

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 Appropriations

BILL: PCS/CS/SB 770 (147698)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Community Affairs Committee; and Senator Ring

SUBJECT: Neighborhood Improvement Districts

DATE: April 15, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Fav/CS
2.	Babin	Diez-Arguelles	AFT	Fav/CS
3.	Babin	Hansen	AP	Pre-meeting
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:

PCS/CS/SB 770 authorizes local government neighborhood improvement districts (NIDs) to borrow money and incur debt and to pledge special assessments to meet such obligations. Local government NIDs are also authorized to lease or lease-purchase property and to impose user fees and charges. All powers provided by the bill are conditioned upon referendum approval by the electors of the district.

In addition to local government NIDs' current authority to levy ad valorem taxes and special assessments, this bill allows these NIDs to impose user fees and charges.

The bill has no fiscal impact on state government. However, local governments may incur additional costs associated with conducting referenda.

This bill substantially amends section 163.506, Florida Statutes.

II. Present Situation:

Neighborhood Improvement Districts

Purposes and Creation

Part IV of ch. 163, F.S., is known as the “Safe Neighborhoods Act.” The intent of the 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.¹

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 NIDs through the adoption of a planning ordinance. Each NID that is established is required to register within 30 days with both the Department of Economic Opportunity 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 Under current law, there are four types of NIDs:

- Local government NIDs,
- Property owners’ association NIDs,
- Community redevelopment NIDs, and
- Special NIDs, which are further classified as either residential or business.³

As of March 2013, there are 31 active NIDs in the state of Florida.⁴ Twenty-eight of these are local government NIDs, two are special residential NIDs and one is classified as a property owners’ association NID.

¹ See s. 163.502, F.S.

² Section 163.5055, F.S.

³ See ss. 163.506-163.512, F.S.

NID Boards and Revenue Sources

The board of directors of a local government NID is the local governing body of the municipality or county that created the NID; however, as an alternative, a majority of the local governing body may also appoint a different board.⁵ The officers of an incorporated property owners' association serve as the board of directors for property owners' association NIDs.⁶ The board of a special NID is a three-member body appointed by the governing body of the municipality or county that created the district.⁷ The board of a community redevelopment NID is the community redevelopment board of commissioners, which is designated by the governing body of the municipality or county that created the board.⁸

Local government NIDs are authorized to levy an ad valorem tax on real and personal property of up to two mills annually.⁹ Special NIDs have the same taxing authority; however, this authority is subject to referendum.¹⁰ Special *residential* NID ad valorem taxes are approved by a majority of the district electors voting in a referendum.¹¹ Special *business* NID ad valorem taxes are approved if freeholders representing in excess of 50 percent of the assessed value of the property within the district endorse the referendum.¹²

All NIDs are also authorized, subject to referendum approval, to make and collect special assessments.¹³ Assessments may not exceed \$500 for each individual parcel of land per year and require an affirmative vote by a majority of the registered voters residing in the district.¹⁴ Community redevelopment NIDs may also utilize community redevelopment trust funds to implement district planning and programming.¹⁵

NID Dissolutions

Local government and community redevelopment NIDs may be dissolved by the governing body that established them.¹⁶ Property owners' association NIDs continue in perpetuity as long as the

⁴ Florida Department of Economic Opportunity, Division of Community Development, *Official List of Special Districts Online*, available at <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/criteria.cfm> (last visited March 21, 2013). See Option 7: Select Functions of Interest.

⁵ Sections 163.506(1)(e), 163.506(3), F.S.

⁶ Section 163.508(1)(e), F.S.

⁷ Section 163.511(1)(f), F.S.

⁸ Section 163.356, F.S.

⁹ Section 163.506(1)(c), F.S.

¹⁰ Section 163.511(1)(a) and (b), F.S.

¹¹ Section 163.511(3)(g), F.S.

¹² Section 163.511(4)(g), F.S.

¹³ Section 163.514(16), F.S. This authority and any of the other NID powers enumerated in s.163.514, F.S., may be prohibited by the NID's enacting ordinance.

