HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 885 Community Development Districts
SPONSOR(S): Littlefield
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Affairs (Sub)	8 Y, 0 N	Nelson	Highsmith-Smith
2) Local Government & Veterans' Affairs			
3) Finance & Tax			
4)			
5)			

SUMMARY ANALYSIS

This bill increases the size of community development districts established by county commissions. The bill also authorizes the district to enforce deed restrictions and architectural review for residential properties within its boundaries, and revises and clarifies requirements relating to disclosure to purchasers of real estate within the district.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[x]
2. Lower taxes?	Yes[]	No[]	N/A[x]
3. Expand individual freedom?	Yes[]	No[]	N/A[x]
4. Increase personal responsibility?	Yes[]	No[]	N/A[x]
5. Empower families?	Yes[]	No[]	N/A[x]

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

This bill amends ch.190, F.S., increasing the size of community development districts that may be established by county commissions from 1,000 acres to 2,500 acres; authorizing districts to enforce deed restrictions and architectural review for residential properties within its boundaries; and revising requirements relating to disclosure to purchasers of real estate within the district.

Current Law

Creation of the Uniform Community Development District Act of 1980

Chapter 190, F. S., is the "Uniform Community Development District Act of 1980." In adopting this act, the Legislature expressed its concern that there was a need for uniform procedures in state law to authorize the establishment of community development districts (CDDs) to provide for the planning, management and financing of capital infrastructure.

A series of events that occurred during the 1970s culminated in the decision by all involved parties to develop and pass the 1980 Community Development District Act. In the early 1970s, developers wishing to undertake large-scale, community-type development began bringing the Legislature proposed local bills establishing independent special districts with extensive local government type powers. A problem soon arose in that there was no conformity among the local bills. In the months preceding the 1975 Legislative Session, a general uneasiness among policy makers resulted in a joint effort by the Legislature, the Governor and major developers to create a statutory framework through which this kind of encompassing development could proceed. The result was the adoption of the "New Communities Act of 1975," chp. 163, part V, F.S.

The New Communities Act of 1975 was intended to provide for a uniform method of creating independent new community districts. However, due to several exceptions contained in the act, developers were able to circumvent the requirements of the law. For this reason, the Legislature adopted the "Uniform Community Development District Act of 1980" in order to provide an exclusive and uniform method of creating CDDs.

Specifically, the Uniform Community Development District Act allows developers to create independent special districts with a broad range of governmental powers as a means of financing various types of infrastructure and delivering "urban community services" for planned developments. The districts are intended to benefit the taxpayers of counties and municipalities in which the districts are located by shifting the burden of paying for infrastructure to those buying land in the districts. However, CDDs do not have the power of a local government to adopt a comprehensive plan, building code or land development code.

Chapter 190 provides for the establishment of a CDD in one of two ways.

- Pursuant to s. 190.005(1), F.S., CDDs larger than 1,000 acres must be established by rule, adopted pursuant to chp.120, F.S., of the Florida Land and Water Adjudicatory Commission (FLAWAC).

- Pursuant to s. 190.005(2), F.S., a county or municipality can establish a CDD by passage of a local ordinance adopted by the county commission, if it encompasses less than 1,000 acres.

Either establishment process entails the preparation of detailed studies displaying:

- Legal description of the CDD's proposed boundaries;
- Permission from 100 percent of the landowners within the proposed CDD's boundaries;
- Identification of the members of the initial landowners board;
- A detailed map of the proposed CDD displaying existing water mains, sewer interceptors and outfalls;
- The type, cost, construction, timetable, and financing method for required infrastructure;
- Information concerning how the CDD will interact with the future land use element of affected local comprehensive plans; and
- An economic impact statement.

The act also requires the petitioner to pay a filing fee of $15,000. This fee is to be paid to the county and to each municipality whose boundaries are contiguous with or contain some portion of the land within the district. Finally, the act requires a local public hearing on the petition pursuant to s. 190.005(1)(c) and s.190.005(2)(b), F.S.

Creation of a CDD by Special Act

Section 11, art. III of the State Constitution prohibits the enactment of special laws or general laws of local application in certain specified subject areas. Paragraph (21) of subsection (a) of section 11 provides that the Legislature may, by general law with a three-fifths vote of the membership of each house, provide additional subject matters to this prohibition. In 1984, the Legislature opted to prohibit special laws or general laws of local application creating independent special districts with two or more of the special powers available to CDDs in section 190.012, F.S. [See s.190.049, F.S.; 84-360, Laws of Florida]

According to the 1991 bill analysis of HB 2029, which amended several sections of ch. 190, F.S., the Legislature emphasized its policy of not wanting to create CDDs through the passage of individual special acts, by including the specific prohibition contained in s.190.049, F.S. That section states, "there shall be no special law or general law of local application creating an independent special district which has the powers enumerated in two or more of the paragraphs contained in section 190.012 [special powers provision]." Therefore, the Legislature may not by special act create a CDD if it were granted two or more of the enumerated powers. However, the Legislature may create a CDD with a single specific power by special act. Subsequent legislatures may amend that enabling legislation, adding to the powers of the CDD.

