

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: SB 504

INTRODUCER: Senator Perry

SUBJECT: Local Government Public Construction Works

DATE: January 10, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Paglialonga</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 504 specifies the manner in which the estimated cost of a public building construction project must be determined when a local government governing board is deciding whether it is in the local government's best interest to perform the project using its own services, employees, and equipment. Specifically, the bill requires the estimated cost of the project to be determined using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment costs and maintenance, insurance costs, and the cost of materials.

For county construction and reconstruction projects of roads and bridges utilizing proceeds from the constitutional gas tax, the bill specifies that total construction project costs must include all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and the cost of materials.

The bill may have a positive fiscal impact to the private sector and an indeterminate negative fiscal impact on local governments.

The bill takes effect July 1, 2020.

**II. Present Situation:**

**Procurement of Construction Services**

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. The Department of Management Services is responsible for establishing the following by rule:

- Procedures for determining the qualifications and responsibilities of potential bidders prior to advertisement for and receipt of bids for building construction contracts;

- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities when those contracts are determined to be in the best interest of the state.<sup>1</sup>

Counties, municipalities, special districts, and other political subdivisions seeking to construct or improve a public building, structure, or other public construction works must competitively award the project if the projected cost is in excess of \$300,000.<sup>2</sup> For electrical work, local governments must competitively award projects estimated to cost more than \$75,000. Section 255.20(1), F.S., provides that the term “competitively award” means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation.

### **Exemption from Competitive Solicitation for Local Governments Performing Work**

If the governing board of a local government seeking to construct or improve a public building or structure conducts a public meeting and finds by majority vote that it is in the public’s best interest to perform the project using its own services, employees, and equipment, then the local government is exempt from the requirement to competitively award the contract for the project.<sup>3</sup> The meeting of the governing board must have been publicly noticed at least 21 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the components and scope of the project, and the estimated cost of the project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the project, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials. The notice must state that the purpose of the meeting is to consider whether it is in the best interest of the public to perform the project using the local government’s own services, employees, and equipment.<sup>4</sup>

At the public meeting, the governing board must allow any qualified contractor or vendor who could have been awarded the project had the project been competitively bid to present evidence regarding the project and the accuracy of the local government’s estimated cost of the project. In making a determination, the governing board must consider the estimated cost of the project and the accuracy of the estimated cost in light of any other information that may be presented at the public meeting. In addition, the board must consider whether the project requires an increase in the number of government employees or an increase in capital expenditures for public facilities, equipment, or other capital assets. The governing body may further consider the impact on local economic development, the impact on small and minority business owners, the impact on state and local tax revenues, whether the private sector contractors provide health insurance and other

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<sup>1</sup> Section 255.29, F.S.

<sup>2</sup> Section 255.20(1), F.S.

<sup>3</sup> Section 255.20(1)(c)9., F.S.

<sup>4</sup> *Id.*

benefits equivalent to those provided by the local government, and any other factor relevant to what is in the public's best interest.<sup>5</sup>

### **Construction and Maintenance of Roads and Bridges**

Current law authorizes counties to employ labor and provide road equipment to construct and open new roads or bridges and to repair and maintain any existing roads and bridges under certain circumstances.<sup>6</sup> However, counties must competitively bid and award to the lowest bidder all projects for construction and reconstruction of roads and bridges, including resurfacing, that utilize the proceeds of the 80 percent portion of the surplus of the constitutional gas tax.<sup>7</sup> An exception to this requirement allows a county to use its own forces for these construction and reconstruction projects under the following circumstances:

- Construction and maintenance in emergency situations;
- When a construction or reconstruction project has a total cumulative annual value not to exceed five percent of its 80-percent portion of the constitutional gas tax or \$400,000, whichever is greater; or
- When constructing sidewalks, curbing, accessibility ramps, or appurtenances incidental to roads and bridges if each project is estimated in accordance with generally accepted cost-accounting principles to have total construction project costs of less than \$400,000.<sup>8</sup>

In addition, if, after proper advertising, the county receives no bids for a specific project, the county may use its own forces to construct the project. A county is not prohibited from performing routine maintenance as authorized by law.<sup>9</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 255.20, F.S., relating to certain local bids and contracts for public construction works. The bill clarifies that when deciding whether it is in the public's best interest for the local government to perform the project using its own services, employees and equipment, the governing board's consideration of the estimated cost of the project must utilize generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment costs and maintenance, insurance costs, and the cost of materials.

