

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 17 Community Redevelopment Agencies
SPONSOR(S): Government Accountability Committee; Raburn
TIED BILLS: IDEN./SIM. **BILLS:** SB 432

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Accountability Committee	20 Y, 1 N, As CS	Darden	Williamson

SUMMARY ANALYSIS

The Community Redevelopment Act authorizes counties and municipalities to create community redevelopment agencies (CRAs) as a means of redeveloping slums and blighted areas. CRAs are controlled by a governing board that either is composed of members of the local governing body creating the CRA or commissioners appointed by the local governing body. CRAs operate under a community redevelopment plan that is approved by the local governing body. CRAs are primarily funded by tax increment financing, calculated based on the increase of property values inside the boundaries of the CRA.

The bill increases accountability and transparency for CRAs by:

- Requiring the governing board members of a CRA to undergo four hours of ethics training annually;
- Requiring each CRA to use the same procurement and purchasing processes as the creating county or municipality;
- Expanding the annual reporting requirements for CRAs to include audit information and performance data and requiring the information and data to be posted on the agency website;
- Providing that moneys in the redevelopment trust fund may only be expended pursuant to an annual budget adopted by the board of commissioners of the CRA and only for those purposes specified in current law beginning October 1, 2018;
- Authorizing the local governing body creating the CRA to adjust the level of tax increment financing available to the CRA;
- Requiring a CRA created by a municipality to provide its budget and any amendments to the board of county commissioners for the county in which the CRA is located by a time certain; and
- Requiring counties and municipalities to include CRA data in their annual financial report.

The bill provides that the creation of new CRAs on or after October 1, 2018, may only occur by special act of the Legislature. It provides for the eventual phase-out of existing CRAs at the earlier of the expiration date stated in the agency's charter or on September 30, 2038, with the exception of those CRAs with any outstanding bond obligations. However, phase-out may be prevented if a supermajority of board members serving on the board of the entity that created the CRA vote to retain the agency. The bill provides a process for the Department of Economic Opportunity to declare a CRA inactive if it has reported no revenues, no expenditures, and no debt for three consecutive fiscal years.

The bill may have a fiscal impact on the state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Community Redevelopment Act

The Community Redevelopment Act of 1969 (Act)¹ authorizes a county or municipality to create a community redevelopment agency (CRA) as a means of redeveloping slums and blighted areas. The Act defines a “blighted area” as an area in which there are a substantial number of deteriorated structures causing economic distress or endangerment to life or property and two or more of the following factors are present:

- Predominance of defective or inadequate street layout, parking facilities, roadways, bridges, or public transportation facilities;
- Aggregate assessed values of real property in the area for ad valorem tax purposes have failed to show any appreciable increase over the five years prior to the finding of such conditions;
- Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- Unsanitary or unsafe conditions;
- Deterioration of site or other improvements;
- Inadequate and outdated building density patterns;
- Falling lease rates per square foot of office, commercial, or industrial space compared to the remainder of the county or municipality;
- Tax or special assessment delinquency exceeding the fair value of the land;
- Residential and commercial vacancy rates higher in the area than in the remainder of the county or municipality;
- Incidence of crime in the area higher than in the remainder of the county or municipality;
- Fire and emergency medical service calls to the area proportionately higher than in the remainder of the county or municipality;
- A greater number of violations of the Florida Building Code in the area than the number of violations recorded in the remainder of the county or municipality;
- Diversity of ownership or defective or unusual conditions of title which prevent the free alienability of land within the deteriorated or hazardous area;
- Governmentally owned property with adverse environmental conditions caused by a public or private entity; or
- A substantial number or percentage of properties damaged by sinkhole activity that have not been adequately repaired or stabilized.²

An area also may be classified as blighted if one of the above factors is present and all taxing authorities with jurisdiction over the area have agreed that the area is blighted by interlocal agreement or by passage of a resolution by the governing bodies.³

The Act defines a “slum area” as “an area having physical or economic conditions conducive to disease, infant mortality, juvenile delinquency, poverty, or crime because there is a predominance of buildings or improvements” in poor states of repair with one of the following factors present:

- Inadequate provision for ventilation, light, air, sanitation, or open spaces;
- High density of population, compared to the population density of adjacent areas within the county or municipality, and overcrowding, as indicated by government-maintained statistics or other studies and the requirements of the Florida Building Code; or

¹ Chapter 163, part III, F.S.

² Section 163.340(8), F.S.

³ *Id.*

- The existence of conditions that endanger life or property by fire or other causes.⁴

Creation of Community Redevelopment Agencies

Either a county or a municipal government may create a CRA. Before creating a CRA, a county or municipal government must adopt a resolution with a “finding of necessity.”⁵ This resolution must make legislative findings “supported by data and analysis” that the area to be included in the CRA’s jurisdiction is either blighted or a slum and that redevelopment of the area is necessary to promote “the public health, safety, morals, or welfare” of residents.⁶

A county or municipality may create a CRA upon the adoption of a finding of necessity and a finding that a CRA is necessary for carrying out the community redevelopment goals embodied by the Act.⁷ A CRA created by a county may only operate within the boundaries of a municipality when the municipality has concurred by resolution with the community redevelopment plan adopted by the county. A CRA created by a municipality may not include more than 80 percent of the municipality if it was created after July 1, 2006.⁸

The ability to create, expand, or modify a CRA is also determined by the county’s status as a charter or non-charter county, as summarized below:

County Status	Authority
Charter County - CRA created after adoption of charter ⁹	County possesses authority to create CRAs within the county, but may delegate authority to a municipality via interlocal agreement.
Charter County - CRA created before adoption of charter ¹⁰	County does not have authority over CRA operations, including modification of redevelopment plan or expansion of CRA boundaries.
Non-Charter County ¹¹	County does not have authority over CRA operations, including modification of redevelopment plan or expansion of CRA boundaries.

