

By the Committee on Transportation; and Senator Hooper

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1                   A bill to be entitled  
2       An act relating to transportation; creating s.  
3       287.05705, F.S.; providing that certain governmental  
4       entities may not prohibit certain vendors from  
5       responding to competitive solicitations of certain  
6       contractual services; providing applicability;  
7       amending s. 316.2397, F.S.; revising provisions  
8       authorizing vehicles and equipment to show or display  
9       flashing lights; amending s. 337.025, F.S.; revising  
10      the type of transportation project contracts that are  
11      subject to an annual cap; revising application of such  
12      cap; creating s. 337.0262, F.S.; prohibiting the  
13      Department of Transportation and contractors and  
14      subcontractors of the department from purchasing  
15      specified substances from a borrow pit unless  
16      specified conditions are satisfied; requiring certain  
17      contracts, subcontracts, and purchase orders to  
18      require compliance with the prohibition; requiring the  
19      department to cease acceptance of substances from a  
20      borrow pit under certain conditions; authorizing the  
21      department to resume acceptance of such substances  
22      under certain conditions; amending s. 337.14, F.S.;  
23      requiring contractors wishing to bid on certain  
24      contracts to first be certified by the Department of  
25      Transportation as qualified; revising requirements for  
26      applying for and issuing a certificate of  
27      qualification; providing construction with respect to  
28      submission and approval of an application for such  
29      certificate; exempting airports from certain

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30 restrictions regarding entities performing engineering  
31 and inspection services; amending s. 337.185, F.S.;  
32 revising and providing definitions; revising  
33 requirements for arbitration of certain contracts by  
34 the State Arbitration Board; revising requirements  
35 regarding arbitration requests, hearings, procedures,  
36 and awards; revising membership and meeting  
37 requirements; revising compensation of board members;  
38 amending s. 378.403, F.S.; defining the term "borrow  
39 pit"; amending s. 378.801, F.S.; prohibiting operation  
40 of a borrow pit at a new location without notifying  
41 the Secretary of Environmental Protection of the  
42 intent to extract; conforming provisions to changes  
43 made by the act; amending s. 378.802, F.S.; revising  
44 application of provisions to exclude existing  
45 locations; providing an effective date.

46  
47 Be It Enacted by the Legislature of the State of Florida:

48  
49 Section 1. Section 287.05705, Florida Statutes, is created  
50 to read:

51 287.05705 Procurements of road, bridge, and other specified  
52 public construction services.—

53 (1) With respect to competitive solicitations for the  
54 procurement of contractual services that are limited to the  
55 classes of work for which the Department of Transportation  
56 issues certificates of qualification pursuant to s. 337.14, and  
57 which services do not involve the construction, remodeling,  
58 repair, or improvement of any building, a governmental entity

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59 procuring such services may not prohibit a response from a  
60 vendor possessing a valid certificate of qualification under s.  
61 337.14 or license under chapter 489 corresponding to the  
62 contractual services being procured.

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

65 Section 2. Subsections (5) and (7) of section 316.2397,  
66 Florida Statutes, are amended to read:

67 316.2397 Certain lights prohibited; exceptions.—

68 (5) Road maintenance and construction equipment and  
69 vehicles may display flashing white lights or flashing white  
70 strobe lights when in operation and where a hazard exists.  
71 Construction equipment in a work zone on roadways with a posted  
72 speed limit of 55 miles per hour or higher may show or display a  
73 combination of flashing green, amber, and red lights in  
74 conjunction with periods when workers are present. Additionally,  
75 school buses and vehicles that are used to transport farm  
76 workers may display flashing white strobe lights.

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

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

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

84 (c) During periods of extremely low visibility on roadways  
85 with a posted speed limit of 55 miles per hour or higher; and

86 (d) ~~(e)~~ For the lamps authorized under subsections (1), (2),  
87 (3), (4), and (9), s. 316.2065, or s. 316.235(6) which may

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88 flash.

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; accelerated construction procedures; and those  
103 techniques that have the potential to reduce project life cycle  
104 costs. To the maximum extent practical, the department must use  
105 the existing process to award and administer construction and  
106 maintenance contracts. When specific innovative techniques are  
107 to be used, the department is not required to adhere to those  
108 provisions of law that would prevent, preclude, or in any way  
109 prohibit the department from using the innovative technique.  
110 However, before using an innovative technique that is  
111 inconsistent with another provision of law, the department must  
112 document in writing the need for the exception and identify what  
113 benefits the traveling public and the affected community are  
114 anticipated to receive. The department may enter into no more  
115 than \$120 million in contracts awarded annually for the purposes  
116 authorized by this section.

