

1                   A bill to be entitled  
 2           An act relating to local government public  
 3           construction works; amending s. 255.20, F.S.;  
 4           requiring the governing board of a local government to  
 5           consider estimated costs of certain projects using  
 6           generally accepted cost-accounting principles that  
 7           account for specified costs when making a specified  
 8           determination; requiring a local government that  
 9           performs a project using its own services, employees,  
 10          and equipment to disclose the actual costs of the  
 11          project after completion to the Auditor General;  
 12          requiring the Auditor General to review such  
 13          disclosures as part of his or her routine audits of  
 14          local governments; amending s. 336.41, F.S.; requiring  
 15          estimated total construction project costs for certain  
 16          projects to include specified costs; providing an  
 17          effective date.

18  
 19   Be It Enacted by the Legislature of the State of Florida:

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 21           Section 1. Paragraph (c) of subsection (1) of section  
 22   255.20, Florida Statutes, is amended to read:

23           255.20 Local bids and contracts for public construction  
 24   works; specification of state-produced lumber.—

25           (1) A county, municipality, special district as defined in

26 | chapter 189, or other political subdivision of the state seeking  
27 | to construct or improve a public building, structure, or other  
28 | public construction works must competitively award to an  
29 | appropriately licensed contractor each project that is estimated  
30 | in accordance with generally accepted cost-accounting principles  
31 | to cost more than \$300,000. For electrical work, the local  
32 | government must competitively award to an appropriately licensed  
33 | contractor each project that is estimated in accordance with  
34 | generally accepted cost-accounting principles to cost more than  
35 | \$75,000. As used in this section, the term "competitively award"  
36 | means to award contracts based on the submission of sealed bids,  
37 | proposals submitted in response to a request for proposal,  
38 | proposals submitted in response to a request for qualifications,  
39 | or proposals submitted for competitive negotiation. This  
40 | subsection expressly allows contracts for construction  
41 | management services, design/build contracts, continuation  
42 | contracts based on unit prices, and any other contract  
43 | arrangement with a private sector contractor permitted by any  
44 | applicable municipal or county ordinance, by district  
45 | resolution, or by state law. For purposes of this section, cost  
46 | includes the cost of all labor, except inmate labor, and the  
47 | cost of equipment and materials to be used in the construction  
48 | of the project. Subject to the provisions of subsection (3), the  
49 | county, municipality, special district, or other political  
50 | subdivision may establish, by municipal or county ordinance or

51 special district resolution, procedures for conducting the  
52 bidding process.

53 (c) The provisions of this subsection do not apply:

54 1. If the project is undertaken to replace, reconstruct,  
55 or repair an existing public building, structure, or other  
56 public construction works damaged or destroyed by a sudden  
57 unexpected turn of events such as an act of God, riot, fire,  
58 flood, accident, or other urgent circumstances, and such damage  
59 or destruction creates:

60 a. An immediate danger to the public health or safety;

61 b. Other loss to public or private property which requires  
62 emergency government action; or

63 c. An interruption of an essential governmental service.

64 2. If, after notice by publication in accordance with the  
65 applicable ordinance or resolution, the governmental entity does  
66 not receive any responsive bids or proposals.

67 3. To construction, remodeling, repair, or improvement to  
68 a public electric or gas utility system if such work on the  
69 public utility system is performed by personnel of the system.

70 4. To construction, remodeling, repair, or improvement by  
71 a utility commission whose major contracts are to construct and  
72 operate a public electric utility system.

73 5. If the project is undertaken as repair or maintenance  
74 of an existing public facility. For the purposes of this  
75 paragraph, the term "repair" means a corrective action to

