

1                   A bill to be entitled  
2       An act relating to local government public  
3       construction works; amending s. 255.20, F.S.;  
4       requiring the governing board of a local government to  
5       consider estimated costs of certain projects using  
6       generally accepted cost-accounting principles that  
7       account for specified costs when making a specified  
8       determination; requiring a local government that  
9       performs a project using its own services, employees,  
10      and equipment to disclose the actual costs of the  
11      project after completion to the Auditor General;  
12      requiring the Auditor General to review such  
13      disclosures as part of his or her routine audits of  
14      local governments; amending s. 336.41, F.S.; requiring  
15      estimated total construction project costs for certain  
16      projects to include specified costs; providing an  
17      effective date.

18  
19   Be It Enacted by the Legislature of the State of Florida:

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21       Section 1. Paragraph (c) of subsection (1) of section  
22   255.20, Florida Statutes, is amended to read:

23       255.20 Local bids and contracts for public construction  
24   works; specification of state-produced lumber.—

25       (1) A county, municipality, special district as defined in

chapter 189, or other political subdivision of the state seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than \$300,000. For electrical work, the local government must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than \$75,000. As used in this section, 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. This subsection expressly allows contracts for construction management services, design/build contracts, continuation contracts based on unit prices, and any other contract arrangement with a private sector contractor permitted by any applicable municipal or county ordinance, by district resolution, or by state law. For purposes of this section, cost includes the cost of all labor, except inmate labor, and the cost of equipment and materials to be used in the construction of the project. Subject to the provisions of subsection (3), the county, municipality, special district, or other political subdivision may establish, by municipal or county ordinance or

51 special district resolution, procedures for conducting the  
52 bidding process.

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

54 1. If the project is undertaken to replace, reconstruct,  
55 or repair an existing public building, structure, or other  
56 public construction works damaged or destroyed by a sudden  
57 unexpected turn of events such as an act of God, riot, fire,  
58 flood, accident, or other urgent circumstances, and such damage  
59 or destruction creates:

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

61 b. Other loss to public or private property which requires  
62 emergency government action; or

63 c. An interruption of an essential governmental service.

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

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

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

73 5. If the project is undertaken as repair or maintenance  
74 of an existing public facility. For the purposes of this  
75 paragraph, the term "repair" means a corrective action to

76 restore an existing public facility to a safe and functional  
77 condition and the term "maintenance" means a preventive or  
78 corrective action to maintain an existing public facility in an  
79 operational state or to preserve the facility from failure or  
80 decline. Repair or maintenance includes activities that are  
81 necessarily incidental to repairing or maintaining the facility.  
82 Repair or maintenance does not include the construction of any  
83 new building, structure, or other public construction works or  
84 any substantial addition, extension, or upgrade to an existing  
85 public facility. Such additions, extensions, or upgrades shall  
86 be considered substantial if the estimated cost of the  
87 additions, extensions, or upgrades included as part of the  
88 repair or maintenance project exceeds the threshold amount in  
89 subsection (1) and exceeds 20 percent of the estimated total  
90 cost of the repair or maintenance project using generally  
91 accepted cost-accounting principles that fully account for all  
92 costs associated with performing and completing the work,  
93 including employee compensation and benefits, equipment cost and  
94 maintenance, insurance costs, and materials. An addition,  
95 extension, or upgrade shall not be considered substantial if it  
96 is undertaken pursuant to the conditions specified in  
97 subparagraph 1. Repair and maintenance projects and any related  
98 additions, extensions, or upgrades may not be divided into  
99 multiple projects for the purpose of evading the requirements of  
100 this subparagraph.

101           6. If the project is undertaken exclusively as part of a  
102 public educational program.

103           7. If the funding source of the project will be diminished  
104 or lost because the time required to competitively award the  
105 project after the funds become available exceeds the time within  
106 which the funding source must be spent.

107           8. If the local government competitively awarded a project  
108 to a private sector contractor and the contractor abandoned the  
109 project before completion or the local government terminated the  
110 contract.

