

SUMMARY OF CS/HB 9 Enrolled

Community Redevelopment Agencies (CRAs)

Passed During the 2019 Florida Legislative Session

I. Effective date October 1, 2019

II. Requires ethics training for CRA board members specifically

Currently, all municipal and county elected officials must meet annual ethics training requirements under Chapter 112.3142. County officials had this requirement before cities; city officials have been required to complete 4 hours of ethics training each calendar year since 2015. Now, each “commissioner” of a CRA created under part III of chapter 163 must complete 4 hours of ethics training each calendar year.

This “new” requirement is identical to that required of elected municipal officials, but now is specifically added in (c) of s. 112.3142, and s.163.367(1). So, the impact of this provision would most likely require new training for anyone on a CRA board who is not an elected official.

Note: “commissioner” of a CRA may not be a term used commonly, but it does refer to any board member of a Florida CRA in this case.

III. CS/HB 9 requires the CRA to use the same procurement processes as the city or county

163.370 is amended to add a new section (5) which says:

“A community redevelopment agency shall procure all commodities and services under the same purchasing processes and requirements that apply to the county or municipality that created the agency.”

Many CRAs currently use the purchasing processes, department, rules and regulations as the creating entity. However, for those who do not, as long as the processes that are used by the CRA are the same as the city or county, the CRA can do the procuring themselves as they currently do. This was an incorrect finding of the Miami Dade Grand Jury in 2015, which concluded that there were different processes for procurement by the CRA which interfered with transparency in contracts.

The ultimate purpose, however, even though this section did not say it, is that all the procurement processes of all CRAs are as transparent as possible. When you need to determine what legal processes, specific to CRAs, have to be followed when "procuring", always consult with your legal counsel. For example, all CRAs must follow statutory CCNA provisions.

The FRA has many RFPs posted online, to use as examples of what to include and how to proceed when selecting vendors and contractors. Also, we have tips online www.redevelopment.net/MyFRA/RESOURCES/RedevelopmentAgencies/RFPS for the best practices in developing RFPs and selecting private entities to do CRA work. RFPs are one of the most common areas in which things are overlooked that cause the expenditure of unnecessary additional time and money. These issues are not necessarily unique to CRAs.

IV. CS/HB 9 requires the CRA to "publish" (on its website) digital maps and the CRA annual report.

The newly created s.163.371 covers all the reporting requirements for CRAs under Chapter 163, Part III as of 10/1/19. Included as (1) of that new section, there are new requirements to post (and keep updated) digital maps, geographic boundaries, and total acreage of the CRA. In (2) of that new section, there is a new requirement to "file" the annual report with the creating city or county, but also a new requirement to publish the annual report on the CRA website.

When we say new requirements, they are new to Chapter 163, Part III (many of you already exceed these requirements voluntarily). However, the law currently in s.189.069* outlines several requirements for all special districts (dependent like CRAs and independent like DDAs) regarding web-based public access. We recommend that before you REDEVELOP your web pages that deal with the CRA (maybe you too had to deal with the ADA challenges) you look at that section also.

Because there is no cross reference to Chapter 189 in the new s.163.371, be sure to know about the list in that statute as well. To review this list go to www.redevelopment.net under MyFRA Member Forum, COMPLIANCE information under top tab RESOURCES.

Unfortunately, the new statutory language crafted by bill drafting staff refers to publishing on a website and not posting, but we assume they are talking about these things being posted online as equal to being published online.

The law currently under s.189.069* requires each CRA to maintain an official website and to be preeminently displayed on the home page of the local general-purpose government that created the CRA, with a hyperlink to the CRA pages. Also, CRAs are required to submit their official internet addresses to the department (DEO/Special

Districts). The DEO has interpreted that the CRA pages can be part of the local government's URL or website.

Also, we will update the list of reporting requirements for members soon and distribute the cheat sheet list of all the reporting/posting requirements for all Florida CRAs from all the Florida statutes.

V. Annual CRA Reporting Requirements

On line 166, s.163.371 (2) a new section requires several things to be included in the annual report (and published on the agency's website).

Instead of the former section on reporting in S. 163. 356(3)(c), buried in that paragraph/vague, we have a new section of law that addresses reporting.

