

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 Community Affairs Committee

BILL: SB 564

INTRODUCER: Senator Simmons

SUBJECT: Neighborhood Improvement Districts

DATE: February 22, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Pre-meeting
2.			AFT	
3.			AP	
4.				
5.				
6.				

I. Summary:

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. The bill also authorizes local government neighborhood improvement districts (NIDs) to borrow money, contract for loans and issue bonds by resolution of the governing body, and if required by the Florida Constitution, obtain the affirmative vote of the district electors. The authority of local government NIDs to levy ad valorem taxes, borrow money, and collect certain special assessments is subject to approval by a referendum of freeholders (property owners) in the local government NID.

The Safe Neighborhoods Program and related grant opportunities, unfunded since 1992, 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, 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, 163.523, 163.524, and 163.526.

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.

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 1, 2013). See Option 7: Select Functions of Interest.

NID Boards and Revenue Sources

The local governing body is designated as the board of directors for local government NIDs; however, as an alternative, a majority of the local governing body may also appoint a board.⁵ Officers of an incorporated property owners' association serve as the board of directors for property owners' association NIDs.⁶ Special NIDs have appointed boards while community redevelopment NIDs designate the local community redevelopment board of commissioners as the board of directors for their districts.⁷

Local government NIDs are authorized to levy an ad valorem tax on real and personal property of up to two mills annually. Special NIDs have the same taxing authority; however, this authority is subject to referendum. Special *residential* NID ad valorem taxes are approved by a majority of the district electors voting a referendum. 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.⁸

All NIDs are also authorized, subject to referendum approval, to make and collect special assessments pursuant to s. 163.514(16), F.S.⁹ Such 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. Community redevelopment NIDs utilize community redevelopment trust funds to implement district planning and programming.¹⁰

NID Dissolutions

Local government and community redevelopment NIDs may be dissolved by the governing body that established them through the rescindment of the district's creation ordinance.¹¹ Property owners' association NIDs continue in perpetuity as long as the property owners' associations created when establishing the NIDs exist.¹² Special NIDs are dissolved at the end of the tenth fiscal year of operation.¹³

NIDs and Bond Authority

Although NIDs have various powers, they do not have bond authority. 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.¹⁴ 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."

⁵ Sections 163.506(1)(e), 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 See s. 163.511(3)(g), F.S.

⁹ This authority and any of the other NID powers enumerated in s. s.163.514, F.S., may be prohibited by the NID's enacting ordinance.

¹⁰ Section 163.512(1)(c), F.S.

¹¹ Sections 163.506(4), 163.512(3), F.S.

¹² Section 163.508(4), F.S.

¹³ 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.

¹⁴ Op. Atty Gen. Fla. 2006-49 (2006).

Duties of the Department of Legal Affairs

Many of the programs in The Safe Neighborhoods Act are administered by the Department of Legal Affairs (DLA) 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.¹⁵

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 1992.¹⁶ 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.¹⁷

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

¹⁵ See s. 163.519(1)-(11), F.S.

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

¹⁷ *Id.*

the district.”¹⁸ Additionally, the NID must provide some method for and measurement of the reduction of crime within the district.¹⁹

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.²⁰

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.²¹ 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. These powers include the special assessments provisions of s. 163.514, F.S.²²

The Special District Information Program within the Department of Economic Opportunity currently lists one active Neighborhood Preservation and Enhancement District in the state.²³

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 DLA to submit provisions to fund capital improvements within its budget request to the Legislature.²⁴ 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;

¹⁸ Section 163.516(3), F.S.

¹⁹ *Id.*

²⁰ 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.

²¹ See s. 163.524, F.S.

²² Section 163.526(1)(a), F.S.

²³ 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 1, 2013).

²⁴ Section 163.521, F.S.

- 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.²⁵

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 such community organizations to carry out any activities therein and to provide maintenance services for implemented projects. Community Organization compensation for activities is 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 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.

Article VII, section 1(a) of the State Constitution preempts all taxes, other than ad valorem taxes, to the state and local governments which may levy other taxes only if these taxes are authorized

²⁵ *Id.*

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 Neighborhood Improvement Districts, 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.²⁶

III. Effect of Proposed Changes:

Section 1 amends s. 163.2511, F.S., relating to urban infill and redevelopment, to make conforming references.

Section 2 amends s. 163.2517, F.S., relating to the designation of urban infill and redevelopment areas, to make conforming references.

Section 3 amends s. 163.3182, F.S., relating to transportation deficiencies, to make conforming references.

Section 4 amends s. 163.3246, F.S., relating to local government comprehensive planning certification, to make conforming references.

