

Bill No. CS for CS for SB 2984

Amendment No. ____ Barcode 311690

CHAMBER ACTION

Senate

House

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Senator Geller moved the following amendment:

Senate Amendment (with title amendment)

On page 45, lines 28 and 29, delete those lines

and insert:

Section 17. Subsection (4) is added to section 190.012, Florida Statutes, to read:

190.012 Special powers; public improvements and community facilities.--The district shall have, and the board may exercise, subject to the regulatory jurisdiction and permitting authority of all applicable governmental bodies, agencies, and special districts having authority with respect to any area included therein, any or all of the following special powers relating to public improvements and community facilities authorized by this act:

(4)(a) To adopt rules necessary for the district to enforce certain deed restrictions pertaining to the use and operation of real property within the district. For the purpose of this subsection, "deed restrictions" are those covenants, conditions, and restrictions contained in any

Bill No. CS for CS for SB 2984

Amendment No. Barcode 311690

1 applicable declarations of covenants and restrictions that
2 govern the use and operation of real property within the
3 district and, for which covenants, conditions, and
4 restrictions, there is no homeowners' association or property
5 owner's association having respective enforcement powers. The
6 district may adopt by rule all or certain portions of the deed
7 restrictions that:

8 1. Relate to limitations or prohibitions that apply
9 only to external structures and are deemed by the district to
10 be generally beneficial for the district's landowners and for
11 which enforcement by the district is appropriate, as
12 determined by the district's board of supervisors; or

13 2. Are consistent with the requirements of a
14 development order or regulatory agency permit.

15 (b) The board may vote to adopt such rules only when
16 all of the following conditions exist:

17 1. The district's geographic area contains no
18 homeowners' associations as defined in s. 720.301(7);

19 2. The district was in existence on the effective date
20 of this subsection, or is located within a development that
21 consists of multiple developments of regional impact and a
22 Florida Quality Development;

23 3. The majority of the board has been elected by
24 qualified electors pursuant to the provisions of s. 190.006;
25 and

26 4. The declarant in any applicable declarations of
27 covenants and restrictions has provided the board with a
28 written agreement that such rules may be adopted. A memorandum
29 of the agreement shall be recorded in the public records.

30 (c) Within 60 days after such rules taking effect, the
31 district shall record a notice of rule adoption stating

Bill No. CS for CS for SB 2984

Amendment No. ____ Barcode 311690

1 generally what rules were adopted and where a copy of the
2 rules may be obtained. Districts may impose fines for
3 violations of such rules and enforce such rules and fines in
4 circuit court through injunctive relief.

5 Section 18. Section 190.046, Florida Statutes, is
6 amended to read:

7 190.046 Termination, contraction, or expansion of
8 district.--

9 (1) The board may petition to contract or expand the
10 boundaries of a community development district in the
11 following manner:

12 (a) The petition shall contain the same information
13 required by s. 190.005(1)(a)1. and 8. In addition, if the
14 petitioner seeks to expand the district, the petition shall
15 describe the proposed timetable for construction of any
16 district services to the area, the estimated cost of
17 constructing the proposed services, and the designation of the
18 future general distribution, location, and extent of public
19 and private uses of land proposed for the area by the future
20 land use plan element of the adopted local government local
21 comprehensive plan. If the petitioner seeks to contract the
22 district, the petition shall describe what services and
23 facilities are currently provided by the district to the area
24 being removed, and the designation of the future general
25 distribution, location, and extent of public and private uses
26 of land proposed for the area by the future land element of
27 the adopted local government comprehensive plan.

28 (b) For those districts initially established by
29 county ordinance, the petition for ordinance amendment shall
30 be filed with the county commission. If the land to be
31 included or excluded is, in whole or in part, within the

Bill No. CS for CS for SB 2984

Amendment No. ____ Barcode 311690

1 boundaries of a municipality, then the county commission shall
2 not amend the ordinance without municipal approval. A public
3 hearing shall be held in the same manner and with the same
4 public notice as other ordinance amendments. The county
5 commission shall consider the record of the public hearing and
6 the factors set forth in s. 190.005(1)(e) in making its
7 determination to grant or deny the petition for ordinance
8 amendment.

9 (c) For those districts initially established by
10 municipal ordinance pursuant to s. 190.005(2)(e), the
11 municipality shall assume the duties of the county commission
12 set forth in paragraph (b); however, if any of the land to be
13 included or excluded, in whole or in part, is outside the
14 boundaries of the municipality, then the municipality shall
15 not amend its ordinance without county commission approval.

