

Tourism, Infrastructure & Energy Subcommittee

Wednesday, February 17, 2021
1:00 PM – 3:00 PM
Webster Hall (212 Knott)

Meeting Packet

Chris Sprowls
Speaker

Brad Drake
Chair

The Florida House of Representatives

Commerce Committee
Tourism, Infrastructure & Energy Subcommittee

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Speaker

Brad Drake
Chair

AGENDA

Wednesday, February 17, 2021
Webster Hall (212 Knott)
1:00 PM –3:00 PM

I. Call to Order & Roll Call

II. Welcoming Remarks

III. Consideration of the following bills(s):

HB 57 by *Rep. Andrade*
Transportation

HB 353 by *Rep. Hage*
Bicycle Operation Regulations

IV. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4873 Fax: (850) 413-0419

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Tourism, Infrastructure & Energy Subcommittee

Start Date and Time:	Wednesday, February 17, 2021 01:00 pm
End Date and Time:	Wednesday, February 17, 2021 03:00 pm
Location:	Webster Hall (212 Knott)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 57 Transportation by Andrade
HB 353 Bicycle Operation Regulations by Hage

The Chair requests that all amendments should be filed by 6 p.m. on Tuesday, February 16, 2021, including amendments filed by Members of the Committee/Subcommittee.

This meeting will be live-streamed on https://thefloridachannel.org/. Audience seating will be socially distanced and limited to the press and those persons wishing to provide substantive testimony on the filed bills or draft legislation. Persons who wish to attend must register at www.myfloridahouse.gov, and pick up a pass at the Legislative Welcome Center on the 4th Floor of the Capitol beginning two hours before the start of the meeting. Seating will be available on a first-come, first-served basis. Registration closes three hours before the meeting starts.

NOTICE FINALIZED on 02/10/2021 3:00PM by Rigas.Amanda

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 57 Transportation
SPONSOR(S): Andrade
TIED BILLS: **IDEN./SIM. BILLS:** SB 1194

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee		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:

- Requires the sales tax on the sale of each motor vehicle sold in fiscal years 2021-2022 and 2022-2023 to be reduced by $50.
- 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 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 a project'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.
- Defines the term "borrow pit" and requires notification to the Department of Environmental Protection for certain activities relating to borrow pits.

The bill is likely to a significant negative fiscal impact to state government associated with a reduction in sales tax on the sale of motor vehicles and 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:

Sales Tax on Motor Vehicles

Current Situation

Florida law imposes a six percent tax on certain sales transactions.[1] Unless a specific exemption applies, sales tax, plus any applicable discretionary sales surtax, is due on all new or used motor vehicles sold, leased, delivered into, imported into, or used in this state.[2]

Sales tax is due on the sales price of the motor vehicle, including any separately itemized charge or fee for items such as:

- Accessories sold with the vehicle;
- Preparation, settlement, or closing fees;
- Freight, handling, or delivery of the motor vehicle to the dealer;
- Commission; and
- Any other expense or cost of the dealer that the dealer requires the purchaser to pay.

Any separately itemized fee or charge mandated by a state law for titling, licensing, or registering the motor vehicle, or for recording a lien on the motor vehicle, is not subject to sales and use tax.[3]

A motor vehicle dealer may deduct a trade-in allowance from the taxable sales price of a motor vehicle when, in a single transaction, tangible personal property is traded as part of the motor vehicle sale. If the sale is between individuals, the purchaser, in a single transaction, must trade an aircraft, boat, motor vehicle, or mobile home for the motor vehicle being purchased to qualify for the trade-in allowance.[4]

A discretionary sales surtax is due on the sale of a motor vehicle when the purchaser's address on the motor vehicle's registration or title is located within a county imposing a discretionary sales surtax. A discretionary sales surtax is only applicable to the first $5,000 of the purchase price.[5]

Effect of the Bill

The bill requires that for fiscal years 2021-2022 and 2022-2023, after calculating the sales tax imposed by ch. 212, F.S. on the sale of a motor vehicle, the amount due is reduced by $50.

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

[1] Ch. 212, F.S. Office of Economic and Demographic Research, *2020 Florida Tax Handbook*, p. 163. Available at: http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2020.pdf (last visited December 14, 2020).
[2] Florida Department of Revenue, *Tax Advisory on Sales and Use Tax on Motor Vehicles*, December 2017. Available at: https://floridarevenue.com/Forms_library/current/gt800030.pdf (last visited December 11, 2020).
[3] *Id.*
[4] *Id.*
[5] *Id.*

agencies in managing and procuring commodities and contractual services, that detailed justification of agency[6] 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.[7]

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:[8]

- 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.[9]

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 law[10] and DOT's rules.[11] 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.[12] 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.[13]

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[6] 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.

[7] S. 287.001, F.S.

[8] *See* ss. 287.012(6) and 287.057, F.S.

[9] 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.

[10] S. 337.14, F.S.

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

[12] S. 337.14(1), F.S.

[13] R. 14-22.0011(1), F.A.C.

Effect of the Bill

The bill provides that a local or regional governmental entity[14] procuring certain services via a competitive solicitation[15] 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 services[16] 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.[17]

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.[18]

A PDD must obey all official traffic and pedestrian control signals and devices, display identifying information, and be equipped with a braking system.[19] 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.[20]

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.

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[14] 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.

[15] 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.

[16] 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.

[17] S. 316.003(56), F.S.

[18] S. 316.2071(1), F.S.

[19] S. 316.0271(2), F.S.

[20] S. 316.2071(3), F.S.

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.[21]

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.[22] 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.[23]

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.[24] 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.[25] 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."[26]

Effect of the Bill
The bill authorizes construction vehicles 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.[27]

With the exception of funeral processions,[28] 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

[21] S. 316.2397(2), F.S.
[22] S. 316.2397(4), F.S.
[23] S. 316.2397(5), F.S.
[24] MUTCD, Section 6F.60, available at https://mutcd.fhwa.dot.gov/pdfs/2009r1r2/mutcd2009r1r2edition.pdf (last visited December 14, 2020).
[25] MUTCD, Section 1A.13 definition of "warning light."
[26] MUTCD, Section 2B.13.
[27] S. 316.2397(7), F.S.
[28] S. 316.1974(3)(c), F.S.

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.[29]

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.[30]

DOT may enter into no more than $120 million in contracts annually for the purposes of innovative transportation projects.[31] 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.[32]

Design-Build Contracts
Under current law, DOT may combine the design and construction phases of a building, a major bridge, a limited access facility, or a rail corridor project into a single contract, referred to as a design-build contract, if DOT determines that doing so is in the best interests of the public.[33] DOT, by rule,[34] must adopt procedures for administering design-build contracts, including certain statutorily required requirements and procedures.[35]

Effect of the Bill
The bill replaces the total $120 million annual cap on contracts for innovative transportation projects with a $120 million annual cap for design-build contracts.

