The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Transportation

BILL:	CS/SB 64
INTRODUCER:	Transportation Committee and Senator Hooper
SUBJECT:	Department of Transportation
DATE:	February 21, 2023 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	**Fav/CS**
2.			ATD	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 64 contains various provisions relating to the Florida Department of Transportation (FDOT). The bill:

- Clarifies that stipends paid by the FDOT to non-selected design-build firms that have submitted responsive proposals for construction contracts contained in the FDOT's legislatively approved work program are not subject to existing documentation and notification requirements for stipend payments made by the FDOT to resolve a bid protest through a settlement.
- Requires the FDOT to implement strategies to reduce the cost of all project phases while ensuring the design and construction of project meet applicable federal and state standards, and to track such strategies and the projected savings to be realized therefrom.
- Authorizes the FDOT to share a portion of the construction cost savings realized due to a change in the construction contract design and scope, initiated after execution of the contract, with a design services consultant or a construction engineering and inspection services consultant to the extent that the consultant's input and involvement contributed to such savings, not to exceed ten percent of the construction cost savings realized.
- Repeals a provision prohibiting the FDOT from requesting legislative approval of a proposed turnpike project until the design phase of that project is at least thirty percent complete.
- Revises authorization for an applying contractor who desires to bid exclusively on construction contracts with proposed budget estimates of $2 million (rather than $1 million) to submit reviewed (rather than audited, certified) annual or reviewed interim financial statements prepared by a certified public accountant.

- Authorizes an applicant for an FDOT contractor certificate of qualification to submit with a timely submitted application a request to keep an existing certificate, with the current maximum capacity rating, in place until the expiration date.
- Requires each contract let by the FDOT for performance of bridge construction or maintenance over navigable waters to contain a provision requiring marine general liability insurance, in an amount determined by the FDOT, which covers third-party personal injury and property damage caused by vessels used by the contractor in the performance of the work.
- Prohibits a producer from certifying any shipment of aggregates to a customer other than the FDOT unless such shipment is in compliance with the FDOT's rules, requires producer certification of aggregates in accordance with the FDOT's rules, provides that an electronic ticket generated by a system used by the FDOT serves as an official record for material deliveries on local government projects, and prohibits a local government from refusing to accept electronic tickets.
- Repeals a current provision of law providing temporary confidential and exempt status from public records requirements for a document that reveals the identity of a person who has requested or obtained a bid package, plan, or specifications pertaining to any project to be let by the FDOT.

The fiscal impact of the bill is indeterminate. Please see the "Fiscal Impact Statement" heading.

The bill takes effect July 1, 2023.

II. Present Situation:

For ease of organization and readability, the present situation is discussed below in conjunction with the effect of the proposed changes.

III. Effect of Proposed Changes:

FDOT Contracting and Procurement Authority/Settlements and Stipends (Section 3)

Present Situation

When the FDOT determines that doing so is in the best interest of the public and intends, *through a settlement*, to pay a non-selected responsive bidder a total sum of $1 million or more, including any amount paid pursuant to s. 334.049, F.S. (patents, copyrights, trademarks, and trade secrets), s. 337.11(8), F.S. (stipends to non-selected, responsive design-build firms), or any other law, current law requires the FDOT to:[1]

- Document in a written memorandum by the FDOT secretary the specific reasons that such settlement and payment to a non-selected responsive bidder is in the best interest of the state. The written memorandum must be included and maintained in the permanent procurement files of the FDOT and must include:
  - A description of the property rights, patent rights, copyrights, trademarks, or the engineering design or other design work that the department will acquire or retain as a result of such settlement; and

[1] Section 337.1101(1), F.S.

  - The specific appropriation in the existing General Appropriations Act which the department intends to use to provide such payment.
- Provide prior written notification to the President of the Senate, the Speaker of the House of Representatives, the Senate and House of Representatives minority leaders, the chair and vice chair of the Legislative Budget Commission, and the Attorney General at least 5 business days, or as soon thereafter as practicable, before the FDOT makes the settlement agreement final. Such written notification must include the written memorandum described above.
- Provide written notification of such discussions to the same individuals at the time settlement discussions regarding any such payment have begun in earnest.

