

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7203 PCB FTC 10-07 Community Development Districts

SPONSOR(S): Finance & Tax Council and Bogdanoff

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

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Finance & Tax Council	10 Y, 0 N	Aldridge	Langston
1)	Economic Development & Community Affairs Policy Council		Noriega	Tinker
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

A Community Development District (CDD or district) is a local unit of special-purpose government created pursuant to chapter 190, F.S., with certain limited governmental powers. Among the powers granted to CDDs are the ability to levy taxes and special assessments as may be authorized; to issue bonds; and to charge, collect, and enforce fees and other user charges.

This bill allows CDDs without qualified electors to levy an optional tax of up to one percent on all commercial rental transactions occurring in the district that are subject to sales tax under s. 212.031, F.S. Approval to levy such a tax requires the approval of four of the five members of the elected board of supervisors (board) of the CDD and at least two-thirds of the landowners within the CDD.

The bill provides that the proceeds of the tax may only be used to promote and support commercial activity within the district, including those festivals, special events, and other activities within the district that enhance commercial activity.

This bill requires approval from the CDD’s board prior to expenditure of the tax proceeds and requires local administration of the tax.

The bill also provides that if the board determines that a CDD has qualified electors, the CDD’s authority to levy the tax authorized by this bill expires. Also, all transactions that are exempt from the tax imposed under s. 212.031, F.S., are exempt from the tax authorized by this bill.

The Revenue Estimating Conference has not met to estimate the fiscal impact of this bill in an Impact Conference this year. However, because of the small number of potential districts that may be affected by this bill and the difficulty in predicting which CDDs, if any, will exercise the provisions of this bill, staff estimates that this bill may have an indeterminate impact on local revenue collections.

This bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background

A Community Development District (CDD or district) is a local unit of special-purpose government created pursuant to ch. 190, F.S., that is empowered to exercise limited powers and specialized functions to facilitate the delivery of urban community development services in concert with private developers. There are currently 576 CDDs in the state.¹

Section 190.012, F.S., specifies the types of infrastructure CDDs are authorized to provide, including infrastructure relating to water management and control; water supply, sewer and wastewater management, reclamation and reuse; bridges or culverts; roads; street lights; parks and other outdoor recreational, cultural and educational facilities; fire prevention and control; school buildings; security; mosquito control; and waste collection and disposal.

Governance and Powers

CDDs are governed by an elected five-member board of supervisors (board) who possess the general managerial authority provided to other special districts in the state. In addition to other powers, the board is authorized to: hire and fix the compensation of a general manager; contract; borrow money; issue bonds; levy ad valorem taxes, special assessments and non-ad valorem taxes; charge, collect, and enforce fees and other user charges; adopt administrative rules pursuant to ch. 120, F.S.; and exercise the power of eminent domain.² CDDs may be exclusively comprised of land used only for commercial purposes, and some districts have no "qualified electors."³ In these situations, the board is elected by the district's landowners.

Taxation

¹ Department of Community Affairs, http://www.floridaspecialdistricts.org/OfficialList/funct_sa.cfm (last viewed on April 14, 2010).

² Section 190.011, F.S.

³ Defined in s. 190.003(17), F.S., as "any person at least 18 years of age who is a citizen of the United States, a legal resident of Florida and of the district, and who registers to vote with the supervisor of elections in the county in which the district land is located."

Chapter 212, F.S., provides for administration of the tax on sales, use and other transactions. Section 212.031, F.S., provides that, unless exempt, every person engaging in the business of renting, leasing, letting, or granting a license for the use of any real property is exercising a taxable privilege. To exercise such privilege, a tax of 6 percent is levied on the total rent or license fee charged for such real property by the person charging or collecting the rental or license fee.⁴ The rent or fee includes payments for granting a privilege to use or occupy real property for any purpose. Certain specified exemptions from the tax apply.⁵ The Department of Revenue (DOR) is authorized to adopt rules to interpret s. 212.031, F.S., acting pursuant to ch. 120, F.S., the Administrative Procedures Act.

In addition, the renting, leasing, letting, or granting a license for the use of any real property is also subject to a discretionary sales surtax, as provided in s. 212.055, F.S., unless the property is specifically exempt.

CDDs are not currently authorized to impose a sales tax on a transaction subject to tax pursuant to s. 212.031, F.S.

Effect of the Proposed Changes

This bill creates s. 212.0315, F.S., to allow CDDs without qualified electors to levy an optional tax of up to one percent on all commercial rental transactions occurring in the district that are subject to sales tax under s. 212.031, F.S. Approval to levy such a tax requires the approval of four of the five members of the elected board of the CDD, and at least two-thirds of the landowners within the CDD at a special meeting held solely for this purpose. The landowner vote is to be noticed in the same manner as the noticing for the initial election of supervisors. Each landowner will have one vote without regard to the number of acres owned.

Under this bill, the board must notify the Department of Revenue (DOR) within 10 days after approval to levy the tax. Also, this tax may take effect on the first day of any month, but may not take effect until at least 60 days have passed after approval.