111           9. If the governing board of the local government complies  
112 with all of the requirements of this subparagraph, conducts a  
113 public meeting under s. 286.011 after public notice, and finds  
114 by majority vote of the governing board that it is in the  
115 public's best interest to perform the project using its own  
116 services, employees, and equipment. The public notice must be  
117 published at least 21 days before the date of the public meeting  
118 at which the governing board takes final action. The notice must  
119 identify the project, the components and scope of the work, and  
120 the estimated cost of the project using generally accepted cost-  
121 accounting principles that fully account for all costs  
122 associated with performing and completing the work, including  
123 employee compensation and benefits, equipment cost and  
124 maintenance, insurance costs, and materials. The notice must  
125 specify that the purpose for the public meeting is to consider

126 whether it is in the public's best interest to perform the  
127 project using the local government's own services, employees,  
128 and equipment. Upon publication of the public notice and for 21  
129 days thereafter, the local government shall make available for  
130 public inspection, during normal business hours and at a  
131 location specified in the public notice, a detailed itemization  
132 of each component of the estimated cost of the project and  
133 documentation explaining the methodology used to arrive at the  
134 estimated cost. At the public meeting, any qualified contractor  
135 or vendor who could have been awarded the project had the  
136 project been competitively bid shall be provided with a  
137 reasonable opportunity to present evidence to the governing  
138 board regarding the project and the accuracy of the local  
139 government's estimated cost of the project. In deciding whether  
140 it is in the public's best interest for the local government to  
141 perform a project using its own services, employees, and  
142 equipment, the governing board must consider the estimated cost  
143 of the project using generally accepted cost-accounting  
144 principles that fully account for all costs associated with  
145 performing and completing the work, including employee  
146 compensation and benefits, equipment costs and maintenance,  
147 insurance costs, and the cost of materials, and the accuracy of  
148 the estimated cost in light of any other information that may be  
149 presented at the public meeting and whether the project requires  
150 an increase in the number of government employees or an increase

151 in capital expenditures for public facilities, equipment, or  
152 other capital assets. The local government may further consider  
153 the impact on local economic development, the impact on small  
154 and minority business owners, the impact on state and local tax  
155 revenues, whether the private sector contractors provide health  
156 insurance and other benefits equivalent to those provided by the  
157 local government, and any other factor relevant to what is in  
158 the public's best interest. A local government that performs a  
159 project using its own services, employees, and equipment must  
160 disclose the actual costs of the project after completion to the  
161 Auditor General. The Auditor General shall review such  
162 disclosures as part of his or her routine audits of local  
163 governments.

164 10. If the governing board of the local government  
165 determines upon consideration of specific substantive criteria  
166 that it is in the best interest of the local government to award  
167 the project to an appropriately licensed private sector  
168 contractor pursuant to administrative procedures established by  
169 and expressly set forth in a charter, ordinance, or resolution  
170 of the local government adopted before July 1, 1994. The  
171 criteria and procedures must be set out in the charter,  
172 ordinance, or resolution and must be applied uniformly by the  
173 local government to avoid awarding a project in an arbitrary or  
174 capricious manner. This exception applies only if all of the  
175 following occur:

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

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

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

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

c. The project is to be awarded by any method other than a



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competitive selection process, and the published notice clearly specifies the ordinance or resolution by which the private sector contractor will be selected and the criteria to be considered.

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

11. To projects subject to chapter 336.

Section 2. Subsection (4) of section 336.41, Florida Statutes, is amended to read:

336.41 Counties; employing labor and providing road equipment; accounting; when competitive bidding required.—

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

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

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

(c) Construction of 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 or as adjusted by the percentage change in the Construction Cost Index from January 1, 2008,

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

Section 3. This act shall take effect July 1, 2019.



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 167 (2019)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Oversight, Transparency &  
Public Management Subcommittee  
Representative Andrade offered the following:

**Amendment (with title amendment)**

Remove line 152 and insert:  
the public's best interest. A local government that performs  
projects using its own services, employees, and equipment must  
disclose the actual costs of the project after completion to the  
Auditor General. The Auditor General shall review such  
disclosures as part of his or her routine audits of local  
governments.

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**T I T L E   A M E N D M E N T**

Remove line 8 and insert:

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 167 (2019)

Amendment No.

17 determination; requiring that a local government that performs  
18 projects using its own services, employees, and equipment  
19 disclose the actual costs of the project after completion to the  
20 Auditor General; requiring that the Auditor General review such  
21 disclosures as part of his or her routine audits of local  
22 governments; amending s. 336.41, F.S.; requiring