As of November 1, 2017, there were 224 CRAs in Florida, which is a 30 percent increase over the past decade.¹²

Community Redevelopment Agency Boards

The Act allows the local governing body creating a CRA to choose between two structures when establishing the agency’s governing board.

One option is to appoint a board of commissioners consisting of five to nine members serving four-year terms.¹³ The local governing body may appoint any person as a commissioner who lives in or is engaged in business in the agency’s area of operation.¹⁴ The local governing body making the

⁴ Section 163.340(7), F.S.

⁵ See s. 163.355, F.S. (prohibiting counties and municipalities from exercising powers under the Act without a finding of necessity).

⁶ *Id.*

⁷ Section 163.356(1), F.S.

⁸ Section 163.340(10), F.S.

⁹ Section 163.410, F.S.

¹⁰ *Id.*

¹¹ Section 163.415, F.S.

¹² Compare Dept. of Economic Opportunity, Special District Accountability Program, *Official List of Special Districts Online*, <http://specialdistrictreports.floridajobs.org/webreports/mainindex.aspx> (last accessed Nov. 1, 2017) (224 active CRAs as of Nov. 1, 2017) with Bill Analysis for HB 1583 (2006) (stating there were 171 CRAs in operation as of Mar. 26, 2006).

¹³ Section 163.356(2), F.S.

¹⁴ Section 163.356(3)(b), F.S. A person is “engaged in business” if he or she owns a business, performs services for compensation, or serves as an officer or director of a business that owns property or performs services in the agency’s area of operation.

appointment selects the chair and vice chair of the commission.¹⁵ Commissioners are not entitled to compensation for their services, but may receive reimbursement for expenses incurred in the discharge of their official duties.¹⁶ Commissioners and employees of an agency are subject to the code of ethics for public officers and employees under ch. 112, F.S.¹⁷

The other option is for the local governing body to appoint itself as the agency board of commissioners.¹⁸ If the local governing body consists of five members, the local governing body may appoint two additional members to four-year terms.¹⁹ The additional members either must meet the selection criteria for appointed board members under s. 163.356, F.S., or may be representatives of another taxing authority within the agency's area of operation, subject to an interlocal agreement between the local governing body creating the CRA and the other taxing authority.²⁰

As of November 1, 2017, the local governing body creating the CRA serves as the CRA board for 156 of the 224 active CRAs.²¹

Community Redevelopment Agency Operations

The CRA board of commissioners is responsible for exercising the powers of the agency.²² A majority of the board's members are required for a quorum. A CRA may employ an executive director, technical experts, legal counsel, and other agents and employees necessary to fulfill its duties.²³

A CRA exercising its powers under the Act must file an annual report with the governing body of the creating local government entity.²⁴ The report must contain a complete financial statement of the assets, liabilities, income, and operating expenses of the agency. The CRA must publish a notice in a newspaper of general circulation in the community that the report has been filed and is available for inspection during business hours in the office of the clerk of the city or county commission and the office of the agency.

As a type of dependent special district,²⁵ a CRA also must maintain certain information on an official website.²⁶ The website may be part of the creating governmental entity's website.²⁷ The information required to be posted includes the public purpose of the CRA,²⁸ the description of the CRA's boundaries and the services it provides,²⁹ a listing of all amounts collected for the fiscal year by the

¹⁵ Section 163.356(3)(c), F.S.

¹⁶ Section 163.356(3)(a), F.S.

¹⁷ Section 163.367(1), F.S. *but cf.* s. 112.3142, F.S. (requiring ethics training for specific constitutional officers and elected municipal officers).

¹⁸ Section 163.357(1)(a), F.S.

¹⁹ Section 163.357(1)(c), F.S.

²⁰ Section 163.357(1)(c)-(d), F.S.

²¹ Dept. of Economic Opportunity, Special District Accountability Program, *Official List of Special Districts Online*, <http://specialdistrictreports.floridajobs.org/webreports/mainindex.aspx> (last accessed Nov. 1, 2017).

²² Section 163.356(3)(b), F.S.

²³ Section 163.356(3)(c), F.S.

²⁴ *Id.*

²⁵ *See* s. 189.012(2), F.S. (defining "dependent special district" as any special district that meets at least one of the following criteria: the membership of its governing body is identical to that of the governing body of a single county or a single municipality; all members of its governing body are appointed by the governing body of a single county or a single municipality; members of the special district's governing body are subject to removal at will by the governing body of a single county or a single municipality during their unexpired terms; or the district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or a single municipality.)

²⁶ Section 189.069(1), F.S.

²⁷ Section 189.069(1)(b), F.S.

²⁸ Section 189.069(2)(a)2., F.S.

²⁹ Section 189.069(2)(a)7., F.S.

CRA and the sources of those revenues,³⁰ the CRA's budget and any amendments,³¹ and the final, complete audit report for the CRA's most recently completed fiscal year as well as all required by law.³²

Community Redevelopment Plans

A community redevelopment plan must be in place before a CRA can engage in operations.³³ The county, the municipality, the CRA itself, or members of the public may submit the plan and then the CRA chooses which plan it will use as its community redevelopment plan.³⁴ Next, the CRA must submit the plan to the local planning agency for review before the plan can be considered.³⁵ The local planning agency must complete its review within 60 days.

