

1 A bill to be entitled
 2 An act relating to community development districts;
 3 amending s. 190.012, F.S.; revising deed restriction
 4 enforcement rulemaking authority of boards of directors of
 5 community development districts; amending s. 190.046,
 6 F.S.; revising procedures and requirements to amend the
 7 boundaries of a community development district; revising
 8 procedures and requirements to merge community development
 9 districts; providing limitations; providing for petition
 10 filing fees; preserving rights of creditors, liens upon
 11 property, and claims and pending actions or proceedings;
 12 providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

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 16 Section 1. Subsection (4) of section 190.012, Florida
 17 Statutes, is amended to read:

18 190.012 Special powers; public improvements and community
 19 facilities.--The district shall have, and the board may
 20 exercise, subject to the regulatory jurisdiction and permitting
 21 authority of all applicable governmental bodies, agencies, and
 22 special districts having authority with respect to any area
 23 included therein, any or all of the following special powers
 24 relating to public improvements and community facilities
 25 authorized by this act:

26 (4) (a) To adopt rules necessary for the district to
 27 enforce certain deed restrictions pertaining to the use and
 28 operation of real property within the district and outside the

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29 | district ~~if~~ pursuant to an interlocal agreement under chapter
 30 | 163 if within another district or, if not within another
 31 | district, with the consent of the county or municipality in
 32 | which the deed restriction enforcement is proposed to occur. For
 33 | the purpose of this subsection, the term "deed restrictions"
 34 | means ~~are~~ those covenants, conditions, ~~and~~ restrictions,
 35 | compliance mechanisms, and enforcement remedies contained in any
 36 | applicable declarations of covenants and restrictions that
 37 | govern the use and operation of real property ~~within the~~
 38 | ~~district~~ and, for which covenants, conditions, and restrictions,
 39 | there is no homeowners' association or property owner's
 40 | association having respective enforcement powers unless, with
 41 | respect to a homeowners' association whose board is under member
 42 | control, the association and the district agree in writing to
 43 | enforcement by the district. The district may adopt by rule all
 44 | or certain portions of the deed restrictions that:

45 | 1. Relate to limitations, ~~or~~ prohibitions, compliance
 46 | mechanisms, or enforcement remedies that apply only to external
 47 | appearances or uses ~~structures~~ and are deemed by the district to
 48 | be generally beneficial for the district's landowners and for
 49 | which enforcement by the district is appropriate, as determined
 50 | by the district's board of supervisors; or

51 | 2. Are consistent with the requirements of a development
 52 | order or regulatory agency permit.

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

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

57 | ~~1.2.~~ The district was in existence on the effective date
 58 | of this subsection, or is located within a development that
 59 | consists of multiple developments of regional impact and a
 60 | Florida Quality Development.~~+~~

61 | ~~2.3.~~ For residential districts, the majority of the board
 62 | has been elected by qualified electors pursuant to the
 63 | provisions of s. 190.006.~~+~~~~and~~

64 | 3. For residential districts, less than 25 percent of
 65 | residential units are in a homeowners' association.

66 | 4. The declarant in any applicable declarations of
 67 | covenants and restrictions has provided the board with a written
 68 | agreement that such rules may be adopted. A memorandum of the
 69 | agreement shall be recorded in the public records.

70 | (c) Within 60 days after such rules take effect, the
 71 | district shall record a notice of rule adoption stating
 72 | generally what rules were adopted and where a copy of the rules
 73 | may be obtained. Districts may impose fines for violations of
 74 | such rules and enforce such rules and fines in circuit court
 75 | through injunctive relief.

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

78 | 190.046 Termination, contraction, or expansion of
 79 | district.--

80 | (1) A landowner or the board may petition to contract or
 81 | expand the boundaries of a community development district in the
 82 | following manner:

83 | (a) The petition shall contain the same information
 84 | required by s. 190.005(1)(a)1. and 8. In addition, if the

85 | petitioner seeks to expand the district, the petition shall
86 | describe the proposed timetable for construction of any district
87 | services to the area, the estimated cost of constructing the
88 | proposed services, and the designation of the future general
89 | distribution, location, and extent of public and private uses of
90 | land proposed for the area by the future land use plan element
91 | of the adopted local government local comprehensive plan. If the
92 | petitioner seeks to contract the district, the petition shall
93 | describe what services and facilities are currently provided by
94 | the district to the area being removed, and the designation of
95 | the future general distribution, location, and extent of public
96 | and private uses of land proposed for the area by the future
97 | land element of the adopted local government comprehensive plan.

98 | (b) For those districts initially established by county
99 | ordinance, the petition for ordinance amendment shall be filed
100 | with the county commission. If the land to be included or
101 | excluded is, in whole or in part, within the boundaries of a
102 | municipality, then the county commission shall not amend the
103 | ordinance without municipal approval. A public hearing shall be
104 | held in the same manner and with the same public notice as other
105 | ordinance amendments. The county commission shall consider the
106 | record of the public hearing and the factors set forth in s.
107 | 190.005(1)(e) in making its determination to grant or deny the
108 | petition for ordinance amendment.

109 | (c) For those districts initially established by municipal
110 | ordinance pursuant to s. 190.005(2)(e), the municipality shall
111 | assume the duties of the county commission set forth in
112 | paragraph (b); however, if any of the land to be included or

113 excluded, in whole or in part, is outside the boundaries of the
 114 municipality, then the municipality shall not amend its
 115 ordinance without county commission approval.

116 (d)1. For those districts initially established by
 117 administrative rule pursuant to s. 190.005(1), the petition
 118 shall be filed with the Florida Land and Water Adjudicatory
 119 Commission.