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

119 (a) Turnpike enterprise projects, ~~and turnpike enterprise~~  
120 ~~projects shall not be counted toward the department's annual~~  
121 ~~cap.~~

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

125 Section 4. Section 337.0262, Florida Statutes, is created  
126 to read:

127 337.0262 Purchase and use of clay, peat, gravel, sand, or  
128 any other solid substance extracted from borrow pits.—

129 (1) The department, and any contractor or subcontractor of  
130 the department, may not purchase or use any clay, peat, gravel,  
131 sand, or other solid substance extracted from a borrow pit as  
132 defined in s. 378.403 unless:

133 (a) Certification is provided to the department,  
134 contractor, or subcontractor by the operator of the borrow pit  
135 that it is in compliance with the notice requirements and  
136 substantive requirements of s. 378.801; and

137 (b) The operator of the borrow pit is in compliance with  
138 the performance standards in s. 378.803, including, but not  
139 limited to, providing proof of currently valid permits required  
140 by the Department of Environmental Protection and the  
141 appropriate water management district.

142 (2) All contracts and purchase orders executed by the  
143 department, and all subcontracts and purchase orders executed by  
144 contractors or subcontractors after July 1, 2021, must include  
145 specific requirements for compliance with this section.

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146       (3) In the event that the department determines that  
147 substances are being obtained and used from a borrow pit that is  
148 not in compliance with this section, the department must cease  
149 to accept any substances from that borrow pit within 48 hours  
150 after such determination. The department may resume acceptance  
151 of substances from the borrow pit once the borrow pit is in  
152 compliance with this section.

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

155       337.14 Application for qualification; certificate of  
156 qualification; restrictions; request for hearing.—

157       (1) Any contractor desiring to bid for the performance of  
158 any construction contract in excess of \$250,000 which the  
159 department proposes to let must first be certified by the  
160 department as qualified pursuant to this section and rules of  
161 the department. The rules of the department must address the  
162 qualification of contractors to bid on construction contracts in  
163 excess of \$250,000 and must include requirements with respect to  
164 the equipment, past record, experience, financial resources, and  
165 organizational personnel of the applying contractor which are  
166 necessary to perform the specific class of work for which the  
167 contractor seeks certification. Any contractor who desires to  
168 bid on contracts in excess of \$50 million and who is not  
169 qualified and in good standing with the department as of January  
170 1, 2019, must first be certified by the department as qualified  
171 ~~and desires to bid on contracts in excess of \$50 million~~ must  
172 have satisfactorily completed two projects, each in excess of  
173 \$15 million, for the department or for any other state  
174 department of transportation. The department may limit the

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175 dollar amount of any contract upon which a contractor is  
176 qualified to bid or the aggregate total dollar volume of  
177 contracts such contractor is allowed to have under contract at  
178 any one time. Each applying contractor seeking qualification to  
179 bid on construction contracts in excess of \$250,000 shall  
180 furnish the department a statement under oath, on such forms as  
181 the department may prescribe, setting forth detailed information  
182 as required on the application. Each application for  
183 certification must be accompanied by audited, certified  
184 financial statements prepared in accordance with generally  
185 accepted accounting principles and auditing standards by a  
186 certified public accountant licensed in this state or another  
187 state. The audited, certified financial statements must be for  
188 the applying contractor and must have been prepared the latest  
189 annual financial statement of the applying contractor completed  
190 within the immediately preceding last 12 months. The department  
191 may not consider any financial information of the parent entity  
192 of the applying contractor, if any. The department may not  
193 certify as qualified any applying contractor who fails to submit  
194 the audited, certified financial statements required by this  
195 subsection. If the application or the annual financial statement  
196 shows the financial condition of the applying contractor more  
197 than 4 months before ~~prior to~~ the date on which the application  
198 is received by the department, the applicant must also submit an  
199 interim audited, certified financial statements prepared in  
200 accordance with generally accepted accounting principles and  
201 auditing standards by a certified public accountant licensed in  
202 this state or another state ~~statement and an updated application~~  
203 ~~must be submitted.~~ The interim financial statements ~~statement~~

