Session Law 83-004

Florida Senate & House of Representatives
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8th Dec. 50 230 (M.32) (1/4.315)

262 corr. 345, 342-130 41.

12-th Dec. 44.315
CHAPTER 83-3  LAWS OF FLORIDA  CHAPTER 83-3

Any funds in excess of $5 million shall be appropriated from a revenue source other than the State Transportation Trust Fund, unless otherwise authorized by the Legislature.

(b) Appropriation requests shall identify each public transit project calling for state expenditure of $500,000 or more.

(c) No state funds shall be allocated or expended for operation deficits of public transit projects, except as specifically allowed for approved service development projects.

(d) Public transit service development projects shall be individually identified in the department's appropriation request. Such request shall show a breakdown in funds showing capital and operating expense.

(4) PROJECT ELIGIBILITY.--Any project necessary to carry out those duties and responsibilities enumerated in s. 341.041 is eligible for expenditure of state funds in accordance with fund participation rates established herein, subject to the following conditions:

(a) Unless otherwise authorized by the Legislature, the department is prohibited from entering into any agreement with a contractor for any public transit project which would result in the ultimate expenditure of state funds in excess of $5 million:

Any funds in excess of $5 million shall be appropriated from a revenue source other than the State Transportation Trust Fund, unless otherwise authorized by the Legislature.

(b) The department shall provide the department under the provisions of this act, a public transit capital project, or a public transit service development project.

(c) The project has been approved by the department as being consistent with standards established pursuant to provisions of this act.

Section 64. (1) This section, sections 1 through 6, and sections 54, 55, 56, and 62 of this act shall take effect March 14, 1983, provided that:

(a) The tax imposed pursuant to part II of chapter 212, Florida Statutes, as created by this act, shall be due and payable commencing April 1, 1983.

(b) The determination and notification required under s. 212.2015 and (4), Florida Statutes, as created by this act, shall be made prior to April 1, 1983, and shall apply for the 14-month period April 1, 1983, through May 31, 1984.

(c) Notwithstanding the provisions of s. 212.95, Florida Statutes, as created by this act, 49.4 percent of the taxes remitted prior to July 1, 1983, subject to the following:

(d) The Department of Revenue is authorized to make expenditures necessary for the implementation of this act beginning March 7, 1983, and in making such expenditures the department shall be exempt from the requirements of part II of chapter 23, chapter 287, Florida Statutes, for a period of 120 days from said date.

(2) Sections 7 through 51 and 59 through 61 of this act shall take effect April 1, 1983, provided that this act shall not affect the first gas tax imposed by chapter 206, Florida Statutes.

(3) Sections 53 and 58 of this act shall take effect July 1, 1983.

(4) Section 57 shall take effect upon becoming a law.

(5) Section 52 shall take effect on May 1, 1983.

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

CHAPTER 83-4

House Bill No. 1-A

An act relating to Department of Transportation contracts; creating s. 337.164, Florida Statutes; providing legislative intent; creating s. 337.165, Florida Statutes; providing definitions; providing for denial or revocation of a contractor's certificate of qualification for specified reasons; providing for a period of disqualification; providing a hearing procedure; providing criteria for the determination of a contractor's status; providing for a continuation of obligations under preexisting contracts; providing notification requirements; providing investigative authority; creating s. 337.166, Florida Statutes; providing for disposition of certain moneys recovered; creating s. 337.167, Florida Statutes, providing that qualification to bid on state contracts is not a license for the purpose of the Administrative Procedures Act, prohibiting administrative stays of denial or revocation; providing criteria for injunctive relief; providing a finding of an immediate danger to public safety, health, and welfare; creating s. 337.168, Florida Statutes; providing for severe penalties; providing for the applicability of the act with respect to certain remedies of the Department of Transportation; providing for specified reasons; providing for a period of revocation of a contractor's certificate of qualification, Florida Statutes; providing definitions; providing for denial or revocation of a contractor's certificate of qualification for specified reasons; providing for a period of disqualification; providing a hearing procedure; providing criteria for the determination of a contractor's status; providing for a continuation of obligations under preexisting contracts; providing notification requirements; providing investigative authority; creating s. 337.166, Florida Statutes; providing for disposition of certain moneys recovered; creating s. 337.167, Florida Statutes, providing that qualification to bid on state contracts is not a license for the purpose of the Administrative Procedures Act, prohibiting administrative stays of denial or revocation; providing criteria for injunctive relief; providing a finding of an immediate danger to public safety, health, and welfare; creating s. 337.168, Florida Statutes; providing for severe penalties; providing for the applicability of the act with respect to certain remedies of the Department of Transportation; providing for specified reasons; providing for a period of revocation of a contractor's certificate of qualification.

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

Section 1. Section 337.164, Florida Statutes, is created to read:
The integrity of the public contracting process of the Department of Transportation is vital to the development of a balanced and efficient transportation system and a matter of interest to all the people of the state. The Legislature hereby determines and declares that:

(1) The procedures of the department for bidding and qualification of bidders on department contracts exist to secure the public benefits of free and open competition and to secure the quality of public works.

(2) The opportunity to bid on department contracts or to supply goods or services to the department is a privilege, not a right.

(3) The privilege of transacting business with the department should be denied to persons or firms involved in contract crime in order to preserve the integrity of the public contracting process.

(4) Persons or firms involved in contract crime should be denied both the privilege of transacting business with the department and the opportunity of obtaining economic benefit through the transaction of business by their affiliates with the department.

To this end, it is the intent of the Legislature to provide sufficiently broad authority to the department to ensure the integrity of its public contracting process.

Section 2. Section 337.165, Florida Statutes, is created to read:

337.165 Contract crime; denial or revocation of a certificate of qualification.—

1. The following words and phrases, when used in this section shall have the following meanings:

(a) "Contractor" means any person who bids or applies to bid on work let by the Department of Transportation 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 shall include a contractor's officers, directors, executives, shareholders active in management, employees, and agents.

(b) "Contract crime" means any violation of state or federal antitrust laws with respect to a public contract, or any violation of any state or federal law involving fraud, bribery, collusion, conspiracy, or material misrepresentation, with respect to a public contract.

(c) A contractor or its affiliate whose certificate has been denied or revoked because of his status as an affiliate of a contractor convicted of a contract crime may, at the hearing requested under subparagraph 1., offer proof that he is not an affiliate as defined by this act. Submission of an affidavit alone shall not constitute competent evidence that the person is not an affiliate. If the department finds that such person is not an affiliate as defined by this act, his certificate shall not be denied or revoked.

(d) A contractor or affiliate whose certificate has been denied or revoked because of a conviction for contract crime, and who is subsequently convicted for a contract crime committed within 10 years of such denial or revocation shall not be considered for eligibility pursuant to paragraph (d) until 24 months after the date of the denial or revocation based upon such subsequent conviction.

2. Any person who is notified by the department of its intent to deny or revoke his certificate to bid on work let by the department shall inform the contractor or its affiliate in writing of its intent to deny or revoke the certificate of the contractor or affiliate to bid on work let by the department and of the contractor's right to a hearing. If a hearing is requested within 10 days of receipt of the notice of intent, the department shall notify the contractor or its affiliate of the time, date, and place of the hearing which hearing shall be held within 30 days of receipt of the request for the hearing. If a contractor or its affiliate is subsequently convicted for a contract crime it shall deny or revoke the certificate of the contractor or affiliate for a period of 36 months.

3. Any business entity or a pooling of business entities. The term affiliate shall include the contractor's directors, executives, shareholders active in management, employees, and agents. One business entity's ownership of 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.

(a) "Pooling" means a combination of persons or corporations engaged in the same business, or for the purpose of engaging in a particular business or commercial or speculative venture, where all contribute to a common fund or place their holdings of a given stock or other security in the hands and control of a managing member or committee.

(b) "Certificate" means the certificate of qualification required and granted pursuant to s. 337.14 or other form of authorization issued pursuant to s. 337.33.

(c) No contractor or its affiliate shall be qualified to bid on work let by the department when it is determined that it has, subsequent to January 1, 1978, been convicted of a contract crime within the jurisdiction of any state or federal court.

(d) Any provision of chapter 120 to the contrary notwithstanding, when the department receives notice that a contractor has been convicted of a contract crime the department shall inform the contractor or its affiliate in writing of its intent to deny or revoke the certificate of the contractor or affiliate to bid on work let by the department and of the contractor's right to a hearing. If a hearing is requested within 10 days of receipt of the notice of intent, the department shall notify the contractor or its affiliate of the time, date, and place of the hearing which hearing shall be held within 30 days of receipt of the request for the hearing. If a contractor or its affiliate is subsequently convicted for a contract crime it shall deny or revoke the certificate of the contractor or affiliate for a period of 36 months.

(e) Any provision of chapter 120 to the contrary notwithstanding, when the department receives notice that a contractor has been convicted of a contract crime the department shall inform the contractor or its affiliate in writing of its intent to deny or revoke the certificate of the contractor or affiliate to bid on work let by the department and of the contractor's right to a hearing. If a hearing is requested within 10 days of receipt of the notice of intent, the department shall notify the contractor or its affiliate of the time, date, and place of the hearing which hearing shall be held within 30 days of receipt of the request for the hearing. If a contractor or its affiliate is subsequently convicted for a contract crime it shall deny or revoke the certificate of the contractor or affiliate for a period of 36 months.

(f) "Certificate" means the certificate of qualification required and granted pursuant to s. 337.14 or other form of authorization issued pursuant to s. 337.33.

(g) No contractor or its affiliate shall be qualified to bid on work let by the department when it is determined that it has, subsequent to January 1, 1978, been convicted of a contract crime within the jurisdiction of any state or federal court.

(h) Any provision of chapter 120 to the contrary notwithstanding, when the department receives notice that a contractor has been convicted of a contract crime the department shall inform the contractor or its affiliate in writing of its intent to deny or revoke the certificate of the contractor or affiliate to bid on work let by the department and of the contractor's right to a hearing. If a hearing is requested within 10 days of receipt of the notice of intent, the department shall notify the contractor or its affiliate of the time, date, and place of the hearing which hearing shall be held within 30 days of receipt of the request for the hearing. If a contractor or its affiliate is subsequently convicted for a contract crime it shall deny or revoke the certificate of the contractor or affiliate for a period of 36 months.

(i) Any business entity or a pooling of business entities. The term affiliate shall include the contractor's directors, executives, shareholders active in management, employees, and agents. One business entity's ownership of 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.
CHAPTER 83-4 LAWS OF FLORIDA CHAPTER 83-4

the petition, unless otherwise stipulated by the parties. If the contractor or affiliate requests in his petition that the hearing be conducted by the Division of Administrative Hearings of the Department of Administration, the department shall, within 5 days after receipt of the petition, notify the division of the request. The director of the Division of Administrative Hearings shall, within 5 days after the notice by the department, assign a hearing officer who shall conduct the hearing within 30 days thereafter, unless otherwise stipulated by the parties. The department shall be a party in interest in any hearing conducted by the Division of Administrative Hearings. In determining whether resuscitation or reinstatement would be in the public interest, the department or division hearing officer shall give consideration to any relevant mitigating circumstances, which may include, but are not limited to, the following:

1. The degree of culpability;
2. Prompt and voluntary payment of damages to the state as a result of the contractor’s violation of state or federal antitrust laws;
3. Cooperation with any state or federal prosecution or investigation of contract crime;
4. Disassociation with those involved in a contract crime;
5. Reinstatement in other state or federal jurisdictions; and
6. The needs of the department in completing its programs in a timely cost-effective manner.

The department or division hearing officer shall also consider the failure of the contractor or its affiliate to comply with the notification provisions of subsection (5). Any hearing requested under this paragraph shall be conducted without undue delay. The hearing officer shall, within 30 days after the hearing, complete and submit a final order to the department which shall not alter or amend it. If eligibility for reapplication or reinstatement is denied, the contractor or its affiliate may not petition for a subsequent hearing for a period of 9 months following the date of the order of denial or revocation. However, a hearing prior to the expiration of such period may be authorized by the department if, in its discretion, it determines that a hearing is in the public interest.

(3) A contractor or its affiliate whose certificate is denied or revoked pursuant to this section shall not act as a prime contractor, a material supplier, a subcontractor, or a consultant on any department contract or project during the period of such denial or revocation.

(4) The denial or revocation of a contractor’s or affiliate’s certificate shall not affect the contractor’s or its affiliate’s obligations under any preexisting contract.

(5) A contractor or its affiliate who is currently qualified or seeking to be qualified by the department notify the department within 30 days after conviction of a contract crime applicable to it or to any of its affiliates, or to any officers, directors, executives, shareholders active in management, employees or agents of it or any of its affiliates.

(6) Whenever the department has reason to believe that a contractor or its affiliate, who is currently qualified or seeking to be qualified, has been convicted of a contract crime, or may be qualified with a certificate for reasons of the department or by the division of Administrative Hearings, during the pendency of any administrative review proceedings concerning a final order of denial or revocation or by any court, a court may grant a stay or injunction in an action relating to the denial or revocation of a certificate only upon the posting of a bond by the petitioner seeking a stay or injunction, and provided that:

(a) The petitioner has a substantial likelihood of success on the merits;
(b) The threatened harm or injury to the petitioner clearly outweighs any possible injury to the public occasioned by granting the stay or injunction; and
CHAPTER 83-4 LAWS OF FLORIDA CHAPTER 83-4

(c) It is in the public interest to grant the stay or injunction.

Section 5. Section 337.168, Florida Statutes, is created to read:

337.168 Confidentiality of official estimates, identification of potential bidders, and bid analysis and monitoring system.---

(1) A document or electronic file revealing the department's official cost estimate of a project is exempt from the provisions of s. 119.07(1) until the contract for the project has been executed or until the project is no longer under active consideration.

(2) A document revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by the department is exempt from the provisions of s. 119.07(1) for three working days prior to the deadline for receiving bids.

(3) The department's bid analysis and monitoring system is exempt from the provisions of s. 119.07(1). This exemption shall apply to the actual electronic data files, source documents, unless otherwise exempted under other provisions of law.

Section 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and shall be declared severable.

Section 7. The provisions of this act are not in derogation of existing remedies available to the department and such remedies remain in full force and effect.

Section 8. This act shall take effect upon becoming a law.

Approved by the Governor March 8, 1983.

Filed in Office Secretary of State March 8, 1983.

CHAPTER 83-5 LAWS OF FLORIDA CHAPTER 83-5

An act relating to agricultural products; amending ss. 604.19, 604.20 and 604.21(1), (2), and (4), Florida Statutes; providing that dealers in agricultural products may furnish a certificate of deposit in lieu of bond as a condition of licensure; providing that annual or continuance bond or certificate may be required; providing an effective date.

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

Section 1. Section 604.19, Florida Statutes, is amended to read:

604.19 License; fee; bond; certificate of deposit; penalty.---

Unless the department refuses the application on the ground that the applicant is not of such age or of such reputation as to be eligible to the office or position for which he asks, the department shall issue a license to the applicant for the term of one year from the date of issuance, and the applicant shall pay the appropriate fee. The department shall require the applicant to pay the annual fee set forth in s. 604.19 and to furnish a bond or certificate of deposit in the amount prescribed by s. 604.19, or both, as determined by the department, and shall require in addition the payment of a bond or certificate of deposit in the amount prescribed by s. 604.19, to which the applicant must have access at all times for the full term of such license. The license fee for the principal place of business

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History of Legislation
1982 Regular Session
Special Sessions C, D, E, F, G
Florida Legislature

prepared by:
Legislative Information Division
Joint Legislative Management Committee
Capitol Building, Room 826 — 488-4371
H 0901 LOCAL BILL BY Dyer and Others

CHAP NO. 82-277

01/29/82 HOUSE FILLED

02/01/82 HOUSE INTRODUCED, REFERRED TO CRIMINAL JUSTICE - HJ 0017;

02/24/82 HOUSE FILED

02/28/82 HOUSE FILED

03/09/82 SENATE INTRODUCED; RECOMMENDED FOR CONSIDERATION BY RULES AND CALENDAR

03/11/82 SENATE RECOMMENDED, PLACED ON CALENDAR

03/17/82 SENATE RECEIVED, REFERRED TO EDUCATION, GOVERNMENT OPERATIONS;

03/25/82 SENATE PASSED; PASSED AS AMENDED; YEAS 13 NAYS 5 - HJ 0154

04/09/82 SENATE AMENDED - HOUSE OF REPRESENTATIVES; AMENDED

04/09/82 SENATE AMENDED - HOUSE OF REPRESENTATIVES

04/10/82 SENATE ORDERED ENGROSSED, THEN ENROLLED IN MESSABE

H 0901 LOCAL BILL BY SELECT COMMITTEE ON JUVENILE JUSTICE AND FAMILY

03/09/82 SENATE INTRODUCED; REFERRED TO CRIMINAL JUSTICE - HJ 0016

03/10/82 SENATE RECOMMENDED, PLACED ON CALENDAR

03/11/82 SENATE HAD CONCURRENCE; PASSED AS AMENDED; YEA S 93, NAYS 0 - HJ 0100

04/09/82 SENATE ORDERED ENGROSSED, THEN ENROLLED

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03/10/82 SENATE RECOMMENDED, PLACED ON CALENDAR

03/11/82 SENATE HAD CONCURRENCE; PASSED AS AMENDED; YEA S 113, NAYS 5 - HJ 0100

04/09/82 SENATE ORDERED ENGROSSED, THEN ENROLLED

CHAP NO. 82-277

01/29/82 HOUSE INTRODUCED; REFERRED TO CRIMINAL JUSTICE AND FAMILY

02/01/82 HOUSE FILED

02/08/82 HOUSE READ FIRST TIME, ADDED, HAD CONCURRENCE

02/18/82 HOUSE COMMISSION REPORTED FAVORABLE; PLACED ON CALENDAR

02/24/82 HOUSE COMMISSION REPORTED FAVORABLE; PLACED ON CALENDAR

02/28/82 HOUSE COMMISSION REPORTED FAVORABLE; PLACED ON CALENDAR

03/09/82 SENATE INTRODUCED; REFERRED TO CRIMINAL JUSTICE - HJ 0018

03/11/82 SENATE RECOMMENDED, PLACED ON CALENDAR

03/17/82 SENATE RECEIVED, REFERRED TO EDUCATION, GOVERNMENT OPERATIONS;

03/25/82 SENATE PASSED; PASSED AS AMENDED; YEAS 13 NAYS 5 - HJ 0154

04/09/82 SENATE AMENDED - HOUSE OF REPRESENTATIVES; AMENDED

04/09/82 SENATE AMENDED - HOUSE OF REPRESENTATIVES

04/10/82 SENATE ORDERED ENGROSSED, THEN ENROLLED

H 0901 LOCAL BILL BY TRANSPORTATION, JONES, C. F., LEWIS, NUCKOLLS

03/09/82 SENATE INTRODUCED; REFERRED TO CRIMINAL JUSTICE - HJ 0015

03/10/82 SENATE RECOMMENDED, PLACED ON CALENDAR

03/11/82 SENATE HAD CONCURRENCE; PASSED AS AMENDED; YEA S 93, NAYS 0 - HJ 0100

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H 0901 LOCAL BILL BY SELECT COMMITTEE ON JUVENILE JUSTICE AND FAMILY

03/09/82 SENATE INTRODUCED; REFERRED TO CRIMINAL JUSTICE - HJ 0016

03/10/82 SENATE RECOMMENDED, PLACED ON CALENDAR

03/11/82 SENATE HAD CONCURRENCE; PASSED AS AMENDED; YEA S 93, NAYS 0 - HJ 0100

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H 0901 LOCAL BILL BY SELECT COMMITTEE ON JUVENILE JUSTICE AND FAMILY

03/09/82 SENATE INTRODUCED; REFERRED TO CRIMINAL JUSTICE - HJ 0016

03/10/82 SENATE RECOMMENDED, PLACED ON CALENDAR

03/11/82 SENATE HAD CONCURRENCE; PASSED AS AMENDED; YEA S 93, NAYS 0 - HJ 0100

04/09/82 SENATE ORDERED ENGROSSED, THEN ENROLLED

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A bill to be entitled
An act relating to Department of Transportation
contracts; creating s. 337.165, Florida
Statutes; providing definitions; providing for
denial, revocation, or suspension of a
contractor's certificate of qualification for
specified reasons; providing for a period of
disqualification; providing for reinstatement
of a certificate; providing for a continuation
of obligations under preexisting contracts;
providing penalties; providing notification
requirements; providing investigative
authority; providing for a reward for the
reporting of certain crimes and assistance in
the prosecution thereof; creating s. 337.166,
Florida Statutes; requiring the Department of
Legal Affairs to obtain restitution for the
Department of Transportation in certain
actions; providing for a percentage of such
funds to be used for rewards; creating s.
337.167, Florida Statutes; providing that
qualification to bid on state contracts is not
a license; prohibiting administrative stays of
denial, revocation, or suspension; providing
criteria for injunctive relief; providing a
finding of an immediate danger to public
safety, health and welfare; creating s.
337.168, Florida Statutes; providing a definite
period of time during which the Department of
Transportation's official project cost
estimates and potential bidders' identities are

CODING: Words in small through type are deletions from existing law; words underlined are additions.
WHEREAS, the Legislature finds that the procedures of the Department of Transportation for bidding and qualification of bidders on department contracts exist to secure the public benefits of free and open competition and to ensure the quality of public works, and

WHEREAS, the Legislature finds that the opportunity to bid on Department of Transportation contracts or to supply goods or services to the department is a privilege and not a right, and

WHEREAS, the Legislature finds that the privilege of transacting business with the Department of Transportation should be denied to persons or firms involved in contract crimes in order to preserve the integrity of the public contracting process, NOW, THEREFORE,

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

Section 1. Section 337.165, Florida Statutes, is created to read:

337.165 Contract crime; denial, revocation, or suspension of a certificate of qualification.--

(1) The following words and phrases when used in this section shall have the following meanings:

(a) "Contractor" means any person who bids or applies to bid on work let by the Department of Transportation or who provides professional services to the department. The term contractor shall include a contractor's officers, directors,
executives, shareholders active in management, employees, and
agents.

(b) "Contract crime" means any act prohibited by state
or federal criminal law which involves fraud, bribery,
collusion, conspiracy, violation of state or federal antitrust
laws, or material misrepresentation, committed in any federal
or state jurisdiction with respect to a public contract.

(c) "Convicted" means any conviction of a contract
crime, within any federal or state jurisdiction, with or
without an adjudication of guilt, resulting from a jury or
nonjury trial, or a plea of guilty or nolo contendere.

(d) "Affiliate" means a predecessor or successor of a
contractor under the same, or substantially the same, direct
or indirect control; a group of business entities which is
connected or associated so that one entity controls or has the
power to control each of the other business entities either
directly or indirectly. One business entity's ownership of a
controlling interest, directly or indirectly, in another
business entity; a sharing or interchange of officers,
directors, executives, personnel, employees, or agents among
business entities; or a pooling of equipment or income among
business entities shall be prima facie evidence that one
business entity is an affiliate of another.

(2)(a) No contractor or its affiliate shall be
qualified to bid when, after the notice and hearing it is
determined that it:

1. Has been convicted after the effective date of this
act of a contract crime within the jurisdiction of any state
or federal court outside the state;

2. Has failed to comply with the notification
provisions of subsection (5); or
3. Has been charged in any indictment or information alleging the commission of a contract crime within the state; or

4. Has been convicted of a contract crime within the state.

(b) In cases where subparagraphs 1., 2. or 4. of paragraph (a) apply, the department shall by a final order after notice and hearing deny or revoke the certificate of qualification of the contractor or its affiliate. Such revocation or denial of a certificate of qualification shall be for 36 months, unless the contractor or its affiliate is reinstated or qualified pursuant to paragraph (d). Upon reinstatement or qualification pursuant to paragraph (d), the certificate of qualification of a contractor or its affiliate shall not thereafter be denied or revoked for conviction of contract crime committed outside the state prior to the effective date of such reinstatement or qualification.

2. In cases where subparagraph 3. of paragraph (a) applies, the department shall by a final order after notice and hearing deny or suspend the certificate of qualification of the contractor or its affiliate. Such denial or suspension shall continue until resolution of the criminal charges or until the contractor or its affiliate is reinstated or qualified in accordance with paragraphs (d) or (e).

(c) A contractor or its affiliate whose certificate of qualification has been denied or revoked by reason of acts of contract crime for which it is convicted in this state and for which it is convicted upon a subsequent indictment or information alleging contract crime committed in this state within 5 years of such denial or revocation shall not be considered for reinstatement or qualification pursuant to paragraph (d).
paragraph (d) until 24 months after the date of the denial or revocation based upon such subsequent conviction.

(d) A contractor or affiliate whose certificate of qualification has been denied, revoked, or suspended may be reinstated or qualified upon such terms and conditions as the department may prescribe upon finding it in the public interest. In determining whether reinstatement is in the public interest, the department shall request the advice of the Department of Legal Affairs and thereafter shall consider relevant mitigating circumstances, including but not limited to, the following:

1. The degree of culpability;
2. Prompt and voluntary restitution based on the contractor's and its affiliate's ability to pay;
3. Cooperation with any state or federal prosecution or investigation of contract crime;
4. Disassociation with those involved in a contract crime;
5. Reinstatement in other state or federal jurisdictions; and
6. The needs of the department in completing its construction programs in a timely, cost-effective manner.

(e) A contractor or its affiliate whose certificate of qualification has been denied or suspended because the contractor or its affiliate has been charged in an indictment or information alleging the commission of a contract crime within the state shall have its certificate of qualification automatically reinstated or granted if the contractor or its affiliate is found not guilty, if the indictment or information is nolle prossed or dismissed, or if the contractor or its affiliate files an affidavit with the

CODING: Words in struck through type are deleted from existing law; words underlined are additions.
department denying culpability in the acts alleged in such
indictment or information. If the contractor or its affiliate
is convicted of any of the contract crime charges alleged or
included in the indictment or information, the contractor or
its affiliate shall forfeit and pay to the department an
amount equal to:

1. Ten percent of the total contract price of all
contracts let by the department upon which the contractor or
its affiliate acted as a prime contractor or as consultant;

2. Ten percent of the prime contract bid amount for
all line items for which the contractor or its affiliate was
awarded subcontract work; or

3. Ten percent of the price of all materials or
equipment supplied by the contractor or its affiliate.

These payments shall be in addition to any other sanctions or
remedies available to the state. Such payments shall be
computed upon any new work obtained during the period between
the reinstatement of the certificate pursuant to this
paragraph and the date of conviction. The failure of a
contractor or its affiliate to file the affidavit required for
reinstatement pursuant to this paragraph shall not be
admissible evidence in any civil or criminal proceeding in any
state or federal court.

(3) A contractor or its affiliate whose certificate of
qualification is revoked or suspended pursuant to this section
shall not act as a prime contractor, a material supplier, a
subcontractor, or a consultant on any department contract or
project during the period of such revocation or suspension.

(4) The denial, revocation, or suspension of a
contractor's or affiliate's certificate of qualification shall

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not affect the contractor's or its affiliate's obligations under any preexisting contract.

(5) A contractor or its affiliate which is qualified or which is seeking to be qualified by the department shall notify the department within 30 days of a conviction for a contract crime applicable to it or to any of its affiliates, or to any officers, directors, employees or agents of it or any of its affiliates.

(6) Whenever the department has reason to believe that a contractor or its affiliate which is qualified or seeking qualification by the department has been convicted or charged in any indictment or information with the commission of a contract crime, or may be affiliated with a person or entity so convicted or charged, the department may issue a written demand upon the contractor or its affiliate, concerning any such conviction charge or affiliation, to appear and be examined under oath, to answer written interrogatories under oath, and to produce documents or other tangible evidence for inspection and copying.

(7) The provisions of this act are not in derogation of existing remedies available to the department and such remedies remain in full force and effect.

(8) Any person having knowledge of acts of contract crime committed in the state and who voluntarily reports such acts to the Department of Transportation or the Department of Legal Affairs prior to the commencement of any civil or criminal proceedings arising out of such acts of contract crime and assists said agency in the prosecution of the case, shall be entitled to a reward as set forth herein. The informant shall receive an amount up to 20 percent of any restitution obtained by the Department of Legal Affairs as a reward.
direct result of the informant's testimony and assistance in recovery of such restitution. The amount of the reward shall be determined by the Governor and Cabinet, but said amount shall not be less than 5 percent. Payment of a reward authorized by this section shall not reduce the amount authorized to be deposited in the Department of Legal Affairs Revolving Trust Fund pursuant to s. 337.166.

Section 2. Section 337.166, Florida Statutes, is created to read:

337.166 Restitution; violation of anti-trust laws.--

The Department of Legal Affairs shall be responsible for obtaining restitution on behalf of the Department of Transportation for overcharges, increased costs, or damages occasioned by the violation of state or federal anti-trust laws. Twenty percent of all funds so collected shall be deposited in the Legal Affairs Revolving Trust Fund created by s. 16.53. The remainder of the moneys so collected on behalf of the Department of Transportation after the payment of the reward provided for in s. 337.165(8), shall be deposited in the State Transportation Trust Fund. For purposes of this section, the term "collected" shall mean received in hand.

Section 3. Section 337.167, Florida Statutes, is created to read:

337.167 Administrative procedures; stays and injunctions.--

(1) A certificate of qualification to bid on a Department of Transportation contract, or other form of authorization required to supply goods or services to the department, is not a license as defined in s. 120.52(7). The denial, revocation, or suspension of a certificate of qualification or other authorization is not subject to the

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provisions of s. 120.60 or s. 120.68(3). The provisions of s. 120.57 are applicable to the denial, revocation, or suspension of such certificate or other authorization.

(2) For the purpose of promulgating emergency rules, the continuation of the bidding, contracting, or supplying privileges of a contractor or its affiliate which is convicted of contract crime, or which is charged by indictment or information with commission of contract crime in this state, represents an immediate danger to the public health, safety and welfare.

(3) The denial, revocation, or suspension of a certificate of qualification for reasons of contract crime shall not be stayed by the department or by the Division of Administrative Hearings during the pendency of any review proceedings concerning a final order of denial, revocation, or suspension.

(4) A court may grant a stay or injunction in an action relating to the denial, revocation, or suspension of a certificate of qualification only upon the posting of a bond by the petitioner seeking a stay or injunction, and provided that the court granting a stay or injunction finds:

(a) The petitioner has a substantial likelihood of success on the merits;

(b) The threatened harm or injury to the petitioner clearly outweighs any possible injury to the state occasioned by granting the stay or injunction; and

(c) It is in the public interest to grant the stay or injunction.

Section 4. Section 337.168, Florida Statutes, is created to read:

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
337.158 Confidentiality of official estimates and identities of potential bidders.—

(1) A document revealing the Department of Transportation's official cost estimate of a project is exempt from the provisions of s. 119.07(1) until the contract for the project has been executed.

(2) A document revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by the department is exempt from the provisions of s. 119.07(1) until the deadline for receiving bids on the project.

Section 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 6. This act shall take effect upon becoming a law.
Requires the Department of Transportation to deny or revoke for 3 years a contractor's or its affiliate's certificate of qualification to contract with the department upon its conviction in any state or federal court for certain contract crimes or upon its failure to notify the department of that fact within 30 days of its conviction. Requires the department to deny or suspend a certificate if a contractor or its affiliate has been charged in any indictment or information alleging the commission of a contract crime in this state. Provides for automatic reinstatement or granting of a certificate that has been denied or suspended under certain circumstances. Allows reinstatement or granting of a contractor's or its affiliate's certificate subsequent to a denial, suspension, or revocation of the certificate upon a showing that it is in the public's interest. Provides that repeat offenders who are convicted of a contract crime in this state shall not be considered for reinstatement or qualification until 24 months from the date of the denial or revocation of its certificate based on the second conviction. Prescribes penalties to be imposed on a contractor or its affiliate which is convicted in this state of a contract crime. Prohibits a contractor or its affiliate whose certificate is revoked or suspended for committing a contract crime from acting as a prime contractor, a material supplier, a subcontractor, or a consultant on any department contract or project during the period of revocation or suspension. The denial, revocation, or suspension of a contractor's or its affiliate's certificate does not affect its obligations under preexisting contracts. Requires a contractor or its affiliate to notify the department if it is convicted of a contract crime. Provides the department with investigative authority. Provides a procedure for the issuance of rewards for certain persons who report contract crimes. Requires the Department of Legal Affairs to obtain restitution for the Department of Transportation for damages and costs as a result of a violation of state or federal anti-trust laws. Twenty percent of all restitution obtained by the Department of Legal Affairs is to be deposited in the Legal Affairs Revolving Trust Fund. Provides that a certificate of qualification is not a license and that the denial, suspension, or revocation of a license is not subject to s. 120.60 or s. 120.88(3), F.S. Prohibits the Division of Administrative Hearings from entering a stay order during the pendency of any review proceedings of a final order of denial, revocation, or suspension. Authorizes a court to grant an injunction in denial, revocation, or suspension actions under certain conditions. Provides for confidentiality of official cost estimates and the identities of potential bidders.
SUMMARY:

Present Situation: The Department may suspend, for a specified period of time, or revoke for good cause any certificate of qualification to bid on a Department of Transportation project.

Effect of Proposed Changes:

1) Has been convicted, after the effective date of this act, of a contract crime within the jurisdiction of any state or federal court outside the state.

2) Has failed to notify the Department of Transportation, within 30 days, of an indictment or conviction for a contract crime.

3) Has been charged in any indictment alleging the commission of a contract crime committed within Florida.

4) Has been convicted of a contract crime within the state.

Also provides for a period of disqualification for the above.

Provides for reinstatement of certificate of qualification based upon mitigating circumstances including restitution and cooperation with state and federal prosecution or investigation of contract crime. A contractor or its affiliate shall be automatically reinstated upon filing of an affidavit with the Department of Transportation denying guilt. Failure to file such affidavit is not an admission of guilt. It also provides for a convicted contractor or its affiliate, who has filed an affidavit denying guilt, to pay the Department of Transportation 10% of its contract amount in addition to any other sanctions or remedies to the state.

Provides a reward to any person who voluntarily reports a contract crime to the Department of Transportation or the Department of Legal Affairs prior to the commencement of any civil or criminal proceedings and assists said agency in the prosecution of the case. The amount of the reward, to be determined by the Governor and Cabinet, shall not be less than 5 percent or more than 20 percent of any restitution obtained by the Department of Legal Affairs.

Creates Section 337.166, Florida Statutes, providing the Department of Legal Affairs be responsible for obtaining restitution on behalf of the Department of Transportation. 20% of restitution obtained shall be deposited in the Legal Affairs Revolving Trust Fund and the remainder, after payment of the reward provided in Section 337.165(8), Florida Statutes, shall be deposited in the State Transportation Trust Fund.