The FDOT is separately authorized, when the FDOT determines that doing so is in the best interest of the public, to pay a stipend to non-selected design-build firms that have submitted responsive proposals to the FDOT for construction contracts.[2] These projects are included in the FDOT's legislatively approved work program. The decision and amount of a stipend must be based on the FDOT's analysis of the estimated proposal development costs and the anticipated degree of engineering design during the procurement process. The FDOT retains the right to use the designs in the proposals from responsive non-selected design-build firms that accept a stipend.

A review of the FDOT's Work Program Instructions suggests that the amount of a stipend to be paid is noted in the request for proposals for a design-build project. The FDOT enters into a stipend agreement with each firm after the proposals are "shortlisted,"[3] and each agreement states that the firm that receives the project contract award will not get the stipend. The non-selected firms then submit an invoice within two weeks after the project contract is executed and are paid the stipend amount noted in the request for proposals.[4]

While the FDOT might settle a bid protest through payment of a stipend, in contrast to any amounts paid by the FDOT that would trigger the documentation and notice requirements *for a settlement*, stipends paid by the FDOT pursuant to its separate authority are authorized payments arrived at by contract *during the procurement process*.

Effect of Proposed Changes

The bill amends s. 337.1101(1), F.S., to clarify that stipends paid by the FDOT to non-selected design-build firms that have submitted responsive proposals for construction contracts contained in the FDOT's legislatively approved work program are not subject to existing documentation and notification requirements for stipend payments made by the FDOT to resolve a bid protest through a settlement. If the FDOT pays a stipend to *settle* a bid protest in an amount that triggers the requirements, the FDOT must continue to comply with the documentation and notification requirements.

[2] Section 337.11(8), F.S.
[3] A "shortlist" is a list of selected candidates from which a final choice is to be made.
[4] *See* FDOT, *Work Program Instructions FY 23/24 – 27/28*, p. 378 of 861, available at WorkProgramInstructions.pdf (state.fl.us) (last visited February 1, 2023).

Project Cost-Reduction Strategies and Cost Savings Sharing (Section 2)

Present Situation

The FDOT is required to periodically review its construction, design, and maintenance standards to ensure that such standards are cost-effective and consistent with applicable federal regulations and state law.[5]

The FDOT's Cost Savings Initiative (CSI) is a program that allows contractors to submit proposals that contribute to the cost effectiveness of a given transportation construction project. The CSI Program "provides a method for the Contractor to propose changes in the contract requirements which will accomplish the project's functional requirements, while reducing the project cost, increasing cost effectiveness or significantly improving the project quality without degrading performance, maintainability, or safety. Any proposal submitted that reduces the project cost without substantially changing the work and that was not otherwise provided for in the contract documents should be considered as a CSI Proposal."[6]

The FDOT has an extensive process for evaluating submitted CSI proposals.[7] A contractor's CSI submittal must identify the proposal as a CSI submittal, and a mandatory CSI workshop must be held prior to the beginning of the contract time.[8] The submittal must include a number of items (a description, separate detailed cost estimates, revised plans, a date by which a decision is needed, and a revised project schedule). A submittal must also include an engineering analysis of the proposed change in the contract requirements.

According to the FDOT's Standard Specifications for Road and Bridge Construction, "If the Department approves a Proposal, the Contractor shall receive 50% of the net reduction in the cost of performance of the Contract as determined by the final negotiated agreement between the contractor and the Department. The net reduction will be determined by subtracting from the savings of the construction costs the reasonable documented engineering costs incurred by the contractor to design and develop a Proposal."[9] Under the specification, "The total engineering costs to be subtracted from the savings to determine the net reduction will be limited to 25% of the construction savings and shall not include any markup by the Contractor or the costs for engineering services performed by the Contractor."[10]

As an example of the net reduction calculation, if the total construction cost savings is $100,000 and the documented engineering costs are $10,000, the net reduction equals $90,000. The contract for an approved CSI Proposal would be reduced by 50% of the net reduction ($45,000).