HOWEVER, it does not mean that all the information has to be physically included in the annual report, i.e. one document. It can be parts of the report, separately linked on the web. For instance, the heading could be "2019 CRA Annual Report". The subheadings could be the audit report, performance data, housing expenditures, summary, etc. Whatever you currently include in your annual report, if you wish to continue although not specifically required by law, you are free to do so (as you have probably done for years). If your annual report is a glossy four-color document, with all the newly required information, with virtual page turning online, good for you as well! If your report is a letter to residents, the mayor and the county chair, with all the information listed in it (one sentence for each item), all good.

What is required as of 10/1/19? Included in the annual report, and published on the CRA website:

(a) the most recent audit – if not available, post within 45 days after it is – probably a good idea to say online that the audit will be posted as soon as completed, or not list the subheading at all until it is available, then post. Usually, CRAs need to wait on the city or county audit, which they are part of.

(b) Performance data for each plan of the CRA as of December 31 of the year being reported (I know! The fiscal year is the end of the reporting year for the audit – we could not get the legislature to focus on the fact that the Dec 31 date does not work with the end of the fiscal year...very frustrating, but we are stuck with it.)

VERY IMPORTANT NOTE: Since the data asked for in (b) is financial in nature, for the most part, we urge you to include data that is available as of September 30 of each year, or on whatever basis it is available. The DANGER of doing an updated report as of December 31 is that it has a potential to be incredibly subjective. Recommend you stick with a template that you create for the first report posted in 2020 and fill in the fields

each year, the same way. The intent of this section is to have a history and comparison data from year to year on what the CRA is spending money on, and how it relates to the redevelopment plan(s).

THE FRA WILL BE DISTRIBUTING A REPORTING TEMPLATE TO MEMBERS SOON TO GUIDE ANYONE WHO WANTS TO USE IT FOR THEIR ANNUAL REPORT(S). WE WILL ALSO BE HOLDING A WEBINAR FOR MEMBERS ON THIS TOPIC.

If you have data more recent as of Dec 31, of course you are free to include it.

But for most people, the data as of September 30 of each fiscal year is going to be the most accurate and the LATEST. This is because total expenditures, projects started/completed/costs, property values, affordable housing expenditures, and meeting of goals, can best be factually tracked by end of fiscal year reports. SO if you use the data (stated on the record if you can) as the “most recently available” as of December 31 (September 30 end of fiscal year) **you comply.**

What does performance data include?

1. Total number of projects started and completed and the estimated cost.
2. Total expenditures from the Tax Increment trust fund – amount of the budgeted/actual expenses from September 30, audited, preferably.
3. Original assessed real property values in the CRA district when created. (This number can be obtained from the DOR report DR 420 required of all local governments as of July in the year the CRA was created). Most of this would be data from your city or county finance director or budget staff.
4. Total values as above in the CRA district as of January 1 of the reporting year (again, from the July report, that is most likely the latest data that is available).
5. Total amount spent per the plan for affordable housing for low and middle income residents in each district.

(c) LASTLY but probably most importantly, this subsection asks for

“A summary of the extent, if any,” to which the goal(s) of the plan have been achieved. Would we ever say that the CRA has not achieved any goals in the last year, of the plan? (hint: no). Just like you do in the annual report now, the best practice is to use the annual CRA report as a communication piece at the least, and a promotional triumph at the best.

How have the CRA activities have been successful, how as progress been made, what is being planned, etc.? This should be a positive accounting that is more narrative, which if possible, is made stronger if supported by numbers and statistics. I would bet that most CRA Annual Reports have already checked this off the list, without a new state law to require it!

Remember the goal is to keep annual reports for public inspection that when looked at from year to year, any person could say, wow, yes, things are getting better because of the CRA. This is not always easy, but it can be done, if positively presented.

VI. CRA term expirations - allows for extensions of CRA terms beyond 2039 by majority vote of the governing body that created the CRA.

Newly created s.163.3755

(1) A CRA in existence on 10/1/19 shall terminate as of its natural expiration, or as of 9/30/39 whichever is earlier.

UNLESS

The governing body of the county or municipality that created the CRA (line 201 page 9) approves its continued existence by a majority vote of the members of the governing body.

