

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 making a specified
 8 determination; requiring a local government that
 9 performs a project using its own services, employees,
 10 and equipment to disclose the actual costs of the
 11 project after completion to the Auditor General;
 12 requiring the Auditor General to review such
 13 disclosures as part of his or her routine audits of
 14 local governments; amending s. 336.41, F.S.; requiring
 15 estimated total construction project costs for certain
 16 projects to include specified costs; providing an
 17 effective date.

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 19 Be It Enacted by the Legislature of the State of Florida:

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 21 Section 1. Paragraph (c) of subsection (1) of section
 22 255.20, Florida Statutes, is amended to read:

23 255.20 Local bids and contracts for public construction
 24 works; specification of state-produced lumber.—

25 (1) A county, municipality, special district as defined in

26 | chapter 189, or other political subdivision of the state seeking
27 | to construct or improve a public building, structure, or other
28 | public construction works must competitively award to an
29 | appropriately licensed contractor each project that is estimated
30 | in accordance with generally accepted cost-accounting principles
31 | to cost more than \$300,000. For electrical work, the local
32 | government must competitively award to an appropriately licensed
33 | contractor each project that is estimated in accordance with
34 | generally accepted cost-accounting principles to cost more than
35 | \$75,000. As used in this section, the term "competitively award"
36 | means to award contracts based on the submission of sealed bids,
37 | proposals submitted in response to a request for proposal,
38 | proposals submitted in response to a request for qualifications,
39 | or proposals submitted for competitive negotiation. This
40 | subsection expressly allows contracts for construction
41 | management services, design/build contracts, continuation
42 | contracts based on unit prices, and any other contract
43 | arrangement with a private sector contractor permitted by any
44 | applicable municipal or county ordinance, by district
45 | resolution, or by state law. For purposes of this section, cost
46 | includes the cost of all labor, except inmate labor, and the
47 | cost of equipment and materials to be used in the construction
48 | of the 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 (c) ~~The provisions of~~ This subsection does ~~de~~ not apply:

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

60 a. An immediate danger to the public health or safety;

61 b. Other loss to public or private property which requires
62 emergency government action; or

63 c. An interruption of an essential governmental service.

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

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

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

73 5. If the project is undertaken as repair or maintenance
74 of an existing public facility. For the purposes of this
75 paragraph, the term "repair" means a corrective action to

76 | restore an existing public facility to a safe and functional
77 | condition and the term "maintenance" means a preventive or
78 | corrective action to maintain an existing public facility in an
79 | operational state or to preserve the facility from failure or
80 | decline. Repair or maintenance includes activities that are
81 | necessarily incidental to repairing or maintaining the facility.
82 | Repair or maintenance does not include the construction of any
83 | new building, structure, or other public construction works or
84 | any substantial addition, extension, or upgrade to an existing
85 | public facility. Such additions, extensions, or upgrades shall
86 | be considered substantial if the estimated cost of the
87 | additions, extensions, or upgrades included as part of the
88 | repair or maintenance project exceeds the threshold amount in
89 | subsection (1) and exceeds 20 percent of the estimated total
90 | cost of the repair or maintenance project using generally
91 | accepted cost-accounting principles that fully account for all
92 | costs associated with performing and completing the work,
93 | including employee compensation and benefits, equipment cost and
94 | maintenance, insurance costs, and materials. An addition,
95 | extension, or upgrade shall not be considered substantial if it
96 | is undertaken pursuant to the conditions specified in
97 | subparagraph 1. Repair and maintenance projects and any related
98 | additions, extensions, or upgrades may not be divided into
99 | multiple projects for the purpose of evading the requirements of
100 | this subparagraph.

101 6. If the project is undertaken exclusively as part of a
102 public educational program.

103 7. If the funding source of the project will be diminished
104 or lost because the time required to competitively award the
105 project after the funds become available exceeds the time within
106 which the funding source must be spent.

107 8. If the local government competitively awarded a project
108 to a private sector contractor and the contractor abandoned the
109 project before completion or the local government terminated the
110 contract.