(Continued)
Effect of Proposed Changes: (Continued)

Creates Section 337.167, Florida Statutes, stating that a certificate of qualification to bid on a Department of Transportation project is not a license but is a privilege. Also debars the contractor from bidding on Department of Transportation projects while awaiting for an Administrative Procedures Act hearing.

Creates Section 337.168, Florida Statutes, exempting the Department of Transportation's official cost estimate and proposed bidders list from the Public Records Act until such time as the deadline for receiving bids on the project has expired.

FISCAL IMPACT:

State: Minimal. There would be a slight cost to determine which contractors have been convicted of a contract crime in other states.

Local: None

Private Sector: None
A bill to be entitled
An act relating to Department of Transportation contracts; creating s. 337.165, Florida Statutes; providing definitions; providing for denial, revocation, or suspension of a contractor's certificate of qualification for specified reasons; providing for a period of disqualification; providing for reinstatement of a certificate; providing for a continuation of obligations under preexisting contracts; providing penalties; providing notification requirements; providing investigative authority; providing for a reward for the reporting of certain crimes and assistance in the prosecution thereof; creating s. 337.166, Florida Statutes; requiring the Department of Legal Affairs to obtain restitution for the Department of Transportation in certain actions; providing for a percentage of such funds to be used for rewards; creating s. 337.167, Florida Statutes; providing that qualification to bid on state contracts is not a license; prohibiting administrative stays of denial, revocation, or suspension; providing criteria for injunctive relief; providing a finding of an immediate danger to public safety, health and welfare; creating s. 337.168, Florida Statutes; providing a definite period of time during which the Department of Transportation's official project cost estimates and potential bidders' identities are
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exempt from the provisions of s. 119.07(1), Florida Statutes; providing an effective date.

WHEREAS, the Legislature finds that the procedures of the Department of Transportation for bidding and qualification of bidders on department contracts exist to secure the public benefits of free and open competition and to ensure the quality of public works, and

WHEREAS, the Legislature finds that the opportunity to bid on Department of Transportation contracts or to supply goods or services to the department is a privilege and not a right, and

WHEREAS, the Legislature finds that the privilege of transacting business with the Department of Transportation should be denied to persons or firms involved in contract crimes in order to preserve the integrity of the public contracting process, NOW, THEREFORE,

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

Section 1. Section 337.165, Florida Statutes, is created to read: 337.165 Contract crime; denial, revocation, or suspension of a certificate of qualification.--

(1) The following words and phrases when used in this section shall have the following meanings:

(a) "Contractor" means any person who bids or applies to bid on work let by the Department of Transportation or who provides professional services to the department. The term contractor shall include a contractor's officers, directors,
executives, shareholders active in management, employees, and agents.

(b) "Contract crime" means any act prohibited by state or federal criminal law which involves fraud, bribery, collusion, conspiracy, violation of state or federal antitrust laws, or material misrepresentation, committed in any federal or state jurisdiction with respect to a public contract.

(c) "Convicted" means any conviction of a contract crime, within any federal or state jurisdiction, with or without an adjudication of guilt, resulting from a jury or nonjury trial, or a plea of guilty or nolo contendere.

(d) "Affiliate" means a predecessor or successor of a contractor under the same, or substantially the same, direct or indirect control; a group of business entities which is connected or associated so that one entity controls or has the power to control each of the other business entities either directly or indirectly. One business entity's ownership of a controlling interest, directly or indirectly, in another business entity; a sharing or interchange of officers, directors, executives, personnel, employees, or agents among business entities; or a pooling of equipment or income among business entities shall be prima facie evidence that one business entity is an affiliate of another.

(2) (a) No contractor or its affiliate shall be qualified to bid when, after the notice and hearing it is determined that it:

1. Has been convicted after the effective date of this act of a contract crime within the jurisdiction of any state or federal court outside the state;

2. Has failed to comply with the notification provisions of subsection (5): or
3. Has been charged in any indictment or information alleging the commission of a contract crime within the state;

or

4. Has been convicted of a contract crime within the state.

(b) In cases where subparagraphs 1., 2. or 4. of paragraph (a) apply, the department shall by a final order after notice and hearing deny or revoke the certificate of qualification of the contractor or its affiliate. Such revocation or denial of a certificate of qualification shall be for 36 months, unless the contractor or its affiliate is reinstated or qualified pursuant to paragraph (d). Upon reinstatement or qualification pursuant to paragraph (d), the certificate of qualification of a contractor or its affiliate shall not thereafter be denied or revoked for conviction of contract crime committed outside the state prior to the effective date of such reinstatement or qualification.

2. In cases where subparagraph 3. of paragraph (a) applies, the department shall by a final order after notice and hearing deny or suspend the certificate of qualification of the contractor or its affiliate. Such denial or suspension shall continue until resolution of the criminal charges or until the contractor or its affiliate is reinstated or qualified in accordance with paragraphs (d) or (e).

(c) A contractor or its affiliate whose certificate of qualification has been denied or revoked by reason of acts of contract crime for which it is convicted in this state and for which it is convicted upon a subsequent indictment or information alleging contract crime committed in this state within 5 years of such denial or revocation shall not be considered for reinstatement or qualification pursuant to...
paragraph (d) until 24 months after the date of the denial or revocation based upon such subsequent conviction.

(d) A contractor or affiliate whose certificate of qualification has been denied, revoked, or suspended may be reinstated or qualified upon such terms and conditions as the department may prescribe upon finding it in the public interest. In determining whether reinstatement is in the public interest, the department shall request the advice of the Department of Legal Affairs and thereafter shall consider relevant mitigating circumstances, including but not limited to, the following:

1. The degree of culpability;
2. Prompt and voluntary restitution based on the contractor's and its affiliate's ability to pay;
3. Cooperation with any state or federal prosecution or investigation of contract crime;
4. Disassociation with those involved in a contract crime;
5. Reinstatement in other state or federal jurisdictions; and
6. The needs of the department in completing its construction programs in a timely, cost-effective manner.

(e) A contractor or its affiliate whose certificate of qualification has been denied or suspended because the contractor or its affiliate has been charged in an indictment or information alleging the commission of a contract crime within the state shall have its certificate of qualification automatically reinstated or granted if the contractor or its affiliate is found not guilty, if the indictment or information is nolle prossed or dismissed, or if the contractor or its affiliate files an affidavit with the
department denying its culpability in the acts alleged in such
indictment or information. If the contractor or its affiliate
is convicted of any of the contract crime charges alleged or
included in the indictment or information, the contractor or
its affiliate shall forfeit and pay to the department an
amount equal to:

1. Ten percent of the total contract price of all
contracts let by the department upon which the contractor or
its affiliate acted as a prime contractor or as consultant;

2. Ten percent of the prime contract bid amount for
all line items for which the contractor or its affiliate was
awarded subcontract work; or

3. Ten percent of the price of all materials or
equipment supplied by the contractor or its affiliate.

These payments shall be in addition to any other sanctions or
remedies available to the state. Such payments shall be
computed upon any new work obtained during the period between
the reinstatement of the certificate pursuant to this
paragraph and the date of conviction. The failure of a
contractor or its affiliate to file the affidavit required for
reinstatement pursuant to this paragraph shall not be
admissible evidence in any civil or criminal proceeding in any
state or federal court.

(3) A contractor or its affiliate whose certificate of
qualification is revoked or suspended pursuant to this section
shall not act as a prime contractor, a material supplier, a
subcontractor, or a consultant on any department contract or
project during the period of such revocation or suspension.

(4) The denial, revocation, or suspension of a
contractor's or affiliate's certificate of qualification shall
(5) A contractor or its affiliate which is qualified or which is seeking to be qualified by the department shall notify the department within 30 days of a conviction for a contract crime applicable to it or to any of its affiliates, or to any officers, directors, employees or agents of it or any of its affiliates.

(6) Whenever the department has reason to believe that a contractor or its affiliate which is qualified or seeking qualification by the department has been convicted or charged in any indictment or information with the commission of a contract crime, or may be affiliated with a person or entity so convicted or charged, the department may issue a written demand upon the contractor or its affiliate, concerning any such conviction charge or affiliation, to appear and be examined under oath, to answer written interrogatories under oath, and to produce documents or other tangible evidence for inspection and copying.

(7) The provisions of this act are not in derogation of existing remedies available to the department and such remedies remain in full force and effect.

(8) Any person having knowledge of acts of contract crime committed in the state and who voluntarily reports such acts to the Department of Transportation or the Department of Legal Affairs prior to the commencement of any civil or criminal proceedings arising out of such acts of contract crime and assists said agency in the prosecution of the case, shall be entitled to a reward as set forth herein. The informant shall receive an amount up to 20 percent of any restitution obtained by the Department of Legal Affairs as a reward.
direct result of the informant's testimony and assistance in recovery of such restitution. The amount of the reward shall be determined by the Governor and Cabinet, but said amount shall not be less than 5 percent.

Section 2. Section 337.166, Florida Statutes, is created to read:

337.166 Restitution; violation of anti-trust laws.-- The Department of Legal Affairs shall be responsible for obtaining restitution on behalf of the Department of Transportation for overcharges, increased costs, or damages occasioned by the violation of state or federal anti-trust laws. Twenty percent of all funds so collected, after the payment of the reward provided for in s. 337.165(8), shall be deposited in the Legal Affairs Revolving Trust Fund created by s. 16.53. The remainder of the moneys so collected on behalf of the Department of Transportation shall be deposited in the State Transportation Trust Fund. For purposes of this section, the term "collected" shall mean received in hand.

Section 3. Section 337.167, Florida Statutes, is created to read:

337.167 Administrative procedures; stays and injunctions.--

(1) A certificate of qualification to bid on a Department of Transportation contract, or other form of authorization required to supply goods or services to the department, is not a license as defined in s. 120.52(2). The denial, revocation, or suspension of a certificate of qualification or other authorization is not subject to the provisions of s. 120.60 or s. 120.68(3). The provisions of s. 120.57 are applicable to the denial, revocation, or suspension of such certificate or other authorization.

CODING: Words in small type are deletions from existing law; words underlined are additions.
(2) For the purpose of promulgating emergency rules, the continuation of the bidding, contracting, or supplying privileges of a contractor or its affiliate which is convicted of contract crime, or which is charged by indictment or information with commission of contract crime in this state, represents an immediate danger to the public health, safety and welfare.

(3) The denial, revocation, or suspension of a certificate of qualification for reasons of contract crime shall not be stayed by the department or by the Division of Administrative Hearings during the pendency of any review proceedings concerning a final order of denial, revocation, or suspension.

(4) A court may grant a stay or injunction in an action relating to the denial, revocation, or suspension of a certificate of qualification only upon the posting of a bond by the petitioner seeking a stay or injunction, and provided that the court granting a stay or injunction finds:

(a) The petitioner has a substantial likelihood of success on the merits;
(b) The threatened harm or injury to the petitioner clearly outweighs any possible injury to the state occasioned by granting the stay or injunction; and
(c) It is in the public interest to grant the stay or injunction.

Section 4. Section 337.168, Florida Statutes, is created to read:
337.168 Confidentiality of official estimates and identities of potential bidders.--

(1) A document revealing the Department of Transportation's official cost estimate of a project is exempt from public inspection...
from the provisions of s. 119.07(1) until the contract for the
project has been executed.

(2) A document revealing the identity of persons who
have requested or obtained bid packages, plans, or
specifications pertaining to any project to be let by the
department is exempt from the provisions of s. 119.07(1) until
the deadline for receiving bids on the project.

Section 5. If any provision of this act or the
application thereof to any person or circumstance is held
invalid, the invalidity shall not affect other provisions or
applications of the act which can be given effect without the
invalid provision or application, and to this end the
provisions of this act are declared severable.

- Section 6. This act shall take effect upon becoming a
law.

CODING: Words in double italics are deletions from existing law; words underline are additions.
Requires the Department of Transportation to deny or revoke for 3 years a contractor's or its affiliate's certificate of qualification to contract with the department upon its conviction in any state or federal court for certain contract crimes or upon its failure to notify the department of that fact within 30 days of its conviction. Requires the department to deny or suspend a certificate if a contractor or its affiliate has been charged in any indictment or information alleging the commission of a contract crime in this state. Provides for automatic reinstatement or granting of a certificate that has been denied or suspended under certain circumstances. Allows reinstatement or granting of a contractor's or its affiliate's certificate subsequent to a denial, suspension, or revocation of the certificate upon a showing that it is in the public's interest. Provides that repeat offenders who are convicted of a contract crime in this state shall not be considered for reinstatement or qualification until 24 months from the date of the denial or revocation. Prohibits a contractor or its affiliate whose certificate is revoked or suspended from acting as a prime contractor, a material supplier, a subcontractor, or a consultant on any department contract or project during the period of revocation or suspension. The denial, revocation, or suspension of a contractor's or its affiliate's certificate does not affect its obligations under preexisting contracts. Requires the Department of Transportation for damages and costs as a result of a violation of state or federal anti-trust laws. Twenty percent of all restitution obtained by the Department of Legal Affairs is to be deposited in the Legal Affairs Revolving Trust Fund. Provides that a certificate of qualification is not a license and that the denial, suspension, or revocation of a license is not subject to s. 120.60 or s. 120.68(3), F.S. Prohibits the Division of Administrative Hearings from entering a stay order during the pendency of any review proceedings of a final order of denial, revocation, or suspension. Authorizes a court to grant an injunction in denial, revocation, or suspension actions under certain conditions. Provides for confidentiality of official cost estimates and the identities of potential bidders.
Journal of the House of Representatives

Eighty-fourth Regular Session

since Statehood in 1845

JANUARY 18 through MARCH 25, 1982
Including a record of transmittal of Acts subsequent to sine die adjournment
time under s. 944.273, prior to serving such minimum sentence.

Section 4. Subsection (4) is added to section 794.011, Florida Statutes, to read:

794.011 Sexual battery.—

(4) Any person who is convicted of committing sexual battery pursuant to this section shall be sentenced to a minimum term of imprisonment of 10 calendar years. Notwithstanding the provisions of s. 944.275, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall the defendant be eligible for parole or statutory gain-time under s. 944.273, prior to serving such minimum sentence.

Section 5. Subsection (4) is added to section 810.02, Florida Statutes, to read:

810.02 Burglary.—

(4) Any person who is convicted of committing burglary pursuant to this section shall be sentenced to a minimum term of imprisonment of 3 calendar years. Notwithstanding the provisions of s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall the defendant be eligible for parole or statutory gain-time under s. 944.273, prior to serving such minimum sentence.

Rep. Nuckolls moved the adoption of the amendment. Rep. L. J. Smith raised a point of order under Rule 1.18 that the amendment was not germane because the bill related to a definition of "inner included offenses" and the amendment related to sentencing, also that the amendment substantially expanded the scope of the bill. The Speaker ruled the point well taken and the amendment out of order. Under Rule 8.19, the bill was referred to the Engrossing Clerk.

HB 365—A bill to be entitled An act relating to Department of Transportation contracts; creating s. 337.165, Florida Statutes; providing definitions; providing for denial, revocation, or suspension of an attorney's certificate of qualification for specified reasons; providing for a period of disqualification; providing for reinstatement of a certificate; providing for a continuance of obligations under existing contracts; providing for penalties; providing notification requirements; providing investigatory authority; providing for a reward for the reporting of any violating for the Department of Transportation; directing the Department of Transportation's official project cost estimates in certain actions; providing for a percentage of contracts with the agency for the provision of goods or services. Any person who violates this section is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Rep. Woodburn moved the adoption of the amendment. Without objection, the amendment was adopted. Under Rule 8.19, the bill was referred to the Engrossing Clerk.

HB 376—A bill to be entitled An act relating to Department of Natural Resources; directing the Department of Natural Resources to adopt rules regulating the operation and speed of motorboat traffic within the Loxahatchee River in Palm Beach and Martin counties and a described area in Sarasota County during certain dates for the protection of manatees or sea cows; providing an effective date.

was read the second time by title. Under Rule 8.19, the bill was referred to the Engrossing Clerk.

Consideration of HB 298 was temporarily deferred.

By the Committee on Natural Resources and Representative Myers—

CS/HB 266—A bill to be entitled An act relating to saltwater fisheries; amending s. 370.121(5) and (6), Florida Statutes, directing the Department of Natural Resources to adopt rules regulating the operation and speed of motorboat traffic within the Loxahatchee River in Palm Beach and Martin counties and a described area in Sarasota County during certain dates for the protection of manatees or sea cows; providing an effective date.

was read the first time by title. On motion by Rep. Myers, the rules were waived and the bill was read the second time by title.

Representative M. E. Hawkins offered the following amendment:

Amendment 2—On page 3, between lines 22 and 23, insert: A new paragraph (h) in s. 370.121(3) is created to read:

287.095 Minority business enterprise programs; penalty for false representation.—

(1) "Minority business enterprise" means any legal entity, other than a joint venture, organized to engage in commercial transactions, which is at least 51 percent owned and controlled by minority persons.

(2) "Minority person" means a member of a socially or economically disadvantaged group which for the purposes of this section shall include blacks not of Hispanic origin, Hispanics, American Indians, Alaska natives, Pacific Islanders, women and the physically or mentally disabled.

(3) It is unlawful for any individual to falsely represent any entity as a minority business enterprise for purposes of qualifying for certification as such enterprise under a program of a state agency which, in compliance with federal law, is designed to assist minority business enterprises in the receipt of contracts with the agency for the provision of goods or services. Any person who violates this section is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Representative Kiser offered the following amendment:

Amendment 2—On page 3, between lines 22 and 23, insert: Section 2. A new paragraph (h) in s. 370.121(3) is created to read:

was read the second time by title. Under Rule 8.19, the bill was referred to the Engrossing Clerk.
March 9, 1982

JOURNAL OF THE HOUSE OF REPRESENTATIVES

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REF. MOFFITT IN THE CHAIR

CS/HB 170—A bill to be entitled An act relating to deposi-
tions in criminal proceedings; creating s. 914.16, Florida Stat-
utes, prohibiting the taking of depositions of juvenile victims in
criminal proceedings unless taken before a judicial officer;
providing a waiver; providing an effective date.

—was read the third time by title. On passage, the vote was:

Yea—79

Allen
Barneshead
Brooke
Brown
Butler
Crane
Crawford
Davis
Deranasty
Dyer
Easley

Votes after roll call:
—Yeas—Moeb, Batchelor
—Nays—L. H. Plummer
So the bill passed and was immediately certi-
tied to the Senate for engraving.

THE SPEAKER IN THE CHAIR

CS/HB 963—A bill to be entitled An act relating to Department
of Transportation contracts; creating s. 357.165, Florida Stat-
tutes; providing definitions; providing for denial, revocation,
or suspension of a contractor’s certificate of qualification for
specified reasons; providing for a period of disqualification;
providing for restrictions or cancellation of a certificate; provid-
ing for reinstatement of a certificate; extending the time for
continuation of obligations under preexisting contracts; provid-
ing investigative authority; providing for a reward for the report-
ing of certain crimes and assistance in the preparation there-
of; creating s. 914.16, Florida Statutes; requiring the Depart-
ment of Transportation in certain actions; providing for a percentage
of such funds to be used for rewards; creating s. 357.165,
Florida Statutes; providing that qualification to bid on state
contracts is not a license; providing administrative stays of
denial, revocation, or suspension; providing criteria for in-
vestigative relief; providing for the觅ing of an immediate danger to
public safety, health and welfare; creating s. 357.165, Florida
Statutes; providing a definite period of time during which the Department of Transportation’s official project cost estimates
and potential bidders’ identities are exempt from the provisions
of s. 119.07(1), Florida Statutes; providing an effective date.

—was read the third time by title. On passage, the vote was:

Yea—110

Allen
Barneshead
Batchelor
Bell
Bell
Bell
Brown
Burns

Votes after roll call:
—Yeas—Lippman, Burnsed, Kelly
So the bill passed, as amended, and was immediately certi-
tied to the Senate for engraving.

The Committee on Rules & Calendar offered the following
title amendment:

Amendment B—On page 1, line 6, after the semicolon insert:
specifying conditions under which separate sentencing provisions apply.

Rep. Meffert moved the adoption of the amendment, which was
adopted.

The question recurred on the passage of HB 115. The vote
was:

Yea—107

Allen
Barneshead
Batchelor
Bell
Bell

Votes after roll call:
—Yeas—Moeb, Batchelor
—Nays—L. H. Plummer
So the bill passed and was immediately certi-
tied to the Senate.

The Speaker in the Chair
SB 319—A bill to be entitled An act relating to the Administrative Procedure Act; adding a new subsection (4) to s. 150.56, Florida Statutes; requiring the inclusion of certain information along with the publication of a proposed rule; providing an effective date.

was read the third time by title. On passage, the vote was:

Yeas-110

Nays-2

Johnson, A. E. Wetherell

So the bill passed, as amended, and was immediately certified to the Senate.

SB 219-A bill to be entitled An act relating to the Administrative Procedure Act; adding a new subsection (4) to s. 150.56, Florida Statutes; requiring the inclusion of certain information along with the publication of a proposed rule; providing an effective date.

was read the third time by title. On passage, the vote was:

Yeas-99

Nays-4

So the bill passed and was immediately certified to the Senate.

SB 477-A bill to be entitled An act relating to motor fuel pricing; amending s. 526.121, Florida Statutes; providing for a price differential between cash and credit sales of gasoline; providing an effective date.

was read the third time by title. On passage, the vote was:

Yeas-110

Nays-None

As amended, the bill was immediately certified to the Senate.

CS/HB 266-A bill to be entitled An act relating to saltwater fishing; amending s. 370.12(1)(f) and (g), Florida Statutes, directing the Department of Natural Resources to adopt rules regulating the operation and speed of motorboat traffic within the Loxahatchee River in Palm Beach and Martin counties and a described area in Sarasota County during certain dates for the protection of manatees or sea cows; providing an effective date.

was read the third time by title.

The Committee on Rules & Calendar offered the following title amendment:

Amendment 5—On page 1, lines 7, 8, and 9, strike all said lines and insert: Described areas during certain dates for the protection of manatees or sea cows.

So the bill passed and was immediately certified to the Senate.

Amendment 6—On page 4, lines 19, insert after the period:

"and adding a new paragraph (h)."

The question recurred on the passage of CS/HB 266. The vote was:

Yeas-108

Nays—None

As amended, the bill was immediately certified to the Senate.

Rep. Myers moved the adoption of the amendment, which was adopted.

Rep. Kiser offered the following title amendment:

Amendment 4—On page 1, line 4, after "Statutes," insert "and adding a new paragraph (b)."

Rep. Kiser offered the following title amendment:

Amendment 6—On page 4, line 19, insert after the period:

"and adding a new paragraph (h)."

The question recurred on the passage of CS/HB 266. The vote was:

Yeas-108

Nays—None

As amended, the bill was immediately certified to the Senate.

Rep. Kiser moved the adoption of the amendment, which was adopted.

Rep. Kiser offered the following amendment:

Amendment 6—On page 4, line 19, insert after the period:

"and adding a new paragraph (h)."

The question recurred on the passage of CS/HB 266. The vote was:

Yeas-108

Nays—None

As amended, the bill was immediately certified to the Senate.

Rep. Kiser moved the adoption of the amendment, which was adopted.

Rep. Kiser offered the following amendment:

Amendment 6—On page 4, line 19, insert after the period:

"and adding a new paragraph (h)."

The question recurred on the passage of CS/HB 266. The vote was:

Yeas-108

Nays—None

As amended, the bill was immediately certified to the Senate.

Rep. Kiser moved the adoption of the amendment, which was adopted.

Rep. Kiser offered the following amendment:

Amendment 6—On page 4, line 19, insert after the period:

"and adding a new paragraph (h)."

The question recurred on the passage of CS/HB 266. The vote was:

Yeas-108

Nays—None

As amended, the bill was immediately certified to the Senate.

Rep. Kiser moved the adoption of the amendment, which was adopted.

Rep. Kiser offered the following amendment:

Amendment 6—On page 4, line 19, insert after the period:

"and adding a new paragraph (h)."

The question recurred on the passage of CS/HB 266. The vote was:

Yeas-108

Nays—None

As amended, the bill was immediately certified to the Senate.

Rep. Kiser moved the adoption of the amendment, which was adopted.

Rep. Kiser offered the following amendment:

Amendment 6—On page 4, line 19, insert after the period:

"and adding a new paragraph (h)."

The question recurred on the passage of CS/HB 266. The vote was:

Yeas-108

Nays—None

As amended, the bill was immediately certified to the Senate.

Rep. Kiser moved the adoption of the amendment, which was adopted.

Rep. Kiser offered the following amendment:

Amendment 6—On page 4, line 19, insert after the period:

"and adding a new paragraph (h)."

The question recurred on the passage of CS/HB 266. The vote was:

Yeas-108

Nays—None

As amended, the bill was immediately certified to the Senate.

Rep. Kiser moved the adoption of the amendment, which was adopted.

Rep. Kiser offered the following amendment:

Amendment 6—On page 4, line 19, insert after the period:

"and adding a new paragraph (h)."

The question recurred on the passage of CS/HB 266. The vote was:

Yeas-108

Nays—None

As amended, the bill was immediately certified to the Senate.

Rep. Kiser moved the adoption of the amendment, which was adopted.

Rep. Kiser offered the following amendment:

Amendment 6—On page 4, line 19, insert after the period:

"and adding a new paragraph (h)."

The question recurred on the passage of CS/HB 266. The vote was:

Yeas-108

Nays—None

As amended, the bill was immediately certified to the Senate.

Rep. Kiser moved the adoption of the amendment, which was adopted.

Rep. Kiser offered the following amendment:

Amendment 6—On page 4, line 19, insert after the period:

"and adding a new paragraph (h)."

The question recurred on the passage of CS/HB 266. The vote was:

Yeas-108

Nays—None

As amended, the bill was immediately certified to the Senate.

Rep. Kiser moved the adoption of the amendment, which was adopted.

Rep. Kiser offered the following amendment:

Amendment 6—On page 4, line 19, insert after the period:

"and adding a new paragraph (h)."

The question recurred on the passage of CS/HB 266. The vote was:

Yeas-108

Nays—None

As amended, the bill was immediately certified to the Senate.

Rep. Kiser moved the adoption of the amendment, which was adopted.

Rep. Kiser offered the following amendment:

Amendment 6—On page 4, line 19, insert after the period:

"and adding a new paragraph (h)."

The question recurred on the passage of CS/HB 266. The vote was:

Yeas-108

Nays—None

As amended, the bill was immediately certified to the Senate.

Rep. Kiser moved the adoption of the amendment, which was adopted.
A bill to be entitled

An act relating to Department of Transportation
contracts; creating s. 337.165, Florida
Statutes; providing definitions; providing for
denial, revocation, or suspension of a
contractor's certificate of qualification for
specified reasons; providing for a period of
disqualification; providing for reinstatement
of a certificate; providing for a continuation
of obligations under preexisting contracts;
providing penalties; providing notification
requirements; providing investigative
authority; providing for a reward for the
reporting of certain crimes and assistance in
the prosecution thereof; creating s. 337.166,
Florida Statutes; requiring the Department of
Legal Affairs to obtain restitution for the
Department of Transportation in certain
actions; providing for a percentage of such
funds to be used for rewards; creating s.
337.167, Florida Statutes; providing that
qualification to bid on state contracts is not
a license; prohibiting administrative stays of
denial, revocation, or suspension; providing
criteria for injunctive relief; providing a
finding of an immediate danger to public
safety, health and welfare; creating s.
337.168, Florida Statutes; providing a definite
period of time during which the Department of
Transportation's official project cost
estimates and potential bidders' identities are

CODING: Words in italics are deletions from existing law; words underlined are additions.
WHEREAS, the Legislature finds that the procedures of the Department of Transportation for bidding and qualification of bidders on department contracts exist to secure the public benefits of free and open competition and to ensure the quality of public works, and

WHEREAS, the Legislature finds that the opportunity to bid on Department of Transportation contracts or to supply goods or services to the department is a privilege and not a right, and

WHEREAS, the Legislature finds that the privilege of transacting business with the Department of Transportation should be denied to persons or firms involved in contract crimes in order to preserve the integrity of the public contracting process, NOW, THEREFORE,

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

Section 1. Section 337.165, Florida Statutes, is created to read:

337.165 Contract crime; denial, revocation, or suspension of a certificate of qualification.---

(1) The following words and phrases when used in this section shall have the following meanings:

(a) "Contractor" means any person who bids or applies to bid on work let by the Department of Transportation or who provides professional services to the department. The term contractor shall include a contractor's officers, directors,
executives, shareholders active in management, employees, and agents.

(b) "Contract crime" means any act prohibited by state or federal criminal law which involves fraud, bribery, collusion, conspiracy, violation of state or federal antitrust laws, or material misrepresentation, committed in any federal or state jurisdiction with respect to a public contract.

(c) "Convicted" means any conviction of a contract crime, within any federal or state jurisdiction, with or without an adjudication of guilt, resulting from a jury or nonjury trial, or a plea of guilty or nolo contendere.

(d) "Affiliate" means a predecessor or successor of a contractor under the same, or substantially the same control or a group of business entities which is connected or associated so that one entity controls or has the power to control each of the other business entities. One business entity's ownership 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.

(2)(a) No contractor or its affiliate shall be qualified to bid when, after the notice and hearing it is determined that it:

1. Has been convicted after the effective date of this act of a contract crime within the jurisdiction of any state or federal court outside the state;

2. Has failed to comply with the notification provisions of subsection (b); or

3. Has been charged in any indictment or information alleging the commission of a contract crime within the state; or
4. Has been convicted of a contract crime within the state.

(b) 1. In cases where subparagraphs 1., 2. or 4. of paragraph (a) apply, the department shall by a final order after notice and hearing deny or revoke the certificate of qualification of the contractor or its affiliate. Such revocation or denial of a certificate of qualification shall be for 36 months, unless the contractor or its affiliate is reinstated or qualified pursuant to paragraph (d). Upon reinstatement or qualification pursuant to paragraph (d), the certificate of qualification of a contractor or its affiliate shall not thereafter be denied or revoked for conviction of contract crime committed outside the state prior to the effective date of such reinstatement or qualification.

2. In cases where subparagraph 3. of paragraph (a) applies, the department shall by a final order after notice and hearing deny or suspend the certificate of qualification of the contractor or its affiliate. Such denial or suspension shall continue until resolution of the criminal charges or until the contractor or its affiliate is reinstated or qualified in accordance with paragraphs (d) or (e).

(c) A contractor or its affiliate whose certificate of qualification has been denied or revoked by reason of acts of contract crime for which it is convicted in this state and for which it is convicted upon a subsequent indictment or information alleging contract crime committed in this state within 5 years of such denial or revocation shall not be considered for reinstatement or qualification pursuant to paragraph (d) until 24 months after the date of the denial or revocation based upon such subsequent conviction.
(d) A contractor or affiliate whose certificate of qualification has been denied, revoked, or suspended may be reinstated or qualified upon such terms and conditions as the department may prescribe upon finding it in the public interest. In determining whether reinstatement is in the public interest, the department shall request the advice of the Department of Legal Affairs and thereafter shall consider relevant mitigating circumstances, including but not limited to, the following:

1. The degree of culpability;
2. Prompt and voluntary restitution based on the contractor's and its affiliate's ability to pay;
3. Cooperation with any state or federal prosecution or investigation of contract crime;
4. Disassociation with those involved in a contract crime;
5. Reinstatement in other state or federal jurisdictions; and
6. The needs of the department in completing its construction programs in a timely, cost-effective manner.

(e) A contractor or its affiliate whose certificate of qualification has been denied or suspended because the contractor or its affiliate has been charged in an indictment or information alleging the commission of a contract crime within the state shall have its certificate of qualification automatically reinstated or granted if the contractor or its affiliate is found not guilty, if the indictment or information is nolle prossed or dismissed, or if the contractor or its affiliate files an affidavit with the department denying its culpability in the acts alleged in such indictment or information. If the contractor or its affiliate...
is convicted of any of the contract crime charges alleged or included in the indictment or information, the contractor or its affiliate shall forfeit and pay to the department an amount equal to:

1. Ten percent of the total contract price of all contracts let by the department upon which the contractor or its affiliate acted as a prime contractor or as consultant;
2. Ten percent of the prime contract bid amount for all line items for which the contractor or its affiliate was awarded subcontract work; or
3. Ten percent of the price of all materials or equipment supplied by the contractor or its affiliate.

These payments shall be in addition to any other sanctions or remedies available to the state. Such payments shall be computed upon any new work obtained during the period between the reinstatement of the certificate pursuant to this paragraph and the date of conviction. The failure of a contractor or its affiliate to file the affidavit required for reinstatement pursuant to this paragraph shall not be admissible evidence in any civil or criminal proceeding in any state or federal court.

(3) A contractor or its affiliate whose certificate of qualification is revoked or suspended pursuant to this section shall not act as a prime contractor, a material supplier, a subcontractor, or a consultant on any department contract or project during the period of such revocation or suspension.

(4) The denial, revocation, or suspension of a contractor’s or affiliate’s certificate of qualification shall not affect the contractor’s or its affiliate’s obligations under any preexisting contract.
(5) A contractor or its affiliate which is qualified or which is seeking to be qualified by the department shall notify the department within 30 days of a conviction for a contract crime applicable to it or to any of its affiliates, or to any officers, directors, employees or agents of it or any of its affiliates.

(6) Whenever the department has reason to believe that a contractor or its affiliate which is qualified or seeking qualification by the department has been convicted or charged in any indictment or information with the commission of a contract crime, or may be affiliated with a person or entity so convicted or charged, the department may issue a written demand upon the contractor or its affiliate, concerning any such conviction charge or affiliation, to appear and be examined under oath, to answer written interrogatories under oath, and to produce documents or other tangible evidence for inspection and copying.

(7) The provisions of this act are not in derogation of existing remedies available to the department and such remedies remain in full force and effect.

(8) Any person having knowledge of acts of contract crime committed in the state and who voluntarily reports such acts to the Department of Transportation or the Department of Legal Affairs prior to the commencement of any civil or criminal proceedings arising out of such acts of contract crime and assists said agency in the prosecution of the case, shall be entitled to a reward as set forth herein. The informant shall receive an amount up to 20 percent of any restitution obtained by the Department of Legal Affairs as a direct result of the informant's testimony and assistance in recovery of such restitution. The amount of the reward shall

CODING: Words in bold type are deletions from existing law; words underlined are additions.
be determined by the Governor and Cabinet, but said amount
shall not be less than 5 percent.

Section 2. Section 337.166, Florida Statutes, is
created to read:

337.166 Restitution; violation of anti-trust laws.--
The Department of Legal Affairs shall be responsible for
obtaining restitution on behalf of the Department of
Transportation for overcharges, increased costs, or damages
occasioned by the violation of state or federal anti-trust
laws. Twenty percent of all funds so collected, after the
payment of the reward provided for in s. 337.165(8), shall be
deposited in the Legal Affairs Revolving Trust Fund created by
s. 16.53. The remainder of the moneys so collected on behalf
of the Department of Transportation shall be deposited in the
State Transportation Trust Fund. For purposes of this
section, the term "collected" shall mean received in hand.