The CRA must submit the community redevelopment plan to the governing body that created the CRA as well as each taxing authority that levies ad valorem taxes on taxable real property contained in the boundaries of the CRA.³⁶ The local governing body that created the CRA must hold a public hearing before the plan is approved.³⁷

To approve the plan, the local governing body must find that:

- A feasible method exists to relocate families who will be displaced by redevelopment in safe and sanitary accommodations within their means and without undue hardship;
- The community redevelopment plan conforms to the general plan of the county or municipality as a whole;
- The community redevelopment plan gives due consideration to the utilization of community policing innovations and other factors encouraging neighborhood improvement, with special consideration for impacts on children;
- The community redevelopment plan encourages redevelopment by private enterprise to the maximum possible extent; and
- The community redevelopment plan will reduce or maintain evacuation time and ensure protection for property against exposure to natural disasters if the CRA is in a coastal tourist area.³⁸

The community redevelopment plan must also:

- Conform to the comprehensive plan for the county or municipality;
- Indicate land acquisition, demolition, and removal of structures; redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the community redevelopment area; zoning and planning changes, if any; land uses; maximum densities; and building requirements; and
- Provide for the development of affordable housing in the area, or state the reasons for not addressing in the plan the development of affordable housing.³⁹

³⁰ Section 189.069(2)(a)8., F.S.

³¹ Section 189.(2)(a)11., F.S.

³² Section 189.069(2)(a)12., F.S. See the section of the analysis on "Annual Financial Reports for Local Government Entities."

³³ Section 163.360(1), F.S.

³⁴ Section 163.360(4), F.S.

³⁵ *Id.*

³⁶ Section 163.360(5), F.S.

³⁷ Section 163.360(6), F.S.

³⁸ Section 163.360(7), F.S.

³⁹ Section 163.360(2), F.S.

Redevelopment Trust Fund

CRAs may not levy or collect taxes; however, the local governing body may establish a community redevelopment trust fund that is funded through tax increment financing (TIF). The amount of TIF available to the agency in a given year is equal to 95 percent of the difference between:

- The amount of ad valorem taxes levied in the current year by each taxing authority, excluding any debt service millage, on taxable real property within the boundaries of the community redevelopment area; and
- The amount of ad valorem taxes that would have been produced by levying the current year's millage rate for each taxing authority, excluding any debt service millage, on taxable real property within the boundaries of the community redevelopment area at the total assessed value of the taxable real property prior to the effective date of the ordinance providing for the redevelopment trust fund.⁴⁰

A CRA created by Miami-Dade County on or after July 1, 1994, may set the amount of funding provided at less than 95 percent, with a floor of 50 percent.⁴¹

The TIF authority of a CRA may be limited where the CRA:

- Did not authorize a study to consider whether a finding of necessity resolution should be adopted by June 5, 2006, did not adopt a finding of necessity study by March 31, 2007, did not adopt a community redevelopment plan by June 7, 2007, and was not authorized to exercise community redevelopment powers pursuant to a delegation of authority under s. 163.410, F.S., by a charter county;⁴² or
- Adopted a modified community redevelopment plan after October 1, 2006, which expands the boundaries of the community redevelopment area, if the CRA is in a charter county and was not created pursuant to a delegation of authority under s.163.410, F.S.⁴³

If either of these conditions occurs, a CRA may have TIF proceeds from other taxing entities capped at the millage rate imposed by the municipality that created the CRA.⁴⁴ If either of these conditions occurs and the CRA is more than 25 years old, the CRA's TIF contributions from other taxing authorities may be capped by resolution of the other taxing authority at the sum of the amount of TIF available in the year before the resolution was approved and any increased increment subject to an area reinvestment agreement.⁴⁵

Each taxing authority must transfer TIF funds to the redevelopment trust fund of the CRA by January 1 of each year. For CRAs created before July 1, 2002, each taxing authority must make an annual appropriation to the trust fund for a period of no more than 60 years from when the community redevelopment plan was adopted or no more than 30 years from when the plan was amended, whichever is lesser. For CRAs created on or after July 1, 2002, each taxing authority must make an annual appropriation to the trust fund for no more than 40 years from when the community redevelopment plan was adopted.⁴⁶ If there are any outstanding loans, advances, or indebtedness at the conclusion of these periods, the local governing body that created the CRA must continue transfers to the redevelopment trust fund until the debt has been retired.⁴⁷

⁴⁰ Section 163.387(1)(a), F.S.

⁴¹ *Id.*

⁴² Section 163.387(1)(b)1., F.S.

⁴³ Section 163.387(1)(b)2., F.S.

⁴⁴ Section 163.387(1)(b)1.a., F.S.

⁴⁵ Section 163.387(1)(b)1.b., F.S. An "area reinvestment agreement" is an agreement between the CRA and a private party that requires the increment computed for a specific area to be reinvested in services or public or private projects, or both, including debt service, supporting one or more projects consistent with the community redevelopment plan, which is identified in the agreement to be constructed within that area.

⁴⁶ Section 163.387(2)(a), F.S.

⁴⁷ Section 163.387(3)(a), F.S.

If a taxing authority does not transfer the TIF funds to the redevelopment trust fund, the taxing authority is required to pay a penalty of 5 percent of the TIF amount to the trust fund as well as 1 percent interest per month for the outstanding amount.⁴⁸ A CRA may choose to waive these penalties in whole or in part.

