

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 821 Community Development Districts

SPONSOR(S): Military & Local Affairs Policy Committee, O'Toole

TIED BILLS: **IDEN./SIM. BILLS:** SB 1602

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	<u>Military & Local Affairs Policy Committee</u>	<u>12 Y, 1 N, As CS</u>	<u>Rojas</u>	<u>Hoagland</u>
2)	<u>Civil Justice & Courts Policy Committee</u>	<u></u>	<u></u>	<u></u>
3)	<u>Economic Development & Community Affairs Policy Council</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

Community development districts (CDD) are local units of special purpose government that are empowered to exercise limited powers to facilitate the delivery of urban community development services in concert with private developers. They are, in effect, a means by which private entities secure development capital through bond sales repaid by assessments for public improvements and community facilities.

The bill revises deed restriction enforcement rulemaking authority of boards of directors of CDDs in a manner potentially expanding their powers over real property whether within or outside the CDD's geographic limits. Authority over areas outside the CDD's geographic limits is subject to an interlocal agreement or consent of the county or municipality. Deed restrictions subject to enforcement by CDDs would include both compliance mechanisms and enforcement remedies.

The expansion of CDD rulemaking authority potentially extends to include residents who live outside of the CDD. These residents can potentially become subject to a variety of rules and enforcements without representation on the CDD board and without reaping any of the benefits or services that are provided by the CDD to the residents who reside within the geographic boundaries of the CDD. Furthermore, the expansion of CDD rulemaking and enforcement authority could potentially create situations where an individual who resides outside the geographic boundaries of the CDD is subjected to financial sanctions for failure to comply with the application of expanded deed restrictions.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background and Current Situation

Community development districts (CDD) are special districts that are local units of special purpose government, created pursuant to ch. 190, F.S., and limited to the authority provided in that act. CDD's have a five member board of supervisors elected by the landowners of the district. Under certain circumstances and over time, the board must be elected in conjunction with a primary or general election by the qualified electors of the district. CDD's exercise limited powers facilitating delivery of urban community development services in concert with private developers. They are, in effect, a means by which private entities secure development capital through bond sales repaid by assessments on public improvements and community facilities.

Section 190.012, F.S., empowers certain CDDs to adopt rules necessary for the district to enforce certain deed restrictions pertaining to the use and operation of real property within the district and outside the district if pursuant to an interlocal agreement under ch. 163, F.S. Section 190.012, F.S., defines "deed restrictions" as those covenants, conditions, and restrictions contained in any applicable declarations of covenants and restrictions that govern the use and operation of real property within the district and, for which covenants, conditions, and restrictions, there is no homeowners' association or property owner's association having respective enforcement powers. The district may adopt by rule all or certain portions of the deed restrictions.

Deed restrictions, also known as covenants, conditions or restrictions, encumber an owner's freedom to use the land. They may be imposed on a buyer when property is sold and are included in the deed to the property. Property developers seeking to retain a certain community atmosphere often use deed restrictions. Restrictions may limit the number or types of trees, the color of a house, the size and shape of a house, and require general upkeep of the property. Section 702.303, F.S. limits that an homeowners' associations (HOA) of 15 or fewer parcel owners may enforce only the requirements of those deed restrictions established prior to the purchase of each parcel upon an affected parcel owner or owners.

In 2004, the legislature passed CS/CS/SB 2984 which established that the only CDDs eligible to use the provisions of s.192.012(4), F.S., are those in which the district was already in existence on the effective date of the subsection, or was located within a development that consists of multiple developments of regional impact and a Florida Quality Development. These situations applied uniquely to The Villages and a development called The Meadow in Pasco County.

Effect of the Bill

The bill revises deed restriction enforcement rulemaking authority of boards of directors of CDDs under s. 190.012, F.S., in a manner that expands their powers, and the powers of HOAs, over real property whether within or outside the CDD's geographic limits subject to an interlocal agreement with another district, or the consent of the county or municipality in the area that enforcement is to occur.

The expansion of CDD rulemaking and enforcement authority potentially extends to include residents who live outside of the geographic boundaries of the CDD. These residents can potentially become subject to a variety of rules and enforcements without representation on the CDD board and without reaping any of the benefits or services that are provided by the CDD to the residents who reside within the geographic boundaries of the CDD.

Specifically, the CDD may adopt by rule all or certain portions of deed restrictions that:

- Relate to limitations or prohibitions, compliance mechanisms, or enforcement remedies that apply to external appearances or uses and are deemed by the CDD to be generally beneficial for the CDD's landowners and for which enforcement by the CDD is appropriate, as determined by the CDD's board of supervisors; or
- Are consistent with the requirements of a development order or regulatory agency permit.

The board may vote to adopt rules only when all of the following conditions exist:

- The CDD was in existence on the effective date of this subsection, or is located within a development that consists of multiple developments of regional impact and a Florida Quality Development;
- For residential districts, the majority of the CDD board has been elected by qualified electors pursuant to the provisions of s. 190.006; and
- For residential districts, where less than 25 percent of residential units are within an HOA; and
- The declarant (HOA, CDD or any special district) in any applicable declarations of covenants and restrictions has provided the board with a written agreement that such rules may be adopted. A memorandum of the agreement shall be recorded in the public records.

The bill deletes the limitation that prohibits the CDD board vote to adopt rules relevant to the provisions above if the CDD's geographic area contained an HOA as defined in s. 720.301(9).