Section 3. Section 337.167, Florida Statutes, is
created to read:

337.167 Administrative procedures; stays and
injunctions.--
(1) A certificate of qualification to bid on a
Department of Transportation contract, or other form of
authorization required to supply goods or services to the
department, is not a license as defined in s. 120.52(7). The
denial, revocation, or suspension of a certificate of
qualification or other authorization is not subject to the
provisions of s. 120.60 or s. 120.68(3). The provisions of s.
120.57 are applicable to the denial, revocation, or suspension
of such certificate or other authorization.

(2) For the purpose of promulgating emergency rules,
the continuation of the bidding, contracting, or supplying

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
privileges of a contractor or its affiliate which is convicted
of contract crime, or which is charged by indictment or
information with commission of contract crime in this state,
represents an immediate danger to the public health, safety
and welfare.

(3) The denial, revocation, or suspension of a
certificate of qualification for reasons of contract crime
shall not be stayed by the department or by the Division of
Administrative Hearings during the pendency of any review
proceedings concerning a final order of denial, revocation, or
suspension.

(4) A court may grant a stay or injunction in an
action relating to the denial, revocation, or suspension of a
certificate of qualification only upon the posting of a bond
by the petitioner seeking a stay or injunction, and provided
that the court granting a stay or injunction finds:

(a) The petitioner has a substantial likelihood of
success on the merits;
(b) The threatened harm or injury to the petitioner
clearly outweighs any possible injury to the state occasioned
by granting the stay or injunction; and
(c) It is in the public interest to grant the stay or
injunction.

Section 4. Section 337.168, Florida Statutes, is
created to read:

337.168 Confidentiality of official estimates and
identities of potential bidders.--

(1) A document revealing the Department of
Transportation's official cost estimate of a project is exempt
from the provisions of s. 119.07(1) until the contract for the
project has been executed.

CODING: Words in double quoted type are deletions from existing law; words underlined are additions.
(2) A document revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by the department is exempt from the provisions of s. 119.07(1) until the deadline for receiving bids on the project.

Section 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 6. This act shall take effect upon becoming a law.
I. NEED FOR LEGISLATION

A federal government prosecution task force began presenting evidence before a grand jury in Tallahassee this fall, as part of a nationwide investigation of bid rigging in the highway construction industry. In eight states before entering Florida, this investigation resulted in the filing of more than 180 felony antitrust cases against firms and individuals. Some of the convicted persons and firms are doing business with the State of Florida, and others are seeking to do so. It is reasonable to expect that some Florida based construction firms now doing business with the state will be charged by the Tallahassee grand jury.

The Florida Department of Transportation should not be required to continue to do business with convicted or indicted firms. However, under current law, which treats the road contractor as a "licensee" for purposes of qualification to bid on DOT contracts, the state may be compelled to deal with contractors who are guilty of price-fixing, or risk having contracts delayed by litigation.

The DOT may suspend or revoke a contractor's certificate of qualification "for good cause" pursuant to the provisions of Section 337.16(2), F.S. While this language is not so vague and ambiguous as to offend constitutional due process, it provides no authority or guidance for the following important matters: payment of restitution to the state; how to treat "affiliates" of convicted firms; whether indictment should carry as severe consequences as conviction; provisions for reinstatement as an incentive to pay restitution and cooperate in prosecutions and investigations; how D.O.T. can obtain information from firms suspected of convictions in other states; whether disqualified firms can get court-ordered stays of contracts while they pursue lengthy appeals of their disqualification; etc.

The proposed bill addresses these shortcomings, and creates a rational framework within which the state may act swiftly, but fairly, to protect the integrity of the public contracting process.
II. OUTLINE OF SALIENT FEATURES OF BILL

A. Definitions

(1) "Convicted" includes pleas of guilty and nolo contendere.

(2) "Affiliates" includes parents, subsidiaries, sisters and "stepchild" entities. This definition must be broad to prevent facile evasion of the law by the expedient of forming a "new" entity that is different from the old in form but not in substance.

B. Grounds for Denial or Revocation of Certificate of Qualification to Bid

["Denial" occurs when applying for initial or renewal certificate.]

(1) "Conviction" anywhere in the United States.

(2) "Charged in any indictment or felony information" alleging crimes committed within the State of Florida.

(3) Fraud, bribery and corruption as well as antitrust offenses.

C. Duration of Denial or Revocation

(1) 36 months maximum for first offense, with possibility of reinstatement at any time.

(2) 24 months minimum for second offense, with no possibility of reinstatement during that time.

D. Reinstatement Provisions

(1) Need flexibility to reward those who desire to rehabilitate themselves by making restitution and cooperating in investigations. Objective is to recover overcharges paid by the state and restore competition.

(2) In Tennessee, an emergency situation arose when virtually all contracting firms were disqualified and none were left to bid on road work. The same could happen in Florida, although no one can predict it; so it is prudent to provide a "safety valve" reinstatement option.
(3) Automatic Reinstatement for Indicted Firms - Those who have been charged, but not convicted, are presumed innocent under the law. Nevertheless, the state should have some means of protecting its interests while criminal charges are pending against a contractor. The bill provides that accused firms are disqualified from bidding, but have the option to be reinstated automatically by filing an affidavit denying culpability in the acts for which they have been prosecuted. However, if this option is exercised and an accused firm is subsequently convicted of the charges against it, the firm is liable to the D.O.T. for a statutory penalty equal to 10 percent of the value of work undertaken after filing the affidavit seeking reinstatement.

The failure to file an affidavit for reinstatement is not admissible evidence in a civil or criminal case; therefore, no contractor is compelled to testify against himself, either by silence or by affirmation.

E. Consequences of Disqualification

(1) Barred from bidding on future work until reinstated.
(2) Prohibited from subcontracting or supplying materials, equipment, services or consultation on future work until reinstated.
(3) Required to perform pre-existing contracts.

F. Legislative Repeal of the Capeletti Decision

(1) In Capeletti Bros., Inc. v. State of Florida D.O.T., 362 So.2d 346 (1st D.C.A. 1978); cert. denied, 368 So.2d 1374 (Fla., 1979), it was held that proceedings for revocation of a contractor's certificate of qualification are "in effect" license revocation proceedings within the meaning of the Florida Administrative Procedure Act, Chapter 120, Florida Statutes.

(2) The significance of the Capeletti decision is that a contractor qua "licensee" is entitled to a stay of the agency decision "as a matter of right," while an appeal is pursued. This enables a contractor to continue bidding on DOT contracts even though it has been found guilty of rigging bids and overcharging the state by
millions of dollars. In order to obtain a stay, the contractor need not demonstrate that its appeal is meritorious, nor make any showing that the potential harm to it outweighs the harm to the public interest.

(3) The proposed legislation corrects this imbalance by declaring that a certificate of qualification to bid, or similar authorization required to perform work, is not a "license." Thus, the state is placed more nearly in the same position as any other consumer with respect to those from whom it chooses to purchase goods and services. The bill expressly preserves a contractor's right to an APA hearing under Section 120.57, Florida Statutes.

(4) Ultimately, a disqualified contractor may resort to the courts to attempt to enjoin the state from awarding contracts that the contractor was not permitted to bid. The proposed bill provides substantive criteria to guide the courts when called upon to balance the public interest against the potential harm to an individual contractor.

G. Confidentiality of DOT Estimates and Identity of Potential Bidders

(1) Advance knowledge of the DOT official estimate of project costs enables the participants in a bid-rigging conspiracy to maximize the illegal profit to be gained from a conspiracy, while at the same time minimizing the risk that a rigged contract will be scrutinized. This is because a DOT contract is not subjected to "field review" prior to award unless the apparent low bidder is more than 7 percent above estimate, or unless there is some other obvious irregularity in the low bid. Therefore, a prearranged "winner" can submit a bid just at or slightly below the critical threshold and rest assured that his bid will be accepted without field review. The official estimate can also be utilized by bid riggers as "the number" above which the prearranged "losers" agree to peg their bottom line bids. This kind of arrangement relieves the conspirators of the necessity for direct communication of "the number" among the conspirators and reduces the risk of detection.

(2) Advance knowledge of the identities of prospective bidders on a project is an essential piece of information for the participants in a bid-rigging conspiracy. The pattern of conduct revealed in case
After case has been the same: On or before the evening of the bid letting, the contractor whose "turn" it is to win a bid calls all other contractors who have taken out bid proposals for the project and obtains assurances from them either to submit a bid higher than his or to refrain from bidding altogether. In consideration for such action, the requesting contractor returns the favor on another project or gives a subcontract on the project to one or more of the complementary bidders. The scheme will work if and only if all of the prospective bidders can be contacted and brought "on board." If this cannot be accomplished, then a project must be bid "the hard way," i.e., competitively.

(3) At present, the D.O.T. official estimate is regarded as "confidential" by D.O.T. policy, but is not protected from disclosure by statute. The bill merely provides statutory authorization for D.O.T. to withhold the official cost estimate if, in its judgment, disclosure would be harmful. Nothing in the proposed legislation requires D.O.T. to maintain secrecy of the official cost estimate; nor does the bill prevent D.O.T. from continuing its present practice of providing the legislature and the general public with budget estimates for proposed projects.

(4) Currently, a list of all potential bidders is voluntarily provided by D.O.T. to the Florida Transportation Builders' Association at least 24 hours in advance of the deadline for receiving bids. Even if this practice were stopped, however, the identities of potential bidders could easily be obtained well in advance of a letting by examining the records which must be kept by D.O.T. to prepare for a letting. The only practical means of preventing disclosure of bidders' identities is to exempt documents that would reveal those identities from the public records act for a limited period of time.

(5) The proposed bill provides only that degree of confidentiality which is absolutely required to safeguard the integrity of the bidding process. The public's legitimate right to examine state agency documents is not compromised by a reasonable delay in the release of information that, if released prematurely, creates a clear and present danger to the public interest.
H. Miscellaneous Provisions

(1) The Department of Legal Affairs is responsible for obtaining restitution in cases of overcharges due to antitrust violations.

(2) Monies recovered by way of restitution are to be deposited in the State Transportation Trust Fund, after deduction of statutory costs of 20 percent for the Legal Affairs Revolving Trust Fund.

(3) Emergency rule-making is authorized by a legislative finding of an immediate danger to the public health, safety and welfare.

(4) The Secretary of D.O.T. is empowered to conduct limited civil investigations by way of written demands to ascertain whether contractors have been convicted of contract crimes or are affiliated with convicted persons or firms.

(5) A severability clause protects the remainder of the legislation if any portion is found invalid by the courts.
A bill to be entitled
An act relating to contract crimes; adding a new section to Chapter 337, Florida Statutes; providing definitions; providing for denial or revocation of a contractor's certificate of qualification for specified reasons; providing for a period of disqualification; providing for reinstatement; providing for a continuation of obligations under pre-existing contracts; providing penalties; providing notification requirements; providing investigative authority; providing that qualification to bid on state contracts is not a license; prohibiting administrative stays of revocation; providing criteria for injunctive relief; providing for restitution to the State Transportation Trust Fund; providing a finding of an immediate danger to public safety, health and welfare; providing a definite period of time during which the Department of Transportation's official project cost estimates and potential bidders' identities are exempt from the provisions of Section 119.07(1), Florida Statutes; providing an effective date.

WHEREAS, the Legislature finds that the State's procedures for bidding and qualification of bidders on State contracts exist to secure the public benefits of free and open competition and to ensure the quality of public works, and

WHEREAS, the Legislature finds that the opportunity to bid on State contracts or to supply goods or services to the State is a privilege and not a right, and

WHEREAS, the Legislature finds that the privilege of transacting business with the State should be denied to persons or firms involved in contract crimes in order to preserve the integrity of the public contracting process,
NOW, THEREFORE,

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

Section 1. A new section is added to Chapter 337, Florida Statutes, to read:

Denial or revocation of a certificate of qualification for reasons of contract crime. - -

(1) The following words and phrases when used in this section shall have the following meanings:

(a) "Contractor." - Any person, firm, partnership, association, corporation, organization or business trust or other business entity which bids or applies to bid on work let by the department or which provides professional services to the department. The term contractor shall include officers, directors, executives, shareholders active in management, employees, agents, of the above-described entities.

(b) "Contract Crime." - Any act prohibited by state or federal criminal law involving fraud, bribery, collusion, conspiracy, violation of state or federal antitrust laws or material misrepresentation, committed in any jurisdiction with respect to a public or private contract.

(c) "Convicted." - Any conviction of a contract crime, within any jurisdiction, with or without an adjudication of guilt, resulting from a jury or nonjury trial, or a plea of guilty or nolo contendere.

(d) "Affiliates." - A predecessor or successor of a contractor under the same, or substantially the same, direct or indirect, 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 either directly or indirectly.

An affiliate also includes any business entity which is allied with another business entity through an established course of dealing, including but not limited to the lending of financial or other assistance, sharing of manpower or equipment, or engaging in joint ventures. One business entity's ownership of a controlling interest in another business entity, a sharing or interchange of officers, directors, executives, personnel, employees, or agents, or a pooling of equipment or income, shall be prima facie evidence that one business entity is an affiliate of another.

(e) "Restitution." — The prompt and voluntary repayment to the state of estimated overcharges, increased costs, or damages which the department is entitled to recover as a result of contract crime involving department contracts.

(f) "Secretary." — The Secretary of the Florida Department of Transportation.

(2) (a) No contractor or its affiliate shall be qualified to bid when an investigation by the department discloses that the contractor or its affiliate:

1. Has made false statements in any written submission to the department or in any judicial or administrative proceeding.

2. Has given, offered, or promised to a public employee or official anything of economic value or advantage with an intent or purpose to influence the performance of any act or omission which the contractor or its affiliate believes to be or which is represented as being within the official...
discretion of the public employee or official and which is in violation of a public duty or trust;

1. Has been convicted of a contract crime within the jurisdiction of any state or federal court;

2. Has been charged in any indictment or information alleging the commission of contract crime within the state;

3. Has failed to comply with the notification provisions of subsection (5);

and in such cases the contractor's and its affiliate's certificate of qualification shall be denied or revoked.

(c) A contractor or its affiliate whose certificate of qualification has been denied or revoked by reason of acts of contract crime for which he is convicted in the state of Florida and who is convicted upon a subsequent indictment or information alleging contract crime committed in the state within five (5) years of such denial or revocation shall not be considered for reinstatement pursuant to Subsection (2)(a) shall be for 36 months, unless the contractor is reinstated pursuant to Subsection (2)(d).

(d) A contractor or affiliate whose certificate of qualification has been denied or revoked by reason of acts of contract crime for which he is convicted in the state of Florida and who is convicted upon a subsequent indictment or information alleging contract crime committed in the state within five (5) years of such denial or revocation shall not be considered for reinstatement pursuant to Subsection (2)(d) until 24 months after the date of the denial or revocation based upon such subsequent conviction.

(d) A contractor or affiliate whose certificate of qualification has been denied or revoked may be reinstated upon such terms and conditions as the Secretary may prescribe upon finding it in the public interest to do so.
In determining whether reinstatement is in the public interest, the Secretary shall in all cases seek the advice of the Department of Legal Affairs and, thereafter shall consider relevant mitigating circumstances, including but not limited to, the following:

1. Payment of any amounts owed pursuant to Sub-section (2)(e):
   a. The degree of culpability;
   b. Reinstatement in other jurisdictions;
   c. Cooperation with any state or federal prosecution or investigation of contract crime;
   d. Disassociation with those involved in a contract crime;
   e. Reinstatement in other jurisdictions; and
   f. The needs of the department in completing its construction programs in a timely, cost-effective manner.

(e) If a contractor's or its affiliate's certificate of qualification is denied or revoked for the grounds set forth in Subsection (2)(a) of this section, such contractor or its affiliate shall be automatically reinstated upon the filing of an affidavit with the department denying culpability in the acts alleged in such indictment or information; provided, however, that if the contractor or its affiliate is convicted of any of the charges alleged in the indictment or information, the contractor or its affiliate shall forfeit and pay to the department an amount equal to: (1) 10 percent of the total contract price of all contracts let by the state upon which the contractor or its affiliate acted as a prime contractor or as consultant; (2) 10 percent of the prime contract bid amount for all line items for which the contractor or its affiliate was awarded subcontract work; (3) 10 percent of the price of all materials or equipment supplied by the contractor or its affiliate.
payments shall be in addition to any other sanctions or remedies available to the state. Such payments shall be computed upon any new work obtained during the period between the contractor's reinstatement pursuant to this subsection and the date of conviction. The failure of a contractor or its affiliate to file the affidavit required for reinstatement pursuant to this subsection shall not be admissible evidence in any civil or criminal proceeding in any state or federal court.

(3) A contractor or its affiliate whose certificate of qualification is denied or revoked pursuant to this section shall not act as a prime contractor, a material supplier, a subcontractor, or a consultant on any department contract or project during the period of such denial or revocation.

(4) The denial or revocation of a contractor's or affiliate's certificate of qualification shall not affect the contractor's or its affiliate's obligations under any preexisting contract.

(5) A contractor or its affiliate qualified or seeking qualification by the department shall notify the department within 30 days of a conviction or the filing of any information or indictment for a contract crime applicable to it or to any of its affiliates, or to any officers, directors, employees or agents of it or any of its affiliates.

(6) Whenever the Secretary has reason to believe that a contractor qualified or seeking qualification by the department has been convicted or charged with commission of a contract crime, or may be affiliated with a person or entity so convicted or charged, the Secretary may issue a written demand upon such contractor, concerning any such conviction charge or affiliation, to: (a) appear and be examined under oath; (b) answer
written interrogatories under oath; and (c) produce documents or other tangible evidence for inspection and copying.

The Department of Legal Affairs shall be responsible for obtaining restitution on behalf of the Department of Transportation for overcharges, increased costs or damages occasioned by the violation of state or federal anti-trust laws.

Twenty percent of all restitution so obtained by the Department of Legal Affairs shall be deposited in the Legal Affairs Revolving Trust Fund created by Section 16.53, Florida Statutes. The remainder of the monies recovered on behalf of the Department of Transportation shall be deposited in the State Transportation Trust Fund.

The enactment of these provisions is not in derogation of existing remedies available to the department and such remedies remain in full force and effect.

Section 3. Administrative Procedures; Stays and Injunctions.

(1) A certificate of qualification to bid on contracts, or other form of authorization required to supply goods or services to the state, is not a license, nor shall the denial or revocation of such certificate or authorization be subject to the provisions of Section 120.60, Florida Statutes; however, the provisions of Section 120.57, Florida Statutes, shall be applicable to the denial or revocation of such certificate or authorization.

(2) Continuation of the bidding, contracting or supplying privileges of a contractor or its affiliate who is convicted of contract crime, or who is charged by indictment or information with commission of contract crime in this state,
represents an immediate danger to the public health, safety and welfare.

(3) The revocation or denial of a certificate of qualification for reasons of contract crime shall not be stayed by the department or by the Division of Administrative Hearings during the pendency of any proceedings concerning such denial or revocation pursuant to Chapter 120, Florida Statutes.

(4) Stays or injunctions concerning the revocation or denial of a certificate of qualification may be granted by the courts of this state only upon the posting of a bond by the petitioner seeking a stay or injunction, and provided that the court granting a stay or injunction finds: (a) the petitioner has a substantial likelihood of success on the merits; and (b) the threatened harm or injury to the petitioner clearly outweighs any possible injury to the state occasioned by granting the stay or injunction; and (c) it is in the public interest to grant the stay or injunction.


(1) Any documents revealing the Department of Transportation’s official cost estimate of a project shall be exempt from the provisions of Section 119.07(1), Florida Statutes, until such time as the contract for the project has been executed.

(2) Any documents revealing the identity of persons who have requested or obtained bid packages, plans or specifications pertaining to any project to be let by the department shall be exempt from the provisions of Section 119.07(1), Florida Statutes, until such time as the deadline for receiving bids on the project has expired.
Section 8. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 9. This act shall take effect upon becoming a law.
(Single Mailing)
To the Chief Administrative Officers
of the American Association of State
Highway and Transportation Officials

Dear Members:

Suggested Guidelines for Strengthening Bidding and Contract Procedures

Earlier this year, the Standing Committee on Highways created a
special AASHTO Task Force on Bidding and Estimating Procedures. The
Task Force reviewed the procedures used by several AASHTO Member
Departments and developed suggested guidelines for strengthening these
procedures. The suggested guidelines were subsequently approved by
the Standing Committee on Highways and the Executive Committee.

We are enclosing two copies of the "Suggested Guidelines for
Strengthening Bidding and Contract Procedures." States requesting
additional copies may receive up to a total of ten gratis copies.
The guidelines are available to the public for $1.00 per copy.

Very truly yours,

Francis B. Francois
Executive Director

Enclosure
SUGGESTED GUIDELINES FOR STRENGTHENING
BIDDING AND CONTRACT PROCEDURES

Published by the American Association of State Highway
and Transportation Officials. General Offices located at
444 North Capitol Street, N.W., Suite 225
Washington, D.C. 20001
FOREWORD

These suggested guidelines result from the efforts of a special AASHTO Task Force on Bidding and Estimating, created by the AASHTO Standing Committee on Highways in 1981. The Task Force members reviewed the bidding and estimating practices utilized by several member departments, and problems that have been encountered with existing procedures. On the basis of that review these guidelines were prepared and later accepted by the Standing Committee on Highways. Subsequently, the AASHTO Executive Committee approved publication and distribution of the suggested guidelines in October, 1981, as an informational report to member departments and others interested in the subject.
The following guidelines are not intended to establish an absolute set of mandates that must be adopted by the States. Their purpose is to collate into one document suggestions, based upon experience, which will provide a state with a basis upon which it may build or add to its own antitrust overview program. Each state should carefully review these suggestions and apply, modify or reject each suggestion according to its own individual assessment of the suggestions balanced against the state's law, regulations, procedure, policy and requirements.

I. PRE-BID STAGE

A. Prequalification of Bidders and Subcontractors - A prequalification system is encouraged as a means of not only pre-determining job experience and work capacity but also to serve as a means of identifying individuals and organizations from whom the agency may be accepting a bid. Such system could cover the following as well as other areas:

1. Detailed Financial Statement - The financial statement is a means of establishing financial responsibility as well as providing a valuable "window" through which the agency may view the business association of individuals and organizations who wish to bid.

   In addition to a balance sheet of assets, liabilities and net worth, the financial statement should also require detailed information such as the name and location of depositories, accounts receivable, investments, etc.

   Include an affidavit in the financial statement which attests to the fact that the statements are true and which also authorizes any depository, vendor or other agency named in the application to supply information necessary to verify statements made.

2. Resident Agent - The out-of-state organization or individual proposing to bid should be required to have a resident Agent who is identified by name and address in the prequalification assembly. This will minimize the difficulty which could arise in serving a subpoena, etc. upon an out-of-state contractor.

3. Capacity and Classification (Type Work) for Which the Contractor Requests and is Subsequently Deemed Prequalified - Major Classifications include:

   a. General Highway Construction
   b. Grading and Minor Structure
   c. Paving
   d. Miscellaneous (Signing, Fencing, Guardrail, etc.)
Suggested Guidelines for Strengthening Bidding and Contract Procedures - 2 -

Note: Data of this nature serves to identify the type of work for which a contractor is qualified, thus deterring the submission of a complementary bid by a firm for work in which it has no genuine capability.

4. Experience and Performance - The applicant for prequalification should be required to list his classification and bidding capacity in other states as well as the number of years of experience his organization has had in each of the types of work he wishes to bid upon. The experience record should include both public and private work.

Principal individuals in the organization should be listed along with their position, type work in which they are most experienced and the number of years of such experience.

The contractor should be required to include in his application information regarding his failure to complete contracted work. He/she should also be required to give a full account of any instance in which prequalification was denied or in which the organization was removed from the bidding list in this or another state.

5. Ownership or Control
   a. The prequalification assembly should provide for a list of individuals, companies or corporations owning 10% or more of the applicant's firm.
   b. The applicant should be required to identify owners, officers, partners or individuals holding an office in his/her organization who have financial interest in and/or serve as an officer or partner in another firm prequalified to bid in this or another state.
   c. Affiliates, such as joint ventures, and/or subsidiary companies should be identified in the application.
   d. In addition to the aforementioned, the applicant should be required to identify any other individual or organization who, in any way and to any extent, controls or influences the bidding effort in his/her firm or other firm qualified to bid on highway construction.

Note: This information could reveal possible monetary motive for collusive bidding where such is suspected.

6. Equipment - The applicant should be required to list the plants and equipment he owns or which are otherwise available through rental arrangements.

Note: This should deter the submission of a complementary bid by a firm which lacks the necessary equipment and access to same.
Suggested Guidelines for Strengthening Bidding and Contract Procedures - 3 -

7. False Statements in Questionnaire or at Hearing - Include language in the prequalification assembly which prohibits the making of false, deceptive or fraudulent statements on the application or at the hearing under penalty of temporary or permanent debarment.

Note: This is an opportunity to forewarn the applicant of the seriousness of furnishing incomplete or inaccurate information. The providing of prior notice of the consequence of a prohibited act is a desirable element in supporting an action to revoke qualification.

8. Revocation of Certificate of Qualification - Provide for revocation of qualification if:
   a. The contractor is declared in default in accordance with applicable provisions of the contract; or
   b. It is determined that the contractor has made false, deceptive or fraudulent statement on his application or in the course of any hearing associated with his application for prequalification; or
   c. It is determined that the contractor has participated in antitrust violations; or
   d. It is determined that the contractor has employed agency personnel or offered or given gifts or gratuities to such agency personnel; or
   e. The contractor has been debarred from performing work on Federal-aid projects; or
   f. Any other action or inaction on the part of the contractor which the appropriate committee or agency representative deems to warrant revocation.

9. Appeals Procedure - There should be a well defined appeals procedure for a prospective bidder who may be dissatisfied with some decision affecting his/her classification, performance rating, and limits of prequalification. It is essential that the procedure include a reasonable opportunity for the prospective bidder to present his case. An appeals procedure strengthens the process by which the agency reaches its ultimate conclusion and helps insulate its action from a collateral judicial attack based upon an alleged lack of due process.

10. Up-Dating Prequalification Assembly - In addition to the required annual or other periodic renewal of qualification, the contractor shall also be required to update his/her assembly within ten (10) days when there is a corporate or affiliate change and/or a reduction in more than 10 percent of stated assets.
B. Specifications - Include language in the agency's book of standard or general specifications which prohibits antitrust activities and the restraint of free competitive bidding. For example:

1. Under the section which sets forth various requirements for preparation of the proposal, the following or similar wording could be used to reinforce the required execution of a sworn statement:

   "A sworn statement shall be executed by the bidder or an agent hereof, on behalf of each person, firm, association or corporation submitting a proposal, certifying that such person, firm, association or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such contract. The sworn statement shall be in the form of an affidavit, furnished by the Department and sworn to before a person who is authorized by the laws of the State to administer oaths. The original of such sworn statement shall be filed with the Department when the proposal is submitted."

2. Under the section which lists various deficiencies which may result in a proposal being rejected, the following or similar wording could be used to lend additional support to the sworn statement:

   "If the bidder fails to submit a sworn statement concerning collusion or restraint of free competitive bidding."

3. Under the section relating to the disqualification of a bidder, the following or similar wording could be used to reinforce the agency's authority to not only reject proposals by reason of antitrust violation on the project at hand but also to debar such contractor in so far as future projects are concerned:

   "Evidence of collusion or restraint of free competition among the bidders. The contractor participating in such antitrust activity will not be permitted to bid upon future projects until reinstatement to the approved bidder's list."

Note: This same subject is referred to in Section II A.

C. Estimate - In the interest of creating the best possible environment for open competition in the bidding process for public contracts, it is recommended that the detailed engineer's estimate be kept secret. Under such system, it is prudent to limit access to the estimate and to maintain a responsible level of security for files in which they are stored.

D. Competition - Seek ways and means of improving competition on a continuing basis. For example:
Suggested Guidelines for Strengthening Bidding and Contract Procedures - 5 -

1. Prebid meetings with contractors to discuss plans and specifications, especially complex projects, are encouraged. Personal contacts after the taking of bids could prove helpful in determining why certain contractors did not bid. Could such work be divided or combined differently to attract additional bidders on future projects?

2. Seek both agency and industry input on a continuing basis that will identify and eliminate superfluous, redundant or otherwise unnecessary requirements which encumber the entry of competent contractors.

3. Make possible the bidding of basic improvement type projects by small contractors by tailoring prequalification requirements, specifications and acceptance criteria to such projects.

4. A list of those contractors who have picked up a bid package should not be made available to other contractors before the bid opening. A public disclosure will allow those contractors who would violate the antitrust laws to find out whether they will have competition on any particular contract. If they do not know who picked up the bid package, although they still are not prevented by this nondisclosure from colluding, they will be uncomfortable because they must worry that someone else, outside their circle and unknown to them, may take the bid by underbidding them. If they know that no one outside their circle picked up a bid package then they can be comfortable that their collusive plot will be successful.

E. Debarment - Adopt policy for debarment of contractor and affiliate who commit a "bidding crime", defined as any act prohibited by state or federal law and committed in any jurisdiction, involving fraud, conspiracy, collusion, lying or material misrepresentation with respect to bidding on any contract, public or private.

1. Debarment should occur for any of the following reasons:

   (a) Conviction of a bidding crime resulting from a jury or bench trial, any plea of guilty or nolo contendere, any public admission of any contractor, any presentation of an unindicted co-conspirator.

   (b) Conviction of any offense indicating a lack of moral and ethical integrity as may reasonably be perceived to relate to or reflect upon the business practices of the company;

   (c) Any other cause of a serious and compelling nature affecting responsibility as a contractor.

   (d) Debarment by some other state or federal agency for substantially any of the reasons listed above.
Suggested Guidelines for Strengthening Bidding and Contract Procedures - 6 -

Note: For a debarment process to be effective, states must adopt a reciprocating debarment process. This will be necessary to shut off the opportunity for a contractor who is debarred in one state from simply making a corresponding and offsetting increase in his bidding activity elsewhere. It should be noted that several states now have a policy whereby contractors who have been indicted are automatically suspended from bidding on projects. The AASHTO headquarters office will assume responsibility for notifying all member states of any reported debarment action.

2. The debarment policy should contain the following provisions:

a. Opportunity for hearing before or after debarment.

b. A uniform period of debarment - 36 months is suggested.

c. Authority on the part of the commission or agency head to lift or suspend debarment at any time if it is in the public interest to do so. The following mitigating circumstances may influence this decision:

1. Degree of culpability
2. Restitution of damages to state
3. Cooperation in the investigation of other bidding crimes.
4. Disassociation with those involved in bidding crimes.
5. Whether lengthy debarment is required for protection of the state.

d. Authority on the part of the commission or agency head to hold a hearing no later than 15 days prior to the last day of the term of debarment and require the contractor to show cause why the debarment should not continue. Note: The passage of time may not necessarily cure a contractor's lack of responsibility in terms of business practices, associations or factors which contributed to the bidding crime.

3. Additional rules applicable to debarment:

a. Illegal or improper conduct of any individual may be fully imputed to the business firm with which he/she is or was associated or by whom he/she was employed where that conduct was engaged in within the course of his/her employment or with knowledge or approval of the business firm or thereafter ratified by it.

b. Debarment in no way affects the obligation of a contractor to the agency to complete services already under contract.

c. The commission or agency head may, in the public’s best interest, suspend or otherwise delay inquiry into or review of any debarment in the event such action may impede, hinder or delay federal or state investigations into a bidding crime. Such decision will be made only after notice and as opportunity to be heard is afforded the affected contractor.
Suggested Guidelines for Strengthening Bidding and Contract Procedures - 7 -

d. Any contractor currently qualified to bid upon agency contracts shall have a duty to notify the commission or agency head if it is convicted of any bidding crime within 30 days thereafter. Failure to furnish such notification is a serious and compelling offense sufficient to result in debarment in and of itself.

4. Notice to contractors:

A copy of any policy and procedure for debarment should be mailed to each prequalified contractor and to each contractor previously debarred or suspended.

II. BIDDING STAGE

A. Proposal Documents - Include an affidavit on a form furnished by the agency in bid document which contains the following elements:

1. Appropriate references to applicable state and federal law which deals with bidding crimes.

2. An introductory statement which requires the execution of the affidavit as a prerequisite for consideration of the bid.

3. A statement which in effect certifies that the contractor has not committed a bidding crime in connection with the project.

4. A Notary Public statement witnessing the principal's signature.

Note: This same subject is referred to in Section I B 3.

23 U.S.C. Subsection 112(c) requires that before the Federal Highway Administration may approve a federal-aid highway contract, a noncollusion sworn statement must be submitted with the state's request for approval. In addition 23 CFR Subsection 635.107(i) requires that such statement must be on file with the state highway agency. Finally, under 18 U.S.C. Subsection 1020 filing a false statement can subject the affiant to a criminal penalty of $10,000 or not more than five years in prison.

B. Estimate - A statistical estimating system should be checked and monitored by the use of a rational estimating technique. Statistically based systems could be highly influenced by unit prices taken from bids which may not have been developed in a competitive environment.

C. Submission of Proposal - Require proposals to be submitted in envelopes furnished by the agency and that they be sealed. This requirement provides for the ready recognition of bids versus other mail thus assisting in their prompt delivery to the contract office and assurance that the bid will not be casually opened.
Suggested Guidelines for Strengthening Bidding and Contract Procedures

D. Location of Bid Depository - Proposals should be received at one location and address - the contract office. Avoid having a bid deposit or drop point at a location where bidders assemble for securing of subcontractor and vendor prices. Agency employees should avoid contacts of a personal nature with contractors during the preparation of bids - contacts of such nature create an image of impropriety.

E. Opening and Reading of Bids - Provide for the public opening and reading of bids in order to maintain the highest level of credibility among bidders as well as the general public.

F. Analysis of Bids - Bid prices should be reviewed and compared with the agency's estimate for each of the items. Estimators and bid analysts should be trained in the identification of irregular bids, abnormal bidding patterns, etc. Utilize information obtained from antitrust investigators and economists who specialize in the detection of such activities in the writing of specific guidelines for bid analysts. Such guidelines should include a charting of the contractors' bids and awards geographically for possible territorial arrangements. Look also for bidding patterns which indicate possible alternating of contracts. Attempt to detect bidding irregularities which suggest token or complementary bidding.

G. Reporting of Suspected Antitrust Activities - Promptly report any indication of antitrust violations to the appropriate investigative authority for their review.

H. Award - Adopt a policy in which a contract may be awarded when only one bid is received, assuming that the estimating procedure is reliable. A policy of not awarding a contract on which a single bid is received encourages the submission of complementary bids.