The following taxing authorities are exempt from contributing to the redevelopment trust fund:

- A school district;⁴⁹
- A special district that levies ad valorem taxes on taxable real property in more than one county;
- A special district for which ad valorem taxation is the sole source of revenue;
- A library district, unless the library district is in a jurisdiction where the CRA had validated bonds as of April 30, 1984;
- A neighborhood improvement district;
- A metropolitan transportation authority;
- A water management district created under s. 373.069, F.S.; and
- A hospital district that is a special district if the CRA was created on or after July 1, 2016.⁵⁰

Additionally, the local governing body creating the CRA may choose to exempt other special districts levying ad valorem taxes in the community redevelopment area.⁵¹ The decision to grant the exemption must be based on statutory criteria, must be adopted at a public hearing, and the conditions of the exemption must be included in an interlocal agreement between the county or municipality and the special district.

Any revenue bonds issued by the CRA are payable from revenues pledged to and received by the CRA and deposited into the redevelopment trust fund.⁵² The lien created by the revenue bonds does not attach to the bonds until the revenues are deposited in the redevelopment trust fund and do not grant bondholders any right to require taxation in order to retire the bond. Revenue bonds issued by a CRA are not a liability of the state or any political subdivision of the state and this status must be made clear on the face of the bond.⁵³

A CRA may spend funds deposited in its redevelopment trust fund for “purposes, including, but not limited to”:

- Administrative and overhead expenses necessary or incidental to the implementation of a community redevelopment plan adopted by the agency;
- Expenses of redevelopment planning, surveys, and financial analysis, including the reimbursement of the governing body or the CRA for such expenses incurred before the redevelopment plan was approved and adopted;
- Acquisition of real property in the redevelopment area;
- Clearance and preparation of any redevelopment area for redevelopment and relocation of site occupants within or outside the community redevelopment area as provided in s. 163.370, F.S.;
- Repayment of principal and interest or any redemption premium for loans, advances, bonds, bond anticipation notes, and any other form of indebtedness;
- All expenses incidental to or connected with the issuance, sale, redemption, retirement, or purchase of bonds, bond anticipation notes, or other form of indebtedness, including funding of any reserve, redemption, or other fund or account provided for in the ordinance or resolution authorizing such bonds, notes, or other form of indebtedness;
- Development of affordable housing within the community redevelopment area; and

⁴⁸ Section 163.387(2)(b), F.S.

⁴⁹ See s. 163.340, F.S. (defining a “taxing authority” as “a public body that levies or is authorized to levy an ad valorem tax on real property located in a community redevelopment area” and defining a “public body” as excluding school districts.)

⁵⁰ Section 163.387(2)(c), F.S.

⁵¹ Section 163.387(2)(d), F.S.

⁵² Section 163.387(4), F.S.

⁵³ Section 163.387(5), F.S.

- Development of community policing innovations.⁵⁴

If any funds remain in the redevelopment trust fund on the last day of the fiscal year, the funds must be:

- Returned to each taxing authority on a pro rata basis;
- Used to reduce the amount of any indebtedness to which increment revenues are pledged;
- Deposited into an escrow account for the purpose of later reducing any indebtedness to which increment revenues are pledged; or
- Appropriated to a specific redevelopment project pursuant to an approved community redevelopment plan and the project must be completed within three years from the date of such appropriation.⁵⁵

Each CRA must provide for an annual audit of its redevelopment trust fund, conducted by an independent certified public accountant or firm.⁵⁶

Community Redevelopment Agency Oversight and Accountability

Miami-Dade County Grand Jury Report

A Miami-Dade County grand jury issued a report in 2016 after “learning of several examples of mismanagement of large amounts of public dollars” by CRAs.⁵⁷ The report found that some CRA boards were “spending large amounts of taxpayer dollars on what appeared to be pet projects of elected officials” and “there is a significant danger of CRA funds being used as a slush fund for elected officials.”⁵⁸ In the event funds were misused, the report found that the Act lacked any accountability and enforcement measures.

The report noted that while county and municipal governments may not pledge ad valorem tax proceeds to finance bonds without voter approval, the board of a CRA could pledge TIF funds to finance bonds without any public input.⁵⁹

The grand jury found that redevelopment trust fund money was often used “without the exercise of any process of due diligence, without justification and without recourse.”⁶⁰ The report noted that the Act does not provide guidelines for the proper use of CRA funds, resulting in questionable expenditures.⁶¹ For example, one CRA highlighted in the report spent \$300,000 of its \$400,000 budget on administrative expenses. The report also found examples of the CRA funds being used to fund fairs, carnivals, and other community entertainment events.⁶² Additionally, the report found that funds might have been misused as part of the CRA contracting process since there is no specified procurement process for CRAs.⁶³

While the Act states affordable housing is one of the three primary purposes for the existence of CRAs, the report found that the provision of affordable housing by CRAs “appears to be the exception and not the rule.”⁶⁴ The report stated that while CRAs cite prohibitive costs as a reason for not developing affordable housing, funds are often used for other purposes.⁶⁵ Some CRAs have requested that their boundaries be extended to include areas for low-income housing while not providing any affordable

⁵⁴ Section 163.387(6), F.S.

⁵⁵ Section 163.387(7), F.S.

⁵⁶ Section 163.387(8), F.S.

⁵⁷ Miami-Dade County Grand Jury, *Final Report for Spring Term A.D. 2015*, at 1 (filed Feb. 3, 2016).

⁵⁸ *Id.* at 7.

⁵⁹ *Id.* at 9.

⁶⁰ *Id.* at 14.

⁶¹ *Id.* at 15.

⁶² *Id.* at 16.

⁶³ *Id.* at 17.

⁶⁴ *Id.* at 19.