Powers of the CDD

CDDs have limited authority and may only exercise those powers that are expressly granted to them by law or those that are necessarily implied because they are essential to carry into effect those powers granted. Thus, CDDs are authorized to accomplish special, limited purposes and do not possess the broader home rule powers that municipalities and counties have in Florida.

Section 190.011. F.S., grants the general corporate powers that CDDs may exercise. The section provides that districts shall have and boards may exercise the following powers:

- Sue and be sued in the name of the district;
- Make and execute contracts;
- Apply for coverage of its employees under the state retirement system;

- Borrow money and accept gifts;
- Maintain an office within the county in which the district is located;
- Acquire, purchase, or dispose of easements, dedications, or reservations;
- Assess and impose ad valorem taxes;
- Adopt administrative rules for the district;
- Levy special assessments pursuant to ch. 170, F.S.; and
- Exercise all of the powers necessary, convenient, incidental, or proper in connection with any powers, duties, or purposes authorized by the act.

Section 190.012, F.S., makes provision for *special* powers of CDDs. The section provides that the district shall have and the board may exercise any or all of the following special powers relating to public improvements and community facilities:

- Finance, fund, plan, establish, acquire, construct, reconstruct, enlarge or extend, equip, operate, and maintain systems and facilities for the following infrastructures:

  --water management;
  --water supply, sewer, and wastewater management;
  --bridges or culverts;
  --district roads; and
  --any project when required by the local government pursuant to s. 380.06 or 380.61, F.S.

- After the board has obtained consent of the local government(s) within the jurisdiction, the district may plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate and maintain additional systems and facilities for:

  --parks and facilities for indoor and outdoor recreation, cultural, and educational uses;
  --fire prevention and control;
  --school buildings and related structures;
  --control and elimination of mosquitoes and the like;
  --security such as guardhouses, fences, electronic intrusion systems, and patrol cars; and
  --waste collection and disposal

Special Assessments

Special assessments exist when a local government requires property owners in a specified area to pay for local improvements because they benefit most from such improvements. Counties and municipalities may levy special assessments pursuant to their constitutional home rule powers. Special purpose local governments, such as CDDs, are authorized to levy special assessments by the statutes governing their creation or establishment. As established by case law, two requirements exist for the imposition of special assessments:

- The property assessed must derive a special benefit from the improvement or service provided; and
- The assessment must be fairly and reasonably apportioned among properties that receive the special benefit.

Special assessment liens are not co-equal to state, county, or city tax liens unless explicitly stated so in the law. Therefore, absent statutory authority to the contrary, lien priorities are determined by the chronological order in which they are perfected and recorded in the official records of the appropriate county in order to be effective against subsequent purchasers for value without notice.

Section 197.3631, F.S., authorizes local governments to collect non-ad valorem assessments by one of two methods—either the uniform method set forth in s. 197.3632 and 197.3635, F.S., or "any alternative method which is authorized by law." The uniform non-ad-valorem collection process is a favored method because the special assessments are collected in the same manner as ad valorem taxes, and no specific enforcement action is required by the governmental unit that imposes the assessment. As an alternative method, local governments may collect and enforce special assessments by hiring and paying for its own employees or collection agents.

Termination, Contraction, or Expansion of a District

Currently if a CDD wants to contract or expand its boundaries, the board must petition the local government pursuant to s.190.046, F.S. In all cases written consent of all the landowners whose land is to be added or deleted is required. The petitions to amend are limited to 10 percent more than the district's original size, and all petitions are limited to a cumulative maximum of 250 acres. Under 190.046(1)(g), F.S., a petition to amend the boundaries of the district which exceed 250 acres is considered a petition to establish a new district.

Section 720.305, F.S, relates to homeowners' associations and provides obligations of members; remedies at law or in equity; levy of fines and suspension of use rights; failure to fill sufficient number of vacancies on board of directors to constitute a quorum; appointment of receiver upon petition of any member**.** Specifically, this section provides that:

(1) Each member and the member's tenants, guests, and invitees, and each association, are governed by, and must comply with, this chapter, the governing documents of the community, and the rules of the association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the association or by any member against:

(a) The association;

(b) A member;

(c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and

(d) Any tenants, guests or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. This section does not deprive any person of any other available right or remedy.

