Tab 1	**SB 1776** by **Bradley**; Vegetable Gardens

Tab 2	**CS/SB 536** by **JU, Passidomo**; (Similar to CS/H 00875) Limitations of Actions Other Than for the Recovery of Real Property

295224	A	S	CA, Passidomo	Delete L.60 - 62:	02/05 11:22 AM

Tab 3	**SB 224** by **Book (CO-INTRODUCERS) Farmer**; (Identical to H 00277) Legal Holidays

Tab 4	**SB 574** by **Steube**; (Compare to CS/H 00521) Tree and Timber Trimming, Removal, and Harvesting

132156	D	S	CA, Steube	Delete everything after	02/01 05:11 PM

Tab 5	**SB 964** by **Baxley**; (Identical to H 00709) Voting Systems

620480	D	S	CA, Baxley	Delete everything after	02/05 11:23 AM

Tab 6	**SB 1814** by **Simmons**; (Similar to H 01405) Safe Neighborhood Improvement Districts

Tab 7	**CS/SB 1308** by **EP, Perry**; (Identical to CS/H 01149) Environmental Regulation

200016	A	S	CA, Perry	Delete L.120 - 167:	02/05 11:24 AM
979634	A	S	CA, Perry	Delete L.173 - 174:	02/05 11:24 AM
605428	A	S	CA, Perry	Delete L.233 - 236:	02/05 11:24 AM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Lee, Chair
Senator Bean, Vice Chair

MEETING DATE: Tuesday, February 6, 2018
TIME: 11:00 a.m.—12:30 p.m.
PLACE: 301 Senate Office Building

MEMBERS: Senator Lee, Chair; Senator Bean, Vice Chair; Senators Brandes, Campbell, Perry, Rodriguez, and Simmons

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 1776** Bradley	Vegetable Gardens; Prohibiting local governments from regulating vegetable gardens on residential properties except as otherwise provided by law, etc. CA 02/06/2018 RC	
2	**CS/SB 536** Judiciary / Passidomo (Similar CS/H 875)	Limitations of Actions Other Than for the Recovery of Real Property; Authorizing the commencement, within a specified timeframe, of counterclaims, cross-claims, and third-party claims that arise out of the conduct, transaction or occurrence set out or attempted to be set out in a pleading for which such claims relate, etc. JU 01/25/2018 Fav/CS CA 02/06/2018 RC	
3	**SB 224** Book (Identical H 277, Compare S 214)	Legal Holidays; Removing the designations of the birthdays of Robert E. Lee and Jefferson Davis and Confederate Memorial Day as legal holidays, etc. CA 02/06/2018 GO RC	
4	**SB 574** Steube (Compare CS/H 521)	Tree and Timber Trimming, Removal, and Harvesting; Preempting to the state the regulation of the trimming, removal, or harvesting of trees and timber on private property; prohibiting local governments from prohibiting the burial of vegetative debris on certain properties, etc. CA 02/06/2018 EP RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	**SB 964** Baxley (Identical H 709)	Voting Systems; Revising the definition of the term "marksense ballots" for purposes of the Florida Election Code; providing applicability of specified ballot requirements to a voter interface device, etc. EE 01/10/2018 Favorable CA 02/06/2018 RC	
6	**SB 1814** Simmons (Similar H 1405, Compare H 1407)	Safe Neighborhood Improvement Districts; Creating the Safe Neighborhood Improvement District Revolving Loan Program; authorizing the Department of Legal Affairs to provide loans for specified projects within safe neighborhood improvement districts; authorizing a safe neighborhood improvement district to borrow funds made available under the program and pledge revenues to repay such funds; requiring the approval of the use of the revolving loans by the registered voters of the district by referendum, etc. CA 02/06/2018 ACJ AP	
7	**CS/SB 1308** Environmental Preservation and Conservation / Perry (Identical CS/H 1149)	Environmental Regulation; Revising the required provisions of the water resource implementation rule; requiring the Department of Environmental Protection and the water management districts to develop and enter into a memorandum of agreement providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit; requiring counties and municipalities to address contamination of recyclable material in specified contracts; prohibiting counties and municipalities from requiring the collection or transport of contaminated recyclable material by residential recycling collectors, etc. EP 01/22/2018 Fav/CS CA 02/06/2018 AP	

Other Related Meeting Documents

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 1776
INTRODUCER:	Senator Bradley
SUBJECT:	Vegetable Gardens
DATE:	February 5, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Pre-meeting**
2.			RC	

I. Summary:

SB 1776 prohibits a county, municipality, or other political subdivision of the state from regulating vegetable gardens on residential properties. Additionally, any such local ordinance or regulation regarding vegetable gardens on residential properties is void and unenforceable.

However, local governments may still adopt a local ordinance or regulation of a general nature which does not specifically regulate vegetable gardens, including, but not limited to, regulations and ordinances relating to water use during drought conditions, fertilizer use, or control of invasive species.

II. Present Situation:

Florida Constitution

The Florida Constitution establishes and describes the duties, powers, structure, and function of government in Florida, and establishes the basic law of the state.

