

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 437 Community Development Districts
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee, Buchanan
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	12 Y, 1 N, As CS	Darden	Miller
2) Ways & Means Committee	14 Y, 0 N	Engelbrecht	Langston
3) State Affairs Committee			

SUMMARY ANALYSIS

Community development districts (CDD) are a type of special-purpose local government intended to provide basic urban community services in a cost-effective manner. The operation of CDDs is governed by Chapter 190, F.S., the "Uniform Community Development District Act of 1980." Depending on their size, CDDs are created by a county or municipal ordinance or the adoption of a rule by the Florida Land and Water Adjudicatory Commission (FLWAC). There are currently 677 active CDDs in Florida.

The bill would enable CDDs created by a county government to include a list of parcels in the creation petition that the district expects to annex within the next ten years. A parcel may only be included with the consent of the landowner. The bill provides a process for expanding the boundaries of the CDD to include parcels identified for annexation within the next ten years at the time of creation. The bill provides that the expansion of district boundaries to include these parcels does not alter the time period for transition from a landowner board to a board composed of qualified electors under s. 190.006, F.S and states that the parcels may be annexed even if the resulting CDD is greater than 2,500 acres.

The bill provides that a CDD may merge with a special district created by a special act pursuant to the terms of that special act and makes provisions for the assets and liabilities of the CDD.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 190, F.S., the “Uniform Community Development District Act of 1980,”¹ sets forth the exclusive and uniform procedures for establishing and operating a community development district (CDD).² This type of independent special district³ is an alternative method to manage and finance basic services for community development.⁴ There are currently 677 active CDDs in Florida.⁵

A CDD must act within the constraints of applicable comprehensive plans, ordinances, and regulations of the local general purpose government.⁶ CDDs have certain general powers, including the authority to assess and impose ad valorem taxes upon lands in the CDD, sue and be sued, participate in the state retirement system, contract for services, borrow money, accept gifts, adopt rules and orders pursuant to the Administrative Procedure Act (APA).⁷ CDDs may also maintain an office, lease, issue bonds, raise money by user charges or fees, and levy and enforce special assessments.⁸

The statute also authorizes additional special powers pertaining to public improvements and facilities, such as systems for water management, water supply, sewer, and wastewater management, as well as roads, bridges, culverts, street lights, buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, signage, environmental contamination, conservation areas, mitigation areas, and wildlife habitat.⁹ With the consent of the applicable local general-purpose government with jurisdiction over the affected area, a CDD may plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for improvements such as parks and recreational areas, fire prevention and control, school buildings and related structures; security; control and elimination of mosquitoes and other arthropods of public health importance; waste collection and disposal.¹⁰

¹ S. 190.001, F.S.

² Ss. 190.004, 190.005, F.S.

³ A “special district” is “a unit of local government created for a special purpose... within a limited geographic boundary ... created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.” S. 189.012(6), F.S. An “independent special district” is characterized by having a governing body the members of which are not identical in membership to, nor all appointed by, nor any removable at will by, the governing body of a single county or municipality, and the district budget cannot be affirmed or vetoed by the governing body of a single county or municipality. S. 189.012(3), F.S. Any special district including more than one county is an independent special district, unless the district lies wholly within a single municipality. S. 189.012(3), F.S.

⁴ S. 190.003(6), F.S.

⁵ Department of Economic Opportunity, *Official List of Special Districts Online – Directory*, available at <http://specialdistrictreports.floridajobs.org/webreports/mainindex.aspx> (last visited Feb. 25, 2019).

⁶ S. 190.004(3), F.S.

⁷ Ch. 120, F.S.

⁸ S. 190.011, F.S.

⁹ S. 190.012(1), F.S. The rule or ordinance establishing the CDD may restrict the special powers authorized in this subsection. S. 190.005(1)(f), (2)(d), F.S.

¹⁰ S. 190.012(2), F.S.

