

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 Community Affairs

BILL: SB 1508

INTRODUCER: Senator Simmons

SUBJECT: Neighborhood Improvement Districts

DATE: April 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Yeatman	CA	Favorable
2.			ACJ	
3.			AP	

I. Summary:

SB 1508 revises provisions relating to the board of directors of a special neighborhood improvement district including authorizing the appointment of a three-, five-, or seven-member board and requiring the board of directors to be landowners in the district. The bill requires counties or municipalities to specify the number of directors in the ordinance creating the special neighborhood improvement district.

The bill creates the Safe Neighborhood Improvement District Revolving Loan Program. Under the bill, the Department of Legal Affairs (DLA) may provide loan guarantees, purchase loan insurance, and refinance local debt through the issuance of new loans for projects that are in the plans of a safe neighborhood improvement district (SNID). The DLA must set aside 15 percent of the amounts credited to the Safe Neighborhood Improvement District Revolving Loan Trust Fund for small SNIDs.

In order to be eligible for a loan under the program, the qualified electors of the SNID must approve the use of revolving loans by referendum.

The bill also provides for audits of the loan projects upon completion, the investment of unused funds, and a process by which to handle defaults of the loan projects.

The DLA must prepare a report at the end of each fiscal year which details the financial assistance provided, service fees collected, interest earned, and loans outstanding and provide the report to the appropriations committees in the Senate and the House of Representatives.

II. Present Situation:

Safe 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 preserve and foster the development of attractive neighborhoods and business environments;
- Prevent overcrowding and congestion;
- Improve or redirect traffic and provide pedestrian safety;
- Reduce crime rates and the opportunities for the commission of crime; and
- Provide improvements in neighborhoods so they are defensible against crime.¹

Section 163.503(1), F.S., defines the term “safe neighborhood improvement district” (SNID) or “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 SNIDs through the adoption of a planning ordinance. Each SNID that is established is required to register within 30 days with both the Department of Economic Opportunity (DEO) and the Department of Legal Affairs (DLA) and provide the name, location, size, type of SNID, and such other information that the departments may require.² Under current law, there are four types of SNIDs:

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

¹ See s. 163.502(3), F.S.

² Section 163.5055(1)(a), F.S.

³ See ss. 163.506-163.512, F.S.

As of March 29, 2019, there are 26 active SNIDs in the state of Florida.⁴ Twenty-three of these are local government SNIDs; two are special residential SNIDs; and one is classified as a property owners' association SNID.

SNID Boards and Revenue Sources

The board of directors of a local government SNID is the local governing body of the municipality or county that created the SNID; 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 SNID is comprised of the officers of the property owners' association.⁶

The board of a special SNID is a three-member body, appointed by the governing body of the municipality or county that created the SNID, who are residents of the area and serve staggered terms of 3 years.⁷ The board of a community redevelopment SNID 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.⁸

Local government SNIDs and special SNIDs are authorized to levy ad valorem taxes up to 2 mills annually.⁹ Local government SNIDs are authorized to levy tax without a referendum; however, special SNIDs require a referendum to levy ad valorem taxes.¹⁰ For a special *residential* SNID, taxes are approved by a majority of the electors voting in the referendum.¹¹ For a special *business* SNID, taxes are approved by freeholders representing in excess of 50 percent of the assessed value of the property within the SNID.¹²

All SNIDs are also authorized to make and collect special assessments, but all special assessments are subject to referendum approval.¹³ Special assessments are approved by a majority of registered voters residing in the SNID.¹⁴ 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 SNIDs may also utilize community redevelopment trust funds to implement district planning and programming.¹⁵

⁴ Florida Department of Economic Opportunity, Division of Community Development, *Official List of Special Districts Online*, available at <http://specialdistrictreports.floridajobs.org/webreports/mainindex.aspx> (last visited March 29, 2019).

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

⁶ Section 163.508(1)(e), F.S.

⁷ Sections 163.511(1)(f), and (8), F.S.

⁸ Section 163.512(1)(d), F.S.

⁹ Sections 163.506(1)(c), F.S., and 163.511(1)(b), F.S.

