

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 57 Transportation
SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee, Andrade
TIED BILLS: **IDEN./SIM. BILLS:** SB 1194

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	18 Y, 0 N, As CS	Johnson	Keating
2) Ways & Means Committee			
3) Infrastructure & Tourism Appropriations Subcommittee			
4) Commerce Committee			

SUMMARY ANALYSIS

The bill contains various provisions related to transportation. In summary, the bill:

- Prohibits governmental entities from prohibiting certain entities holding a certificate of qualification from the Department of Transportation (DOT) or the appropriate construction license from bidding on road, bridge, or other specified public construction service projects.
- Increases the statutory weight limit of a personal delivery device from 80 pounds to 550 pounds, excluding cargo.
- Authorizes vehicles to display flashing lights if certain conditions exist.
- Authorizes specified road construction vehicles to display flashing blue lights under certain circumstances.
- Authorizes portable radar speed display units to display flashing red or blue lights under certain circumstances.
- Revises statutory provisions regarding innovative transportation projects.
- Revises financial statement requirements for certificates for qualification of DOT contractors.
- Clarifies that the submission of an application for qualification and subsequent approval does not affect an applicant's ability factor or maximum capacity rating.
- Revises construction, engineering, and inspection requirements for airports.
- Revises statutory provisions regarding the State Arbitration Board within DOT, by clarifying court review, providing subpoena power, and increasing payments to certain board members.
- Requires the Central Florida Expressway Authority to consult with, instead of obtain consent from, the Secretary of DOT prior to constructing any extensions, additions, or improvements to the expressway system in Lake County.
- Defines the term "borrow pit" and requires notification to the Department of Environmental Protection for certain activities relating to borrow pits.

The bill has an insignificant negative fiscal impact to state government associated with an increase in compensation for members of the State Arbitration Board. Local governments operating airports may see a reduction in expenditures due to the exemption from construction, engineering, and inspection requirements in the bill. See Fiscal Analysis for details.

The bill has an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Procurement of Public Construction Services

Current Situation

State Procurement Law

Chapter 287, F.S., governs the state's procurement of personal property and services.

The Legislature recognizes that fair and open competition is a basic tenet of public procurement. It is essential to the effective and ethical procurement of commodities and contractual services that there be a system of uniform procedures utilized by state agencies in managing and procuring commodities and contractual services, that detailed justification of agency¹ decisions in the procurement of commodities and contractual services be maintained, and that adherence by the agency and the vendor to specific ethical considerations be required.²

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:³

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposal, which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate, which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services.

Construction Contracting

Administered by the Department of Business and Professional Regulation (DBPR), ch. 489, F.S., relates to various forms of construction contracting and generally requires licensing of construction contractors. However, there is an exemption for road and railroad construction and services incidental to such work.⁴

Department of Transportation Certification for Qualification

Florida law requires that any contractor desiring to bid on any Department of Transportation (DOT) construction contract in excess of \$250,000 must first be certified by DOT as qualified pursuant to state

¹ Section 287.012(1), F.S., defines the term "agency" as any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

² S. 287.001, F.S.

³ See ss. 287.012(6) and 287.057, F.S.

⁴ S. 489.103(1), F.S. Rule 61G4-12.011, F.A.C., defines the term "services incidental thereto" for the purpose of s. 489.103(1), F.S., only, to mean all work on bridges, roads, streets, highways, and railroads except building construction and those subcontractor categories, defined in Sections 489.105(3)(d)-(q), F.S. However, notwithstanding the previous provision, services incidental thereto specifically includes storm drainage and excavation work necessary for the construction of bridges, roads, streets, highways, and railroads; and includes directly contracting with a governmental entity for work on bridges, roads, street, highways, and railroads when any building construction included in the contract is subcontracted to a contractor appropriately licensed under ch. 489, Part I, F.S., to perform building construction or those subcontractor categories defined in ss. 489.105(3)(d)-(q), F.S., and such building construction does not constitute more than 50 percent of the total contract amount.

law⁵ and DOT's rules.⁶ DOT's rules must include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor which are necessary to perform the specific class of work for which the contractor seeks certification.⁷ DOT's rules provide the requirements for contractors to be certified as qualified to bid for the performance of road, bridge, or public transportation construction contracts in excess of \$250,000.⁸

Effect of the Bill

The bill provides that a governmental entity⁹ procuring certain services via a competitive solicitation¹⁰ may not prohibit a response from a vendor that possesses a valid certificate of qualification or license under ch. 489, F.S., corresponding to the contractual services being procured. Specifically, this provision applies to procurement of contractual services¹¹ that are limited to the classes of work for which DOT issues certificates of qualification and that do not involve the construction, remodeling, repair, or improvement of any building. This applies to all competitive solicitations issued by a governmental entity on or after October 1, 2021.

