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LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Perry) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (3) of section 218.80, Florida  
Statutes, is amended to read:

218.80 Public Bid Disclosure Act.—

(3) Bidding documents or other request for proposal issued  
for bids by a local governmental entity, or any public contract  
entered into between a local governmental entity and a  
contractor shall disclose each permit or fee which the



12 contractor will have to pay before or during construction, ~~and~~  
13 ~~shall include~~ the dollar amount or the percentage method or the  
14 unit method of all permits or fees which may be required by the  
15 local government as a part of the contract and a listing of all  
16 other governmental entities that may have additional permits or  
17 fees generated by the project. If the request for proposal does  
18 not require the response to include a final fixed price, the  
19 local governmental entity is not required to disclose any fees  
20 or assessments in the request for proposal. However, at least 10  
21 days prior to requiring the contractor to submit a final fixed  
22 price for the project, the local governmental entity shall make  
23 the disclosures required in this section. Any of the local  
24 governmental entity's permits or fees that ~~which~~ are not  
25 disclosed in the bidding documents, other request for proposal,  
26 or a contract between a local government and a contractor shall  
27 not be assessed or collected after the contract is let. No local  
28 government shall halt construction under any public contract or  
29 delay completion of the contract in order to collect any permits  
30 or fees which were not provided for or specified in the bidding  
31 documents, other request for proposal, or the contract.

32 Section 2. Subsection (1) of section 255.20, Florida  
33 Statutes, is amended to read:

34 255.20 Local bids and contracts for public construction  
35 works; specification of state-produced lumber.-

36 (1) A county, municipality, special district as defined in  
37 chapter 189, or other political subdivision of the state seeking  
38 to construct or improve a public building, structure, or other  
39 public construction works must competitively award to an  
40 appropriately licensed contractor each project that is estimated



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41 ~~in accordance with generally accepted cost-accounting principles~~  
42 to cost more than \$300,000. For electrical work, the local  
43 government must competitively award to an appropriately licensed  
44 contractor each project that is estimated ~~in accordance with~~  
45 ~~generally accepted cost-accounting principles~~ to cost more than  
46 \$75,000. As used in this section, the term "competitively award"  
47 means to award contracts based on the submission of sealed bids,  
48 proposals submitted in response to a request for proposal,  
49 proposals submitted in response to a request for qualifications,  
50 or proposals submitted for competitive negotiation. This  
51 subsection expressly allows contracts for construction  
52 management services, design/build contracts, continuation  
53 contracts based on unit prices, and any other contract  
54 arrangement with a private sector contractor permitted by any  
55 applicable municipal or county ordinance, by district  
56 resolution, or by state law. For purposes of this section, cost  
57 includes employee compensation and benefits ~~the cost of all~~  
58 ~~labor~~, except inmate labor, ~~and~~ the cost of equipment and  
59 maintenance, insurance costs, and the cost of direct materials  
60 to be used in the construction of the project, including  
61 materials purchased by the local government, and other direct  
62 costs, plus a factor of 20 percent for management, overhead, and  
63 other indirect costs. Subject to the provisions of subsection  
64 (3), the county, municipality, special district, or other  
65 political subdivision may establish, by municipal or county  
66 ordinance or special district resolution, procedures for  
67 conducting the bidding process.

68 (a) Notwithstanding any other law, a governmental entity  
69 seeking to construct or improve bridges, roads, streets,



70 highways, or railroads, and services incidental thereto, at a  
71 cost in excess of \$250,000 may require that persons interested  
72 in performing work under contract first be certified or  
73 qualified to perform such work. A contractor may be considered  
74 ineligible to bid if the contractor is behind by 10 percent or  
75 more on completing an approved progress schedule for the  
76 governmental entity at the time of advertising the work. A  
77 prequalified contractor considered eligible by the Department of  
78 Transportation to bid to perform the type of work described  
79 under the contract is presumed to be qualified to perform the  
80 work described. The governmental entity may provide an appeal  
81 process to overcome that presumption with de novo review based  
82 on the record below to the circuit court.

83 (b) For contractors who are not prequalified by the  
84 Department of Transportation, the governmental entity shall  
85 publish prequalification criteria and procedures prior to  
86 advertisement or notice of solicitation. Such publications must  
87 include notice of a public hearing for comment on such criteria  
88 and procedures prior to adoption. The procedures must provide  
89 for an appeal process within the authority for making objections  
90 to the prequalification process with de novo review based on the  
91 record below to the circuit court within 30 days.

