The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL:	CS/CS/SB 1602
INTRODUCER:	Judiciary Committee, Community Affairs Committee, and Senator Baker
SUBJECT:	Community Development Districts
DATE:	April 23, 2009 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Fav/CS**
2.	Sumner/Maclure	Maclure	JU	**Fav/CS**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill adds a definition for the term "compact, urban, mixed-use district," for purposes of the Uniform Community Development District Act, and defines that term to mean "a district located within a municipality and within a community redevelopment area created pursuant to s. 163.356, that consists of a maximum of 75 acres, and has development entitlements of at least 400,000 square feet of retail development and 500 residential units."

This bill includes the newly defined "compact, urban, mixed-use district" within an existing exception that gives a community development district (CDD) additional years before the board of supervisors must be elected by qualified electors of the district rather than by the landowners. In addition, this newly defined mixed-used district would be included within an existing exception that requires that a higher number of qualified electors be available in the district before the change in election process must occur.

This bill broadens the authority of CDDs to levy fines and enforce deed restrictions even when those deed restrictions apply to property outside of the community development district. The bill also amends provisions dealing with the procedures for changing the boundaries of a CDD.

This bill substantially amends the following sections of the Florida Statutes: 190.003, 190.005, 190.006, 190.011, 190.012, 190.016, 190.021, 190.046, and 348.968, Florida Statutes.

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.

Section 190.002, F.S., prescribes definitions applicable to the Uniform Community Development District Act.

Section 190.006, F.S., provides that once a district is created by rule or ordinance, the landowners of the district are to meet to elect five supervisors for the district. However, six years after the initial appointment of members, the position of each member whose term has expired shall be filled by a qualified elector of the district by election. However, there is an exception for a district exceeding 5,000 acres, in which case the election does not have to occur for 10 years. Also under current law, if when the time for election by qualified electors arises, there are not at least 250 electors in the district, members of the board continue to be elected by the landowners. There is an exception in current law for a district exceeding 5,000 acres, in which case the landowners continue to elect the board until there are at least 500 qualified electors.

Section 190.012, F.S., specifies the types of infrastructure community development districts (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.[3]

Section 190.012, F.S., empowers certain CDDs to adopt rules necessary for the district to enforce certain deed restrictions pertaining to the use and operation of real property within the district and outside the district if pursuant to an interlocal agreement under ch. 163, F.S. Section 190.012, F.S., defines “deed restrictions” 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, there is no homeowners’ association or property owner’s association having respective enforcement powers. The district may adopt by rule all or certain portions of the deed restrictions.

[1] Section 190.002(1)(a), F.S.
[2] As authorized in ss. 190.021 & 190.035, F.S.
[3] 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.

Deed restrictions, also known as covenants, conditions, or restrictions, encumber an owner's freedom to use the land. They may be imposed on a buyer when property is sold and are included in the deed to the property. Property developers seeking to retain a certain community atmosphere often use deed restrictions. Restrictions may limit the number or types of trees, the color of a house, the size and shape of a house, and require general upkeep of the property.

In 2004, the Legislature passed CS/CS/SB 2984 which established that the only CDDs eligible to use the provisions of s. 192.012(4), F.S., are those in which the district was already in existence on the effective date of the subsection, or was located within a development that consists of multiple developments of regional impact and a Florida Quality Development. These situations applied uniquely to The Villages in Sumter County and a development called The Meadow in Pasco County.

III. Effect of Proposed Changes:

Section 1 amends s. 190.003, F.S., which prescribes definitions applicable to the Uniform Community Development District Act. The bill adds a definition for the term "compact, urban, mixed-use district," and it defines that term to mean "a district located within a municipality and within a community redevelopment area created pursuant to s. 163.356, that consists of a maximum of 75 acres, and has development entitlements of at least 400,000 square feet of retail development and 500 residential units."

Section 2 amends s. 190.006, F.S., relating to the powers of the governing board of a community development district. Under current law, once a district is created by rule or ordinance, the landowners of the district are to meet to elect five supervisors for the district. However, six years after the initial appointment of members, the position of each member whose term has expired shall be filed a qualified elector of the district, elected by the qualified electors of the district. There is an exception for a district exceeding 5,000 acres, in which case the new election process does not have to occur for 10 years.[4] The bill includes the newly defined "compact, urban, mixed-use district" within this exception. Therefore, such a mixed-use district would not have to hold the statutorily required election by the electors of the district for 10 years after the district was initially created.

