

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 Committee on Community Affairs

BILL: SB 1254

INTRODUCER: Senator Wright

SUBJECT: Community Development District Bond Financing

DATE: January 17, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>FT</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1254 increases the number of votes required for a community development district board to authorize bonds. The bill increases the passing threshold from a majority vote to a two-thirds vote of the board, beginning October 1, 2020.

II. Present Situation:

Community Development Districts

Community development districts (CDDs) are a type of special-purpose local government intended to develop and provide basic urban community services cost-effectively. These independent special districts¹ are created pursuant to and governed by the Uniform Community Development District Act of 1980.² The Act lays out the exclusive and uniform procedures for establishing and operating a CDD.³ CDDs provide a means to manage and finance the delivery of basic services and capital infrastructure to developing communities without overburdening other governments and their taxpayers.⁴ Currently, there are 711 active CDDs in Florida.⁵

¹ A “special district” is “a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.” Section 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. Section 189.012(3), F.S. *Also, see s. 189.012(2), F.S.*

² Section 190.001, F.S.

³ *See ss. 190.004 and 190.005, F.S.*

⁴ Section 190.002(1)(a), F.S.

⁵ Department of Economic Opportunity, *Official List of Special Districts Online – Directory*, available at: <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Jan. 11, 2020).

CDDs are created either by the Florida Land and Water Adjudicatory Commission (FLWAC)⁶ or by local ordinance. CDDs of less than 2,500 acres are established by ordinance of the county having jurisdiction over the majority of the land in the area in which the CDD will be located, with certain exceptions.⁷ For example, CDDs that lie wholly within a municipality are created by municipal ordinance.⁸ CDDs that are 2,500 acres or more are established by petitioning the FLWAC to adopt an administrative rule creating the district.⁹ CDDs remain in existence unless dissolved by statute, merged with another district, or all authorized services are transferred to a general-purpose unit of local government.¹⁰

CDD Board of Supervisors

Board Powers

A CDD board is authorized to exercise general and special powers within the constraints of applicable comprehensive plans, ordinances, and regulations of the general-purpose local government.¹¹ General powers include the authority to assess and impose ad valorem taxes within the district and to issue bonds.¹² In part, the special powers over public improvements and community facilities include, unless prohibited elsewhere,¹³ the power to finance, fund, plan, establish, acquire, construct, equip, operate, and maintain facilities and basic infrastructures for:

- Water management and control for the lands within the district;
- Water supply, sewer, and wastewater management, reclamation, and reuse;
- Water supply, sewer, and wastewater management, reclamation, and reuse;
- District roads and road improvements.¹⁴

Board Elections and Membership

A CDD board is controlled by a five-member board of supervisors (board), who are initially elected by the landowners¹⁵ of the district. In the first board election, each landowner is entitled to one vote for each acre owned. Out of the five initial board members, three members serve 2-year terms and two members serve 4-year terms.¹⁶ In two years, the landowners must hold the second board election to replace the three exiting 2-year term board members.¹⁷ Two of the

⁶ 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 (The Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture compose the Cabinet. See s. 20.03(1), F.S.).

⁷ Section 190.005(2), F.S.

⁸ Section 190.005(2)(e), F.S.

⁹ Section 190.005(1), F.S.

¹⁰ Section 190.046(2), F.S.

¹¹ See s. 190.004(3), F.S.

¹² Section 190.011, F.S.

¹³ Sections 190.005(1)(f) and (2)(d), F.S.

¹⁴ Section 190.012, F.S.

¹⁵ “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. Section 190.003(14), F.S.

¹⁶ Section 190.006, F.S.

¹⁷ *Id.*

replacement board members will serve 4-year terms, and one will serve a 2-year term.¹⁸ This system of replacing board members is known as a staggered board.¹⁹

Transferring Board Control from Landowners to Qualified Electors

Landowners are the private individuals and businesses that own the land located within a CDD.²⁰ Typically, landowners have a financial interest in building the infrastructure and public facilities for a new community through the operation of a CDD. Qualified electors²¹ are the persons that reside within the boundaries of a CDD. During the initial six years of CDD operations, landowners are provided a broad right to elect and serve as CDD board members.²² In practice, initial landowner control of a CDD board facilitates the governmental actions needed to develop and construct public infrastructure for future residents. However, the control of a CDD board eventually transfers from landowners to qualified electors. Florida law describes certain situations and timeframes in which qualified electors are required to elect and fill all five positions on a CDD board.²³

Under s. 190.006(3)(a)1., F.S., if a landowner controlled board proposes to exercise ad valorem taxing power at any time, landowners are required to transfer control of the board to the district's qualified electors. The CDD must hold a general or special election, where qualified electors are the only individuals allowed to vote and hold a board position.²⁴

Qualified electors may also gain the right to fill board positions starting either the 6th or 10th year after an initial CDD board election, as long as the district has the statutorily required number of qualified electors.²⁵ If the number of qualified electors within a district is below the statutory threshold during the 6th and 10th year elections, members of the board shall continue to be elected by landowners.²⁶

Under s. 190.006(3)(a)2.b., if the district obtains the required number of qualified electors following the 6th or 10th year elections, then, at the next election, qualified electors would elect and fill two board member positions, and the landowners would elect and fill the remaining one. In this scenario, out of the five-member CDD board, the landowners have three elected members on the board, and the qualified electors have two. Under current law, this majority of landowner

¹⁸ *Id.*

¹⁹ A staggered board is a board that consists of directors grouped into classes who serve terms of different lengths. A typical staggered board has three to five classes of positions on the board, each carrying terms of service that vary in length, allowing for a staggering of elections. See Investopedia, *Staggered Board*, available at: <https://www.investopedia.com/terms/s/staggered-board.asp> (last visited Jan. 13, 2020)

²⁰ Section 190.003(14), F.S.

