

By the Committee on Governmental Oversight and Accountability;  
and Senator Perry

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1                   A bill to be entitled  
2           An act relating to local government public  
3           construction works; amending s. 218.80, F.S.; revising  
4           legislative intent; revising disclosure requirements  
5           for bidding documents and other requests for proposals  
6           issued for bids by a local governmental entity and  
7           public contracts entered into between local  
8           governmental entities and contractors; amending s.  
9           255.20, F.S.; requiring the governing board of a local  
10          government to consider estimated costs of certain  
11          projects using generally accepted cost-accounting  
12          principles that account for specified costs when the  
13          board is making a specified determination; requiring  
14          that a local government that performs projects using  
15          its own services, employees, and equipment disclose  
16          the actual costs of the project after completion to  
17          the Auditor General; requiring that the Auditor  
18          General review such disclosures as part of his or her  
19          routine audits of local governments; amending s.  
20          336.41, F.S.; requiring estimated total construction  
21          project costs for certain projects to include  
22          specified costs; providing an effective date.

23  
24 Be It Enacted by the Legislature of the State of Florida:

25  
26           Section 1. Subsections (2) and (3) of section 218.80,  
27           Florida Statutes, are amended to read:

28           218.80 Public Bid Disclosure Act.—

29           (2) It is the intent of the Legislature that a local

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30 governmental entity shall disclose all of the ~~local governmental~~  
31 ~~entity's~~ permits or fees, including, but not limited to, all  
32 license fees, permit fees, impact fees, or inspection fees,  
33 payable by the contractor ~~to the unit of government that issued~~  
34 ~~the bidding documents or other request for proposal~~, unless such  
35 permits or fees are disclosed in the bidding documents or other  
36 request for proposal for the project at the time the project was  
37 let for bid. It is further the intent of the Legislature to  
38 prohibit local governments from halting construction to collect  
39 any undisclosed permits or fees which were not disclosed or  
40 included in the bidding documents or other request for proposal  
41 for the project at the time the project was let for bid.

42 (3) Bidding documents or other request for proposal issued  
43 for bids by a local governmental entity, or any public contract  
44 entered into between a local governmental entity and a  
45 contractor shall disclose each permit or fee which the  
46 contractor will have to pay before or during construction and  
47 shall include the dollar amount or the percentage method or the  
48 unit method of all permits or fees which may be required ~~by the~~  
49 ~~local government~~ as a part of the contract. If the request for  
50 proposal does not require the response to include a final fixed  
51 price, the local governmental entity is not required to disclose  
52 any fees or assessments in the request for proposal. However, at  
53 least 10 days prior to requiring the contractor to submit a  
54 final fixed price for the project, the local governmental entity  
55 shall make the disclosures required in this section. Any of the  
56 local governmental entity's permits or fees that ~~which~~ are not  
57 disclosed in the bidding documents, other request for proposal,  
58 or a contract between a local government and a contractor shall

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59 not be assessed or collected after the contract is let. No local  
60 government shall halt construction under any public contract or  
61 delay completion of the contract in order to collect any permits  
62 or fees which were not provided for or specified in the bidding  
63 documents, other request for proposal, or the contract.

64 Section 2. Paragraph (c) of subsection (1) of section  
65 255.20, Florida Statutes, is amended to read:

66 255.20 Local bids and contracts for public construction  
67 works; specification of state-produced lumber.-

68 (1) A county, municipality, special district as defined in  
69 chapter 189, or other political subdivision of the state seeking  
70 to construct or improve a public building, structure, or other  
71 public construction works must competitively award to an  
72 appropriately licensed contractor each project that is estimated  
73 in accordance with generally accepted cost-accounting principles  
74 to cost more than \$300,000. For electrical work, the local  
75 government must competitively award to an appropriately licensed  
76 contractor each project that is estimated in accordance with  
77 generally accepted cost-accounting principles to cost more than  
78 \$75,000. As used in this section, the term "competitively award"  
79 means to award contracts based on the submission of sealed bids,  
80 proposals submitted in response to a request for proposal,  
81 proposals submitted in response to a request for qualifications,  
82 or proposals submitted for competitive negotiation. This  
83 subsection expressly allows contracts for construction  
84 management services, design/build contracts, continuation  
85 contracts based on unit prices, and any other contract  
86 arrangement with a private sector contractor permitted by any  
87 applicable municipal or county ordinance, by district

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88 resolution, or by state law. For purposes of this section, cost  
89 includes the cost of all labor, except inmate labor, and the  
90 cost of equipment and materials to be used in the construction  
91 of the project. Subject to the provisions of subsection (3), the  
92 county, municipality, special district, or other political  
93 subdivision may establish, by municipal or county ordinance or  
94 special district resolution, procedures for conducting the  
95 bidding process.

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

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

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

104 b. Other loss to public or private property which requires  
105 emergency government action; or

106 c. An interruption of an essential governmental service.