The bill also removes redundant language regarding the exception for turnpike enterprise projects. The bill removes the exception for projects funded by the American Recovery and Reinvestment Act of

[29] Department of Highway Safety and Motor Vehicles, *Florida Driver Handbook,* available at: https://www3.flhsmv.gov/handbooks/englishdriverhandbook.pdf (last visited December 14, 2020).
[30] S. 337.025(1), F.S.
[31] *Id.*
[32] S. 337.025(2), F.S.
[33] S. 337.11(7)(a), F.S.
[34] DOT's rules regarding design-build contracts are codified in Rule 14-91, F.A.C.
[35] S. 337.11(7)(b), F.S.

2009. The bill provides the annual cap on contracts does not apply to low-bid design-build milling[36] 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.[37]

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.[38]

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.[39]

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 applying contractor must 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.[40]

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[36] 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).
[37] S, 337.14(1), F.S. DOT's rules regarding qualifications to bid are contained in Rule. 14-22, F.A.C.
[38] S. 337.14(1), F.S.
[39] *Id.*
[40] S. 337.14(4), F.S.

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.[41]

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.[42]

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 project, or the maximum capacity rating of the project.

Construction, Engineering, and Inspection at Airports

Current Situation

Under current law, a contractor,[43] or his or her affiliate[44] qualified with DOT may not also qualify to provide testing services, or construction, engineering, and inspection (CEI) services to DOT.[45] This limitation does not apply to any design-build prequalification[46] 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.[47]

In 2019, the Legislature passed HB 905,[48] 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.[49] 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.[50]

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[41] R. 14.22-003, F.A.C.

[42] R. 14-22.003, F.A.C.

[43] 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.

[44] 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.

[45] S. 337.14, F.S.

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

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

[48] Ch. 2019-153, L.O.F.

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

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

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

Florida law creates the State Arbitration Board (board) within DOT to facilitate the prompt settlement of claims[51] for additional compensation arising out of construction and maintenance contracts between DOT and its various contractors.[52]

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.[53]

The board is composed of three members: one member is appointed by the head of DOT;[54] 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.[55]

An arbitration hearing may be requested by DOT or by a contractor who has a dispute with DOT which, under the board's rules,[56] 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.[57]

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.[58]

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

[51] 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.
[52] S. 337.185(1), F.S.
[53] S. 337.185(1), F.S.
[54] The head of DOT is the Secretary of Transportation.
[55] S. 337.185(2), F.S.
[56] 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).
[57] S. 337.185(3), F.S.
[58] S. 337.185(4), F.S.

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.[59]

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.[60]

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 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.[61]

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.[62]

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.[63]

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 by DOT.
>
> "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 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 law.

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

[59] S. 337.185(5), F.S.
[60] S. 337.185(6), F.S.
[61] S. 337.185(7), F.S.
[62] S. 337.185(8), F.S.
[63] S. 337.185(9), F.S.

by the board pursuant to this provision is final if a request for a trial de novo[64] is not filed within the time provided by Rule 1.830, Florida Rules of Civil Procedure.[65] 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.[66] 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 law.

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 rules of the court. 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 by law.

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 virtual videoconferencing.[67]

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.

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[64] 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).

[65] 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.

[66] Ch. 90, F.S.

[67] In Florida law, this is often referred to as via "communications media technology."

Resource Extraction Reclamation Act

Current Situation

Federal Law
The Federal Mine Safety and Health Act of 1977,[68] 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.[69]

The Occupational Safety and Health Act of 1970[70] (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 may operate their own occupational safety and health programs under a plan approved by the United States Secretary of Labor.[71]

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.[72]

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,[73] which prohibits an operator[74] 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 mine[75] without notifying the secretary of the Department of Environmental Protection (DEP) of the intention to mine.[76] 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.[77]

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.[78]

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[68] Pub. L. 91-173 as amended by Pub. L. 95-164
[69] 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-osha-memorandum (last visited January 21, 2021).
[70] Pub. L. 91-596
[71] 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.*
[72] *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.
[73] S.378.401, F.S.
[74] S. 378.403(13), F.S., defines the term "operator" as any person engaged in an operation.
[75] 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.
[76] S. 378.801(1), F.S.
[77] S. 378.801(2), F.S.
[78] S. 378.802, F.S.

Section 378.803, F.S., provides the following performance standards for the reclamation of other resources:[79]

- 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

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 Amends s. 212.08, F.S., relating to sales, rental, use, consumption, distribution, and storage tax; specified exemptions.

Section 2 Creates s. 287.05705, F.S., relating to procurements of road, bridge, and other specified public construction services.

Section 3 Amends s. 316.003, F.S., providing definitions.

Section 4 Amends s. 316.2397, F.S., relating to certain lights prohibited; exceptions.

Section 5 Amends s. 337.025, F.S., relating to innovative transportation projects.

[79] 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.

Section 6 Amends s. 337.14, F.S., relating to application for qualification; certificate of qualification; restrictions; request for hearing.

Section 7 Amends s. 337.185, F.S., relating to the State Arbitration Board.

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 Revenue Estimating Impact Conference has not met regarding the $50 reduction in sales tax due on the sale of each motor vehicle in the state. However, there will likely be a significant negative fiscal impact to General Revenue and various trust funds.

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. The bill also authorizes board members who are DOT employees to receive compensation for service on the board.[80] 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:

   This 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:

The reduction in sales tax on the sale of motor vehicles will reduce the sales tax paid by consumers by $50 per motor vehicle sold.

D. FISCAL COMMENTS:

None.

[80] Under current law, board members who are DOT employees may not receive additional compensation for service on the board.

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 bill authorizes the State Arbitration Board to meet via virtual video conferencing; however, the generally used term in statute is "communications media technology,"[81] and the state has rules[82] governing the use of communications media technology by state agencies. While the statutory definition of communications media technology does not specifically mention virtual videoconferencing, it allows for digital video by any method available, which appears to include virtual videoconferencing.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not Applicable.

[81] 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.
[82] R. 28-109, F.A.C.