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

93 1. If the project is undertaken to replace, reconstruct, or  
94 repair an existing public building, structure, or other public  
95 construction works damaged or destroyed by a sudden unexpected  
96 turn of events such as an act of God, riot, fire, flood,  
97 accident, or other urgent circumstances, and such damage or  
98 destruction creates:



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99           a. An immediate danger to the public health or safety;  
100           b. Other loss to public or private property which requires  
101 emergency government action; or  
102           c. An interruption of an essential governmental service.  
103           2. If, after notice by publication in accordance with the  
104 applicable ordinance or resolution, the governmental entity does  
105 not receive any responsive bids or proposals.  
106           3. To construction, remodeling, repair, or improvement to a  
107 public electric or gas utility system if such work on the public  
108 utility system is performed by personnel of the system.  
109           4. To construction, remodeling, repair, or improvement by a  
110 utility commission whose major contracts are to construct and  
111 operate a public electric utility system.  
112           5. If the project is undertaken as repair or maintenance of  
113 an existing public facility. For the purposes of this paragraph,  
114 the term "repair" means a corrective action to restore an  
115 existing public facility to a safe and functional condition and  
116 the term "maintenance" means a preventive or corrective action  
117 to maintain an existing public facility in an operational state  
118 or to preserve the facility from failure or decline. Repair or  
119 maintenance includes activities that are necessarily incidental  
120 to repairing or maintaining the facility. Repair or maintenance  
121 does not include the construction of any new building,  
122 structure, or other public construction works or any substantial  
123 addition, extension, or upgrade to an existing public facility.  
124 Such additions, extensions, or upgrades shall be considered  
125 substantial if the estimated cost of the additions, extensions,  
126 or upgrades included as part of the repair or maintenance  
127 project exceeds the threshold amount in subsection (1) and



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128 exceeds 20 percent of the estimated total cost of the repair or  
129 maintenance project ~~using generally accepted cost-accounting~~  
130 ~~principles that~~ fully accounting account for all costs  
131 associated with performing and completing the work, including  
132 employee compensation and benefits, equipment cost and  
133 maintenance, insurance costs, and the cost of direct materials  
134 to be used in the construction of the project, including  
135 materials purchased by the local government, and other direct  
136 costs, plus a factor of 20 percent for management, overhead, and  
137 other indirect costs. An addition, extension, or upgrade shall  
138 not be considered substantial if it is undertaken pursuant to  
139 the conditions specified in subparagraph 1. Repair and  
140 maintenance projects and any related additions, extensions, or  
141 upgrades may not be divided into multiple projects for the  
142 purpose of evading the requirements of this subparagraph.

143 6. If the project is undertaken exclusively as part of a  
144 public educational program.

145 7. If the funding source of the project will be diminished  
146 or lost because the time required to competitively award the  
147 project after the funds become available exceeds the time within  
148 which the funding source must be spent.

149 8. If the local government competitively awarded a project  
150 to a private sector contractor and the contractor abandoned the  
151 project before completion or the local government terminated the  
152 contract.

153 9. If the governing board of the local government complies  
154 with all of the requirements of this subparagraph, conducts a  
155 public meeting under s. 286.011 after public notice, and finds  
156 by majority vote of the governing board that it is in the



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157 public's best interest to perform the project using its own  
158 services, employees, and equipment. The public notice must be  
159 published at least 21 days before the date of the public meeting  
160 at which the governing board takes final action. The notice must  
161 identify the project, the components and scope of the work, and  
162 the estimated cost of the project ~~using generally accepted cost-~~  
163 ~~accounting principles that~~ fully accounting account for all  
164 costs associated with performing and completing the work,  
165 including employee compensation and benefits, equipment cost and  
166 maintenance, insurance costs, and the cost of direct materials  
167 to be used in the construction of the project, including  
168 materials purchased by the local government, and other direct  
169 costs, plus a factor of 20 percent for management, overhead, and  
170 other indirect costs. The notice must specify that the purpose  
171 for the public meeting is to consider whether it is in the  
172 public's best interest to perform the project using the local  
173 government's own services, employees, and equipment. Upon  
174 publication of the public notice and for 21 days thereafter, the  
175 local government shall make available for public inspection,  
176 during normal business hours and at a location specified in the  
177 public notice, a detailed itemization of each component of the  
178 estimated cost of the project and documentation explaining the  
179 methodology used to arrive at the estimated cost. At the public  
180 meeting, any qualified contractor or vendor who could have been  
181 awarded the project had the project been competitively bid shall  
182 be provided with a reasonable opportunity to present evidence to  
183 the governing board regarding the project and the accuracy of  
184 the local government's estimated cost of the project. In  
185 deciding whether it is in the public's best interest for the



