

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 611 Public Construction Projects
SPONSOR(S): Economic Development & Community Affairs Policy Council, Roads Bridges & Ports Policy Committee and Hukill
TIED BILLS: **IDEN./SIM. BILLS:** SB 616

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Roads, Bridges & Ports Policy Committee	13 Y, 7 N, As CS	Cater	Miller
2)	Economic Development & Community Affairs Policy Council	15 Y, 0 N, As CS	Cater	Tinker
3)	Finance & Tax Council			
4)				
5)				

SUMMARY ANALYSIS

Current law requires a county, municipality, special district, or other political subdivision of the state seeking to improve a public building, structure, or other public construction work to award the work competitively for projects that cost more than \$200,000. A political subdivision, however, can award the project without competitive bidding under certain circumstances, such as when funds for the project will be diminished or lost under the project; or when the governing body of the local government, in a public meeting, determines that it is in the public's best interest to perform the project with the local government's own services, employees, and equipment.

The bill revises various statutory requirements concerning competitively bidding public construction projects. The bill specifically:

- Revises the threshold amounts where a local government must put a project out for competitive bid.
- Defines the terms "repair" and "maintenance" for the purpose of this bill.
- Requires public notice prior to a local government performing certain projects.
- Provides that the public notice prior to making a public interest determination must include a detailed cost estimate of the project.
- Provides for exemptions for local governments operating a public use airport, certain ports, a public transit system, or a mass transit system.

The bill has an effective date of July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Law

Section 250.20, F.S., requires a county, municipality, special district,¹ or other political subdivision² of the state seeking to improve a public building, structure, or other public construction work to competitively award construction projects that cost more than \$200,000. However, the threshold for electrical work is \$50,000. These amounts are adjusted annually for inflation. The requirement does not apply, for example, when:

- Repairing or replacing an existing public facility damaged or destroyed by an unexpected turn of events such as fire or flood;
- Repairing or maintaining an existing public facility;
- The funding source of the project will be diminished or lost because the time required to competitively award the project after the funds become available exceeds the time within which the funding source must be spent; or
- The local government's governing board finds by majority vote that it is in the public's best interest to perform the project using its own services, employees, and equipment.³

Proposed Changes

The bill amends s. 255.20, F.S. related to local bids and contracts for public construction works. The bill increases the threshold where a county or municipality must competitively award the construction

¹ The statute applies to special districts as defined in ch. 189, F.S. Section 189.403(1), F.S., defines "special district" as a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. . . The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, F.S., a municipal service taxing or benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

² Section 1.01(8), F.S. defines "political subdivision" to "include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in the state."

³ Section 255.20(1)(c), F.S.

project to \$300,000. Adjusted for inflation, the current threshold is approximately \$285,000. and \$75,000 for electrical work.

For purposes of this section, the bill defines “repair” and “maintenance.” Repair is defined as corrective action to restore an existing public facility to a safe and functional condition. Maintenance is defined as preventative or corrective action to maintain an existing public facility in an operational state or to preserve the facility from failure or decline. Repair and maintenance includes activities that are necessary and incidental to repairing or maintaining the facility.

However, repair or maintenance does not include:

- The construction of any new building, structure, or other public works construction.
- Any substantial addition, extension, or upgrade to an existing public facility where its cost, in accordance with generally accepted cost-accounting principles, is more than 20 percent of the total cost of the repair or maintenance project.

For any repair or maintenance project that includes an addition, extension, or upgrade to an existing public facility and the local government will perform the work using its own services, employees, and equipment, the bill requires the local government to publish a public notice identifying the project and the components and scope of the work at least 30 days prior to beginning the repair or maintenance. The public notice is required to state the estimated total cost of the project and the cost of the addition, extension, or upgrade, using generally accepted cost-accounting principles that fully account for all costs associated with the project. These costs must include employee compensation and benefits, equipment cost and maintenance, insurance cost and materials. For 30 days following the publication of the public notice, the local government is required to make available for public inspection, a detailed break-down of each component of the estimated cost of the project and documentation explaining the methodology used to arrive at the estimated cost.