A bill to be entitled

An act relating to transportation; amending s. 212.08, F.S.; reducing motor vehicle sales tax for certain fiscal years; creating s. 287.05705, F.S.; providing that certain governmental entities may not prohibit certain vendors from responding to competitive solicitations of certain contractual services; providing applicability; amending s. 316.003, F.S.; revising the definition of the term "personal delivery device"; amending s. 316.2397, F.S.; revising provisions authorizing vehicles to show or display flashing lights; amending s. 337.025, F.S.; revising the type of transportation project contracts that are subject to an annual cap; revising application of such cap; amending s. 337.14, F.S.; requiring contractors wishing to bid on certain contracts to first be certified by the Department of Transportation as qualified; revising requirements for applying for and issuing a certificate of qualification; providing construction with respect to submission and approval of an application for such certificate; exempting airports from certain restrictions regarding entities performing engineering and inspection services; amending s. 337.185, F.S.; revising and providing definitions; revising requirements for arbitration of

certain contracts by the State Arbitration Board; revising requirements regarding arbitration requests, hearings, procedures, and awards; revising membership and meeting requirements; revising compensation of board members; amending s. 378.403, F.S.; defining the term "borrow pit"; amending s. 378.801, F.S.; prohibiting operation of a borrow pit at a new location without notifying the Secretary of Environmental Protection of the intent to extract; conforming provisions; amending s. 378.802, F.S.; revising application of provisions to exclude existing mines; providing an effective date.

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

Section 1. Paragraph (ppp) is added to subsection (7) of section 212.08, Florida Statutes, to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any entity by this chapter do not inure to any transaction that is

otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(ppp) Motor vehicle sales tax for specified fiscal years.—For fiscal years 2021-2022 and 2022-2023, after calculating the sales tax imposed by this chapter on the sale of a motor vehicle, the amount due shall be reduced by $50.

Section 2. Section 287.05705, Florida Statutes, is created to read:

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

(1) With respect to competitive solicitations for the

procurement of contractual services that are limited to the classes of work for which the Department of Transportation issues certificates of qualification pursuant to s. 337.14, which services do not involve the construction, remodeling, repair, or improvement of any building, a local or regional governmental entity procuring such services may not prohibit a response from a vendor possessing a valid certificate of qualification under s. 337.14 or license under chapter 489 corresponding to the contractual services being procured.

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

Section 3. Paragraph (b) of subsection (56) of section 316.003, Florida Statutes, is amended to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(56) PERSONAL DELIVERY DEVICE.—An electrically powered device that:

(b) Weighs less than 550 ~~80~~ pounds, excluding cargo;

A personal delivery device is not considered a vehicle unless expressly defined by law as a vehicle. A mobile carrier is not considered a personal delivery device.

Section 4. Subsection (10) of section 316.2397, Florida

Statutes, is renumbered as subsection (12), subsections (2) and (7) are amended, and new subsections (10) and (11) are added to that section, to read:

316.2397 Certain lights prohibited; exceptions.—

(2) It is expressly prohibited for any vehicle or equipment, except police vehicles and vehicles and equipment specified in subsections (10) and (11), to show or display blue lights. However, vehicles owned, operated, or leased by the Department of Corrections or any county correctional agency may show or display blue lights when responding to emergencies.

(7) Flashing lights are prohibited on vehicles except:

(a) 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;

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

(c) During periods of extreme low visibility on roadways with a posted speed limit of 55 mph or higher; and

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

(10) Construction vehicles within a work zone on roadways with a posted speed limit of 55 mph or higher may show or display flashing blue lights while performing paving operations

or where a hazard exists.

(11) Under the direction of a law enforcement officer, portable radar speed display units in advance of a work zone on roadways with a posted speed limit of 55 mph or higher may show or display flashing red and blue lights when workers are present.

Section 5. Section 337.025, Florida Statutes, is amended to read:

337.025 Innovative transportation projects; department to establish program.—

(1) The department may establish a program for transportation projects demonstrating 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. Such 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 those techniques that have the potential to reduce project life cycle costs. To the maximum extent practical, the department must use the existing process to award and administer construction and maintenance contracts. When specific innovative techniques are to be used, the department is not required to adhere to those

provisions of law that would prevent, preclude, or in any way prohibit the department from using the innovative technique. However, before using an innovative technique that is inconsistent with another provision of law, the department must document in writing the need for the exception and identify what benefits the traveling public and the affected community are anticipated to receive. The department may enter into no more than $120 million in design-build contracts awarded annually pursuant to s. 337.11(7) for the purposes authorized by this section.

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

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

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

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

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

(1) Any contractor desiring to bid for the performance of any construction contract in excess of $250,000 which the department proposes to let must first be certified by the

department as qualified pursuant to this section and rules of the department. The rules of the department must address the qualification of contractors to bid on construction contracts in excess of $250,000 and 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. Any contractor who desires to bid on contracts in excess of $50 million and who is not qualified and in good standing with the department as of January 1, 2019, must first be certified by the department as qualified and ~~desires to bid on contracts in excess of $50 million~~ must have satisfactorily completed two projects, each in excess of $15 million, for the department or for any other state department of transportation. The department may limit the dollar amount of any contract upon which a contractor is qualified to bid or the aggregate total dollar volume of contracts such contractor is allowed to have under contract at any one time. Each applying contractor seeking qualification to bid on construction contracts in excess of $250,000 shall furnish the department a statement under oath, on such forms as the department may prescribe, setting forth detailed information as required on the application. Each application for certification must be accompanied by audited, certified financial statements prepared in accordance with generally

accepted accounting principles and auditing standards by a certified public accountant licensed in this state or another state. The audited, certified financial statements must be for the applying contractor and must have been prepared ~~the latest annual financial statement of the applying contractor completed~~ within the immediately preceding ~~last~~ 12 months. The department may not consider any financial information of the parent entity of the applying contractor, if any. The department may not certify as qualified any applying contractor that fails to submit the audited, certified financial statements required by this subsection. If the application or the annual financial statement shows the financial condition of the applying contractor more than 4 months before ~~prior to~~ the date on which the application is received by the department, the applicant must also submit ~~an~~ interim audited, certified financial statements prepared in accordance with generally accepted accounting principles and auditing standards by a certified public accountant licensed in this state or another state ~~statement and an updated application must be submitted~~. The interim financial statements ~~statement~~ 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 4 months before ~~prior to~~ the date that the interim financial statements are ~~statement is~~ received by the department. However, upon the request of the applying contractor, an application and

accompanying annual or interim financial statement received by the department within 15 days after either 4-month period under this subsection shall be considered timely. ~~Each required annual or interim financial statement must be audited and accompanied by the opinion of a certified public accountant.~~ An applying contractor desiring 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 certified public accountant. The information required by this subsection is confidential and exempt from s. 119.07(1). The department shall act upon the application for qualification within 30 days after the department determines that the application is complete. The department may waive the requirements of this subsection for projects having a contract price of $500,000 or less if the department determines that the project is of a noncritical nature and the waiver will not endanger public health, safety, or property.

