

STORAGE NAME: h0867.ca

DATE: March 9, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 867

RELATING TO: Public Construction/Bids

SPONSOR(S): Representative Brummer

COMPANION BILL(S): SB 1906 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS
 - (2) BUSINESS REGULATION & CONSUMER AFFAIRS
 - (3) EDUCATION APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

The bill amends current law regarding competitive bidding for local public construction work. The bill requires a county, municipality, special district, or other political subdivision (local government) to competitively award contracts in excess of \$100,000. The bill requires that the local government establish, by municipal or county ordinance or special resolution, procedures for conducting the bidding process. Moreover, the bill removes various exceptions now currently applicable to public construction projects. The bill requires that when the local governing board decides that it is in the best interest to award the project to a private contractor, that it do so using specific substantive criteria and administrative procedures. The bill provides a standing provision for a licensed contractor or vendor to sue the appropriate local government. Lastly, the bill provides for recovery of attorney's fees unless the court finds that the challenge was frivolous.

The bill has an indeterminate fiscal impact on local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 255.20, F.S. requires counties, municipalities, special districts, or other political subdivisions of the state (collectively referred to as local governments) to competitively award contracts to construct or improve a public building, or other public construction works that cost in excess of \$200,000.

There are various exceptions to the competitive award requirement. For example, some exceptions include:

- repairs caused by accident
- reconstruction that needs to be completed immediately for public health or safety reasons
- repairs to an existing public facility
- improvements by a utility commission whose major contracts are to construct and operate a public electric utility system
- projects undertaken as part of a public education program

Pursuant to a noticed public meeting under section 268.001, F.S., a local governing board may, by majority vote, decide that it is in the public's best interest that local government employees perform the project. The public notice must be published at least 14 days prior to the date of the public meeting at which the governing board takes final action. In deciding whether it is in the public's best interest for the local government to have its employees perform the job, the governing board may consider several factors, such as:

- cost of the project
- whether the project requires an increase in capital expenditures for public facilities
- the impact on local economic development
- the impact on small and minority business owners
- the impact on state and local tax revenues
- whether the private sector contractors provide health insurance and other benefits equivalent to those provided by the local government
- any other relevant factor

In addition, section 255.20, F.S., establishes requirements for the use of appropriately registered or certified contractors on local government projects above \$200,000 where the project is to be performed by local government employees.

B. EFFECT OF PROPOSED CHANGES:

The bill makes the following changes to current law:

- Changes the threshold level in which local governments must competitively award public construction projects from \$200,000 to \$100,000.
- Requires that the local government establish by municipal or county ordinance or special resolution, procedures in conducting the bidding process.
- Removes the exception for construction, remodeling, repair, or improvement by a utility commission whose major contracts are to construct and operate a public electric utility system.
- Removes the exception for a project to repair or maintain an existing public facility.
- Requires that the exception for a project undertaken exclusively as part of a public educational program also be for the purpose of education or training.
- Restates the exception for a project whose funding source will be diminished or lost because the time needed to competitively award the project exceeds the time within which the funding must be spent, to include no fault of the owner.

- Requires that when a governing board finds by a majority that it is in the public's best interest for local government employees to perform the project, that the exception from competitive bidding extend to only those projects where the construction cost for the local government would be less than that for a private sector contractor.
- Requires governing boards to consider various specific factors when deciding the public's best interest exception.
- Requires local governing boards when deciding that it is in the best interest to award to a private sector contractor, do so upon consideration of specific substantive criteria and administrative procedures expressly set forth in a charter, ordinance, or resolution adopted prior to July 1, 1994.
- Adds a standing provision for a licensed contractor or vendor interested in submitting an offer to perform work under this section to sue the appropriate local government.
- Provides for recovery of attorneys fees unless the court finds that the challenge frivolous.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill requires that the local government establish by municipal or county ordinance, or special resolution, procedures for conducting bidding process.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The addition or reduction of responsibilities, obligations, or other work will depend on the bidding process established by the local government.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

An agency or program is not eliminated or reduced.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

The bill does not purport to provide services to families and children.

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

The bill does not create or change a program providing services to families or children.

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. STATUTE(S) AFFECTED:

Section 255.20, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1 -- Amends Section 255.20, F.S.

Section 255.20 (1) - changes the threshold level in which counties, municipalities, special districts and political subdivisions (local government) must competitively award public construction works from \$200,000 to \$100,000; provides that construction costs include the cost of all overhead; requires that the local government establish, by municipal or county ordinance or special resolution, procedures in conducting the bidding process.

Section 255.20 (1)(a)(3) - requires that the exception for construction, remodeling, repair, or improvement to a public electric gas utility system performed by personnel of the system also be for work that requires the use of forces specially trained to work with electricity or combustible areas.

Section 255.20(1)(a)(4) - removes the exception for construction, remodeling, repair, or improvement by a utility commission whose major contracts are to construct and operate a public electric utility system.

Section 255.20(1)(a)(5) - removes the exception for a project to repair or maintain an existing public facility.