¹⁴ *Id.*

¹⁵ Section 163.512(1)(c), F.S.

¹⁶ Sections 163.506(4) and 163.512(3), F.S.

property owners' association created when establishing the NID exists.¹⁷ Special NIDs are dissolved at the end of the tenth fiscal year of operation.¹⁸

NIDs and Bond Authority

Although NIDs have various powers, they do not have express authority to borrow funds. In 2006, the Florida Attorney General issued 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.¹⁹ 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."

Other Sources of Funding for Local Government Improvement Efforts

County and municipal governments have authority under current law and under their constitutional home rule authority to raise revenue that could be used for many of the purposes identified by the Safe Neighborhoods Act.

Section 125.01(1)(q), F.S., provides that counties may establish:

municipal service taxing or benefit units for any part or all of the unincorporated area of the county, within which it may provide fire protection, law enforcement, beach erosion control, recreation service and facilities, water..., streets, sidewalks, street lighting, garbage and trash collection and disposal, waste and sewage collection and disposal, drainage, transportation, indigent health care services, mental health care services, and other essential facilities and municipal services from funds derived from service charges, special assessments, or taxes within such unit only.... This paragraph authorizes all counties to levy additional taxes, within the limits fixed for municipal purposes, within such municipal service taxing units under the authority of the second sentence of s. 9(b), Art. VII of the State Constitution.

Section 125.01(1)(r), F.S., grants counties the power to levy and collect ad valorem taxes, and provides that no referendum is required for the levy by a county of ad valorem taxes for county purposes or for providing municipal services within any municipal service taxing unit. The distinction between a municipal service taxing unit and a municipal service benefit unit is that in a benefit unit the services are funded by a service charge or a special assessment rather than a tax.

¹⁷ Section 163.508(4), F.S.

¹⁸ Section 163.511(13), F.S. Special NIDs may continue for subsequent 10-year periods if the continuation of the district is approved through referendum.

¹⁹ Op. Atty Gen. Fla. 2006-49 (2006).

All taxes, other than ad valorem taxes, are reserved to the state.²⁰ Local governments may levy other taxes only if these taxes are authorized by general law. Not all local government revenue sources are taxes. Counties and municipalities may levy fees, assessments, or charges for services under their home rule authority. Special assessments may be used to fund certain services and to construct and maintain capital facilities, such as those appropriate for NIDs, if they meet two requirements: (1) the property subject to assessment must derive a special benefit from the service or improvement funded by the assessment, and (2) the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit.²¹

III. Effect of Proposed Changes:

Section 1 amends s. 163.506, F.S., to authorize local government NIDs to:

- Borrow money and incur indebtedness;
- Pledge special assessments to secure or repay district obligations; and
- Impose user fees and charges.

The bill authorizes the governing body of local government NIDs to issue a resolution authorizing bonds. Bonds must be approved by the board of the district, the governing body of the municipality or county that created the district, and by referendum. The referendum required for bonds is the same referendum currently required to impose special assessments.

Section 2 provides an effective date of July 1, 2013.

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:

In addition to local government NIDs' current authority to levy ad valorem taxes and special assessments, this bill allows these NIDs to impose user fees and charges.

²⁰ Fla. Const. Art. VII, s. 1(a)

²¹ See *City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992).

B. Private Sector Impact:

Taxpayers located in local government NIDs may be subject to user fees and charges.

C. Government Sector Impact:

Local governments may incur costs associated with conducting referenda.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**Recommended CS/CS by Appropriations Subcommittee on Finance and Tax on April 4, 2013:**

The committee substitute:

- Requires that bonds must be approved by the governing body of the municipality or county that created the district.
- Restricts the revenue sources that can be pledged for bonds to special assessments.

CS by Community Affairs on March 7, 2013:

- Provides that bonds require a resolution of the district's governing body and may not be issued or sold for an amount greater than the amount assessed by the district.
- Conditions the powers authorized in the bill upon referendum approval by the electors of the district.

B. Amendments:

None.