

History of Florida's Independent Special Districts

By **Kenza VanAssenderp**



Three transformative Florida laws on independent special districts were enacted in the crucial decade of the 1980s, measures that still apply today. This informal report explores how these statutes and related Florida policy came about.

The three laws are the landmark Uniform Community Development District Act of 1980, the enactment in the state plan of FS Section 187, and the District Accountability Act of 1989.

Independent districts are not dependent upon (under the control of) counties or municipalities. For certain infrastructure districts, their boards are initially elected by property owners until qualified electors move in.

Up until 1972, infrastructure-provision districts pursuant to state general law were created as drainage districts by Circuit Court orders, but then modified by special act of the Legislature into more specialized entities. This would enable them to provide infrastructure on land needed to develop new residential communities.

That was the process when three special purpose infrastructure districts were set up on undeveloped land in northwest Broward County, property that Mr. Joe Terravella, a visionary, and his innovative company Coral Ridge Properties (later Westinghouse Communities), purchased and developed. He used those districts as a key asset that later helped give birth to the City of Coral Springs.

His concept was that consistent control of the use of water (drainage, distribution, and waste) and the related sequential timing of both the installation of basic infrastructure and the long-term independent sustained quality maintenance of such infrastructure were the key to his high-quality residential development to meet the demand. His conviction was that independent special purpose infrastructure-managing districts were the key. He further believed that, while counties and municipalities can provide infrastructure to private developers, those general-purpose local governments are not as efficient as districts because they must deal with different legitimate but countervailing economic and political realities. He also knew that while independent special districts are local governments and therefore not as efficient as private developers, they are accountable and focus only on their immediate and long-term infrastructure duties. He was willing to accept their relative inefficiency in exchange for the focused, pinpointed, and sustained quality of infrastructure they provide – which in turn supports sustained good marketability of the intrinsic value of his new communities. He knew also that private developers want to build and sell their product at a profit and then move on, whereas the districts would remain to continue their focus only on quality infrastructure.

The reality back then, however, was that as Florida started growing rapidly, there were no environmental and growth management laws and policies, nor were there related state laws and policies on use of independent special purpose districts and the roles of counties and municipalities.

Four years after Florida's revised Constitution was approved in 1968, and two years after Governor Reuben Askew was inaugurated, two key reforms began:

- First, the vanguard Environmental Land Management Committee ("ELMS I") was appointed. It recommended setting up a Florida system to require that local, regional, and state governments assess the key regional impacts caused by new community developments and then issue development orders before construction, in order to manage growth. ELMS I emphasized comprehensive planning. It recommended special district infrastructure bond financing, but only as a reward for developers who spent the additional substantial time and money to go through the new regional impact process. Mr. Terravella served on that ELMS I committee and helped lead the progressive reforms in regional impact growth management.
- Second, the Local Government Study Commission was appointed to study and recommend how to implement the new county and municipal home rule powers authorized by the 1968 Constitution. In doing so, it studied independent districts and identified and reported several problems with them. Based on those findings, the study commission recommended that Florida prohibit independent special purpose districts expressly because such districts needlessly take power from counties and municipalities that can do the same things as districts would. Of course, the advent of concurrency puts those burdens on the developer, which is not inconsistent with the use of independent infrastructure districts.

In 1974, Mr. Terravella and his team purchased land in northwest Collier County to develop into a new community, in anticipation of the burgeoning growth to come to Collier County. He asked his lawyer and team to draft a special local bill, after working with the Collier County Commission, for the Legislature to enact that would create an independent special purpose infrastructure district to replace the old Clam Pass entity. That bill created the Pelican Bay district special act. His lawyer had read the Local Government Study Commission's list of specific problems with independent districts and included each one of them in the Pelican Bay bill, transforming each problem into a reform provision. Lawyers for the ITT corporation also wrote and successfully lobbied into law two other independent district special acts to serve their new communities, but the ITT acts did not include the specific reforms contained in the Pelican Bay Act.

