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 Committee on Community Affairs

BILL:	CS/SB 1156
INTRODUCER:	Community Affairs Committee and Senator Hutson
SUBJECT:	Community Development Districts
DATE:	January 15, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Fav/CS**
2.			CM	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1156 revises the acreage size requirements that determine the track that a prospective Community Development District (CDD) must undertake as it seeks to become established. The bill also makes explicit that a CDD is not prohibited from contracting with a towing operator to remove a vehicle or vessel from a CDD-owned facility or property. The bill also provides a new process for the merger of CDDs—permitting up to five CDDs to combine into one surviving CDD, providing the composition for the surviving CDD board of supervisors, and providing other requirements for merger.

II. Present Situation:

Community Development Districts

Community Development Districts are special-purpose units of local government established to help Florida development and growth "pay for itself" by providing infrastructure and services for new and existing communities when such infrastructure and services would not otherwise be available from other local, general-purpose governments like counties and municipalities.[1] CDDs serve as an alternative means of financing, constructing, acquiring, operating, and maintaining public infrastructure improvements to communities throughout Florida such as roads, utilities,

[1] Jere L. Earlywine and Katie S. Buchanan, *The Role of Community Development Districts In Florida*, Florida Environmental and Land Use Law Treatise 25.10-1 (2015).

hardscaping, landscaping, streetlights, stormwater infrastructure, conservation and mitigation areas, recreation facilities, and various other improvements allowed by statute.[2]

Creation of CDDs

There are two different tracks for the establishment of a CDD: one for CDDs with 1,000 acres or more and one for CDDs with less than 1,000 acres. CDDs of 1,000 acres or more are reviewed at a state and local level and are established by administrative rule. Smaller CDDs of less than 1,000 acres are reviewed at a local level and establish by ordinance, though local governments may refer a petition for a smaller CDD to the state for processing.

CDDs of 1,000 Acres or More in Size

In order to establish a CDD of 1,000 acres or more, a petition must be filed with the FLWAC. An establishment petition filed with FLWAC must contain all of the following elements:[3]

- A metes and bounds description of the external boundaries of the CDD;
- The written consent to the establishment of the CDD by all landowners whose real property is to be included in the CDD;
- A designation of five persons to be the initial members of the board of supervisors, who shall serve in that office until replaced by elected members as provided in s. 190.006, F.S.;
- The proposed name of the CDD;
- A map of the proposed district showing current major trunk water mains and sewer inceptors and outfalls if in existence;
- Based upon available data, the proposed timetable for construction of the district services and the estimated cost of constructing the proposed services;
- A designation of the future general distribution, location, and extent of public and private uses of land proposed for the area within the CDD; and
- A statement of estimated regulatory costs in accordance with the requirements of s. 120.541, F.S.

Before filing the petition, a petitioner must pay a $15,000 filing fee to each of the municipalities or counties in which the CDD would be located.[4] After the petition is filed, a local public hearing on the petition is conducted pursuant to the Administrative Procedure Act, ch. 120, F.S., in the county where the proposed CDD would be located.[5] This hearing is conducted by an administrative law judge selected by the Division of Administrative Hearings (DOAH). The petitioner is required to publish notice of the hearing in a newspaper of paid general circulation for 4 consecutive weeks immediately before the hearing and the notice must identify the date, time, and location of the hearing and describe the area to be included in the CDD, along with other applicable information.[6] All units of general-purpose local government which are affected and the general public must be given an opportunity to appear at the hearing and be given the ability to make oral or written comments on the petition.[7] Furthermore, each affected county and

[2] *Id.*
[3] Section 190.005(1)(a), F.S.
[4] Section 190.005(1)(b), F.S.
[5] Section 190.005(1)(d), F.S.
[6] *Id.*
[7] *Id.*

municipality is authorized to conduct its own public hearing to recommend whether the petition should be granted or denied by FLWAC, but the hearing must take place before the DOAH hearing and must be concluded within 45 days after the petition is filed.[8] After such a hearing, the county or municipality may adopt a resolution expressing its support of, or objection to, the granting of the petition by FLWAC.[9]

The administrative law judge presiding over the DOAH hearing will prepare a report and recommendation to FLWAC. In determining whether to grant or deny an establishment petition, FLWAC is required to consider the entire record from the local DOAH hearing, the transcript from the hearing, any resolutions adopted by counties or municipalities addressing the petition, and must ultimately make a determination after considering each of the factors set forth in s. 190.005(1)(e), F.S.

If a CDD established by FLWAC wants any of the special powers enumerated in s. 190.012, F.S.,[10] it must request such powers from the local general-purpose government within the jurisdiction of which they are to be exercised.

