

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 Appropriations Subcommittee on Finance and Tax

BILL: CS/CS/SB 564

INTRODUCER: Appropriations Subcommittee on Finance and Tax, Committee on Community Affairs and Senator Simmons

SUBJECT: Neighborhood Improvement Districts

DATE: April 4, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Fav/CS
2.	Babin	Diez-Arguelles	AFT	Fav/CS
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
- B. AMENDMENTS..... Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

CS/CS/SB 564 renames the Safe Neighborhoods Act as the “Neighborhoods Improvement Act” and revises its focus from safety and crime reduction to neighborhood improvements such as street and sidewalk enhancement, landscaping, mass transit, and stormwater and public utility development.

In addition to local government Neighborhood Improvement Districts’ (NID) current authority to levy ad valorem taxes and special assessments, this bill allows these NIDs to impose fees and user charges.

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

The bill authorizes local government NIDs to borrow money and issue bonds. Bonds must be approved by the board of the NID, governing body of the municipality or county that created the district, and by referendum. The bill distinguishes between local government NIDs located in residential areas and those located in commercial areas.

The Safe Neighborhoods Program, unfunded since 1992, and related grant opportunities, are eliminated by the bill. Many of the Department of Legal Affairs' administrative duties associated with safety, crime reduction, and community policing efforts are also removed. The bill also allows NIDs to contract with county or municipal government for legal advice, and to plan for certain public improvements.

The bill substantially amends the following sections of the Florida Statutes: 163.2511, 163.2517, 163.3182, 163.3246, 163.387, 163.501, 163.502, 163.503, 163.5035, 163.504, 163.5055, 163.506, 163.508, 163.511, 163.512, 163.514, 163.5151, 163.516, 163.524, 163.526, 376.84, 775.083, and 932.7055.

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

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 (DEO) and the Department

¹ See s. 163.502, F.S.

of Legal Affairs (DLA) 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.

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 district; however, as an alternative, a majority of the local governing body may also appoint a different board.⁵ The board of a property owners' association NID is comprised of the officers of the property owners' association.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. 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 of commissioners.⁷

Local government NIDs and special NIDs are authorized to levy ad valorem taxes up to 2 mills annually.⁸ Local government NIDs are authorized to levy tax without a referendum; however, special NIDs require a referendum to levy ad valorem taxes.⁹ For a special *residential* NID, taxes are approved by a majority of the electors voting in the referendum.¹⁰ For a special *business* NID, taxes are approved by freeholders representing in excess of 50 percent of the assessed value of the property within the district endorse the referendum.¹¹

All NIDs are also authorized to make and collect special assessments, but all special assessments are subject to referendum approval.¹² Special assessments are approved by a majority of

² Section 163.5055, F.S.

³ See ss. 163.506-163.512, F.S.

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) and 163.506(3), F.S.

⁶ Section 163.508(1)(e), F.S.

⁷ Sections 163.511(1)(f), and 163.512(1)(d), F.S., respectively.

⁸ Sections 163.506(1)(c), F.S., and 163.511(1)(b), F.S.

⁹ Section 163.511(1)(a) and (b), F.S.

¹⁰ Section 163.511(3)(g), F.S. Although the word "elector" is used in s. 163.511(3)(g), F.S., it appears that the intent is that the vote be made by residents within the district that are registered voters. See s. 163.511(3)(b), F.S.

¹¹ Section 163.511(4)(g), F.S.

¹² 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.

registered voters residing in the district.¹³ Assessments may be collected pursuant to ss. 197.3632 and 197.3635, F.S. (the uniform method for collection of non-ad valorem assessments). Assessments may not exceed \$500 for each individual parcel of land per year.

Community redevelopment NIDs may also utilize community redevelopment trust funds to implement district planning and programming.¹⁴

NID Dissolutions

Local government and community redevelopment NIDs may be dissolved by the governing body that established them.¹⁵ Property owners' association NIDs continue in perpetuity as long as the property owners' association that was created or existed when the NID was created.¹⁶ Special NIDs are dissolved at the end of the tenth fiscal year of operation.¹⁷

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.¹⁸ 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

Many of the programs in the Safe Neighborhoods Act are administered by the DLA whose duties include 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.¹⁹

¹³ *Id.* See also Fn 10 regarding the term "elector."

¹⁴ Section 163.512(1)(c), F.S.

¹⁵ Sections 163.506(4) and 163.512(3), F.S.

¹⁶ Section 163.508(4), F.S.

¹⁷ 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.

¹⁸ Op. Atty. Gen. Fla. 2006-49 (2006).

¹⁹ See s. 163.519(1)-(11), F.S.

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.