⁶⁵ *Id.*

housing.⁶⁶ Some CRA board members have stated the agencies do not focus on affordable housing because it does not produce sufficient revenue.⁶⁷

Another area of concern for the grand jury was a focus on removing blight by improving the appearance of commercial areas, but leaving slum conditions in place, particularly in the form of multi-family housing that is “unsafe, unsanitary, and overcrowded.”⁶⁸ The grand jury points to news coverage of some apartment buildings with overflowing toilets and frequent losses of power due to the need for repairs. The report notes the contrast between these conditions and the use of some CRA proceeds to “fund ball stadiums, performing arts centers[,] and dog parks.”⁶⁹

The grand jury report also notes that while a finding of necessity is required for creating a CRA, there is no process for determining whether the mission of the CRA has been fulfilled.⁷⁰

The report concludes by making 29 recommendations for ensuring transparency and accountability in the operation of CRAs, including:

- Requiring all CRA boards to contain members of the community;
- Imposing a cap on annual CRA expenditures used for administrative costs;
- Requiring CRAs to adopt procurement guidelines that mirror those of the associated county or municipality;
- Requiring each CRA to submit its budget to the county commission with sufficient time for full consideration;
- Setting aside a percentage of TIF revenue for affordable housing; and
- Imposing ethics training requirements.⁷¹

Broward County Inspector General Reports

The Broward County Office of the Inspector General has conducted two investigations into CRA operations in the past five years: Hallandale Beach CRA in 2013⁷² and Margate CRA in 2014.⁷³

The investigation into the Hallandale Beach CRA showed that the agency failed to create a trust fund and that the city commission failed to operate the CRA as an entity separate from the city.⁷⁴ The former executive director of the CRA stated the city had “free reign” to use funds from the CRA’s account.⁷⁵ The report found over \$2 million of questionable expenditures by the Hallandale Beach CRA between 2007 and 2012, including \$125,000 in inappropriate loans and \$152,494 spent on “civic promotions such as festivals and fireworks displays.”⁷⁶ After some of these issues were brought to the attention of the city and the CRA, the CRA continued working on a funding plan that included spending \$5,347,000 on two parks outside of the boundaries of the CRA. The report also found that the CRA paid “substantially more than its appraised value” to purchase a property owned by a church whose pastor was a city commissioner at the time.⁷⁷

⁶⁶ *Id.*

⁶⁷ *Id.* at 20.

⁶⁸ *Id.* at 22.

⁶⁹ *Id.*

⁷⁰ *Id.* at 32.

⁷¹ *Id.* at 34-36.

⁷² Broward Office of the Inspector Gen., *Final Report Re: Gross Mismanagement of Public Funds by the City of Hallandale Beach and the Hallandale Beach Community Redevelopment Agency*, OIG 11-020 (Apr. 18, 2013).

⁷³ Broward Office of the Inspector Gen., *Final Report Re: Misconduct by the Margate Community Redevelopment Agency in the Handling of Taxpayer Funds*, OIG 13-015A (July 22, 2014).

⁷⁴ *City of Hallandale Beach*, *supra* note 62, at 1.

⁷⁵ *Id.* at 28.

⁷⁶ *Id.* at 1.

⁷⁷ *Id.* at 2.

The investigation of the Margate CRA showed a failure to allocate properly TIF funds received from the county and other taxing authorities.⁷⁸ While the CRA stated unused funds were not returned because they were allocated for a specific project, the investigation showed the agency had a pattern of intentionally retaining excess unallocated funds for later use.⁷⁹ This pattern of misuse had resulted in a debt to the county of approximately \$2.7 million for fiscal years 2008-2012.⁸⁰

Auditor General Report

The Auditor General is required to conduct a performance audit of the local government financial information reporting system every three years.⁸¹ As part of the most recent performance audit, the Auditor General made five findings concerning CRAs and suggestions to enhance current law:

- Create greater specificity as to the types of expenditures that qualify for undertakings of a CRA.
- Provide county taxing authorities more control over expenditures of CRAs created by municipalities to help ensure that CRA trust fund moneys are used appropriately.
- Require all CRAs, including those created before October 1, 1984, to follow the statutory requirements governing the specific authorized uses of CRA trust fund moneys.
- Allow CRAs to provide for reserves of unexpended CRA trust fund balances to be used during financial downturns.
- Require compliance with the audit requirement in s. 163.387(8), F.S., and require such audits to include a determination of compliance with laws pertaining to expenditure of, and disposition of unused, CRA trust fund moneys.⁸²

Ethics Training Requirements for Public Officials

Constitutional officers and all elected municipal officers must complete four hours of ethics training on an annual basis.⁸³ The required ethics training must include instruction on s. 8, Art. II of the Florida Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws. This requirement may be met by attending a continuing legal education class or other continuing professional education class, seminar, or presentation if the required subjects are covered.

Inactive Special Districts

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary. Special districts are created by general law,⁸⁴ special act,⁸⁵ local ordinance,⁸⁶ or by rule of the Governor and Cabinet.⁸⁷ A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.⁸⁸ A special district may be "dependent"⁸⁹ or "independent."⁹⁰ All CRAs are dependent special districts.⁹¹

⁷⁸ *Margate Community Redevelopment Agency*, *supra* note 63, at 1.

⁷⁹ *Id.*

⁸⁰ *Id.* at 2.

⁸¹ Section 11.45(2)(g), F.S.

⁸² Florida Auditor Gen., Report No. 2015-037 (Oct. 2014).

⁸³ Section 112.3142, F.S. A "constitutional officer" is defined as the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, state attorneys, public defenders, sheriffs, tax collectors, property appraisers, supervisors of elections, clerks of the circuit court, county commissioners, district school board members, and superintendents of schools.