[5] Section 334.044(10)(b), F.S.
[6] FDOT CSI Procedure 625-030-0050, available at Cost Savings Initiative (CSI) (fdot.gov) (last visited January 9, 2023).
[7] *Id. See also* Specification 4-3.9, *FDOT Standard Specifications for Road and Bridge Construction FY 2023-24*, available at fy2023-24ebook.pdf (windows.net) (last visited January 9, 2023).
[8] *See* the FDOT CSI Presentation, *Cost Savings Initiatives*, p. 14, *supra* note 33.
[9] *Supra* note 34, Specification 4-3.9.7.
[10] *Supra* note 33, p. 5-6.

The FTBA advises that under the CSI Program, even if a submitted proposal from a contractor is based on an idea presented to the contractor by a design consultant or a construction engineering and inspection services consultant, the consultant does not receive a share of the cost savings.[11]

Effect of Proposed Changes

The bill creates s. 337.11(16), F.S., requiring the FDOT to implement strategies to reduce the cost of all project phases, including design, construction, and inspection,[12] while ensuring that the design and construction of projects meet applicable federal and state standards. The bill also requires the FDOT to track such strategies, as well as the projected savings to be realized from such strategies.

The bill creates s. 337.11(17), F.S., authorizing the FDOT to share a portion of the construction cost savings realized due to a change in the construction contract design and scope, initiated after execution of the contract, with a design services consultant or a construction engineering and inspection services consultant in accordance with the extent that the consultant's input and involvement contributed to such savings. The amount paid may not exceed ten percent of the construction cost savings realized. This revision may incentivize the identified consultants (as opposed to contractors under the FDOT's CSI Program) to propose and share in cost savings to be realized during the course of an FDOT construction contract.

Legislative Approval of a Proposed Turnpike Project (Section 6)

Present Situation

The Florida Turnpike Enterprise (FTE) within the FDOT is empowered to plan, construct, maintain, repair, and operate the Florida Turnpike System. The FTE's powers are in addition to those of the FDOT.[13] The FTE is a single budget entity that develops its own budget, submitted to the Legislature along with the FDOT's.[14] The turnpike system currently includes the mainline from Central Florida to Miami, as well as the Homestead Extension, and the First Coast Expressway, the Seminole Expressway, the Beachline West and Beachline East Expressways, the Southern Connector Extension, the Sawgrass Expressway, the Suncoast Parkway, the Daniel Webster Western Beltway, the Veterans Expressway, the I-4 Connector, and the Polk Parkway.[15]

A proposed turnpike project may not be added to the turnpike system unless the project is determined to be economically feasible, a statement of environmental feasibility is completed for the project, and such project is determined to be consistent with approved local comprehensive plans of the local governments in which the project is located, to the maximum extent feasible.[16]

[11] Telephone conversation with the FTBA, January 9, 2023.
[12] "Inspection" refers to "construction, engineering, and inspection services," which include the activities required to review and inspect highway and bridge construction performed by a construction contractor. *See* FDOT, Construction, Engineering & Inspections, available at Construction, Engineering & Inspections (fdot.gov) (last visited January 9, 2023).
[13] Section 338.2216(1)(a), F.S.
[14] Section 338.2216(3)(a), F.S.
[15] For a map of the turnpike system, *see* Florida's Turnpike System Maps, available at Florida's Turnpike System Maps – Florida's Turnpike (floridasturnpike.com) (last visited February 3, 2023).
[16] Section 338.223(1)(a), F.S.