Also under current law, if, when the time for election by qualified electors arises, there are not at least 250 electors in the district, members of the board continue to be elected by the landowners. There is an exception in current law for a district exceeding 5,000 acres, in which case the landowners continue to elect the board until there are at least 500 qualified electors. This bill includes the newly defined mixed-use district within this exception. Therefore, under the bill, if 10 years after initial appointment for this newly defined mixed-use district, there are not at least 500 electors, members of the initial board continue to be elected by the landowners. Thus if a project meeting the bill's definition of mixed-used district does not have enough electors available at the expiration of six years, it would receive, under the bill, authority to delay such change in the election process until 10 years – creating additional time to secure electors within the district.

[4] *See* s. 190.005(3)(a)2.a., F.S.

Section 3 provides intent language that the bills amendments to in s. 190.006, F.S., apply retroactively to districts established prior to July 1, 2009.

Section 4, 5, 6, 7, and 8 amends ss. 190.005, 190.011, 190.016, 190.021, and 348.968, F.S., to make conforming changes.

Section 9 revises deed restriction enforcement rulemaking authority of boards of directors of CDDs under s. 190.012, F.S., in a manner that expands their powers, and the powers of homeowner's associations (HOAs), over real property whether within or outside the CDD's geographic limits, subject to an interlocal agreement with another district, or the consent of the county or municipality in the area that enforcement is to occur.

The expansion of CDD rulemaking and enforcement authority extends to include residents who live outside of the geographic boundaries of the CDD. These residents can potentially become subject to a variety of rules and enforcements without representation on the CDD board and without reaping any of the benefits or services that are provided by the CDD to the residents who reside with the geographic boundaries of the CDD.

Specifically, the CDD may adopt by rule all or certain portions of deed restrictions that:
- Relate to limitations or prohibitions, compliance mechanisms, or enforcement remedies that apply to external appearances or uses and are deemed by the CDD to be generally beneficial for the CDD's landowners and for which enforcement by the CDD is appropriate, as determined by the CDD's board of supervisors; or
- Are consistent with the requirements of a development order or regulatory agency permit.

The board may vote to adopt rules only when all of the following conditions exist:
- The CDD was in existence on June 23, 2004, or is located within a development that consists of multiple developments of regional impact and a Florida Quality Development.
- For residential districts, the majority of the CDD board has been elected by qualified electors pursuant to the provisions of s. 190.006.
- The declarant (HOA, CDD or any special district) in any applicable declarations of covenants and restrictions has provided the board with a written agreement that such rules may be adopted. A memorandum of the agreement shall be recorded in the public records.
- For residential districts, less than 25 percent of residential units are in a homeowners' association.

The bill deletes the restriction that the CDD board may only vote to adopt rules relevant to the provisions above if the CDD's geographic area contains no HOAs as defined in s. 720.301(9), F.S.

The bill also expands the definition of "deed restrictions" to include compliance mechanisms and enforcement remedies contained in any applicable declaration of covenants and restrictions, including those of an HOA whose board is under member control, which govern the use and operation of real property. The scope of the deed restrictions is further expanded because they would not be limited to restrictions within the district.

The terms "compliance mechanisms" and "enforcement remedies" are often applied by HOAs and CDDs in the form of penalties or special assessments. A parcel owner's failure to comply can result in a lien being placed against the parcel.

The bill provides for the election of a district board advisor from the property owners whose land is outside the boundary of the district solely for the purpose of reviewing enforcement actions proposed by the district board on properties outside the district but within the development and making recommendations relating to those proposed actions.

The bill provides that whenever an interlocal agreement is entered into, a district board advisor seat is created for one elected landowner whose property is within the jurisdiction of the governmental entity entering into the interlocal agreement but not within the boundaries of the district.The district board advisor shall be elected for a two-year term by landowners whose land is subject to enforcement by the district but whose land is not within the boundaries of the district.

The bill requires that the elections occur at meeting that is properly noticed and gives each landower one vote per acre of land owned by him or her and located within the district for each person to be elected. Votes may be made in person or by proxy in writing. Landowners with less than an acre of land are entitled to one vote.

The bill provides that if a vacancy occurs in the district advisor seat, a special landowner election shall be held within 60 days after the vacancy using the notice, proxy, and acreage voting provisions.

Section 10 amends s. 190.046, F.S., to allow a landowner to petition to contract or expand the boundaries of a CDD. The bill specifies that the petition filing fee is paid to:

- the county if the CDD or land to be added or deleted from the district is located within an unincorporated area, or
- the municipality if the district or the land to be added or deleted is located within an incorporated area.

