

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 Judiciary Committee

BILL: CS/SB 1010

INTRODUCER: Judiciary Committee and Senator Simmons

SUBJECT: Neighborhood Improvement Districts

DATE: April 14, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Favorable
2.	Munroe	Maclure	JU	Fav/CS
			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill renames the Safe Neighborhoods Act as the “Neighborhoods Improvement Act” and makes conforming changes to reflect new legislative intent. This bill also authorizes local government neighborhood improvement districts (NIDs) to borrow money, issue bonds, collect special assessments, charge user fees, and levy ad valorem taxes upon real and tangible personal property within the district by resolution of the governing body, and if required by the Florida Constitution, obtain the affirmative vote of the district electors. The authority of a local government NIDs to exercise its authority to levy ad valorem tax, to borrow money and incur debt (issue bonds) is subject to approval by a referendum of freeholders (property owners) in the local government NID.

The bill allows special NIDs, community redevelopment NIDs, and property owners’ association NIDs to make and collect special assessments for improvements and reasonable operating expenses subject to referendum approval. The bill also allows NIDs to contract with county or municipal government for legal advice, and to plan for certain public improvements.

This bill substantially amends the following sections of the Florida Statutes: 163.501, 163.502, 163.503, 163.5035, 163.504, 163.5055, 163.506, 163.508, 163.511, 163.512, 163.514, 163.5151, and 163.516.

This bill repeals the following sections of the Florida Statutes: 163.513, 163.517, 163.519, 163.521, 163.5215, 163.522, 163.523, 163.524, and 163.526.

II. Present Situation:

Neighborhood Improvement Districts

Part IV of ch. 163, F.S., is known as the “Safe Neighborhoods Act.” The intent of this Act is to:

- Guide and accomplish the coordinated, balanced, and harmonious development of safe neighborhoods;
- Promote the health, safety, and general welfare of these areas and their inhabitants, visitors, property owners, and workers;
- Establish, maintain, and preserve property values and foster the development of attractive neighborhoods and business environments;
- Prevent overcrowding and congestion;
- Improve or redirect traffic and provide pedestrian safety; and
- Reduce crime rates.

Section 163.503(1) defines the term “neighborhood improvement district” to mean:

A district located in an area in which more than 75 percent of the land is used for residential purposes, or in an area in which more than 75 percent of the land is used for commercial, office, business, or industrial purposes, excluding the land area used for public facilities, and where there is a plan to reduce crime through the implementation of crime prevention through environmental design, environmental security or defensible space techniques, or through community policing innovations. . . .

The Safe Neighborhoods Act allows county or municipal governing bodies to create Neighborhood Improvement Districts (NIDs) through the adoption of a planning ordinance. Under current law, there are four types of NIDs: local government NIDs, property owners’ association NIDs, special NIDs, and community redevelopment NIDs.¹ Each NID that is established is required to register within 30 days with both the Department of Community Affairs and the Department of Legal Affairs and provide the name, location, size, type of NID, and such other information that the departments may require.² To date, there are approximately 25 NIDs in the state of Florida.³

¹ See ss. 163.506-163.512, F.S.

² Section 163.5055, F.S.

³ Florida Department of Community Affairs, *SB 1010 Agency Analysis*, 2 (March 11, 2011) (on file with the Senate Committee on Community Affairs).

Although NIDs have various powers, they do not have bond authority. Of the 25 neighborhood improvement districts in the state of Florida, eight NIDs reported that they do not have *any* type of revenue source, and some have reported that they are inactive due to such lack of funding.⁴

In 2006, the Florida Attorney General issued Advisory Legal Opinion 2006-49, stating that an NID created by ordinance pursuant to s. 163.511, F.S., does not have the authority to borrow money to carry out the purposes of the district.⁵ The Attorney General's Office reasoned that a statutorily created entity is limited to such powers expressly granted by law or reasonably implied to carry out its expressly granted power. The opinion further stated that “[w]hen the Legislature has directed how a thing shall be done, that is in effect a prohibition against its being done any other way.”

