

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Finance and Tax Committee

BILL: CS/SB 2700

INTRODUCER: Finance and Tax Committee and Senator Haridopolos

SUBJECT: Community Development Districts

DATE: April 24, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CA	Fav/1 amendment
2.	Fournier	Johansen	FT	Fav/CS
3.			TA	
4.				
5.				
6.				

I. Summary:

This bill revises a number of provisions governing community development districts (CDDs or districts) in order to:

- Allow CDDs to be multi-county;
- Include proportionate share payments and other concurrency obligations in the term “cost”;
- Include curbs and gutters in the term “water management and control facilities”;
- Include hydrants and chilled water distribution systems in the term “water system”;
- Require a petitioner to pay a filing fee and submit a copy of the petition to a county only if the CDD will be located in an unincorporated area;
- If located within an incorporated area, the filing fee and a copy of the petition goes to the municipality;
- Require a CDD located within multiple jurisdictions to pay a \$15,000 filing fee to each entity;
- Require a CSS located in multiple counties to maintain its records, hold meetings and hearings, and publish notices only in the county where a majority of its acreage lies;
- Allow public hearings on a petition for a new CDD only in counties and municipalities in which the proposed CDD will be located and municipalities that are contiguous to the proposed boundaries of the CDD;
- Limit those issues that may be addressed in a county ordinance establishing a CDD to those matters that would be contained in a rule adopted by the Florida Land and Water Adjudicatory Commission (FLWAC) to establish a CDD;

- Require a petition to establish a CDD that is located in 2 municipalities to be filed with FLWAC regardless of the size of the CDD;
- Require that platted lots be counted individually, with each lot rounded up to the nearest whole acre, for purposes of determining the number of voting interests held by a landowner in a CDD;
- Require publication of a notice of the qualifying period for each election at least 2 weeks before the start of the qualifying period;
- Provide a process to appoint a qualified elector to fill a vacancy on the board;
- Eliminate a conflict of interest for a board member who is employed by an entity affiliated with the landowner;
- Move the CDD budget process up one month, to June 15, to make it easier to comply with the notice requirements for the Truth In Millage (TRIM) notice;
- Require a CDD to file its disclosure document in the property records of each county where the district is located;
- Expand the special powers of a CDD to allow for the financing or construction of roads and improvements to existing roads onsite or offsite which are owned by or will be conveyed to a local general-purpose government, or the state or federal government; alleys; landscaping and hardscaping (i.e., entry feature); and utility lines placed underground that will be conveyed to the district's retail electric utility provider; and any other project, facility, or service within the district's boundaries that is required by a governmental authority with jurisdiction to issue a development approval, zoning condition, or a permit for land within the CDD;
- Allow a CDD, if authorized by the school district, to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate and maintain school site improvements;
- Allow a CDD to enforce deed restrictions pertaining to property outside the district pursuant to an interlocal agreement under ch. 163, F.S.;
- Provide that non-ad valorem assessments levied to pay interest on bond anticipation notes are not assessments for purposes of the 30-year limitation on district assessments in s. 190.022, F.S.;
- Allow the notice of the proposed amount of the assessment and the date and time of the hearing under s. 197.3635, F.S., to be used instead of the additional notice requirements under s. 197.3632(4)(b), F.S., for benefit and maintenance special assessments;
- Provide that special assessments authorized under ch. 170, F.S., which relates to local municipal improvements, shall constitute a lien against real property until paid;
- Allows for foreclosure of liens under the provisions of ch. 170 or 173, F.S.;
- Allow a CDD board to use a request for proposals or qualifications when purchasing goods, supplies, materials, or maintenance services that exceed a certain amount;
- Require petitions to amend a boundary to follow the process in s. 190.005, F.S., for the establishment of a new district;
- Specify that a FLWAC rule or county ordinance amending a boundary does not serve to establish a new 6-year or 10-year period under s. 190.006(3)(a)2., F.S., which relates to the initial appointment of board members;
- Require written consent of all landowners whose land will be added or deleted from the district;

- State that the petition for expansion or contraction by the CDD board constitutes consent of the landowners within the CDD, except for those landowners whose land is proposed to be added or deleted from the district; and
- Require a CDD wholly located in an unincorporated area and which meets the population standards for incorporation, as determined by the Department of Community Affairs, and satisfies the other requirements for incorporation in s. 165.061, F.S., to hold a referendum at the next general election on whether to incorporate.