"Economically feasible" for a proposed turnpike project means that, as determined by the FDOT before issuance of revenue bonds for the project, the estimated net revenues of the project, excluding feeder roads[17] and turnpike improvements, will be sufficient to pay at least 50 percent of the annual debt service on the bonds by the end of the 12th year of operation and to pay at least 100 percent of the debt service on the bonds by the end of the 30th year of operation. Up to 50 percent of the adopted work program costs of the project may be funded from turnpike revenues.[18] The required statement of *environmental* feasibility is a statement by the Department of Environmental Protection of the project's significant environmental impacts,[19] and that review must occur prior to requesting legislative approval of a proposed turnpike project.[20]

If a proposed project is economically feasible, consistent to the maximum extent feasible with the applicable local comprehensive plans, and a favorable statement of environmental feasibility is completed, the FDOT, with the approval of the Legislature, is directed to construct, maintain, and operate the project.

The FDOT may authorize engineering studies, traffic studies, environmental studies, and other expert studies of the location, costs, economic feasibility, and practicality of proposed turnpike projects and may proceed with the design phase of such projects.[21] However, the FDOT may not request legislative approval of a proposed project (by including the project in the FDOT's annual request for legislative approval of its budget) until the design phase of the project is at least thirty percent complete.[22]

Research reveals that this limitation on requesting legislative approval applies only to a proposed turnpike project. The limitation does not apply to other FDOT projects. The FTBA suggests the limitation, especially in light of the specific authorization for progressive design-build contracting, is overly restrictive and could cause project delays.[23]

Effect of Proposed Changes

The bill amends s. 338.223(1)(a), F.S., to remove the prohibition against the FDOT requesting legislative approval of a proposed turnpike project until the design phase of that project is at least thirty percent complete. A proposed turnpike project must continue to be economically feasible, a statement of environmental feasibility must still be completed for the project before requesting legislative approval, and such project must still be determined to be consistent with approved local comprehensive plans of the local governments in which the project is located, to the maximum extent feasible.

[17] A "feeder road" is defined as any road no more than five miles in length, connecting to the turnpike system which the FDOT determines is necessary to create or facilitate access to a turnpike project. Section 338.221(3), F.S
[18] Sections 338.223(1)(a) and 338.221(8)(a), F.S.
[19] Section 338.221(10), F.S.
[20] Section 338.223(1)(c), F.S.
[21] *Supra* note 38.
[22] *Id.*
[23] Telephone conversation with the FTBA, January 31, 2023.

Contractor Certificates of Qualification (Section 4)

Present Situation

Current law requires any contractor desiring to bid on any FDOT construction contract in excess of $250,000 to first be certified by the FDOT as qualified pursuant to s. 337.14, F.S., and the FDOT's rules.[24] When applying to the FDOT, 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 the FDOT receives the application, the contractor must also submit an interim financial statement and an updated application.[25] Each required annual or interim financial statement must be audited and accompanied by the opinion of a certified public accountant (CPA). However, an applying contractor who desires to bid exclusively for the performance of construction contracts with proposed budget estimates of less than $1 million may submit reviewed annual or reviewed interim financial statements prepared by a CPA.[26]

The FDOT's rules 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. In so doing, the FDOT verifies and evaluates whether an applicant is competent and responsible and possesses the necessary financial resources to perform the requested work.[27]

Part of the latter inquiry involves whether an applicant has the financial resources sufficient to establish a maximum capacity rating (MCR), which is defined as the total aggregate dollar amount of *uncompleted* work an applicant may have under contract at any one time as a prime contractor and/or subcontractor, regardless of the work location and with whom the applicant contracted.[28] According to the FDOT's rules, the MCR is established by a formula, one element of which is the "ability factor." The FDOT's rules require an applicant's maximum capacity rating to be reduced by the total value of their current uncompleted work, producing the applicant's "current capacity," or bidding capacity. Under the rule, the current capacity must be amended immediately upon issuance of a new certificate of qualification, regardless of whether the existing certificate has expired.[29]