Duties of the Department of Legal Affairs.—The Safe Neighborhoods Act is administered by the Department of Legal Affairs, whose duties include, but are not limited to, the authority to:

- Develop program design and criteria for funding NIDs;
- Develop application and review procedures;
- Review and evaluate applications for planning and technical assistance;
- Utilize staff to provide crime prevention through community policing innovations, environmental design, environmental security, and defensible space training; and
- Review and approve or disapprove safe neighborhood improvement plans prior to the adoption by the local governing body.⁶

Safe Neighborhoods Program.—Section 163.517, F.S., provides for the creation of the Safe Neighborhoods Program. The purpose of this program is to “provide planning grants and technical assistance on a 100-percent matching basis to neighborhood improvement districts.” Under this section, planning grants are to be awarded as follows:

- Property owners' association NIDs may receive up to \$20,000.
- Local government NIDs may receive up to \$100,000.
- Special NIDs may receive up to \$50,000.
- Community redevelopment NIDs may receive up to \$50,000.

Grants are awarded to eligible applicants based on evaluation of specified criteria provided in subsections (2) and (3) of s. 163.517, F.S.

According the State Attorney General's Office, funding under the Safe Neighborhood Program has not been provided to NIDs since 1993.⁷

Safe Neighborhood Improvement Plan.—All NIDs are currently required to prepare a safe neighborhood improvement plan that addresses the statutory criteria provided in s. 163.516, F.S. The safe neighborhood improvement plan must be consistent with the adopted county or municipal comprehensive plan and must be “sufficiently complete to indicate such land acquisition, demolition and removal of structures, street modifications, redevelopment, and

⁴ *Id.*

⁵ Op. Atty Gen. Fla. 2006-49 (2006).

⁶ See s. 163.519(1)-(11), F.S.

⁷ Conversation with legislative affairs staff at the Office of the State Attorney General (March 22, 2011).

rehabilitation as may be proposed to be carried out in the district.”⁸ Additionally, the NID must provide some method for and measurement of the reduction of crime within the district.⁹

Neighborhood Preservation and Enhancement Program.—The governing body of a municipality or county may authorize participation in the Neighborhood Preservation and Enhancement Program through the adoption of a local ordinance. Neighborhood Preservation and Enhancement Districts shall be created by the residents of a particular neighborhood or through county or municipal initiative by identifying those areas that are in need of enhancement. Neighborhood Preservation and Enhancement plans shall be enforced through an agency created by the local government which may be composed of the local code department or any other agency that will provide adequate enforcement of the plan.

After the boundaries and size of the Neighborhood Preservation and Enhancement District have been defined, the residents therein shall create a Neighborhood Council, consisting of five elected members who shall have the authority to receive grants from the Safe Neighborhoods Program under s. 163.517, F.S. The established Neighborhood Council and local government designated enforcement agency shall have such powers and duties as provided under s. 163.526, F.S.

Neighborhood Improvement Districts inside Enterprise Zones.—The local governing body of any municipality or county, in which the boundaries of an enterprise zone, in whole or in part, include a NID, may request the Department of Legal Affairs to submit provisions to fund capital improvements within its budget request to the Legislature.¹⁰ Local governments must demonstrate the ability to implement the project within two years after the date of appropriation. All requests received for capital improvement functions must be ranked by the Department of Legal Affairs based on the following:

- The necessity of the improvements to overall implementation of the safe neighborhood plan;
- The degree to which the improvements help the plan achieve crime prevention through community policing innovations, environmental design, environmental security, and defensible space objectives;
- The effect of the improvements on residents of low or moderate income; and
- The fiscal inability of a local government to perform the improvements without state assistance.¹¹

Community Organization Involvement.—Section 163.523, F.S., authorizes local governments to cooperate and seek the involvement of certain community organizations to assist in the creation of safe neighborhood improvements districts. Except for the preparation of safe neighborhood improvement plans, NIDs may contract with such community organizations to carry out any activities therein and may compensate such organizations for the value of their services in an amount not to exceed 1 percent of the total annual budget of the NID.

⁸ Section 163.516(3), F.S.

⁹ *Id.*

¹⁰ Section 163.521, F.S.

¹¹ *Id.*

III. Effect of Proposed Changes:

Section 1 amends s. 163.501, F.S., to rename part IV of ch. 163, F.S., as the “Neighborhoods Improvement Act.”

Section 2 amends s. 163.502, F.S., to amend the legislative findings and purposes for this Act to include “lack of adequate public improvements such as streets, street lights, street furniture, street landscaping, sidewalks, traffic signals, way-finding signs, mass transit, stormwater systems, and other public utilities and improvements.”

