

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 840

INTRODUCER: Senator Diaz de la Portilla

SUBJECT: Community Redevelopment Agencies

DATE: February 5, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The provisions in this bill apply to counties defined in s. 125.011(1), F.S., and require Community Redevelopment Agencies (CRAs) operating within such counties to submit annual performance reviews conducted by and at the discretion of the board of county commissioners (Board). The bill grants these counties the power to terminate a CRA operating or located within its boundaries if the Board determines certain conditions exist. An approved termination plan is required and the elements of the plan are provided in the bill. The bill also establishes additional requirements regarding the operation of a CRA’s redevelopment trust fund.

In addition, the bill requires a CRA located and operating in a county as defined in s. 125.011(1), F.S., to submit to a forensic audit performed by a licensed and independent forensic accountant at least every five years, as requested by the Board. The forensic audit must include, but is not limited to, a review of an agency's assets, liabilities, income, and operating expenses to ensure that the agency has not engaged in financial misconduct or wasteful activity.

This bill substantially amends sections 163.356, 163.362, and 163.387 of the Florida Statutes.

II. Present Situation:

Community Redevelopment Act

The Community Redevelopment Act of 1969, Ch. 163, Part II, F.S. (Act), was enacted to provide a mechanism to revitalize slum and blighted areas “which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state.” The Act authorizes each local government to establish a CRA to revitalize designated slum and

blighted areas upon a “finding of necessity” and a further finding of a “need for a CRA to carry out community redevelopment.”¹

Creation of Community Redevelopment Agencies

Upon the finding of necessity and finding a need for a CRA to function in the county or municipality to carry out community redevelopment, any county or municipality may create a CRA.² CRAs of a county have the power to function within the corporate limits of a municipality only as, if, and when the governing body of the municipality has, by resolution, concurred in the community redevelopment plan or plans proposed by the county’s governing body.³

Section 163.356(2), F.S., addresses CRA board membership. The governing body adopting a resolution declaring a need for a CRA is required to appoint a board of commissioners of the CRA, which must consist of five to nine commissioners, serving four-year terms. One or more members of the board of commissioners of the agency may be representatives of a taxing authority, including members of that taxing authority’s governing body.

The powers of a CRA are exercised by the commissioners.⁴ A majority of the commissioners constitutes a quorum for the purpose of conducting business and exercising the powers of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws require a larger number.⁵

The governing body may remove a commissioner for inefficiency, neglect of duty, or misconduct in office only after a hearing and only if he or she has been given a copy of the charges at least 10 days prior to such hearing and has had an opportunity to be heard in person or by counsel.⁶

Section 163.356(3)(c), F.S., provides that the county or municipal governing body is required to designate a chair and vice chair from among the commissioners. The CRA may employ an executive director, technical experts, and other employees. The CRA is required to file with the governing body, on or before March 31 of each year, a report of its activities for the preceding fiscal year. The CRA must provide a complete financial statement including its assets, liabilities, income, and operating expenses as of the end of the fiscal year.⁷ The CRA must publish in a newspaper of general circulation in the community a notice to the effect that the report has been filed with the county or municipality and that the report is available for inspection during business hours in the office of the clerk of the city or county commission and in the office of the CRA.

¹ Section 163.335, F.S.

² Section 163.356(1), F.S.

³ *Id.*

⁴ Section 163.356(3)(b), F.S.

⁵ *Id.*

⁶ Section 163.356 (4), F.S.

⁷ As dependent special districts, CRAs are subject to the annual financial report requirements of local government entities under s. 218.32, F.S., and the annual financial audit reports required under s. 218.39, F.S.

Governing Body as the CRA

As an alternative to the appointment of commissioners, the governing body may, at the time of the adoption of a resolution under s. 163.355, F.S., or at any time thereafter by adoption of a resolution, declare itself to be an agency, in which case all the rights, powers, duties, privileges, and immunities vested by this part in an agency will be vested in the governing body of the county or municipality, subject to all responsibilities and liabilities imposed or incurred.

