

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 53 Public Works

SPONSOR(S): State Affairs Committee, Public Integrity & Elections Committee and Government Operations Subcommittee, DiCeglie and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1076, CS/CS/HB 367

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|------------------|---------|---------------------------------------|
| 1) Government Operations Subcommittee | 10 Y, 6 N, As CS | Roth | Smith |
| 2) Public Integrity & Elections Committee | 11 Y, 6 N, As CS | Pardo | Rubottom |
| 3) State Affairs Committee | 16 Y, 8 N, As CS | Roth | Williamson |

SUMMARY ANALYSIS

Currently, for a competitive solicitation for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds, certain entities of the state may not use a local ordinance or regulation that provides certain preferences.

“Public works project” means an activity of which 50 percent or more of the cost will be paid from state-appropriated funds that were appropriated at the time of the competitive solicitation and which consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any political subdivision.

For competitive solicitations for construction services, the bill removes the 50 percent or more, state-appropriated funding threshold that triggers the prohibition on certain local preferences and instead, provides that the prohibition applies if such solicitations will be paid for, in whole or in part, with funding that is state-appropriated. The bill also removes the 50 percent or more, state-appropriated funding threshold within the definition of public works project and applies the pre-bid prohibitions to activities exceeding \$1,000,000 in value and that are paid for, in whole or in part, with state-appropriated funds.

The bill prohibits the state or any political subdivision that contracts for a public works project from preventing a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier, from participating in the bidding process based on the geographic location of the company headquarters or offices of the contractor, subcontractor, or material supplier or carrier submitting a bid on a public works project or the residences of employees of such contractor, subcontractor, or material supplier or carrier.

Wastewater and stormwater must be managed to protect public health, water quality, recreation, fish, wildlife, and the aesthetic appeal of Florida’s waterways.

Beginning with the annual assessment due January 1, 2022, the bill requires Office of Economic & Demographic Research (EDR) to include an analysis of the expenditures necessary to repair, replace, and expand water-related infrastructure in their annual assessment of Florida's water resources and conservation lands.

By June 30, 2022, and every five years thereafter, the bill requires each county, municipality, or special district providing wastewater or stormwater services to develop a needs analysis for its jurisdiction over the subsequent 20 years. The analyses must be compiled and submitted to EDR, which must evaluate the compiled documents for the purpose of developing a statewide analysis for inclusion in the annual assessment due January 1, 2023.

The bill may have an indeterminate fiscal impact on the state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Works Projects

Present Situation

Procurement of Construction Services

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. The Department of Management Services is responsible for establishing by rule the following:

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertising for and receiving bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities when those contracts are determined to be in the best interest of the state.¹

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.² A county, municipality, special district, or other political subdivision seeking to construct or improve a public building must competitively bid the project if the estimated cost is in excess of \$300,000.³

Section 255.0525, F.S., requires the solicitation of competitive bids or proposals for any state construction project that is projected to cost more than \$200,000 to be publicly advertised in the Florida Administrative Register (FAR) at least 21 days prior to the established bid opening. If the cost of the construction project is projected to exceed \$500,000, the advertisement must be published in the FAR at least 30 days prior to the bid opening, and at least once in a newspaper of general circulation in the county where the project is located at least 30 days prior to the bid opening.⁴

For a competitive solicitation⁵ for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds, a state college, county, municipality, school district, or other political subdivision of the state may not use a local ordinance or regulation that provides a preference based upon:

- The contractor's maintaining an office or place of business within a particular local jurisdiction;
- The contractor's hiring employees or subcontractors from within a particular local jurisdiction; or
- The contractor's prior payment of local taxes, assessments, or duties within a particular local jurisdiction.⁶

Several counties and municipalities have adopted ordinances requiring companies bidding on contracts to pay their employees a "living wage,"⁷ while others have adopted ordinances requiring apprenticeship programs.⁸

¹ S. 255.29, F.S.

² See s. 255.0525, F.S.; see also ch. 60D-5.002 and 60D-5.0073, F.A.C.