Personal Delivery Devices

Current Situation

A personal delivery device (PDD) is an electrically powered device that:

- Is operated on sidewalks and crosswalks and intended primarily for transporting property;
- Weighs less than 80 pounds, excluding cargo;
- Has a maximum speed of 10 miles per hour; and
- Is equipped with technology to allow for operation of the device with or without the active control or monitoring of a natural person.¹²

A PDD may operate on sidewalks and crosswalks where it has all the rights and duties applicable to a pedestrian, except that a PDD may not unreasonably interfere with pedestrians or traffic and must yield the right-of-way to pedestrians on the sidewalk or crosswalk.¹³

A PDD must obey all official traffic and pedestrian control signals and devices, display identifying information, and be equipped with a braking system.¹⁴ A PDD may not:

- Operate on a public highway except to the extent necessary to cross a crosswalk;
- Operate on a sidewalk or crosswalk unless the PDD operator is actively controlling or monitoring its navigation and operation; or
- Transport hazardous materials.¹⁵

⁵ S. 337.14, F.S.

⁶ DOT's rules regarding contractor qualification are codified in Rule 14-22, F.A.C.

⁷ S. 337.14(1), F.S.

⁸ R. 14-22.0011(1), F.A.C.

⁹ Section 287.102(14), F.S., defines the term "governmental entity" as a political subdivision or agency of this state or of any state of the United States, including, but not limited to, state government, county, municipality, school district, nonprofit public university or college, single-purpose or multipurpose special district, single-purpose or multipurpose public authority, metropolitan or consolidated government, separate legal entity or administrative entity, or any agency of the Federal Government.

¹⁰ Section 287.012(6), F.S., defines the term "competitive solicitation" as the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

¹¹ Section 287.012(8), F.S., defines the term "contractual service" as the rendering by a contractor of its time and effort rather than the furnishing of specific commodities. The term applies only to those services rendered by individuals and firms who are independent contractors, and such services may include, but are not limited to, evaluations; consultations; maintenance; accounting; security; management systems; management consulting; educational training programs; research and development studies or reports on the findings of consultants engaged thereunder; and professional, technical, and social services. The term does not include a contract for the furnishing of labor or materials for the construction, renovation, repair, modification, or demolition of a facility, building, portion of building, utility, park, parking lot, or structure or other improvement to real property entered into pursuant to Ch. 255, F.S., and rules adopted thereunder.

¹² S. 316.003(56), F.S.

¹³ S. 316.2071(1), F.S.

¹⁴ S. 316.0271(2), F.S.

¹⁵ S. 316.2071(3), F.S.

Effect of the Bill

The bill increases the statutory weight limit of a PDD from 80 pounds to 550 pounds, excluding cargo. This will allow larger PDDs to assist with such tasks as package delivery.

Flashing Blue Lights

Current Situation

Florida law prohibits the display of blue lights on any vehicle or equipment, except police vehicles and vehicles of the Department of Corrections or any county correctional agency when responding to emergencies.¹⁶

Road or street maintenance equipment, road or street maintenance vehicles, road service vehicles, refuse collection vehicles, petroleum tankers, and mail carrier vehicles may display amber lights when in operation or where a hazard exists.¹⁷ Additionally, road maintenance and construction equipment and vehicles may display flashing white lights or flashing white strobe lights when in operation and where a hazard exists.¹⁸

The Manual on Uniform Traffic Control Devices (MUTCD), adopted by DOT pursuant s. 316.0745, F.S., describes portable changeable message signs as temporary traffic control devices installed for temporary use with the flexibility to display a variety of messages, including warning messages where traffic speed is expected to drop substantially.¹⁹ Warning lights used in a temporary traffic control zone, in either a steady burn or a flashing mode, are yellow in color as required by the MUTCD.²⁰ In addition, the MUTCD provides that “If a changeable message sign displaying approach speeds is installed, the legend YOUR SPEED XX MPH or such similar legend should be displayed. The color of the changeable message legend should be a yellow legend on a black background or the reverse of these colors.”²¹

Effect of the Bill

The bill authorizes paving machines or compaction rollers within a work zone on roadways with a posted speed limit of 55 mph or higher to show or display flashing blue lights while performing paving operations or where a hazard exists. Additionally, under the direction of a law enforcement officer, the bill authorizes portable radar speed display units to show or display flashing red or blue lights when placed in advance of a work zone on roadways with a posted speed limit of 55 mph or higher and when workers are present.

Flashing Lights on Vehicles

Current Situation

Florida law prohibits the use of flashing lights on vehicles except:

- As a means of indicating a right or left turn, to change lanes, or to indicate that the vehicle is lawfully stopped or disabled upon the highway;
- When a motorist intermittently flashes his or her vehicle’s headlamps at an oncoming vehicle notwithstanding the motorist’s intent for doing so; and
- For certain lamps authorized in statute, which may flash, including various types of emergency vehicles.²²

¹⁶ S. 316.2397(2), F.S.

¹⁷ S. 316.2397(4), F.S.

¹⁸ S. 316.2397(5), F.S.

¹⁹ MUTCD, Section 6F.60, available at <https://mutcd.fhwa.dot.gov/pdfs/2009r1r2/mutcd2009r1r2edition.pdf> (last visited December 14, 2020).

