



801590

CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: RS	.	
4/17/2008	.	
	.	
	.	

1 The Committee on Community Affairs (Haridopolos) recommended the
 2 following **amendment**:

Senate Amendment (with title amendment)

5 Delete everything after the enacting clause
6 and insert:

7 Section 1. Subsection (1) of section 255.20, Florida
8 Statutes, is amended, and subsection (5) is added to that
9 section, to read:

10 255.20 Local bids and contracts for public construction
11 works; specification of state-produced lumber.--

12 (1) A county, municipality, special district as defined in
13 chapter 189, or other political subdivision of the state seeking
14 to construct, ~~or~~ improve, or repair a public building, structure,
15 or other public construction works must competitively award to an
16 appropriately licensed contractor each project that is estimated
17 in accordance with generally accepted cost-accounting principles



801590

18 | to have a cost ~~total construction project costs~~ of more than
19 | \$200,000. For electrical work, local government must
20 | competitively award to an appropriately licensed contractor each
21 | project that is estimated in accordance with generally accepted
22 | cost-accounting principles to have a cost of more than \$50,000.
23 | As used in this section, the term "competitively award" means to
24 | award contracts based on the submission of sealed bids, proposals
25 | submitted in response to a request for proposal, proposals
26 | submitted in response to a request for qualifications, or
27 | proposals submitted for competitive negotiation. This subsection
28 | expressly allows contracts for construction management services,
29 | design/build contracts, continuation contracts based on unit
30 | prices, and any other contract arrangement with a private sector
31 | contractor permitted by any applicable municipal or county
32 | ordinance, by district resolution, or by state law. For purposes
33 | of this section, construction costs include the cost of all
34 | labor, except inmate labor, and include the cost of equipment and
35 | materials to be used in the construction of the project. Subject
36 | to the provisions of subsection (3), the county, municipality,
37 | special district, or other political subdivision may establish,
38 | by municipal or county ordinance or special district resolution,
39 | procedures for conducting the bidding process.

40 | (a) Notwithstanding any other law to the contrary, a
41 | county, municipality, special district as defined in chapter 189,
42 | or other political subdivision of the state seeking to construct
43 | or improve bridges, roads, streets, highways, or railroads, and
44 | services incidental thereto, at costs in excess of \$250,000 may
45 | require that persons interested in performing work under contract
46 | first be certified or qualified to perform such work. Any
47 | contractor may be considered ineligible to bid by the



801590

48 governmental entity if the contractor is behind on completing an
49 approved progress schedule for the governmental entity by 10
50 percent or more at the time of advertisement of the work. Any
51 contractor prequalified and considered eligible by the Department
52 of Transportation to bid to perform the type of work described
53 under the contract shall be presumed to be qualified to perform
54 the work described. The governmental entity may provide an appeal
55 process to overcome that presumption with de novo review based on
56 the record below to the circuit court.

57 (b) With respect to contractors not prequalified with the
58 Department of Transportation, the governmental entity shall
59 publish prequalification criteria and procedures prior to
60 advertisement or notice of solicitation. Such publications shall
61 include notice of a public hearing for comment on such criteria
62 and procedures prior to adoption. The procedures shall provide
63 for an appeal process within the authority for objections to the
64 prequalification process with de novo review based on the record
65 below to the circuit court within 30 days.

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

67 1. When the project is undertaken to replace, reconstruct,
68 or repair an existing facility damaged or destroyed by a sudden
69 unexpected turn of events, such as an act of God, riot, fire,
70 flood, accident, or other urgent circumstances, and such damage
71 or destruction creates:

- 72 a. An immediate danger to the public health or safety;
73 b. Other loss to public or private property which requires
74 emergency government action; or
75 c. An interruption of an essential governmental service.



801590

76 2. When, after notice by publication in accordance with the
77 applicable ordinance or resolution, the governmental entity does
78 not receive any responsive bids or responses.

79 3. To construction, remodeling, repair, or improvement to a
80 public electric or gas utility system when such work on the
81 public utility system is performed by personnel of the system.

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

85 5. When the project consists exclusively of routine ~~is~~
86 ~~undertaken as repair or maintenance to a public building,~~
87 ~~structure, or other public construction work of an existing~~
88 ~~public facility.~~ As used in this subparagraph, the term "routine
89 maintenance" means minor repairs and associated tasks necessary
90 to preserve the building, structure, or other construction works
91 in its as-built state without undertaking any new construction,
92 additions, or extensions.

