

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/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	16 Y, 0 N, As CS	Miller	Rojas
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Chapter 298, F.S., governs 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 property within the district 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., governs the creation and operation of Community Development Districts (CDDs). These special districts are an alternative method 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.

CS/CS/HB 1129 designates ss. 190.001 through 190.049, F.S., as part I of Ch. 190, F.S., and creates ss. 190.10 through 190.14, authorizing the conversion of certain WCDs to CDDs. Under this new part II, the popularly elected governing board of a WCD with previously expanded powers will be authorized to call a referendum on whether the WCD may convert to a CDD and exercise certain special powers under s. 190.012, F.S. Following voter approval, the WCD must submit a local bill to the Legislature codifying the special powers approved by the voters into the district's charter and reestablishing the WCD as a CDD. Upon the local bill becoming law, the WCD would be converted to a CDD and authorized to exercise the approved powers.

The bill makes conforming changes to ss. 189.404(2), 190.049, and 298.76, F.S., exempting a special act or local law converting a WCD to a CDD under new part II, Ch. 190, F.S., from prohibitions against special acts or local laws exempting the district from certain requirements, creating a CDD other than as provided in part I, Ch. 190, F.S., or granting additional power or authority to a WCD. Additionally, new s. 190.14 would prohibit local laws granting additional powers to a CDD created under part II except those codifying powers approved by the voters. The creation of these provisions requires a three-fifths vote by each chamber.

The bill makes conforming changes to ss. 190.004(4), 190.005, and 190.4085 for the new conversion process. The bill amends s. 189.412, F.S., requiring the Department of Economic Opportunity (DEO) to collect and maintain the documents creating and empowering each special district in the state.

See FISCAL COMMENTS and CONSTITUTIONAL ISSUES.

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

Creation of Water Control Districts

Chapter 298, F.S., governs the creation and operation of water control districts (WCD). Creating new WCDs is limited to special acts of the Legislature (independent WCDs) or by county ordinance¹ (dependent WCDs).² 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 72 active WCDs in the state, 69 of which have elected boards.³

Powers of Water Control Districts

The board of supervisors for a WCD is authorized certain powers by statute.⁴ 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.⁵ 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.⁶

Limitation on Granting Additional Authority to Water Control Districts

Section 298.76(1), F.S., prohibits special laws or general laws of local application granting additional authority, powers, rights, or privileges to any WCD formed pursuant to Ch. 298, F.S. Exceptions are special or local legislation:

- amending an existing special act providing for the levy of an annual maintenance tax of a district;
- extending the corporate life of a district;
- consolidating adjacent districts; or
- authorizing the construction or maintenance of roads for agricultural purposes.

The statute expressly authorizes special or local legislation:

- changing the method of voting for a board of supervisors for any WCD;⁷
- changing the term of office for board members and the qualifications to serve on the board of supervisors in a WCD;⁸ and
- changing the governing authority or governing board of any WCD.⁹

¹ Under s. 125.01, F.S.

² Section 298.01, F.S.

³ 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)

⁴ Section 298.22, F.S., 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.

⁵ Section 298.22, F.S.

⁶ Section 298.22(3), F.S.

⁷ Section 298.76(2), F.S.

⁸ Section 298.76(3), F.S.

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 was a part of Ch. 298, F.S., at the time the district was created and organized.¹⁰

Prior to 1980, the statute authorized granting a WCD additional powers by special laws or general laws of local application.¹¹ In 1980, the Legislature adopted the present language prohibiting granting additional powers by special or local law, which bill passed each chamber by a three-fifths majority.¹² Under the Florida Constitution, a law passed with a three-fifths majority vote may be amended or repealed only by another three-fifths majority vote.¹³

Under s. 189.404(2), F.S., no special law or general law of local application may exempt an independent district from:

- the election requirements of s. 189.405, F.S.;
- the requirements for bond referenda under s. 189.408, F.S.; or
- the requirements for reporting, notice, or public meetings under ss. 189.4085, 189.415, 189.417, or 189.418, F.S.

Section 189.404(2), F.S., also was passed by a three-fifths vote in both chambers.¹⁴ Accordingly, any special act or local law amending the power and authority of a WCD must also comply with s. 189.404(2), F.S.

Community Development Districts

Chapter 190, F.S.,¹⁵ states the exclusive and uniform procedures for establishing and operating a community development district (CDD).¹⁶ This type of independent special district¹⁷ is an alternative method to manage and finance basic services for community development.¹⁸ There are currently 573 active CDDs in Florida.¹⁹

Creation of Community Development Districts

The method for establishing a CDD depends upon its size. CDDs of 1,000 acres or more are established exclusively by petitioning the Florida Land and Water Adjudicatory Commission (FLWAC)²⁰

⁹ Section 298.76(4), F.S.

