

CHAPTER 87-100

Committee Substitute for House Bill No. 123

A bill to be entitled

An act relating to transportation-related contracts; amending s. 212.055, F.S.; providing that proceeds of a charter county transit system surtax may be remitted to an expressway authority or transportation authority for specified purposes; providing for the reduction of the surtax rate in specified circumstances; amending s. 120.53, F.S.; amending s. 120.53, F.S.; prescribing time within which a hearing officer in a protest hearing shall render a recommended order; amending s. 337.015, F.S.; providing direction with respect to the administration of public transportation contracts; requiring the department to report annually on the administration of public transportation contracts; amending s. 337.105, F.S.; providing for suspension of persons or firms providing professional services; amending s. 337.11, F.S.; providing that a person protesting an award must post a bond in a specified amount; providing for the payment of certain costs and charges; providing circumstances in which the department may proceed with bid solicitation or contract award; requiring department contracts to contain a provision requiring the prime contractor to pay all affected subcontractors and suppliers for work completed; requiring the documentation and monitoring of claims not paid by the contractor; amending s. 337.14, F.S.; increasing the construction contract amount for which certification is required; authorizing the department to limit the dollar amount or the total dollar volume of contracts which a person is allowed to have under contract at one time; providing for waiver of contract bond; creating s. 337.145, F.S., providing for offsetting payments by the department; amending s. 337.16, F.S., directing payment of liquidated damages upon delinquency; providing for denial or suspension of certificates of qualification by the department with respect to certain contracts; creating s. 337.175, F.S., establishing retainage provisions; amending s. 337.18, F.S., authorizing the waiver of requirement of a surety bond under certain circumstances; increasing the daily liquidated damages charge for certain contract defaults; establishing penalty provisions; amending s. 337.185, F.S., authorizing binding private arbitration; amending s. 337.403, F.S., allowing the department to participate in certain work that exceeds cost estimates; limiting the amount of departmental participation; creating s. 337.221, F.S., requiring the department to prepare quarterly reports on disputed contractual claims; amending s. 341.322, F.S.; revising and adding definitions; amending s. 341.332, F.S.; prescribing additional standards in the award of franchises; amending s. 341.338, F.S.; providing rulemaking authority with respect to requests for proposals; amending s. 341.343, F.S.; providing for

extensions of time in review of applications; amending s. 341.355, F.S.; providing rulemaking authority with respect to assessment of franchise components; amending s. 341.363, F.S.; providing that franchise conditions take precedence over nonprocedural standards, rules, or regulations; amending s. 341.368, F.S.; revising procedures for modifications of franchise; providing for applicability of certain sections of the act to specified contracts; providing an effective date.

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

Section 2. Subsection (5) of section 120.53, Florida Statutes, is amended to read:

120.53. Adoption of rules of procedure and public inspection

(5) An agency which enters into a contract pursuant to the provisions of ss. 282.301-282.313, chapter 255, chapter 287, or chapters 334-349 shall adopt rules specifying procedures for the resolution of protests arising from the contract bidding process. Such rules shall at least provide that:

(a) The agency shall provide notice of its decision or intended decision concerning a bid solicitation or a contract award as follows:

1. For a bid solicitation, notice of a decision or intended decision shall be given by United States mail or by hand delivery.

2. For any other agency decision, notice of a decision or intended decision shall be given either by posting the bid tabulation at the location where the bids were opened or by certified United States mail, return receipt requested. The notice required by this paragraph shall contain the following statement: "Failure to file a protest within the time prescribed in s. 120.53(5), Florida Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes."

(b) Any person who is affected adversely by the agency decision or intended decision shall file with the agency a notice of protest in writing within 72 hours after the posting of the bid tabulation or after receipt of the notice of the agency decision or intended decision and shall file a formal written protest within 10 days after the date he filed the notice of protest. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under chapter 120. The formal written protest shall state with particularity the facts and law upon which the protest is based.

(c) Upon receipt of THE FORMAL WRITTEN *** protest which has been timely filed, the agency shall stop the bid solicitation process or the

contract award process until the subject of the protest is resolved by final agency action, unless the agency head sets forth in writing particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(d) The agency, on its own initiative or upon the request of a protestor, shall provide an opportunity to resolve the protest by mutual agreement between the parties within 7 days, excluding Saturdays, Sundays, and legal holidays, of receipt of a formal written protest.

1. If the subject of a protest is not resolved by mutual agreement within 7 days, excluding Saturdays, Sundays, and legal holidays, of receipt of the formal written protest and if there is no disputed issue of material fact, an informal proceeding shall be conducted pursuant to s. 120.57(2) and applicable agency rules before a person whose qualifications have been prescribed by rules of the agency.

2. If the subject of a protest is not resolved by mutual agreement within 7 days, excluding Saturdays, Sundays, and legal holidays, of receipt of the formal written protest and if there is a disputed issue of material fact, the agency shall refer the protest to the division for proceedings under s. 120.57(1).

(e) Upon receipt of a formal written protest referred pursuant to this subsection, the division director shall expedite the hearing and assign a hearing officer who shall conduct a hearing within 15 days of the receipt of the formal written protest by the division AND RENDER A RECOMMENDED ORDER WITHIN 30 DAYS AFTER THE HEARING OR WITHIN 30 DAYS AFTER RECEIPT OF THE HEARING TRANSCRIPT BY THE HEARING OFFICER, WHICHEVER IS LATER. The provisions of this paragraph may be waived upon stipulation by all parties.

(f) The Administration Commission shall promulgate model rules of procedure pursuant to the provisions of s. 120.54(10) for the filing of notice of protests and formal written protests.