

STORAGE NAME: h1133.ca

DATE: April 16, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 1133

RELATING TO: Water Management Special District Meeting Notices

SPONSOR(S): Representative A. Greene

COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) WATER & RESOURCE MANAGEMENT YEAS 11 NAYS 0
- (2) COMMUNITY AFFAIRS
- (3) GOVERNMENTAL OPERATIONS
- (4)
- (5)

I. SUMMARY:

This bill gives water management districts (WMDs) the option to advertise in area newspapers, rather than in the Florida Administrative Weekly, staff meetings to evaluate and rank bids for goods or services. Being able to use newspapers as the advertising medium is expected to speed up the WMDs' contracting process.

The bill has no fiscal impact on the state general revenue.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Water Management Districts (WMD), as do other governmental agencies in Florida, enter into contracts for certain kinds of services by utilizing the Request for Proposal (RFP) method. Agency staff develop a document (the RFP) which identifies the problem to be solved, outlines the service objectives required, and specifies technical requirements. Some agencies send out RFPs to individuals or businesses which are capable of providing the services desired. Other agencies advertise their RFPs in newspapers or the Florida Administrative Weekly (FAW), a magazine (in print and on-line versions) published by the Department of State. Typically, an agency appoints a team of employees familiar with the subject of the RFP to informally review the bid proposals to determine; whether each potential provider complied with the terms of the RFP, to reject those bids which are not responsive to the RFP, to analyze and rank remaining bids based upon criteria outlined in the RFP and to organize the results of the evaluation to identify top bidders. The bid is awarded by the head of the agency -- in the case of a WMD, the governing board.

A 1981 Florida Attorney General's Opinion (AGO 081-51) concluded that the meetings of RFP evaluation teams are not subject to Florida's "Government in the Sunshine Law," s. 286.11, F.S., requiring notification of meetings between public officials in the course of their official duties. Citing a lack of statutory or judicial guidance about whether a team of government staff rises to the level of an "official board or commission," the AGO concluded:

"To say otherwise would lead to the absurd result that nearly every meeting of 2 or more government employees at which some foreseeable agency action is discussed would be open to the public and could only be held after complying with the Sunshine Law's notice requirements. Such requirements would cripple the efficient operation of government and bring the conduct of the public's business to a virtual standstill. I cannot believe that the Sunshine Law was meant to cover such meetings. As the court stated in the case of Bennett v. Warden, (333 So.2d 97, 99 (2 D.C.A. Fla., 1976):

... frequent and unpublicized meetings between an executive officer and advisors, consultants, staff or personnel under his direction, for the purpose of 'fact-finding' to assist him in the execution of those duties, are not meetings within the contemplation of the Sunshine Law. Any other conclusion, carried to its logical extension, would in our view unduly hamper the efficient operation of modern government the administration of which is more and more being placed in the hands of professional administrators. It would be unrealistic, indeed intolerable, to require of such professionals that every meeting, every contact, and every discussion with anyone from whom they would seek counsel or consultation to assist in acquiring the necessary information, data or intelligence needed to advise or guide the authority by whom they are employed, be a public meeting within the disciplines of the Sunshine Law. Neither the letter nor the spirit of the law require it."

Sixteen years after AGO 081-51, the Third District Court of Appeals ruled the opposite. In Silver Express Company, etc. vs. the District Board of Lower Tribunal Trustees of Miami-Dade Community College, the district court ruled that the deliberations of the community college's purchasing committee on a flight-instruction contract should have been open to the public, because the committee's recommendations had played a significant role in the board of trustees' ultimate decision. The ruling cited Spillis Candela & Partners, Inc. v. Centrust Savings Bank, 535 So.2d 694 (Fla. 3d DCA 1988):

"The law is quite clear. An ad hoc advisory board, even if its power is limited to making recommendations to a public agency and even if it possesses no authority to bind the agency in any way, is subject to the Sunshine Law. The committee here, made a ruling affecting the decision-making process and it was of significance. As a result, it was improper for the committee to reach its recommendation in private since that constituted a violation of the Sunshine Law."

Section 286.011(1), F.S., (1), specifies that, "all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are

declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings." Although this section of law doesn't require advertising every public meeting in the FAW, state, regional and some local governmental agencies prefer to advertise in that medium.

Publication deadlines for material submitted to the FAW can be three to four weeks in advance of the actual meeting; depending on the newspaper, the advertising deadline may be seven to 10 days. The South Florida WMD, which is supporting HB 1133, has said the FAW deadlines have slowed its contracting process. As an example, the South Florida WMD solicited 40 RFPs from contractors in 1998. In 27 of those 40 RFPs, the staff workshop to evaluate the bids was delayed for reasons that included the need to advertise addendums to the original RFPs. In such cases, the staff advertised its second or even third meeting in the FAW, adding several weeks onto the eventual project.

B. EFFECT OF PROPOSED CHANGES:

HB 1133 would allow a WMD to advertise staff meetings to evaluate bids, RFPs or other solicitations in a newspaper of general paid circulation in the county where its principal office is located, or in the county or counties where the public work will be performed, no less than seven days prior to the meeting.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?
No.
- b. Does the bill require or authorize an increase in any fees?
No.
- c. Does the bill reduce total taxes, both rates and revenues?
No.
- d. Does the bill reduce total fees, both rates and revenues?
No.
- e. Does the bill authorize any fee or tax increase by any local government?
No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?
No.
- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?
Not applicable.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?
No.
- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?
No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:
 - (1) Who evaluates the family's needs?
Not applicable.
 - (2) Who makes the decisions?
Not applicable.

(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

Not applicable.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. STATUTE(S) AFFECTED:

Section 189.417(1), F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 189.417 (1), F.S., related to meeting notices for special districts. Provides that, under certain circumstances, water management districts may meet the legal requirements for adequate notice of meetings to evaluate and rank bid proposals by advertising in newspapers, rather than in the Florida Administrative Weekly.

Section 2: Provides that this act takes effect July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate, but probably minimal. Depending on the newspaper, the WMDs may recognize some savings in advertising costs.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Indeterminate. Some newspapers may experience an increase in advertising revenues if the WMDs choose to buy ad space from them rather than from the Florida Administrative Weekly.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate.

D. FISCAL COMMENTS:

None

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce state tax revenues shared with counties and municipalities.

STORAGE NAME: h1133.ca

DATE: April 16, 1999

PAGE 7

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

No amendments were offered to HB 1133 in the Committee on Water and Resource Management.

VII. SIGNATURES:

COMMITTEE ON WATER & RESOURCE MANAGEMENT:

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