¹⁰ Section 298.76(5), F.S.

¹¹ Section 298.76(1), F.S. (1979).

¹² Ch. 80-281, s. 5, LOF. As HB 914, as amended, the bill passed the House on 6/4/1980 (107-0) and the Senate on 6/5/1980 (33-0). See, HJ 01023 (1980) and SJ 00727 (1980).

¹³ Art. III, s. 11(a)(21), Fla. Const.; *School Board of Escambia Co. v. State*, 353 So. 2d 834, 839 (Fla. 1977). The exact text of Art. III, s. 11(a)(21), Fla. Const., is “SECTION 11. Prohibited special laws.— (a) There shall be no special law or general law of local application pertaining to: ... (21) any subject when prohibited by general law passed by a three-fifths vote of the membership of each house. Such law may be amended or repealed by like vote.”

¹⁴ Ch. 89-169, s. 67, LOF.

¹⁵ Section 190.001, F.S., the “Uniform Community Development District Act of 1980.”

¹⁶ Sections 190.004 & 190.005, F.S.

¹⁷ A “special district” is “a local unit of special purpose... government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.” Section 189.403(1), F.S. An “independent special district” is characterized by having a governing body the members of which are not identical in membership to, nor all appointed by, nor any removable at will by, the governing body of a single county or municipality, and the district budget cannot be affirmed or vetoed by the governing body of a single county or municipality. Section 189.403(3), F.S.

¹⁸ Section 190.003(6), F.S.

¹⁹ Florida Department of Economic Opportunity, Division of Community Development, Special District Information Program (DEO), *The Official List of Special Districts Online, Create Your Own Report*, at <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/createspreadsheet.cfm> (accessed 2/17/2014). While the general powers of a CDD include the authority to issue bonds, s. 190.011(9), F.S., one CDD listed by DEO has no such authority.

²⁰ Created by s. 380.07, F.S., the FLWAC is comprised of the Administration Commission, which in turn is created by s. 14.202, F.S., and is composed of the Governor and Cabinet. This distinction affects the requirements for an affirmative vote by the FLWAC. Unless

to adopt an administrative rule creating the district.²¹ The statute requires each petition to contain specific information, including the written consent to establishing the CDD by all landowners²² of real property to be included in the district.²³ Prior to filing the petitioner must submit copies of the petition and pay separate filing fees of \$15,000 each to the county or municipality in which the proposed CDD will be located and also to each municipality contiguous with or containing a portion of the land proposed for inclusion in the district.²⁴ The counties and municipalities required to receive copies of the petition may conduct public hearings and express support or objection to the proposed district by resolution and by stating their position before the FLWAC.²⁵ Additionally, a public hearing on notice must be held in the county where the CDD will be located; these hearings are conducted under the requirements of the Administrative Procedure Act²⁶ before an administrative law judge.²⁷ Once the hearing process is complete, the entire record is submitted to the FLWAC, reviewed by staff, and placed on the FLWAC meeting agenda for final consideration with the petition.²⁸ If the petition is approved, staff of the FLWAC initiates proceedings to adopt the rule creating the CDD.

CDDs of less than 1,000 acres are established exclusively by ordinance²⁹ of the county having jurisdiction over the majority of land in the area in which the CDD is to be located, with certain exceptions.³⁰ A petition to establish a CDD is filed with the county commission.³¹ After conducting a local public hearing before an administrative law judge³² the commission may adopt an ordinance creating the CDD.³³ If any of the land proposed for inclusion in the CDD lies within the area of a municipality the county cannot create the district without approval of the affected municipality.³⁴

If all land proposed for inclusion in the CDD lies within the territorial jurisdiction of a municipality, the petition is filed with that municipality which then exercises the establishment authority normally exercised by the county commission.³⁵ The CDD would be created by municipal ordinance. Within 90 days of receiving the petition, the county commission (or municipality, as applicable) may transfer the petition to the FLWAC.³⁶ Finally, if all land of the proposed CDD lies within the territorial jurisdiction of two or more municipalities, the petition must be filed with the FLWAC even if the total area is less than 1,000 acres.³⁷

The exclusive charter for any CDD are the terms stated in ss. 190.006 – 190.041, F.S., including the special powers authorized by s. 190.012, F.S., granted to the CDD at the discretion of the creating

otherwise provided in law, the statutory voting requirements for the Administration Commission apply and affirmation by the FLWAC requires approval by the Governor and at least 2 Cabinet members.

²¹ Section 190.005(1), F.S.

