

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1491 Community Development Districts
SPONSOR(S): Economic Expansion & Infrastructure; Attkisson
TIED BILLS: **IDEN./SIM. BILLS:** SB 2700

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Infrastructure</u>	<u>7 Y, 0 N</u>	<u>Peterson</u>	<u>Miller</u>
2) <u>Economic Expansion & Infrastructure Council</u>	<u>14 Y, 0 N, As CS</u>	<u>Peterson</u>	<u>Tinker</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Chapter 190, Florida Statutes, the Uniform Community Development District Act of 1980, sets forth the uniform procedure for the establishment and operation of a particular type of independent special district, the community development district (CDD), which serves as an alternative method to manage and finance basic services for community development.

The CS contains a number of provisions governing community development districts. In particular, the CS:

- Provides for establishment of CDDs across county lines.
- Allows for CDDs to finance and make "fair share or concurrency obligations", in addition to payments, contributions, dedications, and any other exactions that may be required as a condition to receive any governmental approval or permit necessary to accomplish any district purpose.
- Specifies petition and filing fee requirements for the establishment of districts and provides requirements for the establishment of districts located in multiple municipalities.
- Revise provisions for determining certain voting units (one vote per one acre) for landowners within a district, to provide that platted lots are to be counted individually and rounded up to the nearest whole acre;
- Provides procedures for filling district board vacancies, and authorizes the board to appoint qualified electors to the board under certain circumstances.
- Revises timeframes and requirements for the preparation of proposed district budgets.
- Revises statutory authorization for the enforcement of district assessments.
- Specifies that non-ad valorem assessments levied to pay interest on bond anticipation notes do not qualify as assessment installments.
- Provides that foreclosure proceedings authorized under ch. 170, F.S., apply to certain district proceedings.
- Provides for competitive solicitation, and authorizes the district to proceed with purchasing if no responses are received when requests for proposals, qualifications, or other competitive solicitations are used.
- Revises provisions for termination, contraction, or expansion of districts, and explicitly states that in all petitions for boundary amendment regardless of size, the board of supervisors' action constitutes consent for the existing landowners, and the written consent of those landowners whose land is to be added to or deleted from the district is required.
- Specifies the determination of population standards by the DCA for the purposes of incorporation or annexation of districts; and requires unincorporated areas to meet certain criteria for incorporation and certain referenda to be held at general elections.

Provides the CS will take effect July 1, 2007, except where otherwise provided.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1491c.EEIC.doc
DATE: 4/18/2007

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

None applicable.

B. EFFECT OF PROPOSED CHANGES:

Chapter 190, Florida Statutes, the Uniform Community Development District Act of 1980, sets forth the uniform procedure for the establishment and operation of a particular type of independent special district, the community development district (CDD), which serves as an alternative method to manage and finance basic services for community development.

Definitions

The CS revises definitions relating to CDDs, in particular:

- Striking language that stated that the boundaries of the CDD were to be contained wholly within a single county.
- Allowing for CDDs to finance and make the “fair share or concurrency obligations”, in addition to payments, contributions, dedications, and any other exactions required as a condition to receive any governmental approval or permit necessary to accomplish any district purpose.
- Explicitly including “curbs and gutters” within the definition of water management and control facilities and “hydrants” and “chilled water distribution systems” within the definition of water system.

Establishment of the District

Current law, s. 190.005, F.S., provides that the method for the establishment of a CDD with a size of 1,000 acres or more shall be pursuant to a rule, adopted under chapter 120, F.S., by the Florida Land and Water Adjudicatory Commission (commission), granting a petition for the establishment of a CDD.

The CS provides clarification as to which cities and counties have to receive petitions and the filing fee:

- Fee is paid and a copy of the petition is submitted to the county, if located within an unincorporated area, or to the municipality if located within an incorporated area.
- If land to be included within a district is located partially within the unincorporated area of one or more counties and partially within a municipality or within two or more municipalities, a fee is to be paid to each entity.
- Districts established across county boundaries are required to maintain records, hold meetings and hearings, and publish notices only in the county where the majority of the acreage within the district lies.