93 6. When the project is undertaken exclusively as part of a
94 public educational program.

95 7. When the funding source of the project will be
96 diminished or lost because the time required to competitively
97 award the project after the funds become available exceeds the
98 time within which the funding source must be spent.

99 8. When the local government has competitively awarded a
100 project to a private sector contractor and the contractor has
101 abandoned the project before completion or the local government
102 has terminated the contract.

103 9. When the local government, after receiving competitive
104 bids or proposals, decides to perform the project using its own
105 services, employees, and equipment in compliance with the



801590

106 procedure in this subparagraph. If the local government receives
107 bids or proposals that are otherwise responsive but are all at
108 least 10 percent greater than the local government's estimated
109 cost of the project, the governing board of the local government,
110 after public notice, must conduct ~~conducts~~ a public meeting under
111 s. 286.011 and determine ~~finds~~ by a majority vote ~~of the~~
112 ~~governing board that it is in the public's best interest to~~
113 perform the project using its own services, employees, and
114 equipment. The public notice must be published at least 14 days
115 prior to the date of the public meeting at which the governing
116 board takes final action to apply this subparagraph. The notice
117 must identify the project, the estimated cost of the project, and
118 specify that the purpose for the public meeting is to consider
119 ~~whether it is in the public's best interest to perform the~~
120 project using the local government's own services, employees, and
121 equipment. A local government's determination ~~In deciding whether~~
122 ~~it is in the public's best interest for local government to~~
123 perform a project using its own services, employees, and
124 equipment must be supported by the following factual findings,
125 which are subject to challenge under subsection (4):

126 a. The local government's estimated cost of the project as
127 specified in the bid documents reasonably represented the fair
128 market cost of performing the project using private-sector
129 contractors; and

130 b. The local government can perform the project using its
131 own services, employees, and equipment at a cost equal to or less
132 than its estimated cost of the project, using generally accepted
133 accounting principles that fully account for all employee
134 compensation and benefits, equipment, and material costs and any
135 other associated costs and expenses, ~~the governing board may~~

Bill No. SB 2148



801590

136 ~~consider the cost of the project, whether the project requires an~~
137 ~~increase in the number of government employees, an increase in~~
138 ~~capital expenditures for public facilities, equipment or other~~
139 ~~capital assets, the impact on local economic development, the~~
140 ~~impact on small and minority business owners, the impact on state~~
141 ~~and local tax revenues, whether the private sector contractors~~
142 ~~provide health insurance and other benefits equivalent to those~~
143 ~~provided by the local government, and any other factor relevant~~
144 ~~to what is in the public's best interest.~~

145 10. When the governing board of the local government
146 determines upon consideration of specific substantive criteria
147 and administrative procedures that it is in the best interest of
148 the local government to award the project to an appropriately
149 licensed private sector contractor according to procedures
150 established by and expressly set forth in a charter, ordinance,
151 or resolution of the local government adopted prior to July 1,
152 1994. The criteria and procedures must be set out in the charter,
153 ordinance, or resolution and must be applied uniformly by the
154 local government to avoid award of any project in an arbitrary or
155 capricious manner. This exception shall apply when all of the
156 following occur:

157 a. When the governing board of the local government, after
158 public notice, conducts a public meeting under s. 286.011 and
159 finds by a two-thirds vote of the governing board that it is in
160 the public's best interest to award the project according to the
161 criteria and procedures established by charter, ordinance, or
162 resolution. The public notice must be published at least 14 days
163 prior to the date of the public meeting at which the governing
164 board takes final action to apply this subparagraph. The notice
165 must identify the project, the estimated cost of the project, and



801590

166 specify that the purpose for the public meeting is to consider
167 whether it is in the public's best interest to award the project
168 using the criteria and procedures permitted by the preexisting
169 ordinance.

170 b. In the event the project is to be awarded by any method
171 other than a competitive selection process, the governing board
172 must find evidence that:

173 (I) There is one appropriately licensed contractor who is
174 uniquely qualified to undertake the project because that
175 contractor is currently under contract to perform work that is
176 affiliated with the project; or

177 (II) The time to competitively award the project will
178 jeopardize the funding for the project, or will materially
179 increase the cost of the project or will create an undue hardship
180 on the public health, safety, or welfare.

181 c. In the event the project is to be awarded by any method
182 other than a competitive selection process, the published notice
183 must clearly specify the ordinance or resolution by which the
184 private sector contractor will be selected and the criteria to be
185 considered.