(2) If the governing documents so provide, an association may suspend, for a reasonable period of time, the rights of a member or a member's tenants, guests or invitees, or both, to use common areas and facilities and may levy reasonable fines, not to exceed $100 per violation, against any member or any tenant, guest or invitee. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed $1,000 in the aggregate unless otherwise provided in the governing documents.

(a) A fine or suspension may not be imposed without notice of at least 14 days to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.

(b) The requirements of this subsection do not apply to the imposition of suspensions or fines upon any member because of the failure of the member to pay assessments or other charges when due if such action is authorized by the governing documents.

(c) Suspension of common-area-use rights shall not impair the right of an owner or tenant of a parcel to have vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

(3) If the governing documents so provide, an association may suspend the voting rights of a member for the nonpayment of regular annual assessments that are delinquent in excess of 90 days.

(4) If an association fails to fill vacancies on the board of directors sufficient to constitute a quorum in accordance with the bylaws, any member may apply to the circuit court that has jurisdiction over the community served by the association for the appointment of a receiver to manage the affairs of the association. At least 30 days before applying to the circuit court, the member shall mail to the association, by certified or registered mail, and post, in a conspicuous place on the property of the community served by the association, a notice describing the intended action, giving the association 30 days to fill the vacancies. If during such time the association fails to fill a sufficient number of vacancies so that a quorum can be assembled, the member may proceed with the petition. If a receiver is appointed, the homeowners' association shall be responsible for the salary of the receiver, court costs, attorney's fees, and all other expenses of the receivership. The receiver has all the powers and duties of a duly constituted board of directors and shall serve until the association fills a sufficient number of vacancies on the board so that a quorum can be assembled.

Section 720.305, F.S.

This law provides a framework for homeowners' associations with regard to remedies at law or in equity, levy of fines and suspension of use rights for failure to comply with association rules and community governing documents.

C. SECTION DIRECTORY:

Section 1: Amends s. 190.005, F.S., to increases the size of a community development districts established by county commissions from up to 1,000 acres to up to 2,500 acres.

Section 2: Amends s. 190.0111, F.S. to provide that a community development district shall have the power to enforce deed restrictions and architectural review for residential properties within its boundaries, as described in s. 720.305, F.S.

Section 3: Amends s. 190.048, F.S., to provide for additional language in the disclosure to purchasers of real estate within a district which provides the amount of the bond assessment and the total of any other assessments for the current fiscal year.

Section 4: Provides an effective date of upon becoming law.

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:

Unknown.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable.

2. Other: Not applicable.

B. RULE-MAKING AUTHORITY: Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

The Sponsor states that over the past few years he has heard from many constituents regarding the need for more clarity as to the role of Community Development Districts. This bill responds to several of their concerns: developers are failing to ensure that homebuyers are properly notified of CDD assessments; Chapter 190 does not give CDDs the power to enforce deed restrictions within their boundaries; and developers are splitting Developments of Regional Impact and Master Planned Unit Developments into multiple Community Development Districts resulting in unnecessary additional administrative expenses.[1]

The president of the Association of Florida Community Developers, Inc., [2]opined that: “HB 885 will do three things, none of which we believe are appropriate amendments to Chapter 190. First, it will increase the threshold at which a petition is filed with FLWAC from 1000 acres to 2500 acres. This will not result in fewer districts, as the majority of districts are already established by local government. If the desire is to have fewer smaller CODs, the local government can determine a district not to be of "sufficient size" under current law. The 1000 acre threshold has been in existence since the beginning of Chapter 190. It ain’t broke; it doesn't need fixing! Second, it will allow CDDs to enforce "existing" deed restrictions and architectural control. The term "existing" is proposed in an amendment in an effort to narrow the grant of authority to CDDs. Aside from technical problems with the draft, as a matter of policy, CDDs are governments and do not have the power to zone or make land use decisions---and they shouldn.t have such powers. The CDD is being asked to enforce private property determinations, and as a unit of government, shouldn't be in that business.Third, the bill would modify the mandatory disclosure language in the statute. While we could support additional meaningful disclosure, the language as presented is vague and would not provide more meaningful information.” Another representative of the Association[3] stated that she had major concerns with the bill.

[1] Representative Ken Littlefield (March 12, 2003).
[2] Bill Hunter, President (undated letter to Florida House Members)
[3] Cheryl Stuart, Hopping, Green and Sams (April 2, 2003).

A representative of the Villages Community Development District[4] indicated that he opposed the bill, and had concerns relating to the CDD provisions.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Local Affairs Subcommittee recommended an amendment at its meeting on April 2, 2003, which limits a district to the enforcement of existing deed restrictions.

[4] Allen Brown, Governmental Consultant (April 2, 2003).