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

¹¹ 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.

¹² Section 163.511(4)(g), F.S.

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

¹⁴ *Id.* *See also* Footnote 11 regarding the term "elector."

¹⁵ Section 163.512(1)(c), F.S.

SNID Dissolutions

Local government and community redevelopment SNIDs may be dissolved by the governing body that established them.¹⁶ Property owners' association SNIDs continue in perpetuity as long as the property owners' association exists.¹⁷ Special SNIDs are dissolved at the end of the tenth fiscal year of operation.¹⁸

SNIDs and Bond Authority

Although SNIDs 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 SNID 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 SNID.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."

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 SNIDs;
- 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.²⁰

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 SNIDs may receive up to \$20,000.
- Local government SNIDs may receive up to \$100,000.
- Special SNIDs may receive up to \$50,000.
- Community redevelopment SNIDs 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.

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

¹⁷ Section 163.508(4), F.S.

¹⁸ Section 163.511(13), F.S. Special SNIDs 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).

²⁰ See s. 163.519, F.S.

While the DLA is charged with overseeing the Safe Neighborhoods Program, funding for the program was repealed in 1992, and there is currently no staff or funding allocated to manage the program and its grants.²¹

Safe Neighborhood Improvement Plan

All SNIDs 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 SNID must provide some method for and measurement of the reduction of crime within the district.²³

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.²⁴ Neighborhood preservation and enhancement districts are 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 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.²⁵

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.²⁶

The Special District Information Program within the DEO currently lists one active Neighborhood Preservation and Enhancement District in the state.²⁷

²¹ Telephone conversation with Daniel Olson, Department of Legal Affairs, Legislative and Cabinet Affairs (March 29, 2019).

²² Section 163.516(3), F.S.

²³ *Id.*

²⁴ *See* s. 163.524(1), F.S.

²⁵ *Id.*

²⁶ Section 163.526(1)(a), F.S.

²⁷ 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://specialdistrictreports.floridajobs.org/webreports/mainindex.aspx> (last visited March 29, 2019).

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 SNIDs. Except for the preparation of safe neighborhood improvement plans, SNIDs may contract with community organizations to carry out any activities in the SNID 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 SNID. 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 Safe Neighborhood Improvement District Revolving Loan Program 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.²⁸ 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 SNIDs, if they meet two requirements: (1) the property subject to assessment must derive a special benefit

²⁸ Fla. Const. Art. VII, s. 1(a)

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.²⁹

III. Effect of Proposed Changes:

Section 1 amends s. 163.511, F.S., to revise several provisions relating to the board of directors of a special neighborhood improvement district. Specifically, the bill provides for the appointment of a three-, five-, or seven-member board, which must be specified in the local planning ordinance, rather than the 3-member board currently provided by law.

The bill requires counties or municipalities to specify the number of directors in the ordinance creating the special neighborhood improvement district.

Additionally, the board of directors must be landowners in the district, whereas current law only required the board of directors to be residents of the area. Finally, the bill removes the requirement that the appointment of the board of directors be for a period of 3 years, implicitly authorizing the district to provide for its own term lengths in its local planning ordinance.

Section 2 creates s. 163.5161, F.S., relating to the Safe Neighborhood Improvement District Revolving Loan Program.

Purpose (Subsection 1)

The purpose of this section is to help implement the legislative public policy of guiding the coordinated, balanced, and harmonious development of SNIDs. This is accomplished by ensuring that SNIDs have adequate finances to plan and increase crime prevention through environmental design, environmental security, or defensible space techniques, or through community policing innovations.

Definitions (Subsection 2)

“Bonds” means bonds, certificates, or other obligations of indebtedness issued by the Department of Legal Affairs (DLA) under this section.

“Neighborhood improvements” means all facilities, including land, water, utilities, and roads, necessary for providing critical infrastructure to implement the crime prevention plans of a SNID.

Providing a Loan (Subsection 3, 4, 5, 6, and 9)

The bill authorizes the DLA to provide loan guarantees, purchase loan insurance, and refinance local debt through the issuance of new loans for projects that are in the plans of a SNID and that have been approved by the department. A SNID may borrow these funds and may pledge any revenues or other adequate security available to the SNID to repay any refunds borrowed.

