

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 871 Educational Facilities Contracting and Construction Procedures  
**SPONSOR(S):** Schools & Learning Council; Kreegel  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 1276

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| REFERENCE                     | ACTION           | ANALYST       | STAFF DIRECTOR |
|-------------------------------|------------------|---------------|----------------|
| 1) Schools & Learning Council | 15 Y, 1 N, As CS | Beagle/Eggers | Cobb           |
| 2) Policy & Budget Council    |                  |               |                |
| 3) _____                      | _____            | _____         | _____          |
| 4) _____                      | _____            | _____         | _____          |
| 5) _____                      | _____            | _____         | _____          |

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**SUMMARY ANALYSIS**

Section 1013.45(1)(e), F.S., authorizes educational boards to use day-labor contracts for new construction and renovation, remodeling, or maintenance of existing facilities. A “day-labor contract” is a project constructed using persons employed directly by a board or by contracted labor. It may not cost more than \$200,000. This maximum amount has been in statute since 1995.

If a day-labor contract exceeds \$25,000, school boards are required by State Board of Education rule and the State Requirements for Educational Facilities (SREF) to advertise the project for at least one week and to request at least three bids. If the cost exceeds \$200,000, the project must be conducted using other authorized contracting processes, which entail more extensive procurement procedures, such as: (a) competitive bidding for a licensed contractor under s. 255.20, F.S., and the SREF; or (b) specified types of contracts under the Consultants’ Competitive Negotiation Act contained in s. 287.055, F.S.

The bill increases the maximum amount for day-labor contracts from \$200,000 to \$280,000. Beginning in January of 2009, the bill requires the maximum amount to be annually adjusted based upon changes in the Consumer Price Index. Thus, under the bill, a day-labor project may cost up to \$280,000 before other types of contracting processes involving more extensive procurement procedures must be utilized.

The bill does not appear to have a fiscal impact on state or local governments. **(See FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT).**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Section 1013.45(1)(e), F.S., authorizes educational boards<sup>1</sup> to use day-labor contracts for new construction and renovation, remodeling, or maintenance of existing facilities. A “day-labor contract” is a project that is constructed using persons employed directly by a board or by contracted labor. It may not cost more than \$200,000.<sup>2</sup>

A day-labor contract is subject to State Board of Education (SBE) Rule 6A-1.012,<sup>3</sup> which sets forth a purchase process for products or services in excess of \$25,000. This rule requires a school board to request at least three bids and to select the lowest and best bid.<sup>4</sup> Additionally, the State Requirements for Educational Facilities (SREF) require any project conducted using contracted services costing less than \$200,000 to be advertised for a minimum of one week.<sup>5</sup>

A day-labor contract may not be used for a project costing more than \$200,000.<sup>6</sup> If a project exceeds this amount, it must be conducted using other authorized contracting procedures, such as competitive bidding or specified types of contracting procedures under s. 287.055, F.S.<sup>7</sup>

If competitive bidding is selected, s. 255.20, F.S., requires a construction or improvement project of \$200,000 or more or an electrical project of \$50,000 or more to be competitively awarded to a licensed contractor.<sup>8</sup> The SREF further provides that educational boards, as required by s. 255.20, F.S. for such projects, must:

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<sup>1</sup> Statute defines “board” to mean a district school board, community college board of trustees, university board of trustees, and the Board of Trustees for the Florida School for the Deaf and the Blind. It does not include the State Board of Education or Board of Governors. See Section 1013.01(3), F.S.

<sup>2</sup> Section 1013.45(2), F.S.

<sup>3</sup> Section 1010.04, F.S., authorizes the SBE to adopt rules for purchasing and leasing by school districts and community colleges.

<sup>4</sup> Rule 6A-1.012(6), F.A.C. (The \$25,000 threshold is based on the purchasing categories established in Section 287.017, F.S. Purchasing Category Two is set at \$25,000. Chapter 287 relates to procurement by state agencies of personal property and services. The statutory definition of “contractual service” specifically excludes contracts for labor or materials for the construction, renovation, repair, modification, or demolition of any facility, building, portion of [a] building, utility, park, parking lot, or other structure or other improvement to real property entered into pursuant to Chapter 255 and rules adopted thereunder. See Section 287.012(9), F.S.).

<sup>5</sup> Section 4.2(2), State Requirements for Educational Facilities (Adopted pursuant to Rule 6A-2.0010, F.A.C.).

<sup>6</sup> Section 1013.45(1)(e), F.S.

<sup>7</sup> The specified types of contracting procedures are: (a) design-build; (b) selection of a construction management entity; and (c) selection of a program management entity. Section 1013.45(1)(b)-(d), F.S. For such contracting procedures, s. 287.055, F.S., requires the use of a public announcement and qualification process for a: (a) construction project that costs more than \$250,000; or (b) planning or study activity that costs more than \$25,000.

<sup>8</sup> Section 255.20(2), F.S., provides that the \$200,000/\$50,000 threshold must be adjusted by the percentage change in the Consumer Price Index (CPI) from January 1, 1994, to January 1 of the year in which the project is scheduled to begin. According to the Office of Economic and Demographic Research, the 2008 adjusted threshold for a new construction or improvement project is approximately \$288,000. Correspondence with Office of Economic and Demographic Research staff on April 3, 2008. This increased threshold amount, however, is not reflected in the SREF.

- Publish a legal notice of the project in a local newspaper at least once per week for at least three weeks, with the last notice published at least seven days before the bid opening date. The notice must include the project's location; the work required; the date, time, and place of bid opening; and other bidder information relating to bidder prequalification, pre-bid conferences, insurance, and board technicality waivers.
- Publicly open, read, and tabulate bids at specified time and place.
- Reject all bids or award the contract to the apparent low bidder.<sup>9</sup>

### **Effect of Proposed Changes**

House Bill 871 amends s. 1013.45, F.S., to increase the maximum amount for day-labor contracts from \$200,000 to \$280,000. Beginning in January of 2009, the bill requires the maximum amount to be annually adjusted based upon changes in the Consumer Price Index. Thus, under the bill, a day-labor project may cost up to \$280,000 before other types of contracting procedures, which entail more extensive procurement procedures, must be utilized.

#### C. SECTION DIRECTORY:

**Section 1.:** Amending s. 1013.45, F.S.; increasing the statutory maximum for day-labor contracts; requiring that the threshold be annually adjusted according to a specified cost index.

**Section 2.:** Providing an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not appear to have a fiscal impact on state revenues.

##### 2. Expenditures:

The bill does not appear to have a fiscal impact on state expenditures.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill does not appear to have a fiscal impact on local revenues.

##### 2. Expenditures:

The bill does not appear to have a fiscal impact on local expenditures.

<sup>9</sup> Section 4.2(2), State Requirements for Educational Facilities (Adopted pursuant to Rule 6A-2.0010, F.A.C.).

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. The bill does not require counties or municipalities to take an action requiring the expenditure of funds; reduce the authority that counties or municipalities had as of February 1, 1989, to raise revenue in the aggregate; or reduce the percentage of state tax shared with counties or municipalities as of February 1, 1989.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On April 8, 2008, the Schools and Learning Council adopted one amendment and reported the bill favorably as a council substitute. The amendment reduces the day-labor contract maximum amount established in the original bill from \$300,000 to \$280,000. Original bill provisions requiring annual adjustment of the maximum amount are revised to specify that such adjustment must begin in January of 2009. Rather than use the Engineering News-Record as the basis for adjustment, the amendment requires the adjustment to be based on changes in the CPI.

This analysis is drafted to the council substitute.