

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: SB 1348

INTRODUCER: Senator Perry

SUBJECT: Community Development Districts

DATE: January 22, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Favorable
2.			JU	
3.			RC	

I. Summary:

SB 1348 authorizes Community Development Districts (CDDs) of less than 2,500 acres and solely in one county or municipality to include a list of parcels in the CDD’s establishment petition that the CDD expects to add within the next 10 years. A parcel may only be included with the consent of the landowner. The bill provides a process for expanding the boundaries of the CDD to include these additional parcels. The bill also provides that the expansion of CDD boundaries to include these parcels does not alter the time period for transition from a landowner board to a board composed of qualified electors under s. 190.006, F.S., and states that the parcels may be added even if the resulting CDD is greater than 2,500 acres.

II. 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 642 active CDDs in Florida.⁵

¹ Section 190.001, F.S.

² Sections 190.004 and 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 a special district that does not mean any of the criteria listed in s. 189.012(2), F.S. Additionally, 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 <http://specialdistrictreports.floridajobs.org/webreports/mainindex.aspx> (last visited Jan. 18, 2017).

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 Administrative Procedure Act (APA);⁷
- Maintain an office;
- Lease;
- Issue bonds;
- Raise money by user charges or fees; and
- Levy and enforce special assessments.⁸

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.⁹ 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; and
- Waste collection and disposal.¹⁰

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 2,500 acres or more are established by petitioning the Florida Land and Water Adjudicatory Commission (FLWAC)¹¹ to

⁶ Section 190.004(3), F.S.

⁷ Ch. 120, F.S.

⁸ Section 190.011, F.S.

⁹ 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) and (2)(d), F.S.

¹⁰ Section 190.012(2), F.S.

¹¹ 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 two Cabinet members.

adopt an administrative rule creating the district.¹² The statute requires each petition to contain specific information, including the written consent to establishing the CDD by all landowners¹³ of real property to be included in the district.¹⁴ Prior to filing, the petitioner must submit copies of the petition and pay separate filing fees of \$15,000 each to the county and any 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.¹⁵ 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.¹⁶ 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 APA¹⁷ before an administrative law judge.¹⁸ 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.¹⁹ If the petition is approved, staff of the FLWAC initiates proceedings to adopt the rule creating the CDD.

Petition for Ordinance Creating a CDD

CDDs of less than 2,500 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.²⁰ A petition to establish a CDD is filed with the county commission.²¹ After conducting a local public hearing before an administrative law judge,²² the commission may adopt an ordinance creating the CDD.²³ 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.²⁴

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.²⁵ In this case, the CDD would be created by municipal ordinance. Within 90 days after receiving the petition, the county commission (or municipality,

¹² Section 190.005(1), F.S.

¹³“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.

¹⁴ Section 190.005(1)(a), F.S.

¹⁵ Section 190.005(1)(b), F.S.

¹⁶ Section 190.005(1)(c), F.S.

¹⁷ The general hearing requirements are stated in ss. 120.569 and 120.57(1), F.S.

¹⁸ 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.

¹⁹ 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. 16, 2011), at <http://www.myflorida.com/myflorida/cabinet/agenda11/0816/FLWAC0816.pdf> (last visited Jan. 18, 2017).

²⁰ Section 190.005(2), F.S.

²¹ Section 190.005(2)(a), F.S. The petition must contain the same information as required for submission to the FLWAC.

²² 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.

²³ See s. 190.005(2)(d), F.S.

²⁴ Section 190.005(2)(e), F.S.

²⁵ *Id.*

as applicable) may transfer the petition to the FLWAC.²⁶ Finally, if all the land of the proposed CDD lies within the territorial jurisdiction of two or more municipalities or two or more counties, the petition must be filed with the FLWAC even if the total area is less than 2,500 acres.²⁷

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.²⁸ The board must have five members serving 2- or 4-year terms.²⁹ 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.³⁰ A meeting of landowners for the purpose of electing the board must be held within 90 days after the effective date of the rule or ordinance creating the district.³¹ Each landowner is entitled to one vote for each acre owned.³² The top two candidates are elected to 4-year terms, while the next three candidates are elected to 2-year terms.³³ 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 6 years after the formation of the district (10 years for districts exceeding 5,000 acres).³⁴ Elections of board members by qualified electors are non-partisan general elections conducted by the supervisor of elections.³⁵

Financial Reporting by a CDD

CDDs are subject to the financial reporting requirements of Chapters, 189, 190, and 218, F.S.³⁶ The district manager is responsible for drafting a proposed budget on or before June 15 of each year.³⁷ The board of the CDD considers the proposed budget, makes amendments as necessary, and adopts the budget by resolution.³⁸ 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.³⁹ At least 60 days prior to adoption, the district is required to submit its budget to the local government entities having jurisdiction over the area.⁴⁰ This submission is for the purposes of disclosure and information only, but the local government entities may submit written comments to the CDD

²⁶ Section 190.005(2)(f), F.S.