This bill substantially amends the following sections of the Florida Statutes: 190.003, 190.005, 190.006, 190.007, 190.008, 190.009, 190.011, 190.012, 190.014, 190.021, 190.026, 190.033, 190.046, and 190.047.

II. Present Situation:

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.¹ Initial financing is typically through the issuance of tax-free bonds, with the corresponding imposition of ad valorem taxes, special assessments, or service charges.² 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 498 active CDDs in Florida.³

Special Powers of a CDD

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

Establishment of a CDD

Section 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 FLWAC, granting a petition for the establishment of a CDD. A proposed CDD that is less than 1,000 acres in size may be established pursuant to county or municipal ordinance. If all of the land for the proposed CDD is within a municipality, the petition for establishing the CDD shall be filed with the municipal government. If any of the land area in a proposed CDD is within a municipality, a county may not establish the CDD without the municipality's approval. Current law does not address what happens if a project is located in two cities.

Board of the CDD

¹ s. 190.002(1)(a), F.S.

² As authorized in ss. 190.021 & 190.035, F.S.

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

⁴ 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.

Section 190.006, F.S., provides for the membership of the board, meetings and the electoral process for supervisors of the district. 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. Current law does not address the course of action to follow when no candidate has qualified to run for a vacant seat.

Budget

Section 190.008, F.S., requires the district manager to prepare, on or before each July 15, a proposed budget for the upcoming fiscal year to be submitted to the board for board approval. At the direction of the board, the proposed budget includes an estimate of all necessary expenditures of the district for the upcoming fiscal year and an estimate of income to the district from the taxes and assessments. Notice of the hearing on the budget must be published in a newspaper of general circulation in the area of the district once a week for 2 consecutive weeks, except that the first publication shall be not fewer than 15 days prior to the date of the hearing. The notice must also contain a designation of the day, time, and place of the public hearing. The board shall adopt a budget prior to October 1 of each year.

Disclosure of Public Financing

Section 190.009, F.S., governs disclosure of information relating to the public financing and maintenance of improvements to real property undertaken by the district. This information must be made available to all existing residents, and to all prospective residents, of the district. This section specifies what information the district must furnish to each developer of a residential development within the district. Also, the Department of Community Affairs keeps a current list of districts and their disclosures.

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.

Bond Anticipation Notes/Non-ad Valorem Assessments

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.

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. 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 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.

Municipal Incorporation

Under ch.165, F.S., there is only one way to establish a city government where no such government exists: the Legislature must pass a special act creating the city's charter, upon determination that the standards provided in that chapter have been met.⁵ Submittal of a feasibility study and a local bill that proposes the local government charter is required for consideration of incorporation. In addition, the new municipality must meet the following conditions in the area proposed for incorporation pursuant to s. 165.061(1), F.S.:

- It must be compact, contiguous and amenable to separate municipal government.
- It must have a total population, as determined in the latest official state census, special census or estimate of population, of at least 1,500 persons in counties with a population of less than 75,000, and of at least 5,000 persons in counties with a population of more than 75,000.
- It must have an average population density of at least 1.5 persons per acre or have extraordinary conditions requiring the establishment of a municipal corporation with less existing density.
- It must be a minimum distance of at least two miles from the boundaries of an existing municipality within the county or have an extraordinary natural boundary that requires separate municipal government.
- It must have a proposed municipal charter that clearly prescribes and defines the form of government and its functions and does not prohibit or restrict the levy of authorized tax.
- In accordance with s. 10, Art. I of the State Constitution, the plan for incorporation must honor existing solid-waste contracts in the affected geographic area subject to incorporation.

III. Effect of Proposed Changes:

Section 190.003, F.S., is amended to allow CDDs to be multi-county. Proportionate share payments and other concurrency obligations are included in the term “cost.” The term “water management and control facilities” is revised to include curbs and gutters. The term “water system” is amended to include hydrants and chilled water distribution systems.

Section 190.005, F.S., is revised to require a petitioner, who is paying a \$15,000 filing fee that is required before filing a petition with the FLWAC to establish a CDD, to pay the filing fee and submit a copy of the petition to a county only if the CDD will be located in an unincorporated area. If located within an incorporated area, the filing fee and a copy of the petition go to the municipality. A proposed CDD that will be located within multiple jurisdictions shall pay a \$15,000 filing fee to each entity. It also requires that districts established in more than one county maintain their records, hold meetings, and publish notices in the county wherein a majority of their acreage lies. Only counties and municipalities in which the proposed CDD will be located and municipalities that are contiguous to the proposed boundaries of the CDD may hold a public hearing on the petition for the new CDD and whether it meets certain statutory criteria in s. 190.005(1)(f), F.S.