Article I, section 2 of the Florida Constitution's Declaration of Rights provides that "All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, *and to acquire, possess and protect property…"*

Article I, section 23 of the Florida Constitution's Right to Privacy provides that "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life…" The Florida Constitution's right to privacy is perceived to provide greater protection than the United States Constitution.[1]

[1] Overton and Giddings, *The Right to Privacy in Florida in the Age of Technology and the Twenty-First Century: A Need for Protection from Private and Commercial Intrusion*, Florida State University Law Review, Volume 25, Issue 1, Article 3, (1997), available at https://ir.law.fsu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1394&context=lr.

Village of Miami Shores Court Case

Residents of the Village of Miami Shores recently brought an action challenging the constitutionality of a zoning ordinance that prohibited the residents from growing vegetables in their front yard.[2] Violators of the ordinance faced fines of $50 per day. The residents claimed the ordinance violated their constitutional rights to acquire, possess, and protect property; and their right to privacy. In its opinion, the Court held that even constitutionally protected property rights are not absolute and are subject to the fair exercise of the State's powers including the power to promote the general welfare of the people through regulation. As a result, using a rational basis standard of review,[3] the Court found that the ordinance was rationally related to the Village code's design standards and landscaping regulations. The ordinance was upheld, and the prohibition remains in place.

III. Effect of Proposed Changes:

The bill provides that except as otherwise provided by law, a county, municipality, or other political subdivision may not regulate vegetable gardens on residential properties. Additionally, any such ordinance or regulation regulating vegetable gardens on residential properties is void and unenforceable.

However, the section does not preclude the adoption of a local ordinance or regulation of a general nature that does not specifically regulate vegetable gardens, including, but not limited to, regulations and ordinances relating to water use during drought conditions, fertilizer use, or control of invasive species.

The bill also provides that it is the Legislature's intent to encourage the development of sustainable cultivation of vegetables and fruits at all levels of production, including for personal consumption, as an important interest of the state.

The bill takes effect on July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[2] *Ricketts v. Village of Miami Shores*, 2017 WL 4943772 (Fla. 3d DCA 2017).
[3] The rational basis standard of review is a deferential standard that requires the reviewing court to uphold the enactment if it is "fairly debatable" whether the purpose of the law is legitimate and whether the methods adopted in the law serve that legitimate purpose. *Membreno & Florida Ass'n of Vendors, Inc. v. City of Hialeah,* 188 S0. 3d 13, 25 (Fla. 3d DCA 2016).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Occupants of residential properties will be able to cultivate a vegetable garden without government intrusion.

C. Government Sector Impact:

Counties, municipalities, and other political subdivisions of the state are prohibited from regulating vegetable gardens on residential properties.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 604.71 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.

By Senator Bradley

5-01089B-18 20181776__

A bill to be entitled

An act relating to vegetable gardens; creating s. 604.71, F.S.; prohibiting local governments from regulating vegetable gardens on residential properties except as otherwise provided by law; specifying that such regulations are void and unenforceable; specifying exceptions; providing applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 604.71, Florida Statutes, is created to read:

604.71 Local regulation of vegetable gardens.—

(1) The Legislature intends to encourage the development of sustainable cultivation of vegetables and fruits at all levels of production, including for personal consumption, as an important interest of the state.

(2) Except as otherwise provided by law, a county, municipality, or other political subdivision of this state may not regulate vegetable gardens on residential properties. Any such local ordinance or regulation regulating vegetable gardens on residential properties is void and unenforceable.

(3) This section does not preclude the adoption of a local ordinance or regulation of a general nature that does not specifically regulate vegetable gardens, including, but not limited to, regulations and ordinances relating to water use during drought conditions, fertilizer use, or control of invasive species.

5-01089B-18 20181776__

Section 2. This act shall take effect July 1, 2018.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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:	CS/SB 536
INTRODUCER:	Judiciary Committee and Senator Passidomo
SUBJECT:	Limitations of Actions Other Than for the Recovery of Real Property
DATE:	February 5, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	**Fav/CS**
2.	Present	Yeatman	CA	**Pre-meeting**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 536 addresses two issues regarding the timeframes for bringing a lawsuit based on a defect in the design, planning, or construction of a building or other improvement to real property. First, the bill specifies that a person who is served with a pleading may file a related counterclaim, cross-claim, or third-party claim within 1 year, regardless of whether the filing of the claim would otherwise be time barred.

Second, the bill causes the timeframes for filing a construction-defect lawsuit[1] to begin and end sooner, in some circumstances, than under current law. Both under the bill and current law, the timeframes in which a property owner may file a construction-defect lawsuit begin to run at the latest of four events set forth in statute. One of these events is the completion of the construction contract.

Recent case law suggests that such a contract is not complete, and thus the timeframes for bringing a lawsuit cannot begin to run, until all punch-list or other follow-up work is complete. The bill substantially counters this case law by effectively providing that a construction contract performed pursuant to a building permit is complete when a final certificate of occupancy or certificate of completion is issued. After that point, the correction or repair of completed work

[1] The term "construction-defect lawsuit" will often be used in this Analysis in lieu of the very long, if more precise, statutory description of the type of lawsuit at issue: a "lawsuit based on a defect in the design, planning, or construction of an improvement to real property."

that is within the scope of the building permit and final certificate does not delay the running of the timeframes in which a construction-defect action may be filed.