186 d. In the event the project is to be awarded by a method
187 other than a competitive selection process, the architect or
188 engineer of record has provided a written recommendation that the
189 project be awarded to the private sector contractor without
190 competitive selection; and the consideration by, and the
191 justification of, the government body are documented, in writing,
192 in the project file and are presented to the governing board
193 prior to the approval required in this paragraph.

194 11. To projects subject to chapter 336.



801590

195 (d)1. If the project is to be awarded based on price, the
196 contract must be awarded to the lowest qualified and responsive
197 bidder in accordance with the applicable county or municipal
198 ordinance or district resolution and in accordance with the
199 applicable contract documents. The county, municipality, or
200 special district may reserve the right to reject all bids and to
201 rebid the project or elect not to proceed with the project. This
202 subsection is not intended to restrict the rights of any local
203 government to reject the low bid of a nonqualified or
204 nonresponsive bidder and to award the contract to any other
205 qualified and responsive bidder in accordance with the standards
206 and procedures of any applicable county or municipal ordinance or
207 any resolution of a special district.

208 2. If the project uses a request for proposal or a request
209 for qualifications, the request must be publicly advertised and
210 the contract must be awarded in accordance with the applicable
211 local ordinances.

212 3. If the project is subject to competitive negotiations,
213 the contract must be awarded in accordance with s. 287.055.

214 (e) If a construction project greater than \$200,000, or
215 \$50,000 for electrical work, is started after October 1, 1999,
216 and is to be performed by a local government using its own
217 employees in a county or municipality that issues registered
218 contractor licenses and the project would require a licensed
219 contractor under chapter 489 if performed by a private sector
220 contractor, the local government must use a person appropriately
221 registered or certified under chapter 489 to supervise the work.

222 (f) If a construction project greater than \$200,000, or
223 \$50,000 for electrical work, is started after October 1, 1999,
224 and is to be performed by a local government using its own



225 employees in a county that does not issue registered contractor
226 licenses and the project would require a licensed contractor
227 under chapter 489 if performed by a private sector contractor,
228 the local government must use a person appropriately registered
229 or certified under chapter 489 or a person appropriately licensed
230 under chapter 471 to supervise the work.

231 (g) Projects performed by a local government using its own
232 services and employees must be inspected in the same manner as
233 inspections required for work performed by private sector
234 contractors.

235 (h) A construction project provided for in this subsection
236 may not be divided into more than one project for the purpose of
237 evading this subsection.

238 (i) This subsection does not preempt the requirements of
239 any small-business or disadvantaged-business enterprise program
240 or any local-preference ordinance.

241 (j) A local government owning or operating a public-use
242 airport, as defined in s. 332.004(1), is exempt from this section
243 if performing repairs or maintenance on the airport's buildings,
244 structures, or public construction works using the local
245 government's own services, employees, and equipment, regardless
246 of the total construction cost.

247 (k) A local government owning or operating a seaport, as
248 identified in s. 403.021(9)(b), is exempt from this section if
249 performing repairs or maintenance on the seaport's buildings,
250 structures, or public construction works using the local
251 government's own services, employees, and equipment, regardless
252 of the total construction cost.

253 (l) A local government owning or operating a public transit
254 system, as defined in s. 343.52, a public transportation system,

Bill No. SB 2148



801590

255 as defined in s. 343.62, or a mass transit system as defined in
256 s. 349.04(1)(b) is exempt from this section if performing repairs
257 or maintenance on the buildings, structures, or public
258 construction works, of a public transit, public transportation
259 system or mass transit system using the local government's own
260 services, employees, and equipment, regardless of the total
261 construction cost.

262 (5) Notwithstanding any law to the contrary, a county,
263 municipality, or special district may not own or operate an
264 asphalt plant or a portable or stationary concrete batch plant
265 that has an independent mixer.

266 Section 2. Section 336.41, Florida Statutes, is amended to
267 read:

268 336.41 Counties and municipalities; employing labor and
269 providing road equipment; accounting; when competitive bidding
270 required.--

271 ~~(1) The commissioners may employ labor and provide~~
272 ~~equipment as may be necessary, except as provided in subsection~~
273 ~~(3), for constructing and opening of new roads or bridges and~~
274 ~~repair and maintenance of any existing roads and bridges.~~

275 (1)(2) It shall be the duty of All persons to whom the
276 governing body of a county or municipality delivers ~~commissioners~~
277 ~~deliver~~ equipment and construction materials ~~supplies~~ for road
278 and bridge purposes shall ~~to~~ make a strict accounting of the
279 equipment and construction materials ~~same~~ to the governing body
280 ~~commissioners~~.

