

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 247 Purchase of Commodities and Contractual Services by Local Governments
SPONSOR(S): Military & Local Affairs Policy Committee, Pafford
TIED BILLS: IDEN./SIM. BILLS: CS/SB 712

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Rows include Military & Local Affairs Policy Committee, Economic Development & Community Affairs Policy Council, and Policy Council.

SUMMARY ANALYSIS

Currently, counties and municipalities, under their home rule powers, establish competitive procurement requirements through ordinance. These local regulations generally include the authority to purchase from competitively awarded contracts of other local governments, referred to as the "piggybacking" process.

However, special districts have only the powers expressly provided by, or which can be reasonably implied from, the authority provided in the district's charter. Upon creation, special districts are generally given purchasing authority with competitive procurement requirements.

The bill statutorily creates the authority for special districts to purchase commodities or contractual services from purchasing agreements of other special districts, municipalities, or counties. The authority provides that such purchase or contractual service:

- must have been competitively procured in compliance with general law; and,
• meets the procurement requirements of the purchasing special district.

Landscape architectural services, surveying and mapping services and architectural and engineering services are excluded from this "piggybacking" authority pursuant to Section 287.055, Florida Statutes.

The bill does not appear to have a negative fiscal impact on state government. To the extent that special districts purchase commodities and contractual services as authorized by this bill, procurement costs for certain goods and services may be reduced for the special district.

The bill is effective on July 1, 2009.

1 See Accela, Inc. v. Sarasota County, 993 So.2d 1035, 1039 (Fla. 2d DCA 2008).

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 Situation

County and Municipality – Article VIII, Florida Constitution

Article VIII, Sections 1 and 2 of the Florida Constitution, provides for the creation, abolishment or changes to a county and a municipality, respectively. Section 1 of the Constitution authorizes the board of county commissioners to enact ordinances in the manner prescribed by Chapter 125, F.S., which are not inconsistent with general law or special law. The first sentence of s 125.01(1), F.S., grants to the governing body of a county the full power to carry on county government. Such powers include the adoption of its own rules of procedure and the authority to expend funds and enter into contractual obligations.

Article VIII, Section 2 and Ch. 166, F.S., provides similar powers to municipalities as those provided for counties in Section 1. Therefore, each county and municipality establishes its own procedures and policies for procurements and governance. Although there may be similarities from county to county and municipality to municipality, there is no standard charter or ordinance governing purchasing.

Moreover, “[a] county may adopt a home-rule ordinance prescribing a general procedure for county purchases; or it may deal with each contract or purchase on an individual basis, with or without competitive bidding, as may best serve the public interest.”²

Uniform Special District Accountability Act – Chapter 189, F.S.

Pursuant to s. 189.403, F.S., a special district is a local unit of special purpose within a limited boundary and created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.³ The purposes of the special district are implemented by specialized functions and related prescribed powers. Chapter 189 does not contain provisions governing the purchase of commodities and contractual services by special districts.

² See Op. Att’y Gen. Fla. 71-366 (1971).

³ Pursuant to subsection (1) of s. 189.403, F.S., school districts, community college districts, special improvement districts within the reservations set aside for the Seminole and Miccosukee Tribes, a municipal service taxing or benefit unit, or a board providing electrical service that is part of a city or part of a political subdivision of a city are not considered special districts.

Agency Procurement of Personal Property and Services – Chapter 287, F.S.

Chapter 287, F.S., specifies the requirements to be followed by an agency when procuring personal property and services. An agency is defined in s. 287.012(1), F.S., as any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization of the executive branch of state government, but not the university and college boards of trustees or the state universities and colleges. Since the requirements of Ch. 287, F.S., apply only to agencies, special districts are not included in the definition of “agency”. As a result, the competitive solicitation requirements of the chapter do not apply to special districts.⁴ In addition, no provision is made in Ch. 287, F.S., for counties, municipalities, or special districts to purchase commodities or contractual services from the purchasing agreements of other counties, municipalities, or special districts.

Section 287.056, F.S., provides that eligible users may, but are not required to, purchase commodities and contractual services from purchasing agreements established and state term contracts procured by the Department of Management Services. The Department of Management Services (“DMS”) has designated special districts as eligible users⁵ who “may purchase commodities and contractual services from purchasing agreements established and state term contracts procured, pursuant to s. 287.057, F.S., by the [DMS].”⁶ However, the Consultants’ Competitive Negotiation Act, s. 287.055, F.S., sets forth requirements for the procurement and contracting of professional architectural, engineering, landscape architectural, or land surveying services by governmental agencies.

Effect of Proposed Changes

The bill statutorily creates the authority for special districts to purchase commodities or contractual services, from purchasing agreements of other special districts, municipalities, or counties. The authority provides that such purchase or contractual service:

- must have been competitively procured in compliance with general law; and,
- meets the procurement requirements of the purchasing special district.

Landscape architectural services, surveying and mapping services and architectural and engineering services are excluded from this “piggybacking” authority pursuant to s. 287.055, F.S.

B. SECTION DIRECTORY:

Section 1: Creates s. 189.4221, F.S., authorizing special districts to purchase commodities or contractual services, except those subject to s. 287.055, F.S., from purchasing agreements of other local governments that were competitively procured in compliance with general law and that meet the procurement requirements of the purchasing special district.

Section 2: Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

⁴ Though it predates the enactment of the “Uniform Special District Accountability Act of 1989,” see also AGO 77-22, opining that a special district is not an agency for purposes of Part I of Chapter 287, F.S.

⁵ Rule 60A-1.005, F.A.C., defines “eligible users” as “all governmental agencies, as defined in Section 163.3164, F.S., which have a physical presence within the state of Florida.

⁶ Section 287.056(1), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

To the extent that special districts purchase commodities and contractual services as authorized by this bill, procurement costs for certain goods and services may be reduced for the special district.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take an action requiring expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There is no statutory minimum standard for the procurement policies of special districts. The bill may potentially allow a special district with insufficient procurement policies to purchase from the contract of another special district with insufficient procurement policies.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 4, 2009, the Military & Local Affairs Policy Committee adopted an amendment to grant this purchasing authority to only special districts.

The Committee Substitute for Committee Substitute HB 247 favorably reported by the Policy Council on April 6, 2009, differs from the Committee Substitute by technical conforming language making it identical to its Senate companion.