



084022

CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: WD	.	
4/17/2008	.	
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1 The Committee on Community Affairs (Haridopolos) recommended the  
 2 following **amendment**:

**Senate Amendment (with title amendment)**

5 Delete everything after the enacting clause  
6 and insert:

8 Section 1. Subsection (1) of section 255.20, Florida  
9 Statutes, is amended to read:

10 255.20 Local bids and contracts for public construction  
11 works; specification of state-produced lumber.--

12 (1) A county, municipality, special district as defined in  
 13 chapter 189, or other political subdivision of the state seeking  
 14 to construct, ~~or~~ improve, repair, or perform maintenance on a  
 15 public building, structure, or other public construction works  
 16 must competitively award to an appropriately licensed contractor  
 17 each project that is estimated in accordance with generally

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18 | accepted cost-accounting principles to have total construction  
19 | project costs of more than \$200,000. For electrical work, local  
20 | government must competitively award to an appropriately licensed  
21 | contractor each project that is estimated in accordance with  
22 | generally accepted cost-accounting principles to have a cost of  
23 | more than \$50,000. As used in this section, the term  
24 | "competitively award" means to award contracts based on the  
25 | submission of sealed bids, proposals submitted in response to a  
26 | request for proposal, proposals submitted in response to a  
27 | request for qualifications, or proposals submitted for  
28 | competitive negotiation. This subsection expressly allows  
29 | contracts for construction management services, design/build  
30 | contracts, continuation contracts based on unit prices, and any  
31 | other contract arrangement with a private sector contractor  
32 | permitted by any applicable municipal or county ordinance, by  
33 | district resolution, or by state law. For purposes of this  
34 | section, construction costs include the cost of all labor, except  
35 | inmate labor, and include the cost of equipment and materials to  
36 | be used in the construction of the project. Subject to the  
37 | provisions of subsection (3), the county, municipality, special  
38 | district, or other political subdivision may establish, by  
39 | municipal or county ordinance or special district resolution,  
40 | procedures for conducting the bidding process.

41 |       (a) Notwithstanding any other law to the contrary, a  
42 | county, municipality, special district as defined in chapter 189,  
43 | or other political subdivision of the state seeking to construct  
44 | or improve bridges, roads, streets, highways, or railroads, and  
45 | services incidental thereto, at costs in excess of \$250,000 may  
46 | require that persons interested in performing work under contract  
47 | first be certified or qualified to perform such work. Any



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48 contractor may be considered ineligible to bid by the  
49 governmental entity if the contractor is behind on completing an  
50 approved progress schedule for the governmental entity by 10  
51 percent or more at the time of advertisement of the work. Any  
52 contractor prequalified and considered eligible by the Department  
53 of Transportation to bid to perform the type of work described  
54 under the contract shall be presumed to be qualified to perform  
55 the work described. The governmental entity may provide an appeal  
56 process to overcome that presumption with de novo review based on  
57 the record below to the circuit court.

58 (b) With respect to contractors not prequalified with the  
59 Department of Transportation, the governmental entity shall  
60 publish prequalification criteria and procedures prior to  
61 advertisement or notice of solicitation. Such publications shall  
62 include notice of a public hearing for comment on such criteria  
63 and procedures prior to adoption. The procedures shall provide  
64 for an appeal process within the authority for objections to the  
65 prequalification process with de novo review based on the record  
66 below to the circuit court within 30 days.

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

68 1. When the project is undertaken to replace, reconstruct,  
69 or repair an existing public building, structure, or other public  
70 construction works ~~facility~~ damaged or destroyed by a sudden  
71 unexpected turn of events, such as an act of God, riot, fire,  
72 flood, accident, or other urgent circumstances, and such damage  
73 or destruction creates:

- 74 a. An immediate danger to the public health or safety;  
75 b. Other loss to public or private property which requires  
76 emergency government action; or  
77 c. An interruption of an essential governmental service.



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78           2. When, after notice by publication in accordance with the  
79 applicable ordinance or resolution, the governmental entity does  
80 not receive any responsive bids or proposals ~~responses~~.

81           3. To construction, remodeling, repair, or improvement to a  
82 public electric or gas utility system when such work on the  
83 public utility system is performed by personnel of the system.