Currently, if an applicant for a certificate of qualification is found to possess the prescribed qualifications, the FDOT must issue the applicant a certificate, which, unless revoked by the FDOT for good cause, is valid for a period of 18 months after the date of the applicant's financial statement, or such shorter period as the FDOT prescribes. Submission of an application

[24] Rule Chapter 14-22, F.A.C.
[25] The interim statements must cover the period from the end date of the annual statement and must show the financial condition of the applying contractor no more than four months prior to the date the FDOT receives the interim statement but, upon request of the applicant, an application and accompanying annual or interim financial statement received by the FDOT within 15 days after either four-month period is considered timely.
[26] A reviewed annual or reviewed interim financial statement is less expensive than an audited, certified annual or interim financial statement.
[27] Rule 14-22.003(1), F.A.C.
[28] Rule 14.22-003(1)(d) and (2), F.A.C.
[29] Rule 14-22.006(1), F.A.C.

does not affect expiration of the certificate and, as of July 1, 2021, does not affect the ability factor of the applicant or the maximum capacity rating of the applicant.[30]

The FTBA indicated the FDOT requested revision of the current language to address overlapping certificates of qualification and any changes in the amount of new work that a firm can bid, due to a revised maximum capacity rating. As an example, the FTBA described a potential situation in which a firm is allowed to bid on a $1 million contract under its existing certificate of qualification and then is later found nonresponsive when a new certificate is issued to the firm during the time leading up to the submission of a bid, due to a revised (lower) capacity rating.[31]

Effect of Proposed Changes

The bill amends s. 337.14(1), F.S, to increase from $1 million to $2 million the proposed budget estimate amount for triggering authorization of an applying contractor to submit reviewed annual or reviewed interim financial statements prepared by a CPA, instead of audited, certified statements. An applying contractor who desires to bid exclusively on construction contracts with proposed budget estimates of $2 million or less may submit reviewed annual or reviewed interim financial statements prepared by a CPA.

The bill also amends the current provision in s. 337.14(4), F.S., that submission of an application does not affect the ability factor or the maximum capacity rating of an applicant for an FDOT certificate of qualification. Instead, the bill authorizes an applicant to submit a written request to the FDOT with a timely submitted application to keep an existing certificate in place until its expiration date. If the FDOT approves the request, the applicant's current maximum capacity rating must remain in place until expiration of the current certification. In the absence of the FDOT's approval and in accordance with the FDOT's existing rules, the current capacity must be amended immediately upon issuance of a new certificate of qualification, regardless of whether the existing certificate has expired.

FDOT Contractor Insurance Requirements (Section 2)

Present Situation

Each contract let by the FDOT requires the contractor to indemnify and hold harmless the FDOT, its officers, and employees from any liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the contractor and persons employed or used by the contractor in performance of the construction contract.[32] The FDOT's contractors are also required to carry commercial general liability insurance, with limits not less than $1 million for each occurrence and not less than a $5 million annual general aggregate, with additional requirements for construction adjacent to railroad tracks and certain utility facilities.[33]

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[30] Section 337.14(4), F.S. *See* s. 10, ch. 2021-188, Laws of Fla., which added the ability factor and MCR as items not being affected by the submission of an application.
[31] *See* FTBA email to Transportation Committee staff, November 30, 2021 (on file in the Senate Transportation Committee).
[32] FDOT, *Standard Specifications for Road and Bridge Construction*, *FY 2023-24*, Section 7-12.1, available at fy2023-24ebook.pdf (windows.net) (last visited February 1, 2023).
[33] *Id.* at 7-13.2, 7-13.3, and 7-13.4.

In September of 2020, during the high winds and seas of Hurricane Sally, the Pensacola Bay Bridge suffered severe damage after multiple barges used by the FDOT's contractor in the bridge's construction broke free of their moorings and struck the bridge.[34] The FDOT closed the bridge to all traffic until May of 2021.[35] Claims were filed by businesses, homeowners, governments, and others claiming direct loss.

