

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 Rules

BILL: CS/CS/SB 504

INTRODUCER: Rules Committee; Governmental Oversight and Accountability Committee; and Senator Perry

SUBJECT: Local Government Public Construction Works

DATE: March 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Paglialonga</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Paglialonga</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 504 specifies how the estimated cost of a public building construction project must be determined when a governing board is deciding whether it is in the local government's best interest to perform the project using its own services, employees, and equipment. The bill requires the estimated project cost to account for additional costs associated with performing and completing the work, including employee compensation and benefits, the cost of equipment and maintenance, insurance costs, and the cost of direct materials to be used in the construction of the project, including materials to be purchased by the local government. The estimated project cost must also include other direct costs, plus a factor of 20 percent for management, overhead, and other indirect costs. The bill also requires local governments to consider the same costs when determining the estimated cost of road and bridge construction and reconstruction projects performed utilizing proceeds from the constitutional gas tax.

The bill requires local governments issuing bidding documents or other requests for proposals to include a listing of all other governmental entities that may have additional permits or fees generated by the project.

The bill requires a local government performing a public building construction project using its own services, employees, and equipment to create a report summarizing completed projects constructed by the local government, which must be publicly reviewed each year by the

governing body. The Auditor General must review the report as part of his or her audits of local governments.

The bill is expected to have an insignificant fiscal impact on local governments and the private sector.

The bill takes effect July 1, 2020.

II. 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 the following by rule:

- Procedures for determining the qualifications and responsibilities of potential bidders prior to advertisement for and receipt of 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

Counties, municipalities, special districts, and other political subdivisions seeking to construct or improve a public building, structure, or other public construction works must competitively award the project if the projected cost is in excess of \$300,000.² For electrical work, local governments must competitively award projects estimated to cost more than \$75,000.

Section 255.20(1), F.S., provides that the term “competitively award” means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation.

Exemption from Competitive Solicitation for Local Governments Performing Work

If the governing board of a local government seeking to construct or improve a public building or structure conducts a public meeting and finds by majority vote that it is in the public’s best interest to perform the project using its own services, employees, and equipment, then the local government is exempt from the requirement to competitively award the contract for the project.³ The meeting of the governing board must have been publicly noticed at least 21 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the components and scope of the project, and the estimated cost of the project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the project, including employee compensation and

¹ Section 255.29, F.S.

² Section 255.20(1), F.S.

³ Section 255.20(1)(c)9., F.S.

benefits, equipment cost and maintenance, insurance costs, and materials. The notice must state that the purpose of the meeting is to consider whether it is in the best interest of the public to perform the project using the local government's own services, employees, and equipment.⁴

At the public meeting, the governing board must allow any qualified contractor or vendor who could have been awarded the project had the project been competitively bid to present evidence regarding the project and the accuracy of the local government's estimated cost of the project. In making a determination, the governing board must consider the estimated cost of the project and the accuracy of the estimated cost in light of any other information that may be presented at the public meeting. In addition, the board must consider whether the project requires an increase in the number of government employees or an increase in capital expenditures for public facilities, equipment, or other capital assets. The governing body may further consider the impact on local economic development, the impact on small and minority business owners, the impact on state and local tax revenues, whether the private sector contractors provide health insurance and other benefits equivalent to those provided by the local government, and any other factor relevant to what is in the public's best interest.⁵

Construction and Maintenance of Roads and Bridges

Current law authorizes counties to employ labor and provide road equipment to construct and open new roads or bridges and to repair and maintain any existing roads and bridges under certain circumstances.⁶ However, counties must competitively bid and award to the lowest bidder all projects for construction and reconstruction of roads and bridges, including resurfacing, that utilize the proceeds of the 80 percent portion of the surplus of the constitutional gas tax.⁷ An exception to this requirement allows a county to use its own forces for these construction and reconstruction projects under the following circumstances:

- Construction and maintenance in emergency situations;
- When a construction or reconstruction project has a total cumulative annual value not to exceed five percent of its 80-percent portion of the constitutional gas tax or \$400,000, whichever is greater; or
- When constructing sidewalks, curbing, accessibility ramps, or appurtenances incidental to roads and bridges if each project is estimated in accordance with generally accepted cost-accounting principles to have total construction project costs of less than \$400,000.⁸

In addition, if, after proper advertising, the county receives no bids for a specific project, the county may use its own forces to construct the project. A county is not prohibited from performing routine maintenance as authorized by law.⁹

⁴ *Id.*

⁵ *Id.*

⁶ *See* s. 336.41, F.S.

⁷ Section 336.41(4), F.S. An excise or license tax of 2 cents per net gallon, which is the tax as levied by s. 16, Art. IX of the State Constitution of 1885, as amended, and continued by s. 9(c), Art. XII of the 1968 State Constitution, as amended, which is therein referred to as the "second gas tax," and which is hereby designated the "constitutional fuel tax." *See* s. 206.41(1)(a), F.S.

⁸ *Id.*

⁹ *Id.*

III. Effect of Proposed Changes:

Section 1 amends 218.80, F.S., to require local governments issuing bidding documents or other requests for proposals to include a listing of all other governmental entities that may have additional permits or fees generated by the project.

Section 2 amends s. 255.20, F.S., relating to certain local bids and contracts for public construction works. The bill specifies the manner in which the estimated cost of a public building construction project must be determined when a governing board is deciding whether it is in the local government's best interest to perform the project using its own services, employees, and equipment. The bill requires the estimated cost of the project to fully account for all costs associated with performing and completing the work, including employee compensation and benefits, the cost of equipment and maintenance, insurance costs, and the cost of direct materials to be used in the construction of the project, including materials to be purchased by the local government. The estimated project cost must also include other direct costs, plus a factor of 20 percent for management, overhead, and other indirect costs.

The bill requires a local government performing a public building construction project using its own services, employees, and equipment to create a report summarizing completed projects constructed by the local government. The report must detail the estimated costs and the actual costs of the projects constructed by the local government and must be publicly reviewed each year by the governing body of the local government. In addition, the report must be made available for review by the public. Finally, the Auditor General must review the report as part of his or her audits of local governments.

The bill also removes provisions requiring local governments to estimate the costs of public building construction projects "in accordance with generally accepted cost-accounting principles."

Section 3 amends s. 336.41, F.S., to require counties to consider the same costs as required in section 2 of the bill when determining the estimated costs of road and bridge construction and reconstruction projects performed utilizing proceeds from the constitutional gas tax. By including these costs in their entirety, the cost of a particular project may be increased above the \$400,000 threshold, requiring the county to competitively procure these services rather than using its own forces.

Section 4 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and 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:

None.

C. Government Sector Impact:

The bill may have an indeterminate positive fiscal impact on local governments if the estimated cost for a local government to complete a construction project causes governing boards to select private contractors that can perform the projects at a lower cost.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 218.80, 255.20 and 336.41 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/CS by Rules on March 2, 2020:

The committee substitute:

- Removes all references to “generally accepted cost-accounting principles;”
- Requires local governments that issue bidding documents or other requests for proposals to include a listing of all other governmental entities that may have additional permits or fees generated by the project;
- Revises the term “cost” to include specified information and requires local governments to consider certain estimated costs before deciding to use their own services; and
- Requires local governments that use their own services to issue a report, reviewed publicly, summarizing the cost of the completed projects.

CS by Governmental Oversight and Accountability on January 13, 2020:

The committee substitute:

- Amends s. 218.80, F.S., to clarify that the local government that issued bidding documents or other requests for proposal must disclose all fees affecting the project let for bid; and
- Removes language prohibiting a local government from performing a project using its own services, employees or an increase in capital expenditures.

- B. **Amendments:**

None.