

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1862

SPONSOR: Senator Diaz de la Portilla

SUBJECT: Community Development Districts

DATE: April 2, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Herrin</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/1 amendment</u>
2.	<u>Fournier</u>	<u>Johansen</u>	<u>FT</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill specifies the powers of a community development district include the authority to collect any ground rent due on behalf of the governmental entity, pursuant to a contract with a governmental entity that owns real property in the district, and this includes the levy of a maintenance special assessment. Also, this bill provides the district may include the amount of ground rent due each year in the maintenance special assessment.

This bill amends the following sections of the Florida Statutes: 190.011 and 190.021.

II. Present Situation:

Chapter 190, F.S., creates the Uniform Community Development District Act of 1980". Section 190.003(13), F.S., defines landowner for the purpose of establishing a community development district. This definition was amended in 2000 to include the owner of a long term ground lease from a governmental entity with a remaining term, excluding all renewal options, in excess of 50 years.¹

Section 190.005(1), F.S., provides for the establishment of districts. The written consent to the establishment of a community development district with a size of 1,000 acres or more by the owner or owners of 100 percent of the real property must be included in the petition for establishment. This provision was amended in 2000 to also require the consent of a governmental entity when real property in the district is owned by that entity and subject to a ground lease as described in s. 190.003(13), F.S.²

¹ Ch. 2000-304, s. 9, L.O.F.

² Ch. 2000-364, s. 34, L.O.F.

Section 190.021, F.S., gives the elected board of the district the power to levy and assess ad valorem taxes on all taxable property in the district for the purpose of constructing, operating, and maintaining assessable improvements; to pay the interest and principal of any general obligation bonds of the district; and to provide for the sinking of other funds established in connection with those bonds. The district's annual budget to maintain and preserve the facilities and projects of the district is supported by a maintenance special assessment that appears on a unit owner's tax bill.³ These capital and maintenance special assessments must appear on each resident's tax bill under the provisions of s. 197.3635, F.S. The tax collector cannot accept partial payment of a tax notice.⁴ The uniform methods of collection for special assessments provides security for a district's bondholders who rely on these assessments to pay the debt service on those bonds. The Legislature, in 2000, enacted a provision excluding real property, owned by a governmental entity and subject to a ground lease as described in s. 190.003(13), from the district's levy of ad valorem taxes or non-ad valorem assessments under chapters 170, 190 or 197, F.S., that constitute a lien or encumbrance on the underlying fee interest of the governmental entity.⁵

Under existing law, a governmental entity would collect the ground rent on lands leased to a developer that has established a community development district. There may be hundreds or thousands of landowners or unit owners in a development that are subject to the ground lease. Lawsuits would have to be filed against each owner. It is possible that the default of a few owners could result in the default and termination of the entire ground lease. In addition, the ground lease may be terminated for nonpayment which could result in the owner losing his or her interest in the property. As a result of the owner no longer having an assessable interest in the property, the special assessments would not be enforced against the owner and the district may default on its bonds.

III. Effect of Proposed Changes:

Section 1 of the bill allows a community development district to collect ground rent from landowners according to a contract with the governmental entity that owns the real property which is subject to a ground lease as described in s. 190.003(13), F.S., and this authority includes the levy of maintenance special assessments pursuant to s. 190.021(3), F.S.

Section 2 provides a district may, pursuant to a contract with a governmental entity that owns real property in the district that is subject to a ground lease as described in s. 190.003(13), F.S., include the amount of ground rent to be collected each year in the maintenance special assessment.

Section 3 of the bill provides the act shall take effect on July 1, 2003.

³ S. 190.021(3), Fla. Stat. (2002).

⁴ S. 197.373, Fla. Stat. (2002). The tax collector will accept partial payment if the part to be paid can be ascertained by legal description and that part is under contract for sale or has been transferred to a new owner.

⁵ Ch. 2000-364, s. 35, L.O.F.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other:

According to the Department of Revenue Property Tax Division, this bill would treat unpaid lease payments like liens on property and liens on homesteads by placing them on the tax notice. They are not liens and to so treat them would conflict with s. 197.3632(1)(d), F.S., and other law as well as constitutional principles. Placing unpaid lease payments on the tax notice would create substantial doubt as to the viability of other items on the tax notice and would thus impair the collectibility of the other items on the notice, proper tax and non-ad valorem assessment liens. There is a substantial likelihood that the validity of lease payments on the tax notice would be challenged in litigation and would delay or impair the collection of other valid taxes and non-ad valorem assessment liens on the tax notice. This would be an administrative difficulty for the Department of Revenue both in its supervision of tax collection role and aid and assistance role to tax collectors under section 195.002(1) and since that Department is typically named as a Defendant in assessment challenges.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Currently, ground rent may not be collected as a part of the maintenance special assessment and, therefore, would be collected as part of the developer's or homeowners' association dues. This bill does not result in a change in the fiscal impact to the private sector, but could result in a unit owner paying his or her portion of the ground rent on an annual basis, rather than monthly.

C. Government Sector Impact:

This bill may offer some savings to local governments through more efficient collection of the ground rent from properties subject to a ground lease lying within a community development district.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Comprehensive Planning:

Deletes the word “including” and inserts the word “through” to clarify that a community development district is authorized to collect ground rent from landowners through the levy of special maintenance assessments.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.
