

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 851 Community Development District Bond Financing

**SPONSOR(S):** Altman

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 1254

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	11 Y, 1 N	Rivera	Miller
2) Ways & Means Committee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

Community development districts (CDDs) are a type of special purpose local government intended to provide basic urban community services in a cost-effective manner. Counties or municipalities create CDDs that are less than 2,500 acres, with a few exceptions, and the Florida Land and Water Adjudicatory Commission (FLWAC) creates CDDs that are 2,500 acres or more in size. CDDs are controlled by a five-member board of supervisors (board) authorized by statute to exercise general powers, including the power to issue bonds, and, unless prohibited, certain special powers over public improvements and facilities.

A CDD board may authorize general obligation, revenue, and benefit bonds by a majority vote of the board. General obligation bonds are payable from taxes levied by the CDD and may be authorized only to finance or refinance capital projects or refund outstanding bonds. General obligation bonds require a referendum unless they are refunding bonds. Revenue bonds are payable from sources other than tax revenues, may be authorized without limitation, and only require a referendum if they will be secured by the full faith and credit and taxing power of the CDD.

There are 709 active CDDs in Florida. Since January 1, 2017, 213 CDDs authorized 305 separate issues of revenue bonds. No CDD has issued general obligation bonds during the period.

The bill increases the number of votes required for a CDD board to authorize bonds from a majority vote to two-thirds vote of the board beginning October 1, 2020.

The bill may have an indeterminate negative fiscal impact on CDDs. See Fiscal Comments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Community Development Districts

Community development districts (CDDs) are a type of special-purpose local government intended to provide basic urban community services in a cost-effective manner. These independent special districts<sup>1</sup> are created pursuant to and governed by the Uniform Community Development District Act of 1980.<sup>2</sup> The Act lays out the exclusive and uniform procedures for establishing and operating a CDD.<sup>3</sup> CDDs provide a means to manage and finance the delivery of basic services and capital infrastructure to developing communities without overburdening other governments and their taxpayers.<sup>4</sup> Currently, there are 709 active CDDs in Florida.<sup>5</sup>

CDDs are created either by local ordinance or the Florida Land and Water Adjudicatory Commission (FLWAC).<sup>6</sup> CDDs of less than 2,500 acres are established by ordinance of the county having jurisdiction over the majority of the land in the area in which the CDD will be located, with certain exceptions.<sup>7</sup> CDDs that lie wholly within a municipality are created by municipal ordinance.<sup>8</sup> CDDs that are 2,500 acres or more are established by petitioning the FLWAC to adopt an administrative rule creating the district.<sup>9</sup> CDDs remain in existence unless dissolved pursuant to statute, merged with another district, or all authorized services are transferred to a general-purpose unit of local government.<sup>10</sup>

A CDD is controlled by a five-member board of supervisors (board) elected by the landowners of the district. Each landowner is entitled to one vote for each acre owned. A new board election, held among the qualified electors of the district, occurs when the board proposes to exercise its ad valorem taxing authority or six years after the formation of the district (10 years for districts exceeding 5,000 acres).<sup>11</sup>

The board is authorized to exercise general and special powers within the constraints of applicable comprehensive plans, ordinances, and regulations of the local general-purpose government.<sup>12</sup> General powers include the authority to assess and impose ad valorem taxes<sup>13</sup> within the district and to issue bonds.<sup>14</sup> In part, the special powers over public improvements and community facilities include, unless

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<sup>1</sup> A “special district” is “a local unit of special purpose...government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.” S. 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. S. 189.012(3), F.S.

<sup>2</sup> S. 190.001, F.S.

<sup>3</sup> See ss. 190.004 and 190.005, F.S.

<sup>4</sup> S. 190.002(1)(a), F.S.

<sup>5</sup> Florida Department of Economic Opportunity (DEO), Division of Community Development, Special District Information Program, *Official List of Special Districts Online, Active Special District Function Totals as of December 5, 2019*, at <http://specialdistrictreports.floridajobs.org/webreports/functiontotals.aspx> (last visited Dec. 18, 2019).

<sup>6</sup> S. 380.07, F.S. The FLWAC consists of the Administration Commission, which is composed of the Governor and Cabinet.

<sup>7</sup> S. 190.005(2), F.S.

<sup>8</sup> S. 190.005(2)(e), F.S.

<sup>9</sup> S. 190.005(1), F.S.

<sup>10</sup> S. 190.046(2), F.S.

<sup>11</sup> See s. 190.006, F.S.

<sup>12</sup> See s. 190.004(3), F.S.

<sup>13</sup> DEO lists four CDDs with ad valorem taxes as a revenue source: Palms of Terra Ceia Bay CDD, Port Labelle CDD, Portofino Springs CDD, and Tampa Palms CDD. Only the Port Labelle CDD reported ad valorem revenue in 2018 in the amount of \$507,518. See DEO, *Official List of Special Districts Online*, at <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited December 17, 2019).