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186 local government to perform a project using its own services,  
187 employees, and equipment, the governing board must consider the  
188 estimated cost of the project fully accounting for all costs  
189 associated with performing and completing the work, including  
190 employee compensation and benefits, equipment cost and  
191 maintenance, insurance costs, and the cost of direct materials  
192 to be used in the construction of the project, including  
193 materials purchased by the local government, and other direct  
194 costs, plus a factor of 20 percent for management, overhead, and  
195 other indirect costs, and the accuracy of the estimated cost in  
196 light of any other information that may be presented at the  
197 public meeting and whether the project requires an increase in  
198 the number of government employees or an increase in capital  
199 expenditures for public facilities, equipment, or other capital  
200 assets. The local government may further consider the impact on  
201 local economic development, the impact on small and minority  
202 business owners, the impact on state and local tax revenues,  
203 whether the private sector contractors provide health insurance  
204 and other benefits equivalent to those provided by the local  
205 government, and any other factor relevant to what is in the  
206 public's best interest. A report summarizing completed projects  
207 constructed by the local government pursuant to this subsection  
208 shall be publicly reviewed each year by the governing body of  
209 the local government. The report shall detail the estimated  
210 costs and the actual costs of the projects constructed by the  
211 local government pursuant to this subsection. The report shall  
212 be made available for review by the public. The Auditor General  
213 shall review the report as part of his or her audits of local  
214 governments.





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215           10. If the governing board of the local government  
216 determines upon consideration of specific substantive criteria  
217 that it is in the best interest of the local government to award  
218 the project to an appropriately licensed private sector  
219 contractor pursuant to administrative procedures established by  
220 and expressly set forth in a charter, ordinance, or resolution  
221 of the local government adopted before July 1, 1994. The  
222 criteria and procedures must be set out in the charter,  
223 ordinance, or resolution and must be applied uniformly by the  
224 local government to avoid awarding a project in an arbitrary or  
225 capricious manner. This exception applies only if all of the  
226 following occur:

227           a. The governing board of the local government, after  
228 public notice, conducts a public meeting under s. 286.011 and  
229 finds by a two-thirds vote of the governing board that it is in  
230 the public's best interest to award the project according to the  
231 criteria and procedures established by charter, ordinance, or  
232 resolution. The public notice must be published at least 14 days  
233 before the date of the public meeting at which the governing  
234 board takes final action. The notice must identify the project,  
235 the estimated cost of the project, and specify that the purpose  
236 for the public meeting is to consider whether it is in the  
237 public's best interest to award the project using the criteria  
238 and procedures permitted by the preexisting charter, ordinance,  
239 or resolution.

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

243           (I) There is one appropriately licensed contractor who is



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244 uniquely qualified to undertake the project because that  
245 contractor is currently under contract to perform work that is  
246 affiliated with the project; or

247 (II) The time to competitively award the project will  
248 jeopardize the funding for the project, materially increase the  
249 cost of the project, or create an undue hardship on the public  
250 health, safety, or welfare.

251 c. The project is to be awarded by any method other than a  
252 competitive selection process, and the published notice clearly  
253 specifies the ordinance or resolution by which the private  
254 sector contractor will be selected and the criteria to be  
255 considered.

256 d. The project is to be awarded by a method other than a  
257 competitive selection process, and the architect or engineer of  
258 record has provided a written recommendation that the project be  
259 awarded to the private sector contractor without competitive  
260 selection, and the consideration by, and the justification of,  
261 the government body are documented, in writing, in the project  
262 file and are presented to the governing board prior to the  
263 approval required in this paragraph.

264 11. To projects subject to chapter 336.

265 (d) If the project:

266 1. Is to be awarded based on price, the contract must be  
267 awarded to the lowest qualified and responsive bidder in  
268 accordance with the applicable county or municipal ordinance or  
269 district resolution and in accordance with the applicable  
270 contract documents. The county, municipality, or special  
271 district may reserve the right to reject all bids and to rebid  
272 the project, or elect not to proceed with the project. This



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273 subsection is not intended to restrict the rights of any local  
274 government to reject the low bid of a nonqualified or  
275 nonresponsive bidder and to award the contract to any other  
276 qualified and responsive bidder in accordance with the standards  
277 and procedures of any applicable county or municipal ordinance  
278 or any resolution of a special district.

279         2. Uses a request for proposal or a request for  
280 qualifications, the request must be publicly advertised and the  
281 contract must be awarded in accordance with the applicable local  
282 ordinances.

283         3. Is subject to competitive negotiations, the contract  
284 must be awarded in accordance with s. 287.055.

285         (e) If a construction project greater than \$300,000, or  
286 \$75,000 for electrical work, is started after October 1, 1999,  
287 is to be performed by a local government using its own employees  
288 in a county or municipality that issues registered contractor  
289 licenses, and the project would require a contractor licensed  
290 under chapter 489 if performed by a private sector contractor,  
291 the local government must use a person appropriately registered  
292 or certified under chapter 489 to supervise the work.