⁸⁴ Section 189.031(3), F.S.

⁸⁵ *Id.*

⁸⁶ Section 189.02(1), F.S.

⁸⁷ Section 190.005(1), F.S. *See*, generally, s. 189.012(6), F.S.

⁸⁸ *2017 – 2018 Local Gov't Formation Manual*, 64, available at

<http://myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=2911> (last accessed Mar. 1, 2017).

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The Special District Accountability Program within the Department of Economic Opportunity (DEO) is responsible for maintaining and electronically publishing the official list of all special districts in Florida.⁹² The official list currently reports all active special districts as well as those declared inactive by DEO.

Whether dependent or independent, when a special district no longer fully functions or fails to meet its statutory responsibilities, DEO must declare the district inactive by following a specified process.⁹³ DEO must first document the factual basis for declaring the district inactive.

A special district may be declared inactive if it meets one of the following criteria:

- The registered agent of the district, the chair of the district governing body, or the governing body of the appropriate local general-purpose government:
 - Provides DEO with written notice that the district has taken no action for two or more years;
 - Provides DEO with written notice that the district has not had any members on its governing body or insufficient numbers to constitute a quorum for two or more years; or
 - Fails to respond to an inquiry by DEO within 21 days.⁹⁴
- Following statutory procedure,⁹⁵ DEO determines the district failed to file specified reports,⁹⁶ including required financial reports.⁹⁷
- For more than one year, no registered office or agent for the district was on file with DEO.⁹⁸
- The governing body of the district unanimously adopts a resolution declaring the district inactive and provides documentation of the resolution to DEO.⁹⁹

Once DEO determines which criterion apply to the district, notice of the proposed declaration of inactive status is published by DEO, the local general-purpose government for the area where the district is located, or the district itself.¹⁰⁰ The notice must state that any objections to declaring the district inactive must be filed with DEO pursuant to chapter 120, F.S., within 21 days after the publication date.¹⁰¹ If no objection is filed within the 21-day period, DEO declares the district inactive.¹⁰²

After declaring certain special districts inactive, DEO must send written notice of the declaration to the authorities that created the district. If the district was created by special act, DEO sends written notice to the Speaker of the House of Representatives, the President of the Senate, and the standing committees in each chamber responsible for special district oversight.¹⁰³ The statute provides that the

⁸⁹ Section 189.012(2), F.S. A “dependent special district” is a special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the district’s governing body are removable at will by the governing body of a single county or municipality, or the district’s budget is subject to the approval of the governing body of a single county or municipality.

⁹⁰ Section 189.012(3), F.S. An “independent special district” is a special district that is not a dependent district.

⁹¹ See ss. 163.356, 163.357, F.S. (board of commissions of CRAs are appointed by a local governing body or are the local governing body).

⁹² Sections 189.061(1), 189.064(2), F.S. Dept. of Economic Opportunity, Special District Accountability Program, *Official List of Special Districts Online*, <http://specialdistrictreports.floridajobs.org/webreports/mainindex.aspx> (last accessed Nov. 1, 2017).

⁹³ Section 189.062(1), F.S.

⁹⁴ Section 189.062(1)(a)1.-3., F.S.

⁹⁵ Section 189.067, F.S.

⁹⁶ Section 189.066, F.S.

⁹⁷ Section 189.062(1)(a)4., F.S. See ss. 189.016(9), 218.32, 218.39, F.S.

⁹⁸ Section 189.062(1)(a)5., F.S.

⁹⁹ Section 189.062(1)(a)6., F.S.

¹⁰⁰ Publication must be in a newspaper of general circulation in the county or municipality where the district is located and a copy must be sent by certified mail to the registered agent or chair of the district’s governing body, if any.

¹⁰¹ Section 189.062(10)(b), F.S. The published notice also must include the name of the district, the law under which it was organized and operating, and a description of the district’s territory.

¹⁰² Section 189.062(1)(c), F.S.

¹⁰³ Section 189.062(3), F.S.

declaration of inactive status is sufficient notice under the Florida Constitution¹⁰⁴ to authorize the repeal of special laws creating or amending the charter of the inactive district.¹⁰⁵ This statute stands in lieu of the normal requirement for publication of notice of intent to file a local bill at least 30 days before introducing the bill in the Legislature.¹⁰⁶

The property and assets of a special district declared inactive by DEO are first used to pay any debts of the district and any remaining property or assets then escheat to the county or municipality in which the district was located. If the district's assets are insufficient to pay its outstanding debts, the local general-purpose government in which the district was located may assess and levy within the territory of the inactive district such taxes as necessary to pay the remaining debt.¹⁰⁷

A district declared inactive may not collect taxes, fees, or assessments.¹⁰⁸ This prohibition continues until the declaration of invalid status is withdrawn, revoked by DEO,¹⁰⁹ or invalidated in an administrative proceeding¹¹⁰ or civil action¹¹¹ timely brought by the governing body of the special district.¹¹² Failure of the special district to challenge (or prevail against) the declaration of inactive status enables DEO to enforce the statute through a petition for enforcement in circuit court.¹¹³

Declaring a special district to be inactive does not dissolve the district or otherwise cease its legal existence. Subsequent action is required to repeal the legal authority creating the district, whether by the Legislature¹¹⁴ or the entity that created the district.¹¹⁵

Annual Financial Reports for Local Government Entities

Counties, municipalities, and special districts must submit an annual financial report for the previous fiscal year to the Department of Financial Services (DFS).¹¹⁶ The report must include component units of the local government entity submitting the report. If a local government entity is required to conduct an audit under s. 218.39, F.S., for the fiscal year, the annual financial report, as well as a copy of the audit report, must be submitted to DFS within 45 days of completion of the audit report, but no later than nine months after the end of the fiscal year. If the local government entity is not required to conduct such audit, the annual financial report is due no later than nine months after the end of the fiscal year. Each local government must provide a link to the annual audit report on its website.