Language is added to limit the content of the rule establishing a CDD, to only contain a “metes and bounds description of” the external boundaries of the district and any real property within the external boundaries of the district which is to be excluded. The CS provides the same for ordinances establishing a CDD, but adds that the commission must consent to any of the optional powers under s. 190.12(2) at the request of the petitioner.

Current law does not address what happens if a project is located in two cities. The CS provides that, irrespective of size, if the proposed CDD is located within the territorial jurisdiction of two or more municipalities, the petition is to be filed with the commission and the statutory method for the establishment of a CDD is to be followed.

Board of the CDD

Voting – Section 190.006, F.S., provides for the membership of the board, meetings and the electoral process for supervisors of the district. Current law states that each landowner is entitled to cast one vote per acre of land owned by him or her and located within the district for each person to be elected. The CS provides that for purposes of determining voting interests, platted lots are to be counted individually and rounded up to the nearest whole acre. The acreage of platted lots is not to be aggregated for determining the number of voting units held by a landowner or a landowner's proxy.

Vacancies – Current law does not address the course of action to follow when no candidate has qualified to run for a vacant seat. The CS requires the district to publish a notice of the qualifying period set by the supervisor of elections for each election at least 2 weeks prior to the start of the qualifying period. The CS states that a vacancy in that seat shall be declared by the board effective on the second Tuesday following the election. The board is to appoint a qualified elector to fill the vacancy within 90 days and the incumbent board member in that seat remains until such appointment.

Conflict of interest – The CS modifies current conflict of interest language in s. 190.007, F.S., to ensure it is not a conflict of interest for a board member, district manager, or another employee of the district to be employed by the landowner or an entity affiliated with a landowner. This section does not take effect until October 1, 2007.

Budget

The CS revises timeframes and requirements for the preparation of proposed district budgets. In particular, the CS moves the CDD budget time frame up one month from July 15 to June 15 and requires that the estimate of income to the district also include "other revenues," in addition to taxes and assessments.

Disclosure of Public Financing

In order to enhance disclosure, the CS requires that a CDD must file the required disclosure documents and any amendments in the property records of each county in which the district is located.

Powers of the District

The CS revises the statutory authorization for the enforcement of district assessments in s. 190.011, relating to general powers of the district, to ensure that special assessments may be collected and enforced pursuant to the provisions of chapter 173, F.S., in addition to the provisions of ss. 197.3631, 197.3632, 197.3635, and chapter 170, Florida Statutes.

Public Improvements and Community Facilities

Section 190.012, F.S., provides that CDDs have special powers related to the following systems, facilities, and basic infrastructures: water management, water supply, sewer, wastewater management, 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. In particular, a CDD is authorized to finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain systems, facilities, and basic infrastructures as outlined in statute. The CS modifies and expands the definition of eligible district roads to say:

- District roads equal to or exceeding the "applicable" specifications of the county in which such district roads are located,
- "roads and improvements to existing public roads that are owned by or conveyed to the local general-purpose government, the state, or the Federal Government, street lights, alleys landscaping, hardscaping, and the undergrounding of electric utility lines."

The CS authorizes the CDD to convey undergrounding of electric utility lines to the retail electric utility provider within the district.

In addition, a new power is added to allow any other project, facility or service required by a development approval, interlocal agreement, zoning condition, or permit issued by a governmental authority with jurisdiction in the district to be undertaken by the CDD.

The CS expands the eligibility for school buildings and related structures to include site improvements as it relates to the CDD's power to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities.

The CS authorizes the district to adopt rules for enforcement of deed restrictions within the district and outside the district pursuant to an interlocal agreement.