²²“Landowner” means the owner of a freehold estate as appears by the deed record, including a trustee, a private corporation, and an owner of a condominium unit; it does not include a reversioner, remainderman, mortgagee, or any governmental entity, who shall not be counted and need not be notified of proceedings under this act. Landowner shall also mean the owner of a ground lease from a governmental entity, which leasehold interest has a remaining term, excluding all renewal options, in excess of 50 years.” Section 190.003(14), F.S.

²³ Section 190.005(1)(a), F.S.

²⁴ Section 190.005(1)(b), F.S.

²⁵ Section 190.005(1)(c), F.S.

²⁶ Ch. 120, F.S. The general hearing requirements are stated in ss. 120.569 and 120.57(1), F.S.

²⁷ Section 190.005(1)(d), F.S.; Rules 42-1.009 & 42-1.012, F.A.C. Chapter 42-1, F.A.C., the procedural rules of the FLWAC, remains substantially unchanged since its adoption in 1982.

²⁸ A similar process is followed when the FLWAC considers a proposed merger of existing CDDs. See, FLWAC Agenda Item 1 and attachments (8/16/2011), at <http://www.myflorida.com/myflorida/cabinet/agenda11/0816/index.html> (accessed 2/21/2014).

²⁹ County commissions are authorized to enact ordinances consistent with general law. Art. VIII, s. 1, Fla. Const.; s. 125.01(1)(t), F.S.

³⁰ Section 190.005(2), F.S.

³¹ Section 190.005(2), F.S. The petition must contain the same information as required for submission to the FLWAC. Section 190.005(2)(a), F.S.

³² Section 190.005(2)(b), F.S. The hearing must follow the same notice and procedural requirements as the local hearing for petitions before the FLWAC.

³³ Section 190.005(2)(d), F.S.

³⁴ Section 190.005(2)(e), F.S.

³⁵ Section 190.005(2)(e), F.S.

³⁶ Section 190.005(2)(f), F.S.

³⁷ Section 190.005(2)(e), F.S.

authority.³⁸ Within 30 days of the effective date of the rule or ordinance creating the CDD, the district must record a notice of being established in the property records of each county where it is located.³⁹

Powers of Community Development Districts

A CDD must act within the constraints of applicable comprehensive plans, ordinances, and regulations of the local general purpose government.⁴⁰ Among the statutory grant of general powers to every CDD are the authority to sue and be sued, acquire and dispose of real and personal property, make and execute contracts, borrow money, apply for governmental grants or loans, exercise the power of eminent domain within the district, and to hold, control, acquire, and make use of public easements, dedications to public use, platted reservations for public purposes.⁴¹ CDDs are also empowered to borrow money and issue bonds, certificates, warrants, notes, or other evidence of indebtedness, levy taxes and special assessments, and to assess and impose ad valorem taxes on lands within the district.⁴² CDDs also have certain rulemaking authority under Ch. 120, F.S.⁴³

CDDs are also granted authority to exercise special powers relating to public improvements and public facilities, including:⁴⁴

- 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 order⁴⁵ 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 the general-purpose local government within which jurisdiction a particular power will be exercised consents, a CDD may also exercise specific powers related to the following additional systems and facilities:⁴⁶

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

Section 190.049, F.S., prohibits any special law or general law of local application from creating a CDD with the powers specified in two or more paragraphs of s. 190.012, F.S., unless the CDD is created

³⁸ Section 190.004(4), F.S.

³⁹ Section 190.4085, F.S.

⁴⁰ Section 190.004(3), F.S.

⁴¹ Section 190.011, F.S.

⁴² Id.

⁴³ Sections 190.011(5), 190.012(3), (4), F.S.

⁴⁴ Section 190.012(1), F.S.

⁴⁵ Pursuant to s. 380.06, F.S. or s. 380.061, F.S.

⁴⁶ Section 190.012(2), F.S. The rule or ordinance establishing the CDD may restrict the special powers authorized in this subsection.

Section 190.005(1)(f), (2)(d), F.S.

pursuant to the requirements of s. 189.404, F.S. Section 190.049, F.S., also was passed by a three-fifths vote in each chamber.⁴⁷

Effect of Proposed Changes

Special District Information Program

The bill amends s. 189.412, F.S., requiring DEO to collect and maintain the documents creating 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 to implement this requirement.

Conversion of Water Control Districts

New Part II, Ch. 190, F.S.

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 190.14, F.S., designated as part II of Ch. 190, F.S.

Section 190.10, F.S., authorizes the conversion to a CDD of 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 were granted expanded authority by the Legislature prior to July 1, 2014. The governing board of a WCD is authorized to initiate a referendum on the question of whether the WCD should be converted to a CDD to exercise one or more of the special powers under s. 190.012, F.S. The board must adopt a resolution at a regularly scheduled board meeting called to determine whether to conduct the referendum, establishing the date of the referendum, and specifying the special powers the governing board seeks to exercise. 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.

