



947204

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/31/2009	.	
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The Committee on Community Affairs (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraphs (a) and (b) of subsection (4) of
section 190.012, Florida Statutes, are amended to read:

190.012 Special powers; public improvements and community
facilities.—The district shall have, and the board may exercise,
subject to the regulatory jurisdiction and permitting authority
of all applicable governmental bodies, agencies, and special
districts having authority with respect to any area included



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12 therein, any or all of the following special powers relating to
13 public improvements and community facilities authorized by this
14 act:

15 (4) (a) To adopt rules necessary for the district to enforce
16 certain deed restrictions pertaining to the use and operation of
17 real property within the district and outside the district ~~if~~
18 pursuant to an interlocal agreement under chapter 163 if within
19 another district or, if not within another district, with the
20 consent of the county or municipality in which the deed
21 restriction enforcement is proposed to occur. For the purpose of
22 this subsection, the term "deed restrictions" means ~~are~~ those
23 covenants, conditions, ~~and~~ restrictions, compliance mechanisms,
24 and enforcement remedies contained in any applicable
25 declarations of covenants and restrictions that govern the use
26 and operation of real property ~~within the district~~ and, for
27 which covenants, conditions, and restrictions, there is no
28 homeowners' association or property owner's association having
29 respective enforcement powers unless, with respect to a
30 homeowners' association whose board is under member control, the
31 association and the district agree in writing to enforcement by
32 the district. The district may adopt by rule all or certain
33 portions of the deed restrictions that:

34 1. Relate to limitations, ~~or~~ prohibitions, compliance
35 mechanisms, or enforcement remedies that apply only to external
36 appearances or uses ~~structures~~ and are deemed by the district to
37 be generally beneficial for the district's landowners and for
38 which enforcement by the district is appropriate, as determined
39 by the district's board of supervisors; or

40 2. Are consistent with the requirements of a development



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41 order or regulatory agency permit.

42 (b) The board may vote to adopt such rules only when all of
43 the following conditions exist:

44 ~~1. The district's geographic area contains no homeowners'~~
45 ~~associations as defined in s. 720.301(9);~~

46 ~~1.2.~~ The district was in existence on the effective date of
47 this subsection, or is located within a development that
48 consists of multiple developments of regional impact and a
49 Florida Quality Development.~~;~~

50 ~~2.3.~~ For residential districts, the majority of the board
51 has been elected by qualified electors pursuant to the
52 provisions of s. 190.006.~~;~~ ~~and~~

53 3. For residential districts, less than 25 percent of
54 residential units are in a homeowners' association.

55 4. The declarant in any applicable declarations of
56 covenants and restrictions has provided the board with a written
57 agreement that such rules may be adopted. A memorandum of the
58 agreement shall be recorded in the public records.

59 Section 2. Subsections (1) and (3) of section 190.046,
60 Florida Statutes, are amended to read:

61 190.046 Termination, contraction, or expansion of
62 district.—

63 (1) A landowner or the board may petition to contract or
64 expand the boundaries of a community development district in the
65 following manner:

66 (a) The petition shall contain the same information
67 required by s. 190.005(1)(a)1. and 8. In addition, if the
68 petitioner seeks to expand the district, the petition shall
69 describe the proposed timetable for construction of any district



70 services to the area, the estimated cost of constructing the
71 proposed services, and the designation of the future general
72 distribution, location, and extent of public and private uses of
73 land proposed for the area by the future land use plan element
74 of the adopted local government local comprehensive plan. If the
75 petitioner seeks to contract the district, the petition shall
76 describe what services and facilities are currently provided by
77 the district to the area being removed, and the designation of
78 the future general distribution, location, and extent of public
79 and private uses of land proposed for the area by the future
80 land element of the adopted local government comprehensive plan.

