

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 Rules

BILL: CS/SB 1466

INTRODUCER: Governmental Oversight and Accountability Committee and Senators Baxley and Broxson

SUBJECT: Government Accountability

DATE: February 28, 2020

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|------------------|
| 1. | <u>Toman</u> | <u>Ryon</u> | <u>CA</u> | <u>Favorable</u> |
| 2. | <u>McVaney</u> | <u>McVaney</u> | <u>GO</u> | <u>Fav/CS</u> |
| 3. | <u>Toman</u> | <u>Phelps</u> | <u>RC</u> | <u>Favorable</u> |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1466 excludes certain acts or omissions by board members or employees of special districts or community development districts from being considered abuse of public position under Article II, section 8(h)(2) of the Florida Constitution if such acts or omissions are authorized under specific provisions of the Florida Code of Ethics.

CS/SB 1466 alters current required reporting of information on a special district's official website. Specifically, the bill allows a special district to satisfy the required posting of its most recent final, complete audit report on its own website by providing a link to this report maintained on the Auditor General's website. In addition, the bill removes the requirement for online posting of a special district's public facilities report and any of a special district's meeting or workshop materials. Required postings of a special district meeting or workshop, and the agendas of such events, remain.

II. Present Situation:

Special Districts

A "special district" is "a unit of local government created for a special purpose... operat[ing] within a limited geographic boundary and is created by general law, special act, local ordinance,

or rule of the Governor and Cabinet.”¹ Special districts are created to provide a wide variety of services, such as mosquito control,² beach facilities,³ children’s services,⁴ fire control and rescue,⁵ and drainage and water control.⁶

Special districts can be classified as “dependent special districts” or “independent special districts.” For a special district to be classified as a “dependent special district,” the district must meet at least one of the following criteria:

- 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;
- The members of its governing body are subject to removal at will by the governing body of a single county or single municipality, during their unexpired terms; or
- The district has a budget that requires approval or can be vetoed by the governing body of a single county or a single municipality.⁷

An “independent special district” is any special district that does not meet the definition of “dependent special district.”⁸ Additionally, any special district that includes territory in more than one county is an independent special district, unless the district lies entirely within the borders of a single municipality.⁹

According to the Department of Economic Opportunity (DEO) Special District Accountability Program Official List of Special Districts, the state currently has 1,756 active special districts. Specifically, there are:

- 633 dependent special districts; and
- 1,123 independent special districts.¹⁰

In 1989, the Legislature enacted the Uniform Special District Accountability Act (Act) which governs special districts and reformed and consolidated laws relating to special districts.¹¹ In 2014, the Legislature extensively revised and reorganized the Act into eight parts. The revision made significant changes to provisions concerning independent special districts and special district oversight and accountability.¹²

¹ Section 189.012(6), F.S.

² Section 388.021(1), F.S.

³ See s. 189.011, F.S.

⁴ Section 125.901(1), F.S.

⁵ Section 191.002, F.S.

⁶ Section 298.01, F.S.

⁷ Section 189.012(2), F.S.

⁸ Section 189.012(3), F.S.

⁹ *Id.*

¹⁰ See Department of Economic Opportunity, Division of Community Development, Special District Accountability Program, *Official List of Special Districts Online – Directory*, available at <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Jan. 19, 2020).

¹¹ Section 189.06, F.S.

¹² Chapter 2014-22, L.O.F.

Reporting Requirements

Special districts are subject to oversight and review by state and local governments to better determine the need for the continued existence of a district, the appropriate future role and focus of a district, improvements to the function or service by a district, and the need for any transition, adjustment, or special implementation periods or provisions.¹³

Special districts created by special act are subject to review by the Joint Legislative Auditing Committee (JLAC) at a public meeting for not complying with reporting requirements under ch. 189, F.S., as well as oversight matters in general.¹⁴ Special districts created by local ordinance or resolution are subject to review by the chair, or the equivalent, of the local governing body.¹⁵ Special districts created or established by rule of the Governor and Cabinet may be reviewed as directed by the Governor and Cabinet.¹⁶ Special districts not subject to other oversight may be reviewed as directed by the President of the Senate and the Speaker of the House of Representatives.¹⁷

State agencies administering funding programs to eligible special districts oversee the use of such funds by the special districts. The state agencies must report the existence of programs as well as an annual list of special districts participating in state funding programs to the DEO Special District Accountability Program.¹⁸

Special District Websites

Each special district is required to maintain an official website containing essential information about the district.¹⁹ Each independent special district is required to maintain a separate website.²⁰ Each dependent district is, at a minimum, required to be prominently displayed on the home page of the website of the local general-purpose government upon which it is dependent.²¹ However, a dependent special district may maintain a separate website.²² A special district shall post the following information, at a minimum, on the district's official website:²³

- The full legal name of the special district.
- The public purpose of the special district.
- The name, official address, official e-mail address, and, if applicable, term and appointing authority for each member of the governing body of the special district.