The contractor, citing the federal Limitation of Liability Act of 1851 (the Act),[36] sought to limit its liability to the value of the barges that actually caused damage to the bridge (approximately $1.43 million).[37] A federal court judge subsequently ruled that the contractor was negligent in its preparations ahead of Hurricane Sally[38] and was not entitled to the limitation of liability contained in the Act.[39]

Effect of Proposed Changes

The bill creates s. 337.11(15), F.S., requiring each contract let by the FDOT for performance of bridge construction or maintenance over navigable waters to contain a provision requiring marine general liability insurance, in an amount determined by the FDOT, that covers third-party personal injury and property damage caused by vessels used by the contractor in the performance of the work.

Construction Aggregates and Material Deliveries (Sections 1 and 7)

Present Situation

The FDOT is currently authorized to adopt rules relating to approval of aggregate[40] and other material sources.[41] Pursuant to that authorization, the FDOT has adopted rules relating to

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[34] *See* FDOT, *Pensacola Bay Bridge Updates and FAQ*, available at Pensacola Bay Bridge FAQ (fdot.gov), for additional details (last visited February 1, 2023).
[35] Pensacola New Journal, *Pensacola Bay Bridge finally open after 8-month closure; drivers can expect some delays*, Kennedy, E., May 28, 2021, available at Pensacola Bay Bridge reopened after Skanska barges damaged during hurricane (pnj.com) (last visited February 1, 2023).
[36] 46 U.S.C. s. 30501, et. seq. Generally, the Act applies to seagoing vessels and vessels used on lakes or rivers or in inland navigation, including canal boats and barges. 46 U.S.C. s. 30502. Under the Act, the liability of the owner of a vessel for specified claims, debts, or liabilities may not exceed the value of the vessel and pending freight. 46 U.S.C. s. 30505(a).
[37] Constructiondive, *Skanska wins key ruling in Pensacola bridge case*, Bousquin, J., August 3, 2021, available at Skanska wins key ruling in Pensacola bridge case | Construction Dive (last visited February 1, 2023).
[38] NorthEscambia.com, *Skanska Loses Federal Lawsuit Over Hurricane Sally Barge Damage*, December 29, 2021, available at Skanska Loses Federal Lawsuit Over Hurricane Sally Barge Damage: NorthEscambia.com (last visited February 1, 2023).
[39] Pensacola News Journal, *Skanska loses Hurricane Sally trial. Judge finds company negligent for failing to prepared*, Kennedy, E., December 29, 2021, available at Skanska trial: Judge sides with claimants in Hurricane Sally case (pnj.com) (last visited February 1, 2023).
[40] Generally speaking, aggregate materials are mined resources that provide the basic material for concrete, asphalt, and road base. Rule 14-103.003(3), F.A.C., defines the term "aggregate" to mean a granular construction material such as sand, limerock, limestone, gravel, shell, slag, and crushed stone; manufactured materials such as shales, slates, and clays; and recycled material such as crushed concrete used as specified, or for other construction materials and uses not yet developed, but which may have potential usage by the FDOT.
[41] Section 334.044(10)(d), F.S. The FDOT may enter into agreements with private or public entities that will provide reliable and economic supplies of construction aggregate materials and control time and cost increases on construction projects. Section 337.026, F.S.

construction aggregates,[42] setting out a standardized method for producers of construction aggregates to apply for, receive, and maintain FDOT approval of construction aggregate sources for use on FDOT projects. The FDOT's primary methods of determining acceptability of aggregate are source and product approval, and maintenance of an on-going quality control program as monitored by the FDOT.[43]

Under the rule, a quality control program requires *producers* of construction materials to:

- Be responsible for their products;
- Establish, maintain, and implement their own individualized process control system; and
- Certify to the FDOT compliance of their product with the applicable standards and contract specifications.[44]

