

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Chapter 190, Florida Statutes, the Uniform Community Development District Act of 1980, sets forth the uniform procedure for the establishment and operation of a particular type of independent special district, the community development district (CDD), which serves as an alternative method to manage and finance basic services for community development.¹ There are currently 233 active CDDs in Florida.²

Powers of a CDD

Among the general powers granted to a CDD: sue and be sued, participate in the state retirement system, contract for services, borrow money, accept gifts, adopt rules and orders, maintain an office, lease, issue bonds, raise money by user charges or fees, assess and impose ad valorem taxes upon lands in the CDD, and levy and enforce special assessments.³

CDDs also have special powers related to the following systems, facilities, and basic infrastructures: water management, water supply, sewer, wastewater management, 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.⁴

CDDs can also be authorized by local governments to address: parks and facilities for indoor and outdoor recreational, cultural, and educational uses; fire prevention and control, including fire stations, water mains and plugs, fire trucks, and other vehicles and equipment; school buildings and related structures; security; control and elimination of mosquitoes and other arthropods of public health importance; waste collection and disposal.⁵

Establishing a CDD

The method for establishing a CDD depends upon its size. CDDs of 1,000 acres or more are established pursuant to rule adopted by the Florida Land and Water Adjudicatory Commission, pursuant to chapter 120, Florida Statutes.⁶ CDDs of less than 1,000 acres are established by an ordinance adopted by the county commission of the county having jurisdiction over the majority of land

¹ See Fla. Stat. § 190.002 (2003).

² See Florida Department of Community Affairs, Division of Housing and Community Development, Special District Information Program, *The Official List of Special Districts Online, Create Your Own Report* (visited Jan. 29, 2003) <<http://www.floridaspecialdistricts.org/OfficialList/criteria.asp>>.

³ See Fla. Stat. § 190.011 (2003).

⁴ See Fla. Stat. § 190.012(1) (2003).

⁵ See Fla. Stat. § 190.012(2) (2003).

⁶ See Fla. Stat. § 190.005(1) (2003).

in the area in which the CDD is to be located, subject to approval by any affected municipalities.⁷ Section 190.005(1), Florida Statutes, sets forth the requirements for a CDD petition, applicable filing fees, and public hearings.

Election of the Board of the CDD Initially Resides with the Landowners

The powers of a CDD are exercised by a board which has five members.⁸ Initially, the board of the CDD is designated as part of the rule or ordinance establishing the CDD.⁹ Within 90 days, the landowners of the CDD must meet to elect the five supervisors for the CDD.¹⁰ Once assembled at the meeting, the landowners elect a chair to conduct the meeting.¹¹ This bill adds language that allows the chair to be any person present at the meeting and permits the chair to nominate candidates and make and second motions if he or she is also a landowner or the proxy-holder of a landowner.

Each landowner may cast one vote per acre of land owned within the district for each person to be elected.¹² A landowner is permitted to vote in person or by written proxy.¹³ This bill requires each proxy to be signed by one of the legal owners of the property for which the vote is cast and sets forth the information that must be contained in the proxy. This bill also provides that the term of office for each successful candidate commences upon election.

This bill further provides for landowner elections that are to occur after the initial election of the board of the CDD. The bill adds language requiring that any landowners' elections after the initial election must be announced at a public meeting of the board at least 90 days prior to the date of the landowners' meeting and requires it to be noticed in the same manner as the initial landowner election. The bill also requires instructions on how landowners may participate in the election, as well as sample proxies, to be provided during the board meeting that announces the landowners' meeting.

Election of the Board of the CDD Moves to Electors

The election of the board of the CDD eventually moves from the landowners to the "qualified electors of the district." This occurs if the board proposes to exercise ad valorem taxing power.¹⁴ It also occurs by operation of time based on the size of the district.¹⁵ In general, for CDDs of 5,000 acres or less, election by electors occurs six years after the CDD is established.¹⁶ For CDDs that are more than 5,000 acres, election by electors occurs 10 years after the CDD is established.¹⁷ Most CDDs¹⁸ must have a minimum number of electors for the election-by-electors-provisions to take effect.¹⁹

This bill changes the applicability of the election-by-electors-provisions to require all CDDs to have a minimum number of electors. The bill also provides for four-year terms for both of the two board

⁷ See Fla. Stat. § 190.005(2) (2003).

⁸ See Fla. Stat. § 190.006(1) (2003).

⁹ See Fla. Stat. § 190.005(1)(a)3. (2003)

¹⁰ See Fla. Stat. § 190.006(2)(a) (2003). See also *State v. Frontier Acres Community Development District of Pasco County*, 472 So.2d 455 (Fla. 1985) ("We therefore conclude that nothing in the equal protection clause precludes the legislature from limiting the voting for the board of supervisors by temporarily excluding those who merely reside in the district.").

¹¹ *Id.*

¹² See Fla. Stat. § 190.006(2)(b) (2003).