³ S. 255.20(1), F.S. For electrical work, local governments must competitively bid projects estimated to cost more than \$75,000.

⁴ For counties, municipalities, and political subdivisions, similar publishing provisions apply. See S. 255.0525(2), F.S.

⁵ "Competitive solicitation" means an invitation to bid, a request for proposals, or an invitation to negotiate. S. 255.248, F.S.

⁶ S. 255.0991(2), F.S.

⁷ See, e.g., Broward County Code of Ordinances s. 26-102, Palm Beach County Code of Ordinances s. 2-147 to 2-250.1, Miami-Dade County Code of Ordinances s. 2-8.9.

⁸ See Charlie Frago, *Tampa Seeks to Require Apprenticeships on Large City Projects*, Tampa Bay Times (December 4, 2020), available at <https://www.tampabay.com/news/tampa/2020/12/04/tampa-seeks-to-require-apprenticeships-on-large-city-projects/> (last visited March 26, 2021).

Preference to State Residents

Florida law provides a preference for the employment of state residents in construction contracts funded with state funds. Such contracts must contain a provision requiring the contractor to give preference to employing state residents to perform the work if such residents have substantially equal qualifications⁹ to those of nonresidents.¹⁰ If a construction contract is funded by local funds, the contract may, but is not required to, contain such a provision.¹¹ In addition, a contractor required to employ state residents must contact the Department of Economic Opportunity to post the contractor's employment needs in the state's job bank system.¹²

A contract will not be let to any person who refuses to execute an agreement that gives preference to state residents.¹³ However, contracts involving the expenditure of federal aid funds do not have to give preference to employing state residents if that conflicts with federal law.¹⁴

Public Works Projects – Prohibited Governmental Actions

In 2017,¹⁵ the Florida Legislature created section 255.0992, F.S., relating to public works projects, and defined the following terms:

- “Political subdivision” means a separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institution of higher education, or other public agency or body thereof authorized to expend public funds for construction, maintenance, repair, or improvement of public works.
- “Public works project” means an activity of which 50 percent or more of the cost will be paid from state-appropriated funds that were appropriated at the time of the competitive solicitation and which consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any political subdivision.

The law provides that except as required by federal or state law, the state or any political subdivision that contracts for a public works project may not require a contractor, subcontractor, or material supplier or carrier engaged in the project to:¹⁶

- Pay employees a predetermined amount of wages or prescribe any wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control, limit, or expand staffing; or
- Recruit, train, or hire employees from a designated, restricted, or single source.

In addition, the law provides¹⁷ that the state or any political subdivision that contracts for a public works project may not prohibit any contractor, subcontractor, or material supplier or carrier from submitting a bid on the project if such individual is able to perform the work described and is qualified, licensed, or

⁹ S. 255.099(1)(a), F.S., defines “substantially equal qualifications” as the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons.

¹⁰ S. 255.099(1), F.S.

¹¹ *Id.*

¹² S. 255.099(1)(b), F.S.

¹³ S. 255.099(2), F.S.

¹⁴ *Id.*

¹⁵ Ch. 2017-113, L.O.F.

¹⁶ S. 255.0992(2)(a), F.S.

¹⁷ S. 255.0992(2)(b), F.S.

certified as required by state law. However, this provision does not apply to vendors listed in sections 287.133¹⁸ and 287.134, F.S.¹⁹

The law does not apply to contracts executed by the Department of Transportation (DOT) under chapter 337, F.S.²⁰

During the bid process, it is common for local governments to place certain limitations, such as the requirement of a general contractor's license, on the bid documents.

Federal Labor and Wage Laws

The National Labor Relations Act of 1935²¹ and the Labor Management Relations Act of 1947²² constitute a comprehensive scheme of regulations guaranteeing employees the right to organize, to bargain collectively through chosen representatives, and to engage in concerted activities to secure their rights in industries involved in or affected by interstate commerce.

