

1                                   A bill to be entitled  
 2           An act relating to public construction projects; amending  
 3           s. 255.20, F.S.; revising exceptions to the requirement  
 4           that certain public projects be competitively awarded;  
 5           defining the term "maintenance"; prohibiting an exception  
 6           if the local government contributed to a delay in funding  
 7           or awarding a project; requiring a local government to  
 8           support a decision to perform a project with its own  
 9           employees and to make a factual finding that the project  
 10          cost will be the same or less than the lowest bid;  
 11          providing additional exceptions for projects related to  
 12          public-use airports, certain ports, and certain public  
 13          transit systems; authorizing a project to be awarded to a  
 14          contractor that maintains a local presence under certain  
 15          circumstances; providing an effective date.

16  
 17 Be It Enacted by the Legislature of the State of Florida:

18  
 19           Section 1. Section 255.20, Florida Statutes, is amended to  
 20           read:

21           255.20 Local bids and contracts for public construction  
 22           works; specification of state-produced lumber.--

23           (1) A county, municipality, special district as defined in  
 24           chapter 189, or other political subdivision of the state seeking  
 25           to construct, ~~or~~ improve, or repair a public building,  
 26           structure, or other public construction works must competitively  
 27           award to an appropriately licensed contractor each project that  
 28           is estimated in accordance with generally accepted cost-

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

53 | (a) Notwithstanding any other law ~~to the contrary~~, a  
 54 | governmental entity ~~a county, municipality, special district as~~  
 55 | ~~defined in chapter 189, or other political subdivision of the~~  
 56 | ~~state~~ seeking to construct or improve bridges, roads, streets,

57 highways, or railroads, and services incidental thereto, at a  
 58 cost ~~costs~~ in excess of \$250,000 may require that persons  
 59 interested in performing work under contract first be certified  
 60 or qualified to perform such work. A ~~Any~~ contractor may be  
 61 considered ineligible to bid ~~by the governmental entity~~ if the  
 62 contractor is behind by 10 percent or more on completing an  
 63 approved progress schedule for the governmental entity ~~by 10~~  
 64 ~~percent or more~~ at the time of advertising ~~advertisement~~ of the  
 65 work. A prequalified ~~Any~~ contractor ~~prequalified and~~ considered  
 66 eligible by the Department of Transportation to bid to perform  
 67 the type of work described under the contract is ~~shall be~~  
 68 presumed to be qualified to perform the work described. The  
 69 governmental entity may provide an appeal process to overcome  
 70 that presumption with de novo review based on the record below  
 71 to the circuit court.

72 (b) For ~~With respect to~~ contractors who are not  
 73 prequalified by ~~with~~ the Department of Transportation, the  
 74 governmental entity shall publish prequalification criteria and  
 75 procedures prior to advertisement or notice of solicitation.  
 76 Such publications must ~~shall~~ include notice of a public hearing  
 77 for comment on such criteria and procedures prior to adoption.  
 78 The procedures must ~~shall~~ provide for an appeal process within  
 79 the authority for making objections to the prequalification  
 80 process with de novo review based on the record below to the  
 81 circuit court within 30 days.

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

- 83 1. If ~~When~~ the project is undertaken to replace,  
 84 reconstruct, or repair an existing public building, structure,

85 or other public construction works facility damaged or destroyed  
 86 by a sudden unexpected turn of events, such as an act of God,  
 87 riot, fire, flood, accident, or other urgent circumstances, and  
 88 such damage or destruction creates:

- 89 a. An immediate danger to the public health or safety;
- 90 b. Other loss to public or private property which requires  
 91 emergency government action; or
- 92 c. An interruption of an essential governmental service.

93 2. If ~~When~~, after notice by publication in accordance with  
 94 the applicable ordinance or resolution, the governmental entity  
 95 does not receive any responsive bids or proposals ~~responses~~.

