

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1129 Special Districts
SPONSOR(S): Economic Development & Tourism Subcommittee; Caldwell
TIED BILLS: **IDEN./SIM. BILLS:** SB 1518

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	11 Y, 0 N	Collins	West
2) Local & Federal Affairs Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Chapter 298, F.S., contains provisions governing the creation and operation of Water Control Districts (WCDs). These special districts are authorized to construct, complete, operate, maintain, repair, and replace any and all works and improvement necessary to execute a water control plan as defined in s. 298.005, F.S. The primary funding source for WCD activities is special assessments, which must be imposed on the property so that the assessment of a particular parcel represents a fair, proportional part of the total cost and maintenance of the improvement. Special assessments are limited to the property benefited, and are not taxes within the meaning of the general constitutional requirement that taxation be imposed at a uniform rate. WCDs may also issue bonds, not to exceed 90 percent of the total amount of special assessments levied.

Chapter 190, F.S., contains provisions governing the creation and operation of Community Development Districts (CDDs). These special districts are an alternative method available for use by public and private sectors to manage and finance basic services for community developments. Initial financing for a CDD is typically secured through the issuance of tax-free bonds, with the corresponding imposition of ad valorem taxes, special assessments, or service charges. 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.

The bill amends s. 189.412, F.S., to require the Department of Economic Opportunity (DEO) to collect and maintain the documents that provide for the creation of each special district in the state. The documents must be made available to the public on DEO's website by December 31, 2014. DEO may coordinate with the Department of State (DOS) to implement this requirement.

The bill designates ss. 190.001 through 190.049, F.S., as part I of ch. 190, F.S., and creates ss. 190.10 through 190.13, designated as part II of ch. 190, F.S., which allows for the conversion of certain WCDs to CDDs. The bill allows the popularly elected governing board of a WCD with previously expanded powers to pass a resolution authorizing a referendum on expanding the special powers the WCD may exercise. Following approval of the referendum, the WCD is required to submit a local bill to the Legislature that codifies the special powers approved by the referendum and reestablishes the WCD as a CDD in its charter.

The bill amends s. 298.76, F.S., adding the water control district-to-community development district conversion process created by the bill in ch. 190, F.S., to the list of instances described in s. 298.76, F.S., when a special act or local bill may expand the authority of a water control district.

See FISCAL COMMENTS.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Water Control Districts

Chapter 298, F.S., contains provisions governing the creation and operation of WCDs. Some of these provisions are briefly described below.

Creation of Water Control Districts

Section 298.01, F.S., restricts the creation of new WCDs to special acts of the Legislature (independent WCDs) and under the provisions of s.125.01, F.S. (dependent WCDs). Districts created by circuit court decree prior to July 1, 1980, are authorized to operate under the authority provided by ch. 298, F.S. There are 83 active WCDs in the state.¹

Board of Supervisors

Upon the formation of a WCD, landowners are required to elect a three-member board of supervisors. Supervisors serve three-year rotating terms, with one supervisor elected each year at a required annual meeting.² To qualify as a supervisor, a person must own property in the district and be a resident of the county in which the district is located, unless a district's special act provides otherwise.

The members of the board are reimbursed for their travel expenses pursuant to s. 112.061, F.S., but receive no payment for their service unless the landowners decide to provide compensation, which may not exceed \$50 per day for the time actually engaged in work for the district and in attending sessions of the board.

Pursuant to s. 298.22, F.S., the board of supervisors has full power and authority to construct, complete, operate, maintain, repair, and replace all works and improvements necessary to execute the district's water control plan.

Water Control Plans

A "water control plan" is any plan of reclamation, water management plan, or plan of improvement developed and implemented by a WCD.³ The approval and implementation process for water control plans has been removed from the purview of the circuit courts.

Before adopting a water control plan or plan amendment, the board of supervisors must adopt a resolution to consider the issue. The board must publish notice of a public hearing once a week for three consecutive weeks in a newspaper of general circulation. Individual notices are mailed to landowners, the jurisdictional water management district, the county commission, and any municipality in which the WCD is located.