281 (2)(a)(3) The governing body of a county or municipality
282 shall competitively award to a private-sector contractor all
283 construction, ~~and~~ reconstruction, or repair of roads and bridges,
284 including resurfacing, full scale mineral seal coating, and major

Bill No. SB 2148



801590

285 bridge and bridge system repairs, ~~to be performed utilizing the~~
286 ~~proceeds of the 80 percent portion of the surplus of the~~
287 ~~constitutional gas tax shall be let to contract to the lowest~~
288 ~~responsible bidder by competitive bid, except~~

289 (b) Notwithstanding paragraph (a), the county or
290 municipality may use its own forces for:

291 1.(a) Construction and maintenance in emergency
292 situations, and

293 2.(b) In addition to emergency work, Construction, and
294 reconstruction, or repair of roads and bridges, including
295 resurfacing, full scale mineral seal coating, and major bridge
296 and bridge system repairs. However:, having a total cumulative
297 annual value not to exceed 5 percent of its 80 percent portion of
298 the constitutional gas tax or \$400,000, whichever is greater, and

299 a. A single project may not exceed \$250,000 in value or as
300 adjusted by the percentage change in the Construction Cost Index
301 from January 1, 2009, exclusive of materials purchased in
302 accordance with sub-subparagraph c.

303 b. A project provided for in this subsection may not be
304 divided into more than one project for the purpose of evading
305 this subsection.

306 c. All materials for such projects must be purchased or
307 furnished from a commercial source, with the exception of
308 government-owned material pits for sand, shell, gravel, and rock
309 existing before January 1, 2008.

310 d. A county or municipality is not subject to the maximum
311 project value in sub-subparagraph a. for paving dirt roads only.
312 Such counties or municipalities are subject to the material
313 purchase provisions of sub-subparagraph c.



801590

314 3.(e) Construction of sidewalks, curbing, accessibility
315 ramps, or appurtenances incidental to roads and bridges if each
316 project is estimated in accordance with generally accepted cost-
317 accounting principles to have total construction project costs of
318 less than \$400,000 or as adjusted by the percentage change in the
319 Construction Cost Index from January 1, 2008,

320
321 ~~for which the county may utilize its own forces.~~

322 (c) However, if, after proper advertising, no bids are
323 received by a county or municipality for a specific project, the
324 county or municipality may use its own forces to construct the
325 project, notwithstanding the limitation of this subsection.
326 ~~Nothing in this section shall prevent the county from performing~~
327 ~~routine maintenance as authorized by law.~~

328 (d) As used in this section, the term "competitively award"
329 means to award a contract based on the submission of sealed bids,
330 proposals submitted in response to a request for qualifications,
331 or proposals submitted for competitive negotiations. This
332 subsection authorizes contracts for construction management
333 services, design-build contracts, continuation contracts based on
334 unit prices, and any other contract arrangement with a private-
335 sector contractor permitted by any applicable municipal or county
336 ordinance, by district resolution, or by state law.

337 (e) For purposes for this section, the value of a project
338 includes the cost of all labor except inmate labor, labor burden,
339 and equipment, including ownership, fuel, and maintenance costs
340 to be used in the construction and reconstruction of the project.

341 (f) This section does not prevent the county or
342 municipality from performing routine maintenance as authorized by



801590

343 law and defined in s. 334.03, including the grading and shaping
344 of dirt roads.

345 (g) Notwithstanding any law to the contrary, a county,
346 municipality, or special district may not own or operate an
347 asphalt plant or a portable or stationary concrete batch plant
348 that has an independent mixer.

349 (3)-(4)(a) For contracts in excess of \$250,000, any county
350 or municipality may require that persons interested in performing
351 work under the contract first be certified or qualified to do the
352 work. Any contractor prequalified and considered eligible to bid
353 by the department to perform the type of work described under the
354 contract shall be presumed to be qualified to perform the work so
355 described. Any contractor may be considered ineligible to bid by
356 the county or municipality if the contractor is behind an
357 approved progress schedule by 10 percent or more on another
358 project for that county or municipality at the time of the
359 advertisement of the work. The county or municipality may provide
360 an appeal process to overcome such consideration with de novo
361 review based on the record below to the circuit court.