²⁰ MUTCD, Section 1A.13 definition of “warning light.”

²¹ MUTCD, Section 2B.13.

²² S. 316.2397(7), F.S.

With the exception of funeral processions,²³ Florida law does not expressly authorize the use of hazard lights on moving vehicles. The Florida Driver Handbook indicates that a driver should not use emergency flashers in instances of low visibility or rain, and may only use emergency flashers when a vehicle is disabled or stopped on the side of the road.²⁴

Effect of the Bill

The bill authorizes the use of flashing lights on vehicles during periods of extreme low visibility on roadways with a posted speed limit of 55 mph or higher.

Innovative Transportation Projects

Current Situation

Innovative Transportation Projects

Current law authorizes DOT to establish a program for transportation projects that demonstrate innovative techniques of highway and bridge design, construction, maintenance, and finance which have the intended effect of measuring resiliency and structural integrity and controlling time and cost increases on construction projects. These techniques may include, but are not limited to, state-of-the-art technology for pavement, safety, and other aspects of highway and bridge design, construction, and maintenance; innovative bidding and financing techniques; accelerated construction procedures; and techniques that have the potential to reduce project life cycle costs. To the maximum extent practical, DOT must use the existing standard process to award and administer construction and maintenance contracts. When specific innovative techniques are to be used, DOT is not required to adhere to provisions of law that would prevent it from using the innovative technique. However, before using an innovative technique that is inconsistent with another provision of law, DOT must document the need for the exception and identify what benefits the traveling public and the affected community are anticipated to receive.²⁵

DOT may enter into no more than \$120 million in contracts annually for the purposes of innovative transportation projects.²⁶ This annual cap on contracts for innovative transportation projects does not apply to:

- Turnpike enterprise projects.
- Transportation projects funded by the American Recovery and Reinvestment Act of 2009.²⁷

Effect of the Bill

The bill removes redundant language regarding the exception for turnpike enterprise projects and the exception for projects funded by the American Recovery and Reinvestment Act of 2009. The bill provides that the annual cap on contracts does not apply to low-bid design-build milling²⁸ and resurfacing contracts.

Application for Qualification

Current Situation

Any contractor that desires to bid for the performance of any DOT construction contract in excess of \$250,000 must first be certified by DOT as qualified.²⁹

²³ S. 316.1974(3)(c), F.S.

²⁴ Department of Highway Safety and Motor Vehicles, *Florida Driver Handbook*, available at: <https://www3.flhsmv.gov/handbooks/englishdriverhandbook.pdf> (last visited December 14, 2020).

²⁵ S. 337.025(1), F.S.

²⁶ *Id.*

²⁷ S. 337.025(2), F.S.

²⁸ Pavement milling, is a process that removes part of a paved surface, such as a parking lot or road. Milling can remove just the surface of the pavement, or anywhere up to the entire depth, referred to as full depth removal.

<https://www.dykespaving.com/blog/how-does-pavement-milling-work/> (last visited January 22, 2021).

²⁹ S. 337.14(1), F.S. DOT's rules regarding qualifications to bid are contained in Rule. 14-22, F.A.C.

A contractor who is not already qualified and in good standing with DOT as of January 1, 2019, and who desires to bid on DOT contracts in excess of \$50 million must have satisfactorily completed two projects, each in excess of \$15 million, for DOT or for any other state's department of transportation.³⁰

Each application for certification must be accompanied by the contractor's latest annual financial statement, which must have been completed within the last 12 months. If the application or the annual financial statement shows the contractor's financial condition more than four months prior to the date on which DOT receives the application, the contractor must also submit an interim financial statement and an updated application. Each required annual or interim financial statement must be audited and accompanied by the opinion of a certified public accountant.³¹

Effect of the Bill

The bill provides that any contractor who desires to bid on contracts in excess of \$50 million must be certified by DOT as qualified in addition to meeting existing experience requirements.

The bill requires each application for certification to be accompanied by audited, certified financial statements prepared in accordance with United States generally accepted accounting principles and United States generally accepted auditing standards by a certified public accountant licensed in this state or another state. The applying contractor's audited, certified financial statements must specifically address the applying contractor and must have been prepared within the immediately preceding 12 months. DOT may not consider any financial information relating to the parent entity of the applying contractor, if any. DOT may not certify as qualified any applying contractor that fails to submit the required audited, certified financial statements.

If the application or the annual financial statement shows the applying contractor's financial condition more than four months before the date on which DOT receives the application, the bill authorizes DOT to request, rather than require, the applying contractor to also submit interim audited, certified financial statements prepared in accordance with United States generally accepted accounting and auditing principles and standards. Financial statements must be prepared by a certified public accountant licensed in this state or another state.