¹ DEO maintains a list of all special districts, including WCD's at <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/> (last accessed on March 15, 2014)

² Section 298.11(2), F.S., provides that every acre of assessable land within a district represents one share, or vote, i.e., "one acre, one vote." Each landowner within a district is entitled to one vote per acre of assessable land that he or she owns. Landowners owning less than one accessible acre are entitled to one vote. Landowners owning more than one accessible acre are entitled to one additional vote for any fraction of an acre greater than 1/2 acre, when all of the landowner's acreage is aggregated for purposes of voting. The section allows proxy voting by landowners.

³ Section 298.225, F.S.

At the public hearing on the proposed plan or plan amendment, the board of supervisors must consider any objections and then determines whether or not to move forward with the plan. In the event the board decides to proceed, it must direct the district engineer to prepare a written report complete with maps and surveys. The report must include a full and complete water control plan for draining and reclaiming the lands described in the petition. Further, the report must contain an estimate of the costs and benefits of carrying out the water control plan.

A final hearing to consider approval of the engineer's report and the water control plan is noticed by publication, and held at a regularly scheduled board of supervisors' meeting within 60 days after the filing of the report with the district secretary.

Before final adoption of the engineer's report and water control plan or plan amendment under s. 298.301, F.S., the board of supervisors must determine that the estimated costs of construction contemplated in the plan or amendment are less than the benefits determined for the lands.

The board of supervisors must review the water control plan at least every five years following its adoption.

Revenue Sources

The primary funding source for WCD activities is special assessments, which must be imposed on the property so that the assessment of a particular parcel represents a fair, proportional part of the total cost and maintenance of the improvement. Special assessments are limited to the property benefited, and are not taxes within the meaning of the general constitutional requirement that taxation be imposed at a uniform rate.⁴

A board of supervisors is authorized to issue bonds, not to exceed 90 percent of the total amount of special assessments levied.⁵

Section 298.54, F.S., additionally authorizes a maintenance tax to maintain and preserve ditches, drains, or other improvements, and for the purpose of defraying the current expenses of the WCD, including any sum that may be required to pay state and county taxes on any lands that have been purchased. The maintenance tax is apportioned upon the basis of the net assessments of benefits assessed as accruing from original construction.

Powers of Water Control Districts

The supervisors of a WCD created pursuant to ch. 298, F.S., have powers provided in s. 298.22, F.S.⁶ These powers include the authority to construct, complete, operate, maintain, repair, and replace any and all works and improvements necessary to execute the water control plan adopted by that district.⁷ Additionally, this section provides that a WCD:

may build and construct any other works and improvements deemed necessary to preserve and maintain the works in or out of said district; acquire, construct, operate, maintain, use, purchase, sell, lease, convey, or transfer real or personal property, including pumping stations, pumping machinery, motive equipment, electric lines and all appurtenant or auxiliary machines, devices, or equipment.⁸

Limitation on Granting Additional Authority to Water Control Districts

Section 298.76, F.S., provides that there shall be no special law or general law of local application

⁴ Section 298.305, F.S.

⁵ Section 289.47(1), F.S.

⁶ Subject to the applicable provisions of chs. 373 and 403, F.S., the "Florida Water Resources Act of 1972" and the "Florida Air and Water Pollution Control Act" respectively.

⁷ Section 298.22, F.S.

⁸ Section 298.22(3), F.S.

granting additional authority, powers, rights, or privileges to any WCD formed pursuant to ch. 298, F.S. However, special or local legislation may:

- amend an existing special act that provides for the levy of an annual maintenance tax of a district;
- extend the corporate life of a district;
- consolidate adjacent districts; or
- authorize the construction or maintenance of roads for agricultural purposes.

Additionally, s. 298.76, F.S, authorizes special or local legislation that:

- changes the method of voting for a board of supervisors for any WCD;
- provides a change in the term of office of the board of supervisors and changes the qualifications of the board of supervisors of any WCD; and
- changes the governing authority or governing board of any WCD.

Finally, s. 298.76, F.S., provides that any special or local law enacted by the Legislature pertaining to a WCD prevails on the district and has the same force and effect as if it had been a part of ch. 298, F.S., at the time the district was created and organized.

Community Development Districts

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 basic community development services.⁹

Chapter 190, F.S., contains a number of provisions directing how community development districts (CDDs) are to be organized and administered. Section 190.041, F.S., gives the board of supervisors of a CDD or any aggrieved person recourse to remedies in law and equity as necessary to ensure compliance with Chapter 190. These remedies include injunctive relief to restrain any person violating the provisions of the act or any bylaws, resolutions, regulations, rules, codes, or orders adopted under the act. CDDs have the power of eminent domain relating to water, sewer, district roads, and water management.