Section 255.20(1)(a)(6) - requires that the exception for a project undertaken exclusively as part of a public educational program also be for the purpose of education or training.

Section 255.20(1)(a)(7) - restates the exception for a project whose funding source will be diminished or lost because the time needed to competitively award the project exceeds the time within which the funding must be spent, include no fault of the owner.

Section 255.20(1)(a)(9) - requires that when governing boards find by a majority that it is in the public's best interest for local government employees to perform the project, the exception apply to only those projects where the construction cost for the local government would be less than that for a private sector contractor; requires governing board to consider various specific factors in deciding the public's best interest exception.

Section 255.20(1)(a)(10) - requires that the when the local governing board of the local government decides that it is in the best interest to award to a private sector contractor, that it do so upon consideration of specific substantive criteria and administrative procedures expressly set forth in a charter, ordinance, or resolution adopted prior to July 1, 1994; requires that the criteria and procedure be applied uniformly by the local government to avoid award of any project in an arbitrary or capricious manner; requires that in the event that the project is awarded in a method other than a competitive bid, the governing board (1) find upon substantial credible evidence that there is one licensed contractor that is uniquely qualified and that the work is of a specialized nature that obtaining competitive bids is not possible, or (2) time constraints that are of no fault of the public owner or its agents; requires that if the project is to be awarded by method other than a competitive selection process, the architect or engineer of record has provided a written recommendation that the project be awarded to the private sector contractor without a competitive selection and the considerations and justifications for the decision by the local government are documented in writing.

Section 255.20(1)(c) - changes the threshold level from \$200,000 to \$100,000 where a local government issues registered contractor licenses and decides to use its own employees for a project; requires that the local government use a licensed contractor; changes starting date of such project from July 1, 1996, to July 1, 1999.

Section 255.20(1)(d) - changes the threshold level from \$200,000 to \$100,000 where a local government does not issue registered contractor licenses and decides to use its own employees; requires that the local government use a licensed contractor if the project would require a licensed contractor if performed by a private contractor; changes starting date of such project from July 1, 1996, to July 1, 1999.

Section 255.20(4) - adds a standing provision for a licensed contractor or vendor interested in submitting an offer to perform work under this section to sue the appropriate local government.; provides for recovery of attorneys fees unless the court finds that the challenge frivolous.

Section 2 -- Provides for an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate.

2. Direct Private Sector Benefits:

Indeterminate.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate.

D. FISCAL COMMENTS:

There is debate as to whether competitively awarding local government construction contracts will be a cost benefit or a cost burden. Many local governments bid out their contracts because they do not have the capacity or personnel to participate in that role. Others have threshold requirements and any contract in excess of that amount is competitively bid. Implementing the bidding process has inherent costs. For example, the costs incurred by way of advertising and bid review and selection. The question is, if the local government is required to bid contracts does it save sufficient money by doing so, to offset the costs associated with nonuse of existing personnel and equipment. Opinions and studies vary as to the answer to these questions. Accordingly, the fiscal impact on local government is indeterminate.

The overall impact on the private construction sector would be beneficial, although there are significant costs associated with preparing a bid which must be absorbed by the private sector bidder if that bidder is unsuccessful. If a private sector bidder is awarded the bid, it would provide employment for private sector employees (and possibly negative ramifications for public employees) and general profits for the bidder, which may potentially stimulate growth in the economy.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Article VII, Sec. 18, of the Constitution of the State of Florida excuses local governments from complying with state mandates which impose negative fiscal consequences. Subsection (a) provides, "No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds" unless certain requirements are met. However, several exemptions and exceptions exist.

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Subsection (d) of Art. VII, Sec. 18, exempts those laws which have an insignificant fiscal impact from the requirements of the mandates provision. Whether a particular bill results in a significant impact must be determined on an aggregate, statewide basis. Any bill which requires an expenditure of greater than \$1.4 million is considered to produce a significant impact.

Counties, municipalities, and special districts not already competitively awarding contracts over \$100,000 may incur additional expense if required to competitively award such contracts. The overall collective financial impact would appear unlikely to exceed \$1.4 million per year in the aggregate, in light of the potential savings some counties, municipalities, and special districts may experience as a result of the competitive process. Accordingly, it would appear that requiring a competitive award of such contracts is not violative of the mandate provisions.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

The Underground Utility Contractors of Florida (UUCF) has documented several abuses to Chapter 255.20, F.S. UUCF states that some jurisdictions have not exercised sound public policy when they entered into sole source construction contracts. They point out that these jurisdictions use their own employees in work projects in excess of the \$200,000 threshold, and often bid against private sector contractors without the benefit of an established criteria to ensure a level playing field. UUCF believes that HB 867 is the most effective way of eliminating these abuses.

The Florida League of Cities, The Florida Association of Counties, and The Special Districts Association oppose the bill for the reason that a reduction in the threshold level of \$200,000 will not alleviate any possible enforcement issues.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

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