Exercise of Powers in Carrying Out Community Redevelopment

Section 163.358, F.S., provides that a county or municipality may delegate powers to a CRA except for the following, which continue to vest in the governing body of the county or municipality:

- the power to determine an area to be a slum or blighted area, or combination thereof;
- the power to grant final approval to community redevelopment plans and modifications;
- the power to authorize the issuance of revenue bonds;
- the power to approve the acquisition, demolition, removal, or disposal of property;
- the power to approve the development of community policing innovations;
- the power of eminent domain.⁸

Community Redevelopment Agency Plans

Each community redevelopment area must have an approved community redevelopment plan that is consistent with the local government comprehensive plan.⁹ The community redevelopment plan must be sufficiently complete to indicate any land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation to be carried out in the designated area.¹⁰ The plan must also provide for the development of affordable housing in the area or state the reasons for not addressing the issue in the plan.¹¹ The local government may subsequently modify the community redevelopment plan upon the recommendation of the CRA.¹²

CRAs are authorized to modify community redevelopment plans after public notice and a public hearing.¹³ Amendments to the community redevelopment plan are permitted to change the boundaries of a redevelopment area or the development and implementation of community policing innovations.¹⁴

CRA Bonds and Trust Funds

When authorized or approved by resolution or ordinance of the governing body, a county, municipality, or CRA has the power to issue redevelopment revenue bonds to finance

⁸ Sections 163.358(1)-(6), F.S.

⁹ Section 163.360(2)(a), F.S.

¹⁰ Section 163.360(2)(b), F.S.

¹¹ Section 163.360(2)(c), F.S.

¹² Section 163.361(1), F.S.

¹³ Section 163.361(2), F.S.

¹⁴ Section 163.361(1), F.S.

community redevelopment.¹⁵ In addition, after approval of a community redevelopment plan, a CRA is authorized to create a redevelopment trust fund.¹⁶ Trust fund monies may be used to finance or refinance any community redevelopment a CRA undertakes pursuant to the approved community redevelopment plan.¹⁷

Section 163.387(6), F.S., allows additional trust fund expenditures for the following purposes as described in the community redevelopment plan:

- administrative and overhead expenses;
- expenses of redevelopment planning, surveys, and financial analysis;
- the acquisition of real property in the redevelopment area;
- the clearance and preparation of any redevelopment area for redevelopment;
- the repayment of principal and interest on any form of indebtedness;
- all expenses incidental to or connected with the issuance, sale, redemption, retirement, or purchase of bonds;
- the development of affordable housing within the community redevelopment area;
- the development of community policing innovations.¹⁸

Any money that remains in a CRA trust fund at the end of a fiscal year shall be:

- returned proportionately to each taxing authority which paid the increment;
- used to reduce any indebtedness to which increment revenues are pledged;
- deposited into an escrow account for a later reduction of indebtedness; or
- appropriated to a specific, approved redevelopment project which will be completed within three years.¹⁹

Section 163.387(8), F.S., provides that each CRA must provide for an audit report of the trust fund each fiscal year prepared by an independent certified public accountant or firm. The audit must describe the amount and source of deposits into, and the amount and purpose of withdrawals from, the trust fund during the fiscal year. It also must include the amount of principal and interest paid during the fiscal year on any indebtedness to which increment revenues are pledged and the remaining amount of such indebtedness. The agency provides a copy of the report to each taxing authority by registered mail.

CRA Tax Increment Financing

CRA's are funded primarily through tax increment financing (TIF).²⁰ As property tax values in the redevelopment area rise above property values in the base year the redevelopment area was created, increment revenues are generated by applying the current millage rate levied by each taxing authority in the area to the increase in value. Each non-exempt taxing authority that levies taxes on property within a community redevelopment area must annually appropriate the amount of increment revenues to the CRA trust fund. These revenues are used primarily to service bonds

¹⁵ Section 163.385(1)(a), F.S.

¹⁶ Section 163.387(1)(a), F.S.

¹⁷ *Id.*

¹⁸ Section 163.387(6)(a)-(h), F.S.

¹⁹ *See s. 163.387(7)*, F.S.

²⁰ *See s. 163.387*, F.S.

issued to finance redevelopment projects. CRAs created prior to 2002 may receive TIF contributions for 60 years, while CRAs subsequently created may receive TIF contributions for 40 years.²¹

CRAs and Home Rule Charter Counties

Section 163.410, F.S., provides that in any county which has adopted a home rule charter, CRA powers must be exercised exclusively by the governing body of such county. However, the governing body of any such county which has adopted a home rule charter may, in its discretion, by resolution delegate the exercise of the powers conferred upon the county within the boundaries of a municipality to the governing body of such municipality. Such a delegation to a municipality must confer only such powers upon a municipality as are specifically enumerated in the delegating resolution. Any power not specifically delegated must be reserved exclusively to the governing body of the county. These provisions do not affect any CRA created by a municipality prior to the adoption of a county home rule charter.²²

III. Effect of Proposed Changes:

Section 1 amends s. 163.356, F.S., to add provisions for the termination of a CRA operating in a county as defined in s. 125.011(1). The board of county commissioners may terminate a CRA if the board finds:

- the agency has been inefficient in removing slum and blight;
- the agency has neglected its duties and responsibilities;
- the agency has engaged in financial misconduct or wasteful activities as evidenced by a forensic audit, an annual performance review or, an annual report; or
- there is no longer a need for the agency.

