

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 611

Public Construction Projects

SPONSOR(S): Hukill

TIED BILLS:

IDEN./SIM. BILLS: SB 616

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Roads, Bridges & Ports Policy Committee	13 Y, 7 N, As CS	Cater	Miller
2)	Economic Development & Community Affairs Policy Council		Cater	Tinker
3)	Finance & Tax Council			
4)				
5)				

SUMMARY ANALYSIS

Current law requires a county, municipality, special district, or other political subdivision of the state seeking to improve a public building, structure, or other public construction work to award the work competitively for projects that cost more than \$200,000. A political subdivision, however, can award the project without competitive bidding under certain circumstances, such as when funds for the project will be diminished or lost under the project; or when the governing body of the local government, in a public meeting, determines that it is in the public's best interest to perform the project with the local government's own services, employees, and equipment.

The bill revises various statutory requirements concerning competitively bidding public construction projects. The bill specifically:

- Defines the term "maintenance" for the purpose of this bill.
- Provides an exception to the diminished funding source exemption, where it does not apply if the governmental entity materially contributed to the delay.
- Deletes the public interest exception provision to provide that the local government must first receive bids and after receiving bids comply with certain provisions; including all of the bids must be greater than the local government's estimated costs, decide to use its own service in a public meeting, and the decision must be supported by factual findings that the government can do it cheaper than the lowest bid.
- Provides for exemptions for local governments operating a public use airport, certain ports, a public transit system, or a mass transit system.
- Provides that a local preference may only be given to bidders in the event of a tie bid.

The bill does not have a fiscal impact on state government. For municipalities and counties, the fiscal impact may be significant, but it is indeterminate. This is due to the bill requiring municipalities and counties to go through a competitive bid process instead of performing the work under the current public interest determination. However, the difference in cost between the two processes is unknown.

The bill has an effective date of July 1, 2009.

**The bill may be a Mandate requiring the finding of an important state interest and a two-thirds vote of the membership. See Mandates section of the analysis.**

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Law**

Section 250.20, F.S., requires a county, municipality, special district,<sup>1</sup> or other political subdivision<sup>2</sup> of the state seeking to improve a public building, structure, or other public construction work to competitively award construction projects that cost more than \$200,000. The requirement does not apply, for example, when:

- Repairing or replacing an existing public facility damaged or destroyed by an unexpected turn of events such as fire or flood;
- Repairing or maintaining an existing public facility;
- The funding source of the project will be diminished or lost because the time required to competitively award the project after the funds become available exceeds the time within which the funding source must be spent; or
- The local government's governing board finds by majority vote that it is in the public's best interest to perform the project using its own services, employees, and equipment.<sup>3</sup>

##### **Proposed Changes**

While current law permits the local government to perform its own maintenance and repair activities, the bill amends s. 255.20, F.S., to subject repairs to the bidding process. The bill defines the term "maintenance" as "those minor repairs and associated tasks necessary to prevent the failure or decline of such facility without having to undertake any new construction, additions, or extensions."

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<sup>1</sup> The statute applies to special districts as defined in ch. 189, F.S. Section 189.403(1), F.S., defines "special district" as a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. . . The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, F.S., a municipal service taxing or benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

<sup>2</sup> Section 1.01(8), F.S. defines "political subdivision" to "include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in the state.

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

The bill revises the exception for the diminished funding source to provide that the exception only applies if the governmental entity undertaking the project has not materially contributed to a delay in funding or in competitively awarding the project.

The bill deletes the public's best interest exception to the bidding requirements, and instead provides that the local governments must first receive competitive bids or proposals. After receiving the bids, if the local government decides to do the project using its own services employees or equipment, the following requirements must be met:

- All of the bids received must be greater than the local governments estimated cost of the project;
- The local government must decide in a public meeting to use its own services;<sup>4</sup> and
- The decision to do the work on its own must be supported by factual finding, subject to challenge, that the local government can perform the project at a cost equal to or less than the lowest cost-responsive bid or proposal received, using generally accepted cost-accounting principles that fully account for all local government costs associated with performing the project, including employee compensation and benefits, equipment, and materials.

The bill also removes existing provisions relating to the considerations currently allowed concerning the local government's decision on doing the work "in house." These considerations relate to cost, the number of government employees, impact on economic development, impact on small and minority business owners, and other factors relevant to the public's best interest.

The bill provides exemptions from the competitive bidding requirements to local governments owning or operating a public-use airport, certain ports, a public transit system, or a mass transit system, if it is using its own services, employees, or equipment to do work on buildings, structures, or public construction works related to those systems.

The bill also provides that only in the event that two or more bidders come in with equal bids with respect to price, quality, and service, the local government may give preference to the bidder with the greatest local presence within the local government's jurisdiction. "Local presence" includes maintaining an office and employing individuals or hiring subcontractors within the jurisdiction. Similar preferences for "tie bids" currently exist in other places in Florida law.<sup>5</sup>

## B. SECTION DIRECTORY:

Section 1 Amends s. 250.20, F.S., relating to local bids and contracts for public construction works.

Section 2 Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None

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<sup>4</sup> This provision was also required with the "public's best interest test."

<sup>5</sup> Section 287.082, F.S. for commodities manufactured, grown, or produced in the state, section 287.092, F.S., for foreign companies with a factory in Florida employing more than 200 persons, section 287.087, F.S., for businesses with drug-free workplace programs, and section 287.093, F.S. for minority business enterprises.

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS

2. Expenditures:

See FISCAL COMMENTS

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private companies could see increased revenues as local governments will be required to competitively bid more projects.

D. FISCAL COMMENTS:

The bill requires municipalities and counties to go through a competitive bid process instead of performing the work under the current public interest determination. There are costs associated with each of these processes; however, the difference in cost is unknown.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill may be a mandate since it requires municipalities and counties to go through a competitive bid process instead of performing the work under the current public interest determination. However, the difference in cost between the two processes is unknown.

Therefore, the bill may require the finding of an important state interest and a two-thirds vote.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The bill contains some language inconsistencies where it refers to both governmental entity and local government. However, both of these terms are currently used in the existing statute being amended.

Other Comments

According to the Florida League of Cities, the provisions of the bill relating to local preferences appear to conflict with s. 287.084(1), F.S., which states:

- (1) When an agency, county, municipality, school district, or other political subdivision of the state is required to make purchases of personal property through competitive solicitation and the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is in a state or political subdivision thereof which grants a preference for the

purchase of such personal property to a person whose principal place of business is in such state, then the agency, county, municipality, school district, or other political subdivision of this state may award a preference to the lowest responsible and responsive vendor having a principal place of business within this state, which preference is equal to the preference granted by the state or political subdivision thereof in which the lowest responsible and responsive vendor has its principal place of business. However, this section does not apply to transportation projects for which federal aid funds are available.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 18, 2009, the Roads, Bridges & Ports Policy Committee adopted one amendment to the bill. This amendment changed the requirement for local governments to accept responsive bids. The bill as originally filed required local governments to accept responsive bids up to 10 percent greater than the local government's estimated cost of the project. The bill as amended allows local governments to perform the work in-house if all of the bids are greater than the local government's estimated cost of the project.

The bill was reported favorable as a committee substitute.