⁵ An exception to this rule exists in Miami-Dade County.

The CS limits those issues that may be addressed in a county ordinance establishing a CDD to those matters that would be contained in a rule adopted by FLWAC to establish a CDD. (The establishment of a CDD of less than 1,000 acres in size is done by county ordinance rather than by a rule adopted by FLWAC.) If the proposed CDD is located in 2 municipalities, the petition to establish the CDD must be filed with FLWAC regardless of the size of the CDD.

Section 196.006, F.S., is amended to require that platted lots be counted individually, with each lot rounded up to the nearest whole acre, for purposes of determining the number of voting interests held by a landowner in a CDD. Also, the election process for a CDD is revised to require the district to publish notification of the qualifying period for a general election at least 2 weeks before it starts, and to provide that, if there is no qualified elector for a seat, the board shall declare the seat vacant on the second Tuesday in November and appoint a qualified elector to the seat within 90 days. The incumbent board member remains in office until a replacement is appointed.

Effective October 1, 2007, s. 190.007, F.S., is amended to revise the conflict of interest provision to eliminate a conflict under ch. 112, F.S., for a board member who is employed by an entity affiliated with the landowner.

Section 190.008, F.S., is amended to move the CDD budget process up one month, to June 15, to make it easier to comply with the notice requirements for the Truth In Millage (TRIM) notice.

Section 190.009, F.S., is amended to require a CDD to file its disclosure document in the property records of each county where the district is located.

Section 190.011, F.S., is amended to revise the special powers of a CDD to allow for the financing or construction of:

- roads and improvements to existing roads onsite or offsite which are owned by or will be conveyed to a local general-purpose government, or the state or federal government;
- alleys, landscaping, and hardscaping (i.e., entry feature);
- utility lines placed underground that will be conveyed to the district's retail electric utility provider; and
- any other project, facility, or service, including school site improvements, within the district's boundaries that is required by a governmental authority with jurisdiction to issue a development approval, zoning condition, or a permit for land within the CDD.

This section is also amended to allow a CDD to enforce deed restrictions pertaining to property outside the district pursuant to an interlocal agreement under ch. 163, F.S.

Section 190.014, F.S., is amended to provide that non-ad valorem assessments levied to pay interest on bond anticipation notes are not assessments for purposes of the 30-year limitation on district assessments in s. 190.022, F.S.

Section 190.021, F.S., is amended to allow the notice of the proposed amount of the assessment and the date and time of the hearing under s. 197.3635, F.S., to be used instead of the additional

notice requirements under s. 197.3632(4)(b), F.S., for benefit and maintenance special assessments.

Also, a special assessment authorized under ch. 170, F.S., which relates to local municipal improvements, shall constitute a lien against real property until paid.

Section 190.26, F.S., is amended to allow a district to use foreclosure proceedings in chapter 170, F.S., when foreclosing a lien in favor of the district.

Section 190.033, F.S., is amended to allow a CDD board to use a request for proposals or qualifications when purchasing goods, supplies, materials, or maintenance services that exceed a certain amount. If the CDD does not receive any response to a competitive solicitation, the district may purchase goods, supplies, materials, or construction services in the manner it deems in the best interest of the district.

Section 190.046, F.S., is amended to revise the CDD boundary amendment process. Specifically, petitions to amend a boundary must follow the process in s. 190.005, F.S., for the establishment of a new district. However, the resulting FLWAC rule or county ordinance shall only amend the boundary and does not serve to establish a new 6-year or 10-year period under s. 190.006(3)(a)2., F.S., which relates to the initial appointment of board members.

When amending the boundaries of a CDD, written consent is required of all landowners whose land will be added or deleted from the district. The bill clarifies that the filing of the petition for expansion or contraction by a CDD board constitutes consent of the landowners within the CDD, except for those landowners whose land is proposed to be added or deleted from the district.

Section 190.047, F.S., is amended to require a CDD that meets the population standards for incorporation, as determined by the Department of Community Affairs; is wholly located in an unincorporated area; and satisfies the other requirements for incorporation in s. 165.061, F.S., to hold a referendum at the next general election on whether to incorporate.

The bill takes effect upon becoming a law, except as otherwise provided.

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. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