The Fair Labor Standards Act (FLSA or act) establishes a federal minimum wage, which is the lowest hourly wage that can be paid in the United States.²³ A state may set the rate higher than the federal minimum, but not lower.²⁴ The act also requires employers to pay time and a half to their employees for overtime hours worked,²⁵ and establishes standards for recordkeeping²⁶ and child labor.²⁷ Over 135 million workers are covered under the act;²⁸ most, but not all, jobs are covered by the FLSA. In addition, some jobs covered by the act are considered "exempt" from the FLSA overtime requirements.²⁹

On February 12, 2014, President Obama signed Executive Order 13658, which establishes a minimum wage for certain federal contractors.³⁰ The Executive Order requires parties who contract with the federal government to pay workers performing work on or in connection with covered federal contracts at least \$10.10 per hour beginning January 1, 2015. Beginning January 1, 2016, and annually thereafter, such workers must be paid an amount determined by the Secretary of Labor in accordance with the Executive Order. The order stated that "[r]aising the pay of low-wage workers increases their morale and the productivity and quality of their work, lowers turnover and its accompanying costs, and

¹⁸ S. 287.133, F.S., prohibits a vendor that has been convicted of a public entity crime from being awarded or performing work as a contractor, supplier, subcontractor, or consultant under a contract with the state, any of its departments or agencies, or any political subdivision.

¹⁹ S. 287.134, F.S., prohibits an entity that has been found by a court to have committed discrimination based on race, gender, national origin, disability, or religion from being awarded or performing work as a contractor, supplier, subcontractor, or consultant under a contract with the state or any department or agency of the state.

²⁰ S. 255.0992(3), F.S.

²¹ 29 U.S.C. ss. 151-169 (encouraging the practice and procedure of collective bargaining and protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection).

²² 29 U.S.C. ss. 141-197 (prescribing the rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce).

²³ 29 U.S.C. s. 206.

²⁴ 29 U.S.C. s. 218(a).

²⁵ 29 U.S.C. s. 207(a)(1).

²⁶ 29 U.S.C. s. 211.

²⁷ 29 U.S.C. s. 212.

²⁸ United States Department of Labor, *Wage and Hour Division: Resources for Workers*, available at <http://www.dol.gov/whd/workers.htm> (last visited March 26, 2021).

²⁹ 29 U.S.C. s. 213; United States Department of Labor, *Fact Sheet #14: Coverage Under the Fair Labor Standards Act (FLSA)*, www.dol.gov/whd/regs/compliance/whdfs14.pdf (last visited March 26, 2021).

³⁰ Exec. Order 13658, 79 Fed. Reg. 9851 (Feb. 12, 2014), available at <http://www.whitehouse.gov/the-press-office/2014/02/12/executive-order-minimum-wage-contractors> (last visited March 26, 2021).

reduces supervisory costs.”³¹ The Executive Order hourly minimum wage in effect from January 1, 2021, through December 31, 2021, is \$10.95.³²

The Davis-Bacon Act³³ applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works.³⁴ Contractors and subcontractors subject to the Davis-Bacon Act are required to pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area, as determined by the Department of Labor.³⁵ The Davis-Bacon Act applies to contractors and subcontractors performing work on federal or District of Columbia contracts.³⁶ Many federal laws that authorize federal assistance for construction through grants, loans, loan guarantees, and insurance are referred to as Davis-Bacon “related Acts.”³⁷ The “related Acts” include provisions that require the prevailing wage provisions of the Davis-Bacon Act to apply to most federally assisted construction.³⁸

State Labor and Wage Regulations

The State Constitution protects the right for workers to collectively bargain, including public sector employees.³⁹ It provides, in pertinent part, that “[t]he right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.” The Florida Supreme Court has held that public employees maintain the same rights to collectively bargain as do private employees.⁴⁰

In addition, the State Constitution provides that “[a]ll working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.”⁴¹ Employers must pay employees no less than the minimum wage for all hours worked in Florida.⁴² The current state minimum wage is \$8.65 per hour,⁴³ which is higher than the federal rate.⁴⁴