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

87           ~~5. When the project is undertaken as repair or maintenance~~  
88 ~~of an existing public facility.~~

89           ~~5.6.~~ When the project is undertaken exclusively as part of  
90 a public educational program.

91           ~~6.7.~~ When the funding source of the project will be  
92 diminished or lost because the time required to competitively  
93 award the project after the funds become available exceeds the  
94 time within which the funding source must be spent, so long as  
95 the governmental entity undertaking the project has not  
96 materially contributed to a delay in funding or competitively  
97 awarding the project.

98           ~~7.8.~~ When the local government has competitively awarded a  
99 project to a private sector contractor and the contractor has  
100 abandoned the project before completion or the local government  
101 has terminated the contract.

102           ~~8.9.~~ When the local government, after receiving competitive  
103 bids or proposals, decides to perform the project using its own  
104 services, employees, and equipment in compliance with the  
105 procedure in this subparagraph. If the local government receives  
106 bids or proposals that are otherwise responsive but are all at  
107 least 10 percent greater than the local government's estimated

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108 cost of the project, the governing board of the local government,  
109 after public notice, must conduct ~~conducts~~ a public meeting under  
110 s. 286.011 and decide ~~finds~~ by a majority vote ~~of the governing~~  
111 ~~board that it is in the public's best interest~~ to perform the  
112 project using its own services, employees, and equipment. The  
113 public notice must be published at least 14 days prior to the  
114 date of the public meeting at which the governing board takes  
115 final action to apply this subparagraph. The notice must identify  
116 the project and, ~~the estimated cost of the project,~~ and specify  
117 that the purpose for the public meeting is to consider whether ~~it~~  
118 ~~is in the public's best interest~~ to perform the project using the  
119 local government's own services, employees, and equipment. A  
120 local government's determination ~~In deciding whether it is in the~~  
121 ~~public's best interest for local government~~ to perform a project  
122 using its own services, employees, and equipment must be  
123 supported by the following factual findings, which are subject to  
124 challenge under subsection (4):

125 a. The local government's estimated cost of the project as  
126 specified in the bid documents reasonably represents the fair  
127 market cost of performing the project using private-sector  
128 contractors; and

129 b. The local government can perform the project using its  
130 own services, employees, and equipment at a cost equal to or less  
131 than its estimated cost of the project, using generally accepted  
132 accounting principles that fully account for all employee  
133 compensation and benefits, equipment, and material costs and any  
134 other associated costs and expenses, ~~the governing board may~~  
135 ~~consider the cost of the project, whether the project requires an~~  
136 ~~increase in the number of government employees, an increase in~~  
137 ~~capital expenditures for public facilities, equipment or other~~



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138 ~~capital assets, the impact on local economic development, the~~  
139 ~~impact on small and minority business owners, the impact on state~~  
140 ~~and local tax revenues, whether the private sector contractors~~  
141 ~~provide health insurance and other benefits equivalent to those~~  
142 ~~provided by the local government, and any other factor relevant~~  
143 ~~to what is in the public's best interest.~~

144 9.10. When the governing board of the local government  
145 determines upon consideration of specific substantive criteria  
146 and administrative procedures that it is in the best interest of  
147 the local government to award the project to an appropriately  
148 licensed private sector contractor according to procedures  
149 established by and expressly set forth in a charter, ordinance,  
150 or resolution of the local government adopted prior to July 1,  
151 1994. The criteria and procedures must be set out in the charter,  
152 ordinance, or resolution and must be applied uniformly by the  
153 local government to avoid award of any project in an arbitrary or  
154 capricious manner. This exception shall apply when all of the  
155 following occur:

156 a. When the governing board of the local government, after  
157 public notice, conducts a public meeting under s. 286.011 and  
158 finds by a two-thirds vote of the governing board that it is in  
159 the public's best interest to award the project according to the  
160 criteria and procedures established by charter, ordinance, or  
161 resolution. The public notice must be published at least 14 days  
162 prior to the date of the public meeting at which the governing  
163 board takes final action to apply this subparagraph. The notice  
164 must identify the project, the estimated cost of the project, and  
165 specify that the purpose for the public meeting is to consider  
166 whether it is in the public's best interest to award the project



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167 using the criteria and procedures permitted by the preexisting  
168 ordinance.

