

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Toledo offered the following:

Amendment (with title amendment)

Between lines 40 and 41, insert:

Section 1. Subsections (2) and (3) of section 218.80, Florida Statutes, are amended to read:

218.80 Public Bid Disclosure Act.—

(2) It is the intent of the Legislature that a local governmental entity shall disclose all of the ~~local governmental entity's~~ permits or fees, including, but not limited to, all license fees, permit fees, impact fees, or inspection fees, payable by the contractor ~~to the unit of government that issued the bidding documents or other request for proposal,~~ unless such

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14 permits or fees are disclosed in the bidding documents or other
15 request for proposal for the project at the time the project was
16 let for bid. It is further the intent of the Legislature to
17 prohibit local governments from halting construction to collect
18 any undisclosed permits or fees which were not disclosed or
19 included in the bidding documents or other request for proposal
20 for the project at the time the project was let for bid.

21 (3) Bidding documents or other request for proposal issued
22 for bids by a local governmental entity, or any public contract
23 entered into between a local governmental entity and a
24 contractor shall disclose each permit or fee which the
25 contractor will have to pay before or during construction and
26 shall include the dollar amount or the percentage method or the
27 unit method of all permits or fees which may be required ~~by the~~
28 ~~local government~~ as a part of the contract. If the request for
29 proposal does not require the response to include a final fixed
30 price, the local governmental entity is not required to disclose
31 any fees or assessments in the request for proposal. However, at
32 least 10 days prior to requiring the contractor to submit a
33 final fixed price for the project, the local governmental entity
34 shall make the disclosures required in this section. Any of the
35 local governmental entity's permits or fees that ~~which~~ are not
36 disclosed in the bidding documents, other request for proposal,
37 or a contract between a local government and a contractor shall
38 not be assessed or collected after the contract is let. No local

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39 government shall halt construction under any public contract or
40 delay completion of the contract in order to collect any permits
41 or fees which were not provided for or specified in the bidding
42 documents, other request for proposal, or the contract.

43 Section 2. Paragraph (c) of subsection (1) of section
44 255.20, Florida Statutes, is amended to read:

45 255.20 Local bids and contracts for public construction
46 works; specification of state-produced lumber.—

47 (1) A county, municipality, special district as defined in
48 chapter 189, or other political subdivision of the state seeking
49 to construct or improve a public building, structure, or other
50 public construction works must competitively award to an
51 appropriately licensed contractor each project that is estimated
52 in accordance with generally accepted cost-accounting principles
53 to cost more than \$300,000. For electrical work, the local
54 government must competitively award to an appropriately licensed
55 contractor each project that is estimated in accordance with
56 generally accepted cost-accounting principles to cost more than
57 \$75,000. As used in this section, the term "competitively award"
58 means to award contracts based on the submission of sealed bids,
59 proposals submitted in response to a request for proposal,
60 proposals submitted in response to a request for qualifications,
61 or proposals submitted for competitive negotiation. This
62 subsection expressly allows contracts for construction
63 management services, design/build contracts, continuation

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64 contracts based on unit prices, and any other contract
65 arrangement with a private sector contractor permitted by any
66 applicable municipal or county ordinance, by district
67 resolution, or by state law. For purposes of this section, cost
68 includes the cost of all labor, except inmate labor, and the
69 cost of equipment and materials to be used in the construction
70 of the project. Subject to the provisions of subsection (3), the
71 county, municipality, special district, or other political
72 subdivision may establish, by municipal or county ordinance or
73 special district resolution, procedures for conducting the
74 bidding process.

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

76 1. If the project is undertaken to replace, reconstruct,
77 or repair an existing public building, structure, or other
78 public construction works damaged or destroyed by a sudden
79 unexpected turn of events such as an act of God, riot, fire,
80 flood, accident, or other urgent circumstances, and such damage
81 or destruction creates:

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

83 b. Other loss to public or private property which requires
84 emergency government action; or

85 c. An interruption of an essential governmental service.