Department of Transportation Construction Projects

Chapter 337, F.S., governs contracting by DOT. Any person who wants to bid for a construction contract in excess of \$250,000 must be certified by DOT as qualified.⁴⁵ Certification is also required to bid on road, bridge, or public transportation construction projects of more than \$250,000.⁴⁶ The purpose

³¹ *Id.*

³² 85 Fed. Reg. 53850 (August 31, 2020), available at <https://www.federalregister.gov/documents/2020/08/31/2020-19037/establishing-a-minimum-wage-for-contractors-notice-of-rate-change-in-effect-as-of-january-1-2021> (last visited March 26, 2021).

³³ Davis-Bacon Act, 40 U.S.C. s. 3141-3148.

³⁴ United States Department of Labor, *Wage and Hour Division: Davis-Bacon and Related Acts*, available at <http://www.dol.gov/whd/govcontracts/dbra.htm> (last visited March 26, 2021).

³⁵ *Id.*

³⁶ *Id.*

³⁷ United States Department of Labor, *Fact Sheet #66: The Davis-Bacon and Related Acts (DBRA)*, <http://www.dol.gov/whd/regs/compliance/whdfs66.pdf> (last visited March 26, 2021). Examples of “related Acts” are the Federal Aid Highway Acts, the Housing and Community Development Act of 1974, and the Federal Water Pollution Control Act.

³⁸ *Id.*

³⁹ Art. I, s. 6, FLA. CONST.

⁴⁰ See *Hillsborough Cnty. Gov’t Emps. Ass’n, Inc. v. Hillsborough Cnty. Aviation Auth.*, 522 So. 2d 358 (Fla. 1988); *City of Tallahassee v. Public Employees Relations Comm’n*, 410 So. 2d 487 (Fla. 1981); *Dade Cnty. Classroom Teachers Ass’n v. Legislature of Fla.*, 269 So. 2d 684 (Fla. 1972).

⁴¹ Art. X, s. 24(a), FLA. CONST.

⁴² Art. X, s. 24(c), FLA. CONST.

⁴³ Department of Economic Opportunity, *Display Posters and Required Notices*, https://floridajobs.org/docs/default-source/business-growth-and-partnerships/for-employers/posters-and-required-notices/2021-minimum-wage/poster-fl-minimum-wage-2021-english.pdf?sfvrsn=74a4bb0_2 (last visited March 26, 2021).

⁴⁴ The federal minimum wage is \$7.25 per hour. For more information about federal minimum wage provisions, see <http://www.dol.gov/whd/minimumwage.htm> (last visited March 26, 2021).

⁴⁵ S. 337.14(1), F.S.

⁴⁶ S. 337.14(2), F.S.

of certification is to ensure professional and financial competence relating to the performance of construction contracts by evaluating bidders “with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor which are necessary to perform the specific class of work for which the contractor seeks certification.”⁴⁷

Effect of Proposed Changes

For competitive solicitations for construction services, the bill removes the 50 percent or more, state-appropriated funding threshold and the preference based prohibition and instead imposes a prohibition to solicitations that will be paid for, in whole or in part, with state-appropriated funding. These penalty prohibitions apply to a state college, county, municipality, school district, or other political subdivision of the state. The bill prohibits the use of a local ordinance or regulation to prevent a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier, from participating in the bidding process based upon:

- The contractor’s maintaining an office or place of business within a particular local jurisdiction;
- The contractor’s hiring employees or subcontractors from within a particular local jurisdiction; or
- The contractor’s prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

The bill also removes the 50 percent or more, state-appropriated funding threshold within the definition of public works project and applies the pre-bid prohibitions to activities that exceed \$1,000,000 in value and that are paid for, in whole or in part, with state-appropriated funds. Specifically, except as required by federal or state law, the state or any political subdivision that contracts for a public works project may not prevent a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier, from participating in the bidding process based on the geographic location of the company headquarters or offices of the contractor, subcontractor, or material supplier or carrier submitting a bid on a public works project or the residences of employees of such contractor, subcontractor, or material supplier or carrier.