Certificate of Qualification

Current Situation

Current law provides that if an applicant for a certificate of qualification is found to possess the prescribed qualifications, DOT must issue to him or her a certificate of qualification that, unless revoked by DOT for good cause, will be valid for a period of 18 months after the date of the applicant's financial statement or such shorter period as DOT prescribes. Submission of a new application does not affect expiration of the certificate of qualification.³²

The ability factor is a performance score which a contractor receives from DOT upon completion of a project. The initial ability factor is based on the applicant's organization, management, work experience, and letters of recommendation.³³

The maximum capacity rating is the total aggregate dollar amount of uncompleted work an applicant may have under contract at one time either as a prime contractor and/or subcontractor, regardless of its location or with whom contracted.³⁴

Effect of the Bill

The bill provides that the submission of an application of qualification and subsequent approval of such application do not affect the ability factor of the applicant, or the maximum capacity rating of the applicant.

³⁰ S. 337.14(1), F.S.

³¹ *Id.*

³² S. 337.14(4), F.S.

³³ R. 14-22-003, F.A.C.

³⁴ R. 14-22.003, F.A.C.

Construction, Engineering, and Inspection at Airports

Current Situation

Under current law, a contractor,³⁵ or his or her affiliate³⁶ qualified with DOT may not also qualify to provide testing services, or construction, engineering, and inspection (CEI) services to DOT.³⁷ This limitation does not apply to any design-build prequalification³⁸ and does not apply when DOT otherwise determines by written order entered at least 30 days before advertisement that the limitation is not in the public's best interests with respect to a particular contract for testing services or CEI services.

DOT has adopted procedures governing conflicts of interest involving professional services consultant contracts and design-build contracts. The procedures contain a set of matrices illustrating the variety of scenarios encountered with prime contractor or subcontractors and when DOT would consider the arrangement a conflict.³⁹

In 2019, the Legislature passed HB 905,⁴⁰ which provided that for a construction project wholly or partially funded by DOT and administered by a local governmental entity, the same entity may not perform both design services and CEI services. That bill exempted certain seaports from that provision.

According to the Florida Airports Council, the 2019 statutory changes relating to CEI requirements will increase construction costs, increase project schedules due to additional coordination with consultants, and reduce project efficiency. Depending on the project, airports may leverage different delivery methods for CEI activities. Additionally, airports indicate that they deliver more than road projects and that DOT's professional services requirements do not always accommodate airport construction projects.⁴¹ The Florida Airports Council maintains that due to the unique and specialized nature of airports, they need to remain agile in the projects they delivery to ensure that each project is completed in a safe, timely, and cost effective manner.⁴²

Effect of the Bill

The bill amends s. 337.14(7), F.S., by providing an exemption for airports from the requirement that, for a project wholly or partially funded by DOT and administered by a local governmental entity, the same entity may not perform both design services and CEI services. This exemption is identical to the one currently in place for seaports.

State Arbitration Board

Current Situation

State Arbitration Board

³⁵ Section 337.165(1)(d), F.S., defines the term "contractor" as any person who bids or applies to bid on work let by the department or any counterpart agency of any other state or of the Federal Government or who provides professional services to the department or other such agency. The term "contractor" includes the officers, directors, executives, shareholders active in management, employees, and agents of the contractor.

³⁶ Section 337.165(1)(a), F.S., defines the term "affiliate" as a predecessor or successor of a contractor under the same, or substantially the same, control or a group of business entities which are connected or associated so that one entity controls or has the power to control each of the other business entities. The term "affiliate" includes the officers, directors, executives, shareholders active in management, employees, and agents of the affiliate. The ownership by one business entity of a controlling interest in another business entity or a pooling of equipment or income among business entities shall be prima facie evidence that one business entity is an affiliate of another.

³⁷ S. 337.14, F.S.

³⁸ Design-build prequalification is pursuant to s. 337.11(7), F.S.

³⁹ DOT Topic No.: 375-030-006-c, Conflict of Interest Procedure for Department Contracts. (August 2008)

⁴⁰ Ch. 2019-153, L.O.F.

⁴¹ Email from Darrick McGhee, Florida Airports Council, Re. HB: 1441-Airport Contracts. (Jan. 21, 2020).

⁴² Email from Darrick McGhee, Florida Airports Council, Re. House Bill: 1441-Contracted Airport Projects. (Feb. 1, 2020).

Florida law creates the State Arbitration Board (board) within DOT to facilitate the prompt settlement of claims⁴³ for additional compensation arising out of construction and maintenance contracts between DOT and its various contractors.⁴⁴

Florida law provides that every contractual claim in an amount up to \$250,000 per contract or, at the claimant's option, up to \$1 million per contract or, upon agreement of the parties, up to \$2 million per contract, which cannot be resolved by negotiation between DOT and the contractor must be arbitrated by the board after DOT's acceptance of the project. However, either party may request that the claim be submitted to binding private arbitration. A court of law may not consider the settlement of a claim until the board arbitration process has been exhausted.⁴⁵

The board is composed of three members: one member is appointed by the head of DOT;⁴⁶ one member is elected by those construction or maintenance companies who are under contract with DOT; and the third member is chosen by agreement of the other two members. Whenever the third member has a conflict of interest regarding an affiliation with one of the parties, the other two members select an alternate member for that hearing. The head of DOT may select an alternative or substitute to serve as DOT's member for any hearing or term. Each member serves a two-year term. The board elects a chair, each term, who is the administrator of the board and custodian of its records.⁴⁷