The DLA must administer loans so that 15 percent of the amounts credited to the Safe Neighborhood Improvement District Revolving Loan Trust Fund in any fiscal year is reserved

²⁹ See *City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992).

for small SNIDs. However, if an insufficient number of projects for which funds are reserved have been submitted to the DLA at the time a funding priority list is adopted, the reservation of these funds no longer applies. The DLA may award the unreserved funds as otherwise provided.

The term of loans made pursuant to this section may not exceed the life of the project secured by the bond. The interest rate on the loans may not exceed that paid on the last bonds sold pursuant to s. 14, Art. VII of the State Constitution.

The DLA may provide financial assistance to small SNIDs, as determined by the DLA, including providing forgiveness of the loan principal.

In order to ensure that public moneys are managed in an equitable, prudent, and cost-effective manner, the total amount of money loaned to any SNID during a fiscal year may not exceed 25 percent of the total funds available for making loans during that year.

Before being approved for a loan, the SNID must, at a minimum:

- Provide a repayment schedule.
- Submit evidence that the project proposed for financial assistance can be permitted or implemented.
- Submit plans and specifications, biddable contract documents, or other documentation of appropriate procurement of goods and services.
- Provide assurance that records will be kept using generally accepted accounting principles and that the DLA and the Auditor General will have access to all records pertaining to the loan.
- Provide assurance that the goods and services funded will be properly operated and maintained.

Approval by Referendum (Subsection 10)

Additionally, a SNID may not receive a revolving loan unless the local government approves a resolution that provides for a referendum, and the qualified electors of the SNID have approved the use of revolving loans by referendum. The referendum must include the estimated cost of the capital projects that are anticipated to be funded by the revolving loan funds and the amount of the loan. Furthermore, the referendum must meet all of the following requirements:

- The referendum to approve the loan funds shall be by mail ballot.
- Within 45 days after the date the city or county commission enacts an ordinance calling a referendum, the city clerk or the supervisor of elections, as appropriate, must compile a list of the names and last known addresses of the electors within the SNID from the list of registered voters of the municipality or county, as appropriate, as of the last day of the preceding month, which must be the registration list for the referendum. A resident of the district whose name does not appear on the registration list may register to vote in the referendum as otherwise provided by law.
- Within 45 days after compilation of the voter registration list, the city clerk or the supervisor of elections, as appropriate, shall notify each qualified elector of the provisions of the ordinance and the date of the upcoming referendum. Notification shall be by first-class mail and a one-time publication in a newspaper of general circulation in the municipality or county, as appropriate, in which the district is located.

- The registration list must remain open for 75 days after the date of the mailing of the notices to the electors as provided above.
- Within 15 days after closing the registration list, the city clerk or the supervisor of elections, as appropriate, shall send a ballot to each elector at his or her last known mailing address by first-class mail. The ballot must include:
 - A description of the capital projects to be funded by the loan and the revenue sources that will be used to repay the loan.
 - A statement asking whether the qualified elector authorizes the SNID to use revolving loan funds, the specific amount of loan funds to be issued, and the estimated cost of the capital projects to be paid for by those loan funds.
- Ballots must be returned by mail or by personal delivery.
- The city clerk or the supervisor of elections, as appropriate, shall tabulate all ballots received within 60 days after the closing of the registration list. The appropriate person must then certify the results to the city or county commission within 5 days.
- The use of revolving loan funds is deemed to have been approved only upon the affirmative vote of a majority of the registered voters in the SNID voting on the issue.

Audit (Subsection 11)

The DLA may conduct an audit of the loan project upon completion, or may require that a separate project audit, prepared by an independent certified public accountant, be submitted.

Service Fees (Subsection 12)

The DLA may require reasonable service fees on loans made to SNIDs to ensure that the Safe Neighborhood Improvement District Revolving Loan Trust Fund will be operated in perpetuity and to implement the purposes authorized under this section. Service fees may not be less than 2 percent nor greater than 4 percent of the loan amount exclusive of the service fee. Service fee revenues shall be deposited into the DLA's Grants and Donations Trust Fund. The fee revenues, and interest earnings thereon, shall be used exclusively to carry out the purposes of this section.