While the DLA is charged with overseeing the Safe Neighborhoods Program, funding for the program was repealed in 1992.²⁰ According to the Bureau of Criminal Justice Programs in the Office of the Attorney General, there is currently no staff or funding allocated to manage the program and its grants.²¹

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 rehabilitation as may be proposed to be carried out in the district.”²² Additionally, the NID must provide some method for and measurement of the reduction of crime within the district.²³

According to the Department of Economic Opportunity, because of the lack of funds available for the Safe Neighborhoods Program, it is unknown how many Safe Neighborhood Plans there are or whether they are still being implemented.²⁴

Neighborhood Preservation and Enhancement Programs and Districts

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.²⁵ Neighborhood preservation and enhancement districts are created by the residents of

²⁰ Office of the Attorney General, *Proposed 2012 Legislation*, (Sept. 16, 2011) (on file with the Senate Committee on Community Affairs).

²¹ *Id.*

²² Section 163.516(3), F.S.

²³ *Id.*

²⁴ Department of Economic Opportunity, *Analysis of HB 191 by Representative Soto* (September 29, 2011) on file with the Senate Committee on Community Affairs. Note: HB 191 is similar to SB 582.

²⁵ *See* s. 163.524, F.S.

a particular neighborhood or through county or municipal initiative by identifying those areas that are in need of enhancement. Neighborhood preservation and enhancement plans are enforced through an agency created by the local government which may be composed of the local code enforcement board or any other agency that will provide adequate enforcement of the plan.²⁶

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 must have such powers and duties as provided under s. 163.526, F.S. These powers include the special assessments provisions of s. 163.514, F.S.²⁷

The Special District Information Program within the DEO currently lists one active Neighborhood Preservation and Enhancement District in the state.²⁸

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 an NID, may request the DLA to submit provisions to fund capital improvements within its budget request to the Legislature.²⁹ 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 DLA 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.³⁰

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 improvement districts. Except for the preparation of safe neighborhood improvement plans, NIDs may contract with community organizations to carry out any activities in the NID and to provide maintenance services for implemented projects. Community Organization compensation for activities is

²⁶ Section 163.524(1), F.S.

²⁷ Section 163.526(1)(a), F.S.

²⁸ Sugarfoot Oaks/Cedar Ridge Preservation and Enhancement District is located in Alachua County. See 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).

²⁹ Section 163.521, F.S.

³⁰ *Id.*

capped at one percent of the total annual budget of the NID. Maintenance services compensation may not exceed two percent of individual project budgets.

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 in current law and the Neighborhoods Improvement Act created by this bill.

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.

All taxes, other than ad valorem taxes, are preempted to the state.³¹ Local governments may levy other taxes only if those 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.³²

³¹ Fla. Const. Art. VII, s. 1(a)

³² See *City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992).

III. Effect of Proposed Changes:

The bill renames the “Safe Neighborhoods Act” as the “Neighborhoods Improvement Act” and makes conforming changes. The bill eliminates current statutory references to crime prevention, broadening the intent to address the general improvement of public facilities.

The bill reforms local government NIDs’ authority to generate revenue, permitting them to borrow money, issue bonds, and impose user fees and other charges. The bill requires referendum approval for the authority to borrow money and issue bonds; however, the bill distinguishes between a residential local government NID and a commercial local government NID, creating a new type of referendum for commercial local government NIDs.³³

The following paragraphs provide a section by section analysis.

Sections 1 through 5, 9, and 28 through 30 make conforming changes.

Section 6 amends s. 163.501, F.S., renaming part IV of ch. 163, F.S., as the “Neighborhoods Improvement Act.”

Section 7 amends s. 163.502, F.S., related to the legislative findings and purposes of the Neighborhoods Improvement 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.” References to crime prevention objectives are deleted.

Section 8 amends s. 163.503, F.S., deleting the definition of “enterprise zone,” and clarifying the definition of “board” to mean the board of directors of the NID. The bill redefines “department” to mean the DEO, and it creates a definition of “local governing body” to mean the local governing body of the municipality or county that creates a neighborhood improvement district.

Section 10 amends s. 163.504, F.S., deleting provisions relating to the Safe Neighborhoods Program and safe neighborhood improvement plans currently administered by the DLA. The bill amends the reference to the “planning ordinance” used to authorize the formation of a NID to simply an “ordinance.” The deletion of the qualifying term “planning” occurs throughout the remainder of the bill.

Section 11 amends s. 163.5055, F.S., providing that NIDs are required to notify (rather than register with) the DEO. The bill deletes provisions that require registration with the DLA and other obsolete provisions.

Section 12 amends s. 163.506, F.S., specifying that residential local government NIDs use the referendum requirement in s. 163.514(16), F.S., to impose special assessments. This provision requires passage by a majority of the registered voters residing in the district.³⁴

³³ The bill uses the term “commercial” to describe non-residential NIDs. Current law uses the term “business” to describe non-residential special NIDs. The definition of “neighborhood improvement district” uses both terms. *See* s. 163.503, F.S.

³⁴ Section 163.514(16)(a), F.S. *See also* Fn 10.

The bill 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.

The bill authorizes local government NIDs 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 by law. The bill 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 must be authorized by a resolution of the board of the district, resolution of the governing body of the municipality or county that created the district, and by referendum. 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.

Florida currently requires special assessments by NIDs to be approved by referendum; the referendum is passed if approved by a majority of the electors of the district. The bill requires special assessments and bonds of residential local government NIDs to be approved using the existing referendum process. The bill requires special assessments and bonds of commercial local government NIDs to be approved by a freeholder referendum. Special assessments are permitted if approved by freeholders—representing a majority of the parcels—who participate in the referendum. Bonding authority is permitted if approved by freeholders—representing in excess of 50 percent of the assessed value—who participate in the referendum.

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

The bill revises petition thresholds triggering a governing body's consideration to dissolve an NID: petitions concerning residential NIDs require signatures of 60 percent of the residents; petitions concerning commercial NIDs require signatures of owners representing 60 percent of the district land area.

Section 13 amends s. 163.508, F.S., deleting 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 14 amends s. 163.511, F.S., making conforming changes and revising the method of appointing and removing directors of a special NID. The bill also amends the current requirement that the board of directors of a special NID be comprised of residents subject to ad valorem taxes within the district, to allow any property owner within the district to serve on the board.

Section 15 amends s. 163.512, F.S., making conforming changes and deleting provisions that allow community redevelopment NIDs to use a community redevelopment trust fund to implement crime prevention plans. Community redevelopment NIDs may continue to use trust funds to implement the district's neighborhood improvement plan.

Section 16 repeals s. 163.513, F.S., relating to crime prevention through community policing innovations, environmental design, environmental security, and defensible space functions of NIDs.

Section 17 amends s. 163.514, F.S., removing powers provided to NIDs to contract with experts on crime prevention through community policing innovations, environmental design, and similar crime deterrence methods. In addition, s. 163.514, F.S., is amended to allow NIDs to:

- Contract for the services of planners, engineers, attorneys, and other consultants;
- Contract with county or municipal government for legal advice; and
- Plan, design, construct, operate, provide, and maintain street lighting, parks, streets, drainage, utilities, swales, parking facilities, transit, landscaping, and open areas.

The bill removes commercial local government NIDs from the typical referendum requirement used by NIDs to impose special assessments.

Section 18 amends s. 163.5151, F.S., requiring each local government and special NID that levies ad valorem tax on real or personal property to establish its budget pursuant to ch. 200, F.S.

Section 19 amends s. 163.516, F.S., providing that certain information is no longer required to be included in neighborhood improvement plans or amended neighborhood improvement plans.

Section 20 repeals s. 163.517, F.S., relating to the Safe Neighborhoods Program.

Section 21 repeals s. 163.519, F.S., relating to the duties of the DLA with regard to NIDs.

Section 22 repeals s. 163.521, F.S., regarding NIDs located inside enterprise zones.

Section 23 repeals s. 163.5215, F.S., which prohibited this part of the statutes from being 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 24 repeals s. 163.522, F.S., stating that counties or municipalities with enterprise zones or community redevelopment areas are directed to give consideration to the creation of NIDs.

Section 25 repeals s. 163.523, F.S., relating to safe neighborhood districts and the cooperation and involvement of community organizations.

Sections 26 and 27 amend ss. 163.524 and 163.526, F.S., prohibiting the creation of a Neighborhood Preservation and Enhancement District or Neighborhood Council after June 30, 2013.

Section 31 provides that this act shall take effect 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 fees and user charges.

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

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 referendums.

The bill also allows NIDs to contract with the county or municipal governments for legal advice.

VI. Technical Deficiencies:**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.)

CS/CS by Appropriations Subcommittee on Finance and Tax on April 4, 2013:

The CS/CS:

- Allows local government NIDs to continue to levy ad valorem tax without approval by referendum.
- Clarifies that the board of the local government NID is the governing body of the municipality or county that created the district.
- Specifies that the freeholder referendum required for commercial local government NIDs to impose special assessments must be approved by freeholders representing a majority of parcels voting in the referendum.

CS by Community Affairs on March 7, 2013:

The CS limits the application of statutory provisions governing Neighborhood Preservation and Enhancement Districts and Neighborhood Councils to those active on or before June 30, 2013. Following this date, no new districts or councils may be created.

B. Amendments:

None