Section 5 amends s. 163.387, F.S., relating to redevelopment trust funds, to make conforming references.

Section 6 amends s. 163.501, F.S., to rename 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 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.” References to crime prevention objectives are deleted.

Section 8 amends s. 163.503, F.S., to modify the definition for “neighborhood improvement district,” and to delete the definitions for the following crime-related terms: “environmental security,” “crime prevention through environmental design,” “defensible space,” “enterprise zone,” and “community policing innovation.”

Section 9 amends s. 163.5035, F.S., to delete the term “safe” in the title of this section.

Section 10 amends s. 163.504, F.S., to delete provisions relating to the Safe Neighborhoods Program and safe neighborhood improvement plans currently administered by the DLA. The adoption of a “planning ordinance” to authorize the formation of a NID is abridged to simply an

²⁶ See *City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992).

“ordinance.” This omission of the qualifying “planning” occurs throughout the remainder of the bill.

Section 11 amends s. 163.5055, F.S., to provide that neighborhood improvement districts shall be required to notify (rather than register with) the Department of Economic Opportunity. Registration with the Department of Legal Affairs and other obsolete provisions are deleted.

Section 12 amends s. 163.506, F.S., to specify that certain special assessment authority relates to residential local government NIDs and to delete the requirement that the local government entity that creates an NID is designated as the board of directors of the district.

The section 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 under the Florida Constitution and this part. 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. The section 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.

The section 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 section 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 \$500 for each individual parcel of land per year.

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

The authority of a local government NID to levy ad valorem taxes and issue bonds, and, for a commercial local government NID to make and collect special assessments, is subject to approval by a referendum of freeholders in the local government NID. The section specifies requirements for the referendum including notice to freeholders and certification of the referendum results to the governing body of the municipality or county where the local government NID is located. Ad valorem taxes, bond issuance, and special assessments are authorized if freeholders representing in excess of 50 percent of the assessed property value in the local government NID approve of the referendum.

The 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.

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

This section references differences between residential local government NIDs and commercial local government NIDs; however these differences are not explicitly defined.

Section 13 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 14 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 15 amends s. 163.512, F.S., to make conforming changes and delete provisions allowing the use of a community redevelopment trust fund to implement crime prevention plans of a community redevelopment neighborhood district. The trust fund may continue to be used for implementing the community neighborhood improvement district's improvement plan as provided in the section.

Section 16 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 17 amends s. 163.514, F.S., to remove 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;
- to contract with county or municipal government for legal advice; and
- to plan, design, construct, operate, provide, and maintain street lighting, parks, streets, drainage, utilities, swales, parking facilities, transit, landscaping, and open areas.

NIDs authorized to make and collect special assessments provided for in s. 163.514(16)(a), F.S., are amended to *only* include residential local government NIDs, special NIDs, community redevelopment NIDs, and property owners' association NIDs (these types of assessments are authorized for commercial local government NIDs in section 12 of the bill). The special assessments remain subject to referendum approval by a majority vote of the registered voters residing in the district and may not exceed \$500 per parcel of land, per year.

Section 18 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 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 Department of Legal Affairs in NIDs.

Section 22 repeals s. 163.521, F.S., addressing NIDs inside enterprise zones and capital improvement projects to promote safe neighborhood and crime prevention programs.

Section 23 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 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.

Section 26 repeals s. 163.524, F.S., relating to the Neighborhood Preservation and Enhancement Program and the creation of a district within the program. There is currently one active Neighborhood Preservation and Enhancement District in the state.

Section 27 repeals s. 163.526, F.S., relating to neighborhood councils and local government designated agencies and their powers with respect to the Neighborhood Preservation and Enhancement Program.

Section 28 amends s. 376.84, F.S., relating to brownfield redevelopment economic incentives, to make conforming references.

Section 29 amends s. 775.083, F.S., relating to criminal fines, to make conforming references.

Section 30 amends s. 932.7055, F.S., relating to liens and forfeited property, to make conforming references.

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:

The bill allows local government NIDs, subject to referendum approval, to collect special assessments, charge user fees, and levy ad valorem taxes upon real and personal property within the district.

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:

The bill allows local government NIDs, subject to referendum approval, to borrow money, issue bonds, collect special assessments, charge fees, and levy ad valorem taxes upon real and tangible personal property within the district. There will be costs associated with conducting a referendum if a local government NID exercises its authority to implement the above.

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

Sugarfoot Oaks/Cedar Ridge Preservation and Enhancement District, located in Alachua County, is an active entity which currently assesses special assessments. The district was created and is operating pursuant to s. 163.524, F.S., and s. 163.526, F.S. Sections 26 and 27 of the bill repeal these statutes.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

B. Amendments:

None.