Creation of Community Development Districts

CDDs may only be established through the processes spelled out in ch. 190, F.S.¹⁰ For CDDs over 1000 acres the Governor and Cabinet, acting as the Land and Water Adjudicatory Commission, must grant a petition for the establishment of a CDD.¹¹ CDDs of less than 1000 acres may only be established pursuant to an ordinance adopted by the county commission of the county having jurisdiction over the majority of land in the area in which the CDD is to be located.¹² There are 573 active CDDs in the state.¹³

Powers of Community Development Districts

CDDs are granted the following general powers:¹⁴

- to sue and be sued in the name of the CDD;
- to adopt and use a seal and authorize the use of a facsimile seal;
- to acquire and dispose of real and personal property;
- to make and execute contracts;

⁹ Section 190.002(1)(a), F.S.

¹⁰ Section 190.004, F.S.

¹¹ Section 190.005(1), F.S.

¹² Section 190.005(2), F.S.

¹³ DEO maintains a list of all special districts, including CDD's at <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/> (last accessed on March 15, 2014)

¹⁴ Section 190.011, F.S.

- to apply for coverage of its employees under the state retirement system;
- to contract for the services of consultants to perform engineering, planning, legal, or other professional services;
- to borrow money, and apply for and use grants or loans from the federal government, state government or a local government;
- to adopt rules and orders pursuant to the provisions of ch. 120, F.S., prescribing the powers, duties, and functions of the officers of the district;
- to maintain offices;
- to hold, control, acquire, and make use of public easements, dedications to public use, platted reservations for public purposes, or any reservations for those purposes authorized by law;
- to lease to or from any person, firm, corporation, association, or public or private entity;
- to borrow money and issue bonds, certificates, warrants, notes, or other evidence of indebtedness;
- to levy taxes and special assessments;
- to charge fees and other user charges;
- to exercise the right and power of eminent domain within the district;
- to cooperate with, or contract with, other governmental agencies;
- to assess and impose ad valorem taxes on lands within the district; and
- to impose special assessments authorized by ch. 190, F.S., and ch 170, F.S.

CDDs are granted authority to exercise special powers relating to public improvements and public facilities including:¹⁵

- water management and control;
- water supply, sewer and reuse;
- bridges or culverts;
- district roads;
- buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, and related signage;
- investigation and remediation costs associated with environmental contamination cleanup;
- conservation areas, mitigation areas, and wildlife habitat;
- any other project inside or outside the boundaries of a district when a local government issues a development order¹⁶ approving or requiring the construction or funding of a project by the district; and
- any other project, facility, or service required by the development approval, interlocal agreement, zoning condition, or permit issued by a governmental authority with jurisdiction in the district.

When a general-purpose local government grants it the authority, a CDD may also exercise powers related to the following additional systems and facilities:¹⁷

- parks and facilities for indoor and outdoor recreational, cultural, and educational uses;
- fire prevention and control, including fire stations, water mains and plugs, fire trucks, and other vehicles and equipment;
- school buildings and related structures which may be leased, sold, or donated to the school district;
- security;
- mosquito control; and
- waste collection and disposal.

A CDD may also adopt and enforce appropriate rules following the procedures of ch. 120, F.S., in connection with the provision of services through its systems and facilities.¹⁸ It may also adopt rules

¹⁵ Section 190.012(1), F.S.

¹⁶ Pursuant to s. 380.06, F.S. or s. 380.061, F.S.

¹⁷ Section 190.012(2), F.S.

¹⁸ Section 190.012(3), F.S.

necessary to enforce certain deed restrictions related to the use and operation of real property located within or outside of the CDD's boundaries.¹⁹

Revenue Sources

Initial financing is typically secured through the issuance of tax-free bonds, the corresponding imposition of ad valorem taxes, special assessments, or service charges.²⁰ Consequently, the burden of paying for the infrastructure is imposed on those buying land, housing, and other structures in the district rather than the other taxpayers of the county or municipality in which the district is located.