The proceeds of this tax must be used to:

- promote and support commercial activity within the district;
- promote and support those festivals, special events, and other activities within the district that enhance commercial activity; and
- provide public services as deemed necessary by the district's board to support commercial activities, including additional public services as deemed necessary by the district's board to support festivals, special events, and other activities that enhance commercial activity within the district. For purposes of this bill, the term "public services" includes, but is not limited to, law enforcement, fire protection, emergency services, and sanitation services.

This bill requires approval of the CDD's board prior to expenditure of the proceeds of the tax, which is to be charged by the person receiving the consideration for the lease, license or rental, and it is to be collected from the lessee, tenant, or customer at the time of payment of the consideration for such lease or rental.

The bill provides that if the board determines that a CDD has qualified electors, the CDD's authority to levy the tax authorized by this bill expires. Also, all transactions that are exempt from the tax imposed under s. 212.031, F.S., are exempt from the tax authorized by this bill.

⁴ Section 212.031(1)(c), F.S.

⁵ Section 212.031, F.S.

The bill also requires local administration of the tax. And, prior to the tax becoming effective, a CDD's board is required to adopt a resolution that includes provisions for, but is not limited to:

- initial collection of the tax to be made in the same manner as the tax imposed under ch. 212, F.S. (Sales and Use Tax);
- designation of the district official to whom the tax is to be remitted, and that official's powers and duties with respect to such tax revenues. Tax revenues may only be used in accordance with the administration provisions of this bill;
- requirements respecting the keeping of appropriate books, records, and accounts by those responsible for collecting and administering the tax;
- provision for payment of a dealer's credit as required under ch. 212, F.S.; and
- a portion of the tax collected may be retained by the district for administration costs, but such portion may not exceed 3 percent of collections.

Under this bill, the district assumes all responsibility for auditing the records and accounts of dealers and assessing, collecting, and enforcing payments of delinquent taxes. The district is also bound by DOR rules pertaining to the sales tax on rentals and license fees for the use of real property,⁶ and to DOR's confidentiality requirements and penalties under s. 213.053, F.S.⁷

A CDD may use any power granted to DOR by ch. 212, F.S., to determine the amount of tax, penalties, and interest to be paid by each dealer and to enforce their respective payments. Also, a CDD may use a Florida-licensed certified public accountant (CPA) to administer its statutory duties and responsibilities. Such CPAs are bound by the same confidentiality requirements and subject to the same penalties as the CDD under s. 213.053, F.S.

Similar to other taxes, the tax imposed by the CDD is a lien on the property of the lessee or licensee of real property in the same manner, and under the same collection guidelines, as liens authorized by ss. 713.68 and 713.69, F.S.⁸

This bill has an effective date of July 1, 2010.

B. SECTION DIRECTORY:

Section 1. Creates s. 212.0315, F.S., which authorizes certain community development districts to levy a tax on certain transactions.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁶ Section 212.031, F.S.

⁷ Section 213.053, F.S., addresses "confidentiality and information sharing."

⁸ These sections address personal property of the lessee. Section 713.68, F.S., relates to "liens for hotels, apartment houses, roominghouses, boardinghouses, etc." Section 713.69, F.S., relates to "unlawful to remove property upon which lien has accrued."

2. Expenditures:

DOR has indicated that this bill will not result in an operational fiscal impact, or present difficulty in implementation, administration, or enforcement.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not met to estimate the fiscal impact of this bill in an Impact Conference this year. However, because of the small number of potential districts that may be affected by this bill and the difficulty in predicting which CDDs, if any, will exercise the provisions of this bill, staff estimates that this bill may have an indeterminate impact on local revenue collections.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses within a CDD that exercises its option to levy the tax will pay more taxes, but could also experience an overall beneficial impact as a result of business promotion and public services focused on expanding commercial and economic activity.

D. FISCAL COMMENTS:

None.

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 an action requiring the expenditure of funds; reduce the authority that counties and municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

This bill authorizes the imposition of a tax that could be determined to be part of the “sales price” paid for a commercial rental, with the sales price amount being subject to the state imposed tax on commercial rentals by s. 212.031, F.S. The bill refers to the collection of tax from the “customer,” which is a term that could either be clarified, or replaced with the term “licensee.”

Also, the provisions regarding the board’s adoption of a resolution are unclear. This bill limits a CDD’s administrative authority to a provision within ch. 212, F.S., and a CDD is bound by DOR rules related specifically to s. 212.031, F.S. However, because there are provisions in ch. 213, F.S., that DOR relies upon to administer s. 212.031, F.S., it is unclear whether a CDD would otherwise be authorized to

adopt administrative rules necessary to audit, assess, collect and enforce the payment of the authorized tax.

In addition, because this bill's definition of "public services" is inconsistent with the definition found in ch. 190, F.S., the bill could be amended to clarify that the powers under this bill must be consistent with the powers granted by ch. 190, F.S.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES