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## Local Government Committee

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### HB 1966

**Brief Description:** Concerning public works contracting.

**Sponsors:** Representatives Zahn and Tharinger.

#### Brief Summary of Bill

- Modifies the process for local governments to select the lowest responsible bidder.
- Removes the ability of certain local governments to have their own regularly employed personnel perform work valued at a specified amount under prudent utility management.
- Establishes procedures for certain local governments to have their own personnel complete public works projects up to a certain dollar amount in exigent circumstances.
- Requires certain local governments to prepare an annual report on public works projects completed by their own personnel.

**Hearing Date:** 2/18/25

**Staff:** Elizabeth Allison (786-7129).

#### **Background:**

##### Public Works.

Public work is all work, construction, alteration, repair, or improvement, other than ordinary maintenance, executed at the cost of the state or of any municipality. Every city, county, town, port district, district, or other public agency authorized to execute public work must follow specified requirements for competitive bidding for public works projects. Specific requirements

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vary by the type of municipality and certain exemptions are provided.

#### Lowest Responsible Bidder.

State law requires local agencies to award public works contracts to a responsible bidder with the lowest responsive bid, otherwise referred to as the lowest responsible bidder. Responsive bids are bids submitted on time with all of the information the agency requested. A responsible bidder must:

- be a registered contractor;
- have a current Unified Business Identifier number;
- have industrial insurance and workers' compensation coverage;
- have an Employment Security Department account;
- have a state excise tax registration number;
- not be disqualified from bidding because of a violation relating to registration, license, or wages;
- not have any apprenticeship violations, if applicable;
- have received training on prevailing wage and public works requirements; and
- within a three-year period immediately preceding the date of the bid solicitation, not have been determined by the Department of Labor and Industries or through a civil judgment to have willfully violated labor laws.

A lowest responsible bidder is a bid that satisfies the above requirements and has the lowest bid. If a jurisdiction issues a written finding that the lowest bidder has delivered a project within the prior three years that was late, overbudget, or did not meet specifications, the jurisdiction may choose the second lowest bidder whose bid is within 5 percent of the lowest bidder.

#### Prudent Utility Management.

Public utility districts, first- and second-class cities, water-sewer districts, and fire protection districts may have their own regularly employed personnel perform work valued at \$300,000 or less, which is an accepted industry standard under prudent utility management.

#### First-Class City Public Works by Public Employees.

A first-class city may have public works performed by city employees in any annual or biennial budget period in an amount up to 10 percent of the public works construction budget over the budget period. If a first-class city has public works performed by public employees in excess of the 10 percent limit in any budget period, the excess amount must be reduced from the allowable amount of public works that may be completed by public employees for the next budget period. If the city fails to reduce the required amount within two years after the excess occurred, 20 percent of the city's motor vehicle fuel tax distributions must be withheld. The withheld funds must be distributed to the city when the city reduces its public works by city employees as required. The state auditor must report any city that exceeds the allowable amount to the state treasurer.

#### **Summary of Bill:**

Lowest Responsible Bidder.

The option for jurisdictions to choose the next lowest bidder when the first lowest bidder has failed to deliver on a project is removed.

Prudent Utility Management.

Provisions relating to prudent utility management are removed for first- and second-class cities, water-sewer districts, and fire protection districts.

Exigent Public Works.

First- and second-class cities, water-sewer districts, and fire protection districts may address exigent public works needs through the use of their own regularly employed in-house personnel up to a project cost of \$300,000. Project costs include labor, materials, supplies, and equipment. Projects may not be divided into units or classes of work to avoid this restriction.

For first- and second-class cities and fire protection districts, a declaration of exigent circumstances may be established by an action of the jurisdiction's governing body. When a jurisdiction determines that there's an exigency, it must document the factual basis for the decision and make the decision available for public inspection.

Exigent public works needs addressed by personnel is limited to an amount equal to 10 percent of the public works construct budget or the jurisdiction's annual or biennial budget. If jurisdiction has public works performed by public employees in excess of the 10 percent limit in any budget period, the excess amount must be reduced from the allowable amount of public works that may be completed by public employees for the next budget period.

These jurisdictions must annually prepare a report indicating the total public works construction budget for that year, the total construction costs of public works performed by public employees by that year, and the amount of public works that is performed by public employees above or below 10 percent of the total construction budget. If the jurisdiction budgets on a biannual basis, this information may be reported for the current biennial period. This report is subject to review by the state auditor.

Exigent public works needs are situations that arise due to unforeseen circumstances and that compromise the proper performance of essential government functions, a need for action to prevent or alleviate serious impacts, and in which the use of a competitive procurement process would prevent the urgent action required to address the situation.

Fire protection districts must use a designated form from the state auditor to account and record costs of public works in excess of \$5,000 that are not let by contract.

**Appropriation:** None.

**Fiscal Note:** Requested on February 14, 2025.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.