

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 971 Community Development Districts
SPONSOR(S): Local Government Affairs Subcommittee; Sullivan
TIED BILLS: **IDEN./SIM. BILLS:** SB 1156

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	11 Y, 0 N, As CS	Darden	Miller
2) Economic Development & Tourism Subcommittee	13 Y, 0 N	Lukis	Duncan
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

Community development districts (CDD) are a type of special-purpose local government intended to provide basic urban community services in a cost-effective manner. The operation of CDDs is governed by Chapter 190, F.S., the "Uniform Community Development District Act of 1980." Depending on their size, CDDs are created by a county or municipal ordinance or the adoption of a rule by the Florida Land and Water Adjudicatory Commission (FLWAC). There are currently 605 active CDDs in Florida.

The bill would increase the size of CDDs that may be created by a county or municipal ordinance from 1,000 acres or less to 2,500 acres or less. The bill makes corresponding changes to the threshold for creating a CDD by FLWAC rule and the process for determining district expansion. The bill clarifies CDDs may contract with towing operators to provide services to facilities and property owned by the district. The bill also creates a merger procedure for multiple districts created by ordinances of the same county or municipality.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 190, F.S., the “Uniform Community Development District Act of 1980,”¹ sets forth the exclusive and uniform procedures for establishing and operating a community development district (CDD).² This type of independent special district³ is an alternative method to manage and finance basic services for community development.⁴ There are currently 605 active CDDs in Florida.⁵

A CDD must act within the constraints of applicable comprehensive plans, ordinances, and regulations of the local general purpose government.⁶ CDDs have certain general powers, including the authority to assess and impose ad valorem taxes upon lands in the CDD, sue and be sued, participate in the state retirement system, contract for services, borrow money, accept gifts, adopt rules and orders pursuant to the APA, maintain an office, lease, issue bonds, raise money by user charges or fees, and levy and enforce special assessments.⁷

The statute also authorizes additional special powers pertaining to public improvements and facilities, such as systems for water management, water supply, sewer, and wastewater management, as well as roads, bridges, culverts, street lights, buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, signage, environmental contamination, conservation areas, mitigation areas, and wildlife habitat.⁸ With the consent of the applicable local general-purpose government with jurisdiction over the affected area, a CDD may plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for improvements such as parks and recreational areas, fire prevention and control, school buildings and related structures; security; control and elimination of mosquitoes and other arthropods of public health importance; waste collection and disposal.⁹

Establishing a CDD

Petition for Rulemaking by the Florida Land and Water Adjudicatory Commission

The method for establishing a CDD depends upon its size. CDDs of 1,000 acres or more are established by petitioning the Florida Land and Water Adjudicatory Commission (FLWAC)¹⁰ to adopt an

¹ Section 190.001, F.S.

² Sections 190.004 & 190.005, F.S.

³ A “special district” is “a unit of local government created for a special purpose... within a limited geographic boundary ... created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.” Section 189.012(6), 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 189.012(3), F.S. Any special district including more than one county is an independent special district, unless the district lies wholly within a single municipality. Section 189.012(3), F.S.

⁴ Section 190.003(6), F.S.

⁵ Department of Economic Opportunity, *Official List of Special Districts Online – Directory*, available at <https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/> (last visited Jan. 13, 2016).

⁶ Section 190.004(3), F.S.

⁷ Section 190.011, F.S.

⁸ Section 190.012(1), 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.

⁹ Section 190.012(2), F.S.

¹⁰ 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 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.

administrative rule creating the district.¹¹ The statute requires each petition to contain specific information, including the written consent to establishing the CDD by all landowners¹² of real property to be included in the district.¹³ 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.¹⁴ 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.¹⁵ Additionally, a public hearing on the petition must be held in the county where the CDD will be located; these hearings are conducted under the requirements of the Administrative Procedure Act¹⁶ before an administrative law judge.¹⁷ 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.¹⁸ If the petition is approved, staff of the FLWAC initiates proceedings to adopt the rule creating the CDD.