II. Present Situation:

Overview

A lawsuit based on a defect resulting from the design, planning, or construction of a building or other improvement to real property must be filed within statutory timeframes, which vary depending on whether the defect is a latent defect or a nonlatent defect. If a lawsuit involves a nonlatent defect, the lawsuit must be filed within 4 years after the latest of four events set forth in statute, such as the issuance of a certificate of occupancy or the "completion . . . of the contract" with the builder. If a lawsuit involves a latent defect, the lawsuit must be filed within 4 years after the defect is discovered or should have been discovered through due diligence. A lawsuit based on the defect must be filed within 10 years after the latest of the events listed in statute, including completion of the construction contract. However, current law does not specify what exactly constitutes completion of a construction contract.

Timeframes for Filing a Lawsuit Based on a Defect in an Improvement to Real Property

A construction-defect lawsuit must be filed within the timeframes set forth in s. 95.11(3)(c), F.S. If the suit involves a nonlatent defect, it must be filed within 4 years after the latest of:

- The date of actual possession by the owner;
- The date of the issuance of a certificate of occupancy;
- The date of abandonment of construction if not completed; or
- The date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.

If a lawsuit instead involves a latent defect, the 4-year timeframe does not begin to run until the date on which the defect is discovered or the date on which the defect should have been discovered by the exercise of due diligence.

However, a lawsuit based on the defect must be filed within 10 years after the latest of:

- The date of actual possession by the owner;
- The date of the issuance of a certificate of occupancy;
- The date of abandonment of construction if not completed; or
- The date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.

What constitutes the completion of a construction contract has been the subject of litigation and legislation in recent years. In 2015, the Fifth District Court of Appeal held that the contract at issue in the case before it was not completed until the final payment was made under the contract. The court explained:

> Completion of the contract means completion of performance by both sides of the contract, not merely performance by the contractor. Had the legislature intended the statute to run from the time the contractor

> completed performance, it could have simply so stated. It is not our function to alter plain and unambiguous language under the guise of interpreting a statute.[2]

Thus, a buyer's delay in making a payment under the contract could prolong a builder's liability for construction defects.

In response to the DCA opinion, the Legislature amended s. 95.11(3)(c), F.S., to state:

> Completion of the contract means the later of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment was made.[3]

But in 2017, the Fifth DCA decided another case involving the issue of what "completion . . . of the contract" means in s. 95.11(3)(c), F.S.[4] In that case, the builder argued that the homeowner's complaint was filed more than 10 years after closing on the construction contract at issue, and thus was time-barred. However, the DCA noted that the contract expressly contemplated that work under the contract could occur after closing. The court essentially held that the closing on a contract is not equivalent to contract completion. As such, under this case, a builder's liability for construction defects may be prolonged by at least some construction activities after the closing on a contract.[5]

Though this case was decided before the effective date of the 2017 amendment to s. 95.11(3)(c), F.S., it does not appear that the court would have decided the case differently under the new language.

III. Effect of Proposed Changes:

The bill addresses two issues regarding the timeframes for bringing a lawsuit based on a defect in the design, planning, or construction of a building or other improvement to real property. First, the bill specifies that a person who is served with a pleading may file a related counterclaim, cross-claim, or third-party claim within 1 year, regardless of whether the filing of the claim would otherwise be time barred.

Second, the bill causes the timeframes for filing a construction-defect lawsuit to begin and end sooner, in some circumstances, than under current law. Both under the bill and current law, the timeframes in which a property owner may file a construction-defect lawsuit begin to run at the latest of four events set forth in statute. One of these events is the completion of the construction contract. Recent case law suggests that such a contract is not complete, and thus the timeframes for bringing a lawsuit cannot begin to run, until all punch-list or other follow-up work is complete. The bill substantially counters this case law by effectively providing that a construction contract performed pursuant to a building permit is complete when a final certificate of occupancy or certificate of completion is issued. After that point, the correction or repair of

[2] *Cypress Fairway Condo. v. Bergeron Constr. Co.*, 164 So. 3d 706, 707 (Fla. 5th DCA 2015).
[3] *See* Ch. 2017-101, s. 1, Laws of Fla.
[4] *Busch v. Lennar Homes, LLC*, 219 So. 3d 93 (Fla. 5th DCA 2017).
[5] *See id.* at 95.

completed work that is within the scope of the building permit and final certificate does not delay the running of the timeframes in which a construction-defect action may be filed.

The bill applies to causes of action that accrue on or after the effective date of the bill which is July 1, 2019.

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:

None.

B. Private Sector Impact:

As the bill further specifies the timeframes in which a construction lawsuit may be filed, it may eliminate the need to litigate the issue in certain cases, thus reducing the cost of litigating these cases. On the other hand, the bill will reduce timeframes for some property owners to seek redress in court for construction defects.

C. Government Sector Impact:

As the bill specifies what constitutes completion of a contract, it may reduce the amount of the courts' resources that must be spent adjudicating whether given cases are time-barred.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 95.11 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.)

CS by Judiciary on January 25, 2018:
The committee substitute allows a person 1 year from the date the person is served with a pleading in a construction-defect lawsuit to file a related counterclaim, cross-claim, or third-party claim, regardless of whether the claim would otherwise be time-barred. The underlying bill allowed 45 days to file the related claims. Also, the committee substitute further delineates what constitutes work that is necessary for the completion of a construction contract, which is an event that can commence the timeframe for filing a lawsuit.

B. Amendments:

None.

