

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 793 Community Development Districts

SPONSOR(S): Local & Federal Affairs Committee; Roberson

TIED BILLS: IDEN./SIM. **BILLS:** SB 802

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	16 Y, 0 N, As CS	Miller	Rojas
2) State Affairs Committee			

SUMMARY ANALYSIS

Community Development Districts (CDDs) are a specific type of independent special district authorized to provide an alternative method to manage and finance basic services for community development. CDDs containing more than 1,000 acres are created by administrative rule adopted by the Governor and Cabinet sitting as the Florida Land and Water Adjudicatory Commission. CDDs of less than 1,000 acres typically are created by ordinance of the county in which the majority of the land is located; however, if the area of such a CDD lies completely within a single municipality, the ordinance creating the CDD is adopted by that municipality.

A CDD remains in existence unless the district is merged with another district, all the community development services the CDD was authorized to perform are transferred to a general-purpose unit of local government, or the district is dissolved as provided in statute. The statute provides three alternatives for dissolution of a CDD:

1. Automatic dissolution. By operation of the statute, if no landowner in the CDD obtains a development permit for any part of the land within 5 years of the creation of the CDD.
2. CDD declared inactive under the general Special District laws (Ch. 189, F.S.). If the Department of Economic Opportunity declares the CDD inactive, the creating authority must take legal action to dissolve the district.
3. Petition for Dissolution. If the CDD has no outstanding financial obligations and no operating or maintenance responsibilities, the district's board of supervisors may petition the creating authority to dissolve the district.

This bill proposes a fourth method, authorizing dissolution of a CDD on a majority vote of the landowners in the district. CS/HB 793 provides procedures for calling, conducting, and recording the vote of the landowners. If a majority votes for dissolution, the bill provides an effective date, requires written notice of the dissolution within a time certain to the authority adopting the rule or ordinance creating the CDD, and requires the adopting authority to publish the notice of dissolution. The bill clarifies the dissolution of a CDD by this procedure is not within the discretion of the adopting authority.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation¹

Chapter 190, F.S., the Uniform Community Development District Act of 1980,² states the exclusive and uniform procedures for establishing and operating a community development district (CDD).³ This type of independent special district⁴ is an alternative method to manage and finance basic services for community development.⁵ There are currently 573 active CDDs in Florida.⁶

A CDD must act within the constraints of applicable comprehensive plans, ordinances, and regulations of the local general purpose government.⁷ CDDs have certain general powers, including the authority to assess and impose ad valorem taxes upon lands in the CDD, sue and be sued, participate in the state retirement system, contract for services, borrow money, accept gifts, adopt rules and orders pursuant to the APA, maintain an office, lease, issue bonds, raise money by user charges or fees, and levy and enforce special assessments.⁸

The statute also authorizes additional special powers pertaining to public improvements and facilities, such as systems for water management, water supply, sewer, and wastewater management, as well as roads, bridges, culverts, street lights, buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, signage, environmental contamination, conservation areas, mitigation areas, and wildlife habitat.⁹ With the consent of the applicable local general-purpose government with jurisdiction over the affected area, a CDD may plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for improvements such as parks and recreational areas, fire prevention and control, school buildings and related structures; security; control and elimination of mosquitoes and other arthropods of public health importance; waste collection and disposal.¹⁰

Establishing a CDD

1. Petition for Rulemaking by the Florida Land and Water Adjudicatory Commission

The method for establishing a CDD depends upon its size. CDDs of 1,000 acres or more are established by petitioning the Florida Land and Water Adjudicatory Commission (FLWAC)¹¹ to adopt an

¹ Portions of this analysis are drawn from staff analysis h0533b.lgv.doc prepared by staff of the House Local Government & Veteran's Affairs Committee (March 7, 2004).

² Section 190.001, F.S.

³ Sections 190.004 & 190.005, F.S.

⁴ A "special district" is "a local unit of special purpose...government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet." Section 189.403(1), F.S. An "independent special district" is characterized by having a governing body the members of which are not identical in membership to, nor all appointed by, nor any removable at will by, the governing body of a single county or municipality, and the district budget cannot be affirmed or vetoed by the governing body of a single county or municipality. Section 189.403(3), F.S.