Approval of a source and implementation of a quality assurance program by the FDOT does not relieve the producer of responsibility for compliance with the producer's quality control program, nor of shipping aggregate that meet specifications.[45] Contractors must transport and handle aggregate in a manner that precludes significant variation in the properties of the aggregate, and the rule recites the FDOT's reservation of the right to test all aggregate at the point of use or at the project site to determine acceptability for use according to contract specifications.[46]

Under the FDOT's rules, to "certify" means that the producer affixes the statement "CERTIFIED FOR FDOT" or "CERT. FOR FDOT" to a shipping ticket to attest that the subject aggregate shipment was produced and shipped under an FDOT-approved quality control program and for which quality control tests indicate that the subject aggregate meets the FDOT's specifications and quality and uniformity requirements.[47] Certification must be made at the time of shipment when the weight of material is recorded on the shipping ticket.[48]

According to the Federal Highway Administration (FHWA), "massive amounts of valuable data" are produced by highway construction projects and, historically, such information was communicated via paper. The sole use of paper tickets, such as aggregate shipping tickets collected from truck drivers documenting the weight of every load of materials delivered to a project site "is cumbersome, inefficient, and outdated."[49] Electronic ticketing, known as "e-

[42] Rule Chapter 14-103, F.A.C. Section 334.179, F.S., prohibits local governments from adopting standards or specifications that are in conflict with the FDOT's standards or specifications for permissible use of aggregates that have been certified for use.
[43] Rule 14-103.002(1), F.A.C.
[44] Rule 14-103.002(2), F.A.C.
[45] Rule 14-103.002(3), F.A.C.
[46] *Id.*
[47] Rule 14-103.003(5), F.A.C. Section 334.179, F.S., defines the term" certified for use" as meaning the aggregates have been certified by the producer in accordance with FDOT rules.
[48] Rule 14-103.004(5)(e), F.A.C. A different process is used for direct shipment from a mine through a redistribution terminal (a physical operation at a fixed location, not including the point of production, where aggregates are received from one or more approved sources, recombined from discrete haul units into common storage units, then redistributed for resale to more than one point of use). *See* Rule 14-103.004(5)(g), F.A.C. However, shipping tickets are also required, and a given shipping ticket must reference the producer's ticket number (bill of lading) from the mine.
[49] *See* highways.dot.gov, *e-Ticketing Implementation Plan*, December 2021, available at FHWA-HRT-22-045: e-Ticketing Implementation Plan (dot.gov), at p. 3. (last visited February 2, 2023).

Ticketing" in the industry, "is a market-ready digital innovation that automates the recording and transfer of information in real time for materials as they are moved from the plant to the job site."[50]

The FTBA advises that a small number of local governments are refusing to accept electronic shipping tickets and are continuing to require paper shipping tickets.[51]

Effect of Proposed Changes

The bill amends s. 334.179, F.S., to prohibit a producer from certifying any shipment of aggregates to a customer other than the FDOT unless such shipment is in compliance with the FDOT's rules. This appears to be a restatement of current law, as aggregate shipments must be certified by a producer in accordance with Rule Chapter 14-103, F.A.C., the FDOT's legislatively authorized rule.

In addition, notwithstanding the provisions of s. 334.179, F.S., the bill requires producer certification of aggregates in accordance with rules adopted pursuant to s. 334.044(10), F.S., which is again the same rule chapter.

The bill also creates s. 334.180, F.S., providing that an electronic ticket generated by a system used by the FDOT serves as an official record for material deliveries on local government projects. Notwithstanding any law, rule, or ordinance to the contrary, a local government is prohibited from refusing to accept such electronic ticket.

Public Records Exemption/Confidentiality of Bidders (Section 5)

Section 336.168(1) and (3), F.S., establish confidential and exempt status from public records requirements of s. 119.07(1), F.S., for:

- A document or electronic file revealing the FDOT's official cost estimate of a project until the contract for the project has been executed or until the project is no longer under active consideration; and
- The FDOT's bid analysis and monitoring system, including all system documentation, input, computer processes and programs, electronic data files, and output. This does not apply to the actual source documents, unless otherwise exempted under other provisions of law.