111 9. If the governing board of the local government complies
112 with all of the requirements of this subparagraph, conducts a
113 public meeting under s. 286.011 after public notice, and finds
114 by majority vote of the governing board that it is in the
115 public's best interest to perform the project using its own
116 services, employees, and equipment. The public notice must be
117 published at least 21 days before the date of the public meeting
118 at which the governing board takes final action. The notice must
119 identify the project, the components and scope of the work, and
120 the estimated cost of the project using generally accepted cost-
121 accounting principles that fully account for all costs
122 associated with performing and completing the work, including
123 employee compensation and benefits, equipment cost and
124 maintenance, insurance costs, and materials. The notice must
125 specify that the purpose for the public meeting is to consider

126 whether it is in the public's best interest to perform the
127 project using the local government's own services, employees,
128 and equipment. Upon publication of the public notice and for 21
129 days thereafter, the local government shall make available for
130 public inspection, during normal business hours and at a
131 location specified in the public notice, a detailed itemization
132 of each component of the estimated cost of the project and
133 documentation explaining the methodology used to arrive at the
134 estimated cost. At the public meeting, any qualified contractor
135 or vendor who could have been awarded the project had the
136 project been competitively bid shall be provided with a
137 reasonable opportunity to present evidence to the governing
138 board regarding the project and the accuracy of the local
139 government's estimated cost of the project. In deciding whether
140 it is in the public's best interest for the local government to
141 perform a project using its own services, employees, and
142 equipment, the governing board must consider the estimated cost
143 of the project using generally accepted cost-accounting
144 principles that fully account for all costs associated with
145 performing and completing the work, including employee
146 compensation and benefits, equipment costs and maintenance,
147 insurance costs, and the cost of materials, and the accuracy of
148 the estimated cost in light of any other information that may be
149 presented at the public meeting and whether the project requires
150 an increase in the number of government employees or an increase

151 in capital expenditures for public facilities, equipment, or
152 other capital assets. The local government may further consider
153 the impact on local economic development, the impact on small
154 and minority business owners, the impact on state and local tax
155 revenues, whether the private sector contractors provide health
156 insurance and other benefits equivalent to those provided by the
157 local government, and any other factor relevant to what is in
158 the public's best interest. A local government that performs a
159 project using its own services, employees, and equipment must
160 disclose the actual costs of the project after completion to the
161 Auditor General. The Auditor General shall review such
162 disclosures as part of his or her routine audits of local
163 governments.

164 10. If the governing board of the local government
165 determines upon consideration of specific substantive criteria
166 that it is in the best interest of the local government to award
167 the project to an appropriately licensed private sector
168 contractor pursuant to administrative procedures established by
169 and expressly set forth in a charter, ordinance, or resolution
170 of the local government adopted before July 1, 1994. The
171 criteria and procedures must be set out in the charter,
172 ordinance, or resolution and must be applied uniformly by the
173 local government to avoid awarding a project in an arbitrary or
174 capricious manner. This exception applies only if all of the
175 following occur:

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

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

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

196 (II) The time to competitively award the project will
197 jeopardize the funding for the project, materially increase the
198 cost of the project, or create an undue hardship on the public
199 health, safety, or welfare.

200 c. The project is to be awarded by any method other than a

201 competitive selection process, and the published notice clearly
 202 specifies the ordinance or resolution by which the private
 203 sector contractor will be selected and the criteria to be
 204 considered.

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

213 11. To projects subject to chapter 336.

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

216 336.41 Counties; employing labor and providing road
 217 equipment; accounting; when competitive bidding required.—

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

224 (a) Construction and maintenance in emergency situations;it
 225 ~~and~~

226 (b) In addition to emergency work, construction and
227 reconstruction, including resurfacing, mineral seal coating, and
228 bridge repairs, having a total cumulative annual value not to
229 exceed 5 percent of its 80-percent portion of the constitutional
230 gas tax or \$400,000, whichever is greater;~~7~~ and

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

237
238 for which the county may utilize its own forces. Estimated total
239 construction project costs shall include all costs associated
240 with performing and completing the work, including employee
241 compensation and benefits, equipment costs and maintenance,
242 insurance costs, and the cost of materials. However, if, after
243 proper advertising, no bids are received by a county for a
244 specific project, the county may use its own forces to construct
245 the project, notwithstanding the limitation of this subsection.
246 Nothing in this section shall prevent the county from performing
247 routine maintenance as authorized by law.

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