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

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

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

95 5. If the project is undertaken as repair or maintenance
96 of an existing public facility. For the purposes of this
97 paragraph, the term "repair" means a corrective action to
98 restore an existing public facility to a safe and functional
99 condition and the term "maintenance" means a preventive or
100 corrective action to maintain an existing public facility in an
101 operational state or to preserve the facility from failure or
102 decline. Repair or maintenance includes activities that are
103 necessarily incidental to repairing or maintaining the facility.
104 Repair or maintenance does not include the construction of any
105 new building, structure, or other public construction works or
106 any substantial addition, extension, or upgrade to an existing
107 public facility. Such additions, extensions, or upgrades shall
108 be considered substantial if the estimated cost of the
109 additions, extensions, or upgrades included as part of the
110 repair or maintenance project exceeds the threshold amount in
111 subsection (1) and exceeds 20 percent of the estimated total
112 cost of the repair or maintenance project using generally
113 accepted cost-accounting principles that fully account for all

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114 costs associated with performing and completing the work,
115 including employee compensation and benefits, equipment cost and
116 maintenance, insurance costs, and materials. An addition,
117 extension, or upgrade shall not be considered substantial if it
118 is undertaken pursuant to the conditions specified in
119 subparagraph 1. Repair and maintenance projects and any related
120 additions, extensions, or upgrades may not be divided into
121 multiple projects for the purpose of evading the requirements of
122 this subparagraph.

123 6. If the project is undertaken exclusively as part of a
124 public educational program.

125 7. If the funding source of the project will be diminished
126 or lost because the time required to competitively award the
127 project after the funds become available exceeds the time within
128 which the funding source must be spent.

129 8. If the local government competitively awarded a project
130 to a private sector contractor and the contractor abandoned the
131 project before completion or the local government terminated the
132 contract.

133 9. If the governing board of the local government complies
134 with all of the requirements of this subparagraph, conducts a
135 public meeting under s. 286.011 after public notice, and finds
136 by majority vote of the governing board that it is in the
137 public's best interest to perform the project using its own
138 services, employees, and equipment. The public notice must be

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139 published at least 21 days before the date of the public meeting
140 at which the governing board takes final action. The notice must
141 identify the project, the components and scope of the work, and
142 the estimated cost of the project using generally accepted cost-
143 accounting principles that fully account for all costs
144 associated with performing and completing the work, including
145 employee compensation and benefits, equipment cost and
146 maintenance, insurance costs, and materials. The notice must
147 specify that the purpose for the public meeting is to consider
148 whether it is in the public's best interest to perform the
149 project using the local government's own services, employees,
150 and equipment. Upon publication of the public notice and for 21
151 days thereafter, the local government shall make available for
152 public inspection, during normal business hours and at a
153 location specified in the public notice, a detailed itemization
154 of each component of the estimated cost of the project and
155 documentation explaining the methodology used to arrive at the
156 estimated cost. At the public meeting, any qualified contractor
157 or vendor who could have been awarded the project had the
158 project been competitively bid shall be provided with a
159 reasonable opportunity to present evidence to the governing
160 board regarding the project and the accuracy of the local
161 government's estimated cost of the project. In deciding whether
162 it is in the public's best interest for the local government to
163 perform a project using its own services, employees, and

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164 equipment, the governing board must consider the estimated cost
165 of the project using generally accepted cost-accounting
166 principles that fully account for all costs associated with
167 performing and completing the work, including employee
168 compensation and benefits, equipment costs and maintenance,
169 insurance costs, and the cost of materials, and the accuracy of
170 the estimated cost in light of any other information that may be
171 presented at the public meeting and whether the project requires
172 an increase in the number of government employees or an increase
173 in capital expenditures for public facilities, equipment, or
174 other capital assets. The local government may further consider
175 the impact on local economic development, the impact on small
176 and minority business owners, the impact on state and local tax
177 revenues, whether the private sector contractors provide health
178 insurance and other benefits equivalent to those provided by the
179 local government, and any other factor relevant to what is in
180 the public's best interest. A local government that performs
181 projects using its own services, employees, and equipment must
182 disclose the actual costs of the project after completion to the
183 Auditor General. The Auditor General shall review such
184 disclosures as part of his or her routine audits of local
185 governments.