(4) If the applicant is found to possess the prescribed qualifications, the department shall issue to him or her a certificate of qualification that, unless thereafter revoked by the department 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 the department prescribes. Submission of an application and subsequent approval do ~~shall~~ not affect

expiration of the certificate of qualification, the ability factor of the project, or the maximum capacity rating of the project. If the department finds that an application is incomplete or contains inadequate information or information that cannot be verified, the department may request in writing that the applicant provide the necessary information to complete the application or provide the source from which any information in the application may be verified. If the applicant fails to comply with the initial written request within a reasonable period of time as specified therein, the department shall request the information a second time. If the applicant fails to comply with the second request within a reasonable period of time as specified therein, the application shall be denied.

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

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

Section 7. Section 337.185, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 337.185, F.S., for present text.)

337.185 State Arbitration Board.—

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

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

(a) "Claim" means 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 by the department.

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

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

(3) Every claim in an amount of up to $250,000 per contract will be arbitrated by the board. An award issued by the board pursuant to this section is final and enforceable by a court of law.

(4) The 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 subsection is final if a request for a trial de novo is not filed within the time provided by Rule 1.830, Florida Rules of Civil Procedure. 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. 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 law.

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

(6) The board shall schedule a hearing within 45 days after an arbitration request and, if possible, shall conduct the hearing within 90 days after the request. The board may administer oaths and conduct the proceedings as provided by the rules of the court. The hearing shall be conducted informally. Presentation of testimony and evidence shall be kept to a minimum, and matters shall be presented to the arbitrators primarily through the statements and arguments of counsel. The board shall 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 shall be served and are enforceable in the manner provided by law.

(7) The board must issue an 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 shall constitute the award of the board.

(8) The board shall be composed of three members. The first member shall be appointed by the Secretary of Transportation, and the second member shall be elected by those construction or maintenance companies that are under contract with the department. The third member shall be chosen by agreement of the first and second members. If the first or second member has a conflict of interest regarding affiliation with one of the parties to an arbitration hearing, the appointing entity shall appoint an alternate member for that hearing. If the third member has such a conflict of interest, the first and second members shall select an alternate member. Each member shall serve a 4-year term. The board shall elect a chair for each term, who shall be the administrator of the board and custodian of its records.

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

(10) The members of the board shall receive compensation for the performance of their duties from deposits made by the parties based on an estimate of compensation by the board. All deposits will be held in escrow by the chair in advance of the hearing. Each member eligible for compensation shall be compensated at $200 per hour, up to a maximum of $1,500 per day.

A member shall be reimbursed for the actual cost of his or her travel expenses. The board may allocate funds annually for clerical and other administrative services.

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

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

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

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

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

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

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

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

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

Section 8. Subsections (3) through (19) of section 378.403, Florida Statutes, are renumbered as subsections (4)

through (20), respectively, and a new subsection (3) is added to that section to read:

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

(3) "Borrow pit" means 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.

Section 9. Section 378.801, Florida Statutes, is amended to read:

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

(1) An ~~No~~ operator may not begin the operation of a borrow pit, or 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 this chapter, at a new location ~~mine~~ without notifying the secretary of the intention to extract ~~mine~~.

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

Section 10. Section 378.802, Florida Statutes, is amended to read:

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

Section 11. This act shall take effect July 1, 2021.

TOURISM, INFRASTRUCTURE & SUBCOMMITTEE

HB 57 by Rep. Andrade
TRANSPORTATION

AMENDMENT SUMMARY
FEBRUARY 17, 2021

Amendment 1 (Strike-All Amendment) by Rep. Andrade (# 212831)

- Removes provisions for a $50 sales tax reduction on the purchase of motor vehicles.
- Authorizes use of blue lights on construction vehicles including paving machines and compaction rollers.
- Revises provisions regarding innovative transportation projects to indicate that the $120 million cap for these projects does not apply to low-bid design-build milling and resurfacing contracts.
- Revises provisions regarding a contractor's submission of interim financial statements to the Department of Transportation (DOT) to authorize DOT to request, but not automatically require, their submission.
- Clarifies that the ability factor and the maximum capacity rating apply to the applicant instead of the project.
- Revises provisions regarding the State Arbitration Board (board):
    - Provides references to the Florida Rules of Civil Procedure and the Florida Evidence Code.
    - Provides that arbitration awards are enforceable in a court of competent jurisdiction.
    - Clarifies that board meetings may be conducted in person or via communications media technology.
    - Reinstates a provision that a DOT employee that serves on the board may not be compensated by the board.
    - Ties the reimbursement of board members' travel expenses to the state's generally applicable travel reimbursement law.

Amendment 1a to Amendment 1 by Rep. Slosberg (# 495985)

- Applies the prohibition against texting or using a wireless communications device while driving in a school zone or construction zone to a motor vehicle that is stopped and waiting for an emergency vehicle to pass.
- Creates the First Responder Protection Act, prohibiting the use of a wireless communications device in the immediate vicinity of first responders in the line of duty.
    - Provides legislative intent regarding safety.
    - Authorizes law enforcement to stop vehicles and issue citations to persons who are driving in the immediate vicinity of first responders while using a wireless communications device.
    - Prohibits a person from operating a motor vehicle while using a wireless communications device in a handheld manner in the immediate vicinity of a first responder in the line of duty.
    - Provides exceptions.
    - Requires a law enforcement officer to notify the motor vehicle operator of his or her right to decline a search of the wireless communications device.
    - Provides that a violation is a moving violation and provides for points on the violator's driver's license.
    - Provides for the distribution of fine proceeds to the Emergency Medical Services Trust Fund within the Department of Health.
    - Requires the traffic citation to contain certain information, and requires the Department of Highway Safety and Motor Vehicles to issue a report summarizing the information.

Amendment 1b to Amendment 1 by Rep. Brown (# 203019)

- Requires the Central Florida Expressway Authority to consult with, instead of obtain consent from, the Secretary of the Department of Transportation prior to constructing any extensions, additions, or improvements to the expressway system in Lake County.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Committee/Subcommittee hearing bill: Tourism, Infrastructure & Energy Subcommittee

Representative Andrade offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

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

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

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

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

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

Section 2. Paragraph (b) of subsection (56) of section 316.003, Florida Statutes, is amended to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(56) PERSONAL DELIVERY DEVICE.—An electrically powered device that:

(b) Weighs less than 550 ~~80~~ pounds, excluding cargo;

A personal delivery device is not considered a vehicle unless expressly defined by law as a vehicle. A mobile carrier is not considered a personal delivery device.

