

By the Committee on Community Affairs; and Senator Baker

578-03856-09

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1 A bill to be entitled
2 An act relating to community development districts;
3 amending s. 190.012, F.S.; revising the rulemaking
4 authority of boards of directors of community
5 development districts regarding enforcement of deed
6 restrictions; amending s. 190.046, F.S.; revising
7 procedures and requirements for amending the
8 boundaries of a community development district;
9 revising procedures and requirements for merging
10 community development districts; providing
11 limitations; providing that certain actions constitute
12 consent of landowners within a district to amendment
13 of the boundaries of the district; requiring written
14 consent from such landowners as a prerequisite to the
15 amendment of the boundaries of a district; authorizing
16 filing fees for petitions for merger; preserving
17 rights of certain creditors and certain liens upon
18 property; providing for the continuance of existing
19 claims and pending actions or proceedings by or
20 against a district that is a party to a merger;
21 authorizing the substituting of a surviving district
22 for a dissolved district in such action, claim, or
23 proceeding; providing that approval of the merger
24 agreement and the petition by the board of supervisors
25 of the district constitutes consent of the landowners
26 within the district to a merger; providing an
27 effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Paragraphs (a) and (b) of subsection (4) of section 190.012, Florida Statutes, are amended 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 and outside the district ~~if~~ pursuant to an interlocal agreement under chapter 163 if within another district or, if not within another district, with the consent of the county or municipality in which the deed restriction enforcement is proposed to occur. For the purpose of this subsection, the term "deed restrictions" means ~~are~~ those covenants, conditions, ~~and~~ restrictions, compliance mechanisms, and enforcement remedies 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 or property owner's association having respective enforcement powers unless, with respect to a homeowners' association whose board is under member control, the association and the district agree in writing to enforcement by the district. The district may adopt by rule all or certain

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59 portions of the deed restrictions that:

60 1. Relate to limitations, ~~or~~ prohibitions, compliance
61 mechanisms, or enforcement remedies that apply only to external
62 appearances or uses ~~structures~~ and are deemed by the district to
63 be generally beneficial for the district's landowners and for
64 which enforcement by the district is appropriate, as determined
65 by the district's board of supervisors; or

66 2. Are consistent with the requirements of a development
67 order or regulatory agency permit.

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

70 ~~1. The district's geographic area contains no homeowners'~~
71 ~~associations as defined in s. 720.301(9);~~

72 ~~1.2.~~ The district was in existence on the effective date of
73 this subsection, or is located within a development that
74 consists of multiple developments of regional impact and a
75 Florida Quality Development. ~~;~~

76 ~~2.3.~~ For residential districts, the majority of the board
77 has been elected by qualified electors pursuant to the
78 provisions of s. 190.006. ~~;~~ ~~and~~

79 3. For residential districts, less than 25 percent of
80 residential units are in a homeowners' association.

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

85 Section 2. Subsections (1) and (3) of section 190.046,
86 Florida Statutes, are amended to read:

87 190.046 Termination, contraction, or expansion of

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88 district.—

89 (1) A landowner or the board may petition to contract or
90 expand the boundaries of a community development district in the
91 following manner:

92 (a) The petition shall contain the same information
93 required by s. 190.005(1)(a)1. and 8. In addition, if the
94 petitioner seeks to expand the district, the petition shall
95 describe the proposed timetable for construction of any district
96 services to the area, the estimated cost of constructing the
97 proposed services, and the designation of the future general
98 distribution, location, and extent of public and private uses of
99 land proposed for the area by the future land use plan element
100 of the adopted local government local comprehensive plan. If the
101 petitioner seeks to contract the district, the petition shall
102 describe what services and facilities are currently provided by
103 the district to the area being removed, and the designation of
104 the future general distribution, location, and extent of public
105 and private uses of land proposed for the area by the future
106 land element of the adopted local government comprehensive plan.

107 (b) For those districts initially established by county
108 ordinance, the petition for ordinance amendment shall be filed
109 with the county commission. If the land to be included or
110 excluded is, in whole or in part, within the boundaries of a
111 municipality, then the county commission shall not amend the
112 ordinance without municipal approval. A public hearing shall be
113 held in the same manner and with the same public notice as other
114 ordinance amendments. The county commission shall consider the
115 record of the public hearing and the factors set forth in s.
116 190.005(1)(e) in making its determination to grant or deny the

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117 petition for ordinance amendment.

118 (c) For those districts initially established by municipal
119 ordinance pursuant to s. 190.005(2)(e), the municipality shall
120 assume the duties of the county commission set forth in
121 paragraph (b); however, if any of the land to be included or
122 excluded, in whole or in part, is outside the boundaries of the
123 municipality, then the municipality shall not amend its
124 ordinance without county commission approval.

125 (d)1. For those districts initially established by
126 administrative rule pursuant to s. 190.005(1), the petition
127 shall be filed with the Florida Land and Water Adjudicatory
128 Commission.