III. POST AWARD STAGE

A. Internal Agency Audits - Include spot or periodic reviews of bids and bid analysis in the agency's internal audit process. Report results of these audits to management.

B. State Antitrust Investigation Unit - Provide for spot or periodic review of bids and bid analysis by the State's antitrust unit.

C. Increasing Competition - Inasmuch as the tendency to restrain free competitive bidding bears an inverse relationship to the number of bidders, a continuing effort should be made to determine the size and scope of various types of projects which are attracting the greatest number of bidders and to use such information in the establishment of future projects.

D. Exchange of Information Among States Which Have Experienced Antitrust Activities - Participate in the collection and dissemination of information among States in connection with the detection of antitrust violations.
1. Identifying Bidding Patterns

A. Division of the Work: A certain group of contractors bidding the same or many of the same contracts with a different low bidder on each.

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| Contractor "F" (low) |
| "E" (second) |
| "R" (third) |
| "C" (fourth) |

<table>
<thead>
<tr>
<th>Contract #3</th>
<th>Contract #4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractor &quot;E&quot; (low)</td>
<td></td>
</tr>
<tr>
<td>&quot;C&quot; (second)</td>
<td></td>
</tr>
<tr>
<td>&quot;F&quot; (third)</td>
<td></td>
</tr>
<tr>
<td>&quot;T&quot; (fourth)</td>
<td></td>
</tr>
</tbody>
</table>

| Contractor "D" (low) |
| "W" (second) |
| "C" (third) |
| "E" (fourth) |

Note: Contractors C, E and F bid 3 of the 4 contracts; Contractors C and E bid all 4 of the contracts; however, the 4 contractors in the group are low on at least one of the contracts.

B. Territorial Arrangement: A certain group of contractors bidding the same or many of the same contracts within a given area and with a different low bidder on each.

County "V" is the territory in which Contractors Q, T and U have their headquarters or stationary plants.

<table>
<thead>
<tr>
<th>Contract #1</th>
<th>Contract #2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractor &quot;Q&quot; (low)</td>
<td></td>
</tr>
<tr>
<td>&quot;T&quot; (second)</td>
<td></td>
</tr>
<tr>
<td>&quot;U&quot; (third)</td>
<td></td>
</tr>
</tbody>
</table>

| Contractor "T" (low) |
| "U" (second) |
| "V" (third) |
| "Q" (fourth) |

| Contractor "U" (low) |
| "Q" (second) |

Note: Contractors Q and U bid 2 of the 3 contracts; however, the 3 contractors in the group are low on at least one of the contracts.

C. Alternating Arrangement: A certain group of contractors bidding the same contracts in a given area and alternating the low bid.
City "P" is the territory in which Contractors D and G have their headquarters or stationary plants.

1979

<table>
<thead>
<tr>
<th>Contractor</th>
<th>1980</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;D&quot; (low)</td>
<td>&quot;G&quot; (second)</td>
</tr>
<tr>
<td>&quot;G&quot; (second)</td>
<td>&quot;D&quot; (low)</td>
</tr>
<tr>
<td>&quot;R&quot; (third)</td>
<td>&quot;G&quot; (third)</td>
</tr>
</tbody>
</table>

II. Identifying Bidding Irregularities

A. Order of bidders decided on the basis of one or two items: Similar unit prices are submitted by the several bidders with one or two notable (unexplainable) exceptions:

<table>
<thead>
<tr>
<th>Contractor &quot;B&quot; (low)</th>
<th>Item</th>
<th>Unit Price</th>
<th>Est.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>$3.00</td>
<td>$2.85</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>5.00</td>
<td>5.15</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>6.00</td>
<td>6.10</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>3.00</td>
<td>3.05</td>
</tr>
<tr>
<td></td>
<td>5</td>
<td>7.00</td>
<td>6.90</td>
</tr>
</tbody>
</table>

* Contractor "A" (second)

<table>
<thead>
<tr>
<th>Item</th>
<th>Unit Price</th>
<th>Est.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>3.00</td>
<td>2.85</td>
</tr>
<tr>
<td>2</td>
<td>(10.00)</td>
<td>5.15</td>
</tr>
<tr>
<td>3</td>
<td>6.00</td>
<td>6.10</td>
</tr>
<tr>
<td>4</td>
<td>3.00</td>
<td>3.05</td>
</tr>
<tr>
<td>5</td>
<td>7.00</td>
<td>6.90</td>
</tr>
</tbody>
</table>

* Contractor "C"

<table>
<thead>
<tr>
<th>Item</th>
<th>Unit Price</th>
<th>Est.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>3.00</td>
<td>2.85</td>
</tr>
<tr>
<td>2</td>
<td>5.00</td>
<td>5.15</td>
</tr>
<tr>
<td>3</td>
<td>(15.00)</td>
<td>6.10</td>
</tr>
<tr>
<td>4</td>
<td>3.00</td>
<td>3.05</td>
</tr>
<tr>
<td>5</td>
<td>7.00</td>
<td>6.90</td>
</tr>
</tbody>
</table>

B. Bidder(s) deviate from their usual unit pricing on Project #3 without apparent justification:

<table>
<thead>
<tr>
<th>Contractor &quot;B&quot;</th>
<th>Project #1</th>
<th>Project #2</th>
<th>Project #3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class A-4 Conc. (low)</td>
<td>$210.00</td>
<td>$220.00</td>
<td>$195.00</td>
</tr>
</tbody>
</table>

* Contractor "A" (second)

<table>
<thead>
<tr>
<th>Class A-4 Conc. (second)</th>
<th>Project #1</th>
<th>Project #2</th>
<th>Project #3</th>
</tr>
</thead>
<tbody>
<tr>
<td>$200.00</td>
<td>$214.00</td>
<td>($300.00)</td>
<td></td>
</tr>
</tbody>
</table>

* Contractor "C" (third)

<table>
<thead>
<tr>
<th>Class A-3 Conc. (third)</th>
<th>Project #1</th>
<th>Project #2</th>
<th>Project #3</th>
</tr>
</thead>
<tbody>
<tr>
<td>$175.00</td>
<td>$180.00</td>
<td>($310.00)</td>
<td></td>
</tr>
</tbody>
</table>

* Possibly Complementary Bids
FOR IMMEDIATE RELEASE
December 11, 1981

CONTACT: Steve Hull, Press Secretary
        488-4801
Jill Chamberlin, Deputy Press Secretary 488-3121

GRAHAM AND SMITH SEEK NEW ROAD BIDDING LAW

TALLAHASSEE—Governor Bob Graham and Attorney General Jim Smith today announced they will seek legislation suspending the bidding privilege of road contractors indicted or convicted on contract crime charges.

Graham said the legislation would "create a rational framework within which the state can act swiftly, but fairly, to protect the integrity of the public contracting process."

Smith said, "The Department of Transportation should not be required to do business with firms indicted or convicted on bid-rigging charges, but may be compelled to do so under case law treating contractors as licensees, which may give them legal rights to continue bidding until final resolution of any charges."

The proposed legislation would allow the state to deny or revoke the bidding certification of any contractor or affiliate convicted anywhere in the United States, or indicted for crimes committed within Florida.

These crimes would include fraud, bribery and corruption as well as antitrust offenses such as bid-rigging and market allocation.

The Department of Transportation spends hundreds of millions of dollars every year through the competitive bidding process Graham said. "Any illegal activity subverting the honesty and fairness (MORE)

[MOFF] An Affirmative Action/Equal Opportunity Employer
of this process not only takes money out of the pockets of taxpayers, but hurts the many legitimate contractors who play by the rules."

Graham said bidding should be a privilege, not a right. "The process should work to the public's advantage in obtaining quality construction at a fair market price. This legislation will strengthen the hand of the honest contractor without posing any insurmountable obstacles to the bidding process."

The bill makes confidential the official Department of Transportation estimates of the cost of a project up for bid and withholds disclosure of the list of bidders until the deadline. "The bidder's list has been proved to be the blueprint for conspiracies in other states. Florida's interest in guarding against that possibility, in my opinion, outweighs the desire of the industry to have the list," said Smith.

"The hard evidence of the need for this legislation is the experience of other states with illegal conspiracies," Smith added. "I have seen no empirical evidence that secret lists would, in fact, increase the cost of road building."

If contractors are held to be licensees their certificates may not be withdrawn until completion of all legal rights of appeal, including protracted proceedings under the Administrative Procedures Act.

"With the financial stakes as high as they are in DOT contracts, it would be possible for an indicted contractor to prolong litigation while accumulating a backlog of contracts to

(MORE)
minimize the impact of any suspension of his bidding privilege," said Smith.

He said such legislation might even delay the awarding of a contract to anyone until the case is resolved.

The bill will allow immediate suspension of the bidder’s certificate, but provides for automatic reinstatement by the filing of an affidavit denying the charges and agreeing to a statutory penalty equal to 10 percent of the value of any work undertaken after the date of the affidavit if convicted.

Other grounds for reinstatement include restitution and cooperation with state or federal prosecutors.

The bill will be heard by the House Transportation Committee at 1:30 p.m. Tuesday, December 15. It is a proposed committee bill.

Senator Ken Jenne, D-Hollywood, will be the Senate sponsor.

"Due to the obvious problems in Tennessee and the Carolinas, the Legislature must face the fact that there is a potential for the same in Florida, and act quickly to protect the state's interest," said Jenne.

For information contact Jack Nolan, Department of Transportation, 488-8141 or Don North 488-5572.

-30-
SYNOPSIS OF PROPOSED LEGISLATION

I. NEED FOR LEGISLATION

A federal government prosecution task force began presenting evidence before a grand jury in Tallahassee this fall as part of a nationwide investigation of bid rigging in the highway construction industry. In eight states before entering Florida, this investigation resulted in the filing of more than 180 felony antitrust cases against firms and individuals. Some of the convicted persons and firms are doing business with the State of Florida and others are seeking to do so. It is reasonable to expect that some Florida based construction firms now doing business with the state may be charged by the Tallahassee grand jury.

The Department of Transportation may suspend or revoke a contractor's certificate of qualification "for good cause" pursuant to the provisions of Section 337.16(2), F.S. While this language is not so vague and ambiguous as to offend constitutional due process, it provides no authority or guidance for the following important matters: payment of restitution to the state; how to treat "affiliates" of convicted firms; whether indictment should carry as severe consequences as conviction; provisions for reinstatement as an incentive to pay restitution and cooperate in prosecutions and investigations; how D.O.T. can obtain information from firms suspected of convictions in other states; whether disqualified firms can get court-ordered stays of contracts while they pursue lengthy appeals of their disqualification; etc.
(1) A contractor or affiliate who has been convicted of contract crime shall be debarred for up to 36 months during which period such contractor may not bid, contract with, or supply goods or services to, the DOT; but must continue to perform his obligations under pre-existing DOT contracts. A contractor or affiliate who has been charged within the State of Florida shall be suspended pending resolution of the charges.

(2) A debarred contractor may be reinstated upon a finding by the Secretary with the advice of the Attorney General that it is in the public interest to do so. Reinstatement in the public interest is based on such circumstances as the contractor’s culpability, restitution to the department, cooperation with investigative/prosecutorial authorities, the needs of the department, etc. A contractor who has been suspended of the charge, may be automatically reinstated upon the execution of an affidavit denying culpability in the acts alleged in the charging instrument; however, certain additional penalties attach if such reinstated contractor is subsequently convicted of the charges. A contractor convicted of a contract offense committed in Florida within five years of a prior debarment for contract offenses may not be considered for reinstatement for a minimum period of 24 months.

(3) A contractor who is debarred or suspended may not obtain an administrative stay of such action. It is recognized that the ability to bid on and service DOT projects is a privilege and not a right. A debarred or suspended contractor may seek injunctive relief from the courts, to the extent it is otherwise available, only upon a showing and finding of the contractor’s likelihood of success on the merits, that the harm to the contractor outweighs the harm to the state, and that it is in the public interest to grant such relief.

(4) The bill provides two limited exceptions to the public records law: (a) The department’s official cost estimate shall remain confidential until a contract for a project has been executed. (b) Any documents revealing the identity of potential bidders on a project shall remain confidential until the deadline for receipt of bids has passed.
A bill to be entitled
An act relating to Department of Transportation
contracts; creating s. 337.165, Florida
Statutes; providing definitions; providing for
denial, revocation, or suspension of a
contractor's certificate of qualification for
specified reasons; providing for a period of
disqualification; providing for reinstatement
of a certificate; providing for a continuation
of obligations under preexisting contracts;
providing penalties; providing notification
requirements; providing investigative
authority; creating s. 337.166, Florida
Statutes; requiring the Department of Legal
Affairs to obtain restitution for the
Department of Transportation in certain
actions; creating s. 337.167, Florida Statutes;
providing that qualification to bid on state
contracts is not a license; prohibiting
administrative stays of denial, revocation, or
suspension; providing criteria for injunctive
relief; providing a finding of an immediate
danger to public safety, health and welfare;
creating s. 337.168, Florida Statutes;
providing a definite period of time during
which the Department of Transportation's
official project cost estimates and potential
bidders' identities are exempt from the
provisions of s. 119.07(1), Florida Statutes;
providing an effective date.

CODING: Words in small caps type are deletions from existing law; words underlined are additions.
WHEREAS, the Legislature finds that the procedures of
the Department of Transportation for bidding and qualification
of bidders on department contracts exist to secure the public
benefits of free and open competition and to ensure the
quality of public works, and

WHEREAS, the Legislature finds that the opportunity to
bid on Department of Transportation contracts or to supply
goods or services to the department is a privilege and not a
right, and

WHEREAS, the Legislature finds that the privilege of
transacting business with the Department of Transportation
should be denied to persons or firms involved in contract
crimes in order to preserve the integrity of the public
contracting process. NOW, THEREFORE,

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

Section 1. Section 337.165, Florida Statutes, is
created to read:

337.165 Contract crime; denial, revocation, or
suspension of a certificate of qualification.--
(1) The following words and phrases when used in this
section shall have the following meanings:
(a) "Contractor" means any person who bids or applies
to bid on work let by the Department of Transportation or who
provides professional services to the department. The term
contractor shall include a contractor's officers, directors,
executives, shareholders active in management, employees, and
agents.
(b) "Contract crime" means any act prohibited by state
or federal criminal law which involves fraud, bribery.
(c) "Convicted" means any conviction of a contract crime, within any federal or state jurisdiction, with or without an adjudication of guilt, resulting from a jury or nonjury trial, or a plea of guilty or nolo contendere.

(d) "Affiliate" means a predecessor or successor of a contractor under the same, or substantially the same, direct or indirect control; a group of business entities which is connected or associated so that one entity controls or has the power to control each of the other business entities either directly or indirectly. One business entity's ownership of a controlling interest, directly or indirectly, in another business entity; a sharing or interchange of officers, directors, executives, personnel, employees, or agents among business entities; or a pooling of equipment or income among business entities shall be prima facie evidence that one business entity is an affiliate of another.

(2)(a) No contractor or its affiliate shall be qualified to bid when an investigation by the department discloses that the contractor or its affiliate:

1. Has been convicted of a contract crime within the jurisdiction of any state or federal court;
2. Has failed to comply with the notification provisions of subsection (5);
3. Has been charged in any indictment or information alleging the commission of a contract crime within the state; or
(b) 1. In cases where subparagraph 1. or 2. of paragraph (a) apply, the department shall deny or revoke the certificate of qualification of the contractor or its affiliate. Such revocation or denial of a certificate of qualification shall be for 36 months, unless the contractor or its affiliate is reinstated or qualified pursuant to paragraph (d).

2. In cases where subparagraph 3. of paragraph (a) applies, the department shall deny or suspend the certificate of qualification of the contractor or its affiliate. Such denial or suspension shall continue until resolution of the criminal charges or until the contractor or its affiliate is reinstated or qualified in accordance with paragraph (d) or (e).

(c) A contractor or its affiliate whose certificate of qualification has been denied or revoked by reason of acts of contract crime for which it is convicted in this state and which is convicted upon a subsequent indictment or information alleging contract crime committed in this state within 5 years of such denial or revocation shall not be considered for reinstatement or qualification pursuant to paragraph (d) until 24 months after the date of the denial or revocation based upon such subsequent conviction.

(d) A contractor or affiliate whose certificate of qualification has been denied, revoked, or suspended may be reinstated or qualified upon such terms and conditions as the department may prescribe upon finding it in the public interest to do so. In determining whether reinstatement is in the public interest, the department shall request the advice of the Department of Legal Affairs and, thereafter shall...
consider relevant mitigating circumstances, including but not limited to, the following:

1. The degree of culpability;
2. Prompt and voluntary restitution based on the contractor's and its affiliate's ability to pay;
3. Cooperation with any state or federal prosecution or investigation of contract crime;
4. Disassociation with those involved in a contract crime;
5. Reinstatement in other state or federal jurisdictions; and
6. The needs of the department in completing its construction programs in a timely, cost-effective manner.

(e) A contractor or its affiliate whose certificate of qualification has been denied or suspended because the contractor or its affiliate has been charged in an indictment or information alleging the commission of a contract crime within the state shall have its certificate of qualification automatically reinstated or granted if found not guilty, if the indictment or information is prosed or dismissed, or if the contractor or its affiliate files an affidavit with the department denying culpability in the acts alleged in such indictment or information. If the contractor or its affiliate is convicted of any of the contract crime charges alleged or included in the indictment or information, the contractor or its affiliate shall forfeit and pay to the department an amount equal to:

1. Ten percent of the total contract price of all contracts let by the department upon which the contractor or its affiliate acted as a prime contractor or as consultant;
2. Ten percent of the prime contract bid amount for
all line items for which the contractor or its affiliate was
awarded subcontract work; or

3. Ten percent of the price of all materials or
equipment supplied by the contractor or its affiliate.

These payments shall be in addition to any other sanctions or
remedies available to the state. Such payments shall be
computed upon any new work obtained during the period between
the reinstatement of the certificate pursuant to this
paragraph and the date of conviction. The failure of a
contractor or its affiliate to file the affidavit required for
reinstatement pursuant to this paragraph shall not be
admissible evidence in any civil or criminal proceeding in any
state or federal court.

3. A contractor or its affiliate whose certificate of
qualification is revoked or suspended pursuant to this section
shall not act as a prime contractor, a material supplier, a
subcontractor, or a consultant on any department contract or
project during the period of such denial or revocation.

4. The denial, revocation, or suspension of a
contractor's or affiliate's certificate of qualification shall
not affect the contractor's or its affiliate's obligations
under any preexisting contract.

5. A contractor or its affiliate which is qualified
or which is seeking to be qualified by the department shall
notify the department within 30 days of a conviction or the
filing of any information or indictment for a contract crime
applicable to it or to any of its affiliates, or to any
officers, directors, employees or agents of it or any of its
affiliates.

CODING: Words in underline type are deletions from existing law; words underlined are additions.
Whenever the department has reason to believe that a contractor qualified or seeking qualification by the department has been convicted or charged in any indictment or information with the commission of a contract crime, or may be affiliated with a person or entity so convicted or charged, the department may issue a written demand upon such contractor, concerning any such conviction charge or affiliation, to appear and be examined under oath, to answer written interrogatories under oath, and to produce documents or other tangible evidence for inspection and copying.

The enactment of these provisions is not in derogation of existing remedies available to the department and such remedies remain in full force and effect.

Section 2. Section 337.166, Florida Statutes, is created to read:

337.166 Restitution: violation of anti-trust laws.--

The Department of Legal Affairs shall be responsible for obtaining restitution on behalf of the Department of Transportation for overcharges, increased costs or damages occasioned by the violation of state or federal anti-trust laws. Twenty percent of all restitution so obtained by the Department of Legal Affairs shall be deposited in the Legal Affairs Revolving Trust Fund created by s. 16.53. The remainder of the moneys recovered on behalf of the Department of Transportation shall be deposited in the State Transportation Trust Fund.

Section 3. Section 337.167, Florida Statutes, is created to read:

337.167 Administrative procedures; stays and injunctions.--

CODING: Words in small through type are deletions from existing law; words underlined are additions.
(1) A certificate of qualification to bid on a
Department of Transportation contract, or other form of
authorization required to supply goods or services to the
department, is not a license, nor shall the denial,
revocation, or suspension of such certificate or authorization
be subject to the provisions of s. 120.50, however, the
provisions of s. 120.57, shall be applicable to the denial,
revocation, or suspension of such certificate or
authorization.

(2) For the purpose of promulgating emergency rules
the continuation of the bidding, contracting or supplying
privileges of a contractor or its affiliate which is convicted
of contractor crime, or which is charged by indictment or
information with commission of contractor crime in this state,
represents an immediate danger to the public health, safety
and welfare.

(3) The denial, revocation, or suspension of a
certificate of qualification for reasons of contractor crime
shall not be stayed by the department or by the Division of
Administrative Hearings during the pendency of any proceedings
concerning such denial, revocation, or suspension pursuant to
chapter 120.

(4) Stays or injunctions concerning the denial,
revocation, or suspension of a certificate of qualification
may be granted by the courts of this state only upon the
posting of a bond by the petitioner seeking a stay or
injunction, and provided that the court granting a stay or
injunction finds:

(a) The petitioner has a substantial likelihood of
success on the merits.
(b) The threatened harm or injury to the petitioner
clearly outweighs any possible injury to the state occasioned
by granting the stay or injunction; and
(c) It is in the public interest to grant the stay or
injunction.

Section 4. Section 337.168, Florida Statutes, is
created to read:
337.168 Confidentiality of official estimates and
identities of potential bidders.--

(1) Any documents revealing the Department of
Transportation's official cost estimate of a project shall be
exempt from the provisions of s. 119.07(1) until such time as
the contract for the project has been executed.

(2) Any documents revealing the identity of persons
who have requested or obtained bid packages, plans or
specifications pertaining to any project to be let by the
department shall be exempt from the provisions of s. 119.07(1)
until such time as the deadline for receiving bids on the
project has expired.

Section 5. If any provision of this act or the
application thereof to any person or circumstance is held
invalid, the invalidity shall not affect other provisions or
applications of the act which can be given effect without the
invalid provision or application, and to this end the
provisions of this act are declared severable.

Section 6. This act shall take effect upon becoming a
law.

CODING: Words in small through type are deletions from existing law; words underline are additions.
Florida Senate - 1982

By Senator Jenne

32-516A-82

A bill to be entitled
An act relating to Department of Transportation contracts; creating s. 337.165, Florida Statutes; providing definitions; providing for denial, revocation, or suspension of a contractor's certificate of qualification for specified reasons; providing for a period of disqualification; providing for reinstatement of a certificate; providing for a continuation of obligations under preexisting contracts; providing penalties; providing notification requirements; providing investigative authority; creating s. 337.166, Florida Statutes; requiring the Department of Legal Affairs to obtain restitution for the Department of Transportation in certain actions; creating s. 337.167, Florida Statutes; providing that qualification to bid on state contracts is not a license; prohibiting administrative stays of denial, revocation, or suspension; providing criteria for injunctive relief; providing a finding of an immediate danger to public safety, health and welfare; creating s. 337.168, Florida Statutes; providing a definite period of time during which the Department of Transportation's official project cost estimates and potential bidders' identities are exempt from the provisions of s. 119.07(1), Florida Statutes; providing an effective date.
WHEREAS, the Legislature finds that the procedures of
the Department of Transportation for bidding and qualification
of bidders on department contracts exist to secure the public
benefits of free and open competition and to ensure the
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WHEREAS, the Legislature finds that the privilege of
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(a) "Contractor" means any person who bids or applies
to bid on work let by the Department of Transportation or who
provides professional services to the department. The term
contractor shall include a contractor’s officers, directors,
executives, shareholders active in management, employees, and
agents.
(b) "Contract crime" means any act prohibited by state
or federal criminal law which involves fraud, bribery,

CODING: Words in normal type are deletions from existing law; words underlined are additions.
collusion, conspiracy, violation of state or federal antitrust
laws, or material misrepresentation, committed in any federal
or state jurisdiction with respect to a public or private
contract.

(c) "Convicted" means any conviction of a contract
crime, within any federal or state jurisdiction, with or
without an adjudication of guilt, resulting from a jury or
nonjury trial, or a plea of guilty or nolo contendere.

(d) "Affiliate" means a predecessor or successor of a
contractor under the same, or substantially the same, direct
or indirect control; a group of business entities which is
connected or associated so that one entity controls or has the
direct or indirectly. One business entity's ownership of a
controlling interest, directly or indirectly, in another
business entity; a sharing or interchange of officials,
directors, executives, personnel, employees, or agents among
business entities; or a pooling of equipment or income among
business entities shall be prima facie evidence that one
business entity is an affiliate of another.

(2)(a) No contractor or its affiliate shall be
qualified to bid when an investigation by the department
discloses that the contractor or its affiliate:

1. Has been convicted of a contract crime within the
jurisdiction of any state or federal court;

2. Has failed to comply with the notification
provisions of subsection (5); or

3. Has been charged in any indictment or information
alleging the commission of a contract crime within the state.

(b)(1) In cases where subparagraphs 1. or 2. of
paragraph (a) apply, the department shall by a final order

2. after notice and hearing deny or revoke the certificate of qualification of the contractor or its affiliate. Such revocation or denial of a certificate of qualification shall be for 36 months, unless the contractor or its affiliate is reinstated or qualified pursuant to paragraph (d).

2. In cases where subparagraph 3. of paragraph (a) applies, the department shall by a final order after notice and hearing deny or suspend the certificate of qualification of the contractor or its affiliate. Such denial or suspension shall continue until resolution of the criminal charges or until the contractor or its affiliate is reinstated or qualified in accordance with paragraphs (d) or (e).

(c) A contractor or its affiliate whose certificate of qualification has been denied or revoked by reason of acts of contract crime for which it is convicted in this state and for which it is convicted upon a subsequent indictment or information alleging contract crime committed in this state within 5 years of such denial or revocation shall not be considered for reinstatement or qualification pursuant to paragraph (d) until 24 months after the date of the denial or revocation based upon such subsequent conviction.

(d) A contractor or affiliate whose certificate of qualification has been denied, revoked, or suspended may be reinstated or qualified upon such terms and conditions as the department may prescribe upon finding it in the public interest. In determining whether reinstatement is in the public interest, the department shall request the advice of the Department of Legal Affairs and thereafter shall consider relevant mitigating circumstances, including but not limited to, the following:

1. The degree of culpability;
2. Prompt and voluntary restitution based on the contractor's and its affiliate's ability to pay;
3. Cooperation with any state or federal prosecution or investigation of contract crime;
4. Disassociation with those involved in a contract crime;
5. Reinstatement in other state or federal jurisdictions; and
6. The needs of the department in completing its construction programs in timely, cost-effective manner.

(e) A contractor or its affiliate whose certificate of qualification has been denied or suspended because the contractor or its affiliate has been charged in an indictment or information alleging the commission of a contract crime within the state shall have its certificate of qualification automatically reinstated or granted if the contractor or its affiliate is found not guilty, if the indictment or information is nolle prossed or dismissed, or if the contractor or its affiliate files an affidavit with the department denying culpability in the acts alleged in such indictment or information. If the contractor or its affiliate is convicted of any of the contract crime charges alleged or included in the indictment or information, the contractor or its affiliate shall forfeit and pay to the department an amount equal to:

1. Ten percent of the total contract price of all contracts let by the department upon which the contractor or its affiliate acted as a prime contractor or as consultant;
2. Ten percent of the prime contract bid amount for all line items for which the contractor or its affiliate was awarded subcontract work; or
3. Ten percent of the price of all materials or equipment supplied by the contractor or its affiliate. These payments shall be in addition to any other sanctions or remedies available to the state. Such payments shall be computed upon any new work obtained during the period between the reinstatement of the certificate pursuant to this paragraph and the date of conviction. The failure of a contractor or its affiliate to file the affidavit required for reinstatement pursuant to this paragraph shall not be admissible evidence in any civil or criminal proceeding in any state or federal court.

(3) A contractor or its affiliate whose certificate of qualification is revoked or suspended pursuant to this section shall not act as a prime contractor, a material supplier, a subcontractor, or a consultant on any department contract or project during the period of such revocation or suspension.

(4) The denial, revocation, or suspension of a contractor's or affiliate's certificate of qualification shall not affect the contractor's or its affiliate's obligations under any preexisting contract.

(5) A contractor or its affiliate which is qualified or which is seeking to be qualified by the department shall notify the department within 30 days of a conviction for a contract crime applicable to it or to any of its affiliates, or to any officers, directors, employees or agents of it or any of its affiliates.

(6) Whenever the department has reason to believe that a contractor or its affiliate which is qualified or seeking qualification by the department has been convicted or charged in any indictment or information with the commission of a...
contract crime, or may be affiliated with a person or entity so convicted or charged, the department may issue a written demand upon the contractor or its affiliate, concerning any such conviction charge or affiliation, to appear and be examined under oath, to answer written interrogatories under oath, and to produce documents or other tangible evidence for inspection and copying.

(7) The provisions are not in derogation of existing remedies available to the department and such remedies remain in full force and effect.

Section 2. Section 337.166, Florida Statutes, is created to read:

337.166 Restitution; violation of anti-trust laws.--
The Department of Legal Affairs shall be responsible for obtaining restitution on behalf of the Department of Transportation for overcharges, increased costs, or damages occasioned by the violation of state or federal anti-trust laws. Twenty percent of all restitution so obtained by the Department of Legal Affairs shall be deposited in the Legal Affairs Revolving Trust Fund created by s. 16.53. The remainder of the moneys recovered on behalf of the Department of Transportation shall be deposited in the State Transportation Trust Fund.

Section 3. Section 337.167, Florida Statutes, is created to read:

337.167 Administrative procedures; stays and injunctions.--

(1) A certificate of qualification to bid on a Department of Transportation contract, or other form of authorization required to supply goods or services to the department, is not a license as defined in s. 120.52(7). The
denial, revocation, or suspension of a certificate of qualification or other authorization is not subject to the provisions of s. 120.60 or s. 120.68(3). The provisions of s. 120.57 are applicable to the denial, revocation, or suspension of such certificate or other authorization.

(2) For the purpose of promulgating emergency rules, the continuation of the bidding, contracting, or supplying privileges of a contractor or its affiliate which is convicted of contract crime, or which is charged by indictment or information with commission of contract crime in this state, represents an immediate danger to the public health, safety and welfare.

(3) The denial, revocation, or suspension of a certificate of qualification for reasons of contract crime shall not be stayed by the department or by the Division of Administrative Hearings during the pendency of any review proceedings concerning a final order of denial, revocation, or suspension.

(4) A court may grant a stay or injunction in an action relating to the denial, revocation, or suspension of a certificate of qualification only upon the posting of a bond by the petitioner seeking a stay or injunction, and provided that the court granting a stay or injunction finds:

(a) The petitioner has a substantial likelihood of success on the merits;

(b) The threatened harm or injury to the petitioner clearly outweighs any possible injury to the state occasioned by granting the stay or injunction; and

(c) It is in the public interest to grant the stay or injunction.
Section 4. Section 337.168, Florida Statutes, is created to read:

337.168 Confidentiality of official estimates and identities of potential bidders.--

(1) A document revealing the Department of Transportation's official cost estimate of a project is exempt from the provisions of s. 119.07(1) until the contract for the project has been executed.

(2) A document revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by the department is exempt from the provisions of s. 119.07(1) until the deadline for receiving bids on the project.

Section 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 6. This act shall take effect upon becoming a law.

SENATE SUMMARY

Requires the Department of Transportation to deny or revoke for 3 years a contractor's or its affiliate's certificate of qualification to contract with the department upon its conviction in any state or federal court for a contract crime or upon its failure to notify the department of that fact within 30 days of its conviction. Requires the department to deny or suspend a certificate if a contractor or its affiliate has been charged in any indictment or information alleging the commission of a contract crime in this state. Provides for automatic reinstatement or granting of a certificate that has been denied or suspended under certain circumstances. Allows reinstatement or granting of a...
contractor's or its affiliate's certificate subsequent to a denial, suspension, or revocation of the certificate upon a showing that it is in the public's interest. Provides that repeat offenders who are convicted of a contract crime in this state shall not be considered for reinstatement or qualification until 24 months from the date of the denial or revocation of its certificate based on the second conviction. Prescribes penalties to be imposed on a contractor or its affiliate which is convicted in this state of a contract crime. Prohibits a contractor or its affiliate whose certificate is revoked or suspended for committing a contract crime from acting as a prime contractor, a material supplier, a subcontractor, or a consultant on any department contract or project during the period of revocation or suspension. The denial, revocation, or suspension of a contractor's or its affiliate's certificate does not affect its obligations under preexisting contracts. Requires a contractor or its affiliate to notify the department if it is convicted of a contract crime. Provides the department with investigative authority. Requires the Department of Legal Affairs to obtain restitution for the Department of Transportation for damages and costs as a result of a violation of state or federal anti-trust laws. Twenty percent of all restitution obtained by the Department of Legal Affairs is to be deposited in the Legal Affairs Revolving Trust Fund. Provides that a certificate of qualification is not a license and that the denial, suspension, or revocation of a license is not subject to s. 120.60 or s. 120.68(3), F.S. Prohibits the Division of Administrative Hearings from entering a stay order during the pendency of any review proceedings of a final order of denial, revocation, or suspension. Authorizes a court to grant an injunction in denial, revocation, or suspension actions under certain conditions. Provides for confidentiality of official cost estimates and the identities of potential bidders.
A bill to be entitled
An act relating to Department of Transportation
contracts; creating s. 337.165, Florida Statutes; providing definitions; providing for
denial, revocation, or suspension of a contractor's certificate of qualification for
specified reasons; providing for a period of
disqualification; providing for reinstatement
of a certificate; providing for a continuation
of obligations under preexisting contracts;
providing penalties; providing notification
requirements; providing investigative
authority; creating s. 337.166, Florida Statutes; requiring the Department of Legal
Affairs to obtain restitution for the
department in certain actions; creating s.
337.167, Florida Statutes; providing that
qualification to bid on state contracts is not
a license for purposes of the Administrative
Procedure Act; prohibiting administrative stays
denial, revocation, or suspension; providing
criteria for injunctive relief; providing that
certain activities constitute an immediate
danger to public safety, health and welfare;
creating s. 337.168, Florida Statutes;
providing a definite period of time during
which a department's official project cost
estimates and potential bidders' identities are
exempt from the provisions of s. 119.07(1),
Florida Statutes; providing an effective date.
WHEREAS, the Legislature finds that the procedures of
the Department of Transportation for bidding and qualification
of bidders on department contracts exist to secure the public
benefits of free and open competition and to ensure the
quality of public works, and
WHEREAS, the Legislature finds that the opportunity to
bid on Department of Transportation contracts or to supply
goods or services to the department is a privilege and not a
right, and
WHEREAS, the Legislature finds that the privilege of
transacting business with the Department of Transportation
should be denied to persons or firms involved in contract
crimes in order to preserve the integrity of the public
contracting process, NOW, THEREFORE,

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

Section 1. Section 337.165, Florida Statutes, is
created to read:

337.165 Contract crime; denial, revocation, or
suspension of a certificate of qualification. --
(1) The following words and phrases when used in this
section shall have the following meanings:
(a) "Contractor" means any person who provides
professional services or sells commodities to or bids or
applies to bid on work let by the state or by any agency or
subdivision thereof. The term contractor shall include a
contractor's officers, directors, executives, shareholders
active in management, employees, and agents, while acting on
behalf of or within the employment of the contractor.
(b) "Contract crime" means any act prohibited by state or federal criminal law which involves fraud, bribery, collusion, conspiracy, violation of state or federal antitrust laws, or material misrepresentation, committed in any federal or state jurisdiction with respect to a public contract.

