

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 351 Neighborhood Improvement Districts

**SPONSOR(S):** Economic Development & Tourism Subcommittee; Nelson and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 510

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	8 Y, 5 N, As CS	Duncan	West
2) Local & Federal Affairs Committee			
3) Finance & Tax Subcommittee			
4) Economic Affairs Committee			

### SUMMARY ANALYSIS

The "Safe Neighborhoods Act" (Act) was created to promote the health, safety, and general welfare of neighborhoods and their residents, visitors, property owners, and workers. The Act established other public benefit goals to include:

- establishing, maintaining, and preserving property values and foster the development of attractive neighborhood and business environments;
- preventing overcrowding and congestion;
- improving or redirecting traffic and providing pedestrian safety;
- reducing crime rates and the opportunities for the commission of crime; and
- providing improvements in neighborhoods so they are defensible against crime.

The Act established four types of neighborhood improvement districts (NIDs) to carry out the purposes of the Act:

- Local Government NIDs.
- Property Owners' Association NIDs.
- Special NIDs (business and residential).
- Community Redevelopment NIDs.

The bill grants local government NIDs the power to borrow money, contract loans, and issue bonds, certificates, warrants, notes, or other evidence of indebtedness to finance the undertaking of a capital project for a purpose permitted by the State Constitution. Loans contracted by the local government NID may not exceed the life of the capital project secured by the loan.

The bill does not have a fiscal impact on state government revenues. See FISCAL COMMENTS.

The bill provides an effective date of July 1, 2014.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### The Safe Neighborhoods Act

In 1987,<sup>1</sup> the Legislature created the “Safe Neighborhoods Act” (Act) to guide and accomplish the coordinated and balanced development of safe neighborhoods for the purpose of:

- promoting the health, safety, and general welfare of these areas and their residents, visitors, property owners, and workers;
- establishing, maintaining, and preserving property values and foster the development of attractive neighborhood and business environments;
- preventing overcrowding and congestion;
- improving or redirecting traffic and providing pedestrian safety;
- reducing crime rates and the opportunities for the commission of crime; and
- providing improvements in neighborhoods so they are defensible against crime.<sup>2</sup>

##### Neighborhood Improvement Districts

The Act establishes four types of NIDs to carry out the purposes of the Act:

- Local government NIDs.
- Property owners’ association NIDs.
- Special NIDs (Business and Residential).
- Community redevelopment NIDs.

As of March 19, 2014, there were approximately 31 active NIDs in Florida: 27 local government NIDs, two special (residential) NIDs, one property owners’ association NID, and one neighborhood preservation and enhancement district.<sup>3</sup>

County or municipal governing bodies are authorized to create neighborhood improvement districts (NIDs) through the adoption of a planning ordinance.<sup>4</sup> For property owners’ association NIDs, the local governing body’s ordinance must establish that an incorporated property owners’ association representing 75 percent of all property owners within a proposed district has petitioned the county or municipal governing body requesting that a district be created for the area encompassed by the property owned by the association.<sup>5</sup> Special business or residential NIDs require a referendum to implement the ordinance.<sup>6</sup>

Each NID that is established is required to register within 30 days with 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.<sup>7</sup>

The body governing NIDs depends upon the specific type of NID created. For local government NIDs, the local governing body is designated as the board of directors; however, as an alternative, the local

---

<sup>1</sup> Sections 55-73, Chapter 87-243, L.O.F., codified at Part IV, ch. 163, F.S.

<sup>2</sup> Section 163.502(3), F.S.

<sup>3</sup> Florida Department of Economic Opportunity, Division of Community Development, Special District Information Program, Official List of Special Districts Online, *Customized Special District List*, <http://www.floridajobs.org/community-planning-and-development> (Last visited March 19, 2014). Neighborhood preservation and enhancement districts are created pursuant to s. 163.524, F.S. Such districts are not granted the same powers as neighborhood improvement districts.

<sup>4</sup> See ss. 163.506, 163.508, 163.511, and 163.512, F.S.

<sup>5</sup> Section 163.508(1)(a), F.S.

<sup>6</sup> Section 163.511(1)(a) and (2) – (4), F.S.