If the legislature intended to call the question on all CRAs relative to their existence, CRAs have plenty of time to get the vote locally, by the sponsoring local government.

VERY IMPORTANT NOTE: The city can vote any time after October 1, 2019, to approve their CRA's continued existence by a majority vote of the members of the governing body. There would be no downside to doing this, i.e. the governing body could abolish, amend, limit or vote otherwise at any later date. However, for planning purposes, it might be a best practice to get this requirement in the statute checked off immediately.

The bill/new law does not require the city or county to take the vote at the time the CRA expires or in 2039. Those dates are deadlines, not triggers.

It is totally up to the city or county that created their CRA as the when the vote is taken, i.e. they can stick with "natural expiration" (end of the CRA term, determined when created) or go with the 2039 date and let other elected bodies deal with the issue.

Making no change and taking no action after the bill's effective date of October 1, 2019 is allowed.

VII. Limits the extension of outstanding bonds' maturity beyond 2039 and adds requirements for all bonds outstanding as of 10/1/19

New

s. 163.3755 (2)(a) – (c)

(2)(a) deals with the situation in which:

The governing body does not approve the continued existence of a CRA
There are CRA bonds outstanding as of October 1, 2019
These CRA bonds are due to mature AFTER 9/30/39.

There are so few cases in which CRAs have been able to issue bonds on their own. TIF is usually a secondary pledge using CRA generated monies. So, this provision would not be applicable to most CRAs. However, check with your bond counsel if your CRA has issues bonds, to assess the impact of these subsections on your bonds.

(2)(b) says that as of 9/30/39, any CRA may not extend the maturity of any outstanding bonds.

(2)(c) requires a new finding of necessity limited to meeting the remaining bond obligations, *apparently after 9/30/39*, but does not specify in the paragraph.

VIII. Declaration of "Inactive" CRAs

The definition of inactive is new language in s.163.3756 is a CRA that has reported no revenue, no expenditures, and no debt under s.189.016(9) for six years since 2016. Chapter 189 deals with special districts of all kinds in Florida, and all CRA are DEPENDENT special districts.

This subsection (9) of s. 189.016 cross references the requirements for an annual financial report under s. 218.32 and s.218.39.

The Florida Department of Economic Opportunity must declare these CRAs inactive. There is a process for challenges, limitations on expenditures, and exemption from s.189.062(2) and (4) which require dissolution of the district, assets and a referendum.

s.163.3756(5) specifically says that the "inactive districts" language in that section is cumulative to the language in Chapter 189.062 (inactive districts) and if Chapter 163 conflicts with Chapter 189 regarding inactive districts, s.163.3756 will prevail.

Lastly, the Department of Economic Opportunity shall maintain on its website a separate list of CRAs declared inactive under this section.

IX. Tax Increment Funding Changes

Page 12, lines 294-301 allows any governing body to reduce TIF payments to 50% (current statutory requirement is 95%) of the increased property taxes collected as a result of increased property values in the CRA district.

In order to understand how TIF is calculated, refer to Chapter 163, Part III s.163.387; also, we have a LOT of information posted here <http://my.redevelopment.net/mechanics-of-tax-increment-financing/>.

Notwithstanding this change, there are many interlocal agreements in place throughout the state, between CRAs, cities and counties. These interlocal agreements could remove this option for CRAs who have local agreements on funding.

IX. Allowed expenditures of moneys in the redevelopment trust fund

s.163.387 (6) is revised to clarify exactly on what the CRA may spend trust fund money:

- a. Effective 10/1/19, not only may moneys be spent for “undertakings described in the community redevelopment plan” (law currently)
- b. Added in CS/HB 9 in 2019 now they must be “only pursuant to an annual budget adopted by the board of commissioners of the CRA and only for purposes specified in the budget” *(specified in new s.163.387(c)).
- c. The practice of most CRAs is that they only spend money authorized by their plans and their budgets. However, now the statute which formerly required the plan to guide expenditures ALSO was revised to specify that all expenditures must be *pursuant to the annual CRA budget.
- d. Further, a new requirement requires the city to “submit” its annual budget and any amendments during the year to the board of county commissioners within 10 days after its adoption,

NOTE: “Submit” does not preclude electronic transmission to the chair of the board, with a link to where the adopted budget is posted online.

- e. The all-important but controversial in the past words “included but not limited to” have been REMOVED in CS/HB 9, but replaced with the new s.163.387 (6)(c)9.***

Remembering what CRAs can spend money on is the 5 W’s and HOW:

WHO – CRA board takes separate action, as the CRA, to approve their annual budget. Following this, the city or county commission includes the CRA budget as part

of their annual budget, unless they officially vote to keep them separate (Chapter 189)

WHAT – anything pursuant to the annual CRA budget

WHEN – October 1 – September 30, the fiscal year for all CRAs

WHERE – anything in the **CRA district (See the list of what can be included in the budget.)

WHY – original finding of necessity and subsequent actions taken by the local government that created the CRA

HOW – anything in the current, amended or new CRA plan

Also, for the first time, (6) (a) specifically links Chapter 163 expenditure requirements to Chapter 189 (special districts) expenditure requirements. “Except as otherwise provided in this subsection, a CRA shall comply with the requirements of s. 189.016 (reports; budgets; audits.)” Again, Chapter 163 specifies that it prevails over Chapter 189 requirements.

NEW LIST OF WHAT CRAS CAN BUDGET FOR in s.163.387(6)(c) revised in 2019.

1. Administrative and overhead to implement the plan;
2. Planning, surveys, financial analysis, and reimbursement of money expended before the CRA plan is approved and adopted;
3. Acquisition of real property **in the CRA;
4. Clearance and preparation of property **in the CRA, and assistance to property owners impacted;
5. Repayment of any form of indebtedness;
6. Funding of anything in an ordinance or resolution authorizing indebtedness;
7. Affordable housing **within the CRA;
8. Community policing;
9. ***NEW – “expenses that are necessary to exercise the powers granted under s.163.370, as delegated under s.163.358.”

X. *Allows carry over of monies in the Trust Fund beyond the three year limitation under certain circumstances*

Current law in s.163.387 states:

(7) On the last day of the fiscal year of the CRA, “any money which remains in the trust fund after the payment of expenses pursuant to subsection (6) for such year shall be:”

(d) is one option to appropriate the money for a project in the plan. But the current language modifies the project in the plan with “which project will be completed within 3 years from the date of such appropriation.”

Although CRAs have dealt with this option over many years, the “3 year limitation” has been brought up by auditors as meaning the CRA may not use these moneys after three years since the option was first invoked.

XI. Revises audit requirements and expands duties of auditors; requires the audit to accompany the annual financial report under 218.32; effective October 1, 2019.

s.163.387((8) is amended:

(8)(a) is new and requires a financial audit each fiscal year of each CRA with revenues or a total of expenditures and expenses in excess of \$100,000 as reported on the trust fund financial statements. The audit must be conducted in accordance with rules for audits of local governments adopted by the Auditor General.

NOTE: the text “of the trust fund” after audit currently in (8) was deleted in CS/HB 9 s.163.387 (8)(a) to delete the words “of the trust fund.” Does this expand the audit (8) to the whole operations of the CRA, versus the trust fund in current law?

New (8)(b) Lists the things that the audit must do.

1. Current law is retained about amount and source of deposits, withdrawals, principal and interest paid, remaining amount of indebtedness.
 2. New paragraph to require the inclusion of financial statements as of the end of the fiscal year in the audit (most audits do)
 3. New requirement to include in the annual audit report:
A finding by the auditor as to whether the CRA has or has not complied with subsections (6) and (7) of s.163.387.
- (c) New requirement that the CRA audit report must accompany the financial report submitted by the city or county under s.218.32 (AFR or CAFR to the Department of Financial Services (DFS))
- (d) Deletes “by registered mail” from the current law requirement to provide a copy of the audit report to each taxing authority.

Finally, s.218.32 (3) is revised to specify that failure of the city or county to file a CRA report as required under all of (8) with the Department of Financial Services constitutes a failure to report.

Further, by November of each year the DFS must provide the Special Districts Office of the Florida Department of Economic Opportunity with the list of each CRA that does not report any revenues, expenditures or debt for the previous fiscal year.

EFFECTIVE DATE: 10/1/19

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