(c) "Convicted" means any conviction of a contract crime, within any federal or state jurisdiction, with or without an adjudication of guilt, resulting from a jury or nonjury trial, or a plea of guilty or nolo contendere.

(d) "Affiliate" means a predecessor or successor of a contractor under the same, or substantially the same, control or a group of business entities which is connected or associated so that one entity controls or has the power to control each of the other business entities. One business entity's ownership 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.

(e) "Department" means the applicable agency or subdivision of the state that purchases professional services or commodities from a contractor, or receives bids from contractors on work let by the agency or subdivision.

(2)(a) No contractor or its affiliate shall be qualified to bid when, after the notice and hearing it is determined that it:

1. Has been convicted of a contract crime within the jurisdiction of any state or federal court;

2. Has failed to comply with the notification provisions of subsection (5).
3. Has been charged in any indictment or information alleging the commission of a contract crime within the state; or

(b) In cases where subparagraph 1. or 2. of paragraph (a) apply, the department shall by a final order after notice and hearing deny or revoke the certificate of qualification of the contractor or its affiliate. Such revocation or denial of a certificate of qualification shall be for 36 months, unless the contractor or its affiliate is reinstated or qualified pursuant to paragraph (d). Upon reinstatement or qualification pursuant to paragraph (d), the certificate of qualification of a contractor or its affiliate shall not thereafter be denied or revoked for conviction of contract crime committed outside the state prior to the effective date of such reinstatement or qualification.

2. In cases where subparagraph 3. of paragraph (a) applies, the department shall by a final order after notice and hearing deny or suspend the certificate of qualification of the contractor or its affiliate. Such denial or suspension shall continue until resolution of the criminal charges or until the contractor or its affiliate is reinstated or qualified in accordance with paragraphs (d) or (e).

(c) A contractor or its affiliate whose certificate of qualification has been denied or revoked by reason of acts of contract crime for which it is convicted in this state and for which it is convicted upon a subsequent indictment or information alleging contract crime committed in this state within 5 years of such denial or revocation shall not be considered for reinstatement or qualification pursuant to paragraph (d) until 24 months after the date of the denial or revocation based upon such subsequent conviction.
(d) A contractor or affiliate whose certificate of qualification has been denied, revoked, or suspended may be reinstated or qualified upon such terms and conditions as the department may prescribe upon finding it in the public interest. In determining whether reinstatement is in the public interest, the department shall request the advice of the Department of Legal Affairs and thereafter shall consider relevant mitigating circumstances, including but not limited to, the following:

1. The degree of culpability;
2. Prompt and voluntary restitution based on the contractor's and its affiliate's ability to pay;
3. Cooperation with any state or federal prosecution or investigation of contract crime;
4. Disassociation with those involved in a contract crime;
5. Reinstatement in other state or federal jurisdictions; and
6. The needs of the department in completing its construction programs in a timely, cost-effective manner.

(e) A contractor or its affiliate whose certificate of qualification has been denied or suspended because the contractor or its affiliate has been charged in an indictment or information alleging the commission of a contract crime within the state shall have its certificate of qualification automatically reinstated or granted if the contractor or its affiliate is found not guilty, if the indictment or information is nolle prossed or dismissed, or if the contractor or its affiliate files an affidavit with the department denying its culpability in the acts alleged in such indictment or information. An unindicted contractor or an
unindicted affiliate, whose certificate of qualification has been denied or suspended pursuant to subsection (2)(b)2.
unindicted affiliate, whose certificate of qualification has been denied or suspended pursuant to subsection (2)(b)2.
shall have such certificate automatically reinstated or granted if such contractor or affiliate files an affidavit with the department denying its culpability in any acts alleged to have been committed by a contractor or its affiliate in an indictment or information. If the affiant contractor or affiliate signing such affidavit is convicted of any of the contract crime charges alleged or included in the indictment or information, the convicted contractor or affiliate shall forfeit and pay to the department an amount equal to:

1. Ten percent of the total contract price of all contracts let by the department upon which the contractor or its affiliate acted as a prime contractor or as consultant;

2. Ten percent of the prime contract bid amount for all line items for which the contractor or its affiliate was awarded subcontract work; or

3. Ten percent of the price of all materials or equipment supplied by the contractor or its affiliate.

These payments shall be in addition to any other sanctions or remedies available to the state. Such payments shall be computed upon any new work obtained during the period between the reinstatement of the certificate pursuant to this paragraph and the date of conviction. The failure of a contractor or its affiliate to file the affidavit required for reinstatement pursuant to this paragraph shall not be admissible evidence in any civil or criminal proceeding in any state or federal court.
(3) A contractor or its affiliate whose certificate of qualification is revoked or suspended pursuant to this section shall not act as a prime contractor, a material supplier, a subcontractor, or a consultant on any department contract or project during the period of such revocation or suspension.

(4) The denial, revocation, or suspension of a contractor’s or affiliate’s certificate of qualification shall not affect the contractor’s or its affiliate’s obligations under any preexisting contract.

(5) A contractor or its affiliate which is qualified or which is seeking to be qualified by the department shall notify the department within 30 days of a conviction for a contract crime applicable to it or to any of its affiliates, or to any officers, directors, employees or agents of it or any of its affiliates.

(6) Whenever the department has reason to believe that a contractor or its affiliate which is qualified or seeking qualification by the department has been convicted or charged in any indictment or information with the commission of a contract crime, or may be affiliated with a person or entity so convicted or charged, the department may issue a written demand upon the contractor or its affiliate, concerning any such conviction charge or affiliation, to appear and be examined under oath, to answer written interrogatories under oath, and to produce documents or other tangible evidence for inspection and copying.

(7) The provisions of this act are not in derogation of existing remedies available to the department and such remedies remain in full force and effect.

Section 2. Section 337.166, Florida Statutes, is created to read:

CODING: Words in slack through type are deletions from existing law; words underlined are additions.
337.166 Restitution; violation of anti-trust laws.--

The Department of Legal Affairs shall be responsible for obtaining restitution on behalf of the department for overcharges, increased costs, or damages occasioned by the violation of state or federal anti-trust laws. Twenty percent of all funds so collected shall be deposited in the Legal Affairs Revolving Trust Fund created by s. 16.53. The remainder of the moneys so collected on behalf of the department shall be deposited in a trust fund created for the purposes of this act and shall be credited to the account of the department. For purposes of this section, the term "collected" means received in hand.

Section 3. Section 337.167, Florida Statutes, is created to read:

337.167 Administrative procedures; stays and injunctions.--

(1) A certificate of qualification to bid on a department contract, or other form of authorization required to supply goods or services to the department, is not a license as defined in s. 120.52(7). The denial, revocation, or suspension of a certificate of qualification or other authorization is not subject to the provisions of s. 120.60 or s. 120.68(3). The provisions of s. 120.57 are applicable to the denial, revocation, or suspension of such certificate or other authorization.

(2) For the purpose of promulgating emergency rules, the continuation of the bidding, contracting, or supplying privileges of a contractor or its affiliate which is convicted of contract crime, or which is charged by indictment or information with commission of contract crime in this state,
constitutes an immediate danger to the public health, safety
and welfare.

(3) The denial, revocation, or suspension of a
certificate of qualification for reasons of contract crime
shall not be stayed by the department or by the Division of
Administrative Hearings during the pendency of judicial review
of a final order of denial, revocation, or suspension.

(4) A court may grant a stay or injunction in an
action relating to the denial, revocation, or suspension of a
certificate of qualification only upon the posting of a bond
by the petitioner seeking a stay or injunction, and provided
that the court granting a stay or injunction finds:

[a] The petitioner has a substantial likelihood of
success on the merits;

[b] The threatened harm or injury to the petitioner
clearly outweighs any possible injury to the state occasioned
by granting the stay or injunction; and

[c] It is in the public interest to grant the stay or
injunction.

Section 4. Section 337.168, Florida Statutes, is
created to read:

337.168 Confidentiality of official estimates and
identities of potential bidders.--

(1) A document revealing the department's official
cost estimate of a project is exempt from the provisions of s.
119.07(1) until the contract for the project has been
executed.

(2) A document revealing the identity of persons who
have requested or obtained bid packages, plans, or
specifications pertaining to any project to be let by the
Section 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 6. This act shall take effect upon becoming a law.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR SENATE BILL 330

Provides that the bill's provisions are applicable to any department or subdivision of the state (rather than solely to the Department of Transportation) that purchases professional services or commodities from a contractor, or receives bids from contractors on work let by it.

Removes from the bill's provisions those contract crimes committed with respect to private contracts.

Modifies the definition of "affiliate" by removing reference to direct or indirect control of one entity by another, and by deleting the provision which makes a sharing or interchange of officers, directors or personnel among business entities prima facie evidence of affiliation.

Provides that a person is a contractor only when he is acting on behalf of or within the employment of the contractor.

Provides that an unindicted as well as an indicted contractor or affiliate may be automatically reinstated if he files an affidavit with the department denying his culpability in the acts allegedly committed. Specifies that an indicted or unindicted contractor or affiliate who files the affidavit will be automatically reinstated if he denies his own culpability and will be subject to the 10 percent penalty only if he, the affiant contractor or affiliate, is convicted.
B. Present Situation:

Any person wishing to bid for the performance of a Department of Transportation contract in excess of $100,000 must first be certified by the department as to his qualifications. If the applicant is found to be qualified, the department issues a certificate of qualification which, subject to any limitations specified therein, authorizes him to bid on contracts for a specified period of time.

Section 337.16(2), F.S., authorizes the Department of Transportation to suspend or revoke for good cause any person's certificate of qualification. The issue of whether or not the department has "good cause" to suspend or revoke a certificate of qualification is determined at an administrative hearing held pursuant to s. 120.57.

By judicial determination, the certificate of qualification has been held to be a license, as defined in s. 120.52(7). Pursuant to s. 120.60, licensing is subject to special administrative procedures relating to approval and denial of applications, summary suspensions under emergency circumstances, notice of suspension or revocation, etc. Further, section 120.68(3) provides that if the agency decision has the effect of suspending or revoking a license, then supersedeas shall be granted as a matter of right, unless the court determines that a supersedeas would constitute a probable danger to the health, safety or welfare of the state. The agency may also grant a stay during the pendency of judicial review of the agency final order.

Section 120.54(9) sets out the procedures for adoption of emergency rules. This subsection provides that if an agency finds that immediate danger to the public health, safety or welfare requires emergency action, it may, subject to the procedures outlined, adopt an emergency rule. The agency must publish the specific facts and reasons underlying its finding of immediate danger. Such finding is judicially reviewable.

The department's official cost estimates of projects and lists of possible bidders on projects to be let by the department are currently public record and may be inspected by the public.

- Page 1 -
B. Effect of Proposed Changes:

The bill creates several sections which specifically address the offense of contract crime. Contractors and their affiliates, as defined, would be subject to the bill’s provisions. If, after notice and a hearing, it is determined that a contractor or its affiliate (1) has been convicted, after the effective date of the act, of a crime within the jurisdiction of any state or federal court outside the state; (2) has failed to notify the department within 30 days of a contract crime conviction; or (3) has been convicted of a contract crime within the state, the department is required to revoke or deny the certificate of qualification for 36 months. However, the contractor or affiliate may be reinstated or qualified if the department, with the advice of the Department of Legal Affairs, determines that reinstatement is in the public interest. The bill includes a partial list of mitigating circumstances to be considered in a reinstatement determination.

If, after notice and a hearing, it is determined that the contractor or its affiliate has been charged by indictment or information alleging the commission of contract crime within this state, the department is required to deny or suspend the certificate of qualification until resolution of the criminal charges. However, the contractor or affiliate may be reinstated or qualified if a determination is made that reinstatement is in the public interest. A contractor or affiliate may also be automatically reinstated if it files an affidavit with the department denying its culpability in the acts alleged in the indictment. If the contractor or affiliate files the affidavit and is later convicted of the charges alleged in the indictment or information, then it shall pay to the department 10 percent of the total contract price of all contracts awarded to it during the period between reinstatement of the certificate and the date of conviction.

If a contractor or affiliate whose certificate has been revoked for conviction of contract crime within this state is subsequently convicted of contract crime committed in Florida within 5 years of the prior revocation, the contractor or affiliate could not be considered for reinstatement until 24 months after the date of revocation.

A contractor or its affiliate whose certificate has been suspended or revoked may not act in any capacity on any department contract or project during the suspension period, but is responsible for its obligations under any preexisting contract.

If the department has reason to believe that a contractor or its affiliate has been convicted or charged with contract crime, it may demand that the party appear and be examined under oath.

The Department of Legal Affairs is responsible for obtaining restitution on behalf of the Department.
of Transportation for overcharges and other damages resulting from the violation of state or federal anti-trust laws. Twenty percent of all restitution received in hand is to be deposited in the Legal Affairs Revolving Trust Fund, with the remainder to be deposited in the State Transportation Trust Fund.

The bill excludes the certificate of qualification from the definition of a license in s. 120.52(7) and provides that the denial or revocation of a certificate is not subject to the licensing provisions in Chapter 120 or to the supersedeas provision of s. 120.68(3). The department and the Division of Administrative Hearings are prohibited from issuing a stay pending judicial review of the agency's final order.

A court's discretion to grant a stay or injunction would be conditioned upon the posting of a bond by the party seeking the stay or injunction and upon certain specified findings being made by the court.

For the purpose of adopting emergency rules, the continuation of bidding by a contractor or its affiliate that is convicted of or charged with contract crime, constitutes an immediate danger to the public health, safety or welfare.

Department cost estimates of projects are exempted from the public records law until the contract for the project is executed. Lists of potential bidders on a project to be let would likewise be exempt from the public records law until the deadline for receiving bids.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

To the extent that restitution is obtained, the public in general would benefit from additional funds being made available for transportation needs.

B. Government:

The department has indicated that it can handle the bill's provisions with existing staff.

It is impossible to determine the amount of restitution which could be recovered from contractors. A portion of any damages received on federal aid projects would be paid to the Federal Highway Administration.

III. COMMENTS:

An amendment is attached which clarifies the bill's provision relating to automatic reinstatement by expressly...
stating that an unindicted contractor or unindicted affiliate shall, upon signing an affidavit denying its culpability, be automatically reinstated to bid on department work.
The Committee on Transportation recommended the following amendment which was moved by Senator .......... and adopted: and failed:

**Amendment TO PROPOSED COMMITTEE SUBSTITUTE FOR SB 330**

On page........ line........... change:

a. after the period ...........................................

b. ...........................................................................

c. ...............................................................................

d. .............................................................................

e. .............................................................................

If amendment is not from another bill insert:

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Note insert:

1. An unindicted conduct or, an unindicted affiliate, whose . . . .
2. Certificate of qualification has been denied or suspended . . . .
3. Pursuant to subsection (2)(b)(ii) of this section, shall have . . . .
4. Such certificate, automatically reinstated, granted if . . . .
5. Such contractor or affiliate, files an affidavit with the . . . .
6. Department, setting its, unavailability, in any act, alleged to . . . .
7. Have been committed by a contractor or its affiliate, in an . . . .
8. Indemnity of information . . . .

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(Amendment No.________ Adopted____ Failed____ Date_______)

C12-(81) 5th copy may be removed
SUBJECT: Contract Crime

1. SUMMARY:
   A. Present Situation:

   1. Department of Transportation

      Any person wishing to bid for the performance of a Department of Transportation contract in excess of $100,000 must first be certified by the department as to his qualifications. If the applicant is found to be qualified, the department issues a certificate of qualification which, subject to any limitations specified therein, authorizes him to bid on contracts for a specified period of time.

      Section 337.16(2), F.S., authorizes the Department of Transportation to suspend or revoke for good cause any person's certificate of qualification. The issue of whether or not the department has "good cause" to suspend or revoke a certificate of qualification is determined at an administrative hearing held pursuant to s. 120.57.

      By judicial determination, the certificate of qualification has been held to be a license, as defined in s. 120.52(7). Pursuant to s. 120.60, licensing is subject to special administrative procedures relating to approval and denial of applications, summary suspensions under emergency circumstances, notice of suspension or revocation, etc. Further, section 120.68(3) provides that if the agency decision has the effect of suspending or revoking a license, then supersedeas shall be granted as a matter of right, unless the court determines that a supersedeas would constitute a probable danger to the health, safety or welfare of the state. The agency may also grant a stay during the pendency of judicial review of the agency final order.

      Section 120.54(9) sets out the procedures for adoption of emergency rules. This subsection provides that if an agency finds that immediate danger to the public health, safety or welfare requires emergency action, it may, subject to the procedures outlined, adopt an emergency rule. The agency must publish the specific facts and reasons underlying its finding of immediate danger. Such finding is judicially reviewable.

      The department's official cost estimates of projects and lists of possible bidders on projects to be let by the department are currently public record and may be inspected by the public.
2. Other Departments

The Department of General Services does not certify potential bidders as to their qualifications. If the individual wishing to bid is registered or licensed by the applicable board or licensing entity and posts a performance and payment bond, then he may bid. The department has no authority to prohibit anyone meeting both requirements from bidding on projects let by it. It appears that there are no other departments which prequalify potential bidders.

B. Effect of Proposed Changes:

The bill creates several sections which specifically address the offense of contract crime. Contractors and their affiliates, as defined, would be subject to the bill's provisions, and any department or subdivision of the state would administer and enforce the act. If, after notice and a hearing, it is determined that a contractor or its affiliate (1) has been convicted of a crime within the jurisdiction of any state or federal court; or (2) has failed to notify the department within 30 days of a contract crime conviction, the department is required to revoke or deny the certificate of qualification for 36 months. However, the contractor or affiliate may be reinstated or qualified if the department, with the advice of the Department of Legal Affairs, determines that reinstatement is in the public interest.

The bill includes a partial list of mitigating circumstances to be considered in a reinstatement determination.

If, after notice and a hearing, it is determined that the contractor or his affiliate has been charged by indictment or information alleging the commission of contract crime within this state, the department is required to deny or suspend the certificate of qualification until resolution of the criminal charges. However, if the defendant contractor or affiliate files the affidavit and is later convicted of the charges alleged in the indictment or information, then it shall pay to the department 10 percent of the total contract price of all contracts awarded to it during the period between reinstatement of the certificate and the date of conviction.

If a contractor or affiliate whose certificate has been revoked for conviction of contract crime within this state is subsequently convicted of contract crime committed in Florida within 5 years of the prior revocation, the contractor or affiliate could not be considered for reinstatement until 24 months after the date of revocation.

A contractor or its affiliate whose certificate has been suspended or revoked may not act in any capacity on any department contract or project during the suspension period, but is responsible for its obligations under any preexisting contract.

If the department has reason to believe that a contractor or its affiliate has been convicted or charged with contract crime, it may demand that the party appear and be examined under oath.
The Department of Legal Affairs is responsible for obtaining restitution on behalf of the department for overcharges and other damages resulting from the violation of state or federal anti-trust laws. Twenty percent of all restitution received in hand is to be deposited in the Legal Affairs Revolving Trust Fund, with the remainder to be deposited in a trust fund created for the purposes of the act, and credited to the account of the department.

The bill excludes the certificate of qualification from the definition of a license in s. 120.52(7) and provides that the denial or revocation of a certificate is not subject to the licensing provisions in Chapter 120 or to the supersedeas provision of s. 120.64(3). The department and the Division of Administrative Hearings are prohibited from issuing a stay pending judicial review of the agency's final order.

A court's discretion to grant a stay or injunction would be conditioned upon the posting of a bond by the party seeking the stay or injunction and upon certain specified findings being made by the court.

For the purpose of adopting emergency rules, the continuation of bidding by a contractor or its affiliate that is convicted of or charged with contract crime, constitutes an immediate danger to the public health, safety or welfare.

Department cost estimates of projects are exempted from the public records law until the contract for the project is executed. Lists of potential bidders on a project to be let would likewise be exempt from the public records law until the deadline for receiving bids.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

To the extent that restitution is obtained, the public in general would benefit from additional funds being made available to the state.

B. Government:

The only department contacted was the Department of Transportation. It has indicated that it can handle the bill's provisions with existing staff.

It is impossible to determine the amount of restitution which could be recovered from contractors.

In the transportation area, a portion of any damages received on federal aid projects would be paid to the Federal Highway Administration.

III. COMMENTS:

Although definitions contained in the bill make it applicable to all departments and subdivisions of the state, the bill's provisions address only the suspension or denial of a "certificate of qualification". The Department of Transportation appears to be the only
agency that issues such a certificate. Additional language would be needed in order to provide appropriate measures for application by other agencies included within the bill's scope.
A bill to be entitled
An act relating to state agency contracts;
creating s. 287.132, Florida Statutes;
providing definitions; providing for denial,
revocation, or suspension of a contractor's
certificate of qualification or privilege to
provide services or commodities for specified
reasons; providing for a period of
disqualification; providing for reinstatement
of a certificate or privilege; providing for a
continuation of obligations under preexisting
contracts; providing penalties; providing
notification requirements; providing
investigative authority; creating s. 287.133,
Florida Statutes; requiring the Department of
Legal Affairs to obtain restitution for
agencies in certain actions; creating s.
287.134, Florida Statutes; providing that
qualification to bid on state contracts is not
a license for purposes of the Administrative
Procedure Act; prohibiting administrative stays
doing denial, revocation, or suspension; providing
criteria for injunctive relief; providing that
certain activities constitute an immediate
danger to public safety, health and welfare;
creating s. 287.135, Florida Statutes;
providing a definite period of time during
which an agency's official project cost
estimates and potential bidders' identities are
exempt from the provisions of s. 119.07(1),
Florida Statutes; providing an effective date.
Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 287.132, Florida Statutes, is created to read:

287.132 Contract crime; denial, revocation, or suspension of a certificate of qualification or privilege to provide services or commodities. --

(1) The following words and phrases when used in this section shall have the following meanings:

(a) "Contractor" means any person who provides professional services or sells commodities to or bids on work let by the state or by any agency or subdivision thereof. The term contractor shall include a contractor's officers, directors, executives, shareholders active in management, employees, and agents, while acting on behalf of or within the employment of the contractor.

(b) "Contract crime" means any act prohibited by state or federal criminal law which involves fraud, bribery, collusion, conspiracy, violation of state or federal antitrust laws, or material misrepresentation, committed in any federal or state jurisdiction with respect to a public contract.

(c) "Convicted" means any conviction of a contract crime, within any federal or state jurisdiction, with or without an adjudication of guilt, resulting from a jury or nonjury trial, or a plea of guilty or nolo contendere.

(d) "Affiliate" means a predecessor or successor of a contractor under the same, or substantially the same, control or a group of business entities which is connected or associated so that one entity controls or has the power to control each of the other business entities. One business entity's ownership of a controlling interest in another

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
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.

(2)(a) No contractor or its affiliate shall be
eligible to provide services or commodities or to bid when,
after the notice and hearing it is determined that it:
1. Has been convicted of a contract crime within the
   jurisdiction of any state or federal court;
2. Has failed to comply with the notification
   provisions of subsection (5); or
3. Has been charged in any indictment or information
   alleging the commission of a contract crime within the state.

(b)1. In cases where subparagraphs 1. or 2. of
paragraph (a) apply, the agency shall by a final order after
notice and hearing deny or revoke the privilege of the
contractor or its affiliate to provide services or commodities
or to bid on work let by the agency. The revocation or denial
of said privilege shall be for 36 months, unless the
contractor or its affiliate is determined to be eligible
pursuant to paragraph (d). Upon a determination of
eligibility pursuant to paragraph (d), said privilege shall
not thereafter be denied or revoked for conviction of contract
crime committed outside the state prior to the effective date
of such determination.

2. In cases where subparagraph 3. of paragraph (a)
applies, the agency shall by a final order after notice and
hearing deny or suspend the privilege of the contractor or its
affiliate to provide services or commodities or to bid on work
let by the state. Such denial or suspension shall continue
until resolution of the criminal charges or until the

CODING: Words in normal type are deletions from existing law; words underlined are additions.
contractor or its affiliate is determined to be eligible in accordance with paragraphs (d) or (e).

(c) A contractor or its affiliate whose privilege has been denied or revoked by reason of acts of contract crime for which it is convicted in this state and for which it is convicted upon a subsequent indictment or information alleging contract crime committed in this state within 5 years of such denial or revocation shall not be considered for eligibility pursuant to paragraph (d) until 24 months after the date of the denial or revocation based upon such subsequent conviction.

(d) A contractor or affiliate whose privilege has been denied, revoked, or suspended may be granted eligibility upon such terms and conditions as the agency may prescribe upon finding it in the public interest. In determining whether eligibility is in the public interest, the agency shall request the advice of the Department of Legal Affairs and thereafter shall consider relevant mitigating circumstances, including but not limited to, the following:

1. The degree of culpability;
2. Prompt and voluntary restitution based on the contractor’s and its affiliate’s ability to pay;
3. Cooperation with any state or federal prosecution or investigation of contract crime;
4. Disassociation with those involved in a contract crime;
5. Reinstatement in other state or federal jurisdictions; and
6. The needs of the agency in completing its assigned programs in a timely, cost-effective manner.
(e) A contractor or its affiliate whose privilege has been denied or suspended because the contractor or its affiliate has been charged in an indictment or information alleging the commission of a contract crime within the state shall have its eligibility automatically granted if the contractor or its affiliate is found not guilty, if the indictment or information is nolle prossed or dismissed, or if the contractor or its affiliate files an affidavit with the agency denying its culpability in the acts alleged in such indictment or information. An unindicted contractor or an unindicted affiliate, whose privilege has been denied or suspended pursuant to subsection (2)(b)(2), shall have its eligibility automatically granted if such contractor or affiliate files an affidavit with the agency denying its culpability in any acts alleged to have been committed by a contractor or its affiliate in an indictment or information. If the affiant contractor or affiliate signing such affidavit is convicted of any of the contract crime charges alleged or included in the indictment or information, the convicted contractor or affiliate shall forfeit and pay to the agency an amount equal to:

1. Ten percent of the total contract price of all contracts let by the agency upon which the contractor or its affiliate acted as a prime contractor or as consultant;
2. Ten percent of the prime contract bid amount for all line items for which the contractor or its affiliate was awarded subcontract work; or
3. Ten percent of the price of all materials or equipment supplied by the contractor or its affiliate.
These payments shall be in addition to any other sanctions or remedies available to the state. Such payments shall be computed upon any new work obtained during the period between the granting of eligibility pursuant to this paragraph and the date of conviction. The failure of a contractor or its affiliate to file the affidavit required for eligibility pursuant to this paragraph shall not be admissible evidence in any civil or criminal proceeding in any state or federal court.

(3) A contractor or its affiliate whose privilege is revoked or suspended pursuant to this section shall not act as a prime contractor, a material supplier, a subcontractor, or a consultant on any agency contract or project during the period of such revocation or suspension.

(4) The denial, revocation, or suspension of a contractor's or affiliate's privilege shall not affect the contractor's or its affiliate's obligations under any preexisting contract.

(5) A contractor or its affiliate which is currently providing or seeking to provide services or commodities or which has contracted or is seeking to contract on work let by the agency shall notify the agency within 30 days of a conviction for a contract crime applicable to it or to any of its affiliates, or to any officers, directors, employees or agents of it or any of its affiliates.

(6) Whenever the agency has reason to believe that a contractor or its affiliate which is currently providing or seeking to provide services or commodities or which has contracted or is seeking to contract on work let by the agency has been convicted or charged in any indictment or information with the commission of a contract crime, or may be affiliated...
Qualification or other authorization is not subject to the provisions of s. 120.60 or s. 120.68(3). The provisions of s. 120.57 are applicable to the denial, revocation, or suspension of such certificate or other authorization.

(2) For the purpose of promulgating emergency rules, the continuation of the bidding, contracting, or supplying privileges of a contractor or its affiliate which is convicted of contract crime, or which is charged by indictment or information with commission of contract crime in this state, constitutes an immediate danger to the public health, safety and welfare.

(3) The denial, revocation, or suspension of the privilege to provide services or commodities or to bid on work let by the agency for reasons of contract crime shall not be stayed by the agency or by the Division of Administrative Hearings during the pendency of judicial review of a final order of denial, revocation, or suspension.

(4) A court may grant a stay or injunction in an action relating to the denial, revocation, or suspension of said privilege only upon the posting of a bond by the petitioner seeking a stay or injunction, and provided that the court granting a stay or injunction finds:

(a) The petitioner has a substantial likelihood of success on the merits;

(b) The threatened harm or injury to the petitioner clearly outweighs any possible injury to the state occasioned by granting the stay or injunction; and

(c) It is in the public interest to grant the stay or injunction.

Section 4. Section 287.135, Florida Statutes, is created to read:
with a person or entity so convicted or charged, the agency may issue a written demand upon the contractor or its affiliate, concerning any such conviction charge or affiliation, to appear and be examined under oath, to answer written interrogatories under oath, and to produce documents or other tangible evidence for inspection and copying.

(7) The provisions of this act are not in derogation of existing remedies available to the agency and such remedies remain in full force and effect.

Section 2. Section 287.133, Florida Statutes, is created to read:

287.133 Restitution; violation of anti-trust laws.-- The Department of Legal Affairs shall be responsible for obtaining restitution on behalf of the agency for overcharges, increased costs, or damages occasioned by the violation of state or federal anti-trust laws. Twenty percent of all funds so collected shall be deposited in the Legal Affairs Revolving Trust Fund created by s. 16.53. The remainder of the moneys so collected on behalf of the agency shall be deposited in a trust fund created for the purposes of this act and shall be credited to the account of the agency. For purposes of this section, the term "collected" means received in hand.

Section 3. Section 287.134, Florida Statutes, is created to read:

287.134 Administrative procedures; stays and injunctions.--

(1) A certificate of qualification to bid on a Department of Transportation contract, or other form of authorization required to supply goods or services to any agency, is not a license as defined in s. 120.52(7). The denial, revocation, or suspension of a certificate of
287.135 Confidentiality of official estimates and identities of potential bidders.--

(1) A document revealing the agency's official cost estimate of a project is exempt from the provisions of s. 119.07(1) until the contract for the project has been executed.

(2) A document revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by the agency is exempt from the provisions of s. 119.07(1) until the deadline for receiving bids on the project.

Section 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 6. This act shall take effect upon becoming a law.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR CS SB 330

The provisions relating to contract crimes and remedies would be placed in part I of ch. 287, F.S., thus broadening these applications to all executive state agencies.

In addition to the restrictions placed on contractors who have been prequalified for agency work, identical restrictions would be established for contractors seeking work with agencies that do not require prequalification.
I. SUMMARY:

A. Present Situation:

Part I of ch. 287, F.S., provides procedures for executive agency purchasing of services and commodities. Chapter 337, F.S., provides that any person wishing to bid for the performance of a Department of Transportation contract in excess of $100,000 must first be certified by the department as to his qualifications. If the applicant is found to be qualified, the department issues a certificate of qualification which, subject to any limitations specified therein, authorizes him to bid on contracts for a specified period of time.

Section 337.16(2), F.S., authorizes the DOT to suspend or revoke for good cause any person's certificate of qualification. The issue of whether or not the department has "good cause" to suspend or revoke a certificate of qualification is determined at an administrative hearing held pursuant to s. 120.57, F.S.

By judicial determination, the certificate of qualification has been held to be a license, as defined in s. 120.32(7), F.S. Pursuant to s. 120.60, F.S., licensing is subject to special administrative procedures relating to approval and denial of applications, summary suspensions under emergency circumstances, notice of suspension or revocation, etc. Further, section 120.68(3), F.S., provides that if the agency decision has the effect of suspending or revoking a license, then supersedeas shall be granted as a matter of right, unless the court determines that a supersedeas would constitute a probable danger to the health, safety or welfare of the state.

The agency may also grant a stay during the pendency of judicial review of the agency final order.

Section 120.54(9), F.S., sets out the procedures for adoption of emergency rules. This subsection provides that if an agency finds that immediate danger to the public health, safety or welfare requires emergency action, it may, subject to the procedures outlined, adopt an emergency rule. The agency must publish the specific facts and reasons underlying its finding of immediate danger. Such finding is judicially reviewable.

Agencies' official cost estimates of projects and lists of possible bidders on projects to be let are currently public records and may be inspected by the public.

The departments of General Services and Health and Rehabilitative Services do not certify potential bidders as to their qualifications. If the individual wishing to bid is registered or licensed by the applicable board or licensing entity, and posts a performance and payment bond, then he may bid. These departments have no authority to prohibit anyone...
meeting both requirements from bidding on projects let by them. It appears that there are no other departments which prequalify potential bidders.

B. Effect of Proposed Changes:

The bill would create several sections in pt. I of ch. 287, F.S., dealing with contract crimes. Contractors and their affiliates, as defined, would be subject to the bill's provisions, and any executive agency of the state would administer and enforce the act. If, after notice and a hearing, it is determined that a contractor or its affiliate: (1) has been convicted of a crime within the jurisdiction of any state or federal court; or (2) has failed to notify the agency within 30 days of a contract crime conviction, the agency would be required to revoke or deny the certificate of qualification or privilege to provide services or commodities for 36 months. However, the contractor or affiliate could be reinstated or qualified if the agency, with the advice of the Department of Legal Affairs, determines that reinstatement is in the public interest. The bill includes a partial list of mitigating circumstances to be considered in a reinstatement determination.

If, after notice and a hearing, it is determined that the contractor or his affiliate has been charged by indictment or information alleging the commission of contract crime within this state, the agency would be required to deny or suspend the certificate of qualification or privilege until resolution of the criminal charges. However, the contractor or affiliate could be reinstated or qualified if a determination is made that reinstatement is in the public interest. An unindicted as well as an indicted contractor or affiliate could be automatically reinstated if it files an affidavit with the agency denying its culpability in the acts allegedly committed. If the affidavit contractor or affiliate files the affidavit and is later convicted of the charges alleged in the indictment or information, then it would pay to the agency 10 percent of the total contract price of all contracts awarded to it during the period between reinstatement of the certificate or privilege and the date of conviction.