<sup>7</sup> Section 163.5055, F.S.

governing may appoint a board of directors.<sup>8</sup> For property owners' association NIDs, the local governing body's ordinance designates the officers of the incorporated property owners' association as the board of directors of the district.<sup>9</sup> With respect to special business or residential NIDs, the ordinance provides the appointment of a three-member board of directors.<sup>10</sup> As for community redevelopment NIDs, the ordinance designates the community redevelopment board of commissioners as the board of directors for the NID.<sup>11</sup>

### Ad Valorem Tax

Local government NIDs are authorized to levy an ad valorem tax on real and personal property of up to 2 mills annually.<sup>12</sup>

Special NIDs have the same taxing authority; however, this authority is subject to a referendum. Special *residential* NID ad valorem taxes are approved by a majority of the district electors voting in a referendum.<sup>13</sup> Special *business* NID ad valorem taxes may be levied if freeholders representing in excess of 50 percent of the assessed value of the property within the district approve the referendum.<sup>14</sup>

### Special Assessments

Local government, property owners' association, and special NIDs are also authorized, subject to referendum approval, to make and collect special assessments pursuant to the procedures established in the Act.<sup>15</sup> 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.<sup>16</sup> Community redevelopment NIDs are authorized to utilize community redevelopment trust funds to implement district planning and programming.<sup>17</sup>

### Bonding Authority, Fees and User Charges

The Act does not grant NIDs the power to bond or borrow money to carry out its purposes. In addition, the Act does not authorize local government NIDs to charge, collect and enforce fees and other user charges.

In 2006, the City of DeBary requested the Florida Attorney General's Advisory Legal Opinion on the following question:

Does a Neighborhood Improvement District created by ordinance pursuant to Section 163.511, Florida Statutes, have the power to borrow money to carry out the purposes of such district?

The Attorney General opined "...Nothing in section 163.511, Florida Statutes, authorizes a special neighborhood improvement district to borrow money to carry out the purposes of the act. In contrast, section 190.011(4), Florida Statutes, specifically authorizes community development districts to borrow money, and sections 163.568(2)(h) and 163.370(2)(g), Florida Statutes, authorize regional transportation authorities and community redevelopment agencies to borrow money."<sup>18</sup> 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

---

<sup>8</sup> Section 163.506(1)(e), F.S., and s. 163.506(3), F.S.

<sup>9</sup> Section 163.508(1)(e), F.S.

<sup>10</sup> Section 163.511(7)-(10), F.S.

<sup>11</sup> Section 163.512(1)(d), F.S.

<sup>12</sup> Section 163.506(1)(c), F.S.

<sup>13</sup> Section 163.511(3)(g), F.S.

<sup>14</sup> Section 163.511(4)(g), F.S.

<sup>15</sup> Sections 163.506(1)(d), 163.508(3)(c), 163.511(1)(c), and 163.514(16), F.S.

<sup>16</sup> Section 163.514(16)(a), F.S.

<sup>17</sup> Section 163.512(1)(c), F.S.

<sup>18</sup> Op. Atty. Gen. Fla. AGO 2006-49 (Dec. 2006)

“[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.”<sup>19</sup>

### Other Sources of Funding for Local Government Improvements

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.

All taxes, other than ad valorem taxes, are reserved to the state.<sup>20</sup> Local governments may levy other taxes only if they 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.<sup>21</sup> 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.<sup>22</sup>

### **Effect of Proposed Changes**

The bill provides that a local government NID may borrow money, contract loans, issue bonds, certificates, warrants, notes, or other evidence of indebtedness to finance a capital project for a purpose permitted by the State Constitution. The local government NID may pledge special assessments for the payment of the NID's debts and bonds. Loans contracted by the local government NID may not exceed the life of the capital project secured by the loan.

Bonds issued must be authorized by the NID's board, the governing body of the county or municipality that created the NID, and by referendum. The referendum is the same referendum currently required under the Act in order for a NID to make and collect special assessments.<sup>23</sup>

## **B. SECTION DIRECTORY:**

---

<sup>19</sup> *Id.*

<sup>20</sup> Section 1(a), Art. VII of the State Constitution.

<sup>21</sup> See part I, ch. 125, F.S., part III, ch. 166, F.S., and ch. 170, F.S.

<sup>22</sup> Florida Legislature, Office of Economic & Demographic Research, 2013 Local Government Financial Information Handbook, Dec. 2013, p. 15, available at <http://edr.state.fl.us/Content/local-government/reports/lgfih13.pdf>.

<sup>23</sup> See s. 163.514(16), F.S.

Section 1: Amends s. 163.506(1), F.S., relating to local government NIDs, authorizing an ordinance to grant such NIDs the power to borrow money, contract loans, and issue bonds, certificates, warrants, notes, or other evidence of indebtedness to finance the undertaking of a capital project for a purpose permitted by the State Constitution.

Section 2: Provides an effective date of July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Local governments may incur the costs associated with conducting referenda.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

Local governments may incur the costs associated with conducting referenda.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 25, 2014, the House Economic Development & Tourism Subcommittee adopted an amendment and passed the bill as a committee substitute. The committee substitute:

- restricts the local government NIDs bonding authority to capital projects;
- provides that loan terms may not exceed the life of the capital project secured by the loan; and
- removes an erroneous reference to commercial districts.

The analysis has been updated to reflect the amendment.