¹³ Section 189.068(1), F.S. Any final recommendations from the oversight review process which are adopted and implemented by the appropriate level of government may not be implemented in a manner that would impair the obligation of contracts.

¹⁴ Section 189.0651(2), F.S.

¹⁵ Section 189.0652(2), F.S. Dependent special districts, not created by special act, may be reviewed by the local general-purpose government upon which it is dependent; *see* s. 189.068(2)(c), F.S.

¹⁶ Section 189.068(2)(d), F.S.

¹⁷ Section 189.068(2)(e), F.S.

¹⁸ Sections 189.065(1)-(2), F.S. The list of participating special districts must indicate if a district is not in compliance with state funding program requirements.

¹⁹ Section 189.069(1), F.S.

²⁰ Section 189.069(1)(a), F.S.

²¹ Section 189.069(1)(b), F.S.

²² *Id.*

²³ Section 189.069(2)(a), F.S.

- The fiscal year of the special district.
- The full text of the special district’s charter, the date of establishment, the establishing entity, and the statute or statutes under which the special district operates, if different from the statute or statutes under which the special district was established. Community development districts may reference ch. 190, F.S., as the uniform charter but must include information relating to any grant of special powers.
- The mailing address, e-mail address, telephone number, and website uniform resource locator of the special district.
- A description of the boundaries or service area of, and the services provided by, the special district.
- A listing of all taxes, fees, assessments, or charges imposed and collected by the special district, including the rates or amounts for the fiscal year and the statutory authority for the levy of the tax, fee, assessment, or charge. For purposes of this subparagraph, charges do not include patient charges by a hospital or other health care provider.
- The primary contact information for the special district for purposes of communication from the department.
- A code of ethics adopted by the special district, if applicable, and a hyperlink to generally applicable ethics provisions.
- The budget of the special district and any amendments thereto in accordance with s. 189.016, F.S.
- The final, complete audit report for the most recent completed fiscal year and audit reports required by law or authorized by the governing body of the special district.
- A listing of its regularly scheduled public meetings as required by s. 189.015(1), F.S.
- The public facilities report,²⁴ if applicable.
- The link to the Department of Financial Services website as set forth in s. 218.32(1)(g), F.S.
- At least 7 days before each meeting or workshop, the agenda of the event, along with any meeting materials available in an electronic format, excluding confidential and exempt information. The information must remain on the website for at least 1 year after the event.

Noncomplying Special Districts

If an independent special district fails to file required reports or information regarding registered agents,²⁵ public meetings,²⁶ public facilities,²⁷ or its budget²⁸ with the local general-purpose government in which it is located, the local government notifies the district’s registered agent.²⁹ If the governing body of the local general-purpose government determines that there has been an unjustified failure to file reports or information it must notify DEO.³⁰ This notification triggers a

²⁴ Section 189.08(2)(a), F.S., states that a public facilities report shall provide a description of existing public facilities owned or operated by the special district, and each public facility that is operated by another entity, except a local general-purpose government, through a lease or other agreement with the special district.

²⁵ Section 189.014, F.S.

²⁶ Section 189.015, F.S.

²⁷ Section 189.08, F.S.

²⁸ Section 189.016(9), F.S.

²⁹ Section 189.066(1), F.S. An extension of up to 30 days for filing the required reports or information is possible.

³⁰ *Id.* This notification triggers a series of steps taken by DEO to assist a special district in complying with its financial reporting requirements pursuant to s. 189.067, F.S.

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If a dependent special district fails to file such reports with the local governing authority to which it is dependent, the local governing authority is obligated to take the necessary steps to enforce the special district's accountability.³¹ These may include withholding funds, removing the governing body members, vetoing the special district's budget, conducting the oversight review process, or amending, merging, or dissolving the special district in accordance with the provisions contained in the ordinance that created the dependent special district.³²

The oversight and accountability provisions in s. 189.067, F.S., are also initiated by special district noncompliance related to noticing of bond issues, state agency actuarial reports, annual financial reports, and annual financial audit reports.³³ If a special district fails to comply after DEO has exhausted its attempt to assist under s. 189.067, F.S., the failure is deemed final action by the district.³⁴ The district is subject to the oversight process headed by either the JLAC³⁵ or the local governing body,³⁶ as appropriate.