APA Rulemaking Requirements

A rule creating a CDD may not expand, modify, or delete any of the statutory requirements for a CDD charter, except for inclusion or exclusion of special powers as provided in s. 190.012, F.S.¹⁹ Rulemaking begins with publication of a notice of rule development.²⁰ Once the final form of the rule is developed, the agency must publish a notice of the proposed rule before it may be adopted.²¹ The publication of this notice triggers certain deadlines for the rulemaking process.²² The notice must include the full text of the proposed rule, other additional information, and the procedure to request a hearing on the proposed rule.²³ Once the statutory rulemaking requirements are met, the FLWAC may file the rule with the Department of State for final adoption and the rule typically goes into effect 20 days from this filing unless the notice of proposed rule provides a later date.²⁴

Petition for Ordinance Creating a CDD

¹¹ Section 190.005(1), F.S.

¹²“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.

¹³ Section 190.005(1)(a), F.S.

¹⁴ Section 190.005(1)(b), F.S.

¹⁵ Section 190.005(1)(c), F.S.

¹⁶ Ch. 120, F.S. The general hearing requirements are stated in ss. 120.569 and 120.57(1), F.S.

¹⁷ 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.

¹⁸ Section 190.005(1)(e), F.S. A similar process is followed when the FLWAC considers a proposed merger of existing CDDs. *See* FLWAC Agenda Item 1 and attachments (Aug. 8, 2011), at <http://www.myflorida.com/myflorida/cabinet/agenda11/0816/index.html> (last visited Jan. 13, 2016).

¹⁹ Section 190.005(1)(f), F.S. The statute permits the rule to contain only the metes and bounds description of the real property included in the CDD, the names of the 5 members of the initial board of supervisors for the CDD, and the name of the CDD.

²⁰ Section 120.54(2), F.S.

²¹ Section 120.54(3)(a)1., F.S.

²² Persons affected by the proposed rule have 21 days from the date of publication to request a hearing on the proposed rule. Section 120.54(3)(c), F.S. Those wanting to submit a lower cost regulatory alternative to the proposed rule have the same 21 day time limit. Sections 120.54(3)(a)1., 120.541(1)(a), F.S. The agency must wait at least 28 days from the date of publication before filing the proposed rule for final adoption. Section 120.54(3)(a)2., (3)(e)1., F.S.

²³ Section 120.54(3)(a)1., F.S.

²⁴ Section 120.54(3)(e)6., F.S. If the rule itself increases regulatory costs in excess of \$1 million over the first 5 years from implementation the rule cannot go into effect until ratified by the Legislature. Section 120.541(3), F.S.

CDDs of less than 1,000 acres are established by ordinance of the county having jurisdiction over the majority of land in the area in which the CDD is to be located, with certain exceptions.²⁵ A petition to establish a CDD is filed with the county commission.²⁶ After conducting a local public hearing before an administrative law judge,²⁷ the commission may adopt an ordinance creating the CDD.²⁸ 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.²⁹

If all the 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 duties otherwise performed by the county commission.³⁰ In this case, 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.³¹ Finally, if all the 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.³²

Requirements for Notice, Meeting, and Vote of Landowners in a CDD

The powers of a CDD are exercised by the board of supervisors elected by the landowners of the district.³³ The board must have five members serving two or four year terms.³⁴ The initial members of the board are designated in the original petition to create the CDD and serve until new members are elected after the district is established.³⁵ A meeting of landowners for the purpose of electing the board must be held within 90 days of the effective date of the rule or ordinance creating the district.³⁶ Each landowner is entitled to one vote for each acre he or she owns.³⁷ The top two candidates are elected to four year terms, while the next three candidates are elected to two year terms.³⁸ A new board election, held among the qualified electors of the district, occurs when either the board proposes to exercise its ad valorem taxing authority or six years after the formation of the district (ten years for districts exceeding 5,000 acres).³⁹ Once the statutory requirements are met for election of one or more board member by all qualified electors in the district, such elections are non-partisan general elections conducted by the supervisor of elections.⁴⁰

Special Powers of a CDD

In addition to the general powers granted to a CDD in s. 190.011, F.S., a CDD may exercise additional powers subject to the consent of other regulatory and permitting bodies encompassing the territory of the district.⁴¹ With the consent of the local general-purpose government, a CDD may operate and maintain facilities for:

²⁵ Section 190.005(2), F.S.

²⁶ Section 190.005(2)(a), F.S. The petition must contain the same information as required for submission to the FLWAC.

²⁷ 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.

²⁸ See s. 190.005(2)(d), F.S.

²⁹ Section 190.005(2)(e), F.S.

³⁰ Section 190.005(2)(e), F.S.

³¹ Section 190.005(2)(f), F.S.

³² Section 190.005(2)(e), F.S.

³³ Section 190.006(1), F.S.

³⁴ *Id.*

³⁵ Sections 190.005(1)(a)3., 190.005(2)(a), F.S.

³⁶ Section 190.006(2)(a), F.S.

³⁷ Section 190.006(2)(b), F.S.

³⁸ *Id.*

³⁹ Sections 190.006(3)(a)1.-2., F.S. .). For CDDs with less than certain minimum numbers of qualified electors after 6 or 10 years, as applicable, the district landowners shall continue to elect the board members (s. 190.006(3)(a)2.a., F.S.) until the number of qualified electors in the district exceeds the statutory minimum (s. 190.006(3)(a)2.b., F.S.).

⁴⁰ Section 190.006(3)(b), F.S. The statute does not specify which supervisor of elections conducts the board election if the district encompasses property in more than one county.

⁴¹ Section 190.012, F.S.

- Indoor and outdoor recreational, cultural, and educational uses;⁴²
- Fire prevention and control;⁴³
- School buildings and related structures;⁴⁴
- Security systems, except that the district may not exercise any police power.⁴⁵

Financial Reporting by a CDD

CDDs are subject to the financial reporting requirements of Chapters, 189, 190, and 218, F.S.⁴⁶ The district manager is responsible for drafting a proposed budget on or before June 15 of each year.⁴⁷ The board of the CDD considers the proposed budget, makes amendments (as necessary), and adopts the budget by resolution.⁴⁸ After the board adopts the budget, a public hearing on the budget is held and the board may make further changes as it deems necessary.⁴⁹ At least sixty days prior to adoption, district is required to submit its budget to the local government entities having jurisdiction over the area.⁵⁰ This submission is for the purposes of disclosure and information only, but the local government entities may submit written comments to the CDD board.⁵¹ CDDs are also required to take affirmative steps to provide full disclosure of information related to public financing and maintenance of improvements constructed by the district.⁵² The district must furnish any developer of residential property in the district with sufficient copies of this information to be able to provide a copy to each prospective initial purchaser of property.⁵³ Districts must file disclosures of this information in the property records of each county in which the district is located.⁵⁴ DEO is required to keep a current list of districts and their disclosures of public financing.⁵⁵

CDDs, like other special districts, also must comply with the annual financial reporting and financial audit reporting requirements of Chapter 218, F.S.⁵⁶ A CDD with revenues or total expenditures or expenses in excess of \$100,000 is required to have an annual audit conducted by an independent certified public accountant.⁵⁷ The auditor shall review the financial accounts and records of the district, reports on compliance and internal control, management letters, and financial statements, as required by rules adopted by the Auditor General.⁵⁸ The auditor must present these findings to the chair of the district's governing board and submit a copy of the report to the Auditor General.⁵⁹ The audit report is a public record once the report is submitted by the auditor to the district.⁶⁰ All CDDs are required to file an annual financial report with the Department of Financial Services.⁶¹

Expansion or Contraction of a CDD

⁴² Section 190.012(2)(a), F.S.

⁴³ Section 190.012(2)(b), F.S.

⁴⁴ Section 190.012(2)(c), F.S.

⁴⁵ Section 190.012(2)(d), F.S.

⁴⁶ Sections 189.013, 190.008(1), F.S.

⁴⁷ Section 190.008(2)(a), F.S.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Section 190.008(2)(b), F.S.

⁵¹ Section 190.008(2)(b)-(c), F.S.

⁵² Section 190.009(1), F.S.

⁵³ *Id.*

⁵⁴ Section 190.009(1), F.S.

⁵⁵ Section 190.009(2), F.S.

⁵⁶ Section 189.016(9), F.S., s. 190.008(1), F.S.

⁵⁷ Section 218.39(1), F.S. An entity is exempt from this requirement if it is informed by the first day of the fiscal year that the Auditor General will be conducting an audit of the entity for that fiscal year.

⁵⁸ Section 218.39(2), F.S. The rules of the Auditor General are Rules 10.550, 10.650, 10.700, 10.800, and 10.850, F.A.C. *See* Rule 61H1-20.0093, F.A.C.

⁵⁹ Sections 218.39(5), (7), F.S.

⁶⁰ *See* s. 119.0713(3), F.S.

⁶¹ Section 218.32(1)(a), F.S.

A landowner or the board of a CDD may petition for the boundaries of the district to be expanded or contracted.⁶² This petition must contain the same information as is required to form a district and follows the same hearing process.⁶³ For districts established by FLWAC rule, the petitioner must pay a \$1,500 filing fee to each 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, and the required public meeting is conducted by the board of the CDD instead of a hearing officer.⁶⁴

The amount of land that can be added to a CDD is restricted. If a district was initially established by FLWAC rule, the cumulative additions to the district may not be greater than the lesser of ten percent of the land area of the district or 250 acres.⁶⁵ If a district was initially established by county or municipal ordinance, the cumulative additions to the district may not be greater than the lesser of fifty percent of the land area of the district or 500 acres.⁶⁶

Dissolution of a CDD

A CDD remains in existence unless the district is merged with another district, all community development services associated with the district have been transferred to a county or municipal government, or the district is dissolved as provided in statute.⁶⁷ Ch. 190 provides three ways a district may be dissolved:

- Automatic dissolution: If a landowner does not receive a development permit for some part of the area covered by the CDD within five years of the effective date of the rule or ordinance establishing the district, the CDD is automatically dissolved.⁶⁸
- Action by local government: If a CDD is declared inactive by DEO pursuant to s. 189.062, F.S., the county or municipal government that created the district must be informed and is required to take “appropriate action.”⁶⁹
- Petition for dissolution: A district with no outstanding financial obligations and no operating or maintenance responsibilities may petition the authority that created the district to dissolve the district by appropriate action.⁷⁰ If the district was created by a county or municipal government, the CDD may be dissolved by a non-emergency ordinance.⁷¹ If the district was created by FLWAC rule, the CDD may petition the commission to repeal the rule.

A CDD may merge with another CDD upon filing a petition for merger.⁷² The petition must meet the requirements and will be evaluated by the criteria for establishing a new district.⁷³ The district created as a result of the merger may be a new district, or one of the districts may be noted as the surviving district.⁷⁴ The newly merged district assumes all assets and liabilities of the previous districts.⁷⁵ Before filing the petition, the merging districts must enter into a merger agreement to properly allocate

⁶² Section 190.046(1), F.S.

⁶³ Sections 190.046(1)(a)-(d), F.S.

⁶⁴ Section 190.046(1)(d)1.-4., F.S.

⁶⁵ Section 190.046(1)(e)1., F.S.

⁶⁶ Section 190.046(1)(e)1., F.S.

⁶⁷ Section 190.046(2), F.S.

⁶⁸ Section 190.046(7), F.S. This subsection also requires a “judge of the circuit shall cause a statement (of dissolution) to be filed in the public records.” No guidance is provided as to whether a party must ask the court for the statement, who is authorized to ask, or the procedure to bring the matter before the court.

⁶⁹ Section 190.046(8), F.S.

⁷⁰ Section 190.046(9), F.S.

