

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/HB 793 Coral Springs Improvement District, Broward County  
**SPONSOR(S):** Constitutional Rights, Rule of Law & Government Operations Subcommittee, Daley  
**TIED BILLS:** IDEN./SIM. BILLS:

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**FINAL HOUSE FLOOR ACTION:** 113 Y's 0 N's **GOVERNOR'S ACTION:** Pending

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### SUMMARY ANALYSIS

CS/HB 793 passed the House on February 28, 2024, and subsequently passed the Senate on March 7, 2024.

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary. Special districts are created by general law, special act, local ordinance, or rule of the Governor and Cabinet. A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter.

The Coral Springs Improvement District (CSID) is an independent special district providing drainage, water, and sewer services to portions of the City of Coral Springs in Broward County. The CSID was created by a circuit court order in 1966, with a charter codified by a special act in 1970, and re-codified in 2004. As originally enacted, the charter provided the CSID with an expanded scope of powers, including all powers under ch. 298, F.S., as well as authority to develop and operate water and sewer systems.

The bill revises the purchasing and contracting requirements of the CSID by:

- Increasing the threshold at which competitive bidding is required for goods, supplies, or materials to the Category Two threshold.
- Requiring the district to publish notice of bids once a week in a newspaper of general circulation in Broward County and in the district.
- Requiring the district to comply with the procedures in s. 255.20, F.S., and other applicable general law, when seeking to construct or improve a public building, structure, or other public works projects.
- Clarifying the district must accept the bid of the lowest responsive and responsible bidder, unless the board determines it is in the best interest of the district to reject all of the bids.
- Providing that the provisions of the Consultants' Competitive Negotiation Act apply to district contracts for engineering, architecture, landscape architecture, or registered surveying and mapping services.
- Requiring the district to undergo a competitive bidding procedure for contracts for maintenance services that exceed the Category Two threshold and to adopt rules, policies, and procedures for bids for maintenance services.
- Providing that other services are not subject to competitive bidding requirements unless the board adopts a rule, policy, or procedure.
- Authorizes the district to apply to the Department of Management Services to purchase commodities and contractual services from purchasing agreements established and state term contracts procured by the department.

According to the Economic Impact Statement, the bill is likely to result in cost savings to the district due to the modernization of procurement procedures.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Present Situation**

##### Special Districts

A “special district” is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.<sup>1</sup> Special districts are created by general law, special act, local ordinance, or rule of the Governor and Cabinet.<sup>2</sup> A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district’s charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.<sup>3</sup> Special districts are funded through the imposition of ad valorem taxes, fees, or charges on the users of those services as authorized by law.<sup>4</sup>

Special districts may be classified as dependent or independent based on their relationship with local general-purpose governments. A special district is classified as “dependent” if the governing body of a single county or municipality:

- Serves as governing body of the district;
- Appoints the governing body of the district;
- May remove members of the district’s governing body at-will during their unexpired terms; or
- Approves or can veto the budget of the district.<sup>5</sup>

A district is classified as “independent” if it does not meet any of the above criteria or is located in more than one county, unless the district lies entirely within the boundaries of a single municipality.<sup>6</sup>

Special districts do not possess “home rule” powers and may impose only those taxes, assessments, or fees authorized by special or general law. The special act creating an independent special district may provide for funding from a variety of sources while prohibiting others. For example, ad valorem tax authority is not mandatory for a special district.<sup>7</sup>

##### Competitive Solicitation for Commodities or Contractual Services

Current law provides the following purchasing categories for purposes of state agency procurements of commodities or contractual services:

- CATEGORY ONE: \$20,000.
- CATEGORY TWO: \$35,000.
- CATEGORY THREE: \$65,000.
- CATEGORY FOUR: \$195,000.
- CATEGORY FIVE: \$325,000.<sup>8</sup>

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<sup>1</sup> See *Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019).

<sup>2</sup> See ss. 189.02(1), 189.031(3), and 190.005(1), F.S.; see generally ss. 189.012(6), F.S.