Federal and State Laws Regulating Access to Records by Disabled Individuals

The Americans with Disabilities Act³⁷

The Americans with Disabilities Act (ADA) was signed into law on July 26, 1990, by President George H.W. Bush. The legislation prohibits discrimination and guarantees that people with disabilities have the same opportunities as persons without disabilities. Modeled after the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, religion, sex, or national origin -- and Section 504 of the Rehabilitation Act of 1973 -- the ADA is considered an "equal opportunity" law for people with disabilities.

To be protected by the ADA, one must have a disability, which is defined by the ADA as a physical or mental impairment that substantially limits one or more major life activities; a person who has a history or record of such an impairment; or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered. Title I of the ADA applies to employment, Title II applies to public services and Title III applies to public accommodations and services operated by private entities.

Title II: Public Entities

Title II of the ADA prohibits public entities from excluding the participation in or denying the benefits of their services, programs, or activities to qualified individuals with a disability,³⁸ or

³¹ Section 189.066(2), F.S.

³² *Id.*

³³ *See* s. 189.066, F.S.

³⁴ Section 189.067(2), F.S.

³⁵ Sections 189.067(2) and 189.0651, F.S.

³⁶ Sections 189.067(2) and 189.0652, F.S.

³⁷ United States Department of Justice, Civil Rights Division, *Information and Technical Assistance on the Americans with Disabilities Act*, available at https://www.ada.gov/ada_intro.htm (last visited Jan. 19, 2020).

³⁸ A person is a 'qualified' individual with a disability with respect to licensing if he or she, with or without reasonable modifications, 'meets the essential requirements' for the receipt of services or the participation in programs or activities

otherwise discriminating against such individuals, because of the disability.³⁹ “Public entities” includes state and local governments, state and local agencies, and special districts.⁴⁰ To meet the definition of a qualified individual with a disability, the person must be eligible for receipt of the public benefit with or without a reasonable modification.⁴¹

If the need is obvious or upon request,⁴² a public entity must:

- Make reasonable modifications to its rules, policies, or practices;
- Remove architectural, communication, or transportation barriers; or
- Provide auxiliary aids and services when necessary to accommodate an individual with a disability.⁴³

A public entity must provide auxiliary aids and services in a timely manner and in an accessible format, and must protect the privacy and independence of the individual.⁴⁴ An accommodation or modification that fundamentally alters the nature of the activity, service, or program, or that causes the public entity an undue financial or administrative burden is not reasonable or necessary.⁴⁵

Title III: Private Entities

Title III prohibits certain private entities⁴⁶ from discriminating against an individual on the basis of a disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation. A private entity may provide a different or separate benefit if necessary to effectively provide benefits.⁴⁷

A private entity must make reasonable modifications to its policies, practices, or procedures, or take any steps necessary to ensure individuals are not denied services, segregated or otherwise treated differently due to the absence of an aid or service. A modification or step that will fundamentally alter the nature of the product or service, or pose a direct danger to others is not required. When readily achievable,⁴⁸ a private entity must:

- Remove any existing architectural, structural communication, or transportation barrier; or
- Offer access to its product or service through alternative methods.⁴⁹

provided by a public entity. 42 U.S.C. s. 12131(2). *See also The Fla. Bar v. Clement*, 662 So. 2d 690, 700 (Fla. 1995), as amended (November 28, 1995).

³⁹ 42 U.S.C. s. 12132.

⁴⁰ 42 U.S.C. s. 12131(1)

⁴¹ 42 U.S.C. s. 12131(2)

⁴² *See McCullum v. Orlando Regional Healthcare*, No. 6:11-cv-1387-Orl-31GJK, 2013 WL 1212860, at *4 (M.D.Fla.2013); *see also Smith v. Rainey*, 747 F.Supp.2d 1327, 1338 (M.D.Fla.2010).

⁴³ *See* 42 U.S.C. s. 12131(2).

⁴⁴ 28 C.F.R. s. 35.160(b).

⁴⁵ *See Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 603, 119 S. Ct. 2176 (1999).

⁴⁶ 42 U.S.C. s. 12181(6). A private entity is defined as any entity other than a public entity. Private entities that own, lease, or operate places of public accommodation fall under Title III.

⁴⁷ *See* 42 U.S.C. s. 12182.

⁴⁸ 42 U.S.C. s. 12181(9). Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense.

⁴⁹ 42 U.S.C. s. 12182. *See also A.L. by & through D.L. v. Walt Disney Parks & Resorts US, Inc.*, 900 F.3d 1270 (11th Cir. 2018)(holding that the Defendant’s blanket accommodation for all cognitively disabled theme park guests was not per se ADA violation).

ADA Internet Website Access Administration

The Department of Justice (DOJ) is responsible for administering Title II and Title III of the ADA.⁵⁰ In 2010, DOJ took the position that internet website access fell within the scope of the ADA, even in the absence of explicit language. Therefore, public entities communicating through web-based applications or otherwise providing internet services must ensure that individuals with disabilities have equal access to such services or information unless it would alter the nature of the product or cause the entity an undue burden. To date, the DOJ has promulgated no regulations on this issue.⁵¹

From December 2006 to June 2007, the Civil Rights Division of DOJ released a Best Practices Tool Kit for State and Local Governments.⁵² Chapter 5 addresses web accessibility under Title II. DOJ provides suggestions for how governments may design their websites and recommends referencing the Worldwide Web Consortium's (W3C) Web Content Accessibility Guidelines 2.0 (WCAG 2.0), an internationally accepted resource, for conformance standards.

State and local governments are not required to use the Tool Kit. However, DOJ intends to provide a reasonable approach to achieve compliance through the Tool Kit. Among the common basic challenges to website accessibility cited in the Tool Kit are images without text equivalents. According to the Tool Kit, screen readers and refreshable Braille displays utilized by persons who are visually impaired cannot interpret photographs, charts, color-coded information, or other graphic elements on a webpage. The suggested solution for this challenge is the addition of HTML⁵³ code to provide text for each image and graphic to enable a user with a vision disability to understand what it is. For documents posted online, DOJ suggests governments posting documents online in Portable Document Format (PDF), or other image-based format, also post a version in Rich Text Format (RTF), or other text-based format, to allow compatibility with assistive technologies. The Tool Kit includes a checklist to help local governments assess the accessibility of their websites.

Section 508 of the Rehabilitation Act of 1973

Federal agency website accessibility is not regulated under the ADA but primarily under section 508 of the Rehabilitation Act of 1973 (Section 508).⁵⁴ Public entities are not required to follow these guidelines. However, Florida requires its state agencies, which includes the executive,

⁵⁰ See 28 CFR parts 35 (Title II) and 36 (Title III).

⁵¹ DOJ stated in its 2010 comments, "The Department expects to engage in rulemaking relating to website accessibility under the ADA in the near future." Department of Justice, *2010 Guidance and Section-by-Section Analysis (Attorney General's Comments)*, available at https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm#a35102 (last visited Jan. 20, 2020).

⁵² Department of Justice, *ADA Best Practices Tool Kit for State and Local Governments, Chapter 5*, available at <https://www.ada.gov/pcatoolkit/chap5toolkit.htm> (last visited Jan. 20, 2020). The Tool Kit contains a notice that some chapters may not fully reflect the current ADA.

⁵³ Hypertext mark-up language is a common mark-up language used to present webpages. It tells the web browser how information should be structured and accessed.

⁵⁴ See 29 U.S.C. s. 794d, s. 508 of the Rehabilitation Act; 47 U.S.C. s. 255, and s. 255 of the Telecommunications Act. There is proposed legislation currently in the U.S. Congress that would research the best guidance for state and local governments providing website access. See H.R. 4099 (2019).

legislative, and judicial branches, to follow Section 508 when providing public and employee access to electronic information and data.⁵⁵

Under Section 508, when federal agencies develop, procure, maintain, or use electronic and information technology, they must give employees and members of the public with disabilities access to that information that is comparable to the access available to those without disabilities. The U.S. Access Board (Access Board) is responsible for developing federal accessibility standards.⁵⁶ The Access Board updated its rules in 2018 and currently incorporates the WCAG 2.0 into its regulation.⁵⁷