An arbitration hearing may be requested by DOT or by a contractor who has a dispute with DOT which, under the board's rules,⁴⁸ may be the subject of arbitration. For all contracts entered into after June 30, 1993, the request must be made to the board within 820 days after the final acceptance of the work. The board must conduct the hearing within 45 days of the request. The party requesting the board's consideration must give notice of the hearing to each board member. If the board finds that a third party is necessary to resolve the dispute, the board may vote to dismiss the claim, which may thereafter be pursued in accordance with the Florida law.⁴⁹

All members must be present to conduct a meeting. Upon being called into session, the board must promptly proceed to a determination of the issue or issues in dispute.⁵⁰

When a valid contract is in effect defining the rights, duties, and liabilities of the parties with respect to any matter in dispute, the board may only determine the proper interpretation and application of the appropriate contract provisions. Any investigation made by less than the whole membership of the board must be by authority of a written directive by the chair, and the investigation must be summarized in writing and considered by the board as part of the record of its proceedings.⁵¹

The board must hand down its order within 60 days after it is called into session. If all three members of the board do not agree, the order of the majority constitutes the order of the board.⁵²

The board members may receive compensation for the performance of their duties from administrative fees received by the board, except that a DOT employee may not receive compensation from the board. The compensation amount is determined by the board, but may not exceed \$125 per hour, up to \$1,000 per day for each member authorized to receive compensation. This does not prevent the member elected by construction or maintenance companies from being an employee of an association affiliated with the industry, even if the sole responsibility of that member is service on the board. Travel

⁴³ For the purpose of s. 337.185, F.S., the term "claim" means the aggregate of all outstanding claims by a party arising out of a construction or maintenance contract.

⁴⁴ S. 337.185(1), F.S.

⁴⁵ S. 337.185(1), F.S.

⁴⁶ The head of DOT is the Secretary of Transportation.

⁴⁷ S. 337.185(2), F.S.

⁴⁸ Current State Arbitration Board procedures are available at: https://cdn.ymaws.com/ftba.site-ym.com/resource/resmgr/website_files/arbitration_board/11-19-20_State_Arbitration_B.pdf (last visited December 22, 2020).

⁴⁹ S. 337.185(3), F.S.

⁵⁰ S. 337.185(4), F.S.

⁵¹ S. 337.185(5), F.S.

⁵² S. 337.185(6), F.S.

expenses for the industry member may be paid by an industry association, if necessary. The board may allocate funds annually for clerical and other administrative services.⁵³

The party requesting arbitration must pay a fee to the board in accordance with a schedule established by it, to cover the cost of administration and compensation of the board, not to exceed:

- \$500 per claim which is \$25,000 or less;
- \$1,000 per claim which is in excess of \$25,000 but not exceeding \$50,000;
- \$1,500 per claim which is in excess of \$50,000 but not exceeding \$100,000;
- \$2,000 per claim which is in excess of \$100,000 but not exceeding \$200,000;
- \$3,000 per claim which is in excess of \$200,000 but not exceeding \$300,000;
- \$4,000 per claim which is in excess of \$300,000 but not exceeding \$400,000; and
- \$5,000 per claim which is in excess of \$400,000.⁵⁴

The board in its order may apportion the above fees, and the cost of recording and preparing a transcript of the hearing, among the parties in accordance with the board's finding of liability.⁵⁵

Effect of the Bill

The bill revises statutory provisions relating to the State Arbitration Board. The bill defines the following terms for purposes of the board:

"Claim" -- the aggregate of all outstanding written requests for additional monetary compensation, time, or other adjustments to the contract, the entitlement or impact of which is disputed with DOT and could not be resolved by negotiations between DOT and the contractor.

"Contractor" -- a person or firm having a contract for rendering services to DOT relating to the construction or maintenance of a transportation facility.

"Final acceptance" -- the contractor has completely performed the work provided for under the contract, DOT or its agent has determined that the contractor has satisfactorily completed the work provided for under the contract, and DOT or its agent has submitted written notice of final acceptance to the contractor.

The bill requires that every claim of up to \$250,000 per contract that could not be resolved by negotiations between DOT and the contractor be arbitrated by the board and may not go to private arbitration. An award issued by the board pursuant to this provision is final and enforceable by a court of competent jurisdiction.

A contractor may submit a claim greater than \$250,000 up to \$1 million per contract or, upon agreement of the parties, up to \$2 million per contract to be arbitrated by the board. An award issued by the board pursuant to this provision is final if a request for a trial de novo⁵⁶ is not filed within the time provided by Rule 1.830, Florida Rules of Civil Procedure.⁵⁷ At the trial de novo, the court may not admit evidence that there has been an arbitration proceeding, the nature or amount of the award, or any other matter concerning the conduct of the arbitration proceeding, except that testimony given at an arbitration hearing may be used for any purpose otherwise permitted by the Florida Evidence Code.⁵⁸ If a request for trial de novo is not filed within the time provided, the award issued by the board is final and enforceable by a court of competent jurisdiction.