If the governing board of the local government wishes to perform a project using its own services, employees, and equipment it must make a determination in a public meeting that it is in the public's best interest to do so. Current law requires the public notice to be given at least 14 days prior to the meeting. The bill increases the length of time to 30 days. The bill requires the notice to identify the project, the components and scope of the work, and the estimated cost of the project. The estimated cost must be determined using generally accepted cost-accounting principles that fully account for all costs associated with the project. These costs must include employee compensation and benefits, equipment and maintenance, insurance costs, and materials. For 30 days following the publication of the notice, the local government is required to make available for public inspection a detailed break-down of the components of the estimated cost of the project and documentation explaining the methodology used to arrive at the estimated cost. At the public meeting, any qualified contractor or vendor, who could have been awarded the project, if it was competitively bid, shall have adequate opportunity to present evidence regarding the project and the accuracy of the local governments estimated cost.

The bill requires the local government, to consider the estimated cost of the project and the accuracy of its estimated cost in light of any other information provided at the public meeting.

The bill provides exemptions from the competitive bidding requirements to local governments owning or operating a public-use airport, certain ports, a public transit system, or a mass transit system, if it is using its own services, employees, or equipment to do work on buildings, structures, or public construction works related to those systems.

The bill changes the statute as it relates to the inflation adjustment. The bill changes the index to be used from the Consumer Price Index to the Engineering News Record's Building Cost Index,⁴ which

⁴ The Engineering News Record's Building Cost Index is widely used in the construction industry and contains both a materials and labor component.

better reflects construction costs. It also changes the base date of the inflation adjustment from January 1, 2004, to January 1, 2009.

The bill has an effective date of July 1, 2009.

B. SECTION DIRECTORY:

Section 1 Amends s. 250.20, F.S., relating to local bids and contracts for public construction works.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS

2. Expenditures:

See FISCAL COMMENTS

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill gives qualified contractors or vendors the opportunity to review a local government's cost estimates, and in some cases gives the contractors or vendors the opportunity to present information regarding the accuracy of the cost estimate. This may lead to some additional projects being awarded to outside contractors instead of being done by the local government's own employees.

D. FISCAL COMMENTS:

The bill requires local governments to provide public notice, including cost estimates, prior to conducting certain repair and maintenance activities, and prior to certain public meetings. Giving qualified vendors the opportunity to review cost estimates and provide additional information, may lead to more accurate cost estimates. However, the exact fiscal impact is unknown since it is unknown what projects local governments will undertake.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill requires public notice when a repair or maintenance project includes an addition, extension, or upgrade to an existing public facility which the local government will perform using its own services, employees and equipment. However, the exemption for an insignificant fiscal impact appears to apply.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The bill contains some language inconsistencies where it refers to both governmental entity and local government. However, both of these terms are currently used in the existing statute being amended.

The reference to "Engineering News Records" appears to be missing an apostrophe in "Records".

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 18, 2009, the Roads, Bridges & Ports Policy Committee adopted one amendment to the bill. This amendment changed the requirement for local governments to accept responsive bids. The bill as originally filed required local governments to accept responsive bids up to 10 percent greater than the local government's estimated cost of the project. The bill as amended allows local governments to perform the work in-house if all of the bids are greater than the local government's estimated cost of the project.

The bill was reported favorable as a committee substitute.

On April 1, 2009, the Economic Development & Community Affairs Policy Council adopted a strike-all amendment. This amendment:

- Increases the threshold where local governments are required to put projects out for competitive bid.
- Defines "repair" and "maintenance" for purposes of this section.
- Requiring public notice before local governments perform certain projects using its own resources.
- Requiring certain public notices to contain detailed cost estimates.
- Permitting qualified contractors to present evidence to a local government's governing board regarding a project and the accuracy of the local government's cost estimate.
- Changes the index for determining the rate of inflation from the Consumer Price Index to the Engineering News Records Building Cost Index.
- Changes the base date for the inflation adjustment from January 1, 2004 to January 1, 2009.

The strike-all also deleted provisions in the original bill related to:

- The diminished funding source exemption only applying when the governmental entity did not contribute to any delay.
- The competitive bid requirement prior to the public interest determination and the requirement that the local government may only do the project if all the responsive bids are greater than local government's estimate cost.
- Allowing preference to local businesses only in the event of a tie bid.

The bill was reported favorably as a council substitute.