Section 337.168(2), F.S., currently provides that a document[52] revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by the department is confidential and exempt from the provisions of s. 119.07(1), F.S., for the period which begins two working days before the deadline for obtaining bid packages, plans,

[50] *Id.*

[51] Conversation with the FTBA December 20, 2022. The FDOT's Standard Specifications for Road and Bridge Construction FY 2023-24 authorize its contractors to use either a paper ticketing system or an electric ticketing (E-ticketing) system. *See* 320-3.2.1, p. 273 of 1299, available at fy2023-24ebook.pdf (windows.net) (last visited February 15, 2023).

[52] The FDOT advised that many documents submitted by contractors contain both exempt and non-exempt information. Telephone conversation between FDOT staff and Senate Transportation Committee staff, November 24, 2021. In accordance with s. 119.07(1)(d), F.S., the FDOT would be required to redact any information contained in a document that reveals the identity of persons who have requested or obtained bid packages if the information is exempt under any other provision of law.

or specifications and ends with the letting of the bid. A document that reveals the identity before the two working days before the deadline for obtaining bid packages, plans, or specifications remains a public record.

According to the FDOT's analysis and information provided on the same language proposed during the 2022 Session, the FDOT maintains a website that lists the identity of those who have requested or obtained bid packages for a given project. The lists contain for each person a vendor identification number, an indication of the name of the entity that ordered the documents, and a shipping address and phone number for each. The lists did not appear to contain any information which would be exempt under any other provisions of law. The FDOT advised the lists are published daily, except for during the two-day confidential period defined in current law, and a comprehensive list is then published after the letting occurs.[53]

The issue appears to relate to small contractors, who use the identities of potential bidders for the purpose of submitting sub-contract bids to general contractors for their use in preparing bids for FDOT projects.[54]

Effect of Proposed Changes

The bill amends s. 337.168(2), F.S., to repeal the temporary public records exemption for a document revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by the FDOT. According to the FTBA, this revision provides full transparency as to the identity of potential bidders during the entire procurement process.[55]

Effective Date (Section 8)

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[53] *See* FDOT email to Transportation Committee staff, November 24, 2021 (on file in the Senate Transportation Committee).
[54] Telephone conversation between FDOT staff and Senate Transportation Committee staff, November 24, 2021.
[55] *See* FTBA email to Transportation Committee staff, November 30, 2021 (on file in the Senate Transportation Committee).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The fiscal impact of the FDOT's authorization to share a portion of construction cost savings (realized due to a change in the construction contract design and scope after the contract is executed) with a design service consultant or a construction, engineering, and inspection services consultant is indeterminate, as the amount of any potentially shared savings is unknown.

Contractors who wish to bid exclusively on construction contracts with proposed budget estimates of $2 million or less are expected to experience a positive fiscal impact, in an unknown amount, resulting from the authorization to submit reviewed annual or reviewed interim financial statements prepared by a CPA, which are less expensive than audited, certified annual or interim financial statements.

Contractors who enter into an FDOT contract for performance of bridge construction or maintenance over navigable waters would be required to purchase marine general liability insurance, in an amount determined by the FDOT.

C. Government Sector Impact:

The fiscal impact of the FDOT's authorization to share a portion of construction cost savings (realized due to a change in the construction contract design and scope after the contract is executed) with a design service consultant or a construction, engineering, and inspection services consultant is indeterminate, as the amount of any potentially shared savings is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 334.179, 337.11, 337.1101, 337.14, 337.168, and 338.223.

This bill creates section 334.180 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation on February 21, 2023:
The committee substitute:

- Removes the language prohibiting the FDOT from annually committing more than 20 percent of specified revenues for public transit projects, and the language relating to progressive design-build contracting.
- Clarifies the provisions relating to aggregate certification and electronic tickets to improve readability and remove potential ambiguity.

B. Amendments:

None.