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MEMORANDUM

To: Harmony Community Development District
From: Young Qualls, PA
Date: August 19, 2020
Re: 2020 Legislative Session Laws Effect on Harmony CDD

Question Presented

The District Manager asked for an update and summary of laws passed by the 2020 Florida Legislature. Following are those laws affecting community development districts.

Answer

During the 2020 Florida Legislative Session there were six (6) new laws which pertinently affect the Harmony Community Development District (“District” or “CDD”) being:

1. SB1466 reduces the information that a CDD must post online; now only the agenda must be posted seven (7) days in advance. The CDD may now provide a link to its most recent financial audit report on the Auditor General’s website, rather than posting the report. Another provision regards exemptions of ethics requirements to board members, but this provision only applies to district boards with supervisors who were appointed by developers; thus, this provision does not apply to the District as it is an elected board.
2. HB101 reduces the amount of money a CDD may withhold from progress payments under construction service contracts worth more than \$200,000 from:
 - a. 10% to 5% when less than 50 percent of the project is complete; and
 - b. 5% to 2.5% when 50 percent or more of the project is complete.
3. HB279 requires that when a CDD performs a project using its own services and employees, the CDD must fully account for all direct and indirect costs associated with the project including: employee compensation and benefits; equipment and maintenance costs, insurance costs, the cost of direct materials; and other direct costs, plus a factor of 20% for management, overhead, and other indirect costs, such as permitting fees.

Because Harmony has a unique framework for field staff, the District must take this new obligation into consideration before starting new projects and designate a District staff

member to keep the accounting of such. The Firm is doing additional research into the full affect of this law on the District.

4. SB664 requires CDD contractors and subcontractors to verify new hires' immigration status under "E-Verify" beginning January 1, 2021. The bill's contractor/subcontractor requirements apply to those that have at least 10 employees in Florida and contracts of at least \$35,000 in value.

The District may not enter into a contract unless each party to the contract registers with and uses the E-Verify system. This obligation will need to be added to the District's standard contract form.

5. HB441 increases the maximum dollar amount for continuing contracts under the Consultants' Competitive Negotiation Act (CCNA), Ch. 287, F.S. (2019), for each individual construction project from \$2,000,000 to \$4,000,00 and each individual study under a contract for CDD construction projects from \$200,000 to \$500,000. These new limits are intended to lead to more competitive bidding for contracts with the District.
6. HB5003 creates a special task force to review CDD's governance structure and function and determine if changes are necessary to make the CDD more efficient. The District should continue to follow all procedures and striving for efficiency while carrying out its duties under Ch. 190, F.S. (2019).

Analysis

SB1466

a. District Websites

Per the legislative staff analyses, local governments are facing continued federal litigation in the absence of official rules on ADA compliance for government website and electronic document access. State and local government websites are subject to Title II of the Americans with Disabilities Act (ADA), which prohibits state and local governments from discriminating against a qualified disabled person because of a disability unless a modification of policy or procedure is unreasonable, alters the nature of the service, or causes the government an undue financial or administrative burden. The United States Department of Justice (DOJ) administers Title II. While not having provided any regulations on how state and local government websites can comply with the ADA, the DOJ has issued an ADA Best Practices Tool Kit for state and local governments, which provides suggestions and checklists. Under Title II of the ADA, state and local governments may be sued and many have recently faced increased litigation relating to state and local government website access.

CDDs are required to maintain an official website containing essential information about the district. Each CDD is required to maintain a separate website. A CDD shall post the following information, at a minimum, on the district's official website:

- The full legal name of the special district.
- The public purpose of the special district.
- The name, official address, official e-mail address, and, if applicable, term and appointing authority for each member of the governing body of the special district.
- The fiscal year of the special district.
- The full text of the special district's charter, the date of establishment, the establishing entity, and the statute or statutes under which the special district operates, if different from the statute or statutes under which the special district was established. Community development districts may reference ch. 190, F.S., as the uniform charter but must include information relating to any grant of special powers.
- The mailing address, e-mail address, telephone number, and website uniform resource locator of the special district.
- A description of the boundaries or service area of, and the services provided by, the special district.
- A listing of all taxes, fees, assessments, or charges imposed and collected by the special district, including the rates or amounts for the fiscal year and the statutory authority for the levy of the tax, fee, assessment, or charge. For purposes of this subparagraph, charges do not include patient charges by a hospital or other health care provider.
- The primary contact information for the special district for purposes of communication from the department.
- A code of ethics adopted by the special district, if applicable, and a hyperlink to generally applicable ethics provisions.
- The budget of the special district and any amendments thereto in accordance with s. 189.016, F.S.
- The final, complete audit report for the most recent completed fiscal year and audit reports required by law or authorized by the governing body of the special district.
- A listing of its regularly scheduled public meetings as required by s. 189.015(1), F.S.
- The public facilities report, if applicable.
- Link to the Department of Financial Services website as set forth in s. 218.32(1)(g), F.S.
- At least 7 days before each meeting or workshop, the agenda of such, plus any meeting materials available in an electronic format, excluding confidential and exempt information. The information must remain online for at least 1 year after the event.