295224

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Community Affairs (Passidomo) recommended the following:

Senate Amendment

Delete lines 60 - 62
and insert:
Section 2. The amendments to s. 95.11(3)(c), Florida Statutes, made by this act shall apply to any action commenced on or after July 1, 2018, regardless of when the cause of action accrued, except that any action that would not have been barred under s. 95.11(3)(c), Florida Statutes, prior to the amendments made by this act may be commenced before July 1, 2019, and if it

295224

is not commenced by that date and is barred by the amendments to s. 95.11(3)(c), Florida Statutes, made by this act, it shall be barred.

Section 3. This act shall take effect July 1, 2018.

By the Committee on Judiciary; and Senator Passidomo

590-02439-18 2018536c1

A bill to be entitled

An act relating to limitations of actions other than for the recovery of real property; amending s. 95.11, F.S.; authorizing the commencement, within a specified timeframe, of counterclaims, cross-claims, and third-party claims that arise out of the conduct, transaction or occurrence set out or attempted to be set out in a pleading for which such claims relate; specifying that certain corrections and repairs do not extend the period of time within which an action must be commenced; providing applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) of subsection (3) of section 95.11, Florida Statutes, is amended to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(3) WITHIN FOUR YEARS.—

(c) An action founded on the design, planning, or construction of an improvement to real property, with the time running from the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is

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latest; except that, when the action involves a latent defect, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence. In any event, the action must be commenced within 10 years after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest. However, counterclaims, cross-claims, and third-party claims that arise out of the conduct, transaction or occurrence set out or attempted to be set out in a pleading may be commenced up to 1 year after the pleading to which such claims relate is served, even if such claims would otherwise be time barred. With respect to actions founded on the design, planning, or construction of an improvement to real property, if such construction is performed pursuant to a duly issued building permit and if a local enforcement agency, state enforcement agency, or special inspector, as those terms are defined in s. 553.71, has issued a final certificate of occupancy or certificate of completion, then as to the construction which is within the scope of such building permit and certificate, the correction of defects to completed work or repair of completed work, whether performed under warranty or otherwise, does not extend the period of time within which an action must be commenced. Completion of the contract means the later of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is

made.

Section 2. This act applies to causes of action that accrue on or after July 1, 2019.

Section 3. This act shall take effect July 1, 2019.

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 224
INTRODUCER:	Senators Book and Farmer
SUBJECT:	Legal Holidays
DATE:	February 5, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	**Pre-meeting**
2.			GO	
3.			RC	

I. Summary:

SB 224 removes from statute the designations of the birthdays of Robert E. Lee and Jefferson Davis and Confederate Memorial Day as legal holidays.

II. Present Situation:

Legal Holidays and Special Observance Days

Chapter 683, F.S., establishes legal holidays and special observance days. Legal holidays and special observance days may apply throughout the state or they may be limited to particular counties. For example, "Gasparilla Day"[1] is a legal holiday observed only in Hillsborough County, while "Bill of Rights Day,"[2] if issued by the Governor, is observed throughout the state. Also, designation of a day as a legal holiday does not necessarily make that day a paid holiday for public employees. Section 110.117, F.S., establishes which legal holidays are paid holidays for public employees.[3]

The legal holidays established in s. 683.01(1), F.S., are:
(a) Sunday, the first day of each week.[4]
(b) New Year's Day, January 1.
(c) Birthday of Martin Luther King, Jr., January 15.
(d) Birthday of Robert E. Lee, January 19.
(e) Lincoln's Birthday, February 12.

[1] Section 683.08, F.S.
[2] Section 683.25, F.S.
[3] Section 110.117(1), F.S., provides the following holidays as paid holidays for all state branches and agencies: New Year's Day; Martin Luther King Birthday; Memorial Day; Independence Day; Labor Day; Veteran's Day; Thanksgiving Day and Friday after Thanksgiving; and Christmas Day.
[4] Sunday as a holiday has its origins in the Christian Sabbath or day of rest.

(f) Susan B. Anthony's Birthday, February 15.
(g) Washington's Birthday, the third Monday in February.
(h) Good Friday.
(i) Pascua Florida Day, April 2.[5]
(j) Confederate Memorial Day, April 26.
(k) Memorial Day, the last Monday in May.
(l) Birthday of Jefferson Davis, June 3.
(m) Flag Day, June 14.
(n) Independence Day, July 4.
(o) Labor Day, the first Monday in September.
(p) Columbus Day and Farmers' Day, the second Monday in October.
(q) Veterans' Day, November 11.

The birthday of Robert E. Lee became a legal holiday in 1895.[6] Confederate Memorial Day, originally known as Memorial Day, became a legal holiday in 1895.[7] The birthday of Jefferson Davis became a legal holiday in 1905.[8]

III. Effect of Proposed Changes:

Section 1 amends s. 683.01, F.S., to remove the designation of the birthday of Robert E. Lee (Jan. 19), the birthday of Jefferson Davis (June 3), and Confederate Memorial Day (Apr. 26) as legal holidays.

Section 2 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.

[5] "Pascua Florida" is a Spanish term that means *flowery festival* or *feast of flowers*. It usually refers to the Easter season, though, "Pascua" can, depending on the context, refer to the Jewish Passover, Easter, Christmas, Epiphany or Pentecost. *See,* http://www.answers.com/topic/pascua-florida. April 2 each year is designated as "Florida State Day" and is known as "Pascua Florida Day." Juan Ponce de León called the land he encountered in 1513 "Pascua Florida." The holiday is to be observed in the same manner as a "patriotic occasion."
[6] Chapter 4488, s.1, Laws of Fla. (1895).
[7] Chapter 4487, s.1, Laws of Fla. (1895). The name was changed to Confederate Memorial Day in 1941 when Memorial Day for veterans of all wars was added. Chapter 20525, s.1, Laws of Fla. (1941).
[8] Chapter 5392, s.1, Laws of Fla. (1905).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 683.01 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.