²¹ "Qualified elector" means any person at least 18 years of age who is a citizen of the United States, a legal resident of Florida and of the district, and who registers to vote with the supervisor of elections in the county in which the district land is located. Section 190.003(17), F.S.

²² See s. 190.006(3)(a), F.S.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 2.a. ("If, in the 6th year after the initial appointment of members, or 10 years after such initial appointment for districts exceeding 5,000 acres in area or for a compact, urban, mixed-use district, there are not at least 250 qualified electors in the district, or for a district exceeding 5,000 acres or for a compact, urban, mixed-use district, there are not at least 500 qualified electors, members of the board shall continue to be elected by landowners.")

²⁶ *Id.*

board members may issue new bonds without needing any votes from qualified elector board members.²⁷

CDD Bond Financing

A CDD board may authorize general obligation, benefit, or revenue bonds by one or more resolutions approved by a majority of the members in office.²⁸ Bond resolutions authorize the terms, covenants, or conditions of bonds,²⁹ but cannot authorize bond proceeds to be used to fund the ongoing district operations,³⁰ bond interest rates that deviate from the statewide maximum,³¹ or bonds that mature in more than 40 years.³² If bond proceeds are insufficient to complete an associated project, a board may authorize additional bonds in compliance with the original bond resolution or proceeding.³³ Finally, if a CDD defaults on bond payments, the default does not become a debt of a general-purpose local government or the state.³⁴

General Obligation Bonds

General obligation bonds are secured by a pledge of the full faith and credit and taxing power of the CDD in addition to special tax levies and other sources provided or pledged to pay the bonds.³⁵ A CDD board may also unconditionally and irrevocably pledge to levy ad valorem taxes on all taxable property in the district, with no limit on tax rate or amount, to repay general obligation bonds.³⁶ A pledge of the full faith and credit and taxing power of the district provides a bondholder with recourse against the district's general fund for payment.³⁷

CDD boards may only authorize general obligation bonds to finance or refinance capital projects or refund outstanding bonds.³⁸ For bonds to be authorized, the total amount of outstanding bond principal for the district cannot exceed 35 percent of the assessed value of the taxable property within the district.³⁹ Except for refunding bonds, general obligation bonds must be approved at a referendum as prescribed by the State Constitution.⁴⁰

²⁷ Section 190.016(2), F.S.

²⁸ *Id.* Although the statute allows boards to authorize benefit bonds, these bonds are not defined nor discussed any further in the chapter.

²⁹ Section 190.016(2), F.S.

³⁰ Section 190.016(13), F.S.

³¹ Section 215.84, F.S.

³² Section 190.016(2), F.S.

³³ Section 190.016(6), F.S.

³⁴ Section 190.016(15), F.S.

³⁵ Section 190.003(13), F.S.

³⁶ Section 190.016(9)(b), F.S.

³⁷ Section 190.003(13), F.S.

³⁸ Section 190.016(9)(a), F.S.

³⁹ *Id.* Existing general obligation bonds are not included in the outstanding bond total if they are also secured by: 1) special assessments levied in an amount sufficient to pay bond principal and interest that have been equalized and confirmed as provided by s. 170.08, F.S.; 2) district revenues from water, sewer, or water and sewer user fees when the amount is sufficient to pay bond principal and interest; or 3) any combination of such assessments and revenues. Section 190.016(9)(d)1.-3., F.S.

⁴⁰ Art. VII, s. 12(a), Fla. Const. and Section 190.016(9)(a), F.S.

Revenue Bonds

Revenue bonds are payable from revenues derived from sources other than ad valorem taxes on real or tangible personal property and do not pledge the property, credit, or general tax revenue of the district.⁴¹ Pledged sources include anticipated project revenues, end-user rates or service charges, special assessments, and other revenue-generating district activities.⁴² Revenue bonds don't count as a debt of the CDD.⁴³

CDD boards can authorize revenue bonds without restrictions on the amount or type of project to be financed.⁴⁴ A referendum is not required unless the revenue bond will be secured by the full faith and credit and taxing power of the district.⁴⁵

III. Effect of Proposed Changes:

The bill amends s. 190.016, F.S., to increase the vote threshold required to authorize bonds issued by a CDD board from a majority vote to a two-thirds vote of the board, beginning October 1, 2020.

The bill takes effect on October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

⁴¹ Section 190.003(19), F.S.

⁴² Section 190.016(8)(a), F.S.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The revised voting requirement may reduce the number of CDD bond issuances compared to that which would occur under current law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 190.016 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.