

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/SB 616

INTRODUCER: Community Affairs Committee and Senator Haridopolos

SUBJECT: Public Construction Projects

DATE: April 14, 2009 REVISED: 04/16/09

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|------------------|
| 1. | Wolfgang | Yeatman | CA | Fav/CS |
| 2. | McKay | Wilson | GO | Fav/2 amendments |
| 3. | | | GA | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input checked="" type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

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

- Increases the cost of projects that would require local governments to competitively bid.
- Allows contractors to be considered ineligible to bid if they have been found guilty of violating certain laws within the last 5 years.
- Defines the terms repair and maintenance.
- Requires local governments to publish public notice 30 days in advance of their intent to conduct repairs when the repairs involve an upgrade.
- Increases the length of notice required before a local government can take a final action to decide to carry out a construction project itself.
- Requires notices to include detailed information about any project the local government intends to carry out itself.
- Exempts airports, ports, and public transit systems from competitive bidding requirements when performing repairs or maintenance.

This bill substantially amends section 255.20 of the Florida Statutes.

II. Present Situation:

Local Government Competitive Bidding Process

Section 255.20, 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. 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

County Repair of Existing Roads and Bridges

Section 336.41, F.S., authorizes counties to employ labor and provide equipment, as necessary, for the repair and maintenance of existing roads and bridges. A county may use its proceeds from the 80-percent portion of the surplus of the constitutional fuel tax for all construction and reconstruction of roads and bridges, including resurfacing, full scale mineral seal coating, and major bridge and bridge system repairs. Such projects shall be let to contract to the lowest responsible bidder by competitive bid with several exceptions. These exceptions include the construction and reconstruction, and bridge repairs, having a total cumulative annual value not to exceed 5 percent of the 80-percent portion of the constitutional fuel tax or \$400,000, whichever is greater.

III. Effect of Proposed Changes:

Section 1 amends s. 255.20, F.S., to increase the cost that triggers the statutory requirement to competitively bid a project from \$200,000 to \$300,000. For electrical work, the cost that triggers the competitive bidding process is increased from \$50,000 to \$75,000.

The CS uses the term “governmental entity,” as opposed to “a county, municipality, special district ... or other political subdivision,” to specify what parties may require that certain construction workers under contract be certified.

The CS states that any contractor may be considered ineligible to bid if the contractor has been found guilty of violating certain laws within the past five years.

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.

The CS defines “repair” as corrective action to restore an existing public facility to a safe and functional condition. The CS defines “maintenance” to mean preventative or corrective action for the purpose of maintaining an existing public facility in an operational state or preserving the facility from failure or decline, but does not include:

- the construction of any new building, structure, or other public construction works; or
- any substantial addition, extension, or upgrade to an existing public facility, for which the cost is more than 20 percent of the total cost of the repair or maintenance project.

The CS requires local governments to publish notice identifying any maintenance or repairs that include an addition, extension, or upgrade that the local government intends to do itself at least 30 days before commencing the repair or maintenance. The public notice must contain the cost of the project, and the local government must also make available detailed information about all of the costs associated with the project.

The CS increases the public notice time for the public meeting wherein the local government will decide whether or not to bid a project or use its own staff from 14 to 30 days. The CS specifies that the notice must include information about the scope of the work and all costs associated with the work, including: employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials. The CS requires the local government to make available to the public a detailed itemization of each component of the estimated cost of the project. Contractors or vendors may present evidence to the governing board regarding the project and the accuracy of the estimated cost of the project.

The CS increases the cost that triggers the statutory requirement to competitively bid a project for projects such as roads and bridges under Chapter 336, F.S, from \$200,000 to \$300,000. For electrical work, the cost that triggers the competitive bidding process is increased from \$50,000 to \$75,000.

The CS exempts airports, ports, and public transit systems from competitive bidding requirements when performing repairs or maintenance.

Section 2 provides an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Private companies could see increased revenues as local governments will be required to competitively bid more projects.

C. Government Sector Impact:

Local governments may not be able to respond as quickly to repairs and maintenance because they will be required to give 30 days' notice before carrying out the work themselves. Increased costs associated with delaying repairs or maintenance or bidding out such a project are undetermined at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill changes "county, municipality, special district, or other political subdivision of the state" to read "governmental entity." While that chapter of law has a definition for "local governmental entity" there is no definition for "governmental entity" elsewhere in the chapter. There are a number of different definitions of "governmental entity" in other sections of law. This is a point that could use clarification.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on April 6, 2009:

- Adjusts the cost of projects that would require local governments to competitively bid the project.
- Allows contractors to be considered ineligible to bid if they have been found guilty of violating certain laws within the last 5 years.
- Defines the terms repair and maintenance.
- Requires local governments to publish public notice 30 days in advance of their intent to conduct repairs when the repairs involve an upgrade.
- Increases the length of notice required before a local government can take a final action to decide to carry out a construction project itself.
- Requires notices to include detailed information about any project the local government intends to carry out itself.

- Exempts airports, ports, and public transit systems from competitive bidding requirements when performing repairs or maintenance.

B. Amendments:

Barcode 410256 by Governmental Oversight and Accountability on April 16, 2009:

This amendment changes the effective date from July 1 to October 1, 2009.

Barcode 824000 by Governmental Oversight and Accountability on April 16, 2009:

This amendment requires that a governing board give 21 days notice before the meeting at which it will take final action on a decision to perform a project itself, instead of 30 days notice.