Additionally, the state or any political subdivision that contracts for a public works project may not require a contractor, subcontractor, or material supplier or carrier engaged in the project to:

- Pay employees a predetermined amount of wages or prescribe any wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control, limit, or expand staffing; or
- Recruit, train, or hire employees from a designated, restricted, or single source.

The bill provides that s. 255.0992, F.S., does not apply to the Charter County and Regional Transportation System Surtax found in law, which is approved by a majority vote of the electorate of the county or by a charter amendment approved by a majority vote of the electorate of the county.

Lastly, the bill provides that a state or political subdivision may not prohibit a contractor, subcontractor, or material supplier or carrier who is able, qualified, licensed, or certified to perform such work, from receiving information about public works opportunities.

The bill does not apply to contracts executed by the Department of Transportation under chapter 337, F.S.

Wastewater and Stormwater Management

Present Situation

Wastewater

Because domestic wastewater treatment facilities are stationary installations that are reasonably expected to be sources of water pollution, they must be operated, maintained, constructed, expanded, or modified with a permit issued by the Department of Environmental Protection (DEP).⁴⁸ Approximately

⁴⁷ S. 337.14(1), F.S.

⁴⁸ S. 403.087(1), F.S.

2,000 domestic wastewater treatment facilities in the state serve roughly two-thirds of the state's population.⁴⁹ Each day, over 1.5 billion gallons of treated wastewater effluent⁵⁰ and reclaimed water⁵¹ are disposed of from these facilities.⁵² Methods of disposal include reuse and land application systems, groundwater disposal by underground injection, groundwater recharge using injection wells, surface water discharges, disposal to coastal and open ocean waters, and wetland discharges.⁵³

Stormwater

Stormwater is the flow of water resulting from, and immediately following, a rainfall event.⁵⁴ When stormwater falls on pavement, buildings, and other impermeable surfaces, the runoff flows quickly and can pick up sediment, nutrients (such as nitrogen and phosphorous), chemicals, and other pollutants.⁵⁵ A stormwater management system is a system designed to control discharges necessitated by rainfall events, incorporating methods to collect, convey, store, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution.⁵⁶ Most activities that create new impermeable surfaces or alter surface water flows will involve a stormwater management system.⁵⁷

Office of Economic & Demographic Research

The Office of Economic & Demographic Research (EDR) is a research arm of the Legislature that is principally concerned with forecasting economic and social trends that affect policymaking, revenues, and appropriations.⁵⁸ EDR publishes the official economic, demographic, revenue, and agency workload forecasts that are developed by consensus estimating conferences and makes them available to the Legislature, state agencies, universities, research organizations, and the general public.⁵⁹

In 2016, the Legislature passed Senate Bill 552, which directed EDR to conduct an annual assessment of Florida's water resources and conservation lands.⁶⁰ The assessment is conducted with the assistance of the water management districts, DEP, the Department of Agriculture and Consumer Services, the Fish and Wildlife Conservation Commission, counties, municipalities, and special districts and must be submitted by January 1 of each year.⁶¹

⁴⁹ DEP, *General Facts and Statistics about Wastewater in Florida*, <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Apr. 2, 2021).

⁵⁰ R. 62-600.200(22), F.A.C., defines the term "effluent" as, unless specifically stated otherwise, water that is not reused after flowing out of any plant or other works used for the purpose of treating, stabilizing, or holding wastes.

⁵¹ R. 62-600.200(54), F.A.C., defines the term "reclaimed water" as water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.

⁵² DEP, *General Facts and Statistics about Wastewater in Florida*, <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Apr. 2, 2021).

⁵³ R. 62-600.440(4), F.A.C.

⁵⁴ DEP, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)* (June 1, 2018), 2-10, https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Applicant_Hanbook_I_-_Combined.pdf (last visited Apr. 2, 2021).