<sup>3</sup> Local Administration, Federal Affairs & Special Districts Subcommittee, *The Local Government Formation Manual*, 62, available at <https://myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?Committeed=3227> (last visited Jan. 8, 2024).

<sup>4</sup> The method of financing a district must be stated in its charter. Ss. 189.02(4)(g) and 189.031(3), F.S. Independent special districts may be authorized to impose ad valorem taxes as well as non-ad valorem special assessments in the special acts comprising their charters. See, e.g., ch. 2023-335, s. 6 of s. 1, Laws of Fla. (East River Ranch Stewardship District). See also, e.g., ss. 190.021 (community development districts), 191.009 (independent fire control districts), 197.3631 (non-ad valorem assessments), 298.305 (water control districts), and 388.221, F.S. (mosquito control), and ch. 2004-397, s. 27 of s. 3, Laws of Fla. (South Broward Hospital District).

<sup>5</sup> S. 189.012(2), F.S.

<sup>6</sup> S. 189.012(3), F.S.

<sup>7</sup> See, e.g., ch. 2006-354, Laws of Fla. (Argyle Fire District may impose special assessments, but has no ad valorem tax authority).

<sup>8</sup> S. 287.017, F.S.

State agencies that wish to procure commodities or contractual services in excess of the CATEGORY TWO threshold, which is \$35,000, must use a competitive solicitation process.<sup>9</sup> A “competitive solicitation” is the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of procurement method.<sup>10</sup> Depending on the type of contract and scope of work or goods sought, an agency may use one of three procurement methods: invitation to bid,<sup>11</sup> request for proposals,<sup>12</sup> or invitation to negotiate.<sup>13</sup>

### Procurement of Construction Services

Chapter 255, F.S., specifies the procedures to follow for the procurement of construction services for public property and publicly owned buildings. The Department of Management Services (DMS) is responsible for establishing the following by rule:

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts.
- Procedures for awarding each state agency construction project to the lowest qualified bidder.
- Procedures to govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state.
- Procedures for entering into performance-based contracts for the development of public facilities when those contracts are determined to be in the best interest of the state.<sup>14</sup>

Counties, municipalities, special districts, and other political subdivisions seeking to construct or improve a public building, structure, or other public construction works must competitively award the project if the projected cost is in excess of \$300,000.<sup>15</sup> For electrical work, local governments must competitively award<sup>16</sup> projects estimated to cost more than \$75,000.<sup>17</sup> These threshold amounts are adjusted by the percentage change in the Engineering News-Record's Building Cost Index<sup>18</sup> from January 1, 2009, to January 1 of the year in which the project is scheduled to begin.<sup>19</sup>

### State Term Contracts

A “state term contract” is a contract for commodities or contractual services that is competitively procured by DMS and that is used by agencies and other eligible users.<sup>20</sup> Agencies must purchase

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<sup>9</sup> S. 287.057(1), F.S.

<sup>10</sup> S. 287.012(6), F.S.

<sup>11</sup> When an agency is capable of defining the scope of work or specific commodity sought, then an agency must use an invitation to bid. S. 287.057(1)(a), F.S.

<sup>12</sup> An agency must use a request for proposals when the purposes and uses for the contractual service or commodity sought can be specifically defined and the agency is capable of identifying necessary deliverables. S. 287.057(1)(b), F.S.

<sup>13</sup> An invitation to negotiate is a solicitation used by an agency that is intended to determine the best method for achieving a specific goal or solving a particular problem. It identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value. S. 287.057(1)(c), F.S.

<sup>14</sup> S. 255.29, F.S.

<sup>15</sup> S. 255.20(1), F.S.

<sup>16</sup> The term “competitively award” means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation. *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> The Engineering News-Record is a weekly private-sector publication that publishes, monthly, a Building Cost index (BCI).