CDDs Less Than 1,000 Acres in Size

For a CDD less than 1,000 acres in size, the petition is filed with the county or municipality in which the CDD would be located and must contain the same information as a petition filed with FLWAC.[11] However, municipalities and counties may impose additional petition requirements through policymaking or ordinance. Some municipalities and counties have also set their own filing fees, which are generally due at the time of filing.[12]

Petitions to establish a CDD less than 1,000 acres in size are processed similarly to FLWAC petitions with a few exceptions. The petition must contain the same elements as a FLWAC, but the petition is submitted to the municipality or county in which the proposed CDD would be located rather than FLWAC.[13] Furthermore, instead of a DOAH hearing, the municipality or county must conduct its own public hearing using the same requirements and procedures—i.e., the hearing must be held in the municipality or county in which the CDD would be located, must be noticed for 4 consecutive weeks in a newspaper of general circulation, and must allow all affected units of general-purpose local government and the general public an opportunity to appear at the hearing and present oral or written comments.[14] As is the case with FLWAC, the municipality or county commission must consider the entire record of the public hearing and the factors set forth in s. 190.005(1)(e), F.S., to determine whether to grant the petition.[15] Any ordinance adopted by a municipality or county establishing a CDD may only contain those

[8] Section 190.005(1)(c), F.S.
[9] *Id.*
[10] Such powers include the ability to finance, construct, acquire, operate, and maintain parks and facilities for certain uses; fire prevention and control; school buildings and related structures; security; control and elimination of mosquitoes; and waste collection and disposal. Section 190.012(2), F.S.
[11] Section 190.005(2), F.S.
[12] *Earlywine and Buchanan, supra* note 1, at 25.10-5.
[13] Section 190.005(2), F.S.
[14] Section 190.005(2)(b), F.S.
[15] Section 190.005(2)(c), F.S.

matters permitted to be included in a FLWAC rule as set forth in s. 190.005(1)(f), F.S., unless the county or municipality consents to any of the optional powers under s. 190.012, F.S.[16]

Boundary Amendments

A CDD may amend its boundaries after it has been established. Section 190.046, F.S., governs this process. A boundary amendment petition must contain a metes and bounds description of the boundaries of the CDD, and a statement of estimated regulatory costs.[17] If the petitioner seeks to expand the CDD area, the petition shall describe "the proposed timetable for construction of any district services to the area, the estimated cost of constructing the proposed services, and the designation of the future general distribution, location, and extent of public and private uses of land proposed for the area by the future land use plan element of the adopted local government local comprehensive plan."[18] If the petitioner seeks to contract the CDD, the petition shall describe "what services and facilities are currently provided by the district to the area being removed, and the designation of the future general distribution, location, and extent of public and private uses of land proposed for the area by the future land element of the adopted local government comprehensive plan."[19] Generally, the boundary amendment petition must be filed with the entity that established the CDD.[20]

If FLWAC established the CDD, the boundary amendment petition must be filed with FLWAC.[21] The petitioner must pay a filing fee of $1,500 to the county if the CDD or the land to be added to or deleted from the CDD is located within an unincorporated area, or to the municipality if the CDD or the land to be added to or deleted from the CDD is located within an incorporated area, and to each municipality the boundaries of which are contiguous with or contain all or a portion of the land within or to be added to or deleted from the external boundaries of the CDD.[22]

Each county and municipality has the opportunity to hold a public hearing as provided in s. 190.005(1)(c), F.S.[23] However, the public hearing shall be limited to consideration of the contents of the petition and whether the petition for amendment should be supported by the county or municipality.[24] Within 45 days after the conclusion of the public hearing, the CDD board of supervisors must transmit to FLWAC the full record of the local hearing, the transcript of the hearing, any resolutions adopted by the local general-purpose governments, and its recommendation stating whether to grant the petition for amendment.[25] The FLWAC must then determine whether to grant the petition based on the criteria used for establishment of CDDs, as set forth in s. 190.005(1)(e), F.S.[26]

[16] Section 190.005(2)(d), F.S.
[17] Section 190.046(1)(a), F.S.
[18] *Id.*
[19] *Id.*
[20] Section 190.046(1)(b) and (c), F.S.
[21] Section 190.046(1)(d), F.S.
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*

For FLWAC-established CDDs, a boundary amendment may not result in a cumulative net total greater than 10 percent of the land in the initial CDD and in no event greater than 250 acres on a cumulative net basis.[27] For a CDD established by a municipality or a county, a boundary amendment may not result in a cumulative net total greater than 50 percent of the land in the initial CDD and in no event greater than 500 acres on a cumulative net basis.[28] If the boundary amendment exceeds these criteria, the boundary amendment petition may still proceed but it is processed in accordance with s. 190.005, F.S, which has additional requirements including additional notice similar to that necessary for a new establishment. Any resulting administrative rule or ordinance may only amend the boundaries of the CDD; it does not result in the establishment of a new CDD or a change to the CDD election timeframes.[29]

In all cases of a petition to amend the boundaries of a CDD, the filing of the petition by the CDD constitutes consent of the landowners within the amended CDD.[30] As a result, the only other consent necessary for a boundary amendment is the written consent of those landowners whose land is to be added to or removed from the CDD.[31]