⁵³ S. 337.185(7), F.S.

⁵⁴ S. 337.185(8), F.S.

⁵⁵ S. 337.185(9), F.S.

⁵⁶ A trial de novo refers to a new trial on the entire case and is conducted as if there had been no trial in the first instance.

<https://definitions.uslegal.com/t/trial-de-novo/> (last visited December 22, 2020).

⁵⁷ Rule 1.830, Florida Rules of Civil Procedure relates to voluntary binding arbitration. The rule provides that a voluntary binding arbitration decision may be appealed within 30 days after service of the decision on the parties. Appeal is limited to the grounds specified in s. 44.104(10), F.S.

⁵⁸ Ch. 90, F.S.

An arbitration request may not be made to the board before final acceptance, but must be made within 820 days after final acceptance.

The board must still schedule a hearing within 45 days after an arbitration request and, if possible, must now conduct the hearing within 90 days after the request instead of the previous 45 day deadline.

The bill authorizes the board to administer oaths and conduct the proceedings as provided by the Florida Rules of Civil Procedure and the Florida Evidence Code. The bill requires the hearing must be conducted informally, with the presentation of testimony and evidence being kept to a minimum. The bill requires matters to be presented to the arbitrators primarily through the statements and arguments of counsel. The board must address the scope of discovery, presentation of testimony, and evidence at a preliminary hearing by considering the size, subject matter, and complexity of the dispute. Any party to the arbitration may petition the board, for good cause shown, to issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence at the arbitration and may petition the board for orders compelling such attendance and production at the arbitration. Subpoenas must be served and are enforceable in the manner provided in the Florida Rules of Civil Procedure.

The board must issue its award within 45 days after the conclusion of the arbitration hearing. If all three members of the board do not agree, the award agreed to by the majority of the board constitutes the award of the board.

The board is still composed of three members who are selected in the same manner as in current law. If a member has a conflict of interest, an alternative member is appointed in the same manner as the original appointment. Each member serves a 4-year term instead of the current 2-year term. The board still elects a chair for each term, who is the administrator of the board and custodian of its records.

The presence of all board members is required to conduct a meeting. A meeting may be conducted either in person or via communications media technology⁵⁹ in accordance with rules established by the Administration Commission.⁶⁰

The bill requires all board members, including DOT employees appointed to serve, to receive compensation for the performance of their duties from deposits made by the parties based on an estimate of compensation. All deposits will be held in escrow by the chair in advance of the hearing. Each member eligible for compensation is compensated at \$200 per hour (currently \$150 per hour), up to \$1,500 per day (currently up to \$1,000 per day). A member must be reimbursed for the actual cost of his or her travel expenses. The board may annually allocate funds for clerical and other administrative services.

The bill maintains the filing fees provided in current law keeps the authorization for the board to apportion the filing fees and the cost of recording and preparing a transcript of the hearing among the parties in its award.

Central Florida Expressway Authority

Current Situation

Central Florida Expressway Authority

Part III of ch. 348, F.S., creates the Central Florida Expressway Authority (CFX).⁶¹ CFX may acquire, hold, construct, improve, maintain, operate, own, and lease in the capacity of lessor the Central Florida Expressway System within the geographical boundaries of Orange, Seminole, Lake, Brevard, and Osceola Counties.⁶² However, to ensure the continued financial feasibility of the portion of the Wekiva

⁵⁹ Section 120.54(5)(b)2., F.S., defines the term “communications media technology” as the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.

⁶⁰ The Administration Commission has adopted rules pursuant to s. 120.54(5), F.S. These rules are codified in R. 28-109, F.A.C.

⁶¹ S. 348.753(1), F.S. CFX was previously known as the Orland-Orange County Expressway Authority.

⁶² S. 248.754(1)(a), F.S.

Parkway to be constructed by DOT, the authority may not, without the prior consent of the secretary of DOT, construct any extensions, additions, or improvements to the expressway system in Lake County.⁶³

CFX operates a series of expressways in Central Florida including the East-West Expressway (SR 408), the Apopka Expressway (SR 414), the Central Florida Greenway (SR 417) and the Beachline Expressway (SR 528).⁶⁴

Wekiva Parkway

The Wekiva Parkway (SR 429) is a cooperative effort between DOT, CFX, and the Florida Turnpike Enterprise.⁶⁵ The Wekiva Parkway will connect to the Central Florida Greenway (SR 417), completing the beltway around Central Florida, while helping to protect the natural resources surrounding the Wekiva River. This estimated \$1.6 billion project includes \$500 million of non-toll road improvements including:

- Widening seven miles of SR 46 in Lake and Seminole Counties;
- Rebuilding the US 441/SR 46 interchange in Mount Dora;
- Shifting the CR 46A connection to SR 46 so wildlife can more safely move between habitats;
- Providing non-tolled, one-lane service roads parallel to the parkway in part of east Lake and Seminole Counties; and
- Building a 10-mile, multi-use trail along portions of the parkway in Lake and Seminole Counties.