Florida Statutes Related to Accessibility of Electronic Information

Chapter 282, F.S., regulates the accessibility of electronic information among state agencies.⁵⁸ Executive, legislative, and judicial branches of state government must ensure that state employees with disabilities have access to and are provided with electronic information and data comparable to the access and use by state employees who do not have disabilities unless an undue burden would be imposed on the agency.⁵⁹ Similarly, individuals with disabilities who are members of the public must be provided with access to and use of electronic information and data comparable to that provided to nondisabled members of the public, unless an undue burden would be imposed on the agency.⁶⁰

Each state agency must develop, procure, maintain, and use accessible electronic information and information technology in conformance with federal law,⁶¹ absent an undue burden. If an agency claims compliance will impose an undue burden, it must provide proof an alternative method allows the individual to use the information and data.⁶² The statute does not extend its requirements to local governments.⁶³

Case Law involving Access to Electronic Information

To establish a claim under Title II, a plaintiff must establish he or she had a disability, was denied a public benefit or other discrimination, and the denial of benefits or discrimination was by reason of the plaintiff's disability.⁶⁴ The scope of public entities subject to Title II of the ADA includes public prisons,⁶⁵ universities,⁶⁶ courts,⁶⁷ and legislative chambers.⁶⁸ Additionally, states

⁵⁵ See ss. 282.601-606, F.S.

⁵⁶ See 29 U.S.C. s. 794d; 36 CFR s. 1194. See also U.S. General Services Administration, *IT Accessibility Laws and Policies*, <https://www.section508.gov/manage/laws-and-policies> (last visited Jan. 20, 2020).

⁵⁷ See 36 CFR Part 1194, Appendix C. The WCAG guidelines are primarily intended for web content developers.

⁵⁸ Sections 282.601-606, F.S.

⁵⁹ Section 282.601(1), F.S.

⁶⁰ Section 282.601(2), F.S.

⁶¹ Including Section 508 and 36 C.F.R. part 1194.

⁶² Section 282, 603, F.S.

⁶³ See ch. 282, F.S.

⁶⁴ *Kornblau v. Dade Cty.*, 86 F.3d 193 (11th Cir. 1996).

⁶⁵ *Pennsylvania Dep't of Corr. v. Yeskey*, 524 U.S. 206 (1998); *Edison v. Douberly*, 604 F.3d 1307 (11th Cir. 2010).

⁶⁶ *Bd. of Trustees of Univ. of Alabama v. Garrett*, 531 U.S. 356 (2001).

⁶⁷ *Tennessee v. Lane*, 541 U.S. 509 (2004).

⁶⁸ *Nat'l Ass'n of Deaf v. State*, 318 F. Supp. 3d 1338, Case no. 18-cv-21232-UU (S.D. Fla. 2018).

may be held accountable for discrimination by private entities that lease government-owned property.⁶⁹

While currently there appears to be no Florida appellate court decision resolving a challenge to state agency website accessibility, there have been a number of federal cases in recent years. In *Nat'l Assn. of Deaf v. State*, hearing impaired individuals sued the Florida Senate and House of Representatives claiming the failure to put closed captions on live and archived videos of Florida legislative sessions violates the ADA.⁷⁰ The case survived a motion to dismiss because the Court found the right to participate in the democratic process is a fundamental right that properly abrogates the state's Eleventh Amendment sovereign immunity.⁷¹

Local governments are facing continued federal litigation in the absence of official rules on ADA compliance for government website and electronic document access. The case law is new and unsettled, but there are two emerging legal theories currently being used to determine if a case is viable. Some courts have relied on the standing analysis in Title III (Private Entities) website access cases to resolve Title II cases.⁷² Other courts have adopted a new Title II rubric based, in part, on the connection the plaintiff has with the defendant-government.⁷³

Some governments argue that these cases are not ripe for adjudication because DOJ has not yet promulgated regulations. Courts have generally dismissed this argument, with one court emphasizing that DOJ has had eight years to comment further or promulgate rules on website accessibility compliance but failed to do so.⁷⁴

Community Development Districts

Community Development Districts (CDDs) are special-purpose units of local government established to help Florida development and growth “pay for itself” by providing infrastructure and services for new and existing communities when such infrastructure and services would not otherwise be available from other local, general-purpose governments like counties and municipalities.⁷⁵ CDDs serve as an alternative means of financing, constructing, acquiring, operating, and maintaining public infrastructure improvements to communities throughout Florida such as roads, utilities, hardscaping, landscaping, streetlights, stormwater infrastructure, conservation and mitigation areas, recreation facilities, and various other improvements allowed by statute.⁷⁶

⁶⁹ See *Haas v. Quest Recovery Servs., Inc.*, 549 U.S. 1163 (2007).

⁷⁰ *Nat'l Ass'n of Deaf v. State*, 318 F. Supp. 3d 1338, Case no. 18-cv-21232-UU (S.D. Fla. 2018)(aff'd *Nat'l Ass'n of Deaf v. State*, 945 F.3d 1339 (11th Cir. 2020).

⁷¹ “Order of Motion to Dismiss Based on Sovereign Immunity,” *Id.* (June 18, 2018).

⁷² See *Gil v. Broward Cty.*, No. 18-60282-CIV, 2018 WL 4941108 (S.D. Fla. 2018)

⁷³ See *Price v. City of Ocala*, 375 F. Supp. 3d 1264 (M.D. Fla. 2019)(reasoning Title III analysis is the wrong standard to apply to Title II website access cases because Title III requires a nexus between a physical place and the alleged violation), and *Gil v. City of Pensacola, Fla.*, 392 F. Supp. 3d 1493 (N.D. Fla. 2019).

⁷⁴ See *Open Access for All, Inc. v. Town of Juno Beach, Fla.*, “Order Denying Defendant’s Motion to Dismiss,” Case no. 9:19-CV-80518-ROSENBERG/REINHART, 2019 WL 3425090 (S.D. Fla. July 29, 2019)(case dismissed on other grounds August 15, 2019).

⁷⁵ Jere L. Earlywine and Katie S. Buchanan, *The Role of Community Development Districts In Florida*, Florida Environmental and Land Use Law Treatise 25.10-1 (2015).

⁷⁶ *Id.*

Powers of a Community Development District

A Community Development District (CDD) is a local unit of special-purpose government that has limited authority, subject to the powers and duties enumerated in ch. 190, F.S.⁷⁷

A CDD's general powers⁷⁸ include:

- The power to sue and be sued;
- The ability to contract for specific services, pursuant to the public bidding requirements of s. 190.033, F.S.;
- The authority to adopt rules and orders pursuant to ch. 120, F.S., that describe the powers, duties, and functions of the district's officers; the conduct of the district's business; the maintenance of records; and the form of certificates that evidence tax liens and all of the CDD's other documents and records;
- The right to raise user charges or fees, subject to board approval, in instances in which the money is necessary for the conduct of the district's activities and services, to assess ad valorem taxes pursuant to ch. 190, F.S., and to levy special assessments pursuant to ch. 170, F.S.; and
- To cooperate with, or contract with, other governmental agencies, in connection with any of the powers, duties, or purposes authorized by ch. 190, F.S.

If a CDD wants any of the special powers enumerated in s. 190.012, F.S.,⁷⁹ it must request such powers from the local general-purpose government within the jurisdiction of which they are to be exercised. A CDD's special powers⁸⁰ include the powers to finance, construct, acquire, operate and maintain the following:

- Water management and control;
- Road and roadway improvements, such as street lights, landscaping, and placement of electric utility lines underground;
- Construction of parks and facilities for recreational, cultural, and educational uses;
- Fire prevention and control;
- School buildings and related structures and site improvements;
- Security, including, but not limited to, construction of guardhouses, fences and gates, electronic intrusion-detection systems, and patrol cars.

Specifically, s. 190.007(1) authorizes a community development district board of supervisors to employ and fix the compensation of a district manager. The statute further provides that:

- The district manager has charge and supervision of the works of the district and is responsible for:
 - Preserving and maintaining any improvement or facility constructed or erected pursuant to the provisions of the Uniform Community Development District Act of 1980;

⁷⁷ See, e.g., ss. 190.03(6), 190.011, and 190.012, F.S.

⁷⁸ Section 190.011, F.S.

⁷⁹ Such powers include the ability to finance, construct, acquire, operate, and maintain parks and facilities for certain uses; fire prevention and control; school buildings and related structures; security; control and elimination of mosquitoes; and waste collection and disposal. Section 190.012(2), F.S.

⁸⁰ Section 190.012, F.S.

- Maintaining and operating the equipment owned by the district; and
- Performing such other duties as may be prescribed by the board;
- It is not a conflict of interest under ch. 112, F.S., for a board member or the district manager or another employee of the district to be a stockholder, officer, or employee of a landowner or of an entity affiliated with a landowner; and
- The district manager may hire or otherwise employ and terminate the employment of such persons, including, without limitation, professional, supervisory, and clerical employees, as may be necessary and authorized by the board.⁸¹

Implementation of Amendment 12, Lobbying and Abuse of Office by Public Officers

Amendment 12 of the 2018 Constitution Revision Commission was adopted during the 2018 election with 78.92% support.⁸²

Effective December 31, 2020,⁸³ Amendment 12 prohibits a public officer or public employee from abusing his or her public position in order to obtain a “disproportionate benefit.”