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

227 (4) If the applicant is found to possess the prescribed  
228 qualifications, the department shall issue to him or her a  
229 certificate of qualification that, unless thereafter revoked by  
230 the department for good cause, will be valid for a period of 18  
231 months after the date of the applicant's financial statement or  
232 such shorter period as the department prescribes. Submission of



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233 an application and subsequent approval do ~~shall~~ not affect  
234 expiration of the certificate of qualification, the ability  
235 factor of the applicant, or the maximum capacity rating of the  
236 applicant. If the department finds that an application is  
237 incomplete or contains inadequate information or information  
238 that cannot be verified, the department may request in writing  
239 that the applicant provide the necessary information to complete  
240 the application or provide the source from which any information  
241 in the application may be verified. If the applicant fails to  
242 comply with the initial written request within a reasonable  
243 period of time as specified therein, the department shall  
244 request the information a second time. If the applicant fails to  
245 comply with the second request within a reasonable period of  
246 time as specified therein, the application shall be denied.

247 (7) A "contractor" as defined in s. 337.165(1)(d) or his or  
248 her "affiliate" as defined in s. 337.165(1)(a) qualified with  
249 the department under this section may not also qualify under s.  
250 287.055 or s. 337.105 to provide testing services, construction,  
251 engineering, and inspection services to the department. This  
252 limitation does not apply to any design-build prequalification  
253 under s. 337.11(7) and does not apply when the department  
254 otherwise determines by written order entered at least 30 days  
255 before advertisement that the limitation is not in the best  
256 interests of the public with respect to a particular contract  
257 for testing services, construction, engineering, and inspection  
258 services. This subsection does not authorize a contractor to  
259 provide testing services, or provide construction, engineering,  
260 and inspection services, to the department in connection with a  
261 construction contract under which the contractor is performing

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262 any work. Notwithstanding any other provision of law to the  
263 contrary, for a project that is wholly or partially funded by  
264 the department and administered by a local governmental entity,  
265 except for a seaport listed in s. 311.09 or an airport as  
266 defined in s. 332.004, the entity performing design and  
267 construction engineering and inspection services may not be the  
268 same entity.

269 Section 6. Section 337.185, Florida Statutes, is amended to  
270 read:

271 (Substantial rewording of section. See  
272 s. 337.185, F.S., for present text.)  
273 337.185 State Arbitration Board.—

274 (1) To facilitate the prompt resolution of claims arising  
275 out of or in connection with a construction or maintenance  
276 contract with the department, the Legislature establishes the  
277 State Arbitration Board, referred to in this section as the  
278 "board."

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

280 (a) "Claim" means the aggregate of all outstanding written  
281 requests for additional monetary compensation, time, or other  
282 adjustments to the contract, the entitlement or impact of which  
283 is disputed by the department and could not be resolved by  
284 negotiation between the department and the contractor.

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

288 (c) "Final acceptance" means that the contractor has  
289 completely performed the work provided for under the contract,  
290 the department or its agent has determined that the contractor

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291 has satisfactorily completed the work provided for under the  
292 contract, and the department or its agent has submitted written  
293 notice of final acceptance to the contractor.

294 (3) Every claim in an amount of up to \$250,000 per contract  
295 that could not be resolved by negotiation between the department  
296 and the contractor must be arbitrated by the board. An award  
297 issued by the board pursuant to this section is final and  
298 enforceable by a court of law.

299 (4) The contractor may submit a claim greater than \$250,000  
300 up to \$1 million per contract or, upon agreement of the parties,  
301 up to \$2 million per contract to be arbitrated by the board. An  
302 award issued by the board pursuant to this subsection is final  
303 if a request for a trial de novo is not filed within the time  
304 provided by Rule 1.830, Florida Rules of Civil Procedure. At the  
305 trial de novo, the court may not admit evidence that there has  
306 been an arbitration proceeding, the nature or amount of the  
307 award, or any other matter concerning the conduct of the  
308 arbitration proceeding, except that testimony given at an  
309 arbitration hearing may be used for any purpose otherwise  
310 permitted by the Florida Evidence Code. If a request for trial  
311 de novo is not filed within the time provided, the award issued  
312 by the board is final and enforceable by a court of law.

313 (5) An arbitration request may not be made to the board  
314 before final acceptance but must be made to the board within 820  
315 days after final acceptance.