Section 3. Subsection (10) of section 316.2397, Florida Statutes, is renumbered as subsection (12), subsections (2) and (7) are amended, and new subsections (10) and (11) are added to that section, to read:

316.2397 Certain lights prohibited; exceptions.—

(2) It is expressly prohibited for any vehicle or

equipment, except police vehicles and road construction equipment specified in subsections (10) and (11), to show or display blue lights. However, vehicles owned, operated, or leased by the Department of Corrections or any county correctional agency may show or display blue lights when responding to emergencies.

(7) Flashing lights are prohibited on vehicles except:

(a) 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;

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

(c) During periods of extreme low visibility on roadways with a posted speed limit of 55 mph or higher; and

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

(10) Paving machines or compaction rollers within a work zone area on roadways with a posted speed limit of 55 mph or higher may show or display flashing blue lights while performing paving operations or where a hazard exists.

(11) Under the direction of a law enforcement officer, portable radar speed display units in advance of a work zone area on roadways with a posted speed limit of 55 mph or higher

may show or display flashing red and blue lights when workers are present.

Section 4. Section 337.025, Florida Statutes, is amended to read:

337.025 Innovative transportation projects; department to establish program.—

(1) The department may establish a program for transportation projects demonstrating 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. Such 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 those techniques that have the potential to reduce project life cycle costs. To the maximum extent practical, the department must use the existing process to award and administer construction and maintenance contracts. When specific innovative techniques are to be used, the department is not required to adhere to those provisions of law that would prevent, preclude, or in any way prohibit the department from using the innovative technique. However, before using an innovative technique that is inconsistent with another provision of law, the department must

document in writing the need for the exception and identify what benefits the traveling public and the affected community are anticipated to receive. The department may enter into no more than $120 million in contracts annually for the purposes authorized by this section.

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

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

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

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

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

(1) Any contractor desiring to bid for the performance of any construction contract in excess of $250,000 which the department proposes to let must first be certified by the department as qualified pursuant to this section and rules of the department. The rules of the department must address the qualification of contractors to bid on construction contracts in excess of $250,000 and 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. Any contractor who desires to bid on contracts in excess of $50 million and who is not qualified and in good standing with the department as of January 1, 2019, must first be certified by the department as qualified and ~~desires to bid on contracts in excess of $50 million~~ must have satisfactorily completed two projects, each in excess of $15 million, for the department or for any other state department of transportation. The department may limit the dollar amount of any contract upon which a contractor is qualified to bid or the aggregate total dollar volume of contracts such contractor is allowed to have under contract at any one time. Each applying contractor seeking qualification to bid on construction contracts in excess of $250,000 shall furnish the department a statement under oath, on such forms as the department may prescribe, setting forth detailed information as required on the application. Each application for certification must be accompanied by audited, certified financial statements prepared in accordance with generally accepted accounting principles and auditing standards by a certified public accountant licensed in this state or another state. The audited, certified financial statements must be for the applying contractor and must have been prepared ~~the latest annual financial statement of the applying contractor completed~~

within the immediately preceding ~~last~~ 12 months. The department may not consider any financial information of the parent entity of the applying contractor, if any. The department may not certify as qualified any applying contractor that fails to submit the audited, certified financial statements required by this subsection. If the application or the annual financial statement shows the financial condition of the applying contractor more than 4 months before ~~prior to~~ the date on which the application is received by the department, a reviewed interim financial statement or an interim audited, certified financial statement prepared in accordance with generally accepted accounting principles and auditing standards by a certified public accountant licensed in this state or another state may be requested by the department ~~statement and an updated application must be submitted~~. The interim financial statements, if requested, ~~statement~~ 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 4 months before ~~prior to~~ the date that the interim financial statements are ~~statement is~~ received by the department. However, upon the request of the applying contractor, an application and accompanying annual or interim financial statement received by the department within 15 days after either 4-month period under this subsection shall be considered timely. ~~Each required annual or interim financial statement must be audited and accompanied~~

~~by the opinion of a certified public accountant.~~ An applying contractor desiring 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 certified public accountant. The information required by this subsection is confidential and exempt from s. 119.07(1). The department shall act upon the application for qualification within 30 days after the department determines that the application is complete. The department may waive the requirements of this subsection for projects having a contract price of $500,000 or less if the department determines that the project is of a noncritical nature and the waiver will not endanger public health, safety, or property.

(4) If the applicant is found to possess the prescribed qualifications, the department shall issue to him or her a certificate of qualification that, unless thereafter revoked by the department 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 the department prescribes. Submission of an application and subsequent approval do ~~shall~~ not affect expiration of the certificate of qualification, the ability factor of the applicant, or the maximum capacity rating of the applicant. If the department finds that an application is incomplete or contains inadequate information or information

that cannot be verified, the department may request in writing that the applicant provide the necessary information to complete the application or provide the source from which any information in the application may be verified. If the applicant fails to comply with the initial written request within a reasonable period of time as specified therein, the department shall request the information a second time. If the applicant fails to comply with the second request within a reasonable period of time as specified therein, the application shall be denied.

(7) A "contractor" as defined in s. 337.165(1)(d) or his or her "affiliate" as defined in s. 337.165(1)(a) qualified with the department under this section may not also qualify under s. 287.055 or s. 337.105 to provide testing services, construction, engineering, and inspection services to the department. This limitation does not apply to any design-build prequalification under s. 337.11(7) and does not apply when the department otherwise determines by written order entered at least 30 days before advertisement that the limitation is not in the best interests of the public with respect to a particular contract for testing services, construction, engineering, and inspection services. This subsection does not authorize a contractor to provide testing services, or provide construction, engineering, and inspection services, to the department in connection with a construction contract under which the contractor is performing any work. Notwithstanding any other provision of law to the

contrary, for a project that is wholly or partially funded by the department and administered by a local governmental entity, except for a seaport listed in s. 311.09 or an airport as defined in s. 332.004, the entity performing design and construction engineering and inspection services may not be the same entity.

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

(Substantial rewording of section. See s. 337.185, F.S., for present text.)

337.185 State Arbitration Board.—

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

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

(a) "Claim" means 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 the department and could not be resolved by negotiations between the department and the contractor.

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

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

(3) Every claim in an amount of up to $250,000 per contract that could not be resolved by negotiations between the department and the contractor shall be arbitrated by the board. An award issued by the board pursuant to this subsection is final and enforceable by a court of competent jurisdiction.

(4) The 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 subsection is final if a request for a trial de novo is not filed within the time provided by Rule 1.830, Florida Rules of Civil Procedure. 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. 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.

