

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 Rules

BILL: CS/SB 1156

INTRODUCER: Community Affairs Committee and Senator Hutson

SUBJECT: Community Development Districts

DATE: February 23, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Fav/CS
2.	Harmsen	McKay	CM	Favorable
3.	Present	Phelps	RC	Pre-meeting

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 empowered to contract 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 established 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 Size³

In order to establish a CDD of 1,000 acres or more, a petition must be filed with the Florida Land and Water Adjudicatory Commission (FLWAC). The FLWAC consists of the Governor and Cabinet, and is established under s. 380.07, F.S. The FLWAC's duties generally require it to act to implement statutory responsibilities to protect Florida's natural resources and environment. This includes review of issues regarding water management decisions, state land acquisition, Areas of Critical State Concern, and developments of regional impact, in addition to creation and dissolution of CDDs.⁴

An establishment petition must be filed with the FLWAC and contain all of the following:⁵

- 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 must 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.⁶ 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

² *Id.*

³ Section 190.005, F.S.

⁴ Florida Land and Water Adjudicatory Commission, Statement of Agency Organization and Operation, (Dec. 2015) available at: <http://www.myflorida.com/myflorida/cabinet/flwac/flwac.pdf> (last visited Feb. 15, 2016).

⁵ Section 190.005(1)(a), F.S.

⁶ Section 190.005(1)(b), F.S.

county where the proposed CDD would be located.⁷ 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.⁸ 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.⁹ Furthermore, each affected county and municipality is authorized to conduct its own public hearing to recommend whether the petition should be granted or denied by the FLWAC, but the hearing must take place before the DOAH hearing and must be concluded within 45 days after the petition is filed.¹⁰ 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 the FLWAC.¹¹

The administrative law judge presiding over the DOAH hearing will prepare a report and recommendation to the FLWAC.¹² In determining whether to grant or deny an establishment petition, the 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.

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 the FLWAC.¹³ 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.¹⁴

Petitions to establish a CDD less than 1,000 acres in size are processed similarly to the FLWAC petitions with a few exceptions. The petition must contain the same elements as a FLWAC petition, but the petition is submitted to the municipality or county in which the proposed CDD would be located rather than the FLWAC.¹⁵ 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.¹⁶ As is the case with

⁷ Section 190.005(1)(d), F.S.

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 190.005(1)(c), F.S.

¹¹ *Id.*

¹² Section 190.005(1)(d), F.S.; Section 120.57(k), F.S.

¹³ Section 190.005(2), F.S.

¹⁴ *Earlywine and Buchanan, supra* note 1, at 25.10-5.

¹⁵ Section 190.005(2), F.S.

¹⁶ Section 190.005(2)(b), F.S.

the 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.¹⁷ Any ordinance adopted by a municipality or county establishing a CDD may only contain those 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.¹⁸

Powers of the CDD

CDDs are local units of special-purpose government that have limited authority, subject to the powers and duties enumerated in ch. 190, F.S.¹⁹

The CDD's general powers²⁰ include:

- The power to sue and be sued;
- The ability to contract for specific services, pursuant to the public bidding requirements of s. 190.033, F.S.;
- The authority to adopt rules and orders pursuant to ch. 120, F.S., that describe the powers, duties, and functions of the district's officers; the conduct of the district's business; the maintenance of records; and the form of certificates that evidence tax liens and all of the CDD's other documents and records;
- The right to raise user charges or fees, subject to board approval, in instances in which the money is necessary for the conduct of the district's activities and services, to assess ad valorem taxes pursuant to ch. 190, F.S., and to levy special assessments pursuant to ch. 170, F.S.; and
- To cooperate with, or contract with, other governmental agencies, in connection with any of the powers, duties, or purposes authorized by ch. 190, F.S.

If a CDD wants any of the special powers enumerated in s. 190.012, F.S.,²¹ it must request such powers from the local general-purpose government within the jurisdiction of which they are to be exercised. The CDD's special powers²² include the powers to finance, construct, acquire, operate and maintain the following:

- Water management and control;
- Road and roadway improvements, such as street lights, landscaping, and placement of electric utility lines underground;
- Construction of parks and facilities for recreational, cultural, and educational uses;
- Fire prevention and control;
- School buildings and related structures and site improvements;
- Security, including, but not limited to, construction of guardhouses, fences and gates, electronic intrusion-detection systems, and patrol cars.