Establishing a CDD

Petition for Rulemaking by the Florida Land and Water Adjudicatory Commission

The method for establishing a CDD depends upon its size. CDDs of 2,500 acres or more are established by petitioning the Florida Land and Water Adjudicatory Commission (FLWAC)¹¹ to adopt an administrative rule to create the district.¹² The statute requires each petition to contain specific information, including the written consent to establishing the CDD by all landowners¹³ of real property to be included in the district.¹⁴ Prior to filing, the petitioner must submit copies of the petition and pay separate filing fees of \$15,000 each to the county and any municipality in which the proposed CDD will be located and also to each municipality contiguous with or containing a portion of the land proposed for inclusion in the district.¹⁵ The counties and municipalities required to receive copies of the petition may conduct public hearings and express support or objection to the proposed district by resolution and by stating their position before the FLWAC.¹⁶ Additionally, a public hearing on the petition must be held in the county where the CDD will be located, with the hearings to be conducted under the requirements of the APA¹⁷ before an administrative law judge.¹⁸ Once the hearing process is complete, the entire record is submitted to the FLWAC, reviewed by staff, and placed on the FLWAC meeting agenda for final consideration of the petition.¹⁹ If the petition is approved, staff of the FLWAC initiates proceedings to adopt the rule, thus creating the CDD.

Petition for Ordinance Creating a CDD

CDDs of less than 2,500 acres are established by ordinance of the county having jurisdiction over the majority of land in the area in which the CDD is to be located, with certain exceptions.²⁰ A petition to establish a CDD is filed with the county commission.²¹ After conducting a local public hearing before an administrative law judge,²² the commission may adopt an ordinance creating the CDD.²³ If any of the land proposed for inclusion in the CDD lies within the area of a municipality the county cannot create the district without approval of the affected municipality.²⁴

If all the land proposed for inclusion in the CDD lies within the territorial jurisdiction of a municipality, the petition is filed with that municipality which then exercises the duties otherwise performed by the county

¹¹ Created by s. 380.07, F.S., the FLWAC is comprised of the Administration Commission, which in turn is created by s. 14.202, F.S., and is composed of the Governor and Cabinet. This distinction affects the requirements for an affirmative vote by the FLWAC. Unless otherwise provided in law, the statutory voting requirements for the Administration Commission apply and affirmation by the FLWAC requires approval by the Governor and at least 2 Cabinet members.

¹² S. 190.005(1), F.S.

¹³““Landowner” means the owner of a freehold estate as appears by the deed record, including a trustee, a private corporation, and an owner of a condominium unit; it does not include a reversioner, remainderman, mortgagee, or any governmental entity, who shall not be counted and need not be notified of proceedings under this act. Landowner shall also mean the owner of a ground lease from a governmental entity, which leasehold interest has a remaining term, excluding all renewal options, in excess of 50 years.” S. 190.003(14), F.S.

¹⁴ S. 190.005(1)(a), F.S.

¹⁵ S. 190.005(1)(b), F.S.

¹⁶ S. 190.005(1)(c), F.S.

¹⁷ The general hearing requirements are stated in ss. 120.569, 120.57(1), F.S.

¹⁸ S. 190.005(1)(d), F.S.; R. 42-1.009, 42-1.012, F.A.C. Chapter 42-1, F.A.C., the procedural rules of the FLWAC, remains substantially unchanged since its adoption in 1982.

¹⁹ S. 190.005(1)(e), F.S. A similar process is followed when the FLWAC considers a proposed merger of existing CDDs. *See* FLWAC Agenda Item 1 and attachments (Aug. 16, 2011), at <http://www.myflorida.com/myflorida/cabinet/agenda11/0816/FLWAC0816.pdf> (last visited Mar. 5, 2019).

²⁰ S. 190.005(2), F.S.

²¹ S. 190.005(2)(a), F.S. The petition must contain the same information as required for submission to the FLWAC.

²² S. 190.005(2)(b), F.S. The hearing must follow the same notice and procedural requirements as the local hearing for petitions before the FLWAC.

²³ *See* s. 190.005(2)(d), F.S.

²⁴ S. 190.005(2)(e), F.S.

commission.²⁵ In this case, the CDD would be created by municipal ordinance. Within 90 days of receiving the petition, the county commission (or municipality, as applicable) may transfer the petition to the FLWAC.²⁶ If all the land of the proposed CDD lies within the territorial jurisdiction of two or more municipalities or two or more counties, the petition must be filed with the FLWAC, even if the total area is less than 2,500 acres.²⁷

Requirements for Notice, Meeting, and Vote of Landowners in a CDD

The board of supervisors, who are elected by the landowners of the district, exercise the powers of a CDD.²⁸ The board must have five members serving two or four year terms.²⁹ The initial members of the board are designated in the original petition to create the CDD and serve until after the district is established and new members are elected.³⁰ A meeting of landowners, for the purpose of electing the board, must be held within 90 days of the effective date of the rule or ordinance creating the district.³¹ Each landowner is entitled to one vote for each acre owned.³² The two top-vote-getting candidates are elected to four year terms, while the next three vote-getting candidates are elected to two year terms.³³ A new board election, held among the qualified electors of the district, occurs when either the board proposes to exercise its ad valorem taxing authority or six years after the formation of the district (ten years for districts exceeding 5,000 acres).³⁴ Once the statutory requirements are met for election of one or more board members by all qualified electors in the district, such elections are non-partisan general elections conducted by the supervisor of elections.³⁵

