

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

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.³ 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 in the area in which the CDD is to be located, subject to approval by any affected municipalities.⁴ 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.⁵ Initially, the board of the CDD is designated as part of the rule or ordinance establishing the CDD.⁶ Within 90 days, the landowners of the CDD must meet to elect the five supervisors for the CDD.⁷ Once assembled at the meeting, the landowners elect a chair to conduct the meeting.⁸ 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.

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. § 190.005(1) (2003).

⁴ See Fla. Stat. § 190.005(2) (2003).

⁵ See Fla. Stat. § 190.006(1) (2003).

⁶ See Fla. Stat. § 190.005(1)(a)3. (2003)

⁷ 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.").

⁸ *Id.*

Each landowner may cast one vote per acre of land owned within the district for each person to be elected.⁹ A landowner is permitted to vote in person or by written proxy.¹⁰ 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.¹¹ It also occurs by operation of time based on the size of the district.¹² In general, for CDDs of 5,000 acres or less, election by electors occurs six years after the CDD is established.¹³ For CDDs that are more than 5,000 acres, election by electors occurs 10 years after the CDD is established.¹⁴ Most CDDs¹⁵ must have a minimum number of electors for the election-by-electors-provisions to take effect.¹⁶

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 members initially elected by the electors in most CDDs¹⁷, rather than have one board member initially serve a two-year term and the other initially serve a four-year term.¹⁸

Once a district qualifies to have any of its board members elected by the qualified electors of the district, this bill provides that the initial and all subsequent elections by the qualified electors of the district will be held at the general election in November. The bill requires the board to adopt a resolution to extend or reduce the terms of current board members to comport with this requirement.

The elections by electors are "conducted in the manner prescribed by law for holding general elections."¹⁹ 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.²⁰ 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

⁹ See Fla. Stat. § 190.006(2)(b) (2003).

¹⁰ *Id.*

¹¹ See Fla. Stat. § 190.006(3)(a)1. (2003).

¹² See Fla. Stat. § 190.006(3)(a)2. (2003).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 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).

¹⁶ 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).

¹⁷ *Supra* note 15.

¹⁸ See Fla. Stat. § 190.006(3)(a)2.b. (2003).

¹⁹ See Fla. Stat. § 190.006(3)(b) (2003).

²⁰ See Fla. Stat. § 190.006(3)(c) (2003).

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.

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.²¹

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.²²

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.²³

The bill adds to the special powers provided to CDDs to permit a CDD to enforce certain deed restrictions pertaining to the use and operation of real property of the district under certain conditions.

The bill defines “deed restrictions:”

those covenants, conditions, and restrictions contained in any applicable declarations of covenants and restrictions that govern the use and operation of real property within the district and for which covenants, conditions, and restrictions there is no homeowners’ association having enforcement powers.

The bill permits the district to adopt by rule all or certain portions of the deed restrictions:

- (1) which relate to limitations or prohibitions that only apply external to structures and are deemed by the district to be generally beneficial for the district’s landowners and for which enforcement by the district is appropriate; or
- (2) which are consistent with the requirements of development order conditions or regulatory agency permit conditions.

The bill allows the board to vote to adopt such rules only when all of the following conditions exist:

- (1) the district’s geographic area contains no homeowners’ associations as defined in s. 720.301(7), Florida Statutes;

²¹ See Fla. Stat. § 190.011 (2003).

²² See Fla. Stat. § 190.012(1) (2003).

²³ See Fla. Stat. § 190.012(2) (2003).

- (2) the district was in existence on the effective date of this subsection, or is located within a development that consists of multiple developments of regional impact and a Florida Quality Development;
- (3) the majority of the board has been elected by qualified electors pursuant to the provisions of s. 190.006; and
- (4) the declarant in any applicable declarations of covenants and restrictions has provided the board with a written agreement that such rules may be adopted.

The bill requires the CDD, within 60 days of such rules taking effect, to record a notice of rule adoption stating generally what rules were adopted and where a copy of the rules may be obtained. The bill gives CDDs the authority to impose fines for violations of such rules and to enforce such rules and fines in circuit court through injunctive relief.

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.

C. SECTION DIRECTORY:

Section 1: 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.

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).

- 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 timing of these elections, the nonpartisan nature of CDD board elections, the qualifying papers and qualifying fees, the petitions for qualifying, and the board that certifies elections.

Section 2: Adds subsection (4) to section 190.12, Florida Statutes, to permit a CDD to enforce certain deed restrictions pertaining to the use and operation of real property of the district under certain circumstances

Section 3: Amends the provisions relating to dissolution of a CDD set forth in section 190.046, Florida Statutes.

Section 4: 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:

This bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise

revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

In permitting CDDs to enforce certain deed restrictions pertaining to the use and operation of real property of the district, the definition of "deed restriction" and the conditions under which a board may vote to adopt rules to enforce deed restrictions may make these provisions a general law of local application.²⁶

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

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*, which are reflected, in part, by the changes made in this bill.

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.

On March 3, 2004, the Committee on Local Government & Veterans' Affairs adopted three amendments:

- Amendment 1 by Representative Littlefield, which was recommended by the Subcommittee on Local Affairs, removed line 146 and inserts language to clarify that the initial term of the two board members elected by the qualified electors of the district is 4 years.
- Amendment 2 by Representative Littlefield, at line 23, added to the special powers provided to CDDs to permit CDDs to enforce certain deed restrictions pertaining to the use and operation of real property of the district under certain conditions.
- Amendment 3 by Representative Davis removed lines 153-160 and inserted language which provides that once a district qualifies to have its board members elected by the qualified electors of the district, the initial election involving the qualified electors of the district and all such subsequent elections shall be held in conjunction with the November general election. The amendment permits districts to adopt a resolution to extend or reduce the terms of current members in order to comply with this requirement.

These amendments were adopted and the bill reported favorably as a committee substitute.

²⁶ Such a law is permissible unless there is "no reasonable basis for the classification." See *Housing Authority of City of St. Petersburg v. City of St. Petersburg*, 287 So.2d 307, 311 (Fla. 1973) citing *State ex rel. Baldwin v. Coleman*, 148 Fla. 155, 3 So.2d 802 (1941) ("even though a bill is introduced and treated by the Legislature as a general law, if the bill in truth and in fact is clearly operative as a local or special act and the court can so determine from its obvious purpose or legal effect as gathered from its language or its context, this court will so regard it and deal with it as a local or special act in passing on its validity"). If treated as a special law, published notice or a referendum is required by section 10 of Article III of the Florida Constitution.