By Senator Book

32-00441-18 2018224__

A bill to be entitled

An act relating to legal holidays; amending s. 683.01, F.S.; removing the designations of the birthdays of Robert E. Lee and Jefferson Davis and Confederate Memorial Day as legal holidays; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 683.01, Florida Statutes, is amended to read:

683.01 Legal holidays.—

(1) The legal holidays, which are also public holidays, are the following:

(a) Sunday, the first day of each week.

(b) New Year's Day, January 1.

(c) Birthday of Martin Luther King, Jr., January 15.

~~(d) Birthday of Robert E. Lee, January 19.~~

(d) ~~(e)~~ Lincoln's Birthday, February 12.

(e) ~~(f)~~ Susan B. Anthony's Birthday, February 15.

(f) ~~(g)~~ Washington's Birthday, the third Monday in February.

(g) ~~(h)~~ Good Friday.

(h) ~~(i)~~ Pascua Florida Day, April 2.

~~(j) Confederate Memorial Day, April 26.~~

(i) ~~(k)~~ Memorial Day, the last Monday in May.

~~(l) Birthday of Jefferson Davis, June 3.~~

(j) ~~(m)~~ Flag Day, June 14.

(k) ~~(n)~~ Independence Day, July 4.

(l) ~~(o)~~ Labor Day, the first Monday in September.

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(m) ~~(p)~~ Columbus Day and Farmers' Day, the second Monday in October.

(n) ~~(q)~~ Veterans' Day, November 11.

(o) ~~(r)~~ General Election Day.

(p) ~~(s)~~ Thanksgiving Day, the fourth Thursday in November.

(q) ~~(t)~~ Christmas Day, December 25.

(r) ~~(u)~~ Shrove Tuesday, sometimes also known as "Mardi Gras," in counties where carnival associations are organized for the purpose of celebrating the same.

Section 2. This act shall take effect upon becoming a law.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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 574
INTRODUCER:	Senator Steube
SUBJECT:	Tree and Timber Trimming, Removal, and Harvesting
DATE:	February 5, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	**Pre-meeting**
2.			EP	
3.			RC	

I. Summary:

SB 574 preempts to the state the regulation of trimming, removal, or harvesting of trees and timber on private property. The bill prohibits municipalities, counties and other political subdivisions of the state from prohibiting or restricting a landowner from trimming, removing or harvesting trees located on the landowner's property, requiring mitigation for the removal of trees, or prohibiting the burial of trees and vegetative debris on properties larger than 2.5 acres.

II. Present Situation:

Currently, in Florida there are 67 counties and 413 municipalities.[1] Local governments often have tree ordinances that specify the species that must be used in a given area depending on the land use. Some local governments require a permit prior to trimming certain trees. Local governments may also afford certain trees protection because they are considered an important community resource. The terms used to describe such trees may include heritage, historic, landmark, legacy, special interest, significant, or specimen trees.

For example, in Broward County the removal of any historical tree[2] without first obtaining approval from the Board of County Commissioners is prohibited, as is the removal of any tree without first obtaining a tree removal license from the Environmental Protection and Growth Management Department.[3] Furthermore, municipalities within Broward County are authorized to

[1] *See* ch. 7, F.S.; *The Local Government Formation Manual 2017-2018*, Appx. B, at http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2911&Session=2018&DocumentType=General Publications&FileName=2017-2018 Local Government Formation Manual Final Pub.pdf (last accessed 1/24/2018).

[2] Broward County Code of Ordinances, Ch. 27, Art. XIV, s. 404 defines a "historical tree" as a particular tree or group of trees which has historical value because of its unique relationship to the history of the region, state, nation or world as designated by the Board of County Commissioners.

[3] *Id*. at s. 405

adopt and enforce their own tree preservation regulations in addition to Broward County's regulation of trees.[4]

Home Rule

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[5] Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.[6] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[7]

The Florida Statutes enumerate the powers and duties of all county governments, unless preempted on a particular subject by general or special law.[8] Those powers include the provision of fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies.[9] Article VIII, Section 2 of the State Constitution and s. 166.021, F.S., grant municipalities broad home rule powers.

Mangrove Trimming

In 1996, the Florida Legislature enacted the 1996 Mangrove Trimming and Preservation Act (MTPA).[10] This law regulates the trimming and alteration of mangroves statewide, with the exception of the Delegated Local Governments of Broward, Hillsborough, Miami-Dade, and Pinellas Counties, the City of Sanibel, and the Town of Jupiter Island. [11]

The heights to which a mangrove tree may be trimmed will depend upon the provisions of the MTPA as well as the species and condition of the tree. Projects that involve alterations, and trimming projects that exceed the allowances of the exemptions and general permits, may be authorized through individual permits in s. 403.9328, F.S. Trimming may be authorized in an Environmental Resource Permit (ERP) along with other ERP activities for the same property. Mangrove impacts associated with and located within the footprint of an ERP authorized activity do not require a separate authorization under the MTPA.[12]

[4] *Id* at s. 407
[5] FLA. CONST. art VIII, s. 1(f).
[6] FLA. CONST. art VIII, s. 1(g).
[7] FLA. CONST. art VIII, s. 2(b). See also s. 166.021(1), F.S.
[8] Section 125.01, F.S.
[9] *Id.*
[10] Sections 403.9321-403.9333, F.S.
[11] Florida Department of Environmental Protection, *Mangrove Trimming Guidelines for Homeowners*, available at https://floridadep.gov/sites/default/files/Mangrove-Homeowner-Guide-sm_0.pdf (last visited Feb. 2, 2018).
[12] *Id*.