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

(6) The board shall schedule a hearing within 45 days after an arbitration request and, if possible, shall conduct the hearing within 90 days after the request. The board may administer oaths and conduct the proceedings as provided by the Florida Rules of Civil Procedure and the Florida Evidence Code. The hearing may be conducted informally. Presentation of testimony and evidence shall be kept to a minimum, and matters shall be presented to the board primarily through the statements and arguments of counsel. The board shall 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 shall be served and are enforceable in the manner provided in the Florida Rules of Civil Procedure.

(7) The board must issue an 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 shall constitute the award of the board.

(8) The board shall be composed of three members. The first member shall be appointed by the Secretary of Transportation, and the second member shall be elected by those construction or maintenance companies that are under contract with the department. The third member shall be chosen by agreement of the first and second members. If the first or second member has a conflict of interest regarding affiliation with one of the parties to an arbitration hearing, the appointing entity shall appoint an alternate member for that hearing. If the third member has such a conflict of interest, the first and second members shall select an alternate member. Each member shall serve a 4-year term. The board shall elect a chair for each term, who shall be the administrator of the board and custodian of its records.

(9) The presence of all board members is required to conduct a meeting either in person or by means of communications media technology used in accordance with rules adopted by the Administration Commission under s. 120.54(5).

(10) The members of the board may receive compensation for the performance of their duties from deposits made by the parties based on an estimate of compensation by the board, except that no employee of the department may receive compensation from the board. All deposits shall be held in

escrow in advance of the hearing. Each member eligible for compensation shall be compensated at a rate of $200 per hour, up to a maximum of $1,500 per day. Members of the board are entitled to receive per diem and travel expenses pursuant to s. 112.061. The board may allocate funds annually for clerical and other administrative services.

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

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

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

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

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

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

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

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

The board may apportion the filing fees and the cost of recording and preparing a transcript of the hearing among the

parties in its award.

Section 7. Subsections (3) through (19) of section 378.403, Florida Statutes, are renumbered as subsections (4) through (20), respectively, and a new subsection (3) is added to that section to read:

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

(3) "Borrow pit" means 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.

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

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

(1) An ~~No~~ operator may not begin the operation of a borrow pit, or 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 this chapter, at a new location ~~mine~~ without notifying the secretary of the intention to extract ~~mine~~.

(2) The operator's notice of intent to extract ~~mine~~ shall

consist of the operator's estimated life of the extraction location ~~mine~~ and the operator's signed acknowledgment of the performance standards provided by s. 378.803.

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

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

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

T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert: An act relating to transportation; creating s. 287.05705, F.S.; providing that governmental entities may not prohibit certain vendors from responding to competitive solicitations of certain contractual services; providing applicability; amending s. 316.003, F.S.; revising the definition of the term "personal delivery device"; amending s. 316.2397, F.S.; revising provisions authorizing certain equipment to show or display flashing lights; amending s. 337.025, F.S.; revising the application of the cap on innovative transportation projects; amending s. 337.14, F.S.; requiring contractors wishing to bid

on certain contracts to first be certified by the Department of Transportation as qualified; revising requirements for applying for and issuing a certificate of qualification; revising provisions regarding interim financial statements; providing construction with respect to submission and approval of an application for such certificate; exempting airports from certain restrictions regarding entities performing construction, engineering, and inspection services; amending s. 337.185, F.S.; revising and providing definitions; revising requirements for arbitration of certain contracts by the State Arbitration Board; revising requirements regarding arbitration requests, hearings, procedures, and awards; revising membership and meeting requirements; revising compensation of board members; amending s. 378.403, F.S.; defining the term "borrow pit"; amending s. 378.801, F.S.; prohibiting operation of a borrow pit at a new location without notifying the Secretary of Environmental Protection of the intent to extract; conforming provisions; amending s. 378.802, F.S.; revising application of provisions to exclude existing mines; providing an effective date.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Tourism, Infrastructure & Energy Subcommittee

Representative Slosberg offered the following:

Amendment to Amendment (212831) by Representative Andrade (with title amendment)

Between lines 68 and 69 of the amendment, insert:

Section 4. Paragraph (a) of subsection (3) of section 316.305, Florida Statutes, is amended, and subsection (4) of that section is republished, to read:

316.305 Wireless communications devices; prohibition.—

(3)(a) A person may not operate a motor vehicle while manually typing or entering multiple letters, numbers, symbols, or other characters into a wireless communications device or while sending or reading data on such a device for the purpose of nonvoice interpersonal communication, including, but not

limited to, communication methods known as texting, e-mailing, and instant messaging. As used in this section, the term "wireless communications device" means any handheld device used or capable of being used in a handheld manner, that is designed or intended to receive or transmit text or character-based messages, access or store data, or connect to the Internet or any communications service as defined in s. 812.15 and that allows text communications. For the purposes of this paragraph, a motor vehicle that is stationary is not being operated and is not subject to the prohibition in this paragraph, except when a motor vehicle is stopped and remains in position until an authorized emergency vehicle has passed as required by s. 316.126(1)(a).

(4)(a) Any person who violates paragraph (3)(a) commits a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

(b) Any person who commits a second or subsequent violation of paragraph (3)(a) within 5 years after the date of a prior conviction for a violation of paragraph (3)(a) commits a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

Section 5. Paragraph (a) of subsection (3) of section 316.306, Florida Statutes, is amended, and subsection (4) of that section is republished, to read:

316.306 School and work zones; prohibition on the use of a

wireless communications device in a handheld manner.—

(3)(a)1. A person may not operate a motor vehicle while using a wireless communications device in a handheld manner in a designated school crossing, school zone, or work zone area as defined in s. 316.003(105). This subparagraph shall only be applicable to work zone areas if construction personnel are present or are operating equipment on the road or immediately adjacent to the work zone area. For the purposes of this paragraph, a motor vehicle that is stationary is not being operated and is not subject to the prohibition in this paragraph, except when a motor vehicle is stopped and remains in position until an authorized emergency vehicle has passed as required by s. 316.126(1)(a).

2.a. During the period from October 1, 2019, through December 31, 2019, a law enforcement officer may stop motor vehicles to issue verbal or written warnings to persons who are in violation of subparagraph 1. for the purposes of informing and educating such persons of this section. This sub-subparagraph shall stand repealed on October 1, 2020.

b. Effective January 1, 2020, a law enforcement officer may stop motor vehicles and issue citations to persons who are driving while using a wireless communications device in a handheld manner in violation of subparagraph 1.