Investment of Unused Funds (Subsection 13)

The Safe Neighborhood Improvement District Revolving Loan Trust Fund shall be used exclusively to carry out the purposes of this section. Any funds that are not needed immediately for financial assistance shall be invested pursuant to s. 215.49, F.S.³⁰ The principal and interest of all loans repaid and investment earnings shall be deposited into the fund.

Default (Subsection 14)

If a SNID defaults under the terms of its loan agreement, the DLA must certify as such to the Chief Financial Officer, who shall forward the delinquent amount to the department from any unobligated funds due to the SNID under any revenue-sharing or tax-sharing fund established by the state, except as otherwise provided by the State Constitution. Certification of delinquency may not limit the DLA from pursuing other remedies available for default on a loan, including

³⁰ Section 215.49, F.S., entitled "Making funds available for investment," requires each state agency and the judicial branch to invest certain funds with the State Board of Administration.

accelerating loan repayments, eliminating all or part of the interest rate subsidy on the loan, and requesting a court appoint a receiver to manage the SNID.

The DLA may impose a penalty for delinquent loan payments in the amount of 6 percent of the amount due, in addition to charging the cost to handle and process the debt. Penalty interest shall accrue on any amount due and payable beginning on the 30th day following the date upon which payment is due.

The DLA may terminate or rescind a financial assistance agreement if the recipient fails to comply with the terms and conditions of the agreement.

Rules by the Department (Subsections 5 and 7)

The DLA must establish by rule the criteria for determining whether a SNID serves a financially disadvantaged community. Such criteria shall be based on the median household income of the service population or other reliably documented measures of disadvantaged status.

The DLA may also adopt rules to:

- Establish a priority system for loans based on degree of likelihood of enhancing crime prevention and affordability within a SNID.
- Establish the requirements for the award and the repayment of financial assistance.
- Require evidence of credit worthiness and adequate security, including an identification of revenues to be pledged and documentation of the sufficiency of revenues for loan repayment and pledged revenue coverage, to ensure that each loan recipient can meet its loan repayment requirements.
- Require each project receiving financial assistance to be cost-effective, environmentally sound, implementable, and self-supporting.

Required Report (Subsection 8)

The DLA shall prepare a report at the end of each fiscal year which details the financial assistance provided under this section, service fees collected, interest earned, and loans outstanding. The report shall be provided to the appropriations committees in the Senate and the House of Representatives.

Section 3 provides the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Residents of SNIDs may experience safer and more secure neighborhoods if the SNIDs effectively use the revolving loan program.

C. Government Sector Impact:

SNIDs may receive loans that facilitate the SNID's implementation of its crime prevention plans.

The Department of Legal Affairs determined that the bill would have a significant, but indeterminate fiscal impact.³¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

“Neighborhood improvements” is defined in s. 163.5161(2)(b), F.S., but the term is not otherwise used in the bill. It appears this term was intended to provide a list of eligible projects for the loan program. If so, the bill may need an amendment to reflect that intent.

The term “bonds” is also defined in s. 163.5161(2)(a), F.S., but the bill does not contemplate the issuance of bonds.

It is also unclear what constitutes a “small” safe neighborhood improvement district in line 126 of the bill. Additionally, on line 139, the bill refers to a “small neighborhood improvement district.” In every other reference in the bill, we use “safe neighborhood improvement district.”

³¹ Email from the Department of Legal Affairs, dated March 29, 2019 (Copy on file with the Community Affairs Committee).

Lines 142 through 147 authorize the DLA to establish by rule the criteria for determining whether a SNID serves a financially disadvantaged community. The bill does not discuss whether SNIDs that are financially disadvantaged communities are intended to receive preferential treatment or status in comparison to other SNIDs.

The bill uses the term “registered voters” in line 249. To be consistent, the term “qualified electors” should be used.

VIII. Statutes Affected:

This bill substantially amends section 163.511 of the Florida Statutes.

This bill creates section 163.5161 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.