Section 190.11, F.S., provides the form of the ballot question and the notice requirements for the referendum. A WCD must provide public notice of the referendum in a newspaper of general circulation in each county where the WCD is located. The notice must be published twice, once in the fifth week and once in the second week before the referendum.

The bill creates s. 190.12, F.S., establishing the effect of a referendum. If approved by the majority, following certification of the results the governing board of the WCD must draft a proposed local bill codifying the approved powers into the district's charter and reestablishing the WCD as a CDD. If a majority disapproves, the WCD may not call a subsequent referendum on the same question for five years after the date of the referendum.

New s. 190.13, F.S., provides for codification and the conversion of a WCD to a CDD. At the next regular session of the Legislature after approval in the referendum, the WCD must submit the 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.

New section 190.14, F.S., prohibits special and general acts of local application granting additional authority, powers, rights, or privileges to a CDD created under part II except those local laws codifying additional powers approved by the voters in the district.

Exceptions to Prohibitions against Certain Special or Local Laws

The bill amends ss. 189.404(2), 190.049, and 298.76, F.S., exempting a special act or local law authorizing the conversion of a WCD to a CDD under new part II, Ch. 190, F.S., from the following prohibitions against special acts or local laws:

⁴⁷ Chs. 80-407, s. 2, 84-360, s. 16, and, most recently, 99-378, s. 47, LOF.

- exempting a converted CDD from certain requirements for special districts (s. 189.404(2));
- creating an independent district authorized to exercise two or more powers under s. 190.012, F.S., unless the district is created under s. 189.404, F.S. (s. 190.049); and
- granting additional power or authority to a WCD (s. 298.76).

Three-Fifths Majority Requirement

Pursuant to s. 11(a)(21), article III, of the Florida Constitution, the amendments to ss. 189.404(2), 190.049, and 298.76, F.S., require a three-fifths vote by each chamber. For the prohibition created in s. 190.14, F.S., to be effective, that section also requires a three-fifths vote by each chamber.

Conforming Changes to Ch. 190, F.S.

Sections 190.004(4) and 190.005, F.S., are amended to exempt a CDD created by conversion of a WCD under part II from the exclusive requirements to charter and establish CDDs. Section 190.0485, F.S., is amended to include a CDD created under part II in the requirement for recording notice of its creation.

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

B. SECTION DIRECTORY:

- Section 1: Amends s. 189.404(2), F.S., exempting the conversion of a WCD to a CDD under part II, Ch. 190, F.S., from the prohibition against certain special or local laws.
- Section 2: Amends s. 189.412, F.S., providing for the collection and maintenance of special district charters by the DEO.
- Section 3: Amends s. 190.004(4), F.S., exempting conversions of WCDs under part II from the exclusive charter requirements of Ch. 190., F.S.
- Section 4: Amends s. 190.005, F.S., exempting conversions of WCDs under part II from the exclusive requirements to establish a CDD.
- Section 5: Amends s. 190.0485, F.S., to require a CDD created under part II to record notice of being established in the public records.
- Section 6: Amends s. 190.049, F.S., creating an exception to the statutory prohibition for special or local laws codifying the special powers approved by referendum for a WCD and reestablishing the district as a CDD.
- Section 7: Designates ss. 190.001 through 190.049, F.S. as part I of Ch. 190, F.S., and creates ss. 190.10 through 190.14, F.S., designated as part II of Ch. 190, F.S.
- Section 8: Amends s. 298.76, F.S., providing authority for a special law or local law converting a water control district to a community development district under part II, Ch. 190.
- Section 9: Provides 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 choosing to convert to CDDs may expand their taxing authority through referendum as CDDs have greater taxing authority than WCDs.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

DEO's agency analysis estimated the changes to the current Special District website proposed in the CS will have a cost of between \$150,000 and \$200,000. DEO estimates it will 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:

Pursuant to Art. III, s. 11(a)(21), Fla. Const., a statute passed by a three-fifths majority in each chamber and prohibiting certain special laws or general laws of local application may be amended or repealed only by a similar vote. Passage of amendments to ss. 189.404(2), 190.049, and 298.76(1), F.S., will require a three-fifths vote in both chambers. For proposed s. 190.14, F.S., to provide an effective prohibition against authorizing additional powers to a CDD without a referendum, it also must be adopted by three-fifths in each chamber.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 3, 2014, the Local & Federal Affairs Committee approved a strike-all amendment to CS/HB 1129 and approved the bill as a committee substitute. This analysis is drawn to the committee substitute.