

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

**BILL:** CS/CS/SB 712

**INTRODUCER:** Policy and Steering Committee on Ways and Means; Community Affairs Committee and Senator Pruitt

**SUBJECT:** Commodities & Contractual Services/Local Governments

**DATE:** April 21, 2009      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Malloy</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>McKay</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
3.	<u>McVaney</u>	<u>Kelly</u>	<u>WPSC</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes
- B. AMENDMENTS.....  Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

**I. Summary:**

This bill authorizes special districts to purchase commodities and contractual services from the purchasing agreements of other special districts, counties, and municipalities, under certain conditions. Landscape architectural services, surveying and mapping services, and architectural and engineering services are excluded.

The bill creates section 189.4221, Florida Statutes.

**II. Present Situation:**

**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.<sup>1</sup> The purposes of the special district are implemented by specialized functions and

<sup>1</sup> 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

related prescribed powers. For purposes of ad valorem tax exemptions, special districts are treated the same as municipalities. However, Chapter 189 does not contain provisions governing the purchase of commodities and contractual services by 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, and special districts are not included in the definition of “agency,” the competitive solicitation requirements of the chapter do not apply to special districts.<sup>2</sup> No provision is made in Chapter 287 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. Subsection (12) of s. 287.012, F.S., provides that an “eligible user” is any person or entity authorized by the Department of Management Services pursuant to rule to purchase commodities and contractual services from state term contracts or to use the online procurement system. Rule 60A-1.005, Florida Administrative Code, as adopted by the department, defines an “eligible user” as “all governmental agencies as defined in s. 163.3164<sup>3</sup> which have a physical presence in the State of Florida.” Section 163.3164, F.S., includes any county or municipality, or any school board or other special district in the definition of “governmental agencies.” Thus, special districts may purchase commodities and contractual services from the DMS purchasing agreements and state term contracts.

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.

### **III. Effect of Proposed Changes:**

The bill creates s. 189.4221, F.S., to authorize special districts to purchase commodities and contractual services from the purchasing agreements of other special districts, counties, and municipalities if:

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board providing electrical service that is part of a city or part of a political subdivision of a city are not considered special districts.

<sup>2</sup> 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.

<sup>3</sup> Section 163.3164, F.S., provides definitions for the “Local Government Comprehensive Planning and Land Development Regulation Act.”

- The purchasing agreements of other special districts, counties, and municipalities are procured pursuant to competitive bids, requests for proposals, or competitive negotiations; and,
- The purchasing agreements of other special districts, counties, and municipalities are otherwise in compliance with general law and the purchasing agreement of the other special district, municipality, or county was procured by a process that would have met the procurement requirements of the purchasing special district.

Landscape architectural services, surveying and mapping services, and architectural and engineering services are excluded.

If enacted into law, the bill will take effect July 1, 2009.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

##### **C. Government Sector Impact:**

To the extent that special districts can purchase commodities and contractual services from agencies under the Department of Management Services' procurement process, and will be able to purchase commodities and contractual services from other counties, municipalities and special districts without having to go through the competitive bid process, procurement costs for such commodities and services may be reduced.

#### **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

There is no statutory minimum standard for the procurement policies of special districts. Though the bill refers to various types of competitive procurement methods, because these methods are not generally defined or specified for special districts, they may not mean the same thing in each district. 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.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Policy and Steering Committee on Ways and Means on April 21, 2009:**

The CS corrects a scrivener's error.

**CS by Community Affairs Committee on March 3, 2009**

The CS removes provisions of the bill authorizing municipalities and counties to purchase commodities and services from other special districts, municipalities, or counties because municipalities and counties may already perform this activity using home rule powers.

- B. **Amendments:**

None.