129 2. Before ~~Prior to~~ filing the petition, the petitioner
130 shall pay a filing fee of \$1,500 to the county if the district
131 or the land to be added or deleted from the district is located
132 within an unincorporated area or to the municipality if the
133 district or the land to be added or deleted is located within an
134 incorporated area, and to each municipality the boundaries of
135 which are contiguous with or contain all or a portion of the
136 land within or to be added to or deleted from the external
137 boundaries of the district ~~or the proposed amendment,~~ and ~~submit~~
138 ~~a copy of the petition to the county and to each such~~
139 ~~municipality.~~ The petitioner shall submit a copy of the petition
140 to the entities entitled to receive the filing fee. In addition,
141 if the district is not the petitioner, the petitioner shall file
142 the petition with the district board of supervisors.

143 3. Each ~~The~~ county and each municipality shall have the
144 option of holding a public hearing as provided by s.
145 190.005(1)(c). However, such public hearing shall be limited to

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146 consideration of the contents of the petition and whether the
147 petition for amendment should be supported by the county or
148 municipality.

149 4. The district board of supervisors shall, in lieu of a
150 hearing officer, hold the local public hearing provided for by
151 s. 190.005(1)(d). This local public hearing shall be noticed in
152 the same manner as provided in s. 190.005(1)(d). Within 45 days
153 of the conclusion of the hearing, the district board of
154 supervisors shall transmit to the Florida Land and Water
155 Adjudicatory Commission the full record of the local hearing,
156 the transcript of the hearing, any resolutions adopted by the
157 local general-purpose governments, and its recommendation
158 whether to grant the petition for amendment. The commission
159 shall then proceed in accordance with s. 190.005(1)(e).

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

162 ~~(e) In all cases, written consent of all the landowners~~
163 ~~whose land is to be added to or deleted from the district shall~~
164 ~~be required. The filing of the petition for expansion or~~
165 ~~contraction by the district board of supervisors shall~~
166 ~~constitute consent of the landowners within the district other~~
167 ~~than of landowners whose land is proposed to be added to or~~
168 ~~removed from the district.~~

169 (e)-(f)1. During the existence of a district initially
170 established by administrative rule, the process petitions to
171 amend the boundaries of the district pursuant to paragraphs (a)-
172 (d) may not permit (a)-(e) shall be limited to a cumulative net
173 total of no more than 10 percent of the land in the initial
174 district or, and in no event shall all such petitions to amend

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175 ~~the boundaries ever encompass~~ more than a total of 250 acres on
176 a cumulative net basis.

177 2. During the existence of a district ~~For districts~~
178 initially established by county or municipal ordinance, the
179 process to amend the boundaries of the district pursuant to
180 paragraphs (a)-(d) may not permit limitation provided by this
181 paragraph shall be a cumulative net total of no more than 50
182 percent of the land in the initial district or, and in no event
183 shall all such petitions to amend the boundaries ever encompass
184 more than a total of 500 acres on a cumulative net basis.

185 ~~3. Boundary expansions for districts initially established~~
186 ~~by county or municipal ordinance shall follow the procedure set~~
187 ~~forth in paragraph (b) or paragraph (c).~~

188 (f)-(g) Petitions to amend the boundaries of the district
189 exceeding which exceed the amount of land specified in paragraph
190 (e) (f) shall be processed in accordance with s. 190.005, and
191 the petition shall include only the elements set forth in s.
192 190.005(1)(a)1. and 5.-8., and the consent required by paragraph
193 (g) considered petitions to establish a new district and shall
194 follow all of the procedures specified in s. 190.005. However,
195 the resulting administrative rule or ordinance may amend only
196 the boundaries of the district and may not establish a new
197 district or cause a new 6-year or 10-year period, as described
198 in s. 190.006(3)(a)2. to begin. The filing fee for such
199 petitions shall be as set forth in s. 190.005(1)(b) and (2), as
200 applicable.

201 (g) For any petition to amend the boundaries of a district,
202 the filing of the petition by the district board of supervisors
203 constitutes consent of the landowners within the district.

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204 Written consent must be obtained from the landowners whose land
205 is to be added to or deleted from the district as provided in s.
206 190.005(1)(a)2.

207 (3) The district may merge with other community development
208 districts upon filing a petition for merger. Such petition must
209 include the elements described in s. 190.005(1) and be evaluated
210 using the criteria set forth in s. 190.005(1)(e). The filing fee
211 shall be as provided in s. 190.005(1)(b). In addition, the
212 petition must state whether a new district will be established
213 or one district will be the surviving district. The district
214 establishment of a community development district pursuant to s.
215 190.005 or may merge with any other special districts upon
216 filing a petition for establishment of a community development
217 district pursuant to s. 190.005. The government formed by a
218 merger involving a community development district pursuant to
219 this section shall assume all indebtedness of, and receive title
220 to, all property owned by the preexisting special districts, and
221 the rights of creditors and liens upon property are not impaired
222 by such merger. Any existing claim, pending action, or
223 proceeding by or against any district that is a party to the
224 merger may be continued as if the merger had not occurred, or
225 the surviving district may be substituted in the proceeding for
226 the district that ceased to exist. Before ~~Prior to~~ filing the
227 ~~said~~ petition, the districts desiring to merge shall enter into
228 a merger agreement and shall provide for the proper allocation
229 of the indebtedness so assumed and the manner in which the ~~said~~
230 debt shall be retired. The approval of the merger agreement and
231 the petition by the board of supervisors ~~elected by the electors~~
232 of the district shall constitute consent of the landowners

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233 within the district.

234 Section 3. This act shall take effect July 1, 2009.