If a contractor or affiliate whose certificate or privilege has been revoked for conviction of contract crime within this state is subsequently convicted of contract crime committed in Florida within 5 years of the prior revocation, the contractor or affiliate could not be considered for reinstatement until 24 months after the date of revocation.

A contractor or its affiliate whose certificate or privilege has been suspended or revoked could not act in any capacity on any agency contract or project during the suspension period, but would be responsible for its obligations under any preexisting contract.

If the agency has reason to believe that a contractor or its affiliate has been convicted or charged with contract crime, it could demand that the party appear and be examined under oath.
The Department of Legal Affairs would be responsible for obtaining restitution on behalf of the department for overcharges and other damages resulting from the violation of state or federal anti-trust laws. Twenty percent of all restitution received would be deposited in the Legal Affairs Revolving Trust Fund, with the remainder deposited in a trust fund created for the purposes of the act, and credited to the account of the agency.

The bill would exclude certification of qualification and privilege to provide services or commodities from the definition of a license in s. 120.52(7), F.S., and provides that the denial or revocation of a certificate or privilege would not be subject to the licensing provisions in ch. 120, F.S., or to the superseded provision of s. 120.68(3), F.S. The agency and the Division of Administrative Hearings would be prohibited from issuing a stay pending judicial review of the agency's final order.

A court's discretion to grant a stay or injunction would be conditioned upon the posting of a bond by the party seeking the stay or injunction and upon certain specified findings by the court.

For the purpose of adopting emergency rules, the continuation of bidding by a contractor or its affiliate that is convicted or charged with contract crime, would constitute an immediate danger to the public health, safety, or welfare.

Agency cost estimates of projects would be exempt from the public records law until the contract for the project is executed. Lists of potential bidders on a project to be let would likewise be exempt from the public records law until the deadline for receiving bids.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Convicted contractors and affiliates could be liable for damages equal to 10 percent of the contract amount involved.

B. Government:

The departments of Transportation and General Services have indicated that they could handle the bill's provisions with existing staff.

It is impossible to determine the amount of restitution which could be recovered from contractors.

In the transportation area, a portion of any damages received on federal aid projects would be paid to the Federal Highway Administration.

III. COMMENTS:

None

IV. AMENDMENTS:

None
The provisions relating to contract crimes and remedies would be placed in part I of ch. 287, F.S., thus broadening these applications to all executive state agencies.

In addition to the restrictions placed on contractors who have been prequalified for agency work, identical restrictions would be established for contractors seeking work with agencies that do not require prequalification.
Florida Legislature

History of Legislation
1983 Regular Session
1983 Special Sessions A, B, C
1982 Special Session H

prepared by:

Joint Legislative Management Committee
Legislative Information Division
Capitol Building, Room 826—488-4371
FLORIDA LEGISLATURE

HISTORY OF LEGISLATION

1983 REGULAR SESSION -- APRIL 5 - JUNE 13, 1983
SPECIAL SESSION "A" -- MARCH 1 - MARCH 3, 1983
SPECIAL SESSION "B" -- JUNE 15 - JUNE 24, 1983
SPECIAL SESSION "C" -- JULY 12 (10:00 A.M.) -
  JULY 13, 1983, (1:30 A.M.)

1982 SPECIAL SESSION "H" -- JUNE 21 - JUNE 22, 1982

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COMBINED SUBJECT INDEX - BILLS PASSED
  (INCLUDES REGULAR SESSION AND SPECIAL SESSIONS A, B, C - 1983)

1982 SPECIAL SESSION "H" -- JUNE 21 - JUNE 22, 1982
A bill to be entitled
An act relating to Department of
Transportation contracts; creating s. 337.164,
Florida Statutes; providing legislative intent;
creating s. 337.165, Florida Statutes;
providing definitions; providing for denial,
revocation, or suspension of a contractor's
certificate of qualification for specified
reasons; providing for certain hearings;
providing for a period of disqualification;
providing for reinstatement of a certificate;
providing for a continuation of obligations
under preexisting contracts; providing
notification requirements; providing
investigative authority; creating s. 337.166,
Florida Statutes; providing for disposition of
certain moneys recovered; creating s. 337.167,
Florida Statutes; providing that qualification
to bid on state contracts is not a license;
prohibiting administrative stays of denial,
revocation, or suspension; providing criteria
for injunctive relief; providing a finding of
an immediate danger to public safety, health,
and welfare; creating s. 337.168, Florida
Statutes; providing a definite period of time
during which the Department of Transportation's
official project cost estimates and potential
bidders' identities are exempt from the
provisions of s. 119.071(1), Florida Statutes;
providing that the Department of
Transportation's bid analysis and monitoring
Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 337.164, Florida Statutes, is created to read:

337.164 Legislative intent.--Recognizing that the preservation of the integrity of the public contracting process of the Department of Transportation is vital to the development of a balanced and efficient transportation system and a matter of interest to all the people of the state, the Legislature hereby determines and declares that:

(1) The procedures of the department for bidding and qualification of bidders on department contracts exist to secure the public benefits of free and open competition and to secure the quality of public works.

(2) The opportunity to bid on department contracts or to supply goods or services to the department is a privilege not a right.

(3) The privilege of transacting business with the department should be denied to persons or firms involved in contract crime in order to preserve the integrity of the public contracting process.

(4) Persons or firms involved in contract crime should be denied both the privilege of transacting business with the department and the opportunity of obtaining economic benefit through the transaction of business by their affiliates with the department.
To this end, it is the intent of the Legislature to provide sufficiently broad authority to the department to ensure the integrity of its public contracting process.

Section 2. Section 337.165, Florida Statutes, is created to read:

337.165 Contract crime; denial, revocation, or suspension of a certificate of qualification.--

1. The following words and phrases when used in this section shall have the following meanings:

(a) "Contractor" means any person who bids or applies to bid on work let by the Department of Transportation 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 shall include a contractor's officers, directors, executives, shareholders active in management, employees, and agents.

(b) "Contract crime" means any act prohibited by state or federal criminal law which involves fraud, bribery, collusion, conspiracy, violation of state or federal antitrust laws, or material misrepresentation, committed in any federal or state jurisdiction with respect to a public contract.

(c) "Convicted" or "conviction" means any finding of a contractor crime, within any federal or state jurisdiction, with or without an adjudication of guilt, resulting from a jury or nonjury trial, or a plea of guilty or nolo contendere.

(d) "Affiliate" means 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 shall include the affiliate's officers, directors, shareholders active in management, employees, and agents.
executives, shareholders active in management, employees, and agents. One business entity's ownership 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. Certificate of qualification means that certificate required and granted pursuant to s. 337.14. (a) No contractor or its affiliate shall be qualified to bid when, after notice and hearing, it is determined that it:

1. Has, subsequent to January 1, 1978, been convicted of a contract crime within the jurisdiction of any state or federal court;
2. Has failed to comply with the notification provisions of subsection (5); or
3. Has been charged in any indictment or information alleging the commission of a contract crime within the state. (b) In cases where subparagraphs 1. or 2., of paragraph (a) apply, the department shall by a final order after notice and hearing deny or revoke the certificate of qualification of the contractor or its affiliate. Such revocation or denial of a certificate of qualification shall be for 36 months, unless the contractor or its affiliate is reinstated or qualified pursuant to paragraph (d). Upon reinstatement or qualification pursuant to paragraph (d), the certificate of qualification of a contractor or its affiliate shall not thereafter be denied or revoked for conviction of contract crime committed outside the state prior to the effective date of such reinstatement or qualification.
2. In cases where subparagraph 3. of paragraph (a) applies, the department shall by a final order after notice...
and hearing deny or suspend the certificate of qualification
of the contractor or its affiliate. Such denial or suspension
shall continue until resolution of the criminal charges or
until the contractor or its affiliate is reinstated or
qualified in accordance with paragraphs (d) or (e).

3. a. Notwithstanding the provisions of subparagraph
1., any contractor or person who by final order is determined
to be an affiliate of a contractor convicted of the commission
of a contract crime may, within 10 days from the date of the
final order, request a hearing for the purpose of
demonstrating that the denial or revocation of its certificate
of qualification is not in the public interest. Said hearing
shall be held within 30 days of the date of the request. In
determining whether to deny or revoke the affiliate’s
certificate of qualification is in the public interest, all
relevant mitigating circumstances, in accordance with
paragraph (d), shall be considered.

b. At the hearing, the affiliate shall present for
c onsideration any and all evidence that it desires to have
considered in determining whether its certificate of
qualification should be denied or revoked. Not less than 20
days prior to the hearing, the affiliate shall serve upon the
department a prehearing catalog setting forth all exhibits to
be proffered, a concise statement of the law and facts upon
which it intends to rely, and the names, addresses, and phone
numbers of all witnesses to be proffered at the hearing. Any
exhibit, law, fact, or witness not disclosed in the prehearing
catalog shall not be admissible at the hearing or otherwise
considered in the determination of the final order.

c. After the affiliate has concluded the presentation
of its evidence, the department shall have the right to...
continue the hearing and the presentation of its own evidence until such time as the department may choose. Upon the filing of a request for a hearing pursuant to this subparagraph, any final order of denial or revocation of the affiliate's certificate of qualification shall be stayed pending the entry of a final order determining whether such action is in the public interest based upon the evidence presented; provided, however, such final order shall not be stayed by the department or by the Division of Administrative Hearings during the pendency of any review proceedings except in accordance with s. 337.167(4).

d. If it is determined that the certificate of qualification should be denied or revoked, the affiliate may not petition for a subsequent hearing pursuant to paragraph (d) for a period of 9 months from the date of the order determining whether the denial or revocation is in the public interest. Until the entry of a final order determining whether the denial or revocation is in the public interest, the department may deny an application for certification of any contractor who is determined to be an affiliate of a contractor who has requested a hearing pursuant to this subparagraph.

e. Notwithstanding the foregoing, the provisions of this paragraph shall not be applicable to an affiliate whose application for qualification has been denied and who has never before been certified by the department.

(c) A contractor or its affiliate whose certificate of qualification has been denied or revoked by reason of acts of contract crime for which it is convicted in this state and for which it is convicted upon a subsequent indictment or information alleging contract crime committed in this state
within 5 years of such denial or revocation shall not be considered for reinstatement or qualification pursuant to paragraph (d) until 24 months after the date of the denial or revocation based upon such subsequent conviction.

(d) A contractor or affiliate whose certificate of qualification has been denied, revoked, or suspended may be reinstated or qualified upon such terms and conditions as the department may prescribe upon finding it in the public interest. In determining whether reinstatement is in the public interest, the department shall consider relevant mitigating circumstances, including, but not limited to, the following:

1. The degree of culpability;
2. Prompt and voluntary payment of damages to the state as a result of the contractor’s violation of state or federal antitrust laws;
3. Cooperation with any state or federal prosecution or investigation of contract crime;
4. Disassociation with those involved in a contract crime;
5. Reinstatement in other state or federal jurisdictions; and
6. The needs of the department in completing its construction programs in a timely, cost-effective manner.

(e) A contractor or its affiliate whose certificate of qualification has been denied or suspended because the contractor or its affiliate has been charged in an indictment or information alleging the commission of a contract crime within the state shall be entitled to the grant of a certificate of qualification or the reinstatement of a certificate of qualification automatically upon filing a
certified copy of an order dismissing the indictment or
information or containing a final adjudication that the
contractor or its affiliate is not guilty of the commission of
a contract crime, or conditionally upon the filing of an
affidavit by the contractor or its affiliate denying that it
committed or otherwise participated in the contract crime or
crimes charged in the indictment or information. Should the
contractor or its affiliate, after having been conditionally
granted a certificate of qualification or having obtained a
conditional reinstatement of a suspended certificate of
qualification upon the filing of an affidavit or affidavits,
be convicted of the contract crime or contract crimes charged,
this shall be considered as a relevant factor should the
contractor or affiliate subsequently request reinstatement as
provided in paragraph (d). The failure of a contractor or its
affiliate to file the affidavit required for reinstatement
pursuant to this paragraph shall not be admissible evidence in
any civil or criminal proceeding in any state or federal
court.

(3) A contractor or its affiliate whose certificate of
qualification is revoked or suspended pursuant to this section
shall not act as a prime contractor, a material supplier, a
subcontractor, or a consultant on any department contract or
project during the period of such revocation or suspension.

(4) The denial, revocation, or suspension of a
contractor's or affiliate's certificate of qualification shall
not affect the contractor's or its affiliate's obligations
under any preexisting contract.

(5) A contractor or its affiliate which is qualified
or which is seeking to be qualified by the department shall
notify the department within 30 days of a conviction for a

CODING: Words in small caps through type are deletions from existing law; words underlined are additions.
contract crime, or the filing of an indictment or information alleging the commission of a contract crime, applicable to it or to any of its affiliates, or to any officers, directors, executives, shareholders active in management, employees, or agents of it or any of its affiliates.

Ever the department has reason to believe that a contractor or its affiliate which is qualified or seeking qualification by the department has been convicted or charged in any indictment or information with the commission of a contract crime, or may be affiliated with a person or entity so convicted or charged, the department may issue a written demand upon the contractor or its affiliate, concerning any such conviction, charge or affiliation, to appear and be examined under oath, to answer written interrogatories under oath, and to produce documents or other tangible evidence for inspection and copying.

The provisions of this act are not in derogation of existing remedies available to the department and such remedies remain in full force and effect.

Section 3. Section 337.166, Florida Statutes, is created to read:

337.166 Moneys recovered for violations of antitrust laws.--In accordance with the provisions of s. 16.53, 20 percent of all moneys recovered from a contractor or its affiliate on behalf of the state by reason of any decree or settlement in any state or federal antitrust claim prosecuted by the Attorney General shall be deposited in the Legal Affairs Revolving Trust Fund. The remainder of the moneys recovered shall be deposited in the State Transportation Trust Fund instead of the General Revenue Fund as generally provided under s. 16.53.
Section 4. Section 337.167, Florida Statutes, is created to read:

(1) A certificate of qualification to bid on a Department of Transportation contract, or other form of authorization required to supply goods or services to the department, is intended to assist the department in determining in advance the performance capabilities of entities seeking to supply goods and services to the department and is not a license as defined in s. 120.52(7). The denial, revocation, or suspension of a certificate of qualification or other authorization is not subject to the provisions of s. 120.60 or s. 120.68(3). The provisions of s. 120.57 are applicable to the denial, revocation, or suspension of such certificate or other authorization.

(2) For the purpose of promulgating emergency rules, the continuation of the bidding, contracting, or supplying privileges of a contractor or its affiliate which is convicted of contract crime, or which is charged by indictment or information with commission of contract crime in this state, represents an immediate danger to the public health, safety, and welfare.

(3) The denial, revocation, or suspension of a certificate of qualification for reasons of contract crime shall not be stayed by the department or by the Division of Administrative Hearings during the pendency of any review proceedings concerning a final order of denial, revocation, or suspension.

(4) A court may grant a stay or injunction in an action relating to the denial, revocation, or suspension of a
certificate of qualification only upon the posting of a bond by the petitioner seeking a stay or injunction, and provided that the court granting a stay or injunction finds:

(a) The petitioner has a substantial likelihood of success on the merits;

(b) The threatened harm or injury to the petitioner clearly outweighs any possible injury to the state occasioned by granting the stay or injunction; and

(c) It is in the public interest to grant the stay or injunction.

Section 5. Section 337.168, Florida Statutes, is created to read:

337.168 Confidentiality of official estimates, identities of potential bidders, and bid analysis and monitoring system.--

(1) A document or electronic file revealing the Department of Transportation's official cost estimate of a project is exempt from the provisions of s. 119.07(1) until the contract for the project has been executed or until the project is no longer under active consideration.

(2) A document revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by the department is exempt from the provisions of s. 119.07(1) for the period of time from 3 working days prior to the deadline for receiving bids until the deadline for receiving bids on the project or until the project is no longer under active consideration.

(3) The Department of Transportation's bid analysis and monitoring system is exempt from the provisions of s. 119.07(1). This exemption shall apply to all system.

CODING: Words in brackets indicate deletions from existing law; words underlined are additions.
documentation, input, computer processes and programs, electronic data files, and output, but shall not apply to the actual source documents, unless otherwise exempted under other provisions of law.

Section 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 7. This act shall take effect July 1, 1983, provided that subsection (3) of section 337.168, Florida Statutes, as created by section 5 of this act, shall take effect upon becoming a law.
HOUSE SUMMARY

Provides legislative intent with respect to Department of Transportation contracts and bidders on those contracts who have been convicted of or charged with any contract crime. Requires the department to deny or revoke for 3 years a contractor's or its affiliate's certificate of qualification to contract with the department upon its conviction at any time of a contract crime or upon its failure to notify the department of that fact within 30 days of its conviction. Requires the department to deny or suspend a certificate if a contractor or its affiliate has been charged in any indictment or information alleging the commission of a contract crime in this state. Provides for a hearing for an affiliate of a contractor convicted of a contract crime, under certain circumstances. Provides for automatic reinstatement or granting of a certificate that has been denied or suspended under certain circumstances. Allows reinstatement or granting of a contractor's or its affiliate's certificate subsequent to a denial, suspension, or revocation of the certificate upon a showing that it is in the public interest. Provides that repeat offenders who are convicted of a contract crime in this state shall not be considered for reinstatement or qualification until 24 months from the date of the denial or suspension of the certificate. Prohibits a contractor or its affiliate whose certificate is revoked or suspended for committing a contract crime from acting as a prime contractor, a material supplier, a subcontractor, or a consultant on any department contract or project during the period of revocation or suspension. Provides that the denial, revocation, or suspension of a contractor's or its affiliate's certificate does not affect its obligations under preexisting contracts. Provides the department with investigative authority. Provides for deposit of moneys recovered as result of violations of state or federal antitrust laws in the Legal Affairs Revolving Trust Fund and the State Transportation Trust Fund. Provides that a certificate of qualification is not a license and that the denial, suspension, or revocation of a certificate is not subject to s. 120.60 or s. 120.68(3), F.S. Prohibits the Division of Administrative Hearings from entering a stay order during the pendency of any review proceedings of a final order of denial, revocation, or suspension. Authorizes a court to grant an injunction in denial, revocation, or suspension actions under certain conditions. Provides for confidentiality of official cost estimates, potential bidders' identities, and the department's bid analysis and monitoring system.

CODING: Words in bold type are deletions from existing law; words underlined are additions.
BILL SUMMARY

DATE: March 1, 1983  BILL NUMBER: HB 1A

SPONSOR: Representative C. Fred Jones

RELATING TO: Contract Crime (Bid Rigging)

OTHER COMM REFERENCES: SIMILAR OR COMP BILLS:

SUMMARY PREPARED BY: Bill Ham

SUMMARY

Present Situation: The Department may suspend, for a specified period of time, or revoke for good cause any certificate of qualification to bid on a Department of Transportation project.

Effect of Proposed Changes: Creates section 337.165, Florida Statutes, disallowing a contractor or its affiliate to bid on a project when after the notice and hearing it is determined that the contractor or its affiliate:

1) Has been convicted of a contract crime subsequent to January 1, 1978.
2) Has failed to notify the Department of Transportation, within 30 days, of an indictment or conviction for a contract crime.
3) Has been charged in any indictment alleging the commission of a contract crime committed within Florida.

Also provides for a period of disqualification for the above.

Provides for reinstatement of certificate of qualification based upon mitigating circumstances including restitution and cooperation with state and federal prosecution or investigation of contract crime. A contractor or its affiliate shall be automatically reinstated upon filing of an affidavit with the Department of Transportation denying guilt. Failure to file such affidavit is not an admission of guilt. If subsequently convicted, the department may consider this information in reinstatement hearings.

Creates section 337.166, Florida Statutes, providing the Department of Legal Affairs be responsible for obtaining restitution on behalf of the Department of Transportation. Twenty percent of restitution obtained shall be deposited in the Legal Affairs Revolving Trust Fund and the remainder shall be deposited in the State Transportation Trust Fund.

Creates section 337.167, Florida Statutes, stating that a certificate of qualification to bid on a Department of Transportation project is not a license but is a privilege. Also debars the contractor from bidding on Department of Transportation projects while awaiting an Administrative Procedures Act hearing.

Creates section 337.168, Florida Statutes, exempting the Department of Transportation's official cost estimate and the computer program components of the department's Bid Analysis and Monitoring System from the Public Records Act. Also provides limited exemption of the potential bidders' list from the Public Records Act.
FISCAL IMPACT

State: Minimal. There would be a slight cost to determine which contractors have been convicted of a contract crime in other states.

Local: None.

Private Sector: None.

COMMENTS

STAFF DIRECTOR: [Signature]
Committee on Transportation
Bill No. HB 1-A
Date of meeting March 1, 1983
Time 1:00 P.M.
Place 24 HB

Final Action: FAVORABLE
X FAVORABLE WITH 3 AMENDMENTS
FAVORABLE WITH SUBSTITUTE
UNFAVORABLE

Vote:

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<th>YeA</th>
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<td>MARTIN, S.</td>
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<td>PEEPLES, V.</td>
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<td>SILVER, R.</td>
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<tr>
<td>X</td>
<td>THOMPSON, J.</td>
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YEA Total: 19 Nays Total: 0

Committee Appearance Record
The following persons (other than legislators) appeared before the committee during the consideration of this bill:

<table>
<thead>
<tr>
<th>Name</th>
<th>Representing</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. Bill Bryant</td>
<td>Attorney General's Office</td>
<td>The Capitol, Tallahassee, FL 32399-020</td>
</tr>
</tbody>
</table>

NOTE: Please indicate by an "X" any State employee appearing at the request of Committee Chairman.
(If additional persons, enter on reverse side and check here)
I. DESCRIPTION OF BILL

A. Fund or Tax Affected
   - State Transportation Trust Fund
   - Legal Affairs Revolving Trust Fund
   - General Revenue

B. Principal Agency Affected
   - Department of Transportation

C. Narrative Summary

This bill requires the Department of Transportation to deny or suspend the certificate of qualification of a contractor or its affiliate upon its conviction of a contract crime. "Contract crime" means any act prohibited by state or federal criminal law which involves fraud, bribery, collusion, conspiracy, violation of state or federal antitrust laws, or material misrepresentation, committed in any federal or state jurisdiction with respect to a public contract.

The Department shall deny or suspend a certificate if a contractor or its affiliate has been charged in any indictment or information alleging the commission of a contract crime in this state.

In determining whether reinstatement is in the public interest, the Department shall consider circumstances such as: (1) the degree of culpability, (2) prompt and voluntary payment of damages to the state, (3) cooperation with prosecution or investigation of contract crime, (4) disassociation with those involved in a contract crime, (5) reinstatement in other state or federal jurisdictions, and the needs of the Department in completing its construction programs in a timely, cost-effective manner.

Twenty percent of all monies recovered from a contractor or its affiliate in any claim prosecuted by the Attorney General shall be deposited in the Legal Affairs Revolving Trust Fund. The remainder shall be deposited in the State Transportation Trust Fund instead of the General Revenue Fund as currently provided in law.

II. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS

A. Non-Recurring of First Year State-up Effects

   Costs or statistical analyses system (SAS) and Bid Analyses Monitoring System (BAMS):
   - Previously incurred start-up costs
   - $60,248

B. Recurring of Annualized Continuation Effects

   Costs or statistical analyses system (SAS) and Bid Analyses Monitoring System (BAMS):
   - Recurring annual lease costs
   - $19,208

C. Long Run Effects other than Normal Growth

   None

D. Source of Funds

   The possibility exists for substantial recoveries from violators. Eighty percent of the recovery now is placed in General Revenue; this money will go to the State Transportation Trust Fund under the provisions of this bill.
The workload impact on the legal and contracts offices in the Department of Transportation will probably be substantial if a large number of contractors are indicted. The Department has indicated it will handle any workload increases within existing resources.
I. SUMMARY:

A. Present Situation:

In addition to federal antitrust laws, Chapter 542, F.S., the Florida Antitrust Act of 1980, in part, makes unlawful any contract, combination, or conspiracy in restraint of trade or commerce. Section 542.21 provides both civil and criminal penalties for violations of the chapter's provisions. A civil penalty of not more than $100,000 may be imposed upon any natural person who violates this act, while a penalty of not more than $1,000,000 may be imposed upon any other violator. Any person who knowingly violates any provision is guilty of a felony, punishable by a fine not exceeding $1,000,000 if a corporation, or, if any other person, $100,000 or imprisonment not exceeding 3 years, or both. Further, any person, including the state (by the Attorney General), who is injured because of a violation of the act may bring a civil action in circuit court and will recover threefold the damages sustained in his business or property.

Pursuant to s. 337.14, the Department of Transportation requires that any person wishing to bid for the performance of a department construction contract in excess of $100,000 (with some exceptions) first be certified as to his qualifications. If the applicant is found to be qualified, the department issues a certificate of qualification which, subject to any limitations specified therein, authorizes him to bid on contracts for a specified period of time. Under s. 337.33, F.S., any person wishing to be employed by the department to provide professional services must be qualified as to his professional status, past record and experience, and the adequacy of his personnel.

Section 337.16(2), F.S., authorizes the department to suspend or revoke for good cause any person's certificate of qualification. By administrative rule, the department has defined "good cause," in part. The rule, however makes no mention of antitrust violations, and the department has indicated that the issue of whether such a violation constitutes good cause has never been determined.

By judicial determination, the certificate of qualification has been held to be a license, as defined in s. 120.52(7), F.S. Pursuant to s. 120.66, F.S., licensing is subject to special administrative procedures relating to approval and denial of applications, summary suspensions under emergency circumstances, notice of suspension or revocation, etc.

Further, section 120.68(3), F.S., provides that if the agency decides has the effect of suspending or revoking a license, then supersedeas shall be granted as a matter of right, unless the court determines that a supersedeas would constitute a probable danger to the health, safety or welfare of the state.
The agency may also grant a stay during the pendency of judicial review of the agency final order.

Section 120.57(1), F.S., provides that formal proceedings shall be conducted by a hearing officer assigned by the Division of Administrative Hearings except in certain circumstances. One of the excepted situations is a hearing before an agency head or a member thereof other than an agency head. The section also provides that the hearing officer shall submit to the agency and parties a recommended order. This recommended order may be adopted as the agency's final order or may be modified by it to the extent permitted in the section.

Section 120.54(9), F.S., sets out the procedures for adoption of emergency rules. This subsection provides that if an agency finds that immediate danger to the public health, safety or welfare requires emergency action, it may, subject to the procedures outlined, adopt an emergency rule. The agency must publish the specific facts and reasons underlying its finding of immediate danger. Such finding is judicially reviewable.

The department's official cost estimates of projects and lists of possible bidders on projects to be let are currently public records and may be inspected by the public. The department is now in the process of implementing a computerized bid analysis and monitoring system. This system will analyze the individual bids on a project (currently a manual function) and also monitor ongoing bidding trends using historical data already gathered by the Attorney General's Office. Any programs used and data generated by this system would be open to inspection by the public.

B. Effect of Proposed Changes:

The bill creates several sections dealing with contract crimes in Chapter 337, F.S. Contractors and their affiliates, as defined, would be subject to the bill's provisions, and the department would administer and enforce the act. No contractor or its affiliate would be eligible to bid on work let by the department after it is determined that it has, subsequent to January 1, 1978, been convicted of a contract crime within the jurisdiction of any state or federal court. A convicted contractor is required to notify the department within 30 days of a conviction applicable to it or any of its affiliates or employees.

Any provision of chapter 120 to the contrary notwithstanding, when the department has received notice of the conviction of a contractor or affiliate, it is required to notify the contractor or affiliate of his right to a hearing. If a hearing is requested within 10 days after receipt of notice, the department shall hold the hearing within 30 days of receipt of the request. If the department determines that the contractor has been convicted of a contract crime, it shall deny or revoke the certificate for 36 months.

Any person who is notified by the department of its intent to deny or revoke his certificate because such person is an affiliate of a convicted contractor may, at the hearing, offer proof that he is not an affiliate of the contractor. If the department finds that the person is not an affiliate as defined in the act, then his certificate shall not be denied or revoked.

At any time after denial or revocation of his certificate, a contractor or affiliate may petition for and be granted a hearing to determine whether reinstatement would be in the public interest. The petition would be filed with the department. If the department conducts the hearing, it would
be required to do so within 30 days after receipt of the petition, unless otherwise stipulated by the parties. If the contractor or affiliate requests a hearing officer from the Division of Administrative Hearings, then such request shall be granted and the hearing must be held within 40 days of receipt of the petition. The division hearing officer shall, within 30 days after the hearing, submit a final order which the department shall not alter. Following a denial of reinstatement, a contractor or affiliate may not petition for a subsequent hearing for a period of 9 months, unless a hearing prior to that time is authorized by the department as being in the public interest.

If a contractor or affiliate whose certificate has been denied or revoked for conviction of contract crime is subsequently convicted of contract crime within 10 years of the prior denial or revocation, the contractor or affiliate may not be considered for reinstatement until 24 months after the date of denial or revocation.

A contractor or its affiliate whose certificate has been denied or revoked may not act in any capacity on any department contract or project during the period of denial or revocation, but is responsible for its obligations under any preexisting contract.

If the department has reason to believe that a contractor or its affiliate has been convicted of a contract crime, it may demand that the party appear and be examined under oath.

In accordance with s. 16.53, 20 percent of all moneys recovered from a contractor or affiliate on behalf of the state would be deposited in the Legal Affairs Revolving Trust Fund. The remainder would be deposited in the State Transportation Trust Fund.

The bill would exclude the certificate from the definition of a license in s. 120.52(7), F.S., and provides that the denial or revocation of a certificate would not be subject to the licensing provisions in s. 120.60, F.S., or to the supersedeas provision of s. 120.48(3), F.S. The department and the Division of Administrative Hearings would be prohibited from issuing a stay pending judicial review of the department’s final order.

A court’s discretion to grant a stay or injunction would be conditioned upon the posting of a bond by the party seeking the stay or injunction and upon certain specified findings by the court.

For the purpose of adopting emergency rules, the continuation of bidding by a contractor or its affiliate that is convicted of a contract crime, would constitute an immediate danger to the public health, safety, or welfare.

The department’s bid analysis and monitoring system, including all input, output, computer processes and programs, is exempted from the public records law. Department cost estimates of projects would be exempt from the disclosure requirements of the public records law but only until the contract for the project is executed or until the project is no longer under active consideration. Any department document revealing the identities of potential bidders would also be exempt from the public records law, but only for three working days prior to the deadline for receiving bids.
II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:
   None

B. Government:

   The department has indicated that it could handle the bill's provisions with existing staff.

   It is impossible to determine the amount of damages which could be recovered from contractors.

   A portion of any damages received on federal-aid projects would be paid to the Federal Highway Administration.

III. COMMENTS:

   This bill was passed by both houses during Special Session A of the 1983 Legislature.
<table>
<thead>
<tr>
<th>Applicability</th>
<th>HB-1A</th>
<th>SB-4A</th>
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<tbody>
<tr>
<td></td>
<td>Applies only to the Department of Transportation</td>
<td>Applies to all state agencies</td>
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<tr>
<td>Definition of &quot;contractor&quot;</td>
<td>Any person who bids or applies to bid on work for DOT or any counterpart agency in any other state</td>
<td>Any person bidding on work or providing services to any state agency or agency of any other state</td>
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<tr>
<td>Definition of &quot;affiliate&quot;</td>
<td>SAME</td>
<td>SAME</td>
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<tr>
<td>Retroactivity</td>
<td>Convicted after Jan. 1, 1978</td>
<td>At any time</td>
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<tr>
<td>Basis for denying or revoking certificate</td>
<td>Conviction of a contract crime within the jurisdiction of any state or federal court; or indictment or information within the state</td>
<td>Conviction of a contract crime within the jurisdiction of any state or federal court</td>
</tr>
<tr>
<td>Time frame for denying or revoking certificate</td>
<td>After notice and hearing</td>
<td>The agency head shall notify the convicted contractor or affiliate of intent to deny or revoke the certificate and of the right to a hearing. If hearing is requested within 10 days by convicted party then it must be held within 30 days</td>
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<tr>
<td>Period of revocation</td>
<td>HB-1A</td>
<td>SB-4A</td>
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<td>36 months</td>
<td>36 months</td>
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<tr>
<th>Period of revocation for subsequent convictions</th>
<th>HB-1A</th>
<th>SB-4A</th>
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<tbody>
<tr>
<td>Subsequent conviction of a contract crime within 5 years of the initial conviction, requires a mandatory 24-month period of revocation</td>
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<table>
<thead>
<tr>
<th>Reinstatement of a certificate denied or suspended because of indictment of a contract crime</th>
<th>HB-1A</th>
<th>SB-4A</th>
</tr>
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<tbody>
<tr>
<td>Automatically reinstated if 1) found not guilty or, 2) if the indictment or information is nolle prossed or dismissed or, 3) if the indicted party files an affidavit with the department denying guilt (suspension stayed if affidavit filed)</td>
<td></td>
<td>Does not pertain since denial or suspension could occur only upon conviction, not upon indictment</td>
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<tr>
<th>Reinstatement of a certificate denied or revoked because of conviction of a contract crime</th>
<th>HB-1A</th>
<th>SB-4A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upon such terms and conditions as the department may prescribe upon finding it in the public interest for contractors; provides reinstatement hearings for affiliates of convicted contractors</td>
<td></td>
<td>Provides that a contractor or affiliate may petition for and must be granted a hearing within 30 days (unless otherwise stipulated by the parties) to determine his eligibility for reapplication or reinstatement. Contractor or affiliate has the option of requesting that hearing be conducted by agency or by the Division of Administrative Hearings (DOAH). Hearings by agency shall be conducted within 40 days after requesting the hearing. If reinstatement/reapplication is</td>
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<tr>
<td>HB-1A</td>
<td>SB-4A</td>
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<tr>
<td>Exemptions from public records law</td>
<td>Exemptions DOT's official cost estimates, and the department's bid analysis and monitoring system. Also exempts potential bidders list for 3 working days</td>
<td>Exempts DOT's official cost estimates and the department's bid analysis and monitoring system. denied then contractor/affiliate may not petition for a subsequent hearing for 9 months</td>
</tr>
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[Diagrams and charts not included in the text]
A bill to be entitled
An act relating to state agency contracts;
creating s. 286.30, Florida Statutes; providing
definitions; providing a hearing procedure;
providing for denial or revocation of a
contractor's certificate of qualification or
privilege to provide services or commodities to
any state agency or to bid on work let by any
state agency for specified reasons; providing
for a period of disqualification; providing for
reapplication or reinstatement of a certificate
of qualification or privilege; providing a
hearing procedure; providing for a continuation
of obligations under preexisting contracts;
providing penalties; providing notification
requirements; providing investigative
authority; creating s. 286.31, Florida
Statutes; providing for distribution of moneys
recovered; creating s. 286.32, Florida
Statutes; providing that a certificate of
qualification or other form of authorization to
bid on state contracts is not a license for
purposes of the Administrative Procedure Act;
prohibiting administrative stays of denial or
revocation of certificates or other forms of
authorization to bid; providing criteria for
judicial stays and injunctive relief; providing
that certain activities constitute an immediate
danger to public safety, health and welfare;
creating s. 286.33, Florida Statutes; providing
a definite period of time during which a state
agency's official project cost estimates and
potential bidders' identities are exempt from
the provisions of s. 119.07(1), Florida
Statutes; exempting the Department of
Transportation's bid analysis and monitoring
system from the provisions of s. 119.07(1),
Florida Statutes; creating s. 286.34, Florida
Statutes; providing for continuation of certain
state agency procedures; creating s. 286.35,
Florida Statutes; providing for compilation and
dissemination of contractor ineligibility
information by the Department of General
Services; providing an effective date.