Financial Reporting by a CDD

CDDs are subject to the financial reporting requirements of Chapters, 189, 190, and 218, F.S.³⁶ The district manager is responsible for drafting a proposed budget on or before June 15 of each year.³⁷ The board of the CDD considers the proposed budget, makes amendments (as necessary), and adopts the budget by resolution.³⁸ After the board adopts the budget, a public hearing on the budget is held and the board may make further changes as it deems necessary.³⁹ At least sixty days prior to adoption, the district is required to submit its budget to the local government entities having jurisdiction over the area.⁴⁰ This submission is for the purposes of disclosure and information only, but the local government entities may submit written comments to the CDD board.⁴¹ CDDs are also required to take affirmative steps to provide full disclosure of information related to public financing and maintenance of improvements constructed by the district.⁴² The district must furnish any developer of residential property in the district with sufficient copies of this information to be able to provide a copy to each

²⁵ *Id.*

²⁶ S. 190.005(2)(f), F.S.

²⁷ S. 190.005(2)(e), F.S.

²⁸ S. 190.006(1), F.S.

²⁹ *Id.*

³⁰ Ss. 190.005(1)(a)3., 190.005(2)(a), F.S.

³¹ S. 190.006(2)(a), F.S.

³² S. 190.006(2)(b), F.S.

³³ *Id.*

³⁴ S. 190.006(3)(a)1.-2., F.S.. For CDDs with less than certain minimum numbers of qualified electors after 6 or 10 years, as applicable, the district landowners shall continue to elect the board members (s. 190.006(3)(a)2.a., F.S.) until the number of qualified electors in the district exceeds the statutory minimum (s. 190.006(3)(a)2.b., F.S.).

³⁵ S. 190.006(3)(b), F.S. The statute does not specify which supervisor of elections conducts the board election if the district encompasses property in more than one county.

³⁶ Ss. 189.013, 190.008(1), F.S.

³⁷ S. 190.008(2)(a), F.S.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ S. 190.008(2)(b), F.S.

⁴¹ S. 190.008(2)(b)-(c), F.S.

⁴² S. 190.009(1), F.S.

prospective initial purchaser of property.⁴³ Districts must file disclosures of this information in the property records of each county in which the district is located.⁴⁴ The Department of Economic Opportunity (DEO) is required to keep a current list of districts and their disclosures of public financing.⁴⁵

CDDs, like other special districts, also must comply with the annual financial reporting and financial audit reporting requirements of Chapter 218, F.S.⁴⁶ A CDD with revenues or total expenditures or expenses in excess of \$100,000 is required to have an annual audit conducted by an independent certified public accountant.⁴⁷ The auditor shall review the financial accounts and records of the district, reports on compliance and internal control, management letters, and financial statements, as required by rules adopted by the Auditor General.⁴⁸ The auditor must present these findings to the chair of the district's governing board and submit a copy of the report to the Auditor General.⁴⁹ The audit report is a public record once the report is submitted by the auditor to the district.⁵⁰ All CDDs are required to file an annual financial report with the Department of Financial Services.⁵¹

Expansion or Contraction of a CDD

A landowner or the board of a CDD may petition for the boundaries of the district to be expanded or contracted.⁵² This petition must contain the same information as is required to form a district and follows the same hearing process.⁵³ If the petition seeks to expand the district boundaries, the petition must include a proposed timetable for the construction of any district services in the new area, the estimated cost of constructing the proposed services, and the designation of the future land use plan for the area from the relevant local government local comprehensive plan.⁵⁴ If the petition seeks to contract the district boundaries, the petition must include a list of services and facilities currently provided by the district to the removed area, as well as the future land use plan for the area from the relevant local government local comprehensive plan.