*Construction Economics*, ENGINEERING NEWS-RECORD, <https://www.enr.com/economics> (last visited Jan. 8, 2024).

The BCI serves to inform those in the engineering profession and construction industry about general construction costs across the United States. *Id.* The BCI has a material component that incorporates the actual cost of construction materials and a labor component incorporating the actual cost of labor. *Using ENR Indexes*, ENGINEERING NEWS-RECORD, <https://www.enr.com/economics/faq> (last visited Jan. 7, 2024).

<sup>19</sup> S. 255.20(2), F.S.

<sup>20</sup> S. 287.012(28), F.S.; *see also* s. 287.042(2)(a), F.S.

commodities or contractual services from a state term contract if one has been competitively procured by DMS.<sup>21</sup>

### Consultants' Competitive Negotiation Act

In 1972, Congress passed the Brooks Act,<sup>22</sup> which requires federal agencies to use a qualifications-based selection process for architectural, engineering, and associated services, such as mapping and surveying. Qualifications-based selection is a process whereby service providers are retained on the basis of competency, qualifications, and experience, rather than price. In 1973, the Florida Legislature enacted the Consultants' Competitive Negotiation Act (CCNA),<sup>23</sup> which is modeled after the Brooks Act.<sup>24</sup> The CCNA requires state and local government agencies to procure the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper using a qualifications-based selection process.<sup>25</sup>

The CCNA establishes a three-phase process for procuring professional services:

- Phase 1 – Public announcement and qualification.
- Phase 2 – Competitive selection.
- Phase 3 – Competitive negotiation.

During Phase 1, the public announcement and qualification phase, state and local agencies must publicly announce each occasion when professional services will be purchased for one of the following:

- A project, when the basic construction cost is estimated by the agency to exceed \$325,000; or
- A planning or study activity, when the fee for professional services exceeds \$35,000.<sup>26</sup>

During Phase 2 of the competitive selection phase, an agency must evaluate the qualifications and past performance of interested consultants and select at least three consultants, ranked in order of preference, that it considers the most highly qualified to perform the required services. During this phase, the CCNA prohibits the agency from requesting, accepting, or considering proposals for the compensation to be paid.

During Phase 3 of the competitive negotiation phase, an agency must first negotiate compensation with the highest ranked consultant. If the agency is unable to negotiate a satisfactory contract with that consultant at a price the agency determines to be fair, competitive, and reasonable, negotiations with the consultant must be formally terminated. The agency must then negotiate with the remaining ranked consultants, in order of rank, and follow the same process until an agreement is reached. If the agency is unable to negotiate a satisfactory contract with any of the ranked consultants, the agency must select additional consultants, ranked in the order of competence and qualification without regard to price, and continue negotiations until an agreement is reached.<sup>27</sup>

The CCNA explicitly states it does not prohibit a continuing contract<sup>28</sup> between a firm and an agency.<sup>29</sup> A "continuing contract" is a contract for professional services entered into in accordance with the CCNA between an agency and a firm whereby the firm provides professional services to the agency for projects.<sup>30</sup> The CCNA prohibits firms that are parties to a continuing contract from being required to bid against one another.<sup>31</sup>

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<sup>21</sup> S. 287.056(1), F.S.

<sup>22</sup> Public Law 92-582, 86 Stat. 1278 (1972).

<sup>23</sup> Ch. 73-19, Laws of Fla., codified as s. 287.055, F.S.

<sup>24</sup> Codified as s. 287.055, F.S.

<sup>25</sup> *Id.*

<sup>26</sup> S. 287.055(3)(a)1., F.S.

<sup>27</sup> S. 287.055(5), F.S.

<sup>28</sup> S. 287.055(2)(g), F.S.

<sup>29</sup> S. 287.055(4)(d), F.S.

<sup>30</sup> S. 287.055(2)(g), F.S.