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

Section 1. Section 286.30, Florida Statutes, is
created to read:

286.30 Contract crime; denial or revocation of a
certificate of qualification or privilege to provide services
or commodities; reinstatement of eligibility; notification
requirements; penalty.--

(1) When used in ss. 286.30-286.34:

(a) "Contractor" means any person or legal entity who
provides professional services or sells commodities to or bids
or applies to bid on work let by any state agency or agency of
any other state or the federal government. The term
contractor shall include a contractor's officers, directors,
executives, shareholders active in management, employees, and
agents.

CODING: Words in italics throughout are deletions from existing law; words underlined are additions.
(b) "Contract crime" means any act prohibited by state or federal criminal law which involves fraud, bribery, collusion, conspiracy, violation of state or federal antitrust laws, or material misrepresentation, committed in any federal or state jurisdiction with respect to a public contract.

c) "Convicted" means a finding of guilt or a conviction of a contract crime, with or without an adjudication of guilt, in any federal or state trial court of record as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

(d) "Affiliate" means a predecessor or successor of a contractor under the same, or substantially the same, control, or a group of business entities which is connected or associated so that one entity controls or has the power to control each of the other business entities. One business entity's ownership 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.

(e) "State agency" means a unit of state government in the executive, legislative, or judicial branch.

(f) "Pooling" means a combination of persons or corporations engaged in the same business, or for the purpose of engaging in a particular business or commercial or speculative venture, where all contribute to a common fund or place their holdings of a given stock or other security in the hands and control of a managing member or committee.

(g) "Certificate of qualification" means a document issued by the Department of Transportation which authorizes a contractor to bid on specific classes of work let by the department for a specified period of time, and which fixes the

CODING: Words in italics through type are deletions from existing law; words underlined are additions.
monetary amount of uncompleted work which the contractor will
be permitted to have on contract with the department at any
given time.

(2)(a) No contractor or its affiliate shall be
eligible to provide services or commodities to any state
agency or to bid on work let by any state agency when it is
determined that it has at any time been convicted of a
contract crime within the jurisdiction of any state or federal
court.

(b)1. Any provision of chapter 120 to the contrary
notwithstanding, when a state agency receives notice that a
contractor has been convicted of a contract crime the agency
head or his designee shall inform the contractor or its
affiliate in writing of his intent to deny or revoke the
certificate of qualification or the privilege of the
contractor or affiliate to provide services or commodities to
any state agency or to bid on work let by any state agency and
of the contractor’s right to a hearing. If a hearing is
requested within 10 days of receipt of the notice of intent,
the agency head or his designee shall notify the contractor or
its affiliate of the time, date, and place of the hearing
which hearing shall be held within 30 days of receipt of the
request for the hearing. If the agency head or his designee
determines that the contractor has been convicted of a
contract crime he shall deny or revoke the certificate or
privilege of the contractor or affiliate for a period of 36
months.

2. Any person who is notified by a state agency of its
intent to deny or revoke his certificate of qualification or
his privilege to provide services or commodities to the agency
or to bid on work let by the agency because of his status as

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
an affiliate of a contractor convicted of a contract crime may, at the hearing requested under subparagraph 1., offer proof that he is not an affiliate as defined by this act. Submission of an affidavit alone shall not constitute competent substantial evidence that the person is not an affiliate. If the agency head or his designee finds that such person is not an affiliate as defined by this act then his certificate or privilege shall not be denied or revoked.

(c) A contractor or its affiliate whose certificate of qualification or privilege has been denied or revoked because of a conviction for contract crime, and who is subsequently convicted for a contract crime committed within 10 years of such denial or revocation shall not be considered for eligibility pursuant to paragraph (d) until 24 months after the date of the denial or revocation based upon such subsequent conviction.

(d) A contractor or affiliate whose certificate of qualification or privilege has been denied or revoked may at any time after denial or revocation, petition for and be granted a hearing to determine his eligibility for reapplication or reinstatement upon such terms and conditions as may be prescribed upon finding it is in the public interest. The petition shall be filed with the state agency. Any hearing conducted by a state agency shall be conducted within 30 days after receipt of the petition, unless otherwise stipulated by the parties. If the contractor or affiliate requests in his petition that the hearing be conducted by the Division of Administrative Hearings of the Department of Administration, the agency shall, within 5 days after receipt of the petition, notify the division of the request. The director of the Division of Administrative Hearings shall,
within 5 days after the notice by the agency, assign a hearing
officer who shall conduct the hearing within 30 days
thereafter, unless otherwise stipulated by the parties. The
affected state agency shall be a party in interest in any
hearing conducted by the Division of Administrative Hearings.
In determining whether reapplication or reinstatement would be
in the public interest, the agency or division hearing officer
shall give consideration to any relevant mitigating
circumstances, which may include, but are not limited to, the
following:

1. The degree of culpability;
2. Prompt and voluntary payment of damages to the
state as a result of the contractor's violation of state or
federal antitrust laws;
3. Cooperation with any state or federal prosecution
or investigation of contract crime;
4. Disassociation with those involved in a contract
crime;
5. Reinstatement in other state or federal
jurisdictions; and
6. The needs of the state in completing its programs
in a timely cost-effective manner.

The agency or division hearing officer shall also consider the
failure of the contractor or its affiliate to comply with the
notification provisions of subsection (6). Any hearing
requested under this paragraph shall be conducted and
concluded without undue delay. The hearing officer shall,
within 30 days after the hearing, complete and submit a final
order to the agency which shall not alter or amend it. If
eligibility for reapplication or reinstatement is denied, the
contractor or its affiliate may not petition for a subsequent hearing for a period of 9 months following the date of the order of denial or revocation. However, a hearing prior to the expiration of such period may be authorized by the agency if, in its discretion, it determines that a hearing is in the public interest.

(3) A contractor or its affiliate whose certificate of qualification or privilege is denied or revoked pursuant to this section shall not act as a prime contractor, a material supplier, a subcontractor, or a consultant on any state agency contract or project during the period of such denial or revocation.

(4) The denial or revocation of a contractor's or affiliate's certificate of qualification or privilege shall not affect the contractor's or its affiliate's obligations under any preexisting contract.

(5) A contractor or its affiliate who is currently providing or seeking to provide services or commodities to any state agency or who has contracted or is seeking to contract on work let by a state agency shall notify the agency and the Department of Legal Affairs within 30 days after conviction of a contract crime applicable to it or to any of its affiliates, or to any officers, directors, employees or agents of it or any of its affiliates.

(6) Whenever any state agency has reason to believe that a contractor or its affiliate, who is currently providing or seeking to provide services or commodities or who has contracted or is seeking to contract on work let by the agency, has been convicted of a contract crime, or may be affiliated with a person so convicted, the agency may issue a written demand upon the contractor or its affiliate.
concerning any such conviction or affiliation, to appear and
be examined under oath, to answer written interrogatories
under oath, and to produce documents or other tangible
evidence for inspection and copying.

(7) The provisions of this act are not in derogation
of existing remedies available to any state agency and such
remedies remain in full force and effect.

Section 2. Section 286.31, Florida Statutes, is
created to read:

286.31 Moneys recovered for violations of antitrust
laws.--In accordance with the provisions of s. 16.53, 20
percent of all moneys recovered from a contractor or its
affiliate on behalf of the state by reason of any decree or
settlement in any state or federal antitrust claim prosecuted
by the Attorney General shall be deposited in the Legal
Affairs Revolving Trust Fund. The remainder of the moneys
recovered shall be deposited in the fund from which the
expenditures were originally disbursed.

Section 3. Section 286.32, Florida Statutes, is
created to read:

286.32 Administrative procedures; stays and
injunctions.--

(1) A certificate of qualification to bid on a
Department of Transportation contract, or other form of
authorization required to supply goods or services to any
state agency, is not a license as defined in s. 120.52(7).
The denial or revocation of a certificate of qualification or
other authorization is not subject to the provisions of s.
120.60 or s. 120.68(3).

(2) For the purpose of adopting emergency rules, the
continuation of the bidding, contracting, or supplying

CODING: Words in normal through type are deletions from existing law; words underlined are additions.
11 privileges of a contractor or its affiliate who is convicted
12 of contract crime constitutes an immediate danger to the
13 public health, safety and welfare.
14
15 (3) The denial or revocation of a certificate of
16 qualification or privilege to provide services or commodities
17 to any state agency or to bid on work let by any state agency
18 for reasons of contract crime shall not be stayed by the
19 agency or by the Division of Administrative Hearings during
20 the pendency of judicial review of a final order of denial or
21 revocation.
22
23 (4) A court may grant a stay or injunction in an
24 action relating to the denial or revocation of a certificate
25 of qualification or privilege to provide services or
26 commodities to any state agency or to bid on work let by any
27 state agency only upon the posting of a bond by the petitioner
28 seeking a stay or injunction, and provided that the court
29 granting a stay or injunction finds:
30 (a) The petitioner has a substantial likelihood of
31 success on the merits;
32 (b) The threatened harm or injury to the petitioner
33 clearly outweighs any possible injury to the state occasioned
34 by granting the stay or injunction; and
35 (c) It is in the public interest to grant the stay or
36 injunction.
37
38 Section 4. Section 286.33, Florida Statutes, is
39 created to read:
40 286.33 Confidentiality of official estimates, 41
42 identities of potential bidders, and bid analysis and
43 monitoring system.--
44
45 (1) A document revealing the agency's official cost
46 estimate of a project is exempt from the provisions of s.
47
119.07(1) until the contract for the project has been executed
or until the project is no longer under active consideration.  
(2) A document revealing the identity of persons who
have requested or obtained bid packages, plans, or
specifications pertaining to any project to be let by a state
agency is exempt from the provisions of s. 119.07(1) until the
deadline for receiving bids on the project or until the project is no longer under active consideration.
(3) The Department of Transportation bid analysis and
monitoring system is exempt from the provisions of s.
119.07(1). This exemption applies to all system
documentation, input, computer processes and programs,
electronic data files, and output, but does not apply to the
actual source documents, unless otherwise exempted by law.
Section 5. Section 286.34, Florida Statutes, is
created to read:
286.34 Continuation of existing policies or
procedures.--Nothing in this act shall be construed to require
any state agency to modify the policies or procedures by which
it currently secures services, purchases commodities, or
contracts for work.
Section 6. Section 286.35, Florida Statutes, is
created to read:
286.35 Compilation and dissemination of contractor
ineligibility information.--(1) The Department of General
Services shall maintain a consolidated list of all contractors
or affiliates whose certificates of qualification or
privileges to provide services or commodities to any state
agency or to bid on work let by any state agency has been
denied or revoked. Within 5 days after denial, revocation or
reinstatement by a state agency or within 5 days after
expiration of the denial or revocation period, such agency shall provide the Department of General Services with the information required to be stated on the list. The consolidated list shall state the name of each contractor or affiliate, the duration of each denial or revocation and the date such denial or revocation took effect. Upon reinstatement or expiration of the period of denial or revocation, the Department of General Services shall promptly remove the name of the contractor or affiliate from the list. Such list shall be made available upon request.

(2) The Department of General Services is authorized to adopt rules to implement the provisions of this section.

Section 7. This act shall take effect upon becoming a law.

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SENATE SUMMARY

Prohibits contractors convicted of contract crimes from providing services or commodities or to bid on work let by a state agency. Provides for the denial or revocation and for subsequent reinstatement of a contractor's certificate of qualification or privilege to work on state jobs. Provides for an order enjoining disqualification of an affiliate under certain circumstances. Provides for continuation of obligations under preexisting contracts. Provides penalties, notification requirements, and investigative authority. Provides for the distribution of moneys recovered. Provides that a certificate of qualification or privilege to bid on state contracts is not a license for purposes of the Administrative Procedure Act. Provides for judicial injunctive relief and prohibits administrative stays. Exempts agencies' official project cost estimates and identities of potential bidders from public records inspections requirement. Also exempts the Department of Transportation bid analysis and monitoring system.

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SUBJECT: BILL NO. AND SPONSOR:
Bid-Rigging and Related contract crimes
SB 1199
by Senator Beard

I. SUMMARY:
A. Present Situation:

In addition to federal antitrust laws, Chapter 542, F.S., the Florida Antitrust Act of 1980, in part, makes unlawful any contract, combination, or conspiracy in restraint of trade or commerce. Section 542.21 provides both civil and criminal penalties for violations of the chapter's provisions. A civil penalty of not more than $100,000 may be imposed upon any natural person who violates this act, while a penalty of not more than $1,000,000 may be imposed upon any other violator. Any person who knowingly violates any provision is guilty of a felony, punishable by a fine not exceeding $1,000,000 if a corporation, or, if any other person, $100,000 or imprisonment not exceeding 3 years, or both. Further, any person, including the state (by the Attorney General), who is injured because of a violation of the act may bring a civil action in circuit court and will recover threefold the damages sustained in his business or property.

Other than the civil and criminal penalties imposed by chapter 542, a survey of several major state agencies failed to reveal statutory authority or administrative rules directly authorizing disqualification of contractors from future bidding on construction projects or commodity purchases because of antitrust violations or related crimes.

Current state agency procedures and authority with regard to the qualification and disqualification of contractors in the construction and commodity purchasing areas are briefly summarized below.

Department of Transportation: Pursuant to s. 337.14, the department requires that any person wishing to bid for the performance of a department construction contract in excess of $100,000 (with some exceptions) first be certified as to his qualifications. If the applicant is found to be qualified, the department issues a certificate of qualification which, subject to any limitations specified therein, authorizes him to bid on contracts for a specified period of time.

Section 337.16(2), F.S., authorizes the department to suspend or revoke for good cause any person’s certificate of qualification. By administrative rule, the department has defined “good cause,” in part. The rule, however makes no mention of antitrust violations, and the department has indicated that the issue of whether such a violation constitutes good cause has never been determined.

By judicial determination, the certificate of qualification has been held to be a license, as defined in s. 120.52(7), F.S. Pursuant to s. 120.60, F.S., licensing is subject to special administrative procedures relating to approval and denial of applications, summary suspensions under emergency circumstances, notice of suspension or revocation, etc.
Further, section 120.68(3), F.S., provides that if the agency decision has the effect of suspending or revoking a license, then supersedeas shall be granted as a matter of right, unless the court determines that a supersedeas would constitute a probable danger to the health, safety or welfare of the state. The agency may also grant a stay during the pendency of judicial review of the agency final order.

Departments of General Services, Natural Resources, Health and Rehabilitative Services, Corrections, and the Board of Regents:
These agencies do not certify potential bidders as to their qualifications; instead, only the low bidder's qualifications are assessed at the time of award of the contract. If the person wishing to bid is registered or licensed by the applicable board or licensing entity and posts performance and payment bonds, then he may bid. By rule, the Department of General Services may disqualify a contractor from bidding on future business for poor performance, deficient management, or poor workmanship. No authority is provided for disqualification based on antitrust violations.

In summary, all state agencies consulted lacked specific authority to disqualify a contractor from future bidding because of commission of antitrust or related crimes. Almost all agencies, however, imposed standard contract terms relating to collusion or fraud, thus enabling them to reject a bid on that particular project if collusion should be discovered.

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Section 120.57(1), F.S., provides that formal proceedings shall be conducted by a hearing officer assigned by the Division of Administrative Hearings except in certain circumstances. One of the excepted situations is a hearing before an agency head or a member thereof other than an agency head. The section also provides that the hearing officer shall submit to the agency and parties a recommended order. This recommended order may be adopted as the agency's final order or may be modified by it to the extent permitted in the section.

Section 120.54(9), F.S., sets out the procedures for adoption of emergency rules. This subsection provides that if an agency finds that immediate danger to the public health, safety or welfare requires emergency action, it may, subject to the procedures outlined, adopt an emergency rule. The agency must publish the specific facts and reasons underlying its finding of immediate danger. Such finding is judicially reviewable.

Agencies' official cost estimates of projects and lists of possible bidders on projects to be let are currently public records and may be inspected by the public.

The Department of Transportation has received budget approval to institute a Bid Analysis and Monitoring System. This system will analyze the individual bids on a project (currently a manual function) and also monitor ongoing bidding trends using historical data already gathered by the Attorney General's Office. Any data generated by this system would be open to inspection by the public.
B. Effect of Proposed Changes:

The bill would create several sections dealing with contract crimes at the end of chapter 286, F.S., relating to public business. Contractors and their affiliates, as defined, would be subject to the bill's provisions, and any state agency would administer and enforce the act. No contractor or its affiliate would be eligible to bid on work let by any state agency or to provide services or commodities to any state agency after it is determined that it has at any time been convicted of a contract crime within the jurisdiction of any state or federal court. A convicted contractor is required to notify the Department of Legal Affairs and any state agency with which it does business within 30 days of a conviction applicable to it or any of its affiliates or employees.

Any provision of chapter 120 to the contrary notwithstanding, any state agency that has received notice of the conviction of a contractor or affiliate is required to notify the contractor or affiliate of his right to a hearing. If a hearing is requested within 10 days after receipt of the notice, the agency shall hold the hearing within 30 days of receipt of the request. If the agency head or his designee determines that the contractor has been convicted of a contract crime, he shall deny or revoke the certificate of qualification or privilege to provide services or commodities to any state agency or to bid on work let by any state agency for 36 months.

Any person who is notified by a state agency of its intent to deny or revoke his certificate or privilege because such person is an affiliate of a convicted contractor may, at the hearing, offer proof that he is not an affiliate of the contractor. If the agency finds that the person is not an affiliate as defined in the act, then his certificate or privilege shall not be denied or revoked.

At any time after denial or revocation of his certificate or privilege to bid on state agency contracts, a contractor or affiliate may petition for and be granted a hearing to determine whether reinstatement would be in the public interest. The petition would be filed with the agency. If the agency conducts the hearing, it would be required to do so within 30 days after receipt of the petition, unless otherwise stipulated by the parties. If the contractor or affiliate requests a hearing officer from the Division of Administrative Hearings, then such request shall be granted and the hearing must be held within 40 days of receipt of the petition. The division hearing officer shall, within 30 days after the hearing, submit a final order which the agency shall not alter. Following a denial of reinstatement, a contractor or affiliate may not petition for a subsequent hearing for a period of 9 months, unless a hearing prior to that time is authorized by the state agency as being in the public interest.

If a contractor or affiliate whose certificate or privilege has been denied or revoked for conviction of contract crime is subsequently convicted of contract crime within 10 years of the prior denial or revocation, the contractor or affiliate could not be considered for reinstatement until 24 months after the date of denial or revocation.
A contractor or its affiliate whose certificate or privilege has been denied or revoked could not act in any capacity on any state agency contract or project during the denial or revocation period, but would be responsible for its obligations under any preexisting contract.

If the agency has reason to believe that a contractor or its affiliate has been convicted of a contract crime, it could demand that the party appear and be examined under oath.

In accordance with s. 16.53, 20 percent of all moneys recovered from a contractor or affiliate on behalf of the state would be deposited in the Legal Affairs Revolving Trust Fund. The remainder would be deposited in the fund from which the expenditures were originally disbursed.

The bill would exclude a certificate of qualification or other form of authorization required to supply goods or services to the state from the definition of a license in s. 120.52(7), F.S., and provides that the denial or revocation of a certificate or other authorization would not be subject to the licensing provisions in s. 120.60, F.S., or to the supersedeas provision of s. 120.68(3), F.S. The agency and the Division of Administrative Hearings would be prohibited from issuing a stay pending judicial review of the agency's final order.

A court's discretion to grant a stay or injunction would be conditioned upon the posting of a bond by the party seeking the stay or injunction and upon certain specified findings by the court.

For the purpose of adopting emergency rules, the continuation of bidding by a contractor or its affiliate that is convicted of a contract crime, would constitute an immediate danger to the public health, safety, or welfare.

The bill specifies that nothing in it shall be construed to require any agency to modify the manner in which it currently contracts for work, services, or commodities.

The Department of General Services is required to maintain a consolidated list of ineligible contractors and affiliates based on information required to be provided by any agency denying, revoking or reinstating a contractor's or affiliate's certificate or privilege. The list must be made available upon request.
II. ECONOMIC IMPACT AND FISCAL NOTE:
   A. Public:
      None
   B. Government:
      The departments of Transportation and General Services have indicated that they could handle the bill's provisions with existing staff.
      It is impossible to determine the amount of damages which could be recovered from contractors.
      In the transportation area, a portion of any damages received on federal aid projects would be paid to the Federal Highway Administration.

III. COMMENTS:
      None

IV. AMENDMENTS:
      None
KEY POINTS

This bill is identical in its content to CS/SB 31, the bill unanimously passed out by the Senate Transportation Committee at its January 6th meeting.

1. APPLICABLE TO ALL STATE AGENCIES

The bill is applicable to all state agency contracts, so that every state agency has the tools to deal effectively with bidriggers.

2. PENALTIES ARE RETROACTIVE

The penalties in the bill are retroactive in that they would be imposed on any contractor or affiliate who has at any time been convicted of a contract crime.

3. BROAD DEFINITION OF AFFILIATE

In the bill, "affiliate" is broadly defined so that the agency would have the ability to reach the culpable party. Further, the business would have the burden of proving that it is not an affiliate of a contractor.

4. PENALTIES IMPOSED UPON CONVICTION ONLY

The bill provides for disqualification of a contractor from future bidding for 3 years only upon conviction of the contractor. Upon indictment, the contractor is presumed innocent and until he pleads guilty or is found guilty by a court or jury, he should be allowed to continue responsible bidding.

5. HEARING PROCEDURE EXPEDITED

Specific timeframes are provided for both the initial hearing and the reinstatement hearing in order to avoid delays by either party.

If a contractor petitions for a reinstatement hearing, he would have the option of having a hearing officer assigned by the Division of Administrative Hearings instead of an agency hearing officer.

6. BIDDERS LISTS, PROJECT ESTIMATES, AND SPECIAL COMPUTER PROGRAMS WILL BE CONFIDENTIAL

The bill provides exemptions from the public records law for lists of potential bidders on projects, agency official cost estimates of projects and the DOT's Bid Analysis and Monitoring System.
7. 2 YEAR DEBARMENT WITHOUT REINSTATEMENT FOR SUBSEQUENT CONVICTIONS

If a contractor is subsequently convicted of a contract crime within 10 years of his first revocation then he is subject to a 24 month mandatory revocation with no reinstatement possible during that period.

8. OF MONEYS RECOVERED, 20% TO LEGAL AFFAIRS TRUST FUND; BALANCE TO FUND FROM WHICH EXPENDITURES WERE ORIGINALLY DISBURSED.
OBJECTIONS:

I HAVE SEVERAL OBJECTIONS TO THIS AMENDMENT, BUT I JUST WANT TO SPEAK ABOUT THE MOST IMPORTANT ONES.

1. AMENDMENT NOT NEEDED BECAUSE OF PROVISION ON PAGE 6, LINE 15, (COOPERATION PROVISION).

This amendment is not needed for 2 reasons: First, all pre-trial procedures are currently supervised by the court. Second, and most important, our bill provides an adequate tool to deal with and punish contractors who use delay tactics to put off their trials.

Under our bill, a convicted contractor is debarred for 3 years. In order for him to be reinstated prior to the 3 years, the hearing officer considers several factors, one of which is whether the contractor has cooperated with the prosecutors. Certainly the use of delay tactics does not qualify as "cooperation" and a contractor who has used these tactics would not be reinstated. I think that this is a more fair way to address delay than to penalize "clean" work.

2. CONSTITUTION PRESUMPTION OF INNOCENCE UNTIL CONVICTION.

I am a strong proponent of penalizing a contractor once he is convicted. Until that time, however, under our system of justice, he is presumed innocent and should be allowed to continue to bid responsibly on projects. I strongly oppose any move to impose penalties during the period of indictment, and whether or not the contractor is later convicted is irrelevant.

3. NO SAFEGUARD AGAINST DELAYS BY PROSECUTION. NO ALLOWANCE FOR LEGITIMATE DELAYS.

As I interpreted this amendment, there is no safeguard against a contractor being penalized for delays caused by the prosecution, also, I believe that you run into possible constitutional problems when you don't allow for legitimate, needed delays such as illness, or unavailability of a witness.

4. SHOULD NOT PENALIZE "CLEAN", NEW WORK ON WHICH CONTRACTOR WAS LOW BIDDER.

To me, it just doesn't seem fair to penalize a contractor 10 percent on contracts where there is no evidence at all of any
WRONGDOING, AND ON WHICH THE PUBLIC BENEFITED BY HIS LOW BID. LET'S FACE IT. AN INDICTED CONTRACTOR IS ALMOST CERTAINLY AN HONEST CONTRACTOR, NO MATTER WHAT HE DID IN THE PAST, AND HIS PRESENCE IN THE MARKET ENHANCES COMPETITION, WHICH IS GOOD.

5. WITH ALL THE OTHER PENALTIES PROVIDED, ADDITIONAL 10% PENALTY IS EXCESSIVE.

WE DON'T WANT TO PUT THESE PEOPLE PERMANENTLY OUT OF BUSINESS. WE WANT TO PENALIZE THEM FOR WHAT THEY DID, GET THE MONEY BACK AND KEEP GOOD COMPETITION IN THE MARKET. ALREADY THERE ARE HARSH CRIMINAL PENALTIES (FINE OF UP TO $100,000, UP TO 3 YEARS, IN PRISON OR BOTH, CIVIL PENALTIES FOR TREBLE DAMAGES, AND A THREE YEAR ADMINISTRATIVE DEBARMENT FROM BIDDING.

I SINCERELY BELIEVE THAT THESE ARE ALL WE NEED TO EFFECTIVELY ELIMINATE AND DETER FUTURE BIDRIGGING IN FLORIDA. YOU HAVE TO DRAW THE LINE SOMEWHERE AND SAY THESE ARE ENOUGH PENALTIES.

I URGE A NEGATIVE VOTE ON THIS BAD AMENDMENT.
## Provisions of Compromise on Bidrigging Bill

<table>
<thead>
<tr>
<th></th>
<th>HB-1A</th>
<th>SB-4A</th>
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</thead>
<tbody>
<tr>
<td><strong>Applicability</strong></td>
<td>Applies only to the Department of Transportation</td>
<td>Applies to all state agencies</td>
</tr>
<tr>
<td><strong>Definition of &quot;contractor&quot;</strong></td>
<td>Any person who bids or applies to bid on work for DOT or any counterpart agency in any other state</td>
<td>Any person bidding on work or providing services to any state agency or agency of any other state</td>
</tr>
<tr>
<td><strong>Definition of &quot;affiliate&quot;</strong></td>
<td>SAME</td>
<td>SAME</td>
</tr>
<tr>
<td><strong>Retroactivity</strong></td>
<td>Convicted after Jan. 1, 1978</td>
<td>At any time</td>
</tr>
<tr>
<td><strong>Basis for denying or revoking certificate</strong></td>
<td>Conviction of a contract crime within the jurisdiction of any state or federal court; or indictment or information within the state</td>
<td>Conviction of a contract crime within the jurisdiction of any state or federal court</td>
</tr>
<tr>
<td><strong>Time frame for denying or revoking certificate</strong></td>
<td>After notice and hearing</td>
<td>The agency head shall notify the convicted contractor or affiliate of intent to deny or revoke the certificate and of the right to a hearing. If hearing is requested within 10 days by convicted party then it must be held within 30 days</td>
</tr>
<tr>
<td>Period of revocation</td>
<td>Period of revocation for subsequent convictions</td>
<td>Reinstatement of a certificate denied or suspended because of indictment of a contract crime</td>
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</tr>
<tr>
<td>HB-1A 36 months</td>
<td>Subsequent conviction of a contract crime within 5-years of the initial conviction, requires a mandatory 24-month period of revocation</td>
<td>Automatically reinstated if 1) found not guilty or, 2) if the indictment or information is nolle prossed or dismissed or, 3) if the indicted party files an affidavit with the department denying guilt (suspension stayed if affidavit filed)</td>
</tr>
<tr>
<td>SB-4A 36 months</td>
<td>Subsequent conviction of a contract crime within 10-years of the initial conviction, requires a mandatory 24-month period of revocation</td>
<td>Does not pertain since denial or suspension could occur only upon conviction, not upon indictment</td>
</tr>
<tr>
<td>HB-1A</td>
<td>SB-4A</td>
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</tr>
<tr>
<td>Exemptions from public records law</td>
<td>Exemptions DOT's official cost estimates, and the department's bid analysis and monitoring system. Also exempts potential bidders list for 3 working days</td>
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<tr>
<td></td>
<td>Exempts DOT's official cost estimates and the department's bid analysis and monitoring system</td>
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</tr>
</tbody>
</table>

denied then contractor/affiliate may not petition for a subsequent hearing for 9 months
CONTINUED FLORIDA STATUTES

328.11  S 0716 + H 0277
328.12  S 0716 + H 0277
328.13  S 0716 + H 0277
328.14  S 0716 + H 0277
328.15  S 0716 + H 0277
328.16  S 0716 + H 0277
328.17  S 0716 + H 0277
328.18  S 0716 + H 0277
330.17  H 0400
331.21  H 1230
331.25  H 1230
331.35  H 1230
331.40  H 1230
334.02  H 1204
334.03  S 0402, + H 0195
334.04  S 0404, + H 0201
334.05  S 0405, + H 0201
334.06  S 0406, + H 0201
334.17  S 0311, + H 0237
334.18  S 0312, + H 0210
334.21  S 0315, + H 0210
334.22  S 0316, + H 0210
334.23  S 0317, + H 0210
335.04  S 0427, + H 0195 + H 0400
335.05  S 0429, + H 0195 + H 0400
335.07  S 0429, + H 0195 + H 0400
335.08  S 0429, + H 0195 + H 0400
336.02  S 0427, + H 0195 + H 0400
336.03  S 0427, + H 0195 + H 0400
336.04  S 0427, + H 0195 + H 0400
336.05  S 0427, + H 0195 + H 0400
337.14  S 0311 + S 0508 + H 0283
337.15  H 0002
337.16  S 0013, + S 0028, + S 0029, + H 0002
337.17  S 0013, + S 0028, + S 0029, + H 0002
337.18  S 0013, + S 0028, + S 0029, + H 0002
337.19  H 0208
337.21  S 0317, + H 0283
337.23  S 0318, + H 1232
338.07  H 0400
338.15  H 0400
338.16  H 0400
338.19  S 0009, + H 0183, + H 0400
339.08  S 0189, + S 0287, + H 0180
339.10  S 0189, + S 0287, + H 0180
339.12  S 0189, + S 0287, + H 0180
341.02  S 0189, + H 1231
341.03  H 0400
341.05  S 0189, + H 1231
341.10  S 0189, + H 1231

(BILLS UNDERLINED HAVE PASSED BOTH HOUSES)
(CITATOR INCLUDES COMMITTEE SUBS & AMENDED BILLS)

CONTINUED ON NEXT PAGE
(CITATOR INCLUDES COMMITTEE SUBS & AMENDED BILLS)
A bill to be entitled
An act relating to Department of Transportation contracts; creating s. 337.165, Florida Statutes; providing definitions; providing for denial, revocation, or suspension of a contractor's certificate of qualification for specified reasons; providing for a period of disqualification; providing for reinstatement of a certificate; providing for a continuation of obligations under preexisting contracts; providing penalties; providing notification requirements; providing investigative authority; creating s. 337.166, Florida Statutes; requiring the Department of Legal Affairs to obtain restitution for the Department of Transportation in certain actions; creating s. 337.167, Florida Statutes; providing that qualification to bid on state contracts is not a license; prohibiting administrative stays of denial, revocation, or suspension; providing criteria for injunctive relief; providing a finding of an immediate danger to public safety, health, and welfare; creating s. 337.168, Florida Statutes; providing a definite period of time during which the Department of Transportation's official project cost estimates are exempt from the provisions of s. 119.07(1), Florida Statutes; providing that the Department of Transportation's bid analysis and monitoring system is exempt from the provisions of s.
WHEREAS, the Legislature finds that the procedures of the Department of Transportation for bidding and qualification of bidders on department contracts exist to secure the public benefits of free and open competition and to ensure the quality of public works, and

WHEREAS, the Legislature finds that the opportunity to bid on Department of Transportation contracts or to supply goods or services to the department is a privilege and not a right, and

WHEREAS, the Legislature finds that the privilege of transacting business with the Department of Transportation should be denied to persons or firms involved in contract crimes in order to preserve the integrity of the public contracting process, NOW, THEREFORE,

Be it enacted by the Legislature of the State of Florida:
executives, shareholders active in management, employees, and
agents.

(b) "Contract crime" means any act prohibited by state
or federal criminal law which involves fraud, bribery,
collusion, conspiracy, violation of state or federal antitrust
laws, or material misrepresentation, committed in any federal
or state jurisdiction with respect to a public contract.

(c) "Convicted" means any conviction of a contract
crime, within any federal or state jurisdiction, with or
without an adjudication of guilt, resulting from a jury or
nonjury trial, or a plea of guilty or nolo contendere.

(d) "Affiliate" means a predecessor or successor of a
contractor under the same, or substantially the same, control
or a group of business entities which is connected or
associated so that one entity controls or has the power to
control each of the other business entities. One business
entity's ownership 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.

(2) (a) No contractor or its affiliate shall be
qualified to bid when, after the notice and hearing, it is
determined that it:

1. Has been convicted after the effective date of this
act of a contract crime within the jurisdiction of any state
or federal court outside the state;

2. Has failed to comply with the notification
provisions of subsection (5);

3. Has been charged in any indictment or information
alleging the commission of a contract crime within the state;
4. Has been convicted of a contract crime within the state.

(b) In cases where subparagraphs 1., 2., or 4. of paragraph (a) apply, the department shall by a final order after notice and hearing deny or revoke the certificate of qualification of the contractor or its affiliate. Such revocation or denial of a certificate of qualification shall be for 36 months, unless the contractor or its affiliate is reinstated or qualified pursuant to paragraph (d). Upon reinstatement or qualification pursuant to paragraph (d), the certificate of qualification of a contractor or its affiliate shall not thereafter be denied or revoked for conviction of contract crime committed outside the state prior to the effective date of such reinstatement or qualification.