For districts established by county ordinance, the petition for expansion or contraction must be filed with the county commission; there is no filing fee requirement.⁵⁵ The county commission then conducts a public hearing on the petition in the same manner as for other ordinance amendments. For districts established by FLWAC rule, the petitioner must pay a \$1,500 filing fee to each county or municipality in which the proposed resulting CDD will be located and also to each municipality contiguous with or containing a portion of the land proposed for inclusion in the district, and the required public meeting is conducted by the board of the CDD instead of a hearing officer.⁵⁶

The amount of land that can be added to a CDD is restricted. Whether a district was initially established by FLWAC rule or county or municipal ordinance, the cumulative additions to the district may not be greater than fifty percent of the initial land area of the CDD or a maximum of 1,000 acres.⁵⁷

⁴³ *Id.*

⁴⁴ S. 190.009(1), F.S.

⁴⁵ S. 190.009(2), F.S.

⁴⁶ Ss. 189.016(9), 190.008(1), F.S.

⁴⁷ S. 218.39(1), F.S. An entity is exempt from this requirement if it is informed by the first day of the fiscal year that the Auditor General will be conducting an audit of the entity for that fiscal year.

⁴⁸ S. 218.39(2), F.S. The rules of the Auditor General are Rules 10.550, 10.650, 10.700, 10.800, and 10.850, located at <https://flauditor.gov/pages/rules.html> (last visited Mar. 5, 2019). These rules are not codified in the F.A.C. See s. 120.50(1), F.S., Rule 61H1-20.0093, F.A.C.

⁴⁹ S. 218.39(5), (7), F.S.

⁵⁰ See s. 119.0713(3), F.S.

⁵¹ S. 218.32(1)(a), F.S.

⁵² S. 190.046(1), F.S.

⁵³ S. 190.046(1)(a)-(d), F.S.

⁵⁴ S. 190.046(1)(a), F.S.

⁵⁵ S. 190.046(1)(b), F.S.

⁵⁶ S. 190.046(1)(d)1.-4., F.S.

⁵⁷ S. 190.046(1)(e), F.S.

Merger of a CDD

A CDD may be merged with another CDD by filing a petition for merger, which states the elements for establishing a new CDD, including an evaluation using the criteria for creating a new district and submitting the filing fee.⁵⁸ The petition must state whether the surviving district will be one of the existing districts or if it creates an entirely new district. A CDD may also be merged with other types of special districts by using the process for creating a new district. The CDD would inherit the rights and associated obligations of property and creditors of the merged special district(s). A CDD merging with another type of special district is required to enter a merger agreement to allocate indebtedness to be assumed by the new CDD and the process for retiring the debt. The board of supervisors of the CDD, by approving the merger agreement and the petition, is deemed to represent the consent of the district landowners.

A CDD may also merge with up to four other CDDs created by the same local general-purpose government, as long as the membership of each board of directors is composed entirely of qualified electors.⁵⁹ This method may be used even if the merged district would have been required to receive FLWAC approval, if that CDD were to be newly created. The filing of a petition approved by the board of each applying CDD represents consent of the landowners within each district.

The CDDs planning to merge must meet the requirements of s. 190.046(3), F.S. and must enter into a merger agreement specifying that:⁶⁰

- The merged district's board will consist of five members;
- Each at-large member of the merged district's board represents the entire district;
- Each former district is entitled to elect at least one board member from its former boundary;
- The member of the merged district's interim board will consist of:
 - If two CDDs merge, two members from each former district and one at-large member
 - If three CDDs merge, one member from each former district and two at-large members
 - If four CDDs merge, one member from each former district and one at-large member
 - If five CDDs merge, one member from each former district; and
- All pre-existing board members' terms will end at the next general election and a new board representing the entire district will be elected.

Before filing the merger petition, each CDD must hold a public hearing to take comment on the proposed merger, the merger agreement, and the assignment of board seats.⁶¹ The hearing must be noticed at least 14 days beforehand. If any CDD withdraws after the public hearing, the remaining districts considering merger must hold a public hearing on a revised merger agreement between the remaining parties. The petition may not be filed for at least 30 days after the last public hearing.

Dissolution of a CDD

A CDD remains in existence unless the district is merged with another district, all community development services associated with the district have been transferred to a county or municipal government, or the district is dissolved as provided in statute.⁶² A CDD may be dissolved in one of three ways:

⁵⁸ S. 190.046(3), F.S.

⁵⁹ S. 190.046(4)(a), F.S.

⁶⁰ S. 190.046(4)(b), F.S.

⁶¹ S. 190.046(4)(c), F.S.

⁶² S. 190.046(2), F.S.