“Disproportionate benefit” may not be obtained by the public officer or public employee for:

- Himself or herself;
- His or her spouse, children, or employer; or
- For any business:
 - With which he or she contracts;
 - In which he or she is an officer, a partner, a director, or a proprietor; or
 - In which he or she owns an interest.⁸⁴

Amendment 12 further provides that by October 1, 2019,⁸⁵ the Florida Commission on Ethics (Commission) is required, by rule in accordance with statutory procedures governing administrative rulemaking, to define “disproportionate benefit” and prescribe the requisite intent for finding a violation of the prohibition against abuse of public position.⁸⁶

Following adoption of the Commission’s rules, Amendment 12 requires the Legislature to enact implementing legislation establishing penalties for violations of the prohibition against abuse of public position to take effect December 31, 2020.⁸⁷ CS/SB 7006 is proposed as the implementing legislation that establishes penalties for violations of the prohibition.

Rulemaking by the Florida Commission on Ethics

The Commission has adopted Rule 34-18.001 of the Florida Administrative Code, effective September 30, 2019. The rule defines the term “disproportionate benefit” and prescribes the requisite intent for finding a violation of the prohibition against abuse of public position by a

⁸¹ Section 190.007, F.S.

⁸² Div. of Elections, Fla. Dep’t of State, *November 6, 2018 General Election*, available at <https://results.elections.myflorida.com/Index.asp?ElectionDate=11/6/2018&DATAMODE=> (last visited Feb. 11, 2020).

⁸³ FLA. CONST. art. XII, s. 38.

⁸⁴ FLA. CONST. art. II, s. 8. See Note.

⁸⁵ FLA. CONST. art. XII, s. 38.

⁸⁶ FLA. CONST. art. II, s. 8. See Note.

⁸⁷ FLA. CONST. art. XII, s. 38.

public officer or public employee in order to obtain a disproportionate benefit, both required by Amendment 12.

The rule defines “disproportionate benefit” as a benefit, privilege, exemption or result arising from an act or omission by a public officer or public employee inconsistent with the proper performance of his or her public duties.⁸⁸

The rule prescribes that the public officer or public employee acted, or refrained from acting, with the requisite intent for finding a violation of the prohibition against abuse of public position if the public officer or public employee acted, or refrained from acting, with a wrongful intent for the purpose of obtaining any benefit, privilege, exemption, or result from the act or omission which is inconsistent with the proper performance of his or her public duties.⁸⁹

The Florida Code of Ethics

The Code of Ethics for Public Officers and Employees (Code of Ethics) contains standards of ethical conduct and disclosures applicable to public officers, employees, candidates, lobbyists, and others in State and local government, with the exception of judges.⁹⁰

The Florida Constitution was revised in 1968 to require a code of ethics, prescribed by law, for all state employees and nonjudicial officers prohibiting conflict between public duty and private interests. Florida’s first successful constitutional initiative following adoption of the 1968 Constitution resulted in the adoption of the Sunshine Amendment in 1976, providing additional constitutional guarantees concerning ethics in government. In the area of enforcement, the Sunshine Amendment requires that there be an independent commission (the Commission on Ethics) to investigate complaints concerning breaches of public trust by public officers and employees other than judges. The Code of Ethics has been adopted by the Legislature as Part III of Chapter 112, Florida Statutes. Foremost among the goals of the Code is to promote the public interest and maintain the respect of the people for their government. The Code is also intended to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law. While seeking to protect the integrity of government, the Code also seeks to avoid the creation of unnecessary barriers to public service. Criminal penalties, which initially applied to violations of the Code, were eliminated in 1974 in favor of administrative enforcement. The Legislature created the Commission on Ethics that year “to serve as guardian of the standards of conduct” for public officials, state and local. Five of the Commission’s nine members are appointed by the Governor, and two each are appointed by the President of the Senate and Speaker of the House of Representatives. No more than five Commission members may be members of the same political party, and none may be lobbyists, or hold any public employment during their two-year terms of

⁸⁸ Fla. Admin. Code R. 34-18.001(2)(2019).