Chapter 282, F.S., regulates the accessibility of electronic information among state agencies. Executive, legislative, and judicial branches of state government must ensure that state employees with disabilities have access to and are provided with electronic information and data comparable to the access and use by state employees who do not have disabilities unless an undue burden would be imposed on the agency. Similarly, individuals with disabilities who are members of the public must be provided with access to and use of electronic information and data comparable to that provided to nondisabled members of the public, unless an undue burden would be imposed on the agency. Each state agency must develop, procure, maintain, and use

accessible electronic information and information technology in conformance with federal law,⁶¹ absent an undue burden. If an agency claims compliance will impose an undue burden, it must provide proof an alternative method allows the individual to use the information and data.⁶² The statute does not extend its requirements to local governments

b. Florida Code of Ethics

The Code of Ethics contains several provisions that provide exemptions from what is otherwise prohibited conduct:

- Section 112.313(7), F.S., prohibits conflicting employment or contractual relationships, but provides that where a special tax district is created by general or special law and limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which an agency has jurisdiction, or when the agency has been organized pursuant to chapter 298 (water control districts), then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this subsection or be deemed a conflict per se.
- Section 112.313(12), F.S., contains exemptions from the prohibitions in subsections (3) (prohibition on doing business with one's agency) and subsection (7) by providing that:
 - The prohibitions may be waived for a person serving on an advisory board by the body which appointed the person to the advisory board; and
 - No person is in violation of those subsections if:
 - Within a city or county the business is transacted under a rotation system;
 - The business is awarded under a system of sealed, competitive bidding to the lowest or best bidder who meet certain additional criteria;
 - The purchase or sale is for legal advertising in a newspaper, for any utilities service, or for passage on a common carrier;
 - An emergency purchase or contract must be made in order to protect the health, safety, or welfare of the citizens of the state or political subdivision of the state;
 - The business entity is the sole source of supply;
 - The total amount of transactions do not exceed \$500 per calendar year; and
 - Several other conditions exist related to bank officers, university transactions and purchases by public officers or employees in a private capacity.
- Section 112.313(15), F.S., provides that elected public officers are not in violation of subsection (7) of the section, dealing with conflict of interest, for maintaining an employment relationship with a tax-exempt organization as long as certain condition.
- Section 112.313(16), F.S., provides certain exemptions from the prohibitions of subsections (3) and (7) of the section for local government attorneys.

- Section 112.3143, F.S., prohibits a state public officer from voting on any matter that the officer knows would inure to his or her special private gain or loss; however paragraph (3)(b) of the section provides that a commissioner of a community redevelopment agency or an officer of an independent special tax district elected on a one-acre, one-vote basis, is not prohibited from voting.

c. Effect of SB1466 Changes

Section 2 of the bill amends s. 189.069, F.S., to allow a CDD to satisfy the required posting of its most recent final, complete audit report and other statutorily required audit reports on its own website by providing a link to the most recent audit report maintained on the Auditor General's website. In addition, the bill amends provisions removing the requirement for online posting of a special district's public facilities report and any of a special district's meeting or workshop materials. The posting of a CDD meeting or workshop, and the agendas of such, is still required.

Finally, section 3 of the bill amends s. 190.007, F.S., to provide that board members or public employees of community development districts do not abuse their public position under Article II, section 8(h)(2) of the Florida Constitution if they commit acts or omissions authorized under s. 112.313(7), (12), (15), or (16), F.S., s. 112.3143(3)(b), F.S., or s. 190.007(1), F.S. and board members do not abuse their public position if they commit acts or omissions in connection with a vote if they follow the procedures required by s. 112.3143, F.S. Section 4 of the bill provides an effective date of July 1, 2020.

SEE Bill Text: <https://www.flsenate.gov/Session/Bill/2020/1466/BillText/er/PDF>

SEE Staff Analyses: <https://www.flsenate.gov/Session/Bill/2020/01466/?Tab=Analyses>

HB101

Per the legislative staff analyses, this bill regards CDDs retainage of progress payments on construction contracts. Payments for construction services are usually made incrementally as progress is made, and retainage is a construction practice whereby a project owner withholds a certain percentage of a payment from the contractor who in turn withholds a certain percentage from the subcontractors until the project is completed. The retained funds are generally paid out when the project is completed.

The bill reduces the amount that a CDD may retain from a progress payment to a contractor for contracts worth more than \$200,000 from:

- Ten percent to five percent when less than 50 percent of the project is complete; and
- Five percent to two and a half percent when 50 percent or more of the project is complete.

The bill may result in contractors and subcontractors who provide services in the construction of public projects for CDDs receiving more money in progress payments, which could result in more competition for public works projects and lower costs for the CDD. The bill specifies that the above provisions do not apply to any contract for construction services entered into, pending approval, or advertised by a government entity, on or before October 1, 2019.

SEE Bill Text: <https://www.flsenate.gov/Session/Bill/2020/101/BillText/er/PDF>

SEE Staff Analyses: [flsenate.gov/Session/Bill/2019/101/ByCategory/?Tab=Analyses](https://www.flsenate.gov/Session/Bill/2019/101/ByCategory/?Tab=Analyses)

HB279

Under Florida Statutes, Community Development Districts seeking to construct or improve a public building or structure must competitively bid the project if the projected cost is in excess of \$300,000. For electrical work, CDDs must competitively bid projects estimated to cost more than \$75,000. However, an exemption from the requirement to competitively award these projects exists when the Board of Supervisors of the CDD determines that it is in the public's best interest to use the local government's own services, employees, and equipment.

Per the legislative staff analyses, this bill specifies the manner in which the estimated cost of a public building construction project must be determined when the Board of Supervisors is deciding whether it is in the CDD's best interest to perform the project using its own services, employees, and equipment. Specifically, the bill requires the estimated project cost to fully account for all costs associated with performing and completing the work, including employee compensation and benefits; the cost of equipment and maintenance, insurance costs, and the cost of direct materials to be used in the construction of the project including materials to be purchased by the CDD; and other direct costs, plus a factor of 20 percent for management, overhead, and other indirect costs.

The bill also requires CDDs to consider the same costs when determining the estimated cost of any road and bridge construction and reconstruction projects performed utilizing proceeds from the constitutional gas tax. The bill further requires CDDs issuing bidding documents or other requests for proposals to include a listing of all other governmental entities that may have additional permits or fees generated by the project. Finally, CDDs utilizing their own services must create a report summarizing completed projects constructed by the CDD, which must be publicly reviewed each year by the CDD Board of Supervisors.

SEE Bill Text: <https://www.flsenate.gov/Session/Bill/2020/279/BillText/er/PDF>

SEE Staff Analyses: <https://www.flsenate.gov/Session/Bill/2020/279/?Tab=Analyses>

SB664

This bill requires public employers and certain of their contractors and subcontractors to use E-Verify, beginning July 1, 2021. Particularly, per the legislative staff analyses, the bill's contractor/subcontractor requirements apply to those that have at least 10 employees in Florida and have contracts of at least \$35,000 in value. Additionally, the bill reiterates current law's prohibition on knowingly employing an unauthorized alien, and the bill authorizes a person to file a complaint with the department if he or she believes in good faith that an employer employs an unauthorized alien.

SEE Bill Text: <https://www.flsenate.gov/Session/Bill/2020/664/BillText/er/PDF>

SEE Staff Analyses: <https://www.flsenate.gov/Session/Bill/2020/664/?Tab=Analyses>

HB441

Per the legislative staff analyses, in 1973, the Florida Legislature enacted the Consultants' Competitive Negotiation Act (CCNA), which requires special districts, including CDDs, to procure the "professional services" of an architect, professional engineer, landscape architect, or registered surveyor and mapper using a qualifications-based selection process. Qualifications-based selection is a process whereby service providers are retained on the basis of competency, qualifications, and experience, rather than price.

This bill increases the maximum limit for continuing contracts covered by the CCNA from an estimated per project construction cost of \$2 million to \$4 million. The bill also increases the maximum limit for procuring a study using a continuing contract from \$200,000 per study to \$500,000.

SEE Bill Text: <https://www.flsenate.gov/Session/Bill/2020/441/BillText/er/PDF>

SEE Staff Analyses: <https://www.flsenate.gov/Session/Bill/2020/441/?Tab=Analyses>

HB5003

In Section 108, the bill creates a Local Government Efficiency Task Force within the Legislature to review the governance structure and function of special districts, including CDDs, and determine if changes are necessary to make such a government more efficient. The bill requires a report from the task force to be sent to the Governor, President of the Senate and Speaker of the House of Representatives by June 1, 2021.

SEE Bill Text: <https://www.flsenate.gov/Session/Bill/2020/5003/BillText/er/PDF>

SEE Staff Analyses: <https://www.flsenate.gov/Session/Bill/2020/5003/?Tab=Analyses>