²⁷ Section 190.005(2)(e), F.S.

²⁸ Section 190.006(1), F.S.

²⁹ *Id.*

³⁰ Sections 190.005(1)(a)3., and 190.005(2)(a), F.S.

³¹ Section 190.006(2)(a), F.S.

³² Section 190.006(2)(b), F.S.

³³ *Id.*

³⁴ 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.).

³⁵ 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.

³⁶ Sections 189.013 and 190.008(1), F.S.

³⁷ Section 190.008(2)(a), F.S.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Section 190.008(2)(b), F.S.

board.⁴¹ 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.⁴² The district must provide 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.⁴³ Districts must file disclosures of this information in the property records of each county in which the district is located.⁴⁴ The Department of Economic Opportunity (DEO) is required to keep a current list of districts and their disclosures of public financing.⁴⁵

CDDs, like other special districts, also must comply with the annual financial reporting and financial audit reporting requirements of Chapter 218, F.S.⁴⁶ 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.⁴⁷ 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.⁴⁸ 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.⁴⁹ The audit report is a public record once the report is submitted by the auditor to the district.⁵⁰ All CDDs are required to file an annual financial report with the Department of Financial Services.⁵¹

Expansion or Contraction of a CDD

A landowner or the board of a CDD may petition for the boundaries of the district to be expanded or contracted.⁵² This petition must contain the same information as is required to form a district and follows the same hearing process.⁵³ If the petition seeks to expand the district boundaries, the petition must include a proposed timetable for the construction of any district services in the new area, the estimated cost of constructing the proposed services, and the designation of the future land use plan for the area from the relevant local government local comprehensive plan.⁵⁴ If the petition seeks to contract the district boundaries, the petition must include a list of services and facilities currently provided by the district to the removed area, as well as the future land use plan for the area from the relevant local government local comprehensive plan.⁵⁵

⁴¹ Section 190.008(2)(b)-(c), F.S.

⁴² Section 190.009(1), F.S.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Section 190.009(2), F.S.

⁴⁶ Sections 189.016(9), F.S. and 190.008(1), F.S.

⁴⁷ 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.

⁴⁸ 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.

⁴⁹ Sections 218.39(5) and (7), F.S.

⁵⁰ *See* s. 119.0713(3), F.S.

⁵¹ Section 218.32(1)(a), F.S.

⁵² Section 190.046(1), F.S.

⁵³ Sections 190.046(1)(a)-(d), F.S.

⁵⁴ Section 190.046(1)(a), F.S.

⁵⁵ *Id.*

For districts established by county ordinance, the petition for expansion or contraction must be filed with the county commission; there is no filing fee requirement.⁵⁶ The county commission then conducts a public hearing on the petition in the same manner as for other ordinance amendments. For districts established by FLWAC rule, the petitioner must pay a \$1,500 filing fee to each county or municipality in which the proposed resulting 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.⁵⁷

The amount of land that can be added to a CDD is restricted. Whether a district was initially established by FLWAC rule or 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 initial district or 1,000 acres.⁵⁸

Merger of a CDD

A CDD may be merged with another CDD with the filing of a petition for merger that states the elements for establishing a new CDD, including being evaluated by the criteria for creating a new district and the submission of the filing fee.⁵⁹ The petition must state whether one of the existing districts will be considered the surviving district or if a new district is being created.⁶⁰ A CDD may also be merged with other types of special districts using the process for creating a new district, with the CDD inheriting the rights and associated obligations of property and creditors of the merged special district(s).⁶¹ A CDD merging with another type of special district is required to enter a merger agreement to allocate indebtedness to be assumed by the new CDD and the process for retiring the debt.⁶² The approval of the merger agreement and the petition by the board of supervisors of the CDD is deemed to constitute the consent of the district landowners.⁶³

A CDD may also be merged with up to four other CDDs created by the same local general-purpose government, as long as the membership of each board of directors is composed entirely of qualified electors.⁶⁴ This method may be used even if the merged district would have been required to receive FLWAC approval if the CDD was being newly created. 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:⁶⁵

- The merged district's board will consist of five members;

⁵⁶ Section 190.046(1)(b), F.S.

⁵⁷ Section 190.046(1)(d)1.-4., F.S.

⁵⁸ Section 190.046(1)(e), F.S.