Section 3 amends s. 163.503, F.S., to amend the definition for “neighborhood improvement district,” and to delete the definitions for the following terms: “environmental security,” “crime prevention through environmental design,” “defensible space,” “enterprise zone,” and “community policing innovation.”

Section 4 amends s. 163.5035, F.S., to delete the term “safe” in the title of this section.

Section 5 amends s. 163.504, F.S., to delete provisions relating to the Safe Neighborhoods Program and safe neighborhood improvement plans.

Section 6 amends s. 163.5055, F.S., to provide that neighborhood improvement districts shall be required to notify (rather than register with) the Department of Community Affairs and to delete obsolete provisions.

Section 7 amends s. 163.506, F.S., to authorize local government neighborhood improvement districts to borrow money, contract loans, and issue bonds, certificates, warrants, notices, or other evidence of indebtedness to finance the undertaking of any capital or other projects for purposes permitted under the Florida Constitution and this part.¹² This section also authorizes the district to pledge the funds, credit, property, and taxing power of the improvement district for payment of such debts and bonds. Bonds issued under this part shall be authorized by a resolution of the governing board of the district, and if so required by the Florida Constitution, by affirmative vote of the electors of the district.¹³ The bill provides criteria and governing board authority regarding the issuance, sale, and distribution of bonds and allows for the establishment and administration of sinking funds for the payment, purchase, or redemption of any outstanding bond indebtedness of the district.

¹² Some of the powers are already implied in NIDs who may be authorized to levy an ad valorem tax on real and personal property up to 2 mils annually in existing law; authorize the use of special assessments to support planning and implementation of district improvements under s. 163.514(16), F.S. See s. 163.511, F.S. See also FLA CONST. Art. VII, s. 12 which authorizes counties, school districts, municipalities, special districts, and local governmental bodies with taxing powers to issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation and maturing more than twelve month after issuance only: (a) to finance or refinance capital improvements authorized by law and when approved by electors who are local property owners not wholly exempt from taxation or, (b) to refund outstanding bonds and interest and redemption premium at a lower average interest cost rate.

¹³ See Art. VII, s. 12 of the State Constitution which imposes a limitation on local governments’ power to incur debt (such as the issuance of bonds by requiring approval by vote of the electors who are owners of freehold therein not wholly exempt from taxation.

The bill also allows the governing body of the district to levy ad valorem taxes upon real and tangible personal property within the district, as it deems necessary to make payment, including principal and interest, upon the general obligation and ad valorem bond indebtedness of the district or into any sinking fund so created.

The bill authorizes a commercial local government NID to make and collect special assessments to pay for capital improvements within the district and for reasonable operating expenses of the district, including those in the district budget. Such special assessments may not exceed \$1,500 for each individual parcel of land per year.

The bill allows the district to charge, collect, and enforce fees and other user charges.

The authority of a local government NID to exercise its authority to levy ad valorem tax, to borrow money, and to incur debt (issue bonds) is subject to approval by a referendum of freeholders (property owners) in the local government NID. The bill specifies requirements for the referendum including notice to freeholders in the local government NID and certification of the referendum results to the governing body of the municipality or county where the local government NID is located.

This section deletes provisions in statute that allow a majority of the local governing body of a city or county to appoint a board of directors as an alternative to designating the local governing body as the board of directors of the local government NID.

This section specifies differences between residential local government NIDs and commercial local government NIDs.

Section 8 amends s. 163.508, F.S., to delete provisions relating to the Safe Neighborhoods Program and safe neighborhood improvement plans. This section also allows property owners' association NIDs to request grants from any source and requires the property owners' association in a property owners' association NID to be a not for profit corporation.

Section 9 amends s. 163.511, F.S., to make conforming changes and to revise the method of appointing and removing directors of a special NID.

Section 10 amends s. 163.512, F.S., to make conforming changes and to delete provisions allowing the use of the community redevelopment trust fund to be used to further crime prevention through community policing innovations, environmental design, environmental security, and defensible space techniques. The trust fund may continue to be used for implementing the district's improvement plan as provided in the section.

Section 11 repeals s. 163.513, F.S., which relates to crime prevention through community policing innovations, environmental design, environmental security, and defensible space functions of neighborhood improvement districts.