Governor Askew was advised to veto all three of these special acts because they were inconsistent with the recommendations against independent districts from the Local Government Study Commission. After listening to Mr. Terravella and others including his advisers, Governor Askew:

- Decided to let the three special act bills become law;
- Required the ITT team, with its two districts, to implement the reforms in the Terravella Pelican Bay District Act;
- Appointed a new communities task force to study and make recommendations on the future of independent infrastructure special districts; and,
- Appointed Mr. Terravella and both his and the ITT lawyers – along with then-state Senator Bob Graham and environmental, county, and municipal representatives – to that task force.

The new communities task force deliberated and recommended a new general law on independent districts, which the Governor supported and the Legislature enacted. But it was a failure, largely ignored because it still treated independent districts only as bond financing entities and tied their use to concomitant development approval. It did, however, serve to preserve the concept of independent special purpose infrastructure districts into state law, contrary to the Local Government Study Commission recommendation. That proved important.

The key reform in the 1980s was the Community Development District Act of 1980. Here is how that important legislation came into being: In 1979, in advance of the 1980 session of the Legislature, Mr. Terravella's lawyer recommended drafting legislation to ask the Legislature, once and for all, to make the fundamental decision on whether independent infrastructure special purpose districts can be used in developing new communities. Terravella approved, and his legal team drafted and lobbied for the bill. It was enacted into law in 1980 as Chapter 190, Florida Statutes (the Uniform Community Development District Act of 1980) providing on pertinent part that:

- Independent districts ("CDDs") created and chartered by the new general law, and established by local ordinance or state rule on proposed property to serve a new community, are authorized and needed.

- The purpose of CDDs created and chartered by the state and established by ordinance or rule is not financing. Financing is a component of the powers of the special purpose of the CDD in order to provide infrastructure to property proposed for development. The purpose is management, not financing.
- Such management is by the CDD governing board itself and its management staff. It involves acquisition, construction, operation, maintenance, and financing of the infrastructure; accordingly, the exercise of its financing powers only funds the sole special management purpose but is not itself the purpose.
- The sole special purpose is limited by and subject to all substantive applicable state and local permitting and development orders and planning and zoning requirements, as well as all procedural, notice, disclosure, Sunshine, and all other requirements that state law puts on all local government officials; and,
- Establishment of a limited state-created CDD on proposed property is not a development order and does not require a development order because it is limited both substantively and procedurally.

Later in the decade, in 1985, Chapter 187, Section 201, subsection (20)(b)2, Florida Statutes, was enacted, establishing that the expressed policy of the State of Florida regarding independent districts was to “Allow the creation of independent taxing districts which have uniform general law standards and procedures and do not overburden other governments and their taxpayers while preventing the proliferation of independent districts that do not meet these standards.”

Notwithstanding its use of the antiquated and no longer accurate term “taxing district(s),” this expressed state policy applies to all independent special-purpose districts, not just infrastructure districts such as CDDs. This expressed state policy set forth the key reform that only general law (itself, or pursuant to general law like a special act, a state rule, or a local ordinance) can create any independent special district no matter what its special purpose is. That’s why, for example, CDDs are not and cannot be created by state rule or local ordinance.

Then, in 1989, based and predicated upon the 1980 Community Development District law (FS Chapter 190) and on the expressed state policy (GS Chapter 187), the Florida Legislature enacted the Uniform Special District Accountability Act as Chapter 189, Part III, Florida Statutes.

That Act:

- In its statement in Section 189.03, Florida Statutes, incorporates verbatim key policy language from the 1980 CDD law (FS Chapter 190, Florida Statutes).
- In Section 189.031, Florida Statutes, applies and spells out the precedent-setting independent district reform principles of the 1980 CDD law and the 1985 expressed state policy. The key points are the constitutional prohibitions and the general law minimum requirements of a special act.

Accordingly, because of the 1980 Community Development District law (FS Chapter 190), the 1985 state policy on all independent districts (Chapter 187), and the 1989 district accountability law (Chapter 189), the decade of the 1980s was determinative and solely universal throughout Florida today.

Since then, Florida's independent special district law has been transformed fundamentally and progressively.

The result is that no such district may be created and established if it needlessly proliferates, fragments, or duplicates county or municipal powers – but if created by general law or authorized by general law to be created by special act or to be established by state rule or local ordinance pursuant to general law, then an independent special purpose district no longer is needless because the Florida Legislature has identified its purpose rendering it necessary, not needless.

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