293         (f) If a construction project greater than \$300,000, or  
294 \$75,000 for electrical work, is started after October 1, 1999,  
295 is to be performed by a local government using its own employees  
296 in a county that does not issue registered contractor licenses,  
297 and the project would require a contractor licensed under  
298 chapter 489 if performed by a private sector contractor, the  
299 local government must use a person appropriately registered or  
300 certified under chapter 489 or a person appropriately licensed  
301 under chapter 471 to supervise the work.



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302 (g) Projects performed by a local government using its own  
303 services and employees must be inspected in the same manner  
304 required for work performed by private sector contractors.

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

308 (i) This subsection does not preempt the requirements of  
309 any small-business or disadvantaged-business enterprise program  
310 or any local-preference ordinance.

311 (j) A county, municipality, special district as defined in  
312 s. 189.012, or any other political subdivision of the state that  
313 owns or operates a public-use airport as defined in s. 332.004  
314 is exempt from this section when performing repairs or  
315 maintenance on the airport's buildings, structures, or public  
316 construction works using the local government's own services,  
317 employees, and equipment.

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

323 (l) A local government that owns or operates a public  
324 transit system as defined in s. 343.52, a public transportation  
325 system as defined in s. 343.62, or a mass transit system  
326 described in s. 349.04(1)(b) is exempt from this section when  
327 performing repairs or maintenance on the buildings, structures,  
328 or public construction works of the public transit system,  
329 public transportation system, or mass transit system using the  
330 local government's own services, employees, and equipment.



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331 (m) Any contractor may be considered ineligible to bid by  
332 the governmental entity if the contractor has been found guilty  
333 by a court of any violation of federal labor or employment tax  
334 laws regarding subjects such as safety, tax withholding,  
335 workers' compensation, reemployment assistance or unemployment  
336 tax, social security and Medicare tax, wage or hour, or  
337 prevailing rate laws within the past 5 years.

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

340 336.41 Counties; employing labor and providing road  
341 equipment; accounting; when competitive bidding required.-

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

348 (a) Construction and maintenance in emergency situations,  
349 and

350 (b) In addition to emergency work, construction and  
351 reconstruction, including resurfacing, mineral seal coating, and  
352 bridge repairs, having a total cumulative annual value not to  
353 exceed 5 percent of its 80-percent portion of the constitutional  
354 gas tax or \$400,000, whichever is greater, and

355 (c) Construction of sidewalks, curbing, accessibility  
356 ramps, or appurtenances incidental to roads and bridges if each  
357 project is estimated ~~in accordance with generally accepted cost-~~  
358 ~~accounting principles~~ to have total construction project costs  
359 of less than \$400,000 or as adjusted by the percentage change in



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360 the Construction Cost Index from January 1, 2008,  
361  
362 for which the county may utilize its own forces. Estimated total  
363 construction project costs must include all costs associated  
364 with performing and completing the work, including employee  
365 compensation and benefits, equipment cost and maintenance,  
366 insurance costs, and the cost of direct materials to be used in  
367 the construction of the project, including materials purchased  
368 by the local government, and other direct costs, plus a factor  
369 of 20 percent for management, overhead, and other indirect  
370 costs. However, if, after proper advertising, no bids are  
371 received by a county for a specific project, the county may use  
372 its own forces to construct the project, notwithstanding the  
373 limitation of this subsection. Nothing in this section shall  
374 prevent the county from performing routine maintenance as  
375 authorized by law.

376 Section 4. This act shall take effect July 1, 2020.

377  
378 ===== T I T L E A M E N D M E N T =====

379 And the title is amended as follows:

380 Delete everything before the enacting clause  
381 and insert:

382 A bill to be entitled  
383 An act relating to local government public  
384 construction works; amending s. 218.80, F.S.; revising  
385 disclosure requirements for bidding documents and  
386 other requests for proposals issued for bids by a  
387 local governmental entity and public contracts entered  
388 into between local governmental entities and



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389 contractors; amending s. 255.20, F.S.; revising the  
390 term cost to include specified information; requiring  
391 the governing board of a local government to consider  
392 estimated costs of certain projects that account for  
393 specified costs when the board is making a specified  
394 determination; requiring that a local government that  
395 performs projects using its own services, employees,  
396 and equipment provide a report to the local governing  
397 board with certain information; requiring that the  
398 Auditor General review the report as part of his or  
399 her audits of local governments; amending s. 336.41,  
400 F.S.; requiring estimated total construction project  
401 costs for certain projects to include specified costs;  
402 providing an effective date.