169 b. If ~~In the event~~ the project is to be awarded by any  
170 method other than a competitive selection process, the governing  
171 board must find evidence that:

172 (I) There is one appropriately licensed contractor who is  
173 uniquely qualified to undertake the project because that  
174 contractor is currently under contract to perform work that is  
175 affiliated with the project; or

176 (II) The time to competitively award the project will  
177 jeopardize the funding for the project, or will materially  
178 increase the cost of the project or will create an undue hardship  
179 on the public health, safety, or welfare.

180 c. If ~~In the event~~ the project is to be awarded by any  
181 method other than a competitive selection process, the published  
182 notice must clearly specify the ordinance or resolution by which  
183 the private sector contractor will be selected and the criteria  
184 to be considered.

185 d. If ~~In the event~~ the project is to be awarded by a method  
186 other than a competitive selection process, the architect or  
187 engineer of record has provided a written recommendation that the  
188 project be awarded to the private sector contractor without  
189 competitive selection; and the consideration by, and the  
190 justification of, the government body are documented, in writing,  
191 in the project file and are presented to the governing board  
192 prior to the approval required in this paragraph.

193 ~~10.11.~~ To projects subject to chapter 336.

194 (d)1. If the project is to be awarded based on price, the  
195 contract must be awarded to the lowest qualified and responsive  
196 bidder in accordance with the applicable county or municipal



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197 ordinance or district resolution and in accordance with the  
198 applicable contract documents. The county, municipality, or  
199 special district may reserve the right to reject all bids and to  
200 rebid the project or elect not to proceed with the project. This  
201 subsection is not intended to restrict the rights of any local  
202 government to reject the low bid of a nonqualified or  
203 nonresponsive bidder and to award the contract to any other  
204 qualified and responsive bidder in accordance with the standards  
205 and procedures of any applicable county or municipal ordinance or  
206 any resolution of a special district.

207       2. If the project uses a request for proposal or a request  
208 for qualifications, the request must be publicly advertised and  
209 the contract must be awarded in accordance with the applicable  
210 local ordinances.

211       3. If the project is subject to competitive negotiations,  
212 the contract must be awarded in accordance with s. 287.055.

213       (e) If a construction project greater than \$200,000, or  
214 \$50,000 for electrical work, is started after October 1, 1999,  
215 and is to be performed by a local government using its own  
216 employees in a county or municipality that issues registered  
217 contractor licenses and the project would require a licensed  
218 contractor under chapter 489 if performed by a private sector  
219 contractor, the local government must use a person appropriately  
220 registered or certified under chapter 489 to supervise the work.

221       (f) If a construction project greater than \$200,000, or  
222 \$50,000 for electrical work, is started after October 1, 1999,  
223 and is to be performed by a local government using its own  
224 employees in a county that does not issue registered contractor  
225 licenses and the project would require a licensed contractor  
226 under chapter 489 if performed by a private sector contractor,

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227 the local government must use a person appropriately registered  
228 or certified under chapter 489 or a person appropriately licensed  
229 under chapter 471 to supervise the work.

230 (g) Projects performed by a local government using its own  
231 services and employees must be inspected in the same manner as  
232 inspections required for work performed by private sector  
233 contractors.

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

237 (i) This subsection does not preempt the requirements of  
238 any small-business or disadvantaged-business enterprise program  
239 or any local-preference ordinance.

240 (j) Notwithstanding any other law to the contrary, any  
241 provision contained in a public construction contract with a  
242 county, municipality, special district as defined in chapter 189,  
243 or other political subdivision of the state which purports to  
244 limit, waive, release, or extinguish the rights of a contractor  
245 to recover costs or damages for delay in performing such  
246 contract, on its behalf or on behalf of its subcontractors, if  
247 and to the extent the delay is caused by acts or omissions of the  
248 county, municipality, special district, or political subdivision,  
249 its agents or employees, or other entities with which it is in  
250 privity and due to causes within its control, is void and  
251 unenforceable as against public policy. The decisions of a  
252 county, municipality, special district, or other political  
253 subdivision concerning additional compensation or time to which a  
254 contractor is entitled in connection with any public construction  
255 contract is subject to de novo review in a state court of  
256 appropriate jurisdiction. This paragraph does not make void any



257 provision in such construction contract which provides for  
258 reasonable liquidated damages in case of a delay to the  
259 completion of the project for which the contractor is responsible  
260 or which provides for reasonable liquidated damages to fairly  
261 compensate the contractor for its indirect costs and overhead  
262 expenses associated with a delay.