In 2020, 13 miles of the parkway were open to traffic, and some of the non-tolled, roadway improvements had been made. The entire parkway is scheduled to be open to traffic in 2023.⁶⁶

Effect of the Bill

The bill amends CFX's purposes and powers as it relates to obtaining consent from the secretary of DOT to construct any extensions, additions, or improvements to the expressway system in Lake County. The bill changes the requirement to obtain consent from the secretary of DOT to a requirement that CFX consult with the secretary of DOT prior to constructing any extensions, additions, or improvements to the expressway system in Lake County.

Resource Extraction Reclamation Act

Current Situation

Federal Law

The Federal Mine Safety and Health Act of 1977,⁶⁷ authorizes the United States Secretary of Labor to promulgate and enforce safety and health standards regarding working conditions of employees engaged in underground and surface mineral extraction (mining), related operations, and preparation and milling of the minerals extracted.⁶⁸

The Occupational Safety and Health Act of 1970⁶⁹ (OSHAct) gives the United States Secretary of Labor authority over all working conditions of employees engaged in business affecting commerce except those conditions with respect to which other Federal agencies exercise statutory authority to prescribe or enforce regulations affecting occupational safety or health. The OSHAct also provides that states

⁶³ S. 348.754(1)(c), F.S.

⁶⁴ CFX, <https://www.cfxway.com/> (last visited February 17, 2021).

⁶⁵ The Florida Turnpike Enterprise is part of DOT and operates Florida's turnpike system.

⁶⁶ Wekiva Parkway, <http://www.wekivaparkway.com/> (last visited February 17, 2021).

⁶⁷ Pub. L. 91-173 as amended by Pub. L. 95-164

⁶⁸ United States Department of Labor, Mine Safety and Health Administration, *Interagency Agreement Between the Mine Safety and Health Administration and the Occupational Safety and Health Administration*, available at: <https://www.msha.gov/msha-and-osh-memorandum> (last visited January 21, 2021).

⁶⁹ Pub. L. 91-596

may operate their own occupational safety and health programs under a plan approved by the United States Secretary of Labor.⁷⁰

Pursuant to a 1979 interagency agreement between the federal Mine Safety and Health Administration and the Occupational Safety and Health Administration (OSHA), "borrow pits" are subject to OSHA jurisdiction except those borrow pits located on mine property or related to mining.⁷¹

State Law

Currently, the term "borrow pit" is not defined in Florida statutes.

Part III of Ch. 378, F.S., contains the Resource Extraction Reclamation Act,⁷² which prohibits an operator⁷³ from beginning the process of extracting clay, peat, gravel, sand, or any other solid substance of commercial value found in natural deposits or in the earth, except fuller's earth clay, heavy minerals, limestone, or phosphate, which are regulated elsewhere in Ch. 378, F.S., at a new mine⁷⁴ without notifying the secretary of the Department of Environmental Protection (DEP) of the intention to mine.⁷⁵ The operator's notice of intent to mine must consist of the operator's estimated life of the mine and the operator's signed acknowledgment of the performance standards provided in s. 378.803, F.S.⁷⁶

The act also provides that after January 1, 1989, all operators of existing mines for the extraction of resources as described above must meet the performance standards provided by s. 378.803, F.S., for any new surface area disturbed at such mines.⁷⁷

Section 378.803, F.S., provides the following performance standards for the reclamation of other resources:⁷⁸

- Reclamation must achieve the stormwater, drainage, wetlands, and other surface and groundwater requirements of DEP and the appropriate water management district.
- The final slopes must be at such an angle as to minimize the possibility of slides and may not exceed the natural angle of repose of the material being mined.
- Provisions for safety to persons, wildlife, and adjoining property must be provided.
- Any overburden and spoil must be left in a configuration which is in accordance with accepted soil conservation practices and which is suitable for the proposed future use of the land.
- Reclamation must be designed to avoid the collection of water in pools which are, or are likely to become, noxious, odious, or foul.
- All reclamation activities must, to the extent possible, be coordinated with resource extraction and in any event must be initiated at the earliest practicable time.
- Reclamation activities must be consistent with all applicable local government ordinances at least as stringent as the criteria and standards contained in s. 378.803, F.S.

Effect of the Bill

⁷⁰ United States Department of Labor, Mine Safety and Health Administration, *Interagency Agreement Between the Mine Safety and Health Administration and the Occupational Safety and Health Administration*.

⁷¹ *Id.* For purposes of the federal interagency agreement, the term "borrow pit" means an area of land where the overburden, consisting of unconsolidated rock, glacial debris, other earth material overlying bedrock is extracted from the surface. Extraction occurs on a one-time only basis or only intermittently as need occurs, for use as fill materials by the extracting party in the form in which it is extracted. No milling is involved, except for the use of a scalping screen to remove large rocks, wood and trash. The material is used by the extracting party more for its bulk than its intrinsic qualities on land which is relatively near the borrow pit.

⁷² S.378.401, F.S.

⁷³ S. 378.403(13), F.S., defines the term "operator" as any person engaged in an operation.