⁵⁵ DEP, *Stormwater Management* (2016), 1, https://floridadep.gov/sites/default/files/stormwater-management_0.pdf (last visited Apr. 2, 2021).

⁵⁶ S. 373.403(10), F.S.

⁵⁷ DEP, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)* (June 1, 2018), 1-5, https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Applicant_Hanbook_I_-_Combined.pdf (last visited Apr. 2, 2021).

⁵⁸ EDR, *Welcome*, <http://edr.state.fl.us/Content/> (last visited Apr. 2, 2021).

⁵⁹ EDR, *About Us*, <http://edr.state.fl.us/Content/about/index.cfm> (last visited Apr. 2, 2021).

⁶⁰ Chapter 2016-1, Laws of Fla.; s. 403.928, F.S.; EDR, *Natural Resources and Infrastructure*, <http://edr.state.fl.us/Content/natural-resources/index.cfm> (last visited Apr. 2, 2021).

⁶¹ Ss. 403.928(5) and (7), F.S.

Effect of Proposed Changes

Wastewater Management Analysis

By June 30, 2022, and every five years thereafter, the bill requires each county, municipality, or special district providing wastewater services⁶² to develop a needs analysis for its jurisdiction over the subsequent 20 years. In projecting such needs, each local government must include:

- A detailed description of the facilities used to provide wastewater services.
- The number of current and projected connections and residents served calculated in five-year increments.
- The current and projected service area for wastewater services.
- The current and projected cost of providing wastewater services calculated in five-year increments.
- The estimated remaining useful life of each facility or its major components.
- The most recent five-year history of annual contributions to, expenditures from, and balances of any capital account for maintenance or expansion of any facility or its major components.
- The local government's plan to fund the maintenance or expansion of any facility or its major components. The plan must include historical and estimated future revenues and expenditures with an evaluation of how the local government expects to close any projected funding gap.

The bill requires each municipality or special district to submit its needs analysis, as well as the methodology and any supporting data necessary to interpret the results, to the county within which the largest portion of its service area is located. Each county must compile all analyses submitted to it into a single document and include its own analysis in the document. The county must file the compiled document with the coordinator of EDR no later than July 31, 2022, and every five years thereafter.

Stormwater Management Analysis

By June 30, 2022, and every five years thereafter, the bill requires each county, municipality, or special district providing a stormwater management program or stormwater management system to develop a needs analysis for its jurisdiction over the subsequent 20 years. In projecting such needs, each local government must include:

- A detailed description of the stormwater management program or system and its facilities and projects.
- The number of current and projected residents served calculated in five-year increments.
- The current and projected service area for the stormwater management program or system.
- The current and projected cost of providing services calculated in five-year increments.
- The estimated remaining useful life of each facility or its major components.
- The most recent five-year history of annual contributions to, expenditures from, and balances of any capital account for maintenance or expansion of any facility or its major components.
- The local government's plan to fund the maintenance or expansion of any facility or its major components. The plan must include historical and estimated future revenues and expenditures with an evaluation of how the local government expects to close any projected funding gap.

The bill requires each municipality or special district to submit its needs analyses, as well as the methodology and any supporting data necessary to interpret the results, to the county within which the largest portion of its stormwater management program or stormwater management system is located. Each county must compile all analyses submitted to it into a single document and include its own analysis in the document. The county must file the compiled document with the Secretary of DEP and the coordinator of EDR no later than July 31, 2022, and every five years thereafter.

EDR Annual Assessment

Beginning with the annual assessment due January 1, 2022, the bill requires EDR to include an analysis of the expenditures necessary to repair, replace, and expand water-related infrastructure. As part of the analysis, the bill requires EDR to periodically survey public and private utilities.

⁶² The bill defines "wastewater services" to mean service to a sewerage system or service to domestic wastewater treatment works.

The bill requires EDR to evaluate the compiled wastewater and stormwater analysis documents submitted by the counties for the purpose of developing a statewide analysis for inclusion in the assessment due January 1, 2023.