263 (k) A local government owning or operating a public-use  
264 airport, as defined in s. 332.04(1), is exempt from this section  
265 if performing repairs or maintenance on the airport's buildings,  
266 structures, or public construction works using the local  
267 government's own services, employees, and equipment, regardless  
268 of the total construction cost. A public construction contract  
269 with such a local government for any construction, improvement,  
270 repair, or maintenance work performed on a public-use airport is  
271 not subject to paragraph (j).

272 (l) A local government owning or operating a seaport, as  
273 identified in s. 403.021(9)(b), is exempt from this section if  
274 performing repairs or maintenance on the seaport's buildings,  
275 structures, or public construction works using the local  
276 government's own services, employees, and equipment, regardless  
277 of the total construction cost. A public construction contract  
278 with such a local government for any construction, improvement,  
279 repair, or maintenance work performed on a public seaport is not  
280 subject to paragraph (j).

281 Section 2. Section 336.41, Florida Statutes, is amended to  
282 read:

283 336.41 Counties and municipalities; employing labor and  
284 providing road equipment; accounting; when competitive bidding  
285 required.--



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286 ~~(1) The commissioners may employ labor and provide~~  
287 ~~equipment as may be necessary, except as provided in subsection~~  
288 ~~(3), for constructing and opening of new roads or bridges and~~  
289 ~~repair and maintenance of any existing roads and bridges.~~

290 ~~(1)(2)~~ It is shall be the duty of all persons to whom the  
291 governing body of a county or municipality delivers commissioners  
292 deliver equipment and construction materials supplies for road  
293 and bridge purposes to make a strict accounting of the same to  
294 the governing body commissioners.

295 ~~(2)(a)(3)~~ The governing body of a county or municipality  
296 shall competitively award to a private-sector contractor all  
297 construction, and reconstruction, or repair of roads and bridges,  
298 including resurfacing, full scale mineral seal coating, and major  
299 bridge and bridge system repairs, to be performed utilizing the  
300 proceeds of the 80-percent portion of the surplus of the  
301 constitutional gas tax shall be let to contract to the lowest  
302 responsible bidder by competitive bid

303 (b) Notwithstanding paragraph (a), the county or  
304 municipality may use its own forces, except for:

305 1.(a) Construction and maintenance in emergency  
306 situations, and

307 2.(b) In addition to emergency work, Construction, and  
308 reconstruction, or repair of roads and bridges, including  
309 resurfacing, full-scale mineral seal coating, and major bridge  
310 and bridge system repairs. However:, having a total cumulative  
311 annual value not to exceed 5 percent of its 80-percent portion of  
312 the constitutional gas tax or \$400,000, whichever is greater, and

313 a. A single project may not exceed \$250,000 in value or as  
314 adjusted by the percentage change in the Construction Cost Index



315 dated January 1, 2009, exclusive of materials purchased in  
316 accordance with sub-subparagraph c.

317 b. A project under this subsection may not be divided into  
318 more than one project for the purpose of avoiding the  
319 requirements of this subsection.

320 c. All materials for such projects must be purchased or  
321 furnished from a commercial source, with the exception of  
322 government-owned local material pits for sand, shell, gravel, and  
323 rock existing before January 1, 2008.

324 d. A county or municipality is not subject to the maximum  
325 project value in sub-subparagraph a. for paving dirt roads only.  
326 Such county or municipality is subject to sub-subparagraph c.

327 3.(e) Construction of sidewalks, curbing, accessibility  
328 ramps, or appurtenances incidental to roads and bridges if each  
329 project is estimated in accordance with generally accepted cost-  
330 accounting principles to have total construction project costs of  
331 less than \$400,000 or as adjusted by the percentage change in the  
332 Construction Cost Index from January 1, 2008.