<sup>31</sup> *Id.*

Current law authorizes the use of a continuing contract for construction projects in which the estimated construction cost of each project does not exceed \$4 million, for study activities if the fee for professional services for each study does not exceed \$500,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except the contract must include a termination clause.<sup>32</sup>

### Coral Springs Improvement District

The Coral Springs Improvement District (CSID) is an independent special district providing drainage, water, and sewer services to portions of the City of Coral Springs in Broward County.<sup>33</sup> The CSID was created by a circuit court order in 1966, with a charter codified by special act in 1970,<sup>34</sup> and re-codified in 2004.<sup>35</sup> As originally enacted, the charter provided the district with an expanded scope of powers, including all powers under ch. 298, F.S., as well as authority to develop and operate water and sewer systems.<sup>36</sup>

The CSID is currently governed by a three-member board elected by the landowners of the district on a one-acre, one-vote basis for a four-year term.<sup>37</sup> A majority of board members must be residents of Broward County and all must own land within the district. Beginning with the 2024 general election, the CSID must be governed by a five-member board elected by, and consisting of, qualified electors of the district.<sup>38</sup>

### **Effects of the Bill**

The bill amends the charter of the CSID to revise purchasing and contracting requirements.

The bill provides that contracts for goods, supplies, or materials must be put up for bid if the amount exceeds the threshold of Category Two, which is \$35,000. The bill revises the notice requirement for bids from once a week for two consecutive weeks in a newspaper published in Broward County, to once in a newspaper in general circulation in the county and district.

The bill requires the board, when seeking to construct or improve a public building, structure, or other public works project, to comply with the bidding procedures in s. 255.20, F.S., and other applicable general law.

The bill requires the district to accept the bid of the lowest responsive and responsible bidder, unless the board determines it is in the best interest of the district to reject all bids.

The bill provides that the requirements of the Consultants' Competitive Negotiation Act apply to the district's contracts for engineering, architecture, landscape architecture, or registered surveying and mapping services.

The bill provides that contracts for maintenance services for any district facility or project are subject to competitive bidding requirements when the amount to be paid by the district exceeds the threshold amount of Category Two.<sup>39</sup> The bill also requires the district to adopt rules, policies, and procedures establishing competitive bidding procedures for maintenance services. Unless otherwise required by

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<sup>32</sup> S. 287.055(2)(g), F.S.

<sup>33</sup> See ch. 2004-469, s. 7, Laws of Fla.; see also City of Coral Springs, *Water Billing*, <https://www.coral springs.org/Government/Departments/Water-Billing> (last visited Jan. 8, 2024) (maps of water districts providing services to the residents of Coral Springs).

<sup>34</sup> Ch. 70-617, Laws of Fla.

<sup>35</sup> Ch. 2004-469, s. 2, 3(1), Laws of Fla.

<sup>36</sup> Ch. 70-617, s. 9(21), Laws of Fla., now ch. 2004-469, s. 9(21) of s. 3, Laws of Fla.

<sup>37</sup> Ch. 2004-469, ss. 3(5)(1) and 3(5)(3), Laws of Fla.

<sup>38</sup> Ch. 2004-469, ss. 3(5)(1) and 3(5)(3), Laws of Fla., as amended by ch. 2021-253, Laws of Fla.

<sup>39</sup> *Id.*

district rule or policy, the bill provides that contracts for other services are not subject to competitive bidding requirements.

Lastly, the bill authorizes the district to apply to DMS to purchase commodities and contractual services from purchasing agreements established and state term contracts procured by the department.

According to the Economic Impact Statement, the bill is likely to result in cost savings to the district due to the modernization of procurement procedures.

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

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

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

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

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. ECONOMIC IMPACT STATEMENT FILED? Yes ☒ No ☐**

### **D. NOTICE PUBLISHED? Yes ☒ No ☐**

IF YES, WHEN? November 5, 2023

WHERE? The *Sun-Sentinel*, a daily newspaper of general circulation published in Broward, Palm Beach, and Miami-Dade County.

### **E. REFERENDUM(S) REQUIRED? Yes ☐ No ☒**