Effect of Proposed Changes

Creation and Termination of Community Redevelopment Agencies

The bill provides that the creation of new CRAs on or after October 1, 2018, may only occur by special act of the Legislature. It provides for the termination of existing CRAs at the earlier of the expiration date stated in the agency's charter¹¹⁷ or on September 30, 2038. However, the governing board of a

¹⁰⁴ Art. III, s. 10, Fla. Const.

¹⁰⁵ Section 189.062(3), F.S.

¹⁰⁶ Section 11.02, F.S.

¹⁰⁷ Section 189.062(2), F.S.

¹⁰⁸ Section 189.062(5), F.S.

¹⁰⁹ Section 189.062(5)(a), F.S.

¹¹⁰ Section 189.062(5)(b)1., F.S. Administrative proceedings are conducted pursuant to s. 120.569, F.S.

¹¹¹ Section 189.062(5)(b)2., F.S. The action for declaratory and injunctive relief is brought under ch. 86, F.S.

¹¹² The special district must initiate the legal challenge within 30 days after the date the written notice of DEO's declaration of inactive status is provided to the special district. Section 189.062(5)(b), F.S.

¹¹³ Section 189.062(5)(c), F.S. The enforcement action is brought in the circuit court in and for Leon County.

¹¹⁴ Sections 189.071(3), 189.072(3), F.S.

¹¹⁵ Section 189.062(4), F.S. Unless otherwise provided by law or ordinance, dissolution of a special district transfers title to all district property to the local general-purpose government, which also must assume all debts of the dissolved district. Section 189.076(2), F.S.

¹¹⁶ Section 218.32, F.S.

¹¹⁷ The bill fixes the expiration date stated in the CRA charter as of October 1, 2018.

creating local government entity may prevent the termination of a CRA by a supermajority vote.¹¹⁸ The bill does not provide a deadline by which such vote must occur.

If a governing board does not vote to continue a CRA with outstanding bond obligations as of October 1, 2018, and those bonds do not mature until after the earlier of the termination date of the agency or September 30, 2038, the bill provides that the CRA remains in existence until the bonds mature. A CRA in operation on or after September 30, 2038, may not extend the maturity date of its bonds. The bill requires a county or municipality operating an existing CRA to issue a new finding of necessity that is limited to meeting the remaining bond obligations of the CRA in a timely manner.

Inactive Community Redevelopment Agencies

The bill provides a new inactivity criterion for CRAs. Any CRA reporting no revenues, no expenditures, and no debt for three consecutive fiscal years beginning on October 1, 2015, must be declared inactive by DEO. DEO must notify the CRA of the declaration of inactive status. If the CRA has no board or agent, the notice of inactive status must be delivered to the governing board of the creating local government entity. The governing board of a CRA declared inactive by this procedure may seek to invalidate the declaration by initiating proceedings under s. 189.062(5), F.S., within 30 days after the date of receipt of the DEO notice.

A CRA declared inactive may only expend funds from its redevelopment trust fund necessary to service outstanding bond debt. The CRA may not expend other funds without an ordinance of the governing body of the creating local government entity consenting to the expenditure of funds.

A CRA declared inactive by DEO in accordance with these criteria is exempt from the provisions of ss. 189.062(2) and 189.062(4), F.S. The bill further provides that the provisions of the new section are cumulative and where conflicting, superior to the provisions of s. 189.062, F.S., which provides special procedures for inactive special districts.

The bill directs DEO to maintain a separate list on its website of CRAs declared inactive pursuant to this new section. By November 1 of each year, the bill also requires DFS to submit an annual report to the Special District Accountability Program listing each CRA with no revenues, no expenditures, and no debt for the previous fiscal year.

Budget

Budget

The bill requires CRAs to comply with the budgeting, auditing, and reporting requirements of s. 189.016, F.S., except as otherwise provided by s. 163.387, F.S.

The bill requires each CRA created by a municipality to submit its budget for the next fiscal year to the board of county commissioners for the county in which the CRA is located within 10 days after the date of the adoption. In addition, all amendments to the CRA's operating budget must be submitted to the board of county commissioners within 10 days after the date of the adoption of the amended budget. The bill also permits a CRA budget to include administrative and overhead expenses directly or indirectly necessary to implement a community redevelopment plan adopted by the CRA.

Redevelopment Trust Fund

Effective October 1, 2018, the bill provides that moneys in the redevelopment trust fund may only be expended pursuant to an annual budget adopted by the board of commissioners of the CRA and only for those purposes specified in current law. The bill removes a three-year time limitation on the rollover

¹¹⁸ The bill defines a supermajority as a majority of the board members plus one.

of redevelopment trust fund moneys appropriated to a specific redevelopment project pursuant to an approved community redevelopment plan, but requires retained moneys to either be used for the appropriated project or re-appropriated pursuant to the next annual budget of the CRA (if the project is amended, redesigned, or delayed).

The bill authorizes the local governing body that created the CRA to determine the amount of TIF available to the CRA. The local governing body may set the level of funding at any amount between 50 percent and 95 percent of the increment.