<sup>14</sup> S. 190.011, F.S.

prohibited elsewhere,<sup>15</sup> the power to finance, fund, plan, establish, acquire, construct, equip, operate, and maintain facilities and basic infrastructures for:

- Water management and control for the lands within the district;
- Water supply, sewer, and wastewater management, reclamation, and reuse;
- Bridges or culverts in certain instances; and
- District roads and road improvements.<sup>16</sup>

### CDD Bond Financing

A CDD board may authorize general obligation, benefit, or revenue bonds by one or more resolutions approved by a majority of the members in office.<sup>17</sup> Bond resolutions authorize the terms, covenants, or conditions of bonds,<sup>18</sup> but cannot authorize bond proceeds to be used to fund the ongoing district operations,<sup>19</sup> bond interest rates that deviate from the statewide maximum,<sup>20</sup> or bonds that mature over a period of more than 40 years.<sup>21</sup> If bond proceeds are insufficient to complete an associated project, a board may authorize additional bonds in compliance with the original bond resolution or proceeding.<sup>22</sup> Finally, if a CDD defaults on bond payments, the default does not become a debt of the state or local general-purpose governments.<sup>23</sup>

Since January 1, 2017, 213 CDDs authorized 305 separate issues of revenue bonds. No CDD issued any general obligation or benefit bonds. Fifteen CDDs issued bonds categorized as a bank loan, line of credit, or other.<sup>24</sup>

### *General Obligation Bonds*

General obligation bonds are secured by a pledge of the full faith and credit and taxing power of the CDD in addition to special tax levies and other sources provided or pledged to pay the bonds.<sup>25</sup> A CDD board may also unconditionally and irrevocably pledge to levy ad valorem taxes on all taxable property in the district, with no limit on tax rate or amount, to repay general obligation bonds.<sup>26</sup> A pledge of the full faith and credit and taxing power of the district provides a bondholder with a recourse against the district's general fund for payment.<sup>27</sup>

CDD boards may only authorize general obligation bonds to finance or refinance capital projects or refund outstanding bonds.<sup>28</sup> For bonds to be authorized, the total amount of outstanding bond principal for the district cannot exceed 35 percent of the assessed value of the taxable property within the district.<sup>29</sup> With the exception of refunding bonds, general obligation bonds must be approved at a referendum as prescribed by the State Constitution.<sup>30</sup>

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<sup>15</sup> S. 190.005(1)(f) and (2)(d), F.S.

<sup>16</sup> S. 190.012, F.S.

<sup>17</sup> S. 190.016(2), F.S. Although the statute allows boards to authorize benefit bonds, these bonds are not defined nor discussed any further in the chapter.

<sup>18</sup> S. 190.016(2), F.S.

<sup>19</sup> S. 190.016(13), F.S.

<sup>20</sup> S. 215.184, F.S.

<sup>21</sup> S. 190.016(2), F.S.

<sup>22</sup> S. 190.016(6), F.S.

<sup>23</sup> S. 190.016(15), F.S.

<sup>24</sup> See emails and attachments from Sharon Williams, State Board of Administration of Florida, Division of Bond Finance, "Community Development Districts Since 2017" (Feb. 22, 2019 and Dec. 17, 2019) (on file with the Local, Federal & Veterans Affairs Subcommittee).

<sup>25</sup> S. 190.003(13), F.S.

<sup>26</sup> S. 190.016(9)(b), F.S.

<sup>27</sup> S. 190.003(13), F.S.

<sup>28</sup> S. 190.016(9)(a), F.S.

<sup>29</sup> S. 190.016(9)(a), F.S. Existing general obligation bonds are not included in the outstanding bond total if they are also secured by: 1) special assessments levied in an amount sufficient to pay bond principal and interest that have been equalized and confirmed as provided by s. 170.08, F.S.; 2) district revenues from water, sewer, or water and sewer user fees when the amount is sufficient to pay bond principal and interest; or 3) any combination of such assessments and revenues. S. 190.016(9)(d), F.S.

<sup>30</sup> Art. VII, s. 12(a), Fla. Const.; s. 190.016(9)(a), F.S.

## Revenue Bonds

Revenue bonds are payable from revenues derived from sources other than ad valorem taxes on real or tangible personal property and do not pledge the property, credit, or general tax revenue of the district.<sup>31</sup> Pledged sources include anticipated project revenues, end user rates or charges, special assessments, and other revenue generating district activities.<sup>32</sup> Revenue bonds are not counted as a debt of the CDD.<sup>33</sup>

CDD boards can authorize revenue bonds without restrictions on the amount or type of project to be financed.<sup>34</sup> A referendum is not required unless the revenue bond will be secured by the full faith and credit and taxing power of the district.<sup>35</sup>

### Effect of Proposed Changes

Beginning October 1, 2020, the bill increases the vote threshold required to authorize bonds issued by a CDD board from a majority vote to a two-thirds vote of the board. The bill also makes grammatical changes.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 190.016, F.S., requiring CDD boards to authorize bonds by a two-thirds vote of the board beginning October 1, 2020.

Section 2. Provides an effective date of October 1, 2020.

## 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:

See FISCAL COMMENTS section.

2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

#### D. FISCAL COMMENTS:

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<sup>31</sup> S. 190.003(19), F.S.

<sup>32</sup> S. 190.016(8)(a), F.S.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

The revised voting requirement may reduce the number of CDD bond issuances compared to that which would occur under current law.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

The bill neither provides authority nor requires rulemaking by executive branch agencies.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**