

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 770

INTRODUCER: Senator Ring

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:

Local government neighborhood improvement districts, established pursuant to the Safe Neighborhoods Act, lack the expressed power to borrow funds. SB 770 authorizes local government neighborhood improvement districts (NIDs) to borrow money and incur debt and to pledge revenues and ad valorem taxes to meet such obligations. Leases or lease-purchases and user fees and charges are also permitted.

For purposes of these authorizations, the bill treats the NID similarly to a community development district (CDD) with respect to certain tax exemption and bond provisions.

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.

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

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.

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.

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 expressed 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."

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.

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

⁸ See s. 163.511(3)(g), F.S.

⁹ 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.

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).

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 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.¹⁵

Tax Exemptions and Bond Provisions in chapter 190, Florida Statutes

Chapter 190, Florida Statutes, governs community development districts (CDDs) in the state and includes certain tax exemption and bond provisions. Section 190.044, F.S., provides that CDD property is exempt from levy and sale by execution and also precludes any judgment as a charge or lien on CDD property or revenues. Section 190.021(6), F.S., exempts CDD bonds, interest, fees, charges and other revenues from taxation. Section 190.016 governs CDD bonds. Such bonds are deemed fully negotiable¹⁶ and constitute legal investments and security.¹⁷ Section 190.016(14) features a pledge by the state to bondholders related to district and bondholder rights and the fulfillment of bond agreement terms.

III. Effect of Proposed Changes:

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

- borrow money and incur indebtedness;
- finance and refinance district projects;
- pledge revenues and ad valorem taxes to secure or repay district obligations;
- lease or lease-purchase property as lessor or lessee; and
- impose user fees and charges.

¹⁵ See *City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992).

¹⁶ Section 190.016(4), F.S.

¹⁷ Section 190.016(10), F.S.

For the above authorizations the NID shall be treated as a community development district per the exemption provisions in s. 190.044, F.S., and s. 190.021(6), F.S., and the bond provisions in s. 190.016(4), (10), and (14), F.S. The NID may not be dissolved until arrangements are made for payment of its debt.

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:

The bill allows local government NIDs to impose user fees and charges.

B. Private Sector Impact:

Individuals residing and business located in local government NIDs may be subject to user fees and charges.

C. Government Sector Impact:

Article VII, Section 12 of the Florida Constitution, requires that certain bonds or certificates of indebtedness payable from ad valorem taxes are subject to approval by vote of the electors. There would be costs associated with conducting a referendum if a local government NID pursued projects financed utilizing this type of debt.

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.)

B. **Amendments:**

None.

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