⁵⁹ Section 190.046(3), F.S.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Section 190.046(4)(a), F.S.

⁶⁵ Section 190.046(4)(b), F.S.

- 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 members of the merged district’s interim board will consist of:
 - If two CDDs merge, two members from each former district and one at-large member
 - If three CDDs merge, one member from each former district and two at-large members
 - If four CDDs merge, one member from each former district and one at-large member
 - If five CDDs merge, one member from each former district; and
- 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 CDD must hold a public hearing to take comment on the proposed merger, the merger agreement, and the assignment of board seats.⁶⁶ The hearing must be noticed at least 14 days beforehand. If any CDD withdraws after the public hearing, the remaining 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.

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 A CDD may be dissolved in one of three ways:

- Automatic dissolution: If a landowner does not receive a development permit for some part of the area covered by the CDD within 5 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 CDD 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 a county or municipal government created the district, 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.

⁶⁶ Section 190.046(4)(c), F.S.

⁶⁷ Section 190.046(2), F.S.

⁶⁸ Section 190.046(8), 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(9), F.S.

⁷⁰ Section 190.046(10), F.S.

⁷¹ *Id.*

III. Effect of Proposed Changes:

Section 1 amends s. 190.046, F.S., to provide that a petition to establish a new CDD of less than 2,500 acres located solely in one county or municipality may include a list of parcels adjacent to the district within the same county or municipality which the petitioner expects to add to the district boundaries within 10 years. The petition must include the legal description of the adjacent parcels of land, the name of the current landowners, the acreage of each parcel, and the current land use designation of each parcel. The petitioner must provide notice to the current landowners of the filing of the petition, the date and time of the public hearing on the petition, and the name and address of the petitioner at least 14 days before the public hearing concerning the creation of the CDD. A parcel may only be included with written consent of the landowner.

After the district is established, a person may then petition the county or municipality to amend the boundaries of the CDD to include the previously identified parcel that was a proposed addition to the CDD before its establishment. A filing fee may not be charged for this petition.

Additionally, each petition must include:

- A metes and bounds description of each parcel to be added;
- A new legal description by metes and bounds of the district with the added parcels;
- Written consent of all landowners of the parcels to be added;
- A map of the district including the parcels to be added;
- A description of the development proposed on each additional parcel; and
- A copy of the original petition identifying the parcel to be added.

Before filing the petition with the county or municipality, the person must provide the petition to the district and to the owner of the proposed additional parcel, if the owner is not the petitioner.

Once the petition is determined to be sufficient and complete, the county or municipality must process the addition of the parcel to the CDD as an amendment to the ordinance that establishes the district. The county or municipality may process all petitions to amend the ordinance, even if, after adding such parcels, the district exceeds 2,500 acres.

The petitioner shall publish a notice of the intent to amend the ordinance that establishes the district in a newspaper of general circulation in the proposed district. This notice shall be in addition to any notice required for the adoption of the ordinance amendment. The notice must be published at least 10 days before the scheduled hearing on the ordinance amendment and may be published in the section of the newspaper reserved for legal notices. The notice must include a general description of the land to be added to the district and the date and the time of the scheduled hearing to amend the ordinance. The petitioner must mail the notice of the hearing on the ordinance amendment to the owner of the parcel and to the district at least 14 days before the scheduled hearing.

The amendment of a district by the addition of a parcel does not alter the transition from landowner voting to qualified elector voting pursuant to s. 190.006, F.S., even if the total size of the district after the addition exceeds 5,000 acres. After adoption of the ordinance expanding the district, the petitioner must cause to be recorded a notice of boundary amendment which reflects the new boundaries of the district.

The bill provides that this new method of adding lands to a district does not preclude the addition of lands using procedures in other provisions of s. 190.046, F.S.

Section 2 provides an effective date of July 1, 2018.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Line 50 of the bill states the petition may include parcels the district expects to add “within the next 10 years.” It is unclear if this time period refers to 10 years after the date of the petition or 10 years after the creation of the district.

Line 62 states that “a person” may petition the county or municipality to amend the boundaries of the CDD to annex property included in the petition creating the district. It is unclear if this provision could be exercised by persons other than the board of the district or the landowner of the property to be added.

Similarly, line 79 states that the “person” must provide the petition to the CDD and to the owner of the proposed additional parcel before filing the county or municipality if the owner is not the petitioner.

Lines 89-93 require the petitioner for annexation to publish notice of intent to amend the ordinance that created the district to include the annexed parcels. It may provide greater clarity to require the county to publish notice of the intent to amend the ordinance, with any associated expenses being paid by the petitioner.

VIII. Statutes Affected:

This bill substantially amends section 190.046 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.