333  
334 ~~for which the county may utilize its own forces.~~

335 (c) However, if, after proper advertising, no bids are  
336 received by a county or municipality for a specific project, the  
337 county or municipality may use its own forces to construct the  
338 project, notwithstanding the limitation of this subsection.

339 (d) As used in this section, the term "competitively award"  
340 means to award a contract based on the submission of sealed bids,  
341 proposals submitted in response to a request for qualifications,  
342 or proposals submitted for competitive negotiations. This  
343 subsection expressly allows contracts for construction management  
344 services, design-build contracts, continuation contracts based on



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345 unit prices, and any other contract arrangement with a private-  
346 sector contractor permitted by any applicable municipal or county  
347 ordinance, by district resolution, or by state law.

348 (e) For purposes of this section, the value of a project  
349 includes the cost of all labor, except inmate labor, labor  
350 burden, and equipment, including ownership, fuel, and maintenance  
351 costs to be used in the construction and reconstruction of the  
352 project.

353 (f) ~~Nothing in~~ This section ~~does not shall~~ prevent the  
354 county or municipality from performing routine maintenance as  
355 authorized by law and defined in s. 334.03, including the grading  
356 and shaping of dirt roads.

357 (g) Notwithstanding any law to the contrary, a county,  
358 municipality, or special district may not own or operate an  
359 asphalt plant or a portable or stationary concrete batch plant  
360 having an independent mixer.

361 (3)-(4)(a) For contracts in excess of \$250,000, any county  
362 or municipality may require that persons interested in performing  
363 work under the contract first be certified or qualified to do the  
364 work. Any contractor prequalified and considered eligible to bid  
365 by the department to perform the type of work described under the  
366 contract shall be presumed to be qualified to perform the work so  
367 described. Any contractor may be considered ineligible to bid by  
368 the county or municipality if the contractor is behind an  
369 approved progress schedule by 10 percent or more on another  
370 project for that county or municipality at the time of the  
371 advertisement of the work. The county or municipality may provide  
372 an appeal process to overcome such consideration with de novo  
373 review based on the record below to the circuit court.



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374 (b) The county or municipality, as appropriate, shall  
375 publish prequalification criteria and procedures prior to  
376 advertisement or notice of solicitation. Such publications shall  
377 include notice of a public hearing for comment on such criteria  
378 and procedures before ~~prior to~~ adoption. The procedures shall  
379 provide for an appeal process within the county or municipality  
380 for objections to the prequalification process with de novo  
381 review based on the record below to the circuit court.

382 (c) The county or municipality, as appropriate, shall also  
383 publish for comment, before ~~prior to~~ adoption, the selection  
384 criteria and procedures to be used by the county or municipality  
385 if such procedures would allow selection of other than the lowest  
386 responsible bidder. The selection criteria shall include an  
387 appeal process within the county or municipality with de novo  
388 review based on the record below to the circuit court.

389 Section 3. Subsection (1) of section 336.44, Florida  
390 Statutes, is amended, and subsection (6) is added to that  
391 section, to read:

392 336.44 Counties; contracts for construction of roads;  
393 procedure; contractor's bond.--

394 (1) The commissioners shall let the work on roads out on  
395 contract, in accordance with s. 336.41(2) ~~s. 336.41(3)~~.

396 (6) Notwithstanding any other law to the contrary, any  
397 provision contained in any public construction contract with a  
398 county, municipality, special district as defined in chapter 189,  
399 or other political subdivision of the state which purports to  
400 limit, waive, release, or extinguish the rights of a contractor  
401 to recover costs or damages for delay in performing such  
402 contract, on its behalf or on behalf of its subcontractors, if  
403 and to the extent the delay is caused by acts or omissions of the



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404 county, municipality, special district, or political subdivision,  
405 its agents or employees, or other entities with which it is in  
406 privity and due to causes within its control, is void and  
407 unenforceable as against public policy. A decision of a county,  
408 municipality, special district, or other political subdivision  
409 concerning additional compensation or time to which a contractor  
410 is entitled in connection with any public construction contract  
411 is subject to de novo review in a state court of appropriate  
412 jurisdiction. This subsection does make void any provision in  
413 such construction contract which provides for reasonable  
414 liquidated damages in case of a delay to the completion of the  
415 project for which the contractor is responsible or which provides  
416 for reasonable liquidated damages to fairly compensate the  
417 contractor for its indirect costs and overhead expenses  
418 associated with a delay. A public construction contract with a  
419 local government owning or operating a public-use airport, as  
420 defined in s. 332.04(1), is not required to comply with this  
421 section for any construction, improvement, repair, or maintenance  
422 work performed on a public-use airport. A public construction  
423 contract with a local government owning or operating a seaport,  
424 as identified in s. 403.021(9)(b), is not required to comply with  
425 this section for any construction, improvement, repair, or  
426 maintenance work performed on a public seaport.

