

# 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: CS/SB 1392

SPONSOR: Committee on Comprehensive Planning

SUBJECT: Community Development Districts

DATE: March 12, 2004      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CP</u>	<u>Favorable/CS</u>
2.	<u>Kiger</u>	<u>Kiger</u>	<u>NR</u>	<u>Favorable</u>
3.	_____	_____	<u>EE</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This Committee Substitute (CS) revises the Uniform Community Development District Act of 1980 to allow the CDD governing board to enforce deed restrictions (in specified circumstances), to correct deficiencies in the district dissolution process, and to correct deficiencies in district elections policies and procedures.

This CS amends the following sections of the Florida Statutes: s. 196.006, 196.012 and 196.046.

## II. Present Situation:

### Background

Chapter 190, F.S., the Uniform Community Development District Act, allows for the establishment of independent special districts with governmental authority to manage and finance infrastructure for planned developments.<sup>1</sup> Initial financing is typically through the issuance of tax-free bonds, with the corresponding imposition of ad valorem taxes, special assessments, or service charges.<sup>2</sup> Consequently, the burden of paying for the infrastructure is imposed on those buying land, housing, and other structures in the district -- not on the other taxpayers of the county or municipality in which the district is located. To date, there are 210 active Community Development Districts (CDDs) in Florida.<sup>3</sup>

Section 190.012, F.S., specifies the types of infrastructure CDDs are authorized to provide, including infrastructure relating to water management and control; water supply, sewer and waste water management, reclamation, and reuse; bridges or culverts; roads; street lights; parks

<sup>1</sup> s. 190.002(1)(a), F.S.

<sup>2</sup> As authorized in ss. 190.021 & 190.035, F.S.

<sup>3</sup><http://www.floridaspecialdistricts.org/OfficialList>

and other outdoor recreational, cultural, and educational facilities; fire prevention and control; school buildings; security; mosquito control; and waste collection and disposal.<sup>4</sup>

CDDs are governed by an elected five-member board of supervisors, who possess the general managerial authority provided to other special districts in the state. This includes the authority to hire and fix the compensation of a general manager; the right to contract; to borrow money; to adopt administrative rules pursuant to chapter 120; and the power of eminent domain.<sup>5</sup>

### **Interim Project Report 2004-121: Community Development Districts**

In November 2003, staff of the Senate Comprehensive Planning Committee completed an interim project on issues related to the establishment and governance of CDDs. The report offered a number of recommendations, and the committee directed staff to draft a proposed committee bill to implement the following:

- Amend s. 190.006, F.S., to implement the consensus changes, as identified in the report, to CDD election provisions; and
- Amend s. 190.046, F.S., to authorize a means to dissolve a district when its financial obligations are satisfied and the district no longer has any ongoing operating or maintenance responsibilities.

### **Elections of Board of Supervisors**

Each CDD is governed by an elected five-member board of supervisors.<sup>6</sup> Initially, supervisors are appointed by ordinance or rule.<sup>7</sup> Within ninety days following the effective date of the ordinance or rule, these five supervisors are replaced in a “landowner” election, with each landowner entitled to cast one vote per acre of land he or she owns in the district.<sup>8</sup> Two supervisors are elected for 4 year terms, and the remaining 3 are elected for 2-year terms.

The second landowner election is held on the first Tuesday in November.<sup>9</sup> Districts may hold the election before the three 2-year terms expire, with supervisors taking office when the current supervisor’s term expires, or districts may hold the election after these terms expire, thereby extending the terms for up to one year.<sup>10</sup> The third landowner election takes place two years after the 2<sup>nd</sup> election in November on a date determined by the board. Landowner elections are conducted by the CDD Board of Supervisors – not by the County Supervisor of Elections.

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<sup>4</sup> However, this section also clarifies that CDDs remain subject to the regulatory jurisdiction and permitting authority of all applicable governmental bodies, agencies, and special districts.

<sup>5</sup> ss. 190.007 and 190.012, F.S.

<sup>6</sup> See s. 190.006, F.S., for the election schedule for the district board of supervisors.

<sup>7</sup> s. 190.005(1)(a)3., F.S.

<sup>8</sup> In this election, the principle landowner in the district has significant influence in governance of the district. The Florida Supreme Court upheld the “one acre, one vote” principle in *State v. Frontier Acres Community Development District of Pasco County*, 472 So.2d 455 (Fla. 1985) Landowners with a fraction of an acre are treated as owners with one acre. This allows residents of the district to participate in “landowner” elections subsequent to the initial board election. If the board proposes to levy ad valorem taxes, the supervisors are elected by residents of the district.