The CS clarifies that as a condition for the board to adopt rules necessary to the enforcement of certain deed restrictions, for residential districts, the majority of the board has to have been elected by qualified electors pursuant to the statutory process.

Bond Anticipation Notes/Non-ad Valorem Assessments

The CS provides that non-ad valorem assessments levied to pay interest on bond anticipation notes are not an installment of assessments s. 190.022, F.S., and thus, would not be held to the 30 year limit. Section 190.022, F.S., relates to special assessments and authorizes the board to levy special assessments for the construction, reconstruction, acquisition, or maintenance of district facilities and that district assessments may be made payable in no more than 30 yearly installments.

The CS provides that notice of the proposed amount of the assessment pursuant to s. 200.069, F.S., related to notice of proposed property taxes and non-ad valorem assessments, can be used instead of additional notice required by other provisions of chapter 197, F.S.

The CS provides that special assessments authorized under chapter 170, in addition to s. 190.022, F.S., constitute liens and are subject to certain collection procedures.

Foreclosure of liens

The CS amends section 190.026, F.S., to provide that foreclosure proceedings authorized under ch. 170, F.S., apply to certain district proceedings.

Competitive Solicitation

With regard to bidding procedures, the CS provides authorization for the use of requests for proposals or qualifications and other competitive solicitation methods. In each case in which requests for proposals, qualifications, or other competitive solicitations are used, the CDD is to determine which response is most advantageous for the district and award the contract to that proposer. When no responses are received, the CDD is authorized to proceed to purchase such goods, supplies, materials, or construction services in the manner it deems in the best interests of the district.

Termination, Contraction, or Expansion of District

Section 190.046, F.S., authorizes the board to petition to contract or expand the boundaries of a CDD. The CS revises certain provisions, in particular with regard to the boundary amendment process.

With regard to submittal of the petition and the filing fee, the same provisions apply as in the CDD establishment provisions.

Current law provides that for those CDDs with a size of 1,000 acres or more, written consent is required by all landowners whose real property is to be included in the district. In all other cases, written consent is required of all the landowners whose land is to be added to or deleted from the district, and that the filing of the petition for expansion or contraction by the board of supervisors constitutes consent of all the existing landowners within the district other than those specifically affected. This language is clarified in the CS, but removes the reference to the provision that required those CDDs exceeding the 1,000 acre threshold to require written consent of all landowners. Rather, the filing of the petition by the board will now constitute consent.

In addition, the CS provides that the effect of the boundary amendment does not affect the underlying district's existence or cause a new six or ten year period to begin pursuant to s. 190.006(3)(a)2, F.S..

Incorporation or Annexation of District

The CS provides for the determination of population standards by the Department of Community Affairs for the purposes of incorporation or annexation of districts. It also requires that for any district wholly contained within the unincorporated area of a county that also meets the other requirements for incorporation contained in s. 165.061, F.S., (which provides standards for incorporation, merger, and dissolution), a referendum must be held at a general election on the question of whether to incorporate.

The CS provides an effective date of July 1, 2007, except where otherwise provided.

C. SECTION DIRECTORY:

- Section 1: Amends s. 190.003, F.S.; to revise definitions relating to community development districts, in particular to provide for establishment of community development districts across county lines.
- Section 2: Amends s. 190.005, F.S.; to specify petition and filing fee requirements for the establishment of districts; specify requirements for the adoption of certain rules by the Florida Land and Water Adjudicatory Commission; and provide requirements for the establishment of districts located in multiple municipalities.
- Section 3: Amends s. 190.006, F.S.; to revise provisions for determining certain voting units for landowners within a district; provide procedures for filling district board vacancies; and authorize the board to appoint qualified electors to the board under certain circumstances.
- Section 4: Amends s. 190.007, F.S.; to specify that certain affiliations are not a conflict of interest for district board members, managers, and employees.
- Section 5: Amends s. 190.008, F.S.; to revise timeframes and requirements for the preparation of proposed district budgets.
- Section 6: Amends s. 190.009, F.S.; to require the district to file disclosure documents and amendments relating to the public financing and maintenance of certain property in the property records of each county in which the district is located.
- Section 7: Amends s. 190.011, F.S.; to revise statutory authorization for the enforcement of district assessments.
- Section 8: Amends s. 190.012, F.S.; to revise district regulatory jurisdiction and permitting authority for certain public improvements and community facilities; authorize the district to convey certain activities to utility providers; and authorize the district to adopt rules for enforcement of deed restrictions outside the district pursuant to an interlocal agreement.