Section 12 amends s. 163.514, F.S., to amend the powers provided to NIDs to:

- Delete references to the power to contract with experts on crime prevention through community policing innovations, environmental design, environmental security, and defensible space, or other experts.
- Allow NIDs to contract for the services of planners, engineers, attorneys, and other consultants.
- Allow NIDs to contract with county or municipal government for legal advice.
- Allow NIDs to plan, design, construct, operate, provide, and maintain street lighting, parks, streets, drainage, utilities, swales, parking facilities, transit, landscaping, and open areas.
- Allow special NIDs, community redevelopment NIDs, and property owners' association NIDs to make and collect special assessments, subject to referendum approval, for improvements and reasonable operating expenses.

Section 13 amends s. 163.5151, F.S., to state that each "local government" and special NID levying an ad valorem tax on real or personal property shall establish its budget pursuant to ch. 200, F.S.

Section 14 amends s. 163.516, F.S., so that certain information is no longer required to be included in neighborhood improvement plans.

Section 15 repeals s. 163.517, F.S., relating to the Safe Neighborhoods Program.

Section 16 repeals s. 163.519, F.S., relating to the duties of the Department of Legal Affairs.

Section 17 repeals s. 163.521, F.S., addressing NIDs inside enterprise zones.

Section 18 repeals s. 163.5215, F.S., which states that the provisions of this part shall not be construed to modify, limit, expand, or supersede any existing laws relating to the closing or abandonment of public roads, the denial of access to areas for public ingress or egress, or the use of public facilities.

Section 19 repeals s. 163.522, F.S., relating to state redevelopment programs.

Section 20 repeals s. 163.523, F.S., relating to safe neighborhood districts and the cooperation and involvement of community organizations.

Section 21 repeals s. 163.524, F.S., relating to the Neighborhood Preservation and Enhancement Program.

Section 22 repeals s. 163.526, F.S., relating to neighborhood councils and local government designated agencies.

Section 23 provides that this act shall take effect July 1, 2011.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

This bill will allow local government neighborhood improvement districts (NIDs) to collect special assessments, charge user fees, and levy ad valorem taxes upon real and personal property within the district by resolution of the district's governing body, and if so required by the Florida Constitution, obtain the affirmative vote of the district electors.

This bill will allow special NIDs, community redevelopment NIDs, and property owners' association NIDs to make and collect special assessments for improvements and reasonable operating expenses subject to the referendum approval.

B. Private Sector Impact:

Individuals residing and business located in NIDs may be subject to special assessments, ad valorem taxes, and user fees as provided in this bill.

C. Government Sector Impact:

This bill will allow local government NIDs to borrow money, issue bonds, collect special assessments, charge user fees, and levy ad valorem taxes upon real and tangible personal property within the district by resolution of the governing body, and if required by the Florida Constitution, obtain the affirmative vote of the district electors. If a local government NID exercises its authority to borrow money, issue bonds, collect special assessments, or levy ad valorem taxes upon real and tangible personal property within the district, the bill requires a referendum to be held. There will be costs associated with conducting a referendum.

The bill will allow special NIDs, community redevelopment NIDs, and property owners' association NIDs to make and collect special assessments for improvements and reasonable operating expenses subject to referendum approval.

The bill will also allow NIDs to contract with the county or municipal government for legal advice.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In order to provide a uniform notification process to the Department of Community Affairs' Special District Information Program and to eliminate duplication, the Department of Community Affairs recommends deleting lines 226-229 of the bill and inserting the following:

pursuant to Section 189.418(1), F.S., and the Department of Legal Affairs by providing ~~these departments~~ the Department of Legal Affairs with the district's name, location, size, and type, and such other information as the ~~departments~~ Department of Legal Affairs may request require.¹⁴

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on April 12, 2011:

The committee substitute conditions the authority of a local government NID to exercise its authority to levy ad valorem tax, to borrow money, and to incur debt (issue bonds). If a local government NID exercises its authority to borrow money, issue bonds, collect special assessments, or levy ad valorem taxes upon real and tangible personal property within the district, the committee substitute requires a referendum to be held. A majority of property owners in the local government NID must approve the proposed action in the referendum.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁴ Florida Department of Community Affairs, *SB 1010 Agency Analysis*, 5-6 (March 11, 2011) (on file with the Senate Committee on Community Affairs).