B. SECTION DIRECTORY:

Section 1. Amends s. 255.0991, F.S., relating to contracts for construction services; prohibited local government preferences.

Section 2. Amends s. 255.0992, F.S., relating to public works projects; prohibited governmental actions.

Section 3. Amends s. 403.928, F.S., to require EDR to analyze certain expenditures.

Section 4. Creates s. 403.9301, F.S., to require an analysis for wastewater management needs.

Section 5. Creates s. 403.9302, F.S., to require an analysis for stormwater management needs.

Section 6. Provides a statement of important state interest.

Section 7. Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state revenues.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on EDR associated with the costs of analyzing water-related infrastructure expenditures and evaluating wastewater and stormwater management analyses; however, these costs can likely be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to impact local government revenues.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on local governments associated with the costs of analyzing the needs of wastewater and stormwater management services.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive indeterminate impact to the extent more contractors, subcontractors, or material suppliers or carriers would no longer be required to meet certain pre-bid requirements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires counties and municipalities to conduct stormwater and wastewater management analyses. An exemption may apply if the requirement results in an insignificant fiscal impact. In addition, an exception may apply because the requirement applies to similarly situated persons and the bill provides a legislative finding that the requirements of the bill fulfill an important state interest.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides rulemaking authority nor requires implementation by executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 18, 2021, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment maintained the underlying bill and:

- Prohibited certain preference-based requirements from being applied to any competitive solicitation for construction services paid for with funding that is state-appropriated, locally appropriated, or any combination thereof. The current threshold requirement of 50 percent or more of the cost being from state-appropriated funds, appropriated at the time of the competitive solicitation is removed.
- Prohibited the state or any political subdivision that contracts for a public works project from granting a preference or imposing a penalty during the bidding process based on the geographic location of the company headquarters or offices of the contractor, subcontractor, or material supplier or carrier who is submitting a bid on a public works project, as well as, the residence of the employees of such contractor, subcontractor, or material supplier or carrier.

On March 29, 2021, the Public Integrity & Elections Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment maintained the underlying bill and:

- Removed the preference based prohibition and instead, imposed a penalty prohibition based upon certain criteria for competitive solicitation construction services paid for with any state-appropriated funding.
- Defined “public works project” as an activity that exceeds \$300,000 in value and that is paid for with any state-appropriated funds.
- Removed the preference granting prohibition language and maintains the language that prohibits the state or any political subdivision that contracts for a public works project from imposing a penalty during the bidding process based on the geographic location of the company headquarters or offices of the contractor, subcontractor, or material supplier or carrier who is submitting a bid on a public works project, as well as, the residence of the employees of such contractor, subcontractor, or material supplier or carrier.

On April 19, 2021, the State Affairs Committee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the bill in that it:

- Increased the state-appropriated funding threshold within the definition of “public works project” from \$300,000 to \$1 million.
- Removed the penalty based prohibition for state colleges or local governments using any competitive solicitation for construction services and instead prohibited using a local ordinance or regulation to prevent a certified, licensed, or registered contractor, subcontractor or material supplier or carrier, from participating in the bidding process based on certain preferences.
- Provided that s. 255.0992, F.S., does not apply to the use of discretionary sales surtax proceeds authorized under s. 212.055(1), F.S.

- Removed the penalty based prohibition for the state or any political subdivision that contracts for a public works project and instead prohibited a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier, from participating in the bidding process based on certain preferences.
- Removed the prohibition for the state or political subdivision to require employees to be trained in designated programs with a restricted curriculum or from a single source and provided a prohibition on requiring employees to be recruited, trained, or hired from a designated, restricted, or single source.
- Required EDR to include an analysis of the expenditures necessary to repair, replace, and expand water-related infrastructure in its annual assessment of Florida's water resources and conservation lands.
- Required each county, municipality, or special district providing wastewater or stormwater services to develop an analysis of the wastewater and stormwater needs of its jurisdiction over the next 20 years.

This analysis is drafted to the committee substitute as adopted by the State Affairs Committee.