¹⁷ Section 190.005(2)(c), F.S.

¹⁸ Section 190.005(2)(d), F.S.

¹⁹ *See, e.g.*, ss. 190.03(6), 190.011, and 190.012, F.S.

²⁰ Section 190.011, F.S.

²¹ 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.

²² Section 190.012, F.S.

Removal of Abandoned Property

Cities and municipalities may remove abandoned property, in accordance with their local codes and ordinances, pursuant to s. 705.1015, F.S. Private property owners, including condominiums and businesses, may have a vehicle or vessel towed from their property in accordance with s. 715.07, F.S., which requires notice of the applicable towing company in the location from which the vehicle was towed, storage of the towed vehicle within a specific radius of its towed location, and availability of the vehicle during regular business hours, or within 1 hour of request for retrieval. In addition, the towing company must give notice of the removed vehicle to municipal police or the sheriff within 30 minutes after removal.²³

Because ch. 190, F.S., does not specifically enumerate a power to tow abandoned vehicles, it is unclear whether CDDs currently have the ability to contract with a tow truck operator to remove vehicles from CDD-owned property.

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.²⁴ If the petitioner seeks to expand the CDD area, the petition must 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.”²⁵ If the petitioner seeks to contract the CDD, the petition must 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.”²⁶ Generally, the boundary amendment petition must be filed with the entity that established the CDD.²⁷

If the FLWAC established the CDD, the boundary amendment petition must be filed with the FLWAC.²⁸ 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.²⁹

²³ Section 715.07(2)(a)2, F.S.

²⁴ Section 190.046(1)(a), F.S.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Section 190.046(1)(b) and (c), F.S.

²⁸ Section 190.046(1)(d), F.S.

²⁹ *Id.*

Each county and municipality has the opportunity to hold a public hearing as provided in s. 190.005(1)(c), F.S.³⁰ 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. Within 45 days after the conclusion of the public hearing, the CDD board of supervisors must transmit to the 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.³¹ 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.³²

For CDDs established by the FLWAC, 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.³³ 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.³⁴ 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.³⁵

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.³⁶ 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.³⁷

Merger of CDDs

A CDD may merge with other community development districts upon filing a petition for merger, which must include the elements set forth in s. 190.005(1), F.S., and which must be evaluated pursuant to the criteria set forth in s. 190.005(1)(e), F.S.³⁸ The petition must state whether a new district is to be established or whether one district must be the surviving district. 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. The government formed by a merger involving a CDD is required to 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. 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. The approval of the

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Section 190.046(1)(e), F.S.

³⁴ *Id.*

³⁵ Section 190.005(1)(f), F.S.

³⁶ Section 190.005(1)(g), F.S.

³⁷ *Id.*

³⁸ Section 190.046(3), F.S.

merger agreement and the petition by the board of supervisors of the CDD constitutes consent of the landowners within the district.³⁹

III. Effect of Proposed Changes:

Section 1 amends s. 190.005, F.S., revising the criteria for determining which process a proposed CDD must undertake in order to become established. A CDD of 2,500 acres or more, rather than 1,000 acres or more, is now required to petition the FLWAC for the establishment of a CDD. On the other hand, CDDs with less 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 CDDs established by the FLWAC, 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 bill 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.

³⁹ *Id.*

- 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 must 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 the FLWAC.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 2 exempts CDDs that choose a towing operator from their local government's list of approved towing operators from public bidding requirements. It is unclear if this is an exemption from s. 190.033(3), F.S., which subjects contracts for maintenance services over \$195,000 for any CDD facility or project to competitive solicitation requirements, and exempts contracts for "other services" from competitive solicitation unless the CDD adopts a rule, policy, or procedure that states otherwise.

If "competitive solicitation" under s. 190.033, F.S., includes "public bidding," an exemption for towing services of abandoned vehicles from s. 190.033, F.S., may be unnecessary. It is unlikely that the towing permitted under the bill, if considered a maintenance contract, would result in costs in excess of \$195,000. If the towing services are considered "other services," then they are already exempt from 190.033, F.S., barring a CDD's rule, policy, or procedure stating otherwise.

Ultimately, the exemption as drafted may require CDDs to subject the selection of a towing operator who is not on a local government's list of approved towing operators to unspecified public bidding requirements.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
