

By Senator Perry

8-00728-20

2020504__

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

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

25
26 Section 1. Paragraph (c) of subsection (1) of section
27 255.20, Florida Statutes, is amended to read:

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

8-00728-20

2020504__

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

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

8-00728-20

2020504__

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

- 65 a. An immediate danger to the public health or safety;
66 b. Other loss to public or private property which requires
67 emergency government action; or
68 c. An interruption of an essential governmental service.

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

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

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

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

8-00728-20

2020504__

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

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

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

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

115 9. If the governing board of the local government complies
116 with all of the requirements of this subparagraph, conducts a

8-00728-20

2020504__

117 public meeting under s. 286.011 after public notice, and finds
118 by majority vote of the governing board that it is in the
119 public's best interest to perform the project using its own
120 services, employees, and equipment. The public notice must be
121 published at least 21 days before the date of the public meeting
122 at which the governing board takes final action. The notice must
123 identify the project, the components and scope of the work, and
124 the estimated cost of the project using generally accepted cost-
125 accounting principles that fully account for all costs
126 associated with performing and completing the work, including
127 employee compensation and benefits, equipment cost and
128 maintenance, insurance costs, and materials. The notice must
129 specify that the purpose for the public meeting is to consider
130 whether it is in the public's best interest to perform the
131 project using the local government's own services, employees,
132 and equipment. Upon publication of the public notice and for 21
133 days thereafter, the local government shall make available for
134 public inspection, during normal business hours and at a
135 location specified in the public notice, a detailed itemization
136 of each component of the estimated cost of the project and
137 documentation explaining the methodology used to arrive at the
138 estimated cost. At the public meeting, any qualified contractor
139 or vendor who could have been awarded the project had the
140 project been competitively bid shall be provided with a
141 reasonable opportunity to present evidence to the governing
142 board regarding the project and the accuracy of the local
143 government's estimated cost of the project. In deciding whether
144 it is in the public's best interest for the local government to
145 perform a project using its own services, employees, and

8-00728-20

2020504__

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

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

8-00728-20

2020504__

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

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

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

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

203 (II) The time to competitively award the project will

8-00728-20

2020504__

204 jeopardize the funding for the project, materially increase the
205 cost of the project, or create an undue hardship on the public
206 health, safety, or welfare.

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

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

220 11. To projects subject to chapter 336.

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

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

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

231 (a) Construction and maintenance in emergency situations;IT
232 ~~and~~

8-00728-20

2020504__

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

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

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

255 Section 3. This act shall take effect July 1, 2020.