316 (6) The board shall schedule a hearing within 45 days after  
317 an arbitration request and, if possible, shall conduct the  
318 hearing within 90 days after the request. The board may  
319 administer oaths and conduct the proceedings as provided by the

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320 rules of the court. The hearing shall be conducted informally.  
321 Presentation of testimony and evidence shall be kept to a  
322 minimum, and matters shall be presented to the arbitrators  
323 primarily through the statements and arguments of counsel. The  
324 board shall address the scope of discovery, presentation of  
325 testimony, and evidence at a preliminary hearing by considering  
326 the size, subject matter, and complexity of the dispute. Any  
327 party to the arbitration may petition the board, for good cause  
328 shown, to issue subpoenas for the attendance of witnesses and  
329 the production of books, records, documents, and other evidence  
330 at the arbitration and may petition the board for orders  
331 compelling such attendance and production at the arbitration.  
332 Subpoenas shall be served and are enforceable in the manner  
333 provided by law.

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

338 (8) The board shall be composed of three members. The first  
339 member shall be appointed by the Secretary of Transportation,  
340 and the second member shall be elected by those construction or  
341 maintenance companies that are under contract with the  
342 department. The third member shall be chosen by agreement of the  
343 first and second members. If the first or second member has a  
344 conflict of interest regarding affiliation with one of the  
345 parties to an arbitration hearing, the appointing entity shall  
346 appoint an alternate member for that hearing. If the third  
347 member has such a conflict of interest, the first and second  
348 members shall select an alternate member. Each member shall

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349 serve a 4-year term. The board shall elect a chair for each  
350 term, who shall be the administrator of the board and custodian  
351 of its records.

352 (9) The presence of all board members is required to  
353 conduct a meeting in person or via videoconferencing.

354 (10) The members of the board shall receive compensation  
355 for the performance of their duties from deposits made by the  
356 parties based on an estimate of compensation by the board,  
357 except that an employee of the department may not receive  
358 compensation from the board. All deposits will be held in escrow  
359 by the chair in advance of the hearing. Each member eligible for  
360 compensation shall be compensated at \$200 per hour, up to a  
361 maximum of \$1,500 per day. A member shall be reimbursed for the  
362 actual cost of his or her travel expenses. The board may  
363 allocate funds annually for clerical and other administrative  
364 services.

365 (11) To cover the cost of administration and initial  
366 compensation of the board, the party requesting arbitration  
367 shall pay a filing fee to the board, according to a schedule  
368 established by the board, of:

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

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

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

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

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

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

380 (g) Up to \$5,000 for a claim that is more than \$400,000.  
381

382 The board may apportion the filing fees and the cost of  
383 recording and preparing a transcript of the hearing among the  
384 parties in its award.

385 Section 7. Present subsections (3) through (19) of section  
386 378.403, Florida Statutes, are redesignated as subsections (4)  
387 through (20), respectively, and a new subsection (3) is added to  
388 that section, to read:

389 378.403 Definitions.—As used in this part, the term:

390 (3) "Borrow pit" means an area of land upon which  
391 excavation of surface resources has been conducted, is being  
392 conducted, or is planned to be conducted, as the term is  
393 commonly used in the mining trade, and is not considered a mine.  
394 Such resources are limited to soil, organic soil, sand, or clay  
395 that can be removed with construction excavating equipment and  
396 loaded on a haul truck with no additional processing.

397 Section 8. Section 378.801, Florida Statutes, is amended to  
398 read:

399 378.801 Other resources; notice of intent to extract ~~mine~~  
400 required.—

401 (1) ~~An~~ No operator may not begin the operation of a borrow  
402 pit, or the process of extracting clay, peat, gravel, sand, or  
403 any other solid substance of commercial value found in natural  
404 deposits or in the earth, except fuller's earth clay, heavy  
405 minerals, limestone, or phosphate, which are regulated elsewhere  
406 in this chapter, at a new location ~~mine~~ without notifying the

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407 secretary of the intention to extract ~~mine~~.

408 (2) The operator's notice of intent to extract ~~mine~~ shall  
409 consist of the operator's estimated life of the extraction  
410 location ~~mine~~ and the operator's signed acknowledgment of the  
411 performance standards provided by s. 378.803.

412 Section 9. Section 378.802, Florida Statutes, is amended to  
413 read:

414 378.802 Existing extraction locations ~~mines~~.—After January  
415 1, 1989, all operators of existing locations ~~mines~~ for the  
416 extraction of resources as described in s. 378.801 shall meet  
417 the performance standards provided by s. 378.803 for any new  
418 surface area disturbed at such locations ~~mines~~.

419 Section 10. This act shall take effect July 1, 2021.