III. Effect of Proposed Changes:

The bill creates s. 589.37, F.S., to preempt to the state the regulation of trimming, removal, or harvesting of trees and timber on private property. The bill also prohibits municipalities, counties, and other political subdivisions of the state from:

- Prohibiting or restricting a private landowner from trimming, removing, or harvesting trees or timber located on the landowner's property.
- Requiring mitigation for the removal or harvesting of trees or timber from private property.
- Prohibiting the burial of trees or other vegetative debris on properties larger than 2.5 acres.

The bill provides an effective date of July 1, 2018.

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:

None.

B. Private Sector Impact:

Property owners would save costs associated with permit fees to trim or cut down trees, and with costs associated with burial of vegetative debris.

C. Government Sector Impact:

Local governments may see a decline in money collected in connection to fines or fees associated with the various tree ordinances in effect.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is unclear whether the preemption of regulation of trimming, removal, or harvesting of trees and timber on private property would supersede or have effect on the MPTA and its procedures.

VIII. Statutes Affected:

This bill creates section 589.37 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.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Community Affairs (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 163.3209, Florida Statutes, is amended to read:

163.3209 Electric transmission and distribution line right-of-way maintenance.—After a right-of-way for any electric transmission or distribution line has been established and constructed, no local government shall require or apply any

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permits or other approvals or code provisions for or related to vegetation maintenance and tree pruning or trimming within the established right-of-way. The term "vegetation maintenance and tree pruning or trimming" means the mowing of vegetation within the right-of-way, removal of trees or brush within the right-of-way, and selective removal of tree branches that extend within the right-of-way. The provisions of this section do not include the removal of trees outside the right-of-way, which may be allowed in compliance with applicable local ordinances. Prior to conducting scheduled routine vegetation maintenance and tree pruning or trimming activities within an established right-of-way, the utility shall provide the official designated by the local government with a minimum of 5 business days' advance notice. Such advance notice is not required for vegetation maintenance and tree pruning or trimming required to restore electric service or to avoid an imminent vegetation-caused outage or when performed at the request of the property owner adjacent to the right-of-way, provided that the owner has approval of the local government, if needed. Upon the request of the local government, the electric utility shall meet with the local government to discuss and submit the utility's vegetation maintenance plan, including the utility's trimming specifications and maintenance practices. Vegetation maintenance and tree pruning or trimming conducted by utilities shall conform to ANSI A300 (Part I)—2001 pruning standards and ANSI Z133.1-2000 Pruning, Repairing, Maintaining, and Removing Trees, and Cutting Brush—Safety Requirements. Vegetation maintenance and tree pruning or trimming conducted by utilities must be supervised by qualified electric utility personnel or licensed

contractors trained to conduct vegetation maintenance and tree trimming or pruning consistent with this section or by Certified Arborists certified by the Certification Program of the International Society of Arboriculture. A local government shall not adopt an ordinance or land development regulation that requires the planting of a tree or other vegetation that will achieve a height greater than 14 feet in an established electric utility right-of-way or intrude from the side closer than the clearance distance specified in Table 2 of ANSI Z133.1-2000 for lines affected by the North American Electric Reliability Council Standard, FAC 003.1 requirement R1.2. This section does not supersede or nullify the terms of specific franchise agreements between an electric utility and a local government and shall not be construed to limit a local government's franchising authority. ~~This section does not supersede local government ordinances or regulations governing planting, pruning, trimming, or removal of specimen trees or historical trees, as defined in a local government's ordinances or regulations, or trees within designated canopied protection areas. This section shall not apply if a local government develops, with input from the utility, and the local government adopts, a written plan specifically for vegetation maintenance, tree pruning, tree removal, and tree trimming by the utility within the local government's established rights-of-way and the plan is not inconsistent with the minimum requirements of the National Electrical Safety Code as adopted by the Public Service Commission; provided, however, such a plan shall not require the planting of a tree or other vegetation that will achieve a height greater than 14 feet in an established electric right-of-~~

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~~way~~. Vegetation maintenance costs are ~~shall be~~ considered recoverable costs.

Section 2. Section 589.37, Florida Statutes, is created to read:

589.37 Regulation of tree, timber, and vegetation trimming and removal performed by certain governmental entities prohibited.—

(1) The Legislature finds that uncontrolled growth of trees or vegetation within rights-of-way owned or managed by the state, water management districts, water control districts, neighborhood improvement districts, independent special districts, or community development districts interferes with the operation and maintenance of flood protection and drainage infrastructure, including, but not limited to, canals, which are critical to the protection of the health, safety, and general welfare of the public.