⁸⁹ Fla. Admin. Code R. 34-18.001(4)(2019).

⁹⁰ Florida Commission on Ethics, *Ethics Laws*, available at <http://www.ethics.state.fl.us/Research/EthicsLaws.aspx> (last visited Feb. 11, 2020).

office. A chair is selected from among the members to serve a one-year term and may not succeed himself or herself.⁹¹

The Code of Ethics contains several provisions that provide exemptions from what is otherwise prohibited conduct:

- Section 112.313(7), F.S., prohibits conflicting employment or contractual relationships, but provides that where a special tax district is created by general or special law and limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which an agency has jurisdiction, or when the agency has been organized pursuant to chapter 298 (water control districts), then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this subsection or be deemed a conflict per se.
- Section 112.313(12), F.S., contains exemptions from the prohibitions in subsections (3) (prohibition on doing business with one's agency) and (7) of the section by providing that:
 - The prohibitions may be waived for a person serving on an advisory board by the body which appointed the person to the advisory board; and
 - No person is in violation of those subsections if:
 - Within a city or county the business is transacted under a rotation system;
 - The business is awarded under a system of sealed, competitive bidding to the lowest or best bidder who meet certain additional criteria;
 - The purchase or sale is for legal advertising in a newspaper, for any utilities service, or for passage on a common carrier;
 - An emergency purchase or contract must be made in order to protect the health, safety, or welfare of the citizens of the state or political subdivision of the state;
 - The business entity is the sole source of supply;
 - The total amount of transactions do not exceed \$500 per calendar year; and
 - Several other conditions exist related to bank officers, university transactions and purchases by public officers or employees in a private capacity.
- Section 112.313(15), F.S., provides that elected public officers are not in violation of subsection (7) of the section, dealing with conflict of interest, for maintaining an employment relationship with a tax-exempt organization as long as certain condition.
- Section 112.313(16), F.S., provides certain exemptions from the prohibitions of subsections (3) and (7) of the section for local government attorneys.
- Section 112.3143, F.S., prohibits a state public officer from voting on any matter that the officer knows would inure to his or her special private gain or loss; however paragraph (3)(b) of the section provides that a commissioner of a community redevelopment agency or an officer of an independent special tax district elected on a one-acre, one-vote basis, is not prohibited from voting.

III. Effect of Proposed Changes:

Section 1 amends s. 189.031, F.S., to provide that board members or public employees of special districts do not abuse their public position under Article II, section 8(h)(2) of the Florida

⁹¹ Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, 1 (2020), available at <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf?cp=2020211> (last visited Feb. 11, 2020).

Constitution if they commit acts or omissions authorized under s. 112.313(7), (12), (15), or (16), F.S., or s. 112.3143(3)(b), F.S., and board members do not abuse their public position if they commit acts or omissions in connection with a vote if they follow the procedures required by s. 112.3143, F.S.

Section 2 amends s. 189.069, F.S., to allow a special district to satisfy the required posting of its most recent final, complete audit report and other statutorily required audit reports on its own website by providing a link to the most recent audit report maintained on the Auditor General's website. In addition, amending provisions remove the requirement for online posting of a special district's public facilities report and any of a special district's meeting or workshop materials. Required posting of a special district meeting or workshop, and the agendas of such events, remains.

Section 3 amends s. 190.007, F.S., to provide that board members or public employees of community development districts do not abuse their public position under Article II, section 8(h)(2) of the Florida Constitution if they commit acts or omissions authorized under s. 112.313(7), (12), (15), or (16), F.S., s. 112.3143(3)(b), F.S., or s. 190.007(1), F.S. and board members do not abuse their public position if they commit acts or omissions in connection with a vote if they follow the procedures required by s. 112.3143, F.S.

Section 4 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an 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.

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.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill's removal of certain required website reports and documents may have a negative impact on private companies that provide specific ADA compliant website development and maintenance for special districts.

C. Government Sector Impact:

Special districts may realize a positive financial impact if they are no longer required to post certain reports and documents on their websites.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 189.031, 189.069, and 190.007 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Governmental Oversight and Accountability on February 10, 2020:

The CS adds language to chs. 189 and 190, F.S., regarding special districts and community development districts, respectively, that excludes certain acts or omissions by board members or employees of special districts or community development districts from being considered abuse of public position under Article II, section 8(h)(2) of the Florida Constitution if such acts or omissions are authorized under specific provisions of the Florida Code of Ethics.

B. Amendments:

None.