2. In cases where subparagraph 3. of paragraph (a) applies, the department shall by a final order after notice and hearing deny or suspend the certificate of qualification of the contractor or its affiliate. Such denial or suspension shall continue until resolution of the criminal charges or until the contractor or its affiliate is reinstated or qualified in accordance with paragraphs (d) or (e).

(c) A contractor or its affiliate whose certificate of qualification has been denied or revoked by reason of acts of contract crime for which it is convicted in this state and for which it is convicted upon a subsequent indictment or information alleging contract crime committed in this state within 5 years of such denial or revocation shall not be considered for reinstatement or qualification pursuant to paragraph (d) until 24 months after the date of the denial or revocation based upon such subsequent conviction.

CODING: Words in strike through type are deletions from existing law; words underlined are additions.
(d) A contractor or affiliate whose certificate of qualification has been denied, revoked, or suspended may be reinstated or qualified upon such terms and conditions as the department may prescribe upon finding it in the public interest. In determining whether reinstatement is in the public interest, the department shall request the advice of the Department of Legal Affairs and thereafter shall consider relevant mitigating circumstances, including but not limited to, the following:

1. The degree of culpability;
2. Prompt and voluntary restitution based on the contractor's and its affiliate's ability to pay;
3. Cooperation with any state or federal prosecution or investigation of contract crime;
4. Disassociation with those involved in a contract crime;
5. Reinstatement in other state or federal jurisdictions; and
6. The needs of the department in completing its construction programs in a timely, cost-effective manner.

(e) A contractor or its affiliate whose certificate of qualification has been denied or suspended because the contractor or its affiliate has been charged in an indictment or information alleging the commission of a contract crime within the state shall have its certificate of qualification automatically reinstated or granted if the contractor or its affiliate is found not guilty, if the indictment or information is nolle prossed or dismissed, or if the contractor or its affiliate files an affidavit with the department denying its culpability in the acts alleged in such indictment or information. If the contractor or its affiliate...
is convicted of any of the contract crime charges alleged or
decided in the indictment or information, the contractor or
its affiliate shall forfeit and pay to the department an
amount equal to:

1. Ten percent of the total contract price of all
contracts let by the department upon which
the contractor or
its affiliate acted as a prime contractor or as consultant;

2. Ten percent of the prime contract bid amount for
all line items for which the contractor or its affiliate was
awarded subcontract work; or

3. Ten percent of the price of all materials or
equipment supplied by the contractor or its affiliate.

These payments shall be in addition to any other sanctions or
remedies available to the state. Such payments shall be
computed upon any new work obtained during the period between
the reinstatement of the certificate pursuant to this
paragraph and the date of conviction. The failure of a
contractor or its affiliate to file the affidavit required for
reinstatement pursuant to this paragraph shall not be
admissible evidence in any civil or criminal proceeding in any
state or federal court.

(3) A contractor or its affiliate whose certificate of
qualification is revoked or suspended pursuant to this section
shall not act as a prime contractor, a material supplier, a
subcontractor, or a consultant on any department contract or
project during the period of such revocation or suspension.

(4) The denial, revocation, or suspension of a
contractor's or affiliate's certificate of qualification shall
not affect the contractor's or its affiliate's obligations
under any preexisting contract.
99-74-7-2

(5) A contractor or its affiliate which is qualified or which is seeking to be qualified by the department shall notify the department within 30 days of a conviction for a contract crime applicable to it or to any of its affiliates, or to any officers, directors, employees, or agents of it or any of its affiliates.

(6) Whenever the department has reason to believe that a contractor or its affiliate which is qualified or seeking qualification by the department has been convicted or charged in any indictment or information with the commission of a contract crime, or may be affiliated with a person or entity so convicted or charged, the department may issue a written demand upon the contractor or its affiliate, concerning any such conviction charge or affiliation, to appear and be examined under oath, to answer written interrogatories under oath, and to produce documents or other tangible evidence for inspection and copying.

(7) The provisions of this act are not in derogation of existing remedies available to the department and such remedies remain in full force and effect.

Section 2. Section 337.166, Florida Statutes, is created to read: 337.166 Restitution; violation of anti-trust laws. The Department of Legal Affairs shall be responsible for obtaining restitution on behalf of the Department of Transportation for overcharges, increased costs, or damages occasioned by the violation of state or federal anti-trust laws. Twenty percent of all funds so collected shall be deposited in the Legal Affairs Revolving Trust Fund created by s. 16.53. The remainder of the moneys so collected on behalf of the Department of Transportation shall be deposited in the

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State Transportation Trust Fund. For purposes of this section, the term "collected" shall mean received in hand.

Section 3. Section 337.167, Florida Statutes, is hereby created to read:

337.167 Administrative procedures; stays and injunctions.--

(1) A certificate of qualification to bid on a Department of Transportation contract, or other form of authorization required to supply goods or services to the department, is not a license as defined in s. 120.52(7). The denial, revocation, or suspension of a certificate of qualification or other authorization is not subject to the provisions of s. 120.60 or s. 120.68(3). The provisions of s. 120.57 are applicable to the denial, revocation, or suspension of such certificate or other authorization.

(2) For the purpose of promulgating emergency rules, the continuation of the bidding, contracting, or supplying privileges of a contractor or its affiliate which is convicted of contract crime, or which is charged by indictment or information with commission of contract crime in this state, represents an immediate danger to the public health, safety, and welfare.

(3) The denial, revocation, or suspension of a certificate of qualification for reasons of contract crime shall not be stayed by the department or by the Division of Administrative Hearings during the pendency of any review proceedings concerning a final order of denial, revocation, or suspension.

(4) A court may grant a stay or injunction in an action relating to the denial, revocation, or suspension of a certificate of qualification only upon the posting of a bond.
by the petitioner seeking a stay or injunction, and provided
that the court granting a stay or injunction finds:

(a) The petitioner has a substantial likelihood of
success on the merits;

(b) The threatened harm or injury to the petitioner
clearly outweighs any possible injury to the state occasioned
by granting the stay or injunction; and

(c) It is in the public interest to grant the stay or
injunction.

Section 4. Section 337.168, Florida Statutes, is
created to read:

337.168 Confidentiality of official estimates and bid
analysis and monitoring system.--

(1) A document or electronic file revealing the
Department of Transportation's official cost estimate of a
project is exempt from the provisions of s. 119.07(1) until
the contract for the project has been executed.

(2) The Department of Transportation's bid analysis
and monitoring system is exempt from the provisions of s.
119.07(1). This exemption shall apply to all system
documentation, input, computer processes and programs,
electronic data files, and output, but shall not apply to the
actual source documents, unless otherwise exempted under other
provisions of law.

Section 5. If any provision of this act or the
application thereof to any person or circumstance is held
invalid, the invalidity shall not affect other provisions or
applications of the act which can be given effect without the
invalid provision or application, and to this end the
provisions of this act are declared severable.

Section 6. This act shall take effect October 1, 1983.
HOUSE SUMMARY

Requires the Department of Transportation to deny or revoke for 3 years a contractor's or its affiliate's certificate of qualification to contract with the department upon its conviction in any state or federal court for certain contract crimes or upon its failure to notify the department of that fact within 30 days of its conviction. Requires the department to deny or suspend a certificate if a contractor or its affiliate has been charged in any indictment or information alleging the commission of a contract crime in this state. Provides for automatic reinstatement or granting of a certificate that has been denied or suspended under certain circumstances. Allows reinstatement or granting of a contractor's or its affiliate's certificate subsequent to a denial, suspension, or revocation of the certificate upon a showing that it is in the public interest. Provides that repeat offenders who are convicted of a contract crime in this state shall not be considered for reinstatement or qualification until 24 months from the date of the denial or revocation of its certificate based on the second conviction. Prescribes penalties to be imposed on a contractor or its affiliate which is convicted in this state of a contract crime. Prohibits a contractor or its affiliate whose certificate is revoked or suspended for committing a contract crime from acting as a prime contractor, a material supplier, a subcontractor, or a consultant on any department contract or project during the period of revocation or suspension. Provides that if a contractor or its affiliate whose certificate is revoked or suspended for committing a contract crime is also a partner or shareholder of a contractor's or its affiliate's certificate does not affect its obligations under existing contracts. Requires a contractor or its affiliate to notify the department if it is convicted of a contract crime. Provides the department with investigative authority. Requires the Department of Legal Affairs to obtain restitution for the Department of Transportation for damages and costs as a result of a violation of state or federal anti-trust laws. Provides that 20 percent of all restitution obtained by the Department of Legal Affairs is to be deposited in the Legal Affairs Revolving Trust Fund. Provides that a certificate of qualification is not a license and that the denial, suspension, or revocation of a certificate is not subject to s. 120.60 or s. 120.68(3), F.S. Provides the Division of Administrative Hearings with authority to enter a stay order during the pendency of any review proceedings. Authorizes a court to grant an injunction in denial, revocation, or suspension actions under certain conditions. Provides for confidentiality of official cost estimates and the department's bid analysis and monitoring system.

CODING: Words in italics or in boldface or underlined are deletions from existing law; words in regular type or italic are additions.
A bill to be entitled
An act relating to Department of Transportation
contracts; creating s. 337.165, Florida
Statutes; providing definitions; providing for
denial, revocation, or suspension of a
contractor’s certificate of qualification for
specified reasons; providing for a period of
disqualification; providing for reinstatement
of a certificate; providing for a continuation
of obligations under preexisting contracts;
providing penalties; providing notification
requirements; providing investigative
authority; creating s. 337.166, Florida
Statutes; requiring the Department of Legal
Affairs to obtain restitution for the
Department of Transportation in certain
actions; creating s. 337.167, Florida Statutes;
providing that qualification to bid on state
contracts is not a license; prohibiting
administrative stays of denial, revocation, or
suspension; providing criteria for injunctive
relief; providing a finding of an immediate
danger to public safety, health and welfare;
creating s. 337.168, Florida Statutes;
providing a definite period of time during
which the Department of Transportation’s
official project cost estimates and potential
bidders’ identities are exempt from the
provisions of s. 119.07(1), Florida Statutes;
providing an effective date.
WHEREAS, the Legislature finds that the procedures of the Department of Transportation for bidding and qualification of bidders on department contracts exist to secure the public benefits of free and open competition and to ensure the quality of public works, and
WHEREAS, the Legislature finds that the opportunity to bid on Department of Transportation contracts or to supply goods or services to the department is a privilege and not a right, and
WHEREAS, the Legislature finds that the privilege of transacting business with the Department of Transportation should be denied to persons or firms involved in contract crimes in order to preserve the integrity of the public contracting process, NOW, THEREFORE,

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

Section 1. Section 337.165, Florida Statutes, is created to read:

337.165 Contract crime; denial, revocation, or suspension of a certificate of qualification.--
(1) The following words and phrases when used in this section shall have the following meanings:
(a) "Contractor" means any person who bids or applies to bid on work let by the Department of Transportation or who provides professional services to the department. The term contractor shall include a contractor’s officers, directors, executives, shareholders active in management, employees, and agents.
(b) "Contract crime" means any act prohibited by state or federal criminal law which involves fraud, bribery,

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collusion, conspiracy, violation of state or federal antitrust laws, or material misrepresentation, committed in any federal or state jurisdiction with respect to a public or private contract.

(c) "Convicted" means any conviction of a contract crime, within any federal or state jurisdiction, with or without an adjudication of guilt, resulting from a jury or nonjury trial, or a plea of guilty or nolo contendere.

(d) "Affiliate" means a predecessor or successor of a contractor under the same, or substantially the same, direct or indirect control; a group of business entities which is connected or associated so that one entity controls or has the power to control each of the other business entities either directly or indirectly. One business entity's ownership of a controlling interest, directly or indirectly, in another business entity; a sharing or interchange of officers, directors, executives, personnel, employees, or agents among business entities; or a pooling of equipment or income among business entities shall be prima facie evidence that one business entity is an affiliate of another.

(2)(a) No contractor or its affiliate shall be qualified to bid when an investigation by the department discloses that the contractor or its affiliate:
1. Has been convicted of a contract crime within the jurisdiction of any state or federal court;
2. Has failed to comply with the notification provisions of subsection (5); or
3. Has been charged in any indictment or information alleging the commission of a contract crime within the state.
(b)(1) In cases where subparagraphs 1. or 2. of paragraph (a) apply, the department shall by a final order...
after notice and hearing deny or revoke the certificate of qualification of the contractor or its affiliate. Such revocation or denial of a certificate of qualification shall be for 36 months, unless the contractor or its affiliate is reinstated or qualified pursuant to paragraph (d).

2. In cases where subparagraph 3. of paragraph (a) applies, the department shall by a final order after notice and hearing deny or suspend the certificate of qualification of the contractor or its affiliate. Such denial or suspension shall continue until resolution of the criminal charges or until the contractor or its affiliate is reinstated or qualified in accordance with paragraphs (d) or (e).

(c) A contractor or its affiliate whose certificate of qualification has been denied or revoked by reason of acts of contract crime for which it is convicted in this state and for which it is convicted upon a subsequent indictment or information alleging contract crime committed in this state within 5 years of such denial or revocation shall not be considered for reinstatement or qualification pursuant to paragraph (d) until 24 months after the date of the denial or revocation based upon such subsequent conviction.

(d) A contractor or affiliate whose certificate of qualification has been denied, revoked, or suspended may be reinstated or qualified upon such terms and conditions as the department may prescribe upon finding it in the public interest. In determining whether reinstatement is in the public interest, the department shall request the advice of the Department of Legal Affairs and thereafter shall consider relevant mitigating circumstances, including but not limited to, the following:

1. The degree of culpability;
2. Prompt and voluntary restitution based on the contractor's and its affiliate's ability to pay;
3. Cooperation with any state or federal prosecution or investigation of contract crime;
4. Disassociation with those involved in a contract crime;
5. Reinstatement in other state or federal jurisdictions; and
6. The needs of the department in completing its construction programs in a timely, cost-effective manner.

(e) A contractor or its affiliate whose certificate of qualification has been denied or suspended because the contractor or its affiliate has been charged in an indictment or information alleging the commission of a contract crime within the state shall have its certificate of qualification automatically reinstated or granted if the contractor or its affiliate is found not guilty, if the indictment or information is nolle prossed or dismissed, or if the contractor or its affiliate files an affidavit with the department denying culpability in the acts alleged in such indictment or information. If the contractor or its affiliate is convicted of any of the contract crime charges alleged or included in the indictment or information, the contractor or its affiliate shall forfeit and pay to the department an amount equal to:

1. Ten percent of the total contract price of all contracts let by the department upon which the contractor or its affiliate acted as a prime contractor or as consultant;
2. Ten percent of the prime contract bid amount for all line items for which the contractor or its affiliate was awarded subcontract work; or
1. Ten percent of the price of all materials or
2. equipment supplied by the contractor or its affiliate.
3. These payments shall be in addition to any other sanctions or
4. remedies available to the state. Such payments shall be
5. computed upon any new work obtained during the period between
6. the reinstatement of the certificate pursuant to this
7. paragraph and the date of conviction. The failure of a
8. contractor or its affiliate to file the affidavit required for
9. reinstatement pursuant to this paragraph shall not be
10. admissible evidence in any civil or criminal proceeding in any
11. state or federal court.

(3) A contractor or its affiliate whose certificate of
qualification is revoked or suspended pursuant to this section
shall not act as a prime contractor, a material supplier, a
subcontractor, or a consultant on any department contract or
project during the period of such revocation or suspension.

(4) The denial, revocation, or suspension of a
contractor's or affiliate's certificate of qualification shall
not affect the contractor's or its affiliate's obligations
under any preexisting contract.

(5) A contractor or its affiliate which is qualified
or which is seeking to be qualified by the department shall
notify the department within 30 days of a conviction for a
contract crime applicable to it or to any of its affiliates,
or to any officer, director, employee or agent of it or
any of its affiliates.

(6) Whenever the department has reason to believe that
a contractor or its affiliate which is qualified or seeking
qualification by the department has been convicted or charged
in any indictment or information with the commission of a
contract crime, or may be affiliated with a person or entity so convicted or charged, the department may issue a written demand upon the contractor or its affiliate, concerning any such conviction charge or affiliation, to appear and be examined under oath, to answer written interrogatories under oath, and to produce documents or other tangible evidence for inspection and copying.

(7) The provisions are not in derogation of existing remedies available to the department and such remedies remain in full force and effect.

Section 2. Section 337.166, Florida Statutes, is created to read:

337.166 Restitution; violation of anti-trust laws.-- The Department of Legal Affairs shall be responsible for obtaining restitution on behalf of the Department of Transportation for overcharges, increased costs, or damages occasioned by the violation of state or federal anti-trust laws. Twenty percent of all restitution so obtained by the Department of Legal Affairs shall be deposited in the Legal Affairs Revolving Trust Fund created by s. 16.53. The remainder of the moneys recovered on behalf of the Department of Transportation shall be deposited in the State Transportation Trust Fund.

Section 3. Section 337.167, Florida Statutes, is created to read:

337.167 Administrative procedures; stays and injunctions.--

[1] A certificate of qualification to bid on a Department of Transportation contract, or other form of authorization required to supply goods or services to the department, is not a license as defined in s. 120.52(7).
denial, revocation, or suspension of a certificate of qualification or other authorization is not subject to the provisions of s. 120.60 or s. 120.68(3). The provisions of s. 120.57 are applicable to the denial, revocation, or suspension of such certificate or other authorization.

(2) For the purpose of promulgating emergency rules, the continuation of a contractor’s or its affiliate’s bidding, contracting, or supplying privileges relating to the commission of contract crime, or which is charged by indictment or information with commission of contract crime in this state, represents an immediate danger to the public health, safety, and welfare.

(3) The denial, revocation, or suspension of a certificate of qualification for reasons of contract crime shall not be stayed by the department or by the Division of Administrative Hearings during the pendency of any review proceedings concerning a final order of denial, revocation, or suspension.

(4) A court may grant a stay or injunction in an action relating to the denial, revocation, or suspension of a certificate of qualification only upon the posting of a bond by the petitioner seeking a stay or injunction, and provided that the court granting a stay or injunction finds:

(a) The petitioner has a substantial likelihood of success on the merits;
(b) The threatened harm or injury to the petitioner clearly outweighs any possible injury to the state occasioned by granting the stay or injunction; and
(c) It is in the public interest to grant the stay or injunction.
Section 4. Section 337.168, Florida Statutes, is created to read:

337.168 Confidentiality of official estimates and identities of potential bidders.--

1. A document revealing the Department of Transportation's official cost estimate of a project is exempt from the provisions of s. 119.07(1) until the contract for the project has been executed.

2. A document revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by the department is exempt from the provisions of s. 119.07(1) until the deadline for receiving bids on the project.

Section 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 6. This act shall take effect upon becoming a law.

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SENATE SUMMARY

Requires the Department of Transportation to deny or revoke for 3 years a contractor's or its affiliate's certificate of qualification to contract with the department upon its conviction in any state or federal court for a contract crime or upon its failure to notify the department of that fact within 30 days of its conviction. Requires the department to deny or suspend a certificate if a contractor or its affiliate has been charged in any indictment or information alleging the commission of a contract crime in this state. Provides for automatic reinstatement or granting of a certificate that has been denied or suspended under certain circumstances. Allows reinstatement or granting of a certificate.
contractor’s or its affiliate’s certificate subsequent to a denial, suspension, or revocation of the certificate upon a showing that it is in the public’s interest. Prescribes penalties to be imposed on a contractor or its affiliate which is convicted in this state of a contract crime. Provides that repeat offenders who are convicted of a contract crime in this state shall not be considered for reinstatement or qualification until 24 months from the date of the denial or revocation of its certificate based on the second conviction. Provides that a contractor or its affiliate whose certificate is revoked or suspended for committing a contract crime from acting as a prime contractor, a material supplier, a subcontractor, or a consultant on any department contract or project during the period of revocation or suspension. The denial, revocation, or suspension of a contractor’s or its affiliate’s certificate does not affect its obligations under preexisting contracts. Requires a contractor or its affiliate to notify the department if it is convicted of a contract crime. Provides the department with investigative authority. Requires the Department of Legal Affairs to obtain restitution for the Department of Transportation for damages and costs as a result of a violation of state or federal anti-trust laws. Twenty percent of all restitution obtained by the Department of Legal Affairs is to be deposited in the Legal Affairs Revolving Trust Fund. Provides that a contractor or its affiliate whose certificate is revoked, suspended, or whose certificate is not subject to s. 120.60 or s. 120.68(3), F.S. Prohibits the Division of Administrative Hearings from entering a stay order during the pendancy of any review proceedings of a final order of denial, revocation, or suspension. Authorizes a court to grant an injunction in denial, revocation, or suspension actions under certain conditions. Provides for confidentiality of official cost estimates and the identities of potential bidders.
By Senator Jenne

A bill to be entitled
An act relating to Department of Transportation contracts; creating s. 337.165, Florida Statutes; providing definitions; providing for denial, revocation, or suspension of a contractor's certificate of qualification for specified reasons; providing for a period of disqualification; providing for reinstatement of a certificate; providing for a continuation of obligations under preexisting contracts; providing penalties; providing notification requirements; providing investigative authority; creating s. 337.166, Florida Statutes; providing for disposition of certain moneys recovered; creating s. 337.167, Florida Statutes; providing that qualification to bid on state contracts is not a license; prohibiting administrative stays of denial, revocation, or suspension; providing criteria for injunctive relief; providing a finding of an immediate danger to public safety, health, and welfare; creating s. 337.168, Florida Statutes; providing a definite period of time during which the Department of Transportation's official project cost estimates and potential bidders' identities are exempt from the provisions of s. 119.07(1), Florida Statutes; providing that the Department of Transportation's bid analysis and monitoring system is exempt from the provisions of s.
WHEREAS, the Legislature finds that the procedures of the Department of Transportation for bidding and qualification of bidders on department contracts exist to secure the public benefits of free and open competition and to ensure the quality of public works, and

WHEREAS, the Legislature finds that the opportunity to bid on Department of Transportation contracts or to supply goods or services to the department is a privilege and not a right, and

WHEREAS, the Legislature finds that the privilege of transacting business with the Department of Transportation should be denied to persons or firms involved in contract crimes in order to preserve the integrity of the public contracting process. NOW, THEREFORE,

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

Section 1. Section 337.165, Florida Statutes, is created to read:

337.165 Contract crime; denial, revocation, or suspension of a certificate of qualification.--

(1) The following words and phrases when used in this section shall have the following meanings:

(a) "Contractor" means any person who bids or applies to bid on work let by the Department of Transportation or who provides professional services to the department. The term contractor shall include a contractor's officers, directors,
executives, shareholders active in management, employees, and agents.

(b) "Contract crime" means any act prohibited by state or federal criminal law which involves fraud, bribery, collusion, conspiracy, violation of state or federal antitrust laws, or material misrepresentation, committed in any federal or state jurisdiction with respect to a public contract.

(c) "Convicted" means any conviction of a contract crime, within any federal or state jurisdiction, with or without an adjudication of guilt, resulting from a jury or nonjury trial, or a plea of guilty or no contest.

(d) "Affiliate" means a predecessor or successor of a contractor under the same, or substantially the same, control or a group of business entities which is connected or associated so that one entity controls or has the power to control each of the other business entities. One business entity's ownership 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.

(2)(a) No contractor or its affiliate shall be qualified to bid when, after the notice and hearing, it is determined that it:

1. Has been convicted after the effective date of this act of a contract crime within the jurisdiction of any state or federal court outside the state;
2. Has failed to comply with the notification provisions of subsection (5);
3. Has been charged in any indictment or information alleging the commission of a contract crime within the state; or
4. Has been convicted of a contract crime within the state.

(b). In cases where subparagraphs 1., 2., or 4. of paragraph (a) apply, the department shall by a final order after notice and hearing deny or revoke the certificate of qualification of the contractor or its affiliate. Such revocation or denial of a certificate of qualification shall be for 36 months, unless the contractor or its affiliate is reinstated or qualified pursuant to paragraph (d). Upon reinstatement or qualification pursuant to paragraph (d), the certificate of qualification of a contractor or its affiliate shall not thereafter be denied or revoked for conviction of contract crime committed outside the state prior to the effective date of such reinstatement or qualification.

2. In cases where subparagraph 3. of paragraph (a) applies, the department shall by a final order after notice and hearing deny or suspend the certificate of qualification of the contractor or its affiliate. Such denial or suspension shall continue until resolution of the criminal charges or until the contractor or its affiliate is reinstated or qualified in accordance with paragraphs (d) or (e).

(c) A contractor or its affiliate whose certificate of qualification has been denied or revoked by reason of acts of contract crime for which it is convicted in this state and for which it is convicted upon a subsequent indictment or information alleging contract crime committed in this state within 5 years of such denial or revocation shall not be considered for reinstatement or qualification pursuant to paragraph (d) until 24 months after the date of the denial or revocation based upon such subsequent conviction.
(d) A contractor or affiliate whose certificate of qualification has been denied, revoked, or suspended may be reinstated or qualified upon such terms and conditions as the department may prescribe upon finding it in the public interest. In determining whether reinstatement is in the public interest, the department shall request the advice of the Department of Legal Affairs and thereafter shall consider relevant mitigating circumstances, including, but not limited to, the following:

1. The degree of culpability;
2. Prompt and voluntary payment of damages to the state as a result of the contractor’s violation of state or federal antitrust laws;
3. Cooperation with any state or federal prosecution or investigation of contract crime;
4. Disassociation with those involved in a contract crime;
5. Reinstatement in other state or federal jurisdictions; and
6. The needs of the department in completing its construction programs in a timely, cost-effective manner.

(e) A contractor or its affiliate whose certificate of qualification has been denied or suspended because the contractor or its affiliate has been charged in an indictment or information alleging the commission of a contract crime within the state shall be entitled to the grant of a certificate of qualification or the reinstatement of a certificate of qualification automatically upon filing a certified copy of an order dismissing the indictment or information or containing a final adjudication that the contractor or its affiliate is not guilty of the commission of
a contract crime, or conditionally upon the filing of an affidavit by the contractor or its affiliate denying that it committed the contract crime or crimes charged in the indictment or information. Should the contractor or its affiliate, after having been conditionally granted a certificate of qualification or having obtained a conditional reinstatement of a suspended certificate of qualification upon the filing of an affidavit or affidavits be adjudicated guilty of the contract crime or contract crimes charged, the contractor or its affiliate which is adjudicated guilty shall pay on all contracts awarded to it under and during the conditional certificate of qualification a penalty in addition to any other fine or penalty and in addition to all damages recoverable or payable in law, as follows:

1. Ten percent of the total contract price of all contracts let by the department upon which the contractor or its affiliate acted as a prime contractor or as consultant;

2. Ten percent of the prime contract bid amount for all line items for which the contractor or its affiliate was awarded subcontract work; or

3. Ten percent of the price of all materials or equipment supplied by the contractor or its affiliate.

These payments shall be in addition to any other sanctions or remedies available to the state. Such payments shall be computed upon any new work obtained during the period between the reinstatement of the certificate pursuant to this paragraph and the date of conviction. The failure of a contractor or its affiliate to file the affidavit required for reinstatement pursuant to this paragraph shall not be...
(3) A contractor or its affiliate whose certificate of qualification is revoked or suspended pursuant to this section shall not act as a prime contractor, a material supplier, a subcontractor, or a consultant on any department contract or project during the period of such revocation or suspension.

(4) The denial, revocation, or suspension of a contractor’s or affiliate’s certificate of qualification shall not affect the contractor’s or its affiliate’s obligations under any preexisting contract.

(5) A contractor or its affiliate which is qualified or which is seeking to be qualified by the department shall notify the department within 30 days of a conviction for a contract crime applicable to it or to any of its affiliates, or to any officers, directors, employees, or agents of it or any of its affiliates.

(6) Whenever the department has reason to believe that a contractor or its affiliate which is qualified or seeking qualification by the department has been convicted or charged in any indictment or information with the commission of a contract crime, or may be affiliated with a person or entity so convicted or charged, the department may issue a written demand upon the contractor or its affiliate, concerning any such conviction charge or affiliation, to appear and be examined under oath, to answer written interrogatories under oath, and to produce documents or other tangible evidence for inspection and copying.

(7) The provisions of this act are not in derogation of existing remedies available to the department and such remedies remain in full force and effect.
Section 2. Section 337.166, Florida Statutes, is created to read:

337.166 Moneys recovered for violations of antitrust laws.—In accordance with the provisions of s. 16.53, 20 percent of all moneys recovered from a contractor or its affiliate on behalf of the state by reason of any decree or settlement in any state or federal antitrust claim prosecuted by the Attorney General shall be deposited in the Legal Affairs Revolving Trust Fund. The remainder of the moneys recovered shall be deposited in the State Transportation Trust Fund instead of the General Revenue Fund as generally provided under s. 16.53.

Section 3. Section 337.167, Florida Statutes, is created to read:

337.167 Administrative procedures; stays and injunctions.—

(1) A certificate of qualification to bid on a Department of Transportation contract, or other form of authorization required to supply goods or services to the department, is not a license as defined in s. 120.52(7). The denial, revocation, or suspension of a certificate of qualification or other authorization is not subject to the provisions of s. 120.50 or s. 120.68(3). The provisions of s. 120.57 are applicable to the denial, revocation, or suspension of such certificate or other authorization.

(2) For the purpose of promulgating emergency rules, the continuation of the bidding, contracting, or supplying privileges of a contractor or its affiliate which is convicted of contract crime, or which is charged by indictment or information with commission of contract crime in this state,
represents an immediate danger to the public health, safety, and welfare.

(3) The denial, revocation, or suspension of a certificate of qualification for reasons of contract crime shall not be stayed by the department or by the Division of Administrative Hearings during the pendency of any review proceedings concerning a final order of denial, revocation, or suspension.

(4) A court may grant a stay or injunction in an action relating to the denial, revocation, or suspension of a certificate of qualification only upon the posting of a bond by the petitioner seeking a stay or injunction, and provided that the court granting a stay or injunction finds:

(a) The petitioner has a substantial likelihood of success on the merits;

(b) The threatened harm or injury to the petitioner clearly outweighs any possible injury to the state occasioned by granting the stay or injunction; and

(c) It is in the public interest to grant the stay or injunction.

Section 4. Section 337.168, Florida Statutes, is created to read:

337.168 Confidentiality of official estimates and bid analysis and monitoring system. --

(1) A document or electronic file revealing the Department of Transportation’s official cost estimate of a project is exempt from the provisions of s. 119.07(1) until the contract for the project has been executed.

(2) A document revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by the
The department is exempt from the provisions of s. 119.07(1) until the deadline for receiving bids on the project.

(3) The Department of Transportation's bid analysis and monitoring system is exempt from the provisions of s. 119.07(1). This exemption shall apply to all system documentation, input, computer processes and programs, electronic data files, and output, but shall not apply to the actual source documents, unless otherwise exempted under other provisions of law.

Section 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 6. This act shall take effect October 1, 1983.

HOUSE SUMMARY

Requires the Department of Transportation to deny or revoke for 3 years a contractor's or its affiliate's certificate of qualification to contract with the department upon its conviction in any state or federal court for certain contract crimes or upon its failure to notify the department of that fact within 30 days of its conviction. Requires the department to deny or suspend a certificate if a contractor or its affiliate has been charged in any indictment or information alleging the commission of a contract crime in this state. Provides for automatic reinstatement or granting of a certificate that has been denied or suspended under certain circumstances. Allows reinstatement or granting of a contractor's or its affiliate's certificate subsequent to a denial, suspension, or revocation of the certificate upon a showing that it is in the public interest. Provides that repeat offenders who are convicted of a contract crime in this state shall not be considered for reinstatement or qualification until 24 months from the date of the denial or revocation of its certificate based on the second conviction. Prohibits penalties to be imposed on a contractor or its affiliate which is convicted in this state of a contract crime. Prohibits a
contractor or its affiliate whose certificate is revoked or suspended for committing a contract crime from acting as a prime contractor, a material supplier, a subcontractor, or a consultant on any department contract during the period of revocation or suspension. Provides that the denial, revocation, or suspension of a contractor’s or its affiliate’s certificate does not affect its obligations under preexisting contracts.

Provides the department with investigative authority. Provides for deposit of moneys recovered as result of violations of state or federal antitrust laws in the Legal Affairs Revolving Trust Fund and the State Transportation Trust Fund. Provides that a certificate of qualification is not a license and that the denial, suspension, or revocation of a certificate is not subject to s. 120.60 or s. 120.65(3), F.S. Prohibits the Division of Administrative Hearings from entering a stay order during the pendency of any review proceedings of a final order of denial, revocation, or suspension. Authorizes a court to grant an injunction in denial, revocation, or suspension actions under certain conditions. Provides for confidentiality of official cost estimates, potential bidders’ identities, and the department’s bid analysis and monitoring system.
A bill to be entitled
An act relating to Department of Transportation
contracts; adding s. 337.165(7), Florida
Statutes, as created by section 2 of chapter
83-4, Laws of Florida; providing additional
penalties for contractors or affiliates
convicted of contract crimes if the trial or
plea of nolo contendere occurred more than 180
days after notification of the charges and the
delay did not result in a joint stipulation;
providing an effective date.

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

Section 1. Subsection (7) is added to section 337.165,
Florida Statutes, as created by section 2 of chapter 83-4,
Laws of Florida, to read:

337.165 Contract crime; denial or revocation of a
certificate of qualification.— If a contractor or affiliate who has been
charged in an information or indictment with the commission of
a contract crime within this state is convicted of such
contract crime, and the conviction is the result of a trial or
entry of a plea of guilty or nolo contendere which commenced
or occurred more than 180 days after the date on which the
contractor or affiliate was formally notified of the charges
contained in the information or indictment, and the delay
beyond 180 days did not result from a joint stipulation of the
prosecution and the defense, the convicted contractor or
affiliate shall pay to the appropriate state agency a penalty
equal to:

CODING: Words in capsule type are deletions from existing law; words w/undersw underscore are additions.
1. Ten percent of the total contract price of all contracts let by a state agency upon which the contractor or affiliate acted as a prime contractor or as consultant;

2. Ten percent of the prime contract bid amount for all line items for which the contractor or affiliate was awarded subcontract work; and

3. Ten percent of the price of all materials or equipment supplied by the contractor or affiliate.

(b) This penalty shall be in addition to any other sanctions or remedies available to the state. Such penalty shall be computed upon any new work obtained after 180 days after formal notification of the contractor or affiliate of the charges against him and before the date of conviction.

(c) For purposes of this subsection, a jury trial commences when the trial jury panel for that specific trial is sworn for voir dire examination and a non-jury trial commences when the trial proceedings begin before the judge.

Section 2. This act shall take effect October 1, 1983.

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SENATE SUMMARY

Provides additional penalties for contractors or affiliates convicted of contract crimes if the trial or plea of nolo contendere occurred more than 180 days after notification of the charges and the delay did not result from a joint stipulation of the prosecution and the defense.