⁵ Section 190.003(6), F.S.

⁶ Florida Department of Economic Opportunity, Division of Community Development, Special District Information Program (DEO), *The Official List of Special Districts Online, Create Your Own Report*, at <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/createspreadsheet.cfm> (accessed 2/17/2014). While the general powers of a CDD include the authority to issue bonds, s. 190.011(9), F.S., one CDD listed by DEO has no such authority.

⁷ Section 190.004(3), F.S.

⁸ Section 190.011, F.S.

⁹ Section 190.012(1), F.S. The rule or ordinance establishing the CDD may restrict the special powers authorized in this subsection. Section 190.005(1)(f), (2)(d), F.S.

¹⁰ Section 190.012(2), F.S.

¹¹ Created by s. 380.07, F.S., the FLWAC is comprised of the Administration Commission, which in turn is created by s. 14.202, F.S., and is composed of the Governor and Cabinet. This distinction affects the requirements for an affirmative vote by the FLWAC. Unless

administrative rule creating the district.¹² The statute requires each petition to contain specific information, including the written consent to establishing the CDD by all landowners¹³ of real property to be included in the district.¹⁴ Prior to filing the petitioner must submit copies of the petition and pay separate filing fees of \$15,000 each to the county or municipality in which the proposed CDD will be located and also to each municipality contiguous with or containing a portion of the land proposed for inclusion in the district.¹⁵ The counties and municipalities required to receive copies of the petition may conduct public hearings and express support or objection to the proposed district by resolution and by stating their position before the FLWAC.¹⁶ Additionally, a public hearing on notice must be held in the county where the CDD will be located; these hearings are conducted under the requirements of the Administrative Procedure Act¹⁷ before an administrative law judge.¹⁸ Once the hearing process is complete, the entire record is submitted to the FLWAC, reviewed by staff, and placed on the FLWAC meeting agenda for final consideration with the petition.¹⁹ If the petition is approved, staff of the FLWAC initiates proceedings to adopt the rule creating the CDD.

2. APA Rulemaking Requirements

A rule creating a CDD may not expand, modify, or delete any of the statutory requirements for a CDD charter except for inclusion or exclusion of special powers as provided in s. 190.012, F.S.²⁰ Rulemaking begins with publication of a notice of rule development.²¹ Once the final form of the rule is developed the agency must publish a notice of the proposed rule before it may be adopted.²² The publication of this notice triggers certain deadlines for the rulemaking process.²³ The notice must include the full text of the proposed rule, other additional information, and the procedure to request a hearing on the proposed rule.²⁴ Once the statutory rulemaking requirements are met the FLWAC may file the rule with the Department of State for final adoption and the rule typically goes into effect 20 days from this filing unless the notice of proposed rule provides a later date.²⁵

3. Petition for Ordinance Creating a CDD

CDDs of less than 1,000 acres are established by ordinance²⁶ of the county having jurisdiction over the majority of land in the area in which the CDD is to be located, with certain exceptions.²⁷ A petition to

otherwise provided in law, the statutory voting requirements for the Administration Commission apply and affirmation by the FLWAC requires approval by the Governor and at least 2 Cabinet members.

¹² Section 190.005(1), F.S.

¹³“Landowner” means the owner of a freehold estate as appears by the deed record, including a trustee, a private corporation, and an owner of a condominium unit; it does not include a reversioner, remainderman, mortgagee, or any governmental entity, who shall not be counted and need not be notified of proceedings under this act. Landowner shall also mean the owner of a ground lease from a governmental entity, which leasehold interest has a remaining term, excluding all renewal options, in excess of 50 years.” Section 190.003(14), F.S.

¹⁴ Section 190.005(1)(a), F.S.

¹⁵ Section 190.005(1)(b), F.S.

¹⁶ Section 190.005(1)(c), F.S.

¹⁷ Ch. 120, F.S. The general hearing requirements are stated in ss. 120.569 and 120.57(1), F.S.

¹⁸ Section 190.005(1)(d), F.S.; Rules 42-1.009 & 42-1.012, F.A.C. Chapter 42-1, F.A.C., the procedural rules of the FLWAC, remains substantially unchanged since its adoption in 1982.

¹⁹ A similar process is followed when the FLWAC considers a proposed merger of existing CDDs. See, FLWAC Agenda Item 1 and attachments (8/16/2011), at <http://www.myflorida.com/myflorida/cabinet/agenda11/0816/index.html> (accessed 2/21/2014).

²⁰ Section 190.005(1)(g), F.S. The statute permits the rule to contain only the metes and bounds description of the real property included in the CDD, the names of the 5 members of the original board of supervisors for the CDD, and the name of the CDD.

²¹ Section 120.54(2), F.S.

²² Section 120.54(3)(a)1., F.S.

²³ Persons affected by the proposed rule have 21 days from the date of publication to request a hearing on the proposed rule. Section 120.54(3)(c), F.S. Those wanting to submit a lower cost regulatory alternative to the proposed rule have the same 21 day time limit. Sections 120.54(3)(a)1., 120.541(1)(a), F.S. The agency must wait at least 28 days from the date of publication before filing the proposed rule for final adoption. Section 120.54(3)(a)2., (3)(e)1., F.S.

²⁴ Section 120.54(3)(a)1., F.S.

²⁵ Section 120.54(3)(e)6., F.S. If the rule itself increases regulatory costs in excess of \$1 million over the first 5 years from implementation the rule cannot go into effect until ratified by the Legislature. Section 120.541(3), F.S.

²⁶ County commissions are authorized to enact ordinances consistent with general law. Art. VIII, s. 1, Fla. Const.; s. 125.01(1)(t), F.S.

establish a CDD is filed with the county commission.²⁸ After conducting a local public hearing before an administrative law judge²⁹ the commission may adopt an ordinance creating the CDD.³⁰ If any of the land proposed for inclusion in the CDD lies within the area of a municipality the county cannot create the district without approval of the affected municipality.³¹

If all the land proposed for inclusion in the CDD lies within the territorial jurisdiction of a municipality, the petition is filed with that municipality which then exercises the duties performed by the county commission.³² The CDD would be created by municipal ordinance. Within 90 days of receiving the petition, the county commission (or municipality, as applicable) may transfer the petition to the FLWAC.³³ Finally, if all the land of the proposed CDD lies within the territorial jurisdiction of two or more municipalities, the petition must be filed with the FLWAC even if the total area is less than 1,000 acres.³⁴

Requirements for Notice, Meeting, and Vote of Landowners in a CDD

The powers authorized to a CDD are exercised by the board of supervisors elected by the landowners of the district.³⁵ The statute provides for direct voting by the landowners at noticed meetings³⁶ and by all qualified electors of the district in certain circumstances.³⁷

The initial members of the board are designated in the original petition to create the CDD and serve until new members are elected after the district is established.³⁸ The statute³⁹ requires:

- The landowners in the district must meet to elect the board members within 90 days from the effective date of the rule or ordinance creating the CDD.
- Notice of the meeting must be published once a week for 2 consecutive weeks in a general circulation newspaper. The last date of publication must “be not fewer than 14 days or more than 28 days before the date of the election.”
- Each landowner may cast one vote per acre of land owned by him or her in the district for each person to be elected.⁴⁰

The second election by landowners is held on the first Tuesday in November and subsequent elections held every two years at a landowners meeting held in November as noticed by the board.⁴¹ Once the

²⁷ Section 190.005(2), F.S.

²⁸ Section 190.005(2), F.S. The petition must contain the same information as required for submission to the FLWAC. Section 190.005(2)(a), F.S.

²⁹ Section 190.005(2)(b), F.S. The hearing must follow the same notice and procedural requirements as the local hearing for petitions before the FLWAC.

³⁰ Section 190.005(2)(d), F.S.

³¹ Section 190.005(2)(e), F.S.

³² Section 190.005(2)(e), F.S.

³³ Section 190.005(2)(f), F.S.

³⁴ Section 190.005(2)(e), F.S.

³⁵ Section 190.006(1), F.S.

³⁶ Section 190.006(2)(a), F.S.

³⁷ If the district board proposes to use authorized *ad valorem* taxing powers (s. 190.006(3)(a)1., F.S.), or once 6 years elapse from the initial appointment of board members (10 years for districts exceeding 5,000 acres or are compact, urban, or mixed-use) (s. 190.006(3)(a)2.a., F.S.). For CDDs with less than certain minimum numbers of qualified electors after 6 or 10 years, as applicable, the district landowners shall continue to elect the board members (s. 190.006(3)(a)2.a., F.S.) until the number of qualified electors in the district exceeds the statutory minimum (s. 190.006(3)(a)2.b., F.S.).

³⁸ Sections 190.005(1)(a)3., 190.005(2)(a), F.S.

³⁹ Section 190.006(2)(a), F.S.

⁴⁰ Section 190.006(2)(b), F.S. In this initial election the two candidates receiving the most votes are elected to serve 4 year terms and the three candidates receiving the next largest number of votes are elected to 2 year terms.

⁴¹ Section 190.006(2)(b), F.S. The board must announce date for the election at least 90 days prior to the landowners’ meeting. This announcement is made at a board meeting, along with instructions on how landowners may participate and providing sample proxy forms.

statutory requirements are met for election of one or more board member by all qualified electors in the district, such elections are nonpartisan general elections conducted by the supervisor of elections.⁴²

Dissolution of a CDD

1. 3 Statutory Alternatives

A CDD remains in existence unless the district is merged with another district, “all of the specific community development services that it is authorized to perform have been transferred to a general-purpose unit of local government,” or the district is dissolved as provided in statute.⁴³ The statute lists three different circumstances:

- Automatic dissolution. A CDD is dissolved by operation of the statute if a landowner does not receive a development permit for some part of the area covered by the district within 5 years from the effective date of the rule or ordinance establishing the district.⁴⁴
- CDD becomes inactive under s. 189.4044, F.S. The Department of Economic Opportunity (DEO) must declare a special district inactive if DEO documents a) the special district meets one of five specified statutory conditions, b) notice was provided to the designated representative of the special district (if any) and published in the local area where the special district is located, and c) no administrative appeal to the proposed declaration of inactivity was filed within 21 days from the publication date.⁴⁵ If the CDD is declared inactive under s. 189.4044, F.S., the applicable county or city commission must be informed and must take “appropriate action.”⁴⁶
- Petition for Dissolution. A district with no outstanding financial obligations and no operating or maintenance responsibilities may petition the applicable adopting authority for dissolution by appropriate action. If created by rule of the FLWAC, the petition would request repeal of that rule. If created by local ordinance, the petition would seek an ordinance dissolving the CDD.⁴⁷

2. *Dissolution by the FLWAC under S. 190.046(9), F.S.*

Recent requests under s. 190.046(9), F.S., for the FLWAC to dissolve a CDD by repealing the rule creating the district have submitted a statement or petition and supporting documents verifying the district’s inactivity, the consent of the landowners, and the notice provided to the affected local governments.

In 2009 the Board of Supervisors for the Huntington Hammocks CDD passed Resolution 2009-1 adopting a plan of dissolution and approving a petition for the FLWAC to repeal the rule creating the

⁴² Section 190.006(2)(b), (c), (d), F.S. The statute does not specify which supervisor of elections conducts the board election if the district encompasses property in more than one county.

⁴³ Section 190.046(2), F.S.

⁴⁴ Section 190.046(7), F.S. This subsection also requires a “judge of the circuit shall cause a statement (of dissolution) to be filed in the public records.” No guidance is provided as to whether a party must ask the court for the statement, who is authorized to ask, or the procedure to bring the matter before the court.

⁴⁵ Section 189.4044(1), F.S.

⁴⁶ Section 190.046(8), F.S. If a special district is declared inactive under s. 189.4044, the creating entity must dissolve the district “by repealing its enabling laws or other appropriate means.” Section 189.4044(4), F.S. This provision appears to control the “appropriate action” required for dissolving a CDD under s. 190.046(8), F.S., because “(a)ll special districts, regardless of the existence of other, more specific provisions of applicable law, shall comply with the ...dissolution...requirements...” of Chapter 189, F.S. Section 189.4031(1), F.S. However, the application of this requirement to the dissolution of CDDs appears limited to those conducted under s. 190.046(8), F.S., because the procedures in Ch. 189, F.S., for all but inactive districts, do not apply to CDDs created under Ch. 190, F.S. Section 189.4042(7), F.S.

⁴⁷ Section 190.046(9), F.S. This provision was added by Ch. 2004-345, s. 34, LOF. According to the March 7, 2004, House analysis for CS/HB 533, *supra*, this provision resulted in part after the Department of Community Affairs reported to the Senate Committee on Comprehensive Planning “the process for declaring a district inactive is expensive, time-consuming, and frustrating to the property owners within the CD (*sic*) and recommends that the entity creating the CDD be authorized to dissolve it under limited circumstances.” House Analysis for CS/HB 533 (2004), *supra*, pg. 5, n. 25.

CDD.⁴⁸ The FLWAC considered and approved the petition on September 14, 2010,⁴⁹ and the rule was repealed effective on October 21, 2010, dissolving the CDD.⁵⁰

On April 24, 2012, the FLWAC considered a petition to dissolve the Twin Creeks CDD.⁵¹ The petition was initiated and filed by the majority landowner because the CDD had not had any meetings, held any elections, and no longer had a governing board.⁵² The petition stated the manner for publishing notice of the proposed dissolution and notice already provided to the affected local government. When the petition was filed the petitioner had not received consents to the proposed dissolution from all landowners within the district and so recited the steps taken to inform these landowners of the proposal, requesting they provide consent or an objection within a set time; the petition asserted the lack of any action by these remaining landowners should be assumed as a lack of any objection.⁵³ The FLWAC approved the request⁵⁴ and the rule was repealed effective on June 26, 2012.⁵⁵

On January 23, 2013, the FLWAC considered and approved⁵⁶ a petition to dissolve the Tuscany CDD,⁵⁷ the establishing rule for which subsequently was repealed effective on April 8, 2013.⁵⁸

Effect of Proposed Changes

The bill amends s. 190.046(9), F.S., authorizing the dissolution of a CDD with no outstanding financial obligations and no operating or maintenance responsibilities by a majority vote of the landowners in the district. CS/HB 793 specifies procedures for calling and conducting a vote of the landowners on the issue of dissolution, including notice and meeting procedures, drawn from the present statutory process for landowner elections to the board of supervisors. As provided in the bill:

- A meeting of the landowners on whether to dissolve the CDD may be called either pursuant to a resolution of the board or a written petition by the landowners filed with the board.
- A written petition by the landowners to conduct a vote on whether to dissolve the CDD must be signed either by landowners representing a majority of the acreage in the district or 25 percent of the total number of landowners in the district. If by the acreage method, the interest of each landowner would be calculated according to the method provided in the present statute.⁵⁹
- If there is no existing board for the CDD the petitioning landowners will publish the signed petition as part of the required notice for the landowners' meeting.
- Notice of the meeting would be published in the same manner as presently required for landowner elections to the board. The notice shall state the date, time, location in the district for the meeting, and the purpose is to vote on dissolving the CDD. The notice must include a sample proxy. Publication must be in a newspaper of general circulation in the district, for 2

⁴⁸ Petition to Repeal Ch. 42LLL-1, F.A.C., Exhibit 1, ¶3, at http://www.myflorida.com/myflorida/cabinet/flwac/20100914_index.html (accessed 2/19/2014).

⁴⁹ Transcript of Cabinet Meeting (9/14/2010), p. 9, at <http://www.myflorida.com/myflorida/cabinet/agenda10/0914/trans.html> (accessed 2/19/2014).

⁵⁰ At <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=42LLL-1> (accessed 2/19/2014).

⁵¹ At <http://www.myflorida.com/myflorida/cabinet/agenda12/0424/index.html> (accessed 2/24/2014).

⁵² "Rule Repeal for the Twin Creeks Community Development District," ¶3 (Jan. 3, 2012), at http://www.myflorida.com/myflorida/cabinet/flwac/20120424_index.html (accessed 2/24/2014).

⁵³ "Rule Repeal for ... Twin Creeks," supra at ¶8.

⁵⁴ Transcript of Cabinet Meeting (4/24/2012), p. 58-60, at http://www.myflorida.com/myflorida/cabinet/flwac/20120424_index.html (accessed 2/19/2014). The issue of landowner consents became moot when the FLWAC received signed statements of no objection to the proposed dissolution from the remaining landowners on April 19 and 20, 2012, respectively. Agenda Items 2-A and 2-B, at http://www.myflorida.com/myflorida/cabinet/flwac/20120424_index.html (accessed 2/24/2014).

⁵⁵ At <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=42DDD-1> (accessed 2/19/2014).

⁵⁶ Transcript of Cabinet Meeting (1/23/2013), p. 13-15, at <http://www.myflorida.com/myflorida/cabinet/agenda13/index.html> (accessed 2/18/2014).

⁵⁷ At http://www.myflorida.com/myflorida/cabinet/flwac/20130123_index.html (accessed 2/18/2014).

⁵⁸ At <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=42GG-1> (accessed 2/18/2014).

⁵⁹ Section 190.006(2)(b), F.S. Under the acreage method, a fraction of an acre is treated as one acre for voting purposes. Platted lots are counted individually and rounded up to the nearest whole acre. The acreage of platted lots is not aggregated to determine the number of units held by a landowner or landowner's proxy.

consecutive weeks, and the last publication must be no fewer than 14 days nor more than 28 days before the meeting.

- The meeting shall be chaired by the chair of the board. If there is no board, the landowners in attendance shall choose a chair at the beginning of the meeting. The chair is responsible for:
 - Presiding at the meeting;
 - Retaining a record of all landowners attending the meeting;
 - Retaining all proxies submitted at the meeting;
 - Recording an accurate tally of the votes in order to provide required written notice to the creating authority if the landowners approve dissolution of the CDD; and
 - If a majority votes to dissolve the district, within 5 days of the meeting the chair must provide written notice to the creating authority.
- The written notice served by the chair of the meeting must include:
 - Copies of the board resolution or landowners' written petition calling for dissolution of the CDD;
 - The published notice of the meeting;
 - The record of landowners attending at the meeting;
 - All proxies submitted at the meeting; and
 - The tally of final votes on the question of dissolving the CDD.
- If the majority vote approves dissolution, the CDD would stand dissolved on the adjournment of the meeting.
- On receiving the written notice of dissolution, the creating authority must publish notice of the dissolution of the CDD.
 - If the CDD was created by FLWAC rule, the FLWAC must publish the notice of dissolution in the Florida Administrative Register.
 - In lieu of the requirements under s. 120.54, F.S., for repealing a rule under the regular process provided in the Administrative Procedure Act, the administrative rule creating the CDD would be repealed automatically when the notice of dissolution was published.
 - If the adopting authority was a county or municipality, the notice of dissolution must be published in the same manner as notice of the adoption of an ordinance. The local government must then file its published notice with the Department of State within 10 days of publication.⁶⁰
- Publication of the notice of dissolution is expressly denominated as a "ministerial" act to indicate the dissolution of a CDD by the method provided in the bill is not at the discretion of the authority adopting the rule ordinance creating the CDD.⁶¹ Accordingly, failure to publish the notice of dissolution as required would not affect the legal dissolution of the CDD and the publication requirement could be enforced by a petition for writ of mandamus.⁶²