⁷⁴ Section 348.403(10), F.S., defines the term "mine" as an area of land upon which mining operations have been conducted, are being conducted, or are planned to be conducted, as the term is commonly used in the trade.

⁷⁵ S. 378.801(1), F.S.

⁷⁶ S. 378.801(2), F.S.

⁷⁷ S. 378.802, F.S.

⁷⁸ Section 378.403(17), F.S., defines the term "resource" as soil, clay, peat, stone, gravel, sand, limerock, metallic ore, or any other solid substance of commercial value found in natural deposits on or in the earth, except phosphate, which is regulated by part III.

The bill defines the term “borrow pit” for purposes of the Resource Extraction Reclamation Act, as an area of land upon which excavation of surface resources has been conducted, is being conducted, or is planned to be conducted, as the term is commonly used in the trade, and is not considered a mine. Such resources are limited to soil, organic soil, sand, or clay that can be removed with construction excavating equipment and loaded on a haul truck with no additional processing.

The bill provides that an operator may not begin the operation of a borrow pit at a new location without notifying the secretary of DEP of the intention to extract. The operator's notice of intent to extract must consist of the operator's estimated life of the extraction location and the operator's signed acknowledgment of the performance standards provided by s. 378.803, F.S.

The bill provides that all operators of existing locations, instead of mines, for the extraction of resources as described in s. 378.801, F.S., must meet the performance standards provided by s. 378.803, F.S. for any new surface area disturbed at such locations.

Effective Date

The bill has an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1 Creates s. 287.05705, F.S., relating to procurements of road, bridge, and other specified public construction services.

Section 2 Amends s. 316.003, F.S., providing definitions.

Section 3 Amends s. 316.2397, F.S., relating to certain lights prohibited; exceptions.

Section 4 Amends s. 337.025, F.S., relating to innovative transportation projects.

Section 5 Amends s. 337.14, F.S., relating to application for qualification; certificate of qualification; restrictions; request for hearing.

Section 6 Amends s. 337.185, F.S., relating to the State Arbitration Board.

Section 7 Amends s. 348.754, F.S., providing the purposes and powers of the Central Florida Expressway Authority.

Section 8 Amends s. 378.403, F.S., providing definitions.

Section 9 Amends s. 378.801, F.S., relating to other resources; notice of intent to extract required.

Section 10 Amends s. 378.802, F.S., relating to existing extraction locations.

Section 11 Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state government revenues.

2. Expenditures:

The bill requires and increases hourly compensation for members of the State Arbitration Board from \$150 to \$200, and increases the daily maximum compensation from \$1,000 to \$1,500 per

member. However, both current law and the bill require parties bringing arbitrations to the board to pay filing fees, based on the amount of the dispute, to defray the costs of operating the board. However, the filing fees do not increase, and it is unknown if they will cover the increased cost of the board.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to impact local government revenues.

2. Expenditures:

Local governments operating airports may see a reduction in expenditures due to the exemption from the construction, engineering, and inspection requirements in the bill. However, the cost savings are associated with specific projects; therefore, this reduction in expenditures is indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not authorize rulemaking, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The authorization of blue lights on paving machines, compaction rollers, and portable radar speed display units may conflict with s. 843.081, F.S., which provides that it is unlawful for a person to use in or on any nongovernmentally owned vehicle or vessel any flashing or rotating blue light⁷⁹ unless such person is a law enforcement officer employed by a federal, state, county, or city law enforcement agency or is a person appointed by the Governor pursuant to ch. 354, F.S.^{80, 81}

⁷⁹ Section 843.081(4), F.S., defines the term “flashing or rotating blue light” to include all forms of lights which display a blue light source or which were designed with the intent of displaying a blue light source whether or not such light is actually in use.

⁸⁰ S. 384.081(2), F.S.

⁸¹ Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 57, p.7. (February 16, 2021).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 17, 2021, the Tourism, Infrastructure & Energy Subcommittee adopted a strike-all amendment as amended and reported the bill favorably as a committee substitute. The committee substitute:

- Removes a provision from the bill requiring a \$50 reduction on the sales tax for every motor vehicle sold in this state in fiscal years 2021-2022.
- Clarifies that the provision regarding the procurements of roads, bridges, and other specified construction projects applies to all governmental entities.
- Limits the bill's authorization for flashing blue lights on construction vehicles to paving machines and compaction rollers.
- Returns \$120 million annual cap on innovative transportation projects to apply to all projects.
- Authorizes DOT to request interim financial statements from contractors under certain circumstances, instead of requiring the contractor to submit them.
- Clarifies that the ability factor and the maximum capacity rating apply to the applicant instead of the project.
- Revises and clarifies provisions regarding the State Arbitration Board, including references to the Florida Rules of Civil Procedure and the Florida Evidence Code, and meetings being conducted via communications media technology.
- Requires CFX to consult with, instead of obtain consent from, the secretary of DOT prior to constructing any extensions, additions, or improvements to the expressway system in Lake County.

This analysis is drafted to the committee substitute as approved by the Tourism, Infrastructure & Energy Subcommittee.