(4)(a) Any person who violates this section commits a noncriminal traffic infraction, punishable as a moving

violation, as provided in chapter 318, and shall have 3 points assessed against his or her driver license as set forth in s. 322.27(3)(d)7. For a first offense under this section, in lieu of the penalty specified in s. 318.18 and the assessment of points, a person who violates this section may elect to participate in a wireless communications device driving safety program approved by the Department of Highway Safety and Motor Vehicles. Upon completion of such program, the penalty specified in s. 318.18 and associated costs may be waived by the clerk of the court and the assessment of points must be waived.

(b) The clerk of the court may dismiss a case and assess court costs in accordance with s. 318.18(11)(a) for a nonmoving traffic infraction for a person who is cited for a first time violation of this section if the person shows the clerk proof of purchase of equipment that enables his or her personal wireless communications device to be used in a hands-free manner.

Section 6. Section 316.307, Florida Statutes, is created to read:

316.307 Immediate vicinity of first responders; prohibition on the use of a wireless communications device in a handheld manner.—

(1) This section shall be known as the “First Responder Protection Act.”

(2) For purposes of this section, the term:

(a) "First responder" means a law enforcement officer or correctional officer as defined in s. 943.10, a firefighter as defined in s. 633.102, or an emergency medical technician or paramedic as defined in s. 401.23 who is a full-time paid employee, part-time paid employee, or unpaid volunteer.

(b) "In the line of duty" means:

1. Engaging in law enforcement activities;

2. Performing an activity relating to fire suppression and prevention;

3. Responding to a hazardous material emergency;

4. Performing rescue activity;

5. Providing emergency medical services;

6. Performing disaster relief activity; or

7. Otherwise engaging in emergency response activity.

(c) "Wireless communications device" has the same meaning as provided in s. 316.305(3)(a). The term includes, but is not limited to, a cell phone, a tablet, a laptop, a two-way messaging device, or an electronic game that is used or capable of being used in a handheld manner. The term does not include a safety, security, or convenience feature built into a motor vehicle which does not require the use of a handheld device.

(3) It is the intent of the Legislature to:

(a) Improve roadway safety for all first responders, vehicle operators, vehicle passengers, bicyclists, pedestrians, and other road users.

(b) Prevent crashes related to the act of driving while using a wireless communications device in a handheld manner when operating a motor vehicle while the vehicle is in motion.

(c) Reduce injuries, deaths, property damage, health care costs, health insurance rates, and automobile insurance rates related to motor vehicle crashes.

(d) Authorize law enforcement officers to stop motor vehicles and issue citations to persons who are driving in the immediate vicinity of first responders who are in the line of duty while using a wireless communications device in a handheld manner as provided in subsection (3).

(4)(a)1. A person may not operate a motor vehicle while using a wireless communications device in a handheld manner in the immediate vicinity of first responders who are in the line of duty. This subparagraph shall only be applicable to areas where first responders are present or are carrying out their duties on the road or immediately adjacent to such areas. For the purposes of this paragraph, a motor vehicle that is stationary is not being operated and is not subject to the prohibition in this paragraph, except when a motor vehicle is stopped and remains in position until an authorized emergency vehicle has passed as required by s. 316.126(1)(a).

2.a. During the period from July 1, 2021, through September 30, 2021, a law enforcement officer may stop motor vehicles to issue verbal or written warnings to persons who are

in violation of subparagraph 1. for the purposes of informing and educating such persons of this section. This sub-subparagraph shall stand repealed on July 1, 2022.

b. Effective October 1, 2021, a law enforcement officer may stop motor vehicles and issue citations to persons who are driving while using a wireless communications device in a handheld manner in violation of subparagraph 1.

(b) Paragraph (a) does not apply to a motor vehicle operator who is:

1. Performing official duties as an operator of an authorized emergency vehicle as defined in s. 322.01, a law enforcement or fire service professional, or an emergency medical services professional.

2. Reporting criminal or suspicious activity to law enforcement authorities.

3. Receiving messages that are:

a. Related to the operation or navigation of the motor vehicle;

b. Safety-related information, including emergency, traffic, or weather alerts;

c. Data used primarily by the motor vehicle; or

d. Radio broadcasts.

4. Using a device or system in a hands-free manner for navigation purposes.

5. Using a wireless communications device hands-free or hands-free in voice-operated mode, including, but not limited to, a factory-installed or after-market Bluetooth device.

6. Operating an autonomous vehicle, as defined in s. 316.003, in autonomous mode.

(c) A law enforcement officer who stops a motor vehicle for a violation of paragraph (a) must inform the motor vehicle operator of his or her right to decline a search of his or her wireless communications device and may not:

1. Access the wireless communications device without a warrant.

2. Confiscate the wireless communications device while awaiting issuance of a warrant to access such device.

3. Obtain consent from the motor vehicle operator to search his or her wireless communications device through coercion or other improper method. Consent to search a motor vehicle operator's wireless communications device must be voluntary and unequivocal.

(d) Only in the event of a crash resulting in death or serious bodily injury, as defined in s. 316.027, may a user's billing records for a wireless communications device, or the testimony of or written statements from appropriate authorities receiving such messages, be admissible as evidence in any proceeding to determine whether a violation of subparagraph (a)1. has been committed.

(e) Law enforcement officers must indicate the type of wireless communications device in the comment section of the uniform traffic citation.

(5)(a) A person who violates this section commits a noncriminal traffic infraction, punishable as a moving violation, as provided in chapter 318, and shall have 3 points assessed against his or her driver license as set forth in s. 322.27(3)(d)7. For a first offense under this section, in lieu of the penalty specified in s. 318.18 and the assessment of points, a person who violates this section may elect to participate in a wireless communications device driving safety program approved by the Department of Highway Safety and Motor Vehicles. Upon completion of such program, the penalty specified in s. 318.18 and associated costs may be waived by the clerk of the court and the assessment of points must be waived.

(b) The clerk of the court may dismiss a case and assess court costs in accordance with s. 318.18(11)(a) for a nonmoving traffic infraction for a person who is cited for a first-time violation of this section if the person shows the clerk proof of purchase of equipment that enables his or her personal wireless communications device to be used in a hands-free manner.

(6) Notwithstanding s. 318.21, all proceeds collected pursuant to s. 318.18 for violations of this section must be remitted to the Department of Revenue for deposit into the

Emergency Medical Services Trust Fund of the Department of Health.

