

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 833 Cedar Key Water & Sewer District
SPONSOR(S): Kendrick
TIED BILLS: None. **IDEN./SIM. BILLS:** None.

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Affairs (Sub)</u>	<u>8 Y, 0 N</u>	<u>Smith-Boggis</u>	<u>Highsmith-Smith</u>
2) <u>Local Government & Veterans' Affairs</u>	<u>18 Y, 0 N</u>	<u>Smith-Boggis</u>	<u>Highsmith-Smith</u>
3) <u>State Administration</u>	<u> </u>	<u> </u>	<u> </u>
4) <u> </u>	<u> </u>	<u> </u>	<u> </u>
5) <u> </u>	<u> </u>	<u> </u>	<u> </u>

SUMMARY ANALYSIS

This bill amends the charter of the Cedar Key Special Water and Sewerage District (District) in Levy County to remove current procedures for competitive bidding for contracts by the District.

No fiscal impacts are anticipated for either fiscal year 2003-04 or 2004-05 according to the Economic Impact Statement.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes

This bill amends the charter of the Cedar Key Special Water and Sewerage District (District) in Levy County to remove current procedures for competitive bidding for contracts by the District. In the absence of specific competitive bidding procedures in the District's special acts, general law provisions apply.

Present Situation

The Cedar Key Special Water and Sewerage District in Levy County was created by chapter 63-1569, L.O.F. The District's charter was codified by 98-473, L.O.F. The charter currently provides for an elected five member Board of Commissioners. The District's boundaries include all of the Keys and a fairly large piece of property located onshore. The District is required by the city and county plans to provide service to the Keys and then to its mainland residents. The District is not allowed to service mainland residents if it interrupts its ability to service the residents on the islands. Presently, only a small number of mainland dwellings are currently served with potable water and no mainland properties are served with wastewater treatment.

Currently the District is required to advertise and request bids on all work done in construction, reconstruction, improvement, or enlargement of the system in which the expenditure is more than \$1000, or for the purchase of chemicals or water supplies exceeding \$1500 and current law provides procedures relating to bids.

Local Bids and Contracts

Section 255.20, F.S., requires a county, municipality, special district as defined in chapter 189, or other political subdivision (collectively referred to as local governments) to construct or improve a public building, structure, or other public construction works to competitively award to an appropriately licensed contractor, each project that is estimated in accordance with generally accepted cost-accounting principles to have total construction project costs of more than \$200,000. For electrical work, local government must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to have a cost of more than \$50,000. There are various exceptions to the competitive award requirement. The provisions of this subsection do not apply:

- when the project is undertaken to replace, reconstruct, or repair an existing facility damaged or destroyed by a sudden unexpected turn of events;

- when, after notice by publication in accordance with the applicable ordinance or resolution, the governmental entity does not receive any responsive bids or responses;
- to construction, remodeling, repair, or improvement to a public electric or gas utility system when such work on the public utility system is performed by personnel of the system;
- to construction, remodeling, repair, or improvement by a utility commission whose major contracts are to construct and operate a public electric utility system;
- when the project is undertaken as repair or maintenance of an existing public facility;
- when the project is undertaken exclusively as part of a public educational program;
- when 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;
- when the local government has competitively awarded a project to a private sector contractor and the contractor has abandoned the project before completion or the local government has terminated the contract;
- when the governing board of the local government, after public notice, conducts a public meeting under s. 286.011 and finds by a majority vote of the governing board that it is in the public's best interest to perform the project using its own services, employees, and equipment. The public notice must be published at least 14 days prior to the date of the public meeting at which the governing board takes final action to apply this subparagraph. 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 perform the project using the local government's own services, employees, and equipment. In deciding whether it is in the public's best interest for local government to perform a project using its own services, employees, and equipment, the governing board may consider the cost of the project, whether the project requires an increase in the number of government employees, an increase in capital expenditures for public facilities, equipment or other capital assets, the impact on local economic development, the impact on small and minority business owners, the impact on state and local tax revenues, whether the private sector contractors provide health insurance and other benefits equivalent to those provided by the local government, and any other factor relevant to what is in the public's best interest.
- when the governing board of the local government determines upon consideration of specific substantive criteria and administrative procedures that it is in the best interest of the local government to award the project to an appropriately licensed private sector contractor according to procedures established by and expressly set forth in a charter, ordinance, or resolution of the local government adopted prior to July 1, 1994. The criteria and procedures must be set out in the charter, ordinance, or resolution and must be applied uniformly by the local government to avoid award of any project in an arbitrary or capricious manner. This exception shall apply when all of the following occur:
 - when 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 prior to the date of the public meeting at which the governing board takes final action to apply this subparagraph. 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 ordinance;

- in the event the project is to be awarded by any method other than a competitive selection process, the governing board must find 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, or will materially increase the cost of the project or will create an undue hardship on the public health, safety, or welfare.
- in the event the project is to be awarded by any method other than a competitive selection process, the published notice must clearly specify the ordinance or resolution by which the private sector contractor will be selected and the criteria to be considered; and
- in the event the project is to be awarded by a method other than a competitive selection process, 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.

Section 287.055, F.S., provides for the acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services. The section provides definitions, procedures and prohibited contingent fees and penalties.

C. SECTION DIRECTORY:

Section 1. Section 10 of chapter 98-473, L.O.F., is repealed. The section number is reserved.

Section 2. Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 23, 2003

WHERE? Chiefland Citizen, Chiefland, Levy County, Florida

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES: Not Applicable.

B. RULE-MAKING AUTHORITY: Not Applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The attorney for the District, Mr. John K. McPherson, Esq., sent a letter dated February 11, 2003, to state the following reasons for deleting section 10 of the charter:

- The language is unclear. It is not clear what is meant by “construction, reconstruction, improvement or enlargement of the [systems].”
- There is no exception made for emergency situations.
- The Florida Legislature has, by general law, established certain situations where competitive bidding must be followed by the District.
- There is nothing in the Special District laws in chapter 189, F.S., or elsewhere in Florida law, requiring the District’s charter contain competitive bidding requirements.
- It is the intent of the District to adopt by resolution competitive bidding requirements that are clear and tailored to the District’s needs, and which allow for emergency purchases where necessary to protect the public health. Such adoption by resolution would allow the District to amend the requirements in response to changed circumstances without resort to the Legislature for an amendment to the charter.

Review of the last three years’ financial reporting statements for the District submitted to the Comptroller’s Office, Division of Banking and Finance, appears their audits meet government auditing standards for those years. In 1999, the balance sheet indicated construction in progress at \$37,378 and in 2000 at \$721,826. It appears that a significant project was undertaken by the District. Had the District been subject to general law only (and not the provisions of their special act), they would have been governed by chapter 255 and 287, F.S. for bidding purposes. However, in 2001, construction in progress is indicated at \$785,292. It is difficult to tell if that amount contains an “add-on” amount of if it’s a “new amount”. For assumption purposes, if the 2000 figure was an “add-on” of \$64,000, the amount of the difference for that project would not have been subject to competitive bid.

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

Not Applicable.