16 (d)1. For those districts initially established by
17 administrative rule pursuant to s. 190.005(1), the petition
18 shall be filed with the Florida Land and Water Adjudicatory
19 Commission.

20 2. Prior to filing the petition, the petitioner shall
21 pay a filing fee of \$1,500 to the county and to each
22 municipality the boundaries of which are contiguous with or
23 contain all or a portion of the land within the district or
24 the proposed amendment, and submit a copy of the petition to
25 the county and to each such municipality. In addition, if the
26 district is not the petitioner, the petitioner shall file the
27 petition with the district board of supervisors.

28 3. The county and each municipality shall have the
29 option of holding a public hearing as provided by s.
30 190.005(1)(c). However, such public hearing shall be limited
31 to consideration of the contents of the petition and whether

Bill No. CS for CS for SB 2984

Amendment No. ____ Barcode 311690

1 the petition for amendment should be supported by the county
2 or municipality.

3 4. The district board of supervisors shall, in lieu of
4 a hearing officer, hold the local public hearing provided for
5 by s. 190.005(1)(d). This local public hearing shall be
6 noticed in the same manner as provided in s. 190.005(1)(d).
7 Within 45 days of the conclusion of the hearing, the district
8 board of supervisors shall transmit to the Florida Land and
9 Water Adjudicatory Commission the full record of the local
10 hearing, the transcript of the hearing, any resolutions
11 adopted by the local general-purpose governments, and its
12 recommendation whether to grant the petition for amendment.
13 The commission shall then proceed in accordance with s.
14 190.005(1)(e).

15 5. A rule amending a district boundary shall describe
16 the land to be added or deleted.

17 (e) In all cases, written consent of all the
18 landowners whose land is to be added to or deleted from the
19 district shall be required. The filing of the petition for
20 expansion or contraction by the district board of supervisors
21 shall constitute consent of the landowners within the district
22 other than of landowners whose land is proposed to be added to
23 or removed from the district.

24 (f)1. During the existence of a district initially
25 established by administrative rule, petitions to amend the
26 boundaries of the district pursuant to paragraphs (a)-(e)
27 shall be limited to a cumulative total of no more than 10
28 percent of the land in the initial district, and in no event
29 shall all such petitions to amend the boundaries ever
30 encompass more than a total of 250 acres.

31 2. For districts initially established by county or

Bill No. CS for CS for SB 2984

Amendment No. ____ Barcode 311690

1 municipal ordinance, the limitation provided by this paragraph
2 shall be a cumulative total of no more than 50 percent of the
3 land in the initial district, and in no event shall all such
4 petitions to amend the boundaries ever encompass more than a
5 total of 500 acres.

6 3. Boundary expansions for districts initially
7 established by county or municipal ordinance shall follow the
8 procedure set forth in paragraph (b) or paragraph (c).

9 (g) Petitions to amend the boundaries of the district
10 which exceed the amount of land specified in paragraph (f)
11 shall be considered petitions to establish a new district and
12 shall follow all of the procedures specified in s. 190.005.

13 (2) The district shall remain in existence unless:

14 (a) The district is merged with another district as
15 provided in subsection (3);

16 (b) All of the specific community development systems,
17 facilities, and services that it is authorized to perform have
18 been transferred to a general-purpose unit of local government
19 in the manner provided in subsections (4), (5), and (6); or

20 (c) The district is dissolved as provided in
21 subsection (7), ~~or~~ subsection (8), or subsection (9).

22 (3) The district may merge with other community
23 development districts upon filing a petition for establishment
24 of a community development district pursuant to s. 190.005 or
25 may merge with any other special districts upon filing a
26 petition for establishment of a community development district
27 pursuant to s. 190.005. The government formed by a merger
28 involving a community development district pursuant to this
29 section shall assume all indebtedness of, and receive title
30 to, all property owned by the preexisting special districts.

31 Prior to filing said petition, the districts desiring to merge

Bill No. CS for CS for SB 2984

Amendment No. ____ Barcode 311690

1 shall enter into a merger agreement and shall provide for the
2 proper allocation of the indebtedness so assumed and the
3 manner in which said debt shall be retired. The approval of
4 the merger agreement by the board of supervisors elected by
5 the electors of the district shall constitute consent of the
6 landowners within the district.