If the bill did not amend the statute to specify the procedure for the vote, the vote would be a public referendum conducted under the Florida Election Code.⁶³ The expenses for holding a referendum for the dissolution of the CDD would be paid out of the district's funds.⁶⁴ Voting in the CDD referendum

⁶⁰ A county or a municipality must publish notice of intent to adopt an ordinance at least 10 days prior to adoption. Sections 125.66(2)(a), 166.041(3)(a), F.S. A county must file certified copies of ordinances adopted in the regular manner with the Department of State within 10 days of enactment. Section 125.066(2)(b), F.S. Although municipalities normally are not required to file copies of their ordinances with the Department of State in order for the ordinance to go into effect, s. 166.041(4), (5), F.S., those municipalities acting in lieu of a county to create a CDD are required to follow the same process as a county when acting on a required notice of dissolution. Sections 190.005(2)(e), 190.046(9), F.S.

⁶¹ *Wells v. Castro*, 117 So. 3d 1233, 1236 (Fla. 3d DCA 2014).

⁶² *Wells v. Castro*, *supra* at 1237-1238.

⁶³ Section 97.0115, F.S. The elections procedures specifically provided for independent special districts are not applicable to CDDs. Section 100.011(4)(c), F.S.

⁶⁴ Sections 100.011(4)(a), 100.241(4), F.S.

may be limited to freeholders in the district⁶⁵ but such voters must be qualified voters defined as freeholders.⁶⁶

The definition of “freeholder” for purposes of the election law is not synonymous with that of “landowners” in a CDD. Under the Florida Election Code,⁶⁷ a freeholder is a qualified elector registered in the district who holds in their name property within the district “which is not wholly exempt from taxation.”⁶⁸ In contrast, the definition of “landowner” for purposes of a CDD also includes a trustee, private corporation, owner of a condominium unit, or the owner of a ground lease from a governmental entity with a remaining term exceeding 50 years; the definition is not restricted by the taxable or tax-exempt status of the property.⁶⁹ Relying solely on the Election Code to conduct a referendum for a majority vote of the landowners may result in the exclusion of certain entities with property interests in the district sufficient to meet the definition of a “landowner.”

B. SECTION DIRECTORY:

Section 1: Amends s. 190.046(9), F.S., providing for approval of the dissolution of a CDD by vote of a majority of landowners in the district under certain circumstances. Provides procedures for calling and conducting a vote of the landowners on the issue of dissolution, including notice and meeting procedures, and recording the vote taken. If dissolution is approved, requires written notice to the authority creating the CDD and requires such authority to publish notice of the dissolution. Provides publication by the adopting authority terminates the original administrative rule or local ordinance without need for further proceedings. Expressly states this function by the adopting authority is a ministerial act.

Section 2: Provides an effective date of July 1, 2014.

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. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Authorizes the landowners of a community development district to dissolve the district directly by their majority vote without relying on the board of supervisors to petition the FLWAC or local government (as applicable) to dissolve the district by necessary legal action.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

⁶⁵ Section 100.241(1), F.S.

⁶⁶ Section 100.241(2), F.S. One voting in a freeholder referendum who is not both a freeholder and a qualified elector commits a first degree misdemeanor. Section 100.241(5), F.S.

⁶⁷ Chapters 97 – 106, F.S. Section 97.011, F.S.

⁶⁸ Section 100.241(2), (3), F.S.

⁶⁹ Section 190.003(14), F.S. See n. 13, supra.

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take any action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY: The bill provides no additional rulemaking authority to the FLWAC.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

At its meeting of March 12, 2014, the Local & Federal Affairs Committee adopted an amendment specifying the procedures for calling and conducting a vote of the landowners on the issue of dissolution, including recording the vote, providing notice to the authority creating the CDD, requiring that authority to publish notice of the dissolution, and providing such publication acted in lieu of further proceedings to repeal the administrative rule or local ordinance creating the CDD. The amendment further provided the actions of the creating authority were ministerial in nature, clarifying the dissolution of the CDD by vote of the majority of landowners was not subject to the discretion of the creating authority.

This analysis is drawn to the bill as amended.