

By Senator Perry

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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; prohibiting a local government from
9 performing a project using its own services,
10 employees, and equipment if the project requires an
11 increase in the number of government employees or an
12 increase in certain capital expenditures; requiring
13 that a local government that performs projects using
14 its own services, employees, and equipment disclose
15 the actual costs of the project after completion to
16 the Auditor General; requiring that the Auditor
17 General review such disclosures as part of his or her
18 routine audits of local governments; amending s.
19 336.41, F.S.; requiring estimated total construction
20 project costs for certain projects to include
21 specified costs; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

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25 Section 1. Paragraph (c) of subsection (1) of section
26 255.20, Florida Statutes, is amended to read:

27 255.20 Local bids and contracts for public construction
28 works; specification of state-produced lumber.—

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

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

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

58 1. If the project is undertaken to replace, reconstruct, or

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59 repair an existing public building, structure, or other public
60 construction works damaged or destroyed by a sudden unexpected
61 turn of events such as an act of God, riot, fire, flood,
62 accident, or other urgent circumstances, and such damage or
63 destruction creates:

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

65 b. Other loss to public or private property which requires
66 emergency government action; or

67 c. An interruption of an essential governmental service.

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

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

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

77 5. If the project is undertaken as repair or maintenance of
78 an existing public facility. For the purposes of this paragraph,
79 the term "repair" means a corrective action to restore an
80 existing public facility to a safe and functional condition and
81 the term "maintenance" means a preventive or corrective action
82 to maintain an existing public facility in an operational state
83 or to preserve the facility from failure or decline. Repair or
84 maintenance includes activities that are necessarily incidental
85 to repairing or maintaining the facility. Repair or maintenance
86 does not include the construction of any new building,
87 structure, or other public construction works or any substantial

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88 addition, extension, or upgrade to an existing public facility.
89 Such additions, extensions, or upgrades shall be considered
90 substantial if the estimated cost of the additions, extensions,
91 or upgrades included as part of the repair or maintenance
92 project exceeds the threshold amount in subsection (1) and
93 exceeds 20 percent of the estimated total cost of the repair or
94 maintenance project using generally accepted cost-accounting
95 principles that fully account for all costs associated with
96 performing and completing the work, including employee
97 compensation and benefits, equipment cost and maintenance,
98 insurance costs, and materials. An addition, extension, or
99 upgrade shall not be considered substantial if it is undertaken
100 pursuant to the conditions specified in subparagraph 1. Repair
101 and maintenance projects and any related additions, extensions,
102 or upgrades may not be divided into multiple projects for the
103 purpose of evading the requirements of this subparagraph.

104 6. If the project is undertaken exclusively as part of a
105 public educational program.

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

110 8. If the local government competitively awarded a project
111 to a private sector contractor and the contractor abandoned the
112 project before completion or the local government terminated the
113 contract.

114 9. If the governing board of the local government complies
115 with all of the requirements of this subparagraph, conducts a
116 public meeting under s. 286.011 after public notice, and finds

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117 by majority vote of the governing board that it is in the
118 public's best interest to perform the project using its own
119 services, employees, and equipment. The public notice must be
120 published at least 21 days before the date of the public meeting
121 at which the governing board takes final action. The notice must
122 identify the project, the components and scope of the work, and
123 the estimated cost of the project using generally accepted cost-
124 accounting principles that fully account for all costs
125 associated with performing and completing the work, including
126 employee compensation and benefits, equipment cost and
127 maintenance, insurance costs, and materials. The notice must
128 specify that the purpose for the public meeting is to consider
129 whether it is in the public's best interest to perform the
130 project using the local government's own services, employees,
131 and equipment. Upon publication of the public notice and for 21
132 days thereafter, the local government shall make available for
133 public inspection, during normal business hours and at a
134 location specified in the public notice, a detailed itemization
135 of each component of the estimated cost of the project and
136 documentation explaining the methodology used to arrive at the
137 estimated cost. At the public meeting, any qualified contractor
138 or vendor who could have been awarded the project had the
139 project been competitively bid shall be provided with a
140 reasonable opportunity to present evidence to the governing
141 board regarding the project and the accuracy of the local
142 government's estimated cost of the project. In deciding whether
143 it is in the public's best interest for the local government to
144 perform a project using its own services, employees, and
145 equipment, the governing board must consider the estimated cost

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146 of the project using generally accepted cost-accounting
147 principles that fully account for all costs associated with
148 performing and completing the work, including employee
149 compensation and benefits, equipment costs and maintenance,
150 insurance costs, and the cost of materials, and the accuracy of
151 the estimated cost in light of any other information that may be
152 presented at the public meeting and whether the project requires
153 an increase in the number of government employees or an increase
154 in capital expenditures for public facilities, equipment, or
155 other capital assets. If the project requires an increase in the
156 number of government employees or an increase in such capital
157 expenditures, the local government may not perform the project
158 using its own services, employees, and equipment. The local
159 government may further consider the impact on local economic
160 development, the impact on small and minority business owners,
161 the impact on state and local tax revenues, whether the private
162 sector contractors provide health insurance and other benefits
163 equivalent to those provided by the local government, and any
164 other factor relevant to what is in the public's best interest.
165 A local government that performs projects using its own
166 services, employees, and equipment must disclose the actual
167 costs of the project after completion to the Auditor General.
168 The Auditor General shall review such disclosures as part of his
169 or her routine audits of local governments.

170 10. If the governing board of the local government
171 determines upon consideration of specific substantive criteria
172 that it is in the best interest of the local government to award
173 the project to an appropriately licensed private sector
174 contractor pursuant to administrative procedures established by

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175 and expressly set forth in a charter, ordinance, or resolution
176 of the local government adopted before July 1, 1994. The
177 criteria and procedures must be set out in the charter,
178 ordinance, or resolution and must be applied uniformly by the
179 local government to avoid awarding a project in an arbitrary or
180 capricious manner. This exception applies only if all of the
181 following occur:

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

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

198 (I) There is one appropriately licensed contractor who is
199 uniquely qualified to undertake the project because that
200 contractor is currently under contract to perform work that is
201 affiliated with the project; or

202 (II) The time to competitively award the project will
203 jeopardize the funding for the project, materially increase the

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204 cost of the project, or create an undue hardship on the public
 205 health, safety, or welfare.

206 c. The project is to be awarded by any method other than a
 207 competitive selection process, and the published notice clearly
 208 specifies the ordinance or resolution by which the private
 209 sector contractor will be selected and the criteria to be
 210 considered.

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

219 11. To projects subject to chapter 336.

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

222 336.41 Counties; employing labor and providing road
 223 equipment; accounting; when competitive bidding required.-

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

230 (a) Construction and maintenance in emergency situations;i
 231 ~~and~~

232 (b) In addition to emergency work, construction and

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233 reconstruction, including resurfacing, mineral seal coating, and
234 bridge repairs, having a total cumulative annual value not to
235 exceed 5 percent of its 80-percent portion of the constitutional
236 gas tax or \$400,000, whichever is greater;~~;~~ and

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

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

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