7 (4) The local general-purpose government within the
8 geographical boundaries of which the district lies may adopt a
9 nonemergency ordinance providing for a plan for the transfer
10 of a specific community development service from a district to
11 the local general-purpose government. The plan must provide
12 for the assumption and guarantee of the district debt that is
13 related to the service by the local general-purpose government
14 and must demonstrate the ability of the local general-purpose
15 government to provide such service:

16 (a) As efficiently as the district.

17 (b) At a level of quality equal to or higher than the
18 level of quality actually delivered by the district to the
19 users of the service.

20 (c) At a charge equal to or lower than the actual
21 charge by the district to the users of the service.

22 (5) No later than 30 days following the adoption of a
23 transfer plan ordinance, the board of supervisors may file, in
24 the circuit court for the county in which the local
25 general-purpose government that adopted the ordinance is
26 located, a petition seeking review by certiorari of the
27 factual and legal basis for the adoption of the transfer plan
28 ordinance.

29 (6) Upon the transfer of all of the community
30 development services of the district to a general-purpose unit
31 of local government, the district shall be terminated in

Bill No. CS for CS for SB 2984

Amendment No. ____ Barcode 311690

1 accordance with a plan of termination which shall be adopted
 2 by the board of supervisors and filed with the clerk of the
 3 circuit court.

4 (7) If, within 5 years after the effective date of the
 5 rule or ordinance establishing ~~creating~~ the district, a
 6 landowner has not received a development permit, as defined in
 7 chapter 380, on some part or all of the area covered by the
 8 district, then the district will be automatically dissolved
 9 and a judge of the circuit court shall cause a statement to
 10 that effect to be filed in the public records.

11 (8) In the event the district has become inactive
 12 pursuant to s. 189.4044, the respective board of county
 13 commissioners or city commission shall be informed and it
 14 shall take appropriate action.

15 (9) If a district has no outstanding financial
 16 obligations and no operating or maintenance responsibilities,
 17 upon the petition of the district, the district may be
 18 dissolved by a nonemergency ordinance of the general-purpose
 19 local governmental entity that established the district or, if
 20 the district was established by rule of the Florida Land and
 21 Water Adjudicatory Commission, the district may be dissolved
 22 by repeal of such rule of the commission.

23 Section 19. Section 190.006, Florida Statutes, is
 24 amended to read:

25 190.006 Board of supervisors; members and meetings.--

26 (1) The board of the district shall exercise the
 27 powers granted to the district pursuant to this act. The board
 28 shall consist of five members; except as otherwise provided
 29 herein, each member shall hold office for a term of 2 years or
 30 4 years, as provided in this section, and until a successor is
 31 chosen and qualifies. The members of the board must be

Bill No. CS for CS for SB 2984

Amendment No. ____ Barcode 311690

1 residents of the state and citizens of the United States.

2 (2)(a) Within 90 days following the effective date of
3 the rule or ordinance establishing the district, there shall
4 be held a meeting of the landowners of the district for the
5 purpose of electing five supervisors for the district. Notice
6 of the landowners' meeting shall be published once a week for
7 2 consecutive weeks in a newspaper which is in general
8 circulation in the area of the district, the last day of such
9 publication to be not fewer than 14 days or more than 28 days
10 before the date of the election. The landowners, when
11 assembled at such meeting, shall organize by electing a chair
12 who shall conduct the meeting. The chair may be any person
13 present at the meeting. If the chair is a landowner or proxy
14 holder of a landowner, he or she may nominate candidates and
15 make and second motions.

16 (b) At such meeting, each landowner shall be entitled
17 to cast one vote per acre of land owned by him or her and
18 located within the district for each person to be elected. A
19 landowner may vote in person or by proxy in writing. Each
20 proxy must be signed by one of the legal owners of the
21 property for which the vote is cast and must contain the typed
22 or printed name of the individual who signed the proxy; the
23 street address, legal description of the property, or tax
24 parcel identification number; and the number of authorized
25 votes. If the proxy authorizes more than one vote, each
26 property must be listed and the number of acres of each
27 property must be included. The signature on a proxy need not
28 be notarized. A fraction of an acre shall be treated as 1
29 acre, entitling the landowner to one vote with respect
30 thereto. The two candidates receiving the highest number of
31 votes shall be elected for a period of 4 years, and the three