120 2. Prior to filing the petition, the petitioner shall pay
 121 a filing fee of \$1,500, to the county if the district or the
 122 land to be added or deleted from the district is located within
 123 an unincorporated area or to the municipality if the district or
 124 the land to be added or deleted is located within an
 125 incorporated area, and to each municipality the boundaries of
 126 which are contiguous with or contain all or a portion of the
 127 land within or to be added to or deleted from the external
 128 boundaries of the district ~~or the proposed amendment,~~ and submit
 129 ~~a copy of the petition to the county and to each such~~
 130 ~~municipality.~~ The petitioner shall submit a copy of the petition
 131 to the same entities entitled to receive the filing fee. In
 132 addition, if the district is not the petitioner, the petitioner
 133 shall file the petition with the district board of supervisors.

134 3. Each ~~The~~ county and each municipality shall have the
 135 option of holding a public hearing as provided by s.
 136 190.005(1)(c). However, the ~~such~~ public hearing shall be limited
 137 to consideration of the contents of the petition and whether the
 138 petition for amendment should be supported by the county or
 139 municipality.

140 4. The district board of supervisors shall, in lieu of a

141 hearing officer, hold the local public hearing provided for by
 142 s. 190.005(1)(d). This local public hearing shall be noticed in
 143 the same manner as provided in s. 190.005(1)(d). Within 45 days
 144 of the conclusion of the hearing, the district board of
 145 supervisors shall transmit to the Florida Land and Water
 146 Adjudicatory Commission the full record of the local hearing,
 147 the transcript of the hearing, any resolutions adopted by the
 148 local general-purpose governments, and its recommendation
 149 whether to grant the petition for amendment. The commission
 150 shall then proceed in accordance with s. 190.005(1)(e).

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

153 ~~(e) In all cases, written consent of all the landowners
 154 whose land is to be added to or deleted from the district shall
 155 be required. The filing of the petition for expansion or
 156 contraction by the district board of supervisors shall
 157 constitute consent of the landowners within the district other
 158 than of landowners whose land is proposed to be added to or
 159 removed from the district.~~

160 (e)-(f)1. During the existence of a district initially
 161 established by administrative rule, the process petitions to
 162 amend the boundaries of the district pursuant to paragraphs (a)-
 163 (d) ~~(a)-(e)~~ shall not permit ~~be limited to~~ a cumulative net
 164 total greater ~~of no more~~ than 10 percent of the land in the
 165 initial district, and in no event greater ~~shall all such~~
 166 ~~petitions to amend the boundaries ever encompass more than a~~
 167 ~~total of 250 acres~~ on a cumulative net basis.

168 2. During the existence of a district ~~For districts~~

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169 initially established by county or municipal ordinance, the
170 process to amend the boundaries of the district pursuant to
171 paragraphs (a)-(d) limitation provided by this paragraph shall
172 not permit ~~be~~ a cumulative net total greater ~~of no more~~ than 50
173 percent of the land in the initial district, and in no event
174 greater shall all such petitions to amend the boundaries ever
175 encompass more than a total of 500 acres on a cumulative net
176 basis.

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

180 ~~(f)(g)~~ (f) Petitions to amend the boundaries of the district
181 that ~~which~~ exceed the amount of land specified in paragraph (e)
182 ~~(f)~~ shall be processed in accordance with s. 190.005, and the
183 petition shall include only the elements set forth in s.
184 190.005(1)(a)1. and 5.-8. and the consent required by paragraph
185 (g) considered petitions to establish a new district and shall
186 follow all of the procedures specified in s. 190.005. However,
187 the resulting administrative rule or ordinance may only amend
188 the boundaries of the district and may not establish a new
189 district or cause a new 6-year or 10-year period to begin
190 pursuant to s. 190.006(3)(a)2. The filing fee for such
191 petitions shall be as set forth in s. 190.005(1)(b) and (2), as
192 applicable.

193 (g) In all cases of a petition to amend the boundaries of
194 a district, the filing of the petition by the district board of
195 supervisors constitutes consent of the landowners within the
196 district. In all cases, written consent of those landowners

197 whose land is to be added to or deleted from the district as
 198 provided in s. 190.005(1)(a)2. is required.

199 (3) The district may merge with other community
 200 development districts upon filing a petition for merger, which
 201 petition shall include the elements set forth in s. 190.005(1)
 202 and which shall be evaluated using the criteria set forth in s.
 203 190.005(1)(e). The filing fee shall be as set forth in s.
 204 190.005(1)(b). In addition, the petition shall state whether a
 205 new district is to be established or whether one district shall
 206 be the surviving district. The district establishment of a
 207 ~~community development district pursuant to s. 190.005 or~~ may
 208 merge with any other special districts upon filing a petition
 209 for establishment of a community development district pursuant
 210 to s. 190.005. The government formed by a merger involving a
 211 community development district pursuant to this section shall
 212 assume all indebtedness of, and receive title to, all property
 213 owned by the preexisting special districts, and the rights of
 214 creditors and liens upon property shall not be impaired by such
 215 merger. Any claim existing or action or proceeding pending by or
 216 against any district that is a party to the merger may be
 217 continued as if the merger had not occurred, or the surviving
 218 district may be substituted in the proceeding for the district
 219 that ceased to exist. Prior to filing the ~~said~~ petition, the
 220 districts desiring to merge shall enter into a merger agreement
 221 and shall provide for the proper allocation of the indebtedness
 222 so assumed and the manner in which such ~~said~~ debt shall be
 223 retired. The approval of the merger agreement and the petition
 224 by the board of supervisors ~~elected by the electors of the~~

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225 | district shall constitute consent of the landowners within the
226 | district.

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