76 | restore an existing public facility to a safe and functional  
77 | condition and the term "maintenance" means a preventive or  
78 | corrective action to maintain an existing public facility in an  
79 | operational state or to preserve the facility from failure or  
80 | decline. Repair or maintenance includes activities that are  
81 | necessarily incidental to repairing or maintaining the facility.  
82 | Repair or maintenance does not include the construction of any  
83 | new building, structure, or other public construction works or  
84 | any substantial addition, extension, or upgrade to an existing  
85 | public facility. Such additions, extensions, or upgrades shall  
86 | be considered substantial if the estimated cost of the  
87 | additions, extensions, or upgrades included as part of the  
88 | repair or maintenance project exceeds the threshold amount in  
89 | subsection (1) and exceeds 20 percent of the estimated total  
90 | cost of the repair or maintenance project using generally  
91 | accepted cost-accounting principles that fully account for all  
92 | costs associated with performing and completing the work,  
93 | including employee compensation and benefits, equipment cost and  
94 | maintenance, insurance costs, and materials. An addition,  
95 | extension, or upgrade shall not be considered substantial if it  
96 | is undertaken pursuant to the conditions specified in  
97 | subparagraph 1. Repair and maintenance projects and any related  
98 | additions, extensions, or upgrades may not be divided into  
99 | multiple projects for the purpose of evading the requirements of  
100 | this subparagraph.

101           6. If the project is undertaken exclusively as part of a  
102 public educational program.

103           7. If the funding source of the project will be diminished  
104 or lost because the time required to competitively award the  
105 project after the funds become available exceeds the time within  
106 which the funding source must be spent.

107           8. If the local government competitively awarded a project  
108 to a private sector contractor and the contractor abandoned the  
109 project before completion or the local government terminated the  
110 contract.

111           9. If the governing board of the local government complies  
112 with all of the requirements of this subparagraph, conducts a  
113 public meeting under s. 286.011 after public notice, and finds  
114 by majority vote of the governing board that it is in the  
115 public's best interest to perform the project using its own  
116 services, employees, and equipment. The public notice must be  
117 published at least 21 days before the date of the public meeting  
118 at which the governing board takes final action. The notice must  
119 identify the project, the components and scope of the work, and  
120 the estimated cost of the project using generally accepted cost-  
121 accounting principles that fully account for all costs  
122 associated with performing and completing the work, including  
123 employee compensation and benefits, equipment cost and  
124 maintenance, insurance costs, and materials. The notice must  
125 specify that the purpose for the public meeting is to consider

126 | whether it is in the public's best interest to perform the  
127 | project using the local government's own services, employees,  
128 | and equipment. Upon publication of the public notice and for 21  
129 | days thereafter, the local government shall make available for  
130 | public inspection, during normal business hours and at a  
131 | location specified in the public notice, a detailed itemization  
132 | of each component of the estimated cost of the project and  
133 | documentation explaining the methodology used to arrive at the  
134 | estimated cost. At the public meeting, any qualified contractor  
135 | or vendor who could have been awarded the project had the  
136 | project been competitively bid shall be provided with a  
137 | reasonable opportunity to present evidence to the governing  
138 | board regarding the project and the accuracy of the local  
139 | government's estimated cost of the project. In deciding whether  
140 | it is in the public's best interest for the local government to  
141 | perform a project using its own services, employees, and  
142 | equipment, the governing board must consider the estimated cost  
143 | of the project using generally accepted cost-accounting  
144 | principles that fully account for all costs associated with  
145 | performing and completing the work, including employee  
146 | compensation and benefits, equipment costs and maintenance,  
147 | insurance costs, and the cost of materials, and the accuracy of  
148 | the estimated cost in light of any other information that may be  
149 | presented at the public meeting and whether the project requires  
150 | an increase in the number of government employees or an increase

151 in capital expenditures for public facilities, equipment, or  
152 other capital assets. The local government may further consider  
153 the impact on local economic development, the impact on small  
154 and minority business owners, the impact on state and local tax  
155 revenues, whether the private sector contractors provide health  
156 insurance and other benefits equivalent to those provided by the  
157 local government, and any other factor relevant to what is in  
158 the public's best interest. A local government that performs a  
159 project using its own services, employees, and equipment must  
160 disclose the actual costs of the project after completion to the  
161 Auditor General. The Auditor General shall review such  
162 disclosures as part of his or her routine audits of local  
163 governments.