The bill prohibits the local government from performing the project using its own services, employees, and equipment if the project requires an increase in the number of government employees or an increase in such capital expenditures. Because performing the project using its own services will, in almost every circumstance, require the local government to add at least one employee or increase capital expenditures in some amount, however de minimis, lines 156

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<sup>5</sup> *Id.*

<sup>6</sup> *See* s. 336.41, F.S.

<sup>7</sup> Section 336.41(4), F.S. An excise or license tax of 2 cents per net gallon, which is the tax as levied by s. 16, Art. IX of the State Constitution of 1885, as amended, and continued by s. 9(c), Art. XII of the 1968 State Constitution, as amended, which is therein referred to as the "second gas tax," and which is hereby designated the "constitutional fuel tax." *See* s. 206.41(1)(a), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

through 159 essentially nullify the exemption from competitive solicitation found in s. 255.20(1)(c)9., F.S. Thus, local governments will be required to competitively bid and award virtually all public building construction projects currently covered within the exemption.

The bill requires a local government that performs a public building construction project using its own services, employees, and equipment to disclose the actual costs of the project after completion to the Auditor General, who must review such disclosures as part of his or her routine audits of local governments.

**Section 2** amends s. 336.41, F.S., relating to the construction and reconstruction of roads and bridges by counties utilizing proceeds from the constitutional gas tax. The bill specifies that estimated total construction project costs must include all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and the cost of materials. By including these costs in their entirety, the cost of a particular project may be increased above the \$400,000 threshold, requiring the county to competitively procure these services rather than using its own forces.

**Section 3** provides an effective date of July 1, 2020.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Article VII, subsection (a) of section 18 of the Florida Constitution provides that cities and counties are not bound by general laws requiring them to spend funds or take action that requires the expenditure of funds unless certain specified exemptions or exceptions are met.

Under this bill, cities and counties may incur costs relating to public construction projects. However, the mandate requirements do not apply to laws having an insignificant impact, which, for Fiscal Year 2020-2021, is forecast at slightly over \$2.1 million.<sup>10,11,12</sup> The impact of this bill on cities and counties is indeterminate.

If such costs were determined to exceed \$2.1 million in the aggregate, the bill may be binding on cities and counties if the bill contains a finding of important state interest and meets one of the exceptions specified in State Constitution (e.g., provision of funding or a funding mechanism or enactment by vote of two-thirds of the membership of each house).

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<sup>10</sup> FLA. CONST. art. VII, s. 18(d).

<sup>11</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Dec. 20, 2019).

<sup>12</sup> Based on the Florida Demographic Estimating Conference's December 3, 2019, population forecast for 2020 of 21,555,986. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Dec. 20, 2019).

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Any increase in projects awarded to private contractors will result in a positive fiscal impact on the private sector.

**C. Government Sector Impact:**

From a budgetary perspective, the bill appears to increase costs incurred by local governments by an indeterminate amount. For public construction contracts, the bill requires a local government to contract with a private contractor if a construction project requires an increase in the number of government employees or an increase in capital expenditures. For transportation projects, the bill requires a county to competitively procure certain services if the overall cost of the project exceed a \$400,000 threshold. These requirements must be met even though the budgetary cost of completing the work by government employees may be lower than the budgetary cost of completing the work by the private sector. The prohibition on using government employees in certain instances overlooks (1) the actual incremental impact on a local government's budget in instances where the increase in governmental employees is de minimis as compared to the private sector's estimated cost and (2) the possible financial benefits of a local government utilizing an "in house" crew to provide work on a number of projects over a period of time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 255.20 and 336.41 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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