427 Section 4. This act shall take effect July 1, 2008.

428  
429 ===== T I T L E A M E N D M E N T =====

430 And the title is amended as follows:

431 Delete everything before the enacting clause  
432 and insert:

433 A bill to be entitled

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434 An act relating to public construction works; amending  
435 s. 255.20, F.S.; revising provisions requiring a  
436 county, municipality, special district, or other  
437 political subdivision of the state to competitively  
438 award contracts for certain construction projects;  
439 revising exceptions to such requirements; revising  
440 provisions relating to an exemption for projects  
441 performed by a local government using its own services,  
442 employees, and equipment; providing that certain  
443 construction contract terms purporting to limit  
444 recovery of certain costs or damages by a contractor  
445 are void; providing that certain decisions by the local  
446 governmental entity concerning additional compensation  
447 or time to which a contractor is entitled are subject  
448 to de novo review in state court; providing an  
449 exception; exempting a local government owning or  
450 operating a public-use airport from specified  
451 requirements if performing certain tasks relating to  
452 the airport's buildings, structures, or public  
453 construction works; exempting a local government owning  
454 or operating a seaport from specified requirements when  
455 performing certain tasks relating to the seaport's  
456 buildings, structures, or public construction works;  
457 amending s. 336.41, F.S.; revising provisions  
458 authorizing a county to employ labor and provide  
459 equipment for road and bridge projects; removing a  
460 provision authorizing a county to use its own resources  
461 for constructing and opening new roads and bridges;  
462 revising requirements regarding contracting for certain  
463 county road and bridge projects; requiring that certain

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464 contracts be competitively awarded; authorizing a  
465 county or municipality to use its own forces for  
466 certain projects; providing restrictions and  
467 limitations; providing for the purchase of materials  
468 for such projects; providing that a county or  
469 municipality is exempt from a certain restriction with  
470 regard to paving dirt roads; defining the term  
471 "competitively award" for specified purposes;  
472 clarifying applicability of certain provisions;  
473 specifying costs included in determining the value of a  
474 project for certain purposes; revising provisions  
475 allowing a county or municipality to perform routine  
476 maintenance; prohibiting a county, municipality, or  
477 special district from owning or operating an asphalt  
478 plant or a portable or stationary concrete batch plant  
479 with an independent mixer; authorizing a municipality  
480 to require that persons interested in performing work  
481 under the contract first be certified or qualified to  
482 do the work when the contract amount exceeds a certain  
483 threshold; providing that a contractor may be  
484 considered ineligible to bid by the municipality if the  
485 contractor is behind an approved progress schedule by  
486 more than a certain amount on another project for that  
487 municipality at the time of the advertisement of the  
488 work requiring prequalification; authorizing an appeal  
489 process; requiring that prequalification criteria and  
490 procedures be published before advertisement or notice  
491 of solicitation; requiring notice of a public hearing  
492 for comment on such criteria and procedures before  
493 adoption; requiring that the procedures provide for an



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494 | appeal process for objections to the prequalification  
495 | process; requiring the municipality to publish for  
496 | comment, before adoption, the selection criteria and  
497 | procedures to be used if such procedures would allow  
498 | selection of other than the lowest responsible bidder;  
499 | requiring that the selection criteria include an appeal  
500 | process; amending s. 336.44, F.S.; conforming a cross-  
501 | reference; providing that certain construction contract  
502 | terms purporting to limit recovery of certain costs or  
503 | damages by contractors are void; providing that certain  
504 | decisions by the local governmental entity concerning  
505 | additional compensation or time to which a contractor  
506 | is entitled are subject to de novo review in state  
507 | court; providing an exception; providing an effective  
508 | date.