Effect of Proposed Changes

Special District Information Program

The bill amends s. 189.412, F.S., to require DEO to collect and maintain the documents that provide for the creation of each special district in the state. The documents must be made available to the public on DEO's website by December 31, 2014. DEO may coordinate with DOS to implement this portion of the bill.

Conversion of Water Control Districts

The bill designates ss. 190.001 through 190.049, F.S., as part I of ch. 190, F.S., and creates ss. 190.10 through 190.13, F.S., which are designated as part II of ch. 190, F.S.

Section 190.10, F.S., is created to allow for the conversion to a CDD from a WCD established under ch. 298, F.S., or by special act that incorporates the powers of ch. 298, F.S. Eligible WCDs include only those with popularly elected governing boards that have previously been granted expanded authority by Legislative act. The bill allows the governing board of a WCD to initiate a referendum by adoption of a resolution at a regularly scheduled board meeting. The resolution must establish the date of the referendum and specify the special powers that the governing board is requesting authorization to exercise.

Before conducting a referendum, a WCD must provide public notice of the referendum in a newspaper of general circulation in the county in which the WCD is located, or multiple newspapers if the WCD is located in multiple counties. The notice must be published twice, once in the fifth week and once in the second week before the referendum. The referendum must be conducted by the supervisor of elections by mail ballot of the registered voters residing within the WCD. The cost of the referendum will be paid by the WCD.

The bill creates s. 190.12, F.S., to establish the effect of a referendum. If a majority voted in the affirmative, following certification of the results, the governing board of the WCD may begin exercising the special powers approved by the referendum. If a majority did not vote in the affirmative, the governing board may not exercise the requested special powers, and may not call a subsequent referendum on the question of exercising those special powers for five years after the date of the referendum.

The bill creates s. 190.13, F.S., providing for codification and the conversion of a WCD to a CDD. At the next regular session of the Legislature occurring at least six months after approval of a referendum, the WCD must submit a local bill to the Legislature codifying in the WCD's charter the special powers approved by the referendum and reestablishing the WCD as a CDD. Upon the effective date of such special act of the Legislature, the WCD is converted to a CDD and governed by part II of ch. 190, F.S., and the district's special act.

¹⁹ Section 190.012(4), F.S.

²⁰ As authorized in ss. 190.021 & 190.035, F.S.

The bill amends s. 298.76, F.S., to add the water control district-to-community development district conversion process created by the bill in ch. 190, F.S., to the list of instances described in s. 298.76, F.S., when a special act or local bill may expand the authority of a water control district.

The bill provides an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1: Amends s. 189.412, F.S., providing for the collection and maintenance of special district charters by the DEO.

Section 2: Designates ss. 190.001 through 190.049, F.S. as part I of ch. 190, F.S., and creates ss. 190.10 through 190.13, F.S., designated as part II of ch. 190, F.S.

Section 3: Amends s. 298.76, F.S., providing for the conversion of a water control district to a community development district.

Section 4: Provides for an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

WCDs that choose to convert to CDDs may expand their taxing authority through referendum as CDDs have greater taxing authority than WCDs.

2. Expenditures:

WCDs that choose to conduct a referendum may have additional costs associated with the implementation of the referendum.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A WCD that expands its taxing authority may levy additional taxes and fees on citizens within its jurisdiction.

D. FISCAL COMMENTS:

DEO's agency analysis estimated that the changes to the current Special District website that are proposed in this bill will have a cost of between \$150,000 and \$200,000. DEO will also need between \$50,000 and \$100,000 for Other Personal Services employees to help with the collection, verification, and uploading of the Special District charters and charter amendments. Some of this cost will be recurring.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 25, 2014 the Economic Development & Tourism Subcommittee adopted three amendments and reported the bill favorably as a committee substitute.

Amendment 1 clarifies the special district creation documents DEO must collect and maintain on the department's website. It also allows DEO to coordinate with DOS to implement this portion of the bill. Finally, it sets a December 31, 2014 deadline for DEO to have the information available to the public on its website.

Amendment 2 adds the water control district-to-community development district conversion process created by the bill in ch. 190, F.S., to the list of instances described in s. 298.76, F.S., when a special act or local bill may expand the authority of a water control district.

Amendment 3 clarifies that only water control districts that have popularly elected governing boards and have been previously granted additional powers by the Legislature may pursue the conversion process created by the bill.

The analysis has been updated to reflect these changes.