(7) When a law enforcement officer issues a citation for a violation of this section, the law enforcement officer must record the race and ethnicity of the violator. All law enforcement agencies must maintain such information and must report such information to the department in a form and manner determined by the department. Beginning March 1, 2022, the department shall annually report the data collected under this subsection to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The data collected must be reported at least by statewide totals for local law enforcement agencies, state law enforcement agencies, and state university law enforcement agencies. The statewide total for local law enforcement agencies must combine the data for the county sheriffs and the municipal law enforcement agencies.

T I T L E A M E N D M E N T

Remove line 389 of the amendment and insert:
flashing lights; amending ss. 316.305 and 316.606, F.S.; applying the prohibition against texting while driving and the prohibition against using a wireless communications device in a handheld manner in a designated school crossing, school zone, or work zone

area to a motor vehicle that is stopped and remains in position until an authorized emergency vehicle has passed; providing penalties; creating s. 316.307, F.S.; providing a short title; providing definitions; providing legislative intent; prohibiting a person from operating a motor vehicle while using a wireless communications device in a handheld manner in the immediate vicinity of certain first responders; providing applicability; providing construction; authorizing a law enforcement officer during a specified period to stop motor vehicles to issue warnings; authorizing a law enforcement officer, on and after a specified date, to stop motor vehicles and issue citations; providing exceptions to such prohibition; requiring a law enforcement officer who stops a motor vehicle for a violation to inform the motor vehicle operator of his or her right to decline a search of his or her wireless communications device; prohibiting the law enforcement officer from taking specified actions; requiring certain consent to search a motor vehicle operator's wireless communications device; providing that a user's billing records for a wireless communications device or the testimony of or written statements from certain authorities are admissible as evidence in crashes resulting in death

or serious bodily injury for certain purposes; requiring that law enforcement officers indicate specified information in the uniform traffic citation; providing penalties; authorizing first-time offenders to participate in a wireless communications device driving safety program; authorizing a clerk of the court to dismiss a case and assess court costs under certain circumstances; requiring the deposit of fines into the Emergency Medical Services Trust Fund of the Department of Health; requiring law enforcement officers to record the race and ethnicity of violators when issuing a citation for a violation; requiring all law enforcement agencies to maintain such information and report it to the Department of Highway Safety and Motor Vehicles in a form and manner determined by the department; requiring the department to annually report the data to the Governor and Legislature; providing report requirements; amending s. 337.025, F.S.; revising the

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Tourism, Infrastructure & Energy Subcommittee

Representative Brown offered the following:

Amendment to Amendment (212831) by Representative Andrade (with title amendment)

Between lines 342 and 343 of the amendment, insert:

Section 7. Paragraph (c) of subsection (1) of section 348.754, Florida Statutes, is amended to read:

348.754 Purposes and powers.—

(1)

(c) Notwithstanding any other provision of this section to the contrary, to ensure the continued financial feasibility of the portion of the Wekiva Parkway to be constructed by the department, the authority may not, without ~~the~~ prior consultation with ~~consent of~~ the secretary of the department,

construct any extensions, additions, or improvements to the expressway system in Lake County.

T I T L E A M E N D M E N T

Remove line 404 of the amendment and insert:
requirements; revising compensation of board members; amending s. 348.754; F.S.; prohibiting the Central Florida Expressway Authority from performing certain activities in Lake County without prior consultation of the Secretary of the Department of Transportation; amending

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 353 Bicycle Operation Regulations
SPONSOR(S): Hage
TIED BILLS: **IDEN./SIM. BILLS:** SB 738

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee		Johnson	Keating
2) Commerce Committee			

SUMMARY ANALYSIS

Florida law requires that a person riding a bicycle must ride upon or astride a permanent and regular seat attached to the bicycle. A violation of this provision is a noncriminal traffic infraction, punishable as a pedestrian violation. However, manufacturers are now offering bicycles designed to be operated without seats, which, under Florida law, are unlawful and subject their riders to pedestrian citations.

The bill authorizes a bicycle to be operated without a seat if it was designed by the manufacturer to be operated without one.

State and local governments may see a reduction in revenues associated with no longer issuing citations for riding a bicycle without a seat.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida law defines the term "bicycle" to mean every vehicle propelled solely by human power, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels. The term does not include a scooter or similar device.[1]

Section 316.2065, F.S., provides the state's bicycle regulations. Included in those regulations is a provision prohibiting a person from operating a bicycle other than upon or astride a permanent and regular seat attached to the bicycle.[2] A violation is a noncriminal traffic infraction, punishable as a pedestrian violation as provided in ch. 318, F.S.[3] The base fine is $15;[4] however, with various additional fees the total fine is up to $56.50.[5]

Manufacturers are now offering self-propelled vehicles that meet the definition of a bicycle, but are designed to be operated without a seat. Manufacturers emphasize that these vehicles provide a low impact and full body workout.[6] However, with the statutory requirement that bicycles have a seat, it is unlawful to ride one of these vehicles in Florida, and riders are subject to citations.

Effect of the Bill

The bill amends s. 316.2065, F.S., authorizing a bicycle to be operated without a seat if the bicycle was designed by the manufacturer to be operated without one.

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

B. SECTION DIRECTORY:

Section 1 Amends s. 316.2065, F.S., relating to bicycle regulations.

Section 2 Provides for an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   To the extent there is a decrease in the number of citations issued for operating bicycles without seats, the state may realize a reduction in revenue. However, the fiscal impact cannot be quantified and is indeterminate.

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[1] S. 316.003(4), F.S.
[2] S. 316.2065(2), F.S.
[3] S. 316.2065(19), F.S.
[4] S. 318.18(1), F.S.
[5] Florida Association of Clerks of Court, *2020 Distribution Schedule,* p. 21. Available at: https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/advisories/advisories_2021/21bull005_Attach_2_2020_Dist.pdf (last visited February 4, 2021).
[6] See for example the Elliptigo, https://www.elliptigo.com/ (last visited February 4, 2021).

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   To the extent there is a decrease in the number of citations issued for operating bicycles without seats, local governments may realize a reduction in revenue. However, the fiscal impact cannot be quantified and is indeterminate.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Bicycle riders will no longer be subject to citations associated with operating bicycles without seats, if the bicycle is designed to be operated without a seat.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The 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 revenue 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 provide a grant of rulemaking, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to bicycle operation regulations; amending s. 316.2065, F.S.; providing an exception to the requirement that a person operating a bicycle ride upon or astride a seat attached thereto; providing an effective date.

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

Section 1. Subsection (2) of section 316.2065, Florida Statutes, is amended to read:

316.2065 Bicycle regulations.—

(2) A person operating a bicycle may not ride other than upon or astride a permanent and regular seat attached thereto unless the bicycle was designed by the manufacturer to be ridden without a seat.

Section 2. This act shall take effect July 1, 2021.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.