⁷¹ *Id.*

⁷² Section 190.046(3), F.S.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

indebtedness.⁷⁶ The approval of the merger agreement and the petition by the boards of each district is considered to constitute consent of the landowners of the district.⁷⁷

Effect of Proposed Changes

The bill modifies the establishment of CDDs in several ways. First, the bill increases the size of CDDs that can be created by county or municipal ordinance from less than 1,000 acres to less than 2,500 acres. The bill makes the corresponding changes to the threshold required for needing FLWAC approval for creation of a CDD.

The bill requires any CDD in the territorial jurisdiction of two or more counties to be established by FLWAC rule, mirroring the requirement for FLWAC approval of any CDD in two or more municipalities in current law.

The bill clarifies that the prohibition on a CDD exercising police power does not prevent a district from contracting with a towing operator to remove a vehicle or vessel from facilities or property owned by the district. The district may only exercise its power to tow if the district follows the statutory authorization, notice, and procedural requirements⁷⁸ for an owner or lessee of private property. The district is not required to solicit bids when selecting a towing operator if the operator is included in an approved list of operators maintained by the local government that has jurisdiction over the district's facilities or property.

The bill raises the maximum threshold by which a district can expand. If a district was established initially by FLWAC rule, the cumulative additions to the district may not be greater than the lesser of fifty percent of the land area of the district or 1,000 acres. If a district was established initially by county or municipal ordinance, the cumulative additions to the district may not be greater than the lesser of fifty percent of the land area of the district or 1,000 acres.

The bill also contains a streamlined merger procedure for CDDs created by the same county or municipality. Up to five districts, created by the same local general-purpose government and whose boards are composed entirely of qualified electors, may merge into one district by adoption of an ordinance by the local general-purpose government that created them. CDDs would be able to utilize this provision even if the merged district would have been required to have been created by the FLWAC if it were a new district. The filing of a petition approved by the board of each CDD applying constitutes consent of the landowners within each district.

The CDDs planning to merge must meet the requirements of s. 190.046(3), F.S. and must enter into a merger agreement specifying that:

- The merged district's board will consist of five members,
- Each at-large member of the merged district's board represents the entire district,
- Each former district is entitled to elect at least one board member from its former boundary,
- The member of the merger district's interim board will consist of:
 - If two CDDs merge, two members from each district and one at-large member
 - If three CDDs merge, one member from each district and two at-large members
 - If four CDDs merge, one member from each district and one at-large member
 - If five CDDs merge, one member from each district
- All pre-existing board members terms will end at the next general election and a new board representing the entire district will be elected

Before filing the merger petition, each district must hold a public hearing to take comment on the proposed merger, the merger agreement, and the assignment of board seats. The hearing must be noticed at least 14 days beforehand. If any district withdraws after the public hearing, the remaining

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Section 715.07, F.S.

districts considering merger must hold a public hearing on a revised merger agreement between the remaining parties. The petition may not be filed for at least 30 days after the last public hearing.

B. SECTION DIRECTORY:

Section 1: Amends s. 190.005, F.S., increasing the maximum acreage for community development districts established by an ordinance of the county commission having jurisdiction.

Section 2: Amends s. 190.012, F.S., to authorize community development districts to contract with a towing operator to remove a vehicle or vessel from district property.

Section 3: Amends s. 190.046, F.S., increasing the permissible expansion of districts by petition and enabling districts created by county or municipal ordinance to merge, subject to certain conditions.

Section 4: Providing an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have an indeterminate positive impact on local government revenues to the extent the bill makes CDDs easier to create.

2. Expenditures:

The bill may have an indeterminate positive impact on CDD expenditures to the extent CDDs created by local ordinance may merge more readily and reduce administrative and reporting costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 19, 2016, the Local Government Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removes a provision which would have reduced the notice period of the public hearing conducted by a hearing officer on the petition to the FLWAC from four weeks immediately prior to the hearing to two weeks.

This analysis is drawn to the bill as amended.