(2) Where the state or a water management district, a water control district created under chapter 298, a neighborhood improvement district created under chapter 163, an independent special district, or a community development district created under chapter 190, has a duty to maintain any rights-of-way, a municipality, county, or other political subdivision of the state may not prohibit, restrict, or condition, or require a permit, fee, or mitigation for, the trimming or removal of trees, timber, or vegetation.

(3) This section does not prohibit the licensing and regulation by municipalities or counties of persons engaged in tree, timber, or vegetation trimming or removal.

Section 3. This act shall take effect July 1, 2018.

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99 ========== T I T L E A M E N D M E N T ==========
100 And the title is amended as follows:
101 Delete everything before the enacting clause
102 and insert:
103 A bill to be entitled
104 An act relating to tree, timber, and vegetation
105 trimming and removal; amending s. 163.3209, F.S.;
106 revising applicability of a provision relating to
107 vegetation maintenance and tree pruning or trimming
108 within an established electric transmission and
109 distribution line right-of-way; creating s. 589.37,
110 F.S.; providing legislative findings; prohibiting the
111 regulation of tree, timber, and vegetation trimming
112 and removal performed by certain governmental entities
113 under certain circumstances; providing applicability;
114 providing an effective date.

By Senator Steube

23-00623A-18 2018574__

A bill to be entitled

An act relating to tree and timber trimming, removal, and harvesting; creating s. 589.37, F.S.; preempting to the state the regulation of the trimming, removal, or harvesting of trees and timber on private property; prohibiting certain local governmental actions relating to the trimming or removal of trees or timber; prohibiting local governments from prohibiting the burial of vegetative debris on certain properties; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 589.37, Florida Statutes, is created to read:

589.37 Regulation of tree and timber trimming, removal, or harvesting preempted.

(1) The regulation of the trimming, removal, or harvesting of trees and timber on private property is preempted to the state.

(2) A municipality, county, or other political subdivision of the state may not:

(a) Prohibit or restrict a private landowner from trimming, removing, or harvesting trees or timber located on the landowner's private property.

(b) Require mitigation, including, but not limited to, the planting of trees or the payment of a fee, for the removal or harvesting of trees or timber from private property.

(c) Prohibit the burial of trees, shrubs, palmettos, or

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other vegetative debris on properties larger than 2.5 acres.

Section 2. This act shall take effect July 1, 2018.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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 964
INTRODUCER:	Senator Baxley
SUBJECT:	Voting Systems
DATE:	February 5, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Ulrich	EE	**Favorable**
2.	Cochran	Yeatman	CA	**Pre-meeting**
3.			RC	

I. Summary:

SB 964 authorizes the general use of touch screen voting systems with a voter-verifiable paper trail for canvassing and recount purposes, currently available only to disabled voters.

II. Present Situation:

A "voting system" is a method of casting and processing votes that consists of electromechanical components and, in many cases, utilizes mark-sense ballots. The voting system may also include things like procedures, operating manuals, supplies, printouts, and other software necessary for the system's operation.[1]

The State Division of Elections approves the voting system used in most Florida elections. The Division tests the reliability of both the hardware and software components to make sure that they meet the standards set out in law and rules. Florida's certification process is among the most comprehensive in the nation.

Section 101.56062, F.S., enumerates the statutory standards for accessible voting systems, including items like requirements for tactile or audio input devices and font size for the visually impaired. *Only persons with disabilities may vote on an accessible voting system*.[2]

The disability voting systems generally include a "voter interface device," which many Floridians may remember as "touch screens."[3] The difference between the original "touch

[1] Section 97.021(45), F.S.
[2] Section 101.56075 (1) and (2), F.S.
[3] In the early-to-mid 2000s, some Florida counties experimented with touch screen voting systems *without a paper trail* for the general voting populace; those systems were ultimately replaced by optical scan (i.e., blacken-the-oval) voting systems for all but disabled voters, beginning with the 2008 primary election. Ch. 2007-30, § 6, Laws of Fla. (codified at § 101.56075, F.S.).

screen" systems in use in about 15 counties in the mid-2000s and the current crop of certified disability voting systems, such as the ES&S AutoMARK[4] and ExpressVote,[5] is that the newer systems "mark" a scannable paper ballot — a voter-verifiable paper trail that can be used for recount purposes.[6] These systems prevent an elector from "overvoting" (selecting more than one candidate per race) and warn or prompt the voter if he or she "undervotes" (completely skips a race). There is a summary review screen at the end of the selection process to allow a voter to go back and make or change a selection.[7] After the ballot is printed, voters are able to review the ballot for accuracy before depositing it in an optical scanner for counting.

III. Effect of Proposed Changes:

SB 964 modifies a few voting system terms and provisions in the Florida Election Code to authorize the use of an electronic "voter interface device" for marking paper ballots for optical scanning. The bill further provides that the ballot layout need only apply to the voter interface device and not to the printed ballot.

These changes will effectively allow *any* elector, not just disabled voters, to use the touch screen voting equipment with a scannable paper trail like the ES&S AutoMARK or ExpressVote systems. Supervisors who have already purchased this type of equipment will benefit by increased use of the machines and possible shorter lines at certain polling places, something that is particularly important *this* election cycle with the potentially longer ballot that includes Constitution Revision Commission proposals.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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[4] This system marks the same type of optical scan ballot design familiar to voters, effectively serving as an electronic "pen." Verified Voting, ES&S AutoMARK Description and Instructional Video, https://www.verifiedvoting.org/resources/voting-equipment/ess/automark/ (last accessed Feb. 1, 2018)[hereinafter, *AutoMARK Web Page*].