Bill No. CS for CS for SB 2984

Amendment No. ____ Barcode 311690

1 candidates receiving the next largest number of votes shall be
2 elected for a period of 2 years, with the term of office for
3 each successful candidate commencing upon election. The
4 members of the first board elected by landowners shall serve
5 their respective 4-year or 2-year terms; however, the next
6 election by landowners shall be held on the first Tuesday in
7 November. Thereafter, there shall be an election of
8 supervisors for the district every 2 years in November on a
9 date established by the board and noticed pursuant to
10 paragraph (a). The second and subsequent landowners' election
11 shall be announced at a public meeting of the board at least
12 90 days prior to the date of the landowners' meeting and shall
13 also be noticed pursuant to paragraph (a). Instructions on how
14 all landowners may participate in the election, along with
15 sample proxies, shall be provided during the board meeting
16 that announces the landowners' meeting. The two candidates
17 receiving the highest number of votes shall be elected to
18 serve for a 4-year period, and the remaining candidate elected
19 shall serve for a 2-year period.

20 (3)(a)1. If the board proposes to exercise the ad
21 valorem taxing power authorized by s. 190.021, the district
22 board shall call an election at which the members of the board
23 of supervisors will be elected. Such election shall be held
24 in conjunction with a primary or general election unless the
25 district bears the cost of a special election. Each member
26 shall be elected by the qualified electors of the district for
27 a term of 4 years, except that, at the first such election,
28 three members shall be elected for a period of 4 years and two
29 members shall be elected for a period of 2 years. All elected
30 board members must be qualified electors of the district.

31 2.a. Regardless of whether a district has proposed to

Bill No. CS for CS for SB 2984

Amendment No. ____ Barcode 311690

1 levy ad valorem taxes, commencing 6 years after the initial
2 appointment of members or, for a district exceeding 5,000
3 acres in area, 10 years after the initial appointment of
4 members, the position of each member whose term has expired
5 shall be filled by a qualified elector of the district,
6 elected by the qualified electors of the district. However,
7 for those districts established after June 21, 1991, and for
8 those existing districts established after December 31, 1983,
9 which have less than 50 qualified electors on June 21, 1991,
10 sub-subparagraphs b. and d. ~~e.~~ shall apply.

11 ~~b. For those districts to which this sub-subparagraph~~
12 ~~applies~~ If, in the 6th year after the initial appointment of
13 members, or 10 years after such initial appointment for
14 districts exceeding 5,000 acres in area, there are not at
15 least 250 qualified electors in the district, or for a
16 district exceeding 5,000 acres, there are not at least 500
17 qualified electors, members of the board shall continue to be
18 elected by landowners.

19 b. After the 6th or 10th year, once a district reaches
20 250 or 500 qualified electors, respectively, then the
21 ~~positions~~ position of two board members whose terms are
22 expiring shall be filled by qualified electors of the
23 district, elected by the qualified electors of the district
24 for 4-year terms. ~~One of these board members shall serve a~~
25 ~~2-year term, and the other a 4-year term.~~ The remaining board
26 member whose term is expiring shall be elected for a 4-year
27 term by the landowners and is not required to be a qualified
28 elector. Thereafter, as terms expire, board members shall be
29 qualified electors elected by qualified electors of the
30 district for a term of 4 years.

31 c. Once a district qualifies to have any of its board

Bill No. CS for CS for SB 2984

Amendment No. ____ Barcode 311690

1 members elected by the qualified electors of the district, the
2 initial and all subsequent elections by the qualified electors
3 of the district shall be held at the general election in
4 November. The board shall adopt a resolution if necessary to
5 implement this requirement when the board determines the
6 number of qualified electors as required by sub-subparagraph
7 d., to extend or reduce the terms of current board members.

8 ~~d.c.~~ On or before June 1 ~~July 15~~ of each year, the
9 board shall determine the number of qualified electors in the
10 district as of the immediately preceding April 15 ~~June 1~~. The
11 board shall use and rely upon the official records maintained
12 by the supervisor of elections and property appraiser or tax
13 collector in each county in making this determination. Such
14 determination shall be made at a properly noticed meeting of
15 the board and shall become a part of the official minutes of
16 the district.

17 (b) Elections of board members by qualified electors
18 held pursuant to this subsection shall be nonpartisan and
19 shall be conducted in the manner prescribed by law for holding
20 general elections. Board members shall assume the office on
21 the second Tuesday following their election.

22 (c) Candidates seeking election to office by qualified
23 electors under this subsection shall conduct their campaigns
24 in accordance with the provisions of chapter 106 and shall
25 file qualifying papers and qualify for individual seats in
26 accordance with s. 99.061. Candidates shall pay a qualifying
27 fee, which shall consist of a filing fee and an election
28 assessment or, as an alternative, shall file a petition signed
29 by not less than 1 percent of the registered voters of the
30 district, Candidates shall file petitions, and take the oath
31 required in s. 99.021, with the supervisor of elections in the

Bill No. CS for CS for SB 2984

Amendment No. ____ Barcode 311690

1 county affected by such candidacy. The amount of the filing
2 fee is 3 percent of \$4,800; however, if the electors have
3 provided for compensation pursuant to subsection (8), the
4 amount of the filing fee is 3 percent of the maximum annual
5 compensation so provided. The amount of the election
6 assessment is 1 percent of \$4,800; however, if the electors
7 have provided for compensation pursuant to subsection (8), the
8 amount of the election assessment is 1 percent of the maximum
9 annual compensation so provided. The filing fee and election
10 assessment shall be distributed as provided in s. 105.031(3).

11 (d) The supervisor of elections shall appoint the
12 inspectors and clerks of elections, prepare and furnish the
13 ballots, designate polling places, and canvass the returns of
14 the election of board members by qualified electors. The
15 county canvassing board of county commissioners shall declare
16 and certify the results of the election.

17 (4) Members of the board shall be known as supervisors
18 and, upon entering into office, shall take and subscribe to
19 the oath of office as prescribed by s. 876.05. They shall
20 hold office for the terms for which they were elected or
21 appointed and until their successors are chosen and qualified.
22 If, during the term of office, a vacancy occurs, the remaining
23 members of the board shall fill the vacancy by an appointment
24 for the remainder of the unexpired term.

25 (5) A majority of the members of the board constitutes
26 a quorum for the purposes of conducting its business and
27 exercising its powers and for all other purposes. Action
28 taken by the district shall be upon a vote of a majority of
29 the members present unless general law or a rule of the
30 district requires a greater number.

31 (6) As soon as practicable after each election or

Bill No. CS for CS for SB 2984

Amendment No. ____ Barcode 311690

1 appointment, the board shall organize by electing one of its
2 members as chair and by electing a secretary, who need not be
3 a member of the board, and such other officers as the board
4 may deem necessary.

5 (7) The board shall keep a permanent record book
6 entitled "Record of Proceedings of ...(name of district)...
7 Community Development District," in which shall be recorded
8 minutes of all meetings, resolutions, proceedings,
9 certificates, bonds given by all employees, and any and all
10 corporate acts. The record book shall at reasonable times be
11 opened to inspection in the same manner as state, county, and
12 municipal records pursuant to chapter 119. The record book
13 shall be kept at the office or other regular place of business
14 maintained by the board in the county or municipality in which
15 the district is located or within the boundaries of a
16 development of regional impact or Florida Quality Development,
17 or combination of a development of regional impact and Florida
18 Quality Development, which includes the district.

19 (8) Each supervisor shall be entitled to receive for
20 his or her services an amount not to exceed \$200 per meeting
21 of the board of supervisors, not to exceed \$4,800 per year per
22 supervisor, or an amount established by the electors at
23 referendum. In addition, each supervisor shall receive travel
24 and per diem expenses as set forth in s. 112.061.

25 (9) All meetings of the board shall be open to the
26 public and governed by the provisions of chapter 286.

27 Section 20. This act shall take effect upon becoming a
28 law, except sections 1 through 16, which shall take effect
29 October 1, 2004.

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Bill No. CS for CS for SB 2984

Amendment No. ____ Barcode 311690

1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 3, line 3, delete that line

4

5 and insert:

6 amending s. 190.012, F.S.; providing for the
7 enforcement of deed restrictions in certain
8 circumstances; amending s. 190.046, F.S.;

9 providing for additional dissolution
10 procedures; amending s. 190.006, F.S.;

11 specifying procedures for selecting a chair at
12 the initial landowners' meeting; specifying
13 requirements for proxy voting; requiring notice
14 of landowners' elections; specifying the terms
15 of certain supervisors; providing for
16 nonpartisan elections; specifying the time that
17 resident supervisors assume office; authorizing
18 the supervisor of elections to designate seat
19 numbers for resident supervisors of the board;

20 providing procedures for filing qualifying
21 papers; allowing candidates the option of
22 paying a filing fee to qualify for the
23 election; specifying payment requirements;

24 specifying the number of petition signatures
25 required to qualify for the election; requiring
26 the county canvassing board to certify the
27 results of resident elections; providing
28 effective dates.

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