

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 Committee on Governmental Oversight and Accountability

BILL: CS/SB 742

INTRODUCER: Community Affairs Committee and Senator Grall

SUBJECT: Public Works Projects

DATE: February 5, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Harmsen</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 742 revises the circumstances under which certain governmental actions are prohibited for the procurement of a “public works project.”

A “public works project” consists of the construction, maintenance, repair, renovation, remodeling, or improvement of certain infrastructure projects owned in whole or in part by any political subdivision.

Current law prohibits the state or any political subdivision from imposing certain requirements on contractors for public works projects paid for with any **state-appropriated** funds. The bill expands this provision to also include public works projects paid for with any **local** funds.

The bill does, however, maintain the ability for municipalities and counties to preclude certain contractors from bidding on a public works project based on the geographic location of the contractor’s headquarters or offices, if the project is paid solely with local funds.

The bill also specifies that the term “public works project” does not include the provision of goods, services, or work incidental to the public works project in certain instances.

The bill is not expected to have a fiscal impact on state or local governments.

The bill takes effect July 1, 2024.

II. Present Situation:

Competitive Solicitation of Construction Services

Current law specifies construction services procurement procedures for public property and public owned buildings.¹ The Department of Management Services (DMS) is responsible for establishing by rule procedures to:²

- Determine the qualifications and responsibility of potential bidders prior to advertising for and receiving bids for building construction contracts.³
- Award each state agency construction project to the lowest qualified bidder.⁴
- Govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state.⁵
- Enter into performance-based contracts for the development of public facilities when those contracts are determined to be in the best interest of the state.⁶

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.⁷ 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 \$300,000.⁸

Prohibited Local Government Preferences in Contracts for Construction Services

A competitive solicitation⁹ for construction services that is paid for with state-appropriated funds prevents a state college, county, municipality, school district, or other political subdivision of the state (local government) from using a local ordinance or regulation that provides a preference based upon a contractor, subcontractor, or material supplier or carrier:¹⁰

- Maintaining an office or place of business within a particular local jurisdiction;
- Hiring employees or subcontractors from within a particular local jurisdiction; or
- Prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

A local government that will use state-appropriated funds to pay for construction services must disclose in the solicitation document that any of the aforementioned preferences will be prohibited.¹¹

¹ See ch. 255, F.S.

² Section 255.29, F.S.

³ Rules 60D-5.004 and F.A.C.

⁴ Rule 60D-5.007, F.A.C.

⁵ Rule 60D-5.008, F.A.C.

⁶ Rule 60D-5.0082, F.A.C.

⁷ See s. 255.0525, F.S.; see also Rules 60D-5.002 and 60D-5.0073, F.A.C.

⁸ Section 255.20(1), F.S. For electrical work, local governments must competitively bid projects estimated to cost over \$75,000.

⁹ “Competitive solicitation” means an invitation to bid, a request for proposals, or an invitation to negotiate. Section 255.248, F.S.

¹⁰ Section 255.0991(2), F.S.

¹¹ Section 255.0991(3), F.S.

Public Works Projects

A public works project is an activity that is paid for with any state-appropriated funds and that 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 owned in whole or in part by any political subdivision.¹²

Prohibited Local Government Preferences in Public Works Projects

Except as required by federal or state law, the state or any political subdivision¹³ that contracts for a public works project paid for with any state-appropriated funds may not:¹⁴

- 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;
- 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.
- 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 certified as required by state law.

The foregoing governmental actions are prohibited only for public works projects paid for with any amount of state-appropriated funds. These restrictions do not apply to locally-funded public works projects.

Prior to July 1, 2023, the state or a political subdivision could impose the otherwise prohibited requirements on contractors for state-funded public works projects, up to \$1 million. However, in 2023, the Legislature removed the \$1 million cap and prohibited such actions for public works projects using any amount of state appropriated funds.¹⁵

III. Effect of Proposed Changes:

The bill amends s. 255.0992, F.S., to revise the definition of “public works project” to include all projects paid for with **local** or state funds, rather than just projects that include state funding.

¹² Section 255.0992(1)(b), F.S.

¹³ “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. *See* s. 255.0992(1)(a), F.S.

¹⁴ Section 255.0992, F.S.

¹⁵ Ch. 2023-134, Laws of Fla.

This prevents the state or political subdivision from imposing the prohibited governmental actions for public works projects paid for with any amount of local funds.

The bill does, however, maintain the ability for municipalities and counties to preclude certain contractors from bidding on a public works project based on the geographic location of the contractor's headquarters or offices, if a public works project will be paid for solely with local funds.

The bill clarifies that the term "public works project" does not include the provision of goods, services, or work incidental to the public works project, such as the provision of security services, janitorial services, landscaping services, maintenance services, transportation services, or other services that do not require a construction contracting license or do not involve supplying or carrying construction materials for a public works project.

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The prohibition on certain predetermined wage, benefits, and staffing requirements may result in a positive fiscal impact for contractors.

C. Government Sector Impact:

The change to the definition of “public works project” may lower costs for local public construction projects by prohibiting certain actions by a local government such as imposing predetermined wage and benefit requirements on potential contractors.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 255.0992 of the Florida Statutes.

IX. 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 January 22, 2023:**

The committee substitute:

- Specifies that the term “public works project” does not include the provision of goods, services, or work incidental to the public works project in certain instances.
- Applies the exception allowing local governments to prevent a vendor from bidding based on a contractor's geographic location to municipalities and counties only, rather than all political subdivisions.

B. Amendments:

None.