- Section 9: Amends s. 190.014, F.S.; to specify that non-ad valorem assessments levied to pay interest on bond anticipation notes do not qualify as assessment installments.
- Section 10: Amends s. 190.021, F.S.; to authorize the use of the notice of proposed amount of the assessment pursuant to s. 200.069, F.S., under certain circumstances; and providing that assessments authorized under chapter 170, F.S., constitute liens and are subject to certain collection procedures.
- Section 11: Amends s. 190.026, F.S., to provide that foreclosure proceedings authorized under chapter 170, F.S., apply to certain district proceedings.
- Section 12: Amends s. 190.033, F.S.; to provide for competitive solicitation; and authorizing the district to proceed with purchasing under certain circumstances.
- Section 13: Amends s. 190.046, F.S.; to revise provisions for termination, contraction, or expansion of districts; specify payment of certain fees to counties and municipalities; provide limitations for the amendment of certain district boundaries; and require the written consent of certain landowners.
- Section 14: Amends s. 190.047, F.S.; to specify the determination of population standards by the Department of Community Affairs for the purposes of incorporation or annexation of districts; requiring unincorporated areas to meet certain criteria for incorporation; and requiring certain referenda to be held at general elections.
- Section 15: Provides the CS will take effect July 1, 2007, except where otherwise provided.

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:

N/A

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The CS does not appear to require counties or municipalities to take action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with other counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The CS authorizes a community development district to adopt rules for enforcement of deed restrictions outside the district

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

The Committee on Infrastructure considered HB 1491 on March 19, 2007 and adopted the following amendments:

- Provided that a CDD may undertake a project, facility, or service required by an interlocal agreement in addition to a development approval, zoning condition, or permit
- Authorized the CDD to adopt rules for enforcement of deed restrictions within the district and outside the district pursuant to an interlocal agreement.
- Clarified that as a condition for the board to adopt rules necessary to the enforcement of certain deed restrictions, for residential districts, the majority of the board has to have been elected by qualified electors pursuant to the statutory process.

The bill was reported favorably with three amendments.

The Economic Expansion and Infrastructure Council considered HB 1491 on April 17, 2007 and adopted a strike all amendment. The primary differences between the strike all and the bill as filed are as follows:

- Includes "chilled water distribution systems" in the definition of the term "water system;"
- Districts established across county boundaries are required to maintain records, hold meetings and hearings, and publish notices only in the county where the majority of the acreage within the district lies.
- Requires the district to publish a notice of the qualifying period set by the supervisor of elections for each election at least 2 weeks prior; and provides a 90 day period for the board to appoint a qualified elector to fill a vacancy.
- Adds alleys in the expanded definition of eligible district roads.
- Provides that a CDD may undertake a project, facility, or service required by an interlocal agreement in addition to a development approval, zoning condition, or permit.

- Authorizes the CDD to adopt rules for enforcement of deed restrictions within the district and outside the district pursuant to an interlocal agreement.
- Clarifies that as a condition for the board to adopt rules necessary to the enforcement of certain deed restrictions, for residential districts, the majority of the board has to have been elected by qualified electors pursuant to the statutory process.
- Adds a new section amending section 190.026, F.S., to provide that foreclosure proceedings authorized under ch. 170, F.S., apply to certain district proceedings.

The bill was reported favorably as a council substitute.