Reporting Requirements

Annual Report

Beginning March 31, 2019, and annually thereafter, the bill requires each CRA to submit an annual report to the county or municipality that created the agency and to post the report to the agency's website. The CRA must also publish a notice in a newspaper of general circulation in the community that the report has been filed and is available for inspection during business hours in the office of the clerk of the city or county commission and the office of the agency and on the agency's website. The report must include the most recent audit report of the redevelopment trust fund and provide performance data for each community redevelopment plan overseen by the CRA. The performance data report must include the following information as of December 31 of the year being reported:

- Total number of projects the CRA started, total number of projects completed, and the estimated cost of each project;
- Total expenditures from the redevelopment trust fund;
- Assessed real property values within the CRA's area of authority as of the day the agency was created;
- Total assessed real property values within the CRA as of January 1 of the year being reported;
- Earliest available commercial property vacancy rate within the CRA as of its creation;
- Current commercial property vacancy rates within the CRA;
- Assessed value of real property redeveloped within the CRA as of January 1 of each year reported;
- Earliest available residential property vacancy rates within the CRA as of its creation ;
- Current residential vacancy rate within the CRA;
- Total code enforcement violations within the CRA;
- Total amount expended for affordable housing for low and middle income residents, if the provision of affordable housing was part of the community redevelopment plan;
- Ratio of redevelopment funds to private funds expended within the CRA; and
- Names of sponsors or donors who contribute to the CRA and total amount sponsored or donated.

The bill requires each CRA to post, by January 1, 2019, a digital map on its website depicting the boundaries of the district and the total acreage of the district. If any change is made to the boundaries or total acreage, the bill requires the CRA to post the updated map files within 60 days after the date such change takes effect.

Audit and Financial Report

The bill expands the current reporting requirements for the audit report of the redevelopment trust fund to include:

- A complete financial statement identifying all assets, liabilities, income, and operating expenses of the CRA as of the end of the fiscal year; and
- A finding by the auditor determining whether the CRA complied with the requirements concerning authorized expenditures from the redevelopment trust fund and the use of funds remaining at the conclusion of the fiscal year.

The bill provides that the audit requirement only applies to CRAs with revenues or total expenditures in excess of \$100,000. The bill requires the audit report for each CRA to be included with the annual financial report submitted to DFS by the county or municipality that created the CRA, even if the CRA files a separate financial report with the Department of Financial Services under s. 218.32, F.S. If a CRA is created by special act, the bill requires the county or municipality that filed the petition requesting the creation of the CRA to include the audit report with its annual financial report. The audit must be conducted pursuant to rules adopted by the Auditor General. The bill provides that if a county or municipality has a CRA, failure to include the CRA's annual audit as part of its annual report to DFS constitutes a failure to complete the annual financial report under s. 218.32, F.S.

Governance

The bill requires commissioners of a CRA to undergo annually at least four hours of ethics training on addressing constitutional ethics provisions, the Code of Ethics for Public Officers and Employees, and state public records and meetings laws.

The bill requires CRAs to utilize the same procurement and purchasing processes for commodities and services as the county or municipality that created the CRA.

B. SECTION DIRECTORY:

Section 1: Amends s. 112.3142, F.S., specifying ethics training requirements for CRA commissioners.

Section 2: Amends s. 163.356, F.S., requiring a county or municipality, by resolution, to petition the Legislature to create a new CRA; establishing procedures for appointing members of the CRA board; providing reporting requirements.

Section 3: Amends s. 163.367, F.S., requiring ethics training for CRA commissioners.

Section 4: Amends s. 163.370, F.S., establishing procurement procedures for CRAs.

Section 5: Creates s. 163.371, F.S., providing reporting requirements; requiring publication of notices of reports; requiring reports to be available for inspection in designated places; requiring a CRA to post annual reports and boundary maps on its website.

Section 6: Creates s. 163.3755, F.S., providing termination dates for certain CRAs; requiring the creation of new CRAs to occur by special act after a time certain; providing a phase-out period for existing agencies under specified circumstances.

Section 7: Creates s. 163.3756, F.S., providing legislative findings; providing criteria for DEO to determine whether a CRA is inactive; establishing hearing procedures; requiring DEO to maintain a separate website identifying all inactive CRAs.

Section 8: Amends s. 163.387, F.S., specifying the level of TIF that the governing body may establish for funding the redevelopment trust fund; revising requirements for expenditure of redevelopment trust fund proceeds; revising requirements for the annual budget of a CRA; revising annual audit requirements.

Section 9: Amends s. 218.32, F.S., requiring local governments to include CRA annual audit reports as part of the local government entity's annual audit report to DFS.

Section 10: Provides an effective date of October 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may require expenditures by DEO and DFS to the extent additional staff are necessary to comply with duties created by the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill would increase revenue to some local governments to the extent ad valorem taxation that would otherwise be received by those governments is currently deposited in the redevelopment trust fund.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 14, 2017, the Government Accountability Committee adopted four amendments and reported the bill favorably as a committee substitute. The amendments:

- Required DEO to declare a CRA inactive if it has reported no revenue, no expenditure, and no debt for three consecutive fiscal years beginning October 1, 2015;

- Clarified that a CRA must submit a copy of its budget to the board of county commissioners within 10 days after the date of adoption of such budget;
- Clarified that a CRA may only expend redevelopment trust fund monies for the purpose of exercising powers granted under s. 163.370, F.S., to the extent those powers have been delegated pursuant to s. 163.358, F.S.; and
- Required a county or municipality who petitions for the creation of a CRA by special act to include the audit report of the CRA in its annual financial report.

This analysis is drafted to the committee substitute as passed by the Government Accountability Committee.