The bill also expands the definition of "deed restrictions" to include compliance mechanisms and enforcement remedies contained in any applicable declaration of covenants and restrictions, including those of an HOA whose board is under member control, that govern the use and operation of real property. The scope of the deed restrictions including compliance mechanisms and enforcement remedies are further expanded in that they are no longer limited to applicable declarations within the district.

The terms "compliance mechanisms" and "enforcement remedies" are often applied by HOAs and CDDs in the form of penalties or "special assessments." A parcel owner's failure to comply can result in a lien being placed against the parcel. The expansion of CDD rulemaking and enforcement authority could potentially create situations where an individual who resides outside the geographic boundaries of the CDD is subjected to financial sanctions for failure to comply with the application of expanded deed restrictions.

*(f) Enforcement: If any construction or modification is undertaken which has not been approved or which deviates substantially from the approved plans, Declarant or the party delegated or assigned Declarant's right to appoint the Committee may bring an action for specific performance, declaratory decree or injunction and will be entitled to recover all costs of such action including attorneys' fees before or at trial or on appeal. At such time as Declarant no longer owns Lots within Farnsworth Park, each Owner will also have the right to enforce these provisions. **Failure to enforce strictly these provisions as to a particular violation or violations will not be deemed a waiver of the***

right to enforce these provisions as to future or continuing violations. A special assessment against any Owner in violation of this provision of \$500.00 for the first day and \$100.00 for each additional day will be imposed from the date any unapproved construction or cleaning commences.¹ [emphasis in original]

In addition to the means for enforcement provided in the Declaration, Bylaws or rules of this Association, or by law, in the sole discretion of the Board, suspension of use rights to use Common Property and facilities as provided by law, and levy a fine or fines may be imposed upon an Owner for failure of an owner, Owner's family, guests, occupants, licensees, invitees, tenants or employees, or both, to comply with any covenants, restriction, rule or regulation²

The bill also amends s. 190.046, F.S., revises and clarifies the procedures to amend CDD boundaries and the procedures to merge CDDs. In regard to boundary amendments the bill specifically:

- Clarifies the local government entity to whom the filing fee must be paid, and the petitioner must submit a copy of the petition to the same entities entitled to receive the filing fee.

Minor Boundary Amendments

- During the existence of a district initially established by administrative rule, the process to amend the boundaries of the district shall not exceed a cumulative net total of ten-percent of the land in the initial district, and in no event exceed 250 acres on a cumulative net basis.
- During the existence of a district initially established by county or municipal ordinance, the process to amend the boundaries of the district shall not exceed a cumulative net total of fifty-percent of the land in the initial district, and in no event exceed 500 acres on a cumulative net basis.

Major Boundary Amendments

- Petitions to amend the boundaries of the district that exceed the amount of land specified above must be processed in accordance with s. 190.005, F.S., which provides for the establishment of districts in general.
- The petition must include specified elements set forth in s. 190.005.,F.S., and the consent of the CDD board of supervisors
- The resulting administrative rule or ordinance amends the boundary of the district and does not establish a new district.

CDD Mergers

The bill also clarifies the CDD merger process to provide that a CDD may merge with another CDD upon filing a petition for merger. The petition must state whether a new CDD is to be established or whether one CDD shall be the surviving district. The government formed by a merger involving a CDD pursuant to this section of the bill will assume all indebtedness of, and receive title to, all property owned by the preexisting special districts. The bill provides that the rights of creditors and liens upon property will not be impaired by such merger. Furthermore, any claim existing or action or proceeding pending by or against any CDD which is a party to the merger may be continued as if the merger did not occur or the surviving CDD may be substituted in the proceeding for the CDD which ceased existence.

B. SECTION DIRECTORY:

- Section 1** Amends s. 190.012(4) revises deed restriction enforcement rulemaking authority of boards of directors of CDDs within or outside the CDD's geographic limits, authorizes enforcement through circuit court.

¹ Declaration of Covenants, Conditions, Restrictions and Easements for Farnsworth Park

² Id.

Section 2 Amends s. 190.046, F.S., revises and clarifies the procedures to amend CDD boundaries and the procedures to merge CDDs.

Section 3 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

See Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

See Fiscal Comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The expansion of CDD rulemaking and enforcement authority could potentially create situations where an individual who resides outside the geographic boundaries of the CDD is subjected to financial sanctions for failure to comply with the application of expanded deed restrictions.

D. FISCAL COMMENTS:

The fiscal impact on expenditures of the State Courts System cannot be accurately determined due to the unavailability of data needed to quantifiably establish the increase in judicial workload resulting from the increase in civil filings.

Pursuant to s. 28.241(1)(a), F.S., certain portions of civil filing fees are deposited into the State Courts System's Court Education Trust Fund and Mediation and Arbitration Trust Fund. Quantifiable data needed to determine such amounts with specificity is not available as the increase in filings in connection with this bill is unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2009, the Military & Local Affairs Policy Committee adopted a strike-everything amendment to HB 821 and reported it favorably as a Committee Substitute. The amendment made a number of changes as detailed below.

Specifically, the amendment:

- Deletes the language that authorized CDDs to enforce its rules in the circuit courts through injunctive relief as provided in s. 190.041, F.S.
- Narrows the bill's application to those CDDs where less than 25% of the residential units are within an HOA;
- Adds new amendment language for s. 190.046, F.S., that revises and clarifies the procedures to amend CDD boundaries; and
- Adds new amendment language for s. 190.046, F.S., that revises and clarifies the procedures to merge CDDs.