After a public hearing, the board of the county commissioners may effectuate the termination by adopting a resolution. The CRA must be notified of the proposed termination in writing at least 30 days before the public hearing. Upon notice of a proposed termination, the CRA may not issue bonds, incur further indebtedness or enter into any contract unless approved by the board. The CRA must respond to the notice in writing at least five days before the public hearing.

A termination plan approved by the board of county commissioners includes the following provisions:

- if the CRA has outstanding debt, the plan shall require repayment of the debt, or taxing authorities may be required to continue making contributions until the repayment is made;
- may require the county commissioners to assume powers of the CRA;
- provides an effective date of termination after the payment of all outstanding debt; and
- provides that, after termination, taxing authorities' obligations to contribute to the CRA trust fund automatically end; any remaining trust fund monies shall be returned proportionately to taxing authorities.

²¹ Section 163.387(2)(a), F.S.

²² Section 163.410, F.S.

Notwithstanding any provision of law to the contrary, consent to termination is not required by the CRA, the governing body of a municipality, a contributing taxing authority or from any other person or entity.

Section 2 amends s. 163.362, F.S., to provide that a county as defined in s. 125.011(1), F.S., establish a specific completion date for any CRA redevelopment plan approved or amended on or after July 1, 2012.

Section 3 amends s. 163.387, F.S., related to a CRA in a county defined in s. 125.011(1), F.S., and its trust fund. Such a defined CRA must submit an annual budget of proposed increment revenue expenditures which the board of county commissioners may approve by resolution. Increment revenues contributed by the county, may not be expended for redevelopment without the approval of the county commissioners unless expenditures are to pay CRA debt or contract obligations existing prior to a notice of termination. Certain salaries and terminable at will debts or obligations are not subject to such approval. The CRA may not issue bonds, incur further indebtedness or enter into contracts until the governing body has approved the CRA's annual budget.

In addition, this section further amends how a CRA, as defined by s. 125.011(1), F.S., appropriates trust fund monies remaining at the end of the fiscal year. Such funds may be appropriated to a redevelopment project only if an acceptable timeline and budget for the project is approved by the board of county commissioners.

The section also requires a forensic audit²³ of a CRA as defined in s. 125.011(1), F.S. This forensic audit must occur at least every five years to ensure that the CRA has not engaged in financial misconduct or wasteful activity.

Section 4 provides that the act shall take effect on July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²³ A "forensic audit" is the application of accounting methods to the tracking and collecting of forensic evidence, usually for investigation and prosecution of criminal acts such as embezzlement or fraud. BusinessDictionary.com *available at* <http://www.businessdictionary.com/definition/forensic-audit.html> (last visited Feb.8, 2012); *see* Robert M. Torok, *Accounting and You*, 66 CLEV. B.J. 31 (1995).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

CRAAs located in counties defined in s. 125.011(1), F.S., would be required to pay the cost of a forensic audit at least every five years.

VI. Technical Deficiencies:

None.

VII. Related Issues:**Section 125.011(1), Florida Statutes and Miami-Dade County**

Section 125.011(1), F.S., reads:

“County” means any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word “county” within the above provisions shall include “board of county commissioners” of such county.

The constitutional sections contained in the statute refer to Key West/Monroe County, Dade County and Hillsborough County, respectively. Duval County is also mentioned in Art. VIII, s. 6(e) of the 1968 Constitution, but it is not referred to in s. 125.011(1), F.S.

Miami-Dade County is the only county that comports with the description contained in s. 125.011(1), F.S., of a “county operating under home rule charter” adopted under constitutional authority and which “by resolution of its board of county commissioners, elects the powers” conferred by that statutory section.²⁴ General laws used by Miami-Dade County, and only Miami-Dade County have survived various legal challenges claiming that such general laws are, in actuality, special laws.²⁵

²⁴ Memorandum to Rip Colvin, Executive Director, Legislative Committee on Intergovernmental Affairs, from Carolyn Horwich, Staff Attorney (April 20, 2006) (on file with the Senate Committee on Community Affairs).

²⁵ See *Metropolitan Dade County v. Golden Nugget Group*, 448 So. 515 (FLA. 3rd DCA 1984), *aff'd*, 464 So. 2d 535 (Fla. 1985); *City of Miami v. McGrath*, 824 So. 1543 (Fla. 2002); *Homestead Hospital v. Miami-Dade County*, 829 So. 2d 259 (Fla. 3rd DCA 1992).

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