The filing fee must also be paid to each municipality contiguous with or containing all or a portion of land within, added to, or deleted from the external boundaries of the district. A copy of the petition shall be submitted to each of the entities entitled to receive the filing fee.

The bill deletes the provision in existing law that requires a rule amending the district boundary to have written consent of all the landowners whose land is to be added to or deleted from the district.

The bill adds the language "net" cumulative basis to the way district boundaries shall be assessed.

The bill states that petitions to amend the boundary of a CDD shall include only:

- a description of the external boundaries;
- a map of the proposed district showing water, sewer, and outfall;
- proposed time-table and costs for district services;

- designation of the future land uses;
- a statement of estimated regulatory costs; and
- consent of the landowners as demonstrated by the filing of the petition by the district board of supervisors but written consent must be obtained from any landowner whose land is to be added or deleted from the district.

The bill requires that when CDDs petition to merge with each other their petitions must include the elements required to create a CDD and be evaluated using the criteria used when establishing a CDD. The filing fee would be the same. The petition must state whether a new district will be established or one district will be the surviving district. The amendment deletes language that would require CDDs that merge to hold a public hearing. The amendment specifies that the remaining CDD is still obligated to creditors. Any existing claim, pending action, or proceeding by against a CDD can continue as if the merger had not occurred.

Section 11 provides an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill amends the Uniform Community Development District Act to create a definition for the term "compact, urban, mixed-use district." The bill's definition is very specific: "a district located within a municipality and within a community redevelopment area created pursuant to s. 163.356, that consists of a maximum of 75 acres, and has development entitlements of at least 400,000 square feet of retail development and 500 residential units." To the extent that the "compact, urban, mixed-use district" could apply to a distinct region or set of subdivisions within the state, the bill may be considered a general law of local application. This usually means that its classification scheme is based on population or some other reasonable characteristic which distinguishes one locality from another.[5] It might also be considered a special law if it operates only upon designated persons or discrete regions, and bears no reasonable relationship to differences in population or other legitimate criteria.[6] Article III, Section 11, of the Florida

[5] *Miami Beach v. Frankel*, 363 So. 2d 555 (Fla. 1978).
[6] *Housing Authority v. City of St. Petersburg*, 287 So. 307, 310(Fla. 1973).

Constitution prohibits certain categories of special laws and general laws of local application.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The expansion of CDD rulemaking and enforcement authority could potentially create situations where an individual who resides outside the geographic boundaries of the CDD is subjected to financial sanctions for failure to comply with the application of expanded deed restrictions including purely aesthetic restrictions.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Judiciary on April 21, 2009:

The committee substitute amends s. 190.003, F.S., to include the definition of "compact, urban, mixed-use district" and defines it as "a district located within a municipality and within a community redevelopment area created pursuant to s. 163.356, that consists of a maximum of 75 acres, and has development entitlements of at least 400,000 square feet of retail development and 500 residential units." It also amends s. 190.006, F.S., governing the election process for the board of a community development district, to include this newly defined mixed-use district within an existing exception that give a district additional years before the board of supervisors must be elected by qualified electors of the district rather than by the landowners. The committee substitute also includes this newly defined mixed-use district within an existing exception which requires that a higher number of qualified electors be available in the district before a change in election process must occur.

CS by Community Affairs on March 24, 2009:

The committee substitute adds the requirement that the CDD board may vote to adopt rules that relate to limitations, prohibitions, compliance mechanisms, or enforcement remedies for residential districts when less than 25 percent of the residential units are in a homeowners' association.

The committee substitute adds the language "net" cumulative basis to the way district boundaries shall be assessed.

The committee substitute states that petitions to amend the boundary of a CDD shall include only:

- a description of the external boundaries;
- a map of the proposed district showing water, sewer, and outfall;
- the proposed time-table and costs for district services;
- designation of the future land uses;
- a statement of estimated regulatory costs; and
- consent of the landowners as demonstrated by the filing of the petition by the district board of supervisors but written consent must be obtained from any landowner whose land is to be added or deleted from the district.

The committee substitute requires that when CDDs petition to merge with each other their petitions must include the elements required to create a CDD and be evaluated using the criteria used when establishing a CDD. The filing fee would be the same. The petition must state whether a new district will be established or one district will be the surviving district. The committee substitute deletes language that would require CDDs that merge to hold a public hearing. The amendment specifies that the remaining CDD is still obligated to creditors. Any existing claim, pending action, or proceeding by or against a CDD can continue as if the merger had not occurred.

B. Amendments:

None.