[5] The ExpressVote produces a ballot card with multiple bar codes at the top corresponding to the voter's choices. Underneath the bar codes, the card contains the offices or amendments on the ballot, along with the voter's choice in each contest. See Verified Voting, ES&S ExpressVote Description and Instructional Video, https://www.verifiedvoting.org/resources/voting-equipment/ess/expressvote/ (last accessed Feb. 1, 2018)[hereinafter, *ExpressVote Web Page*].

[6] About 2/3rds of Florida's counties (42/67) currently use either the ES&S AutoMark or Express Vote systems for disabled voters. See Fla. Div. of Elections, *Accessible Voting Equipment by County (updated Jan. 31, 2018)*, available at: http://www.dos.myflorida.com/media/695364/accessible-voting-systems-in-use-by-county.pdf (last accessed Feb. 1, 2018).

[7] Voters can return to a contest selection *for any reason*, not just because they left a race blank, or undervoted, and change a selection.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Local Supervisors of Elections typically purchase voting equipment using county funds or, occasionally, federal grant money. There should be no direct impact on state revenues or expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Except for technical changes, the bill contains the same language that unanimously passed the full Senate, the Senate Ethics and Elections Committee and the Senate Judiciary Committee last year.[8]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 97.021, 101.151, 101.5603 and 101.56075.

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.

[8] See SB 1160 (2017); CS/CS HB 1325 (2017).

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Community Affairs (Baxley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present subsections (6) through (45) of section 97.021, Florida Statutes, are renumbered as subsections (7) through (46), respectively, a new subsection (5) is added to that section, and paragraph (a) of present subsection (5) of that section is amended, to read:

97.021 Definitions.—For the purposes of this code, except

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where the context clearly indicates otherwise, the term:

(5) "Automatic tabulating equipment" means an apparatus that automatically examines, counts, and records votes.

(6) ~~(5)~~ "Ballot" or "official ballot" when used in reference to:

(a) "Marksense ballots" means that printed sheet of paper, used in conjunction with an electronic or electromechanical vote tabulation voting system, containing the names of candidates, or a statement of proposed constitutional amendments or other questions or propositions submitted to the electorate at any election, or the selections made by the elector of candidates or other questions or propositions at an election, on which sheet of paper an elector casts his or her vote either directly on a sheet of paper or indirectly through the use of a voter interface device used to designate the elector's ballot selections on the sheet of paper.

Section 2. Subsection (10) is added to section 101.151, Florida Statutes, to read:

101.151 Specifications for ballots.—

(10) With respect to any voting system that uses a voter interface device to designate the elector's ballot selections on a sheet of paper, the provisions of this section, s. 101.161, and ss. 101.2512-101.254 that prescribe the ballot layout apply only to the display of candidates and issues on the voter interface device.

Section 3. Subsection (5) of section 101.5603, Florida Statutes, is amended to read:

101.5603 Definitions relating to Electronic Voting Systems Act.—As used in this act, the term:

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(5) "Marking device" means any approved device for marking a ballot with ink or other substance, including through a voter interface device, which will enable the ballot to be tabulated by means of automatic tabulating equipment.

Section 4. Subsection (1) of section 101.56075, Florida Statutes, is amended to read:

101.56075 Voting methods.—

(1) Except as provided in subsection (2), all voting shall be by marksense ballot using ~~utilizing~~ a marking device for the purpose of designating ballot selections.

Section 5. Paragraph (a) of subsection (5) and subsections (7) and (8) of section 101.5614, Florida Statutes, are amended to read:

101.5614 Canvass of returns.—

(5)(a) If any vote-by-mail ballot is physically damaged so that it cannot properly be counted by the voting system's automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. Likewise, a duplicate ballot shall be made of a vote-by-mail ballot containing an overvoted race or a marked vote-by-mail ballot in which every race is undervoted which shall include all valid votes as determined by the canvassing board based on rules adopted by the division pursuant to s. 102.166(4). All duplicate ballots shall be clearly labeled "duplicate," bear a serial number which shall be recorded on the defective ballot, and be counted in lieu of the defective ballot. After a ballot has been duplicated, the defective ballot shall be placed in an envelope provided for that purpose, and the duplicate ballot shall be tallied with the

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other ballots for that precinct.

(7) Vote-by-mail ballots may be counted by the voting system's automatic tabulating equipment if they have been marked in a manner which will enable them to be properly counted by such equipment.

(8) The return printed by the voting system's automatic tabulating equipment, to which has been added the return of write-in, vote-by-mail, and manually counted votes and votes from provisional ballots, shall constitute the official return of the election upon certification by the canvassing board. Upon completion of the count, the returns shall be open to the public. A copy of the returns may be posted at the central counting place or at the office of the supervisor of elections in lieu of the posting of returns at individual precincts.

Section 6. Paragraph (a) of subsection (7) of section 102.141, Florida Statutes, is amended to read:

102.141 County canvassing board; duties.—

(7) If the unofficial returns reflect that a candidate for any office was defeated or eliminated by one-half of a percent or less of the votes cast for such office, that a candidate for retention to a judicial office was retained or not retained by one-half of a percent or less of the votes cast on the question of retention, or that a measure