- Automatic dissolution: If a landowner does not receive a development permit for some part of the area covered by the CDD within five years of the effective date of the rule or ordinance establishing the district, the CDD is automatically dissolved.⁶³
- Action by local government: If a CDD is declared inactive by DEO pursuant to s. 189.062, F.S., the county or municipal government that created the district must be informed and is required to take “appropriate action.”⁶⁴
- Petition for dissolution: A CDD with no outstanding financial obligations and no operating or maintenance responsibilities may petition the authority that created the district to dissolve the district by appropriate action.⁶⁵ If the district was created by a county or municipal government, the CDD may be dissolved by a non-emergency ordinance.⁶⁶ If the district was created by FLWAC rule, the CDD may petition the commission to repeal the rule.

Effect of Proposed Changes

The bill provides that the petition to a county government to create a CDD may include a list of parcels adjacent to the district within the same county or municipality that the petitioner expects to include in the district boundaries within ten years. The petition must include the legal description of the parcels, the name of the current landowners, the acreage of each parcel, and the current land use designation of each parcel. Current landowners must receive notice of the filing of the petition, the date and time of the public hearing on the petition, and the name and address of the petitioner at least 14 days period to the public hearing concerning the creation of the CDD. A parcel may only be included with written consent of the landowner.

The bill creates a procedure for expanding the boundaries of a CDD to include parcels listed in the petition to create the district. The bill allows a person to file a petition with the county commission to amend the ordinance creating the CDD to expand the boundaries to include the parcels which were identified in the petition creating the district. The annexation petition must include:

- A metes and bounds description of each parcel to be annexed;
- A new legal description of the district including the annexed parcels;
- Written consent of all landowners of the parcels to be annexed;
- A map of the district including the annexed parcels;
- A description of the development proposed for each parcel to be annexed; and
- A copy of the original petition establishing the CDD.

The county commission would be prohibited from charging a filing fee for the petition to include within the CDD the parcels listed in the petition to create the district.

The petitioner is required to provide a copy of the petition to the district and each landowner of a parcel to be included in the district before the petition is filed with the county commission.

If the petition requirements are met, the county commission would be required to amend the ordinance creating the district to include the new parcels. The additional parcels may be added to the boundaries of the district even if the merged district would have been required to receive FLWAC approval if the district were being newly created. The petitioner is required to provide at least 10 days notice in a newspaper of general circulation within the county of the scheduled hearing to amend the ordinance. The notice must include a general description of parcel(s) to be included in the district and the date and time of the scheduled hearing. The petitioner is also required to provide 14 days notice, by mail, of the

⁶³ S. 190.046(7), F.S. This subsection also requires a “judge of the circuit shall cause a statement (of dissolution) to be filed in the public records.” No guidance is provided as to whether a party must ask the court for the statement, who is authorized to ask, or the procedure to bring the matter before the court.

⁶⁴ S. 190.046(8), F.S.

⁶⁵ S. 190.046(9), F.S.

⁶⁶ *Id.*

hearing to the district and each landowner of a parcel to be included in the district. These notice requirements are in addition to any notices otherwise required to adopt an ordinance.

The bill provides that the expansion of district boundaries by the method established by the bill does not change the time period for transitioning from a landowner to a qualified elector board under s. 190.006, F.S.

The bill requires the petitioner to file a notice of boundary amendment with the FLWAC after adoption of the ordinance amendment.

The bill states that a CDD created by a petition including a list of parcels may use other expansion procedures provided by ch. 190 in addition to the expansion method created by the bill.

The bill authorizes a CDD to merge with a special district created by special act, pursuant to the terms of that special act. A CDD is authorized to enter into a merger agreement to address transition issues, including the allocation and retirement of existing debt. The bill provides that approval of the merger by the board of supervisors of the district represents the consent by the landowners within the CDD. The bill further provides that new special district created by the merger agreement shall assume the assets and liabilities of the CDD.

B. SECTION DIRECTORY:

Section 1: Amends s. 190.005, F.S., to authorize petitioners for a new community development district to include a list of parcels for future expansion of the district.

Section 2: Amends s. 190.046, F.S., providing procedures for the inclusion in the district of parcels included in the petition to create a community development district; providing procedures for a community development district to merge with an independent special district created by special act.

Section 3: Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

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. The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor 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 March 5, 2019, the Local, Federal & Veterans Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides that a CDD may merge with a special district created by a special act pursuant to the terms of that special act and makes provisions for the assets and liabilities of the CDD.

This analysis is drafted to the committee substitute as passed by the Local, Federal & Veterans Affairs Subcommittee.