362 (b) The county or municipality, as appropriate, shall
363 publish prequalification criteria and procedures prior to
364 advertisement or notice of solicitation. Such publications shall
365 include notice of a public hearing for comment on such criteria
366 and procedures prior to adoption. The procedures shall provide
367 for an appeal process within the county or municipality for
368 objections to the prequalification process with de novo review
369 based on the record below to the circuit court.

370 (c) The county or municipality, as appropriate, shall also
371 publish for comment, prior to adoption, the selection criteria
372 and procedures to be used by the county or municipality if such



801590

373 | procedures would allow selection of other than the lowest
374 | responsible bidder. The selection criteria shall include an
375 | appeal process within the county or municipality with de novo
376 | review based on the record below to the circuit court.

377 | Section 3. Section 336.44, Florida Statutes, is amended to
378 | read:

379 | 336.44 Counties and municipalities; contracts for
380 | construction of roads; procedure; contractor's bond.--

381 | (1) The governing body of a county or municipality
382 | ~~commissioners~~ shall let the work on roads out on contract, in
383 | accordance with s. 336.41(2) ~~s. 336.41(3)~~.

384 | (2) Such contracts shall be let to the lowest responsible
385 | bidder, after publication of notice for bids containing
386 | specifications furnished by the governing body of a county or
387 | municipality ~~commissioners~~ in a newspaper published in the county
388 | where such contract is made, at least once each week for 2
389 | consecutive weeks prior to the making of such contract.

390 | (3) Upon accepting a satisfactory bid, the governing body
391 | of a county or municipality ~~commissioners~~ shall enter into a
392 | contract with the party whose bid has been accepted. Such
393 | contract shall contain the specifications of the work to be done
394 | or material furnished, the time limit in which the construction
395 | is to be completed or material delivered, the time and amounts in
396 | which payments are to be made upon the contract, and a penalty to
397 | be paid by the contractor for the failure to comply with the
398 | terms of such contract.

399 | (4) The successful bidder shall enter into a good and
400 | sufficient bond with the governing body of a county or
401 | municipality ~~commissioners~~ for the faithful execution of the
402 | contract; the amount of the bond to be fixed by the governing



801590

403 body of a county or municipality ~~commissioners~~, and the
404 sufficiency of the said bond to be likewise approved by the
405 governing body of a county or municipality ~~commissioners~~.

406 (5) The governing body of a county or municipality
407 ~~commissioners~~ may reject any or all bids and require new bids to
408 be made.

409 Section 4. This act shall take effect upon becoming a law.

410
411 ===== T I T L E A M E N D M E N T =====

412 And the title is amended as follows:

413 Delete everything before the enacting clause
414 and insert:

415 A bill to be entitled
416 An act relating to public construction; amending s.
417 255.20, F.S.; requiring that a county, municipality,
418 special district, or other political subdivision seeking
419 to construct, repair, or improve a public building or
420 structure competitively award each project; providing
421 certain exceptions; revising the procedure for a local
422 government to perform a project using its own services,
423 employees, and equipment; exempting local governments
424 owning or operating a public-use airport, a seaport, or a
425 public transit system as defined by state law from certain
426 requirements under certain conditions; prohibiting a
427 county, municipality, or special district from owning or
428 operating an asphalt plant or concrete plant having an
429 independent mixer; amending s. 336.41, F.S.; deleting
430 provisions authorizing county commissioners to employ
431 labor and provide equipment for certain projects;
432 requiring that all persons to whom the governing body of a



801590

433 county or municipality delivers equipment or material to
434 account for such equipment or material to the governing
435 body; requiring that such governing body competitively
436 award certain projects to a private-sector contractor;
437 authorizing a county or municipality to use its own forces
438 for certain projects; defining the term "competitively
439 award" for specified purposes; providing that the value of
440 a project includes specified costs; providing that
441 requirements to competitively award certain contractors do
442 not prevent counties and municipalities from performing
443 routine maintenance, including the grading and shaping of
444 dirt roads; prohibiting a county, municipality, or special
445 district from owning or operating an asphalt plant or a
446 concrete plant having an independent mixer; authorizing
447 municipalities to provide for certain requirements for
448 contracts exceeding a specified value; requiring that a
449 municipality publish certain information before
450 advertisement, notice of solicitation, or adoption;
451 amending s. 336.44, F.S.; requiring that the governing
452 body of a county or municipality let the work on roads out
453 on contract in accordance with state law; providing an
454 effective date.