164 10. If the governing board of the local government  
165 determines upon consideration of specific substantive criteria  
166 that it is in the best interest of the local government to award  
167 the project to an appropriately licensed private sector  
168 contractor pursuant to administrative procedures established by  
169 and expressly set forth in a charter, ordinance, or resolution  
170 of the local government adopted before July 1, 1994. The  
171 criteria and procedures must be set out in the charter,  
172 ordinance, or resolution and must be applied uniformly by the  
173 local government to avoid awarding a project in an arbitrary or  
174 capricious manner. This exception applies only if all of the  
175 following occur:

176 a. The governing board of the local government, after  
177 public notice, conducts a public meeting under s. 286.011 and  
178 finds by a two-thirds vote of the governing board that it is in  
179 the public's best interest to award the project according to the  
180 criteria and procedures established by charter, ordinance, or  
181 resolution. The public notice must be published at least 14 days  
182 before the date of the public meeting at which the governing  
183 board takes final action. The notice must identify the project,  
184 the estimated cost of the project, and specify that the purpose  
185 for the public meeting is to consider whether it is in the  
186 public's best interest to award the project using the criteria  
187 and procedures permitted by the preexisting charter, ordinance,  
188 or resolution.

189 b. The project is to be awarded by any method other than a  
190 competitive selection process, and the governing board finds  
191 evidence that:

192 (I) There is one appropriately licensed contractor who is  
193 uniquely qualified to undertake the project because that  
194 contractor is currently under contract to perform work that is  
195 affiliated with the project; or

196 (II) The time to competitively award the project will  
197 jeopardize the funding for the project, materially increase the  
198 cost of the project, or create an undue hardship on the public  
199 health, safety, or welfare.

200 c. The project is to be awarded by any method other than a



201 competitive selection process, and the published notice clearly  
 202 specifies the ordinance or resolution by which the private  
 203 sector contractor will be selected and the criteria to be  
 204 considered.

205 d. The project is to be awarded by a method other than a  
 206 competitive selection process, and the architect or engineer of  
 207 record has provided a written recommendation that the project be  
 208 awarded to the private sector contractor without competitive  
 209 selection, and the consideration by, and the justification of,  
 210 the government body are documented, in writing, in the project  
 211 file and are presented to the governing board prior to the  
 212 approval required in this paragraph.

213 11. To projects subject to chapter 336.

214 Section 2. Subsection (4) of section 336.41, Florida  
 215 Statutes, is amended to read:

216 336.41 Counties; employing labor and providing road  
 217 equipment; accounting; when competitive bidding required.—

218 (4) All construction and reconstruction of roads and  
 219 bridges, including resurfacing, full scale mineral seal coating,  
 220 and major bridge and bridge system repairs, to be performed  
 221 utilizing the proceeds of the 80-percent portion of the surplus  
 222 of the constitutional gas tax shall be let to contract to the  
 223 lowest responsible bidder by competitive bid, except for:

224 (a) Construction and maintenance in emergency situations;;  
 225 ~~and~~

226 (b) In addition to emergency work, construction and  
 227 reconstruction, including resurfacing, mineral seal coating, and  
 228 bridge repairs, having a total cumulative annual value not to  
 229 exceed 5 percent of its 80-percent portion of the constitutional  
 230 gas tax or \$400,000, whichever is greater;~~7~~ and

231 (c) Construction of sidewalks, curbing, accessibility  
 232 ramps, or appurtenances incidental to roads and bridges if each  
 233 project is estimated in accordance with generally accepted cost-  
 234 accounting principles to have total construction project costs  
 235 of less than \$400,000 or as adjusted by the percentage change in  
 236 the Construction Cost Index from January 1, 2008,

237  
 238 for which the county may utilize its own forces. Estimated total  
 239 construction project costs shall include all costs associated  
 240 with performing and completing the work, including employee  
 241 compensation and benefits, equipment cost and maintenance,  
 242 insurance costs, and materials. However, if, after proper  
 243 advertising, no bids are received by a county for a specific  
 244 project, the county may use its own forces to construct the  
 245 project, notwithstanding the limitation of this subsection.  
 246 Nothing in this section shall prevent the county from performing  
 247 routine maintenance as authorized by law.

248 Section 3. This act shall take effect July 1, 2019.