186 10. If the governing board of the local government
187 determines upon consideration of specific substantive criteria
188 that it is in the best interest of the local government to award

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189 the project to an appropriately licensed private sector
190 contractor pursuant to administrative procedures established by
191 and expressly set forth in a charter, ordinance, or resolution
192 of the local government adopted before July 1, 1994. The
193 criteria and procedures must be set out in the charter,
194 ordinance, or resolution and must be applied uniformly by the
195 local government to avoid awarding a project in an arbitrary or
196 capricious manner. This exception applies only if all of the
197 following occur:

198 a. The governing board of the local government, after
199 public notice, conducts a public meeting under s. 286.011 and
200 finds by a two-thirds vote of the governing board that it is in
201 the public's best interest to award the project according to the
202 criteria and procedures established by charter, ordinance, or
203 resolution. The public notice must be published at least 14 days
204 before the date of the public meeting at which the governing
205 board takes final action. The notice must identify the project,
206 the estimated cost of the project, and specify that the purpose
207 for the public meeting is to consider whether it is in the
208 public's best interest to award the project using the criteria
209 and procedures permitted by the preexisting charter, ordinance,
210 or resolution.

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

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214 (I) There is one appropriately licensed contractor who is
215 uniquely qualified to undertake the project because that
216 contractor is currently under contract to perform work that is
217 affiliated with the project; or

218 (II) The time to competitively award the project will
219 jeopardize the funding for the project, materially increase the
220 cost of the project, or create an undue hardship on the public
221 health, safety, or welfare.

222 c. The project is to be awarded by any method other than a
223 competitive selection process, and the published notice clearly
224 specifies the ordinance or resolution by which the private
225 sector contractor will be selected and the criteria to be
226 considered.

227 d. The project is to be awarded by a method other than a
228 competitive selection process, and the architect or engineer of
229 record has provided a written recommendation that the project be
230 awarded to the private sector contractor without competitive
231 selection, and the consideration by, and the justification of,
232 the government body are documented, in writing, in the project
233 file and are presented to the governing board prior to the
234 approval required in this paragraph.

235 11. To projects subject to chapter 336.

236 Section 3. Subsection (4) of section 336.41, Florida
237 Statutes, is amended to read:

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238 336.41 Counties; employing labor and providing road
239 equipment; accounting; when competitive bidding required.—

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

246 (a) Construction and maintenance in emergency situations;~~;~~
247 ~~and~~

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

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

259
260 for which the county may utilize its own forces. Estimated total
261 construction project costs must include all costs associated
262 with performing and completing the work, including employee

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263 compensation and benefits, equipment costs and maintenance,
264 insurance costs, and the cost of materials. However, if, after
265 proper advertising, no bids are received by a county for a
266 specific project, the county may use its own forces to construct
267 the project, notwithstanding the limitation of this subsection.
268 Nothing in this section shall prevent the county from performing
269 routine maintenance as authorized by law.

271 -----
272 **T I T L E A M E N D M E N T**

273 Remove line 2 and insert:

274 An act relating to construction; amending s. 218.80,
275 F.S.; revising legislative intent; revising disclosure
276 requirements for bidding documents and other requests
277 for proposals issued for bids by a local governmental
278 entity and public contracts entered into between local
279 governmental entities and contractors; amending s.
280 255.20, F.S.; requiring the governing board of a local
281 government to consider estimated costs of certain
282 projects using generally accepted cost-accounting
283 principles that account for specified costs when the
284 board is making a specified determination; requiring
285 that a local government that performs projects using
286 its own services, employees, and equipment disclose
287 the actual costs of the project after completion to

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288 | the Auditor General; requiring that the Auditor
289 | General review such disclosures as part of his or her
290 | routine audits of local governments; amending s.
291 | 336.41, F.S.; requiring estimated total construction
292 | project costs for certain projects to include
293 | specified costs; amending s.

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