81 (b) For those districts initially established by county
82 ordinance, the petition for ordinance amendment shall be filed
83 with the county commission. If the land to be included or
84 excluded is, in whole or in part, within the boundaries of a
85 municipality, then the county commission shall not amend the
86 ordinance without municipal approval. A public hearing shall be
87 held in the same manner and with the same public notice as other
88 ordinance amendments. The county commission shall consider the
89 record of the public hearing and the factors set forth in s.
90 190.005(1)(e) in making its determination to grant or deny the
91 petition for ordinance amendment.

92 (c) For those districts initially established by municipal
93 ordinance pursuant to s. 190.005(2)(e), the municipality shall
94 assume the duties of the county commission set forth in
95 paragraph (b); however, if any of the land to be included or
96 excluded, in whole or in part, is outside the boundaries of the
97 municipality, then the municipality shall not amend its
98 ordinance without county commission approval.



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99 (d)1. For those districts initially established by
100 administrative rule pursuant to s. 190.005(1), the petition
101 shall be filed with the Florida Land and Water Adjudicatory
102 Commission.

103 2. Before ~~Prior to~~ filing the petition, the petitioner
104 shall pay a filing fee of \$1,500 to the county if the district
105 or the land to be added or deleted from the district is located
106 within an unincorporated area or to the municipality if the
107 district or the land to be added or deleted is located within an
108 incorporated area, and to each municipality the boundaries of
109 which are contiguous with or contain all or a portion of the
110 land within or to be added to or deleted from the external
111 boundaries of the district ~~or the proposed amendment,~~ and ~~submit~~
112 ~~a copy of the petition to the county and to each such~~
113 municipality. The petitioner shall submit a copy of the petition
114 to the entities entitled to receive the filing fee. In addition,
115 if the district is not the petitioner, the petitioner shall file
116 the petition with the district board of supervisors.

117 3. Each ~~The~~ county and each municipality shall have the
118 option of holding a public hearing as provided by s.
119 190.005(1)(c). However, such public hearing shall be limited to
120 consideration of the contents of the petition and whether the
121 petition for amendment should be supported by the county or
122 municipality.

123 4. The district board of supervisors shall, in lieu of a
124 hearing officer, hold the local public hearing provided for by
125 s. 190.005(1)(d). This local public hearing shall be noticed in
126 the same manner as provided in s. 190.005(1)(d). Within 45 days
127 of the conclusion of the hearing, the district board of



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128 supervisors shall transmit to the Florida Land and Water
129 Adjudicatory Commission the full record of the local hearing,
130 the transcript of the hearing, any resolutions adopted by the
131 local general-purpose governments, and its recommendation
132 whether to grant the petition for amendment. The commission
133 shall then proceed in accordance with s. 190.005(1)(e).

134 5. A rule amending a district boundary shall describe the
135 land to be added or deleted.

136 ~~(e) In all cases, written consent of all the landowners~~
137 ~~whose land is to be added to or deleted from the district shall~~
138 ~~be required. The filing of the petition for expansion or~~
139 ~~contraction by the district board of supervisors shall~~
140 ~~constitute consent of the landowners within the district other~~
141 ~~than of landowners whose land is proposed to be added to or~~
142 ~~removed from the district.~~

143 (e)-(f)1. During the existence of a district initially
144 established by administrative rule, the process petitions to
145 amend the boundaries of the district pursuant to paragraphs (a)-
146 (d) may not permit (a)-(e) shall be limited to a cumulative net
147 total of no more than 10 percent of the land in the initial
148 district or, and in no event shall all such petitions to amend
149 the boundaries ever encompass more than a total of 250 acres on
150 a cumulative net basis.