<sup>9</sup> “Landowners” now includes residents of the district.

<sup>10</sup> s. 190.006(1), F.S., specifies that supervisors “shall hold office for a term of 4 years *and* until a successor is chosen and qualifies.” Research indicates that most districts chose the second option.

Over time, the election of the board of supervisors shifts from the landowners to the residents of the district. Six years after the initial appointment of members or, for a district exceeding 5,000 acres in area, 10 years after the initial appointment of members, expired board member positions are filled by a qualified elector of the district, elected by the qualified electors of the district.<sup>11</sup> These “resident” elections are held in November, by the County Supervisor of Elections, and must be conducted in the manner prescribed by law for holding general elections.<sup>12</sup>

CHART 1 depicts the election schedule for those communities that qualify for transition to a resident board of supervisors in the sixth year.

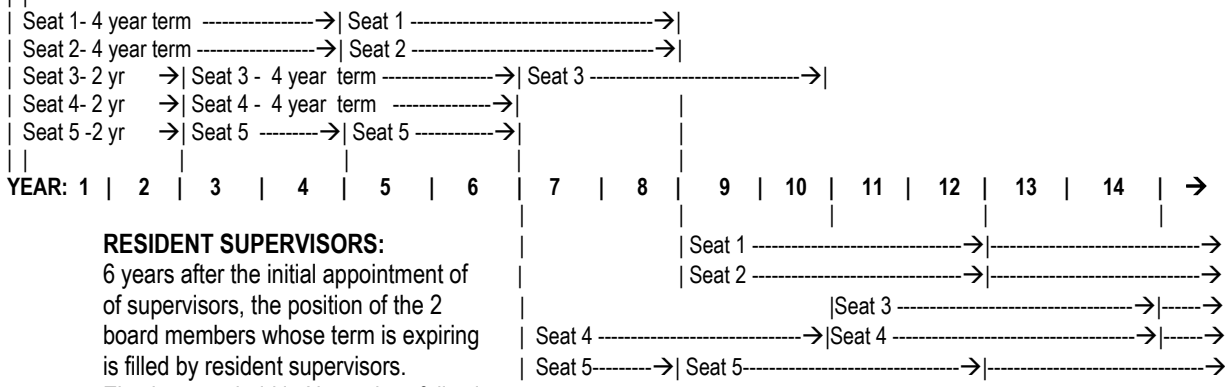
**CHART 1**

**CDD Elections: 6<sup>th</sup> Year Transition Schedule**

**APPOINTED SUPERVISORS:** CDD established, 5 Supervisors Appointed by Ordinance or Rule.

**LANDOWNERS' SUPERVISORS:**

- 1<sup>st</sup> Election held within 90 days of Ordinance or Rule.
- 2<sup>nd</sup> election held on 1<sup>st</sup> Tuesday in November.\*
- Subsequent elections in November, on a date established by the board.



**RESIDENT SUPERVISORS:**

6 years after the initial appointment of supervisors, the position of the 2 board members whose term is expiring is filled by resident supervisors. Elections are held in November, following the schedule set for Landowner Elections.\*\*

\* Section 190.006(1), F.S., specifies that supervisors “shall hold office for a term of 4 years and until a successor is chosen and qualifies. Districts hold the 2<sup>nd</sup> or subsequent elections before the terms expire, with supervisors taking office when the current supervisor’s term expires, or districts hold the election after these terms expire, thereby extending the initial terms for up to one year.

\*\* If the 1<sup>st</sup> Resident Election is scheduled in an odd-numbered year, some districts have held special elections, the cost of which are paid by the district. Others have delayed the election until the General Election, stating that there is no explicit authority to hold a special election for Resident Elections; the effect of this is to extend the Landowner Supervisor’s terms up to an additional year.

Source: Staff of the Senate Committee on Comprehensive Planning, February, 2003

<sup>11</sup> s. 190.003 (16), F.S., defines a “qualified elector” as any person at least 18 years of age who is a citizen of the United States, a legal resident of Florida *and of the district*, and who registered to vote in the county in which the district land is located. However, s. 190.006(3)(a)2.b., F.S., specifies that unless and until these districts have at least 250 and 500 residents, respectively, the landowners will continue to elect board supervisors.

<sup>12</sup> These elections are held in November for two reasons: (1) the 2<sup>nd</sup> and subsequent landowner elections are required to be held in November, and districts typically extend the terms of the first board supervisors to accommodate this requirement; consequently, landowner terms expire in November; and (2) while s. 190.006(2)(b), F.S., specifically addresses landowner elections, the November election requirement is generally also applied to resident elections; however, it is not required.

