

Harmony Community Development District 07/30/2020 Meeting Agenda Supplement

Board Members,

The amendments to website requirements bill 1466 included in the July 30th agenda package did not include the strikeout lines in the bill when converted.

Attached is correct version of Senate Bill 1466.

For informational purposes I have also attached the current website requirements:

Required Information, Documents & Retentions.

Regards,
Kristen Suit
District Manager
InfraMark, IMS

Board of Supervisors:

Included in the agenda packet is Senate Bill 1466 Law Changes.

Attached is a legal analysis of the bill.

Here's the bottom line:

1. The bill removes the requirement for CDDs to post facility reports and meeting materials online. Required posting of notice of a district meeting or workshop, and the agendas of such events, remains.
2. The bill further excludes certain actions of omissions Ch. 112 (Code of Ethics) taken by Board Members from being an abuse of power under the Florida Constitution.

Thanks,
Timothy R. Qualls
District Counsel
Young Qualls, P.A.

CHAPTER 2020-77

Committee Substitute for Senate Bill No. 1466

An act relating to government accountability; amending s. 189.031, F.S.; specifying conditions under which board members and public employees of special districts do not abuse their public positions; amending s. 189.069, F.S.; revising the list of items required to be included on the websites of special districts; amending s. 190.007, F.S.; specifying conditions under which board members and public employees of community development districts do not abuse their public positions; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Effective January 1, 2021, subsection (6) is added to section 189.031, Florida Statutes, to read:

189.031 Legislative intent for the creation of independent special districts; special act prohibitions; model elements and other requirements; local general-purpose government/Governor and Cabinet creation authorizations.—

(6) GOVERNANCE.—For purposes of s. 8(h)(2), Art. II of the State Constitution, a board member or a public employee of a special district does not abuse his or her public position if the board member or public employee commits an act or omission that is authorized under s. 112.313(7), (12), (15), or (16) or s. 112.3143(3)(b), and an abuse of a board member's position does not include any act or omission in connection with a vote when the board member has followed the procedures required by s. 112.3143.

Section 2. Paragraph (a) of subsection (2) of section 189.069, Florida Statutes, is amended to read:

189.069 Special districts; required reporting of information; web-based public access.—

(2)(a) A special district shall post the following information, at a minimum, on the district's official website:

1. The full legal name of the special district.
2. The public purpose of the special district.
3. 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.
4. The fiscal year of the special district.

5. 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 chapter 190 as the uniform charter but must include information relating to any grant of special powers.

6. The mailing address, e-mail address, telephone number, and website uniform resource locator of the special district.

7. A description of the boundaries or service area of, and the services provided by, the special district.

8. 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.

9. The primary contact information for the special district for purposes of communication from the department.

10. A code of ethics adopted by the special district, if applicable, and a hyperlink to generally applicable ethics provisions.

11. The budget of the special district and any amendments thereto in accordance with s. 189.016.

12. 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. If the special district has submitted its most recent final, complete audit report to the Auditor General, this requirement may be satisfied by providing a link to the audit report on the Auditor General's website.

13. A listing of its regularly scheduled public meetings as required by s. 189.015(1).

~~14. The public facilities report, if applicable.~~

~~15.~~ The link to the Department of Financial Services' website as set forth in s. 218.32(1)(g).

~~15.16.~~ 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.

Section 3. Effective January 1, 2021, subsection (1) of section 190.007, Florida Statutes, is amended to read:

190.007 Board of supervisors; general duties.—

(1) The board shall employ, and fix the compensation of, a district manager. The district manager shall have charge and supervision of the works of the district and shall be responsible for preserving and maintaining any improvement or facility constructed or erected pursuant to the provisions of this act, for maintaining and operating the equipment owned by the district, and for performing such other duties as may be prescribed by the board. It shall not be a conflict of interest under chapter 112 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. The district manager may hire or otherwise employ and terminate the employment of such other persons, including, without limitation, professional, supervisory, and clerical employees, as may be necessary and authorized by the board. The compensation and other conditions of employment of the officers and employees of the district shall be as provided by the board. For purposes of s. 8(h)(2), Art. II of the State Constitution, a board member or a public employee of a district does not abuse his or her public position if the board member or public employee commits an act or omission that is authorized under this subsection, s. 112.313(7), (12), (15), or (16), or s. 112.3143(3)(b), and an abuse of a board member's public position does not include any act or omission in connection with a vote when the board member has followed the procedures required by s. 112.3143.

Section 4. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2020.

Approved by the Governor June 23, 2020.

Filed in Office Secretary of State June 23, 2020.

Website Required Information, Documents and Retention

Permanent Website Retention

- Legal Name of District.
- Purpose of the Special District.
- Contact Information for Board Members.
 - Full Name
 - Official Address (Inframark Main Office Address Used)
 - Email Address
 - Term of Office
- Current Fiscal Year.
- Special Charter (i.e.: Chapter 190) and Ordinance.
- Date of Establishment.
- Statute/Statutes the District operates under.
- District Mailing Address.
- District Email Address.
- District Telephone Number.
- Description of District boundaries and service area.
- Description of services provided by the District.
- A listing of all taxes, fees, assessments, or charges imposed and collected by the special district for **only the current fiscal year**, including the rates or amounts for the fiscal year and the statutory authority for the levy of the tax, fee, assessment, or charge (i.e. assessment chart).
- Primary contact information for the District for purposes of communication from department.
- Code of Ethics adopted by the District, if applicable, and a hyperlink to the generally applicable ethics provision (Florida Commissions on Ethics).
- Link to Department of Financial Services' website.
- Link to Florida Auditor General website. **(This is in lieu of posting the current financial audit.)**

Non-Permanent Website Retention

- Budgets (Updated Yearly)
 - Approved Tentative Budget at least two (2) days prior to the budget public hearing. Must remain on website for 45 days.
 - Final Adopted Budget within 30 days after adoption. Must remain for two (2) years.
 - Budget Amendments within five (5) days after adoption. Must remain for two (2) years.
- Most current fiscal year meeting calendar.
- Agenda must be posted no later than seven (7) days prior to the meeting date and must remain on the website for one (1) year. **Back up material no longer required.**

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MEMORANDUM

To: Harmony Community Development District
From: Young Qualls, PA
Date: July 28, 2020
Re: Effect of Changes by Senate Bill 1466

Question

What are the effects on community development districts (“CDD”) of Senate Bill 1466 signed into law by Florida Governor Ron DeSantis and effective July 1, 2020.

Answer

SB1466 (the “bill”) reduces the information that a CDD must post online by authorizing a CDD to satisfy the statutory requirement to post the most recent financial audit online by providing a link to the report maintained on the Auditor General’s website. The bill also removes the requirement for CDDs to post facility reports and meeting materials online. Required posting of notice of a district meeting or workshop, and the agendas of such events, remains.

The bill excludes certain acts or omissions by board members or employees of special districts, including CDDs, 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 the Florida Code of Ethics found in sections 112.313(7), (12), (15), or (16), F.S., or if the CDD board member follows the procedures required by section 112.3143, F.S, regarding voting conflicts.

Analysis

District Websites

Local governments are facing continued federal litigation in the absence of official rules on ADA compliance for government website and electronic document access. State and local government websites are subject to Title II of the Americans with Disabilities Act (ADA), which prohibits state and local governments from discriminating against a qualified disabled person because of a disability unless a modification of policy or procedure is unreasonable, alters the nature of the service, or causes the government an undue financial or administrative burden. The United States Department of Justice (DOJ) administers Title II. While not having provided any regulations on how state and local government websites can comply with the ADA, the DOJ has issued an ADA Best Practices Tool Kit for state and local governments, which provides suggestions and checklists. Under Title II of the ADA, state and local governments may be sued and many have recently faced increased litigation relating to state and local government website access.

Each special district is required to maintain an official website containing essential information about the district. Each independent special district is required to maintain a separate website. A special district shall post the following information, at a minimum, on the district's official website:

- 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.
- 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, 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.

Chapter 282, F.S., regulates the accessibility of electronic information among state agencies. 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. 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. 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

Florida Code of Ethics

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.

Effect of Changes

Section 2 of the bill 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 of the bill 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 of the bill provides an effective date of July 1, 2020.