

By the Committee on Transportation; and Senator Wright

596-02417-24

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1                   A bill to be entitled  
2       An act relating to public records; amending s. 337.14,  
3       F.S.; providing an exemption from public records  
4       requirements for certain financial information  
5       provided by a prospective bidder to the Department of  
6       Transportation for prequalification purposes;  
7       providing for future legislative review and repeal of  
8       the exemption; providing a statement of public  
9       necessity; providing an effective date.

10  
11 Be It Enacted by the Legislature of the State of Florida:

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13       Section 1. Subsection (1) of section 337.14, Florida  
14       Statutes, is amended to read:

15       337.14 Application for qualification; certificate of  
16       qualification; restrictions; request for hearing.—

17       (1) (a) Any contractor desiring to bid for the performance  
18       of any construction contract in excess of \$250,000 which the  
19       department proposes to let must first be certified by the  
20       department as qualified pursuant to this section and rules of  
21       the department. The rules of the department must address the  
22       qualification of contractors to bid on construction contracts in  
23       excess of \$250,000 and must include requirements with respect to  
24       the equipment, past record, experience, financial resources, and  
25       organizational personnel of the applying contractor which are  
26       necessary to perform the specific class of work for which the  
27       contractor seeks certification. Any contractor who desires to  
28       bid on contracts in excess of \$50 million and who is not  
29       qualified and in good standing with the department as of January

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30 1, 2019, must first be certified by the department as qualified  
31 and must have satisfactorily completed two projects, each in  
32 excess of \$15 million, for the department or for any other state  
33 department of transportation. The department may limit the  
34 dollar amount of any contract upon which a contractor is  
35 qualified to bid or the aggregate total dollar volume of  
36 contracts such contractor is allowed to have under contract at  
37 any one time. Each applying contractor seeking qualification to  
38 bid on construction contracts in excess of \$250,000 shall  
39 furnish the department a statement under oath, on such forms as  
40 the department may prescribe, setting forth detailed information  
41 as required on the application. Each application for  
42 certification must be accompanied by audited, certified  
43 financial statements prepared in accordance with generally  
44 accepted accounting principles and auditing standards by a  
45 certified public accountant licensed in this state or another  
46 state. The audited, certified financial statements must be for  
47 the applying contractor and must have been prepared within the  
48 immediately preceding 12 months. The department may not consider  
49 any financial information of the parent entity of the applying  
50 contractor, if any. The department may not certify as qualified  
51 any applying contractor who fails to submit the audited,  
52 certified financial statements required by this paragraph  
53 ~~subsection~~. If the application or the annual financial statement  
54 shows the financial condition of the applying contractor more  
55 than 4 months before the date on which the application is  
56 received by the department, the applicant must also submit  
57 interim audited, certified financial statements prepared in  
58 accordance with generally accepted accounting principles and

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59 auditing standards by a certified public accountant licensed in  
60 this state or another state. The interim financial statements  
61 must cover the period from the end date of the annual statement  
62 and must show the financial condition of the applying contractor  
63 no more than 4 months before the date that the interim financial  
64 statements are received by the department. However, upon the  
65 request of the applying contractor, an application and  
66 accompanying annual or interim financial statement received by  
67 the department within 15 days after either 4-month period under  
68 this paragraph ~~subsection~~ shall be considered timely. An  
69 applying contractor desiring to bid exclusively for the  
70 performance of construction contracts with proposed budget  
71 estimates of less than \$2 million may submit reviewed annual or  
72 reviewed interim financial statements prepared by a certified  
73 public accountant. The information required by this paragraph  
74 ~~subsection~~ is confidential and exempt from s. 119.07(1). The  
75 department shall act upon the application for qualification  
76 within 30 days after the department determines that the  
77 application is complete. The department may waive the  
78 requirements of this subsection for projects having a contract  
79 price of \$500,000 or less if the department determines that the  
80 project is of a noncritical nature and the waiver will not  
81 endanger public health, safety, or property.

82 (b) In addition to the information required by paragraph  
83 (a), any financial information required by the department for  
84 prequalification purposes which would reveal the revenue,  
85 profit, loss, expenses, gross receipts, taxes paid, or capital  
86 investment of any applying contractor is confidential and exempt  
87 from s. 119.07(1) and s. 24(a), Art. I of the State

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88 Constitution. This paragraph is subject to the Open Government  
89 Sunset Review Act in accordance with s. 119.15 and shall stand  
90 repealed on October 2, 2029, unless reviewed and saved from  
91 repeal through reenactment by the Legislature.

92 Section 2. The Legislature finds that it is a public  
93 necessity that any financial information required by the  
94 Department of Transportation for prequalification purposes,  
95 including information that would reveal the revenue, profit,  
96 loss, expenses, gross receipts, taxes paid, or capital  
97 investment from any applying contractor, be made exempt from s.  
98 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
99 State Constitution. In the prequalification process, an applying  
100 contractor will provide financial statements to the department,  
101 and the department may request additional financial information  
102 in order to verify the financial adequacy of the prospective  
103 bidder. These records may contain sensitive information related  
104 to an applying contractor's financial condition. The risk of  
105 potential disclosure of sensitive financial information defeats  
106 the purpose of protections already afforded to financial  
107 statements and may have a chilling effect on entities desiring  
108 to prequalify or maintain prequalification. The chilling effect  
109 may result in a limited pool of prequalified bidders, thus  
110 negatively impacting the department's ability to receive the  
111 best value for projects. Additionally, protecting this financial  
112 information from public disclosure will prevent such information  
113 from being used by competitors to gain an unfair advantage  
114 against other bidders on the project. Lastly, protecting this  
115 information from disclosure promotes the free provision of such  
116 information to the department by removing a prospective bidder's

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117 concern for attendant risks in doing so. As a result, this  
118 exemption promotes the state's interest in ensuring that  
119 prospective bidders on transportation projects possess the  
120 necessary financial resources to complete such projects, many of  
121 which involve immense costs and may be complex and of long  
122 duration.

123 Section 3. This act shall take effect July 1, 2024.