¹³ *Id.*

¹⁴ See Fla. Stat. § 190.006(3)(a)1. (2003).

¹⁵ See Fla. Stat. § 190.006(3)(a)2. (2003).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Those CDDs established after June 21, 1991 and CDDs established after December 31, 1983, which had less than 50 qualified electors on June 21, 1991. See Fla. Stat. § 190.006(3)(a)2a. (2003).

¹⁹ For CDDs of 5,000 acres or less, there must be at least 250 qualified electors and for CDDs that are more than 5,000 acres, there must be at least 500 qualified electors. See Fla. Stat. § 190.006(3)(a)2.b. (2003).

members initially elected by the electors in most CDDs²⁰, rather than have one board member initially serve a two-year term and the other initially serve a four-year term.²¹

The elections by electors are “conducted in the manner prescribed by law for holding general elections.”²² This bill adds a requirement that the elections be nonpartisan and provides that the board members will assume office on the second Tuesday following their election.

Candidates for election by the electors must conduct their campaigns in accordance with chapter 106, Florida Statutes.²³ This bill requires candidates for the CDD board to pay a qualifying fee, which includes a filing fee and an election assessment, or file a petition signed by not less than one percent of the registered voters in the district. The amount of the filing fee is set at 3 percent of \$4,800, unless the electors have provided for compensation for board members, then the amount of the filing fee is 3 percent of the maximum annual compensation. The amount of the election assessment is set at 1 percent of \$4,800, unless the electors have provided for compensation for board members, then the amount of the filing fee is 3 percent of the maximum annual compensation.

The bill provides for the county canvassing board to declare and certify the results of CDD elections, rather than the board of county commissioners.

Dissolution of a CDD

Currently a CDD remains in existence unless the district is merged with another district, “all of the specific community development services that it is authorized to perform have been transferred to a general-purpose unit of local government,” or the district has been dissolved.²⁴ A CDD may also be declared “inactive” by the Department of Community Affairs.²⁵

This bill amends the transfer and dissolution provisions related to CDDs.

The bill requires that “systems” and “facilities” be included with services when transferring to a unit of local government.

The bill makes clarifying amendments to the existing dissolution provisions in subsections (7) and (8) of section 190.046, Florida Statutes. In subsection (7), the word “establishing” replaces the word “creating.” In subsection (8), the word “respective” is added to clarify which local government should be notified that a CDD has become inactive; similarly, “city commission” is added to account for CDDs that are created by municipalities.

The bill also creates a new subsection (9) for section 190.046, Florida Statutes, relating to dissolution. This new subsection permits a district, which has no outstanding financial obligations and no operating or maintenance responsibilities and has filed a petition, to be dissolved by a non-emergency ordinance of the general purpose local government that established the district or by repeal of the rule establishing the district if created by the Florida Land and Water Adjudicatory Commission.

The bill takes effect upon becoming law.

²⁰ *Supra* note 15.

²¹ See Fla. Stat. § 190.006(3)(a)2.b. (2003).

²² See Fla. Stat. § 190.006(3)(b) (2003).

²³ See Fla. Stat. § 190.006(3)(c) (2003).

²⁴ See Fla. Stat. § 190.046(2) (2003).

²⁵ See Fla. Stat. § 189.4044 (2003). See also Fla. S. Comm. On Comprehensive Planning, *Interim Report 2004-121* (2003 on file with comm.) (relating to CDDs; stating that the Department of Community Affairs reports the process for declaring a district inactive is expensive, time-consuming, and frustrating to the property owners within the CD and recommends that the entity creating the CDD be authorized to dissolve it under limited circumstances).

C. SECTION DIRECTORY:

Section 1: Amends the provisions relating to dissolution of a CDD set forth in section 190.046, Florida Statutes.

Section 2: Amends the following subsections of section 190.006, Florida Statutes:

- Amends subsection (1) to make the terms of the board of the CDD consistent with the other provisions of the section.
- Amends subsection (2) as it relates to the chair of the initial meeting of landowners and the requirements for proxies at the initial meeting of landowners, the beginning of the term of the initially elected board of the CDD, and the subsequent landowner elections.
- Amends subsection (3) as it relates to the applicability of the election-by-electors-provisions, the initial term of the board members elected by the electors and the commencement of that term, the nonpartisan nature of CDD board elections, the qualifying papers and qualifying fees, the petitions for qualifying, and the board that certifies elections.

Section 3: Provides that the bill will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect municipal or county governments.

2. Other:

The Senate Committee on Comprehensive Planning completed an interim project related to CDDs. The issues reviewed and the recommendations are provided in *Interim Project Report 2004-121*, part of which is reflected in this bill.

B. RULE-MAKING AUTHORITY:

This bill does not appear to grant any rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 17, 2004, the Subcommittee on Local Affairs recommended the adoption of an amendment to clarify that the initial election of two board members by the electors of the district is for four years.