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

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

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

116 5. If the project is undertaken as repair or maintenance of

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117 an existing public facility. For the purposes of this paragraph,  
118 the term "repair" means a corrective action to restore an  
119 existing public facility to a safe and functional condition and  
120 the term "maintenance" means a preventive or corrective action  
121 to maintain an existing public facility in an operational state  
122 or to preserve the facility from failure or decline. Repair or  
123 maintenance includes activities that are necessarily incidental  
124 to repairing or maintaining the facility. Repair or maintenance  
125 does not include the construction of any new building,  
126 structure, or other public construction works or any substantial  
127 addition, extension, or upgrade to an existing public facility.  
128 Such additions, extensions, or upgrades shall be considered  
129 substantial if the estimated cost of the additions, extensions,  
130 or upgrades included as part of the repair or maintenance  
131 project exceeds the threshold amount in subsection (1) and  
132 exceeds 20 percent of the estimated total cost of the repair or  
133 maintenance project using generally accepted cost-accounting  
134 principles that fully account for all costs associated with  
135 performing and completing the work, including employee  
136 compensation and benefits, equipment cost and maintenance,  
137 insurance costs, and materials. An addition, extension, or  
138 upgrade shall not be considered substantial if it is undertaken  
139 pursuant to the conditions specified in subparagraph 1. Repair  
140 and maintenance projects and any related additions, extensions,  
141 or 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

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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  
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 account for all costs  
164 associated with performing and completing the work, including  
165 employee compensation and benefits, equipment cost and  
166 maintenance, insurance costs, and materials. The notice must  
167 specify that the purpose for the public meeting is to consider  
168 whether it is in the public's best interest to perform the  
169 project using the local government's own services, employees,  
170 and equipment. Upon publication of the public notice and for 21  
171 days thereafter, the local government shall make available for  
172 public inspection, during normal business hours and at a  
173 location specified in the public notice, a detailed itemization  
174 of each component of the estimated cost of the project and

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175 documentation explaining the methodology used to arrive at the  
176 estimated cost. At the public meeting, any qualified contractor  
177 or vendor who could have been awarded the project had the  
178 project been competitively bid shall be provided with a  
179 reasonable opportunity to present evidence to the governing  
180 board regarding the project and the accuracy of the local  
181 government's estimated cost of the project. In deciding whether  
182 it is in the public's best interest for the local government to  
183 perform a project using its own services, employees, and  
184 equipment, the governing board must consider the estimated cost  
185 of the project using generally accepted cost-accounting  
186 principles that fully account for all costs associated with  
187 performing and completing the work, including employee  
188 compensation and benefits, equipment costs and maintenance,  
189 insurance costs, and the cost of materials, and the accuracy of  
190 the estimated cost in light of any other information that may be  
191 presented at the public meeting and whether the project requires  
192 an increase in the number of government employees or an increase  
193 in capital expenditures for public facilities, equipment, or  
194 other capital assets. The local government may further consider  
195 the impact on local economic development, the impact on small  
196 and minority business owners, the impact on state and local tax  
197 revenues, whether the private sector contractors provide health  
198 insurance and other benefits equivalent to those provided by the  
199 local government, and any other factor relevant to what is in  
200 the public's best interest. A local government that performs  
201 projects using its own services, employees, and equipment must  
202 disclose the actual costs of the project after completion to the  
203 Auditor General. The Auditor General shall review such

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204 disclosures as part of his or her routine audits of local  
205 governments.

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

218 a. The governing board of the local government, after  
219 public notice, conducts a public meeting under s. 286.011 and  
220 finds by a two-thirds vote of the governing board that it is in  
221 the public's best interest to award the project according to the  
222 criteria and procedures established by charter, ordinance, or  
223 resolution. The public notice must be published at least 14 days  
224 before the date of the public meeting at which the governing  
225 board takes final action. The notice must identify the project,  
226 the estimated cost of the project, and specify that the purpose  
227 for the public meeting is to consider whether it is in the  
228 public's best interest to award the project using the criteria  
229 and procedures permitted by the preexisting charter, ordinance,  
230 or resolution.

231 b. The project is to be awarded by any method other than a  
232 competitive selection process, and the governing board finds



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233 evidence that:

234 (I) There is one appropriately licensed contractor who is  
235 uniquely qualified to undertake the project because that  
236 contractor is currently under contract to perform work that is  
237 affiliated with the project; or

238 (II) The time to competitively award the project will  
239 jeopardize the funding for the project, materially increase the  
240 cost of the project, or create an undue hardship on the public  
241 health, safety, or welfare.

242 c. The project is to be awarded by any method other than a  
243 competitive selection process, and the published notice clearly  
244 specifies the ordinance or resolution by which the private  
245 sector contractor will be selected and the criteria to be  
246 considered.

247 d. The project is to be awarded by a method other than a  
248 competitive selection process, and the architect or engineer of  
249 record has provided a written recommendation that the project be  
250 awarded to the private sector contractor without competitive  
251 selection, and the consideration by, and the justification of,  
252 the government body are documented, in writing, in the project  
253 file and are presented to the governing board prior to the  
254 approval required in this paragraph.

255 11. To projects subject to chapter 336.

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

258 336.41 Counties; employing labor and providing road  
259 equipment; accounting; when competitive bidding required.-

260 (4) All construction and reconstruction of roads and  
261 bridges, including resurfacing, full scale mineral seal coating,

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262 and major bridge and bridge system repairs, to be performed  
263 utilizing the proceeds of the 80-percent portion of the surplus  
264 of the constitutional gas tax shall be let to contract to the  
265 lowest responsible bidder by competitive bid, except for:

266 (a) Construction and maintenance in emergency situations;~~;~~  
267 and

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

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

279  
280 for which the county may utilize its own forces. Estimated total  
281 construction project costs must include all costs associated  
282 with performing and completing the work, including employee  
283 compensation and benefits, equipment costs and maintenance,  
284 insurance costs, and the cost of materials. However, if, after  
285 proper advertising, no bids are received by a county for a  
286 specific project, the county may use its own forces to construct  
287 the project, notwithstanding the limitation of this subsection.  
288 Nothing in this section shall prevent the county from performing  
289 routine maintenance as authorized by law.

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