151 2. During the existence of a district For districts
152 initially established by county or municipal ordinance, the
153 process to amend the boundaries of the district pursuant to
154 paragraphs (a)-(d) may not permit limitation provided by this
155 paragraph shall be a cumulative net total of no more than 50
156 percent of the land in the initial district or, and in no event



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157 ~~shall all such petitions to amend the boundaries ever encompass~~
158 ~~more than a total of 500 acres on a cumulative net basis.~~

159 ~~3. Boundary expansions for districts initially established~~
160 ~~by county or municipal ordinance shall follow the procedure set~~
161 ~~forth in paragraph (b) or paragraph (c).~~

162 ~~(f)(g)~~ Petitions to amend the boundaries of the district
163 exceeding which exceed the amount of land specified in paragraph
164 (e) (f) shall be processed in accordance with s. 190.005, and
165 the petition shall include only the elements set forth in s.
166 190.005(1)(a)1. and 5.-8., and the consent required by paragraph
167 (g) considered petitions to establish a new district and shall
168 follow all of the procedures specified in s. 190.005. However,
169 the resulting administrative rule or ordinance may amend only
170 the boundaries of the district and may not establish a new
171 district or cause a new 6-year or 10-year period, as described
172 in s. 190.006(3)(a)2. to begin. The filing fee for such
173 petitions shall be as set forth in s. 190.005(1)(b) and (2), as
174 applicable.

175 (g) For any petition to amend the boundaries of a district,
176 the filing of the petition by the district board of supervisors
177 constitutes consent of the landowners within the district.
178 Written consent must be obtained from the landowners whose land
179 is to be added to or deleted from the district as provided in s.
180 190.005(1)(a)2.

181 (3) The district may merge with other community development
182 districts upon filing a petition for merger. Such petition must
183 include the elements described in s. 190.005(1) and be evaluated
184 using the criteria set forth in s. 190.005(1)(e). The filing fee
185 shall be as provided in s. 190.005(1)(b). In addition, the



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186 petition must state whether a new district will be established
187 or one district will be the surviving district. The district
188 ~~establishment of a community development district pursuant to s.~~
189 ~~190.005 or~~ may merge with any other special districts upon
190 filing a petition for establishment of a community development
191 district pursuant to s. 190.005. The government formed by a
192 merger involving a community development district pursuant to
193 this section shall assume all indebtedness of, and receive title
194 to, all property owned by the preexisting special districts, and
195 the rights of creditors and liens upon property are not impaired
196 by such merger. Any existing claim, pending action, or
197 proceeding by or against any district that is a party to the
198 merger may be continued as if the merger had not occurred, or
199 the surviving district may be substituted in the proceeding for
200 the district that ceased to exist. Before ~~Prior to~~ filing the
201 ~~said~~ petition, the districts desiring to merge shall enter into
202 a merger agreement and shall provide for the proper allocation
203 of the indebtedness so assumed and the manner in which the said
204 debt shall be retired. The approval of the merger agreement and
205 the petition by the board of supervisors ~~elected by the electors~~
206 of the district shall constitute consent of the landowners
207 within the district.

208 Section 3. This act shall take effect July 1, 2009.

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211 ===== T I T L E A M E N D M E N T =====

212 And the title is amended as follows:

213 Delete everything before the enacting clause
214 and insert:



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215 A bill to be entitled
216 An act relating to community development districts;
217 amending s. 190.012, F.S.; revising the rulemaking
218 authority of boards of directors of community
219 development districts regarding enforcement of deed
220 restrictions; amending s. 190.046, F.S.; revising
221 procedures and requirements for amending the
222 boundaries of a community development district;
223 revising procedures and requirements for merging
224 community development districts; providing
225 limitations; providing that certain actions constitute
226 consent of landowners within a district to amendment
227 of the boundaries of the district; requiring written
228 consent from such landowners as a prerequisite to the
229 amendment of the boundaries of a district; authorizing
230 filing fees for petitions for merger; preserving
231 rights of certain creditors and certain liens upon
232 property; providing for the continuance of existing
233 claims and pending actions or proceedings by or
234 against a district that is a party to a merger;
235 authorizing the substituting of a surviving district
236 for a dissolved district in such action, claim, or
237 proceeding; providing that approval of the merger
238 agreement and the petition by the board of supervisors
239 of the district constitutes consent of the landowners
240 within the district to a merger; providing an
241 effective date.