96 3. To construction, remodeling, repair, or improvement to  
 97 a public electric or gas utility system if ~~when~~ such work on the  
 98 public utility system is performed by personnel of the system.

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

102 5. If ~~When~~ the project consists exclusively of ~~is~~  
 103 undertaken as repair or maintenance to a public building,  
 104 structure, or other public construction works of an existing  
 105 public facility. For the purposes of this section, the term  
 106 "maintenance" means those minor repairs and associated tasks  
 107 necessary to prevent the failure or decline of such facility  
 108 without having to undertake any new construction, additions, or  
 109 extensions.

110 6. If ~~When~~ the project is undertaken exclusively as part  
 111 of a public educational program.

112 7. If ~~When~~ the funding source of the project will be

113 diminished or lost because the time required to competitively  
 114 award the project after the funds become available exceeds the  
 115 time within which the funding source must be spent, and the  
 116 governmental entity undertaking the project has not materially  
 117 contributed to a delay in funding or in competitively awarding  
 118 the project.

119 8. If ~~When~~ the local government ~~has~~ competitively awarded  
 120 a project to a private sector contractor and the contractor ~~has~~  
 121 abandoned the project before completion or the local government  
 122 ~~has~~ terminated the contract.

123 9. If the local government, after receiving competitive  
 124 bids or proposals, decides to perform the project using its own  
 125 services, employees, and equipment and complies with the  
 126 provisions of this subparagraph. If the local government  
 127 receives bids or proposals that are responsive but are all  
 128 greater than the local government's estimated cost of the  
 129 project, ~~When~~ the governing board of the local government, after  
 130 public notice, shall conduct ~~conducts~~ a public meeting under s.  
 131 286.011 and may decide ~~finds~~ by a majority vote ~~of the governing~~  
 132 ~~board that it is in the public's best interest to perform the~~  
 133 project using its own services, employees, and equipment. The  
 134 public notice must be published at least 14 days before ~~prior to~~  
 135 the date of the public meeting at which the governing board  
 136 takes final action ~~to apply this subparagraph.~~ The notice must  
 137 identify the project and, the estimated cost of the project, and  
 138 specify that the purpose for the public meeting is to consider  
 139 ~~whether it is in the public's best interest to perform the~~  
 140 project using the local government's own services, employees,

141 and equipment. The local government's decision ~~In deciding~~  
142 ~~whether it is in the public's best interest for local government~~  
143 ~~to perform a project using its own services, employees, and~~  
144 ~~equipment~~ must be supported by a factual finding, subject to  
145 challenge under subsection (5), that the local government can  
146 perform the project at a cost equal to or less than the lowest  
147 cost-responsive bid or proposal received, using generally  
148 accepted cost-accounting principles that fully account for all  
149 local government costs associated with performing the project,  
150 including employee compensation and benefits, equipment, and  
151 materials, ~~the governing board may consider the cost of the~~  
152 ~~project, whether the project requires an increase in the number~~  
153 ~~of government employees, an increase in capital expenditures for~~  
154 ~~public facilities, equipment or other capital assets, the impact~~  
155 ~~on local economic development, the impact on small and minority~~  
156 ~~business owners, the impact on state and local tax revenues,~~  
157 ~~whether the private sector contractors provide health insurance~~  
158 ~~and other benefits equivalent to those provided by the local~~  
159 ~~government, and any other factor relevant to what is in the~~  
160 ~~public's best interest.~~

161 10. If ~~When~~ the governing board of the local government  
162 determines upon consideration of specific substantive criteria  
163 ~~and administrative procedures~~ that it is in the best interest of  
164 the local government to award the project to an appropriately  
165 licensed private sector contractor pursuant ~~according~~ to  
166 administrative procedures established by and expressly set forth  
167 in a charter, ordinance, or resolution of the local government  
168 adopted before ~~prior to~~ July 1, 1994. The criteria and

169 procedures must be set out in the charter, ordinance, or  
 170 resolution and must be applied uniformly by the local government  
 171 to avoid awarding a ~~award of any~~ project in an arbitrary or  
 172 capricious manner. This exception applies only if ~~shall apply~~  
 173 ~~when~~ all of the following occur:

174 a. ~~When~~ The governing board of the local government, after  
 175 public notice, conducts a public meeting under s. 286.011 and  
 176 finds by a two-thirds vote of the governing board that it is in  
 177 the public's best interest to award the project according to the  
 178 criteria and procedures established by charter, ordinance, or  
 179 resolution. The public notice must be published at least 14 days  
 180 before ~~prior to~~ the date of the public meeting at which the  
 181 governing board takes final action ~~to apply this subparagraph~~.  
 182 The notice must identify the project, the estimated cost of the  
 183 project, and specify that the purpose for the public meeting is  
 184 to consider whether it is in the public's best interest to award  
 185 the project using the criteria and procedures permitted by the  
 186 preexisting charter, ordinance, or resolution.

187 b. ~~In the event~~ The project is to be awarded by any method  
 188 other than a competitive selection process, and the governing  
 189 board finds ~~must find~~ evidence that:

190 (I) There is one appropriately licensed contractor who is  
 191 uniquely qualified to undertake the project because that  
 192 contractor is currently under contract to perform work that is  
 193 affiliated with the project; or

194 (II) The time to competitively award the project will  
 195 jeopardize the funding for the project, ~~or will~~ materially  
 196 increase the cost of the project, or will create an undue

197 hardship on the public health, safety, or welfare.

198 c. ~~In the event~~ The project is to be awarded by any method  
 199 other than a competitive selection process, and the published  
 200 notice ~~must~~ clearly specifies ~~specify~~ the ordinance or  
 201 resolution by which the private sector contractor will be  
 202 selected and the criteria to be considered.

203 d. ~~In the event~~ The project is to be awarded by a method  
 204 other than a competitive selection process, and the architect or  
 205 engineer of record has provided a written recommendation that  
 206 the project be awarded to the private sector contractor without  
 207 competitive selection, and the consideration by, and the  
 208 justification of, the government body are documented, in  
 209 writing, in the project file and are presented to the governing  
 210 board prior to the approval required in this paragraph.

211 11. To projects subject to chapter 336.

212 (d)~~1.~~ If the project:

213 1. Is to be awarded based on price, the contract must be  
 214 awarded to the lowest qualified and responsive bidder in  
 215 accordance with the applicable county or municipal ordinance or  
 216 district resolution and in accordance with the applicable  
 217 contract documents. The county, municipality, or special  
 218 district may reserve the right to reject all bids and to rebid  
 219 the project, or elect not to proceed with the project. This  
 220 subsection is not intended to restrict the rights of any local  
 221 government to reject the low bid of a nonqualified or  
 222 nonresponsive bidder and to award the contract to any other  
 223 qualified and responsive bidder in accordance with the standards  
 224 and procedures of any applicable county or municipal ordinance



225 or any resolution of a special district.

226 2. ~~If the project~~ Uses a request for proposal or a request  
 227 for qualifications, the request must be publicly advertised and  
 228 the contract must be awarded in accordance with the applicable  
 229 local ordinances.

230 3. ~~If the project~~ Is subject to competitive negotiations,  
 231 the contract must be awarded in accordance with s. 287.055.

232 (e) If a construction project greater than \$200,000, or  
 233 \$50,000 for electrical work, is started after October 1, 1999,  
 234 ~~and~~ is to be performed by a local government using its own  
 235 employees in a county or municipality that issues registered  
 236 contractor licenses, and requires a ~~the project would require a~~  
 237 ~~licensed~~ contractor licensed under chapter 489 if performed by a  
 238 private sector contractor, the local government must use a  
 239 person appropriately registered or certified under chapter 489  
 240 to supervise the work.

241 (f) If a construction project greater than \$200,000, or  
 242 \$50,000 for electrical work, is started after October 1, 1999,  
 243 ~~and~~ is to be performed by a local government using its own  
 244 employees in a county that does not issue registered contractor  
 245 licenses, and requires a ~~the project would require a licensed~~  
 246 contractor licensed under chapter 489 if performed by a private  
 247 sector contractor, the local government must use a person  
 248 appropriately registered or certified under chapter 489 or a  
 249 person appropriately licensed under chapter 471 to supervise the  
 250 work.

251 (g) Projects performed by a local government using its own  
 252 services and employees must be inspected in the same manner ~~as~~

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253 ~~inspections~~ required for work performed by private sector  
254 contractors.

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

258 (i) This subsection does not preempt the requirements of  
259 any small-business or disadvantaged-business enterprise program  
260 or any local-preference ordinance.

261 (j) A local government that owns or operates a public-use  
262 airport as defined in s. 332.004 is exempt from this section  
263 when performing repairs or maintenance on the airport's  
264 buildings, structures, or public construction works using the  
265 local government's own services, employees, and equipment.

266 (k) A local government that owns or operates a port  
267 identified in s. 403.021(9)(b) is exempt from this section when  
268 performing repairs or maintenance on the port's buildings,  
269 structures, or public construction works using the local  
270 government's own services, employees, and equipment.

271 (l) A local government that owns or operates a public  
272 transit system as defined in s. 343.52, a public transportation  
273 system as defined in s. 343.62, or a mass transit system  
274 described in s. 349.04(1)(b), is exempt from this section when  
275 performing repairs or maintenance on the buildings, structures,  
276 or public construction works of the public transit system,  
277 public transportation system, or mass transit system using the  
278 local government's own services, employees, and equipment.

279 (2) The threshold amount of \$200,000 for construction or  
280 \$50,000 for electrical work must be adjusted by the percentage

281 change in the Consumer Price Index from January 1, 1994, to  
 282 January 1 of the year in which the project is scheduled to  
 283 begin.

284 (3) All county officials, boards of county commissioners,  
 285 school boards, city councils, city commissioners, and all other  
 286 public officers of state boards or commissions that are charged  
 287 with the letting of contracts for public work, for the  
 288 construction of public bridges, buildings, and other structures  
 289 must ~~always~~ specify lumber, timber, and other forest products  
 290 produced and manufactured in this state if ~~whenever~~ such  
 291 products are available and their price, fitness, and quality are  
 292 equal. This subsection does not apply to ~~when~~ plywood specified  
 293 for monolithic concrete forms, if ~~when~~ the structural or service  
 294 requirements for timber for a particular job cannot be supplied  
 295 by native species, or if ~~when~~ the construction is financed in  
 296 whole or in part from federal funds with the requirement  
 297 ~~requirements~~ that there be no restrictions as to species or  
 298 place of manufacture.

299 (4) If two or more responsive bids or proposals for a  
 300 project to be competitively awarded under this section are  
 301 otherwise equal with respect to price, quality, and service, the  
 302 local government may give preference to the contractor who  
 303 maintains the greatest local presence within the local  
 304 government's jurisdiction when awarding the project. For  
 305 purposes of this subsection, "local presence" includes  
 306 maintaining an office within the jurisdiction and employing  
 307 individuals or hiring subcontractors within the jurisdiction.  
 308 Except as provided in this subsection, a local government may

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309 not give any consideration to a contractor's local presence or  
310 similar criteria when evaluating bids or proposals or awarding a  
311 project.

312 (5)~~(4)~~ Any qualified contractor or vendor who could have  
313 been awarded the project had the project been competitively bid  
314 has ~~shall have~~ standing to challenge the propriety of a ~~the~~  
315 local government's actions taken pursuant to ~~when the local~~  
316 ~~government seeks to invoke the provisions of~~ this section. The  
317 prevailing party in such action is ~~shall be~~ entitled to recover  
318 its reasonable attorney's fees.

319 Section 2. This act shall take effect July 1, 2009.