Merger of CDDs

A CDD may merge with other community development districts upon filing a petition for merger, which shall include the elements set forth in s. 190.005(1), F.S., and which shall be evaluated pursuant to the criteria set forth in s. 190.005(1)(e), F.S.[32] The petition shall state whether a new district is to be established or whether one district shall be the surviving district.[33] The district may merge with any other special districts upon filing a petition of establishment of a CDD pursuant to s. 190.005, F.S.[34] The government formed by a merger involving a CDD shall assume all indebtedness of, and receive title to, all property owned by the preexisting special districts, and the rights of creditors and liens upon property are not impaired by such merger.[35] Any claim existing or action or proceeding pending by or against any CDD that is a party to the merger must enter into a merger agreement and must provide for the proper allocation of the indebtedness and the manner in which such debt is retired.[36] The approval of the merger agreement and the petition by the board of supervisors of the CDD constitutes consent of the landowners within the district.[37]

III. Effect of Proposed Changes:

Section 1 amends s. 190.005, F.S., revising the criteria for determining which establishment process a CDD must undertake. A CDD of 2,500 acres or more, rather than 1,000 acres or more, will now petition FLWAC for the establishment of a CDD. On the other hand, CDDs with less

[27] Section 190.046(1)(e), F.S.
[28] *Id.*
[29] Section 190.005(1)(f), F.S.
[30] Section 190.005(1)(g), F.S.
[31] *Id.*
[32] Section 190.046(3), F.S.
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*

than 2,500 acres will now petition the county or municipality in which the CDD would be located.

Section 2 amends s. 190.012, F.S., providing that a CDD is not prohibited from contracting with a towing operator to remove a vehicle or vessel from a district-owned facility or property. This is despite the provision in s. 190.012(2)(d), F.S., which requires prior consent from the local general-purpose government in order for a CDD to "have the power to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for…security." When removing a vehicle or vessel from a CDD-owned facility or property, the CDD has the same authorization and is subject to the same notice and procedural requirements as provided in s. 715.07, F.S., for the owner or lessee of private property. The selection of a towing operator by a CDD is not subject to public bidding if the towing operator is included in an approved list of towing operators maintained by the local government that has jurisdiction over the CDD facility or property.

Section 3 amends s. 190.046, F.S., revising the process for amending CDD boundaries. For FLWAC-established CDDs, the limitation on boundary amendments is raised from a maximum cumulative net total no greater than 10 percent of the initial land and no greater than 250 acres on a cumulative net basis to no greater than 50 percent of the initial land and no greater than 1,000 acres on a cumulative net basis. For municipality- or county-established CDDs, the limitation is raised from no greater than 500 acres on a cumulative net basis of the initial land to no greater than 1,000 acres on a cumulative net basis. The 50 percent maximum in current law does not change for CDDs established by county or municipal ordinance.

The section also provides that up to five CDDs whose boards of supervisors are composed entirely of qualified electors and established by the same local general-purpose government may merge into one surviving district through adoption of an ordinance by the local general-purpose government, regardless of the size of the surviving merged district. The filing of a petition by the majority of the members of each of the district board of supervisors seeking to merge constitutes consent of the landowners within each applicable district.

The merger agreement entered into between the district boards must meet the requirements in s. 190.046(3), F.S., and must also meet the following requirements:

- The surviving merged district board must consist of five elected board members.
- Each at-large board seat must represent the entire geographic area of the surviving merged district.
- Each CDD that seeks to merge is entitled to a fair allocation of board membership to represent the districts being merged. To that end:
    - If two districts merge, two board members shall be elected from each of the districts and one board member shall be elected at-large.
    - If three districts merge, one board member shall be elected from each of the three districts and two board members shall be elected at-large.
    - If four districts merge, one board member shall be elected from each of the four districts and one board member shall be elected at-large.
    - If five districts merge, one board member shall be elected from each of the five districts.

- The election of district supervisors for the surviving merged district must be held at the next general election following the merger, at which time all terms of preexisting supervisors shall end and the merger shall be legally in effect.
- Before filing a petition to merge by ordinance of the local general-purpose government, each district proposing to merge must hold a public hearing within its district for the purpose of providing information about and taking public comment on the proposed merger, merger agreement, and assignment of district supervisor seats on the surviving merged district board. Notice of the hearing must be published at least 14 days before the hearing. If, after the public hearing, a district board decides that it no longer wants to merge and cancels the merger agreement, the remaining districts must each hold another public hearing on the revised merger agreement. A petition to merge may not be filed for at least 30 days after the last public hearing held by the districts proposing to move.

Section 4 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The merger of CDDs may result in administrative cost savings which may be passed on to residents.

C. Government Sector Impact:

The FLWAC may see fewer applications for the establishment of a CDD, and counties and municipalities may see more applications, as CDDs between 1,000 and 2,499 acres will apply to the county or municipality in which it is to be located rather than FLWAC.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 190.005, 190.012, and 190.046 of the Florida Statutes.

IX. Additional Information:

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

CS by Community Affairs on January 19, 2016:
Restores the requirement in current law that a petitioner publish notice of the hearing for the establishment of a CDD in a newspaper of paid general circulation for 4 consecutive weeks immediately before the hearing. In addition, provisions regarding merger are conformed to HB 971 with the only substantive changes being the removal of a provision regarding the possibility of a second merger and the additional requirement that each at-large board seat after merger represent the entire geographic area of the surviving merged district.

B. Amendments:

None.