IPR 2004-121 profiles survey responses which identify deficiencies in the current CDD elections policies and procedures. These responses found, in part, that s. 190.006, F.S., does not provide for:

- initial “landowner-meeting” chair selection procedures;
- proxy voting parameters;
- supervisors to assume their office 2 weeks after the election;
- notice of landowners’ elections;
- specificity as to the length of resident’s supervisor terms;
- non-partisan elections;
- designation on seat number by the County Supervisor of Elections for resident supervisors of the board;
- procedures for filing qualifying papers;
- petition signature threshold to qualify for the election; and
- the option for candidates to pay a filing fee to qualify for the election, and payment parameters.

In addition, the county commission is required to declare and certify the results of a district election. This is inconsistent with other election processes, where the county canvassing board is responsible for certifying election results.

### **Dissolution of CDDs**

Section 190.046(2), F.S., provides for the dissolution of CDDs. A district may be dissolved if:

- it is merged with another district;
- all of the district services have been transferred to a general-purpose unit of local government;
- within 5 years after the district was created, the landowner has not received a development permit on some part or all of the area covered by the district; or
- declared inactive by the Department of Community Affairs (DCA), pursuant to s. 189.4044, F.S.<sup>13</sup>

In the interim project survey, we asked whether the statutes adequately provide for proper dissolution of CDDs. Respondents identified the following deficiencies:

- Section 190.046(8), F.S., does not reference municipalities, who are also authorized to create CDDs.
- Absent non-compliance with reporting requirements or inactivity for two years, the statutes do not provide for a graceful means to dissolve when:

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<sup>13</sup> This provision declares that a district may be declared inactive if it meets one of the following criteria: the district has taken no action for 2 calendar years; the district has not had a governing board or a sufficient number of governing board members to constitute a quorum for 18 or more months; the district has failed to file or make a good faith effort to file any of the reports listed in s. 189.419, F.S.; or the district has failed, for 2 consecutive fiscal years, to pay fees assessed by the Special District Information Program pursuant to this chapter.

- the district obtained alternative financing and does not need the governmental structure provided as a CDD;
- incurred no debt and ceased to operate after it received a development permit; or
- its financial obligations are satisfied and the district no longer has any ongoing operating or maintenance responsibilities.<sup>14</sup>

DCA reported that declaring a district inactive is a time-consuming and expensive process for the department and frustrating for the district property owners. DCA recommends that the entity creating the district be authorized to dissolve it under the limited circumstances identified above.

### **Enforcement of Property Deed Restrictions**

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in this state and provides procedures for operating homeowners' associations (HOA). Section 720.301(7), F.S., defines a "homeowners' association" as a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to enforce deed restrictions and to impose assessments that, if unpaid, may become a lien on the parcel.

However, not all homeowners associations are regulated by ch. 720, F.S. "Non-mandatory" or "voluntary" homeowners' associations are voluntary associations established to provide defined benefits or services to homeowners who choose to participate. Such associations do not have the power to enforce deed restrictions and assessments.

Typically, developers create a HOA when they begin selling lots for residences, and make participation in the association mandatory through the covenants that run with the property. However, if the developer fails to create a mandatory HOA, and the covenants fail to require participation in such an association, the individual homeowners are left the responsibility for enforcing the covenants. These individual homeowners may organize in a non-mandatory (or voluntary) HOA, but as such they are not able to use the collective financial resources available from mandatory HOA dues to pay legal fees to enforce the provisions of the covenant.

Chapter 190, F.S., does not empower the board of supervisors of the CDD to enforce deed restrictions on residential properties within the district.<sup>15</sup>

### **III. Effect of Proposed Changes:**

This CS revises the Uniform Community Development District Act of 1980 to allow the CDD governing board to enforce deed restrictions, to correct deficiencies in the district dissolution process, and to correct deficiencies in district elections policies and procedures.

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<sup>14</sup> The Special District Information Program, DCA, reports that at least six residential CDDs cannot dissolve under s. 190.046(2), F.S., without lapsing into inactive status.

<sup>15</sup> See *Hernandez v. Trout Creek Development Corporation*, 779 So2d 360 (Fla. App. 2 Dist. 2000) The court found that CDDs do not have the statutory authority to enforce deed restriction and covenants in residential development declarations, even if the declarations purport to give it such authority.

**Section 1** adds subsection (4) to s. 190.012, F.S., to allow the CDD governing boards to adopt rules necessary for the district to enforce all or portions of deed restrictions<sup>16</sup> that:

- relate to limitations or prohibitions which only “apply external to structures and are deemed by the district to be generally beneficial for the district’s landowners and for which enforcement by the district is appropriate, as determined by the district’s board of supervisors;” or
- are consistent with the requirements of development orders or regulatory agency permits.

However, this authority may be exercised only in districts that meet the following conditions:

- the district’s geographic area contains no “mandatory” homeowners’ associations as defined in s. 720.301(7);<sup>17</sup>
- the district was in existence on the effective date of this act, or is located within a development that consists of multiple developments of regional impact<sup>18</sup> and a Florida Quality Development;<sup>19</sup>
- the majority of the board has been elected by qualified electors pursuant to the provisions of s. 190.006;<sup>20</sup> and
- the declarant in any applicable declarations of covenants and restrictions has provided the board with a written agreement that such rules may be adopted.

Qualified CDDs that have adopted rules to assume this responsibility are authorize to impose fines for violations of such rules and to enforce such rules and fines in circuit court through injunctive relief.

Upon adoption of the rule, CDDs are required to record a notice of rule adoption stating generally what rules were adopted and where a copy of the rules may be obtained.

**Section 2** amends s. 190.046, F.S., to correct a number of deficiencies in the CDD dissolution process. These changes:

<sup>16</sup> “Deed restrictions” are identified in the CS 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 having enforcement powers.

<sup>17</sup> Section 720.301(7), F.S., defines a "homeowners' association" as a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to enforce deed restrictions and to impose assessments that, if unpaid, may become a lien on the parcel.

<sup>18</sup> Section 380.06(1), F.S., defines the term "development of regional impact," as “any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.” Staff of the Department of Community Affairs (DCA) review DRIs for compliance with state law and to identify the regional and state impacts of large-scale developments. DCA makes recommendations to local governments for approving, suggesting mitigation conditions, or not approving proposed developments. A developer, the local government or DCA may appeal local government decisions to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission.

<sup>19</sup> The Florida Quality Development program (FQD, s. 380.061, F.S.) provides an alternative to the traditional DRI program. To date, 18 developments have been designated as Florida Quality Developments.

<http://www.dca.state.fl.us/fdcp/DCP/DRIFQD/dris.htm>

<sup>20</sup> This would be a majority “resident-elected”, as opposed to “landowner-elected” board of supervisors.

- Amend paragraph (2)(b) to provide that a CDD may be dissolved if specific community development system and facilities, rather than only services, are transferred to a general purpose local government;
- Amend subsection (7) to replace the term “creating” with the appropriate term “establishing”;
- Amend subsection (8), F.S., to include a reference to city commissions, who are also authorized to create CDDs; and
- Create subsection (9) to allow a CDD to be dissolved when a district has no outstanding financial obligations and no operating or maintenance responsibilities, and upon petition of the district. The dissolution is by non-emergency ordinance of the general-purpose local governmental entity that established the district, or if established by rule of the Florida Land and Water Adjudicatory Commission, by repeal of such rule of the commission.

**Section 3** amends s. 190.006, F.S., to implement the recommendations from Interim Project Report 2004-121 relating to deficiencies in the current CDD elections policies and procedures. These changes:

- Clarify the terms of offices for CDD supervisors, consistent with subsection (2);
- Specify initial “landowner-meeting” chair selection procedures; (current law does address these procedures)
- Specify proxy voting parameters; (current law does not address these parameters)
- Clarify that the terms of initially-elected supervisors commences upon election;
- Require a public announcement of the second and subsequent landowner elections and requires that voting instructions be provided at time of notice;
- Specify that all ‘resident’ supervisor terms are for 4 years; (this replaces the unnecessary 2year / 4year split terms for initially elected resident supervisors)
- Provide for non-partisan elections;
- Provide that resident board supervisors assume their office 2 weeks after the election; (current law does address this issue)
- Allow the Supervisor of Elections to designate seat numbers for resident supervisors of the board;
- Provide procedures for filing qualifying papers; (current law does address these procedures for CDD elections)
- Specify the petition signature threshold to qualify for the election; (current law does address this issue for CDD elections)
- Allow candidates the option of paying a filing fee to qualify for the election, and specify payment parameters; (current law does address this issue for CDD elections)
- Require the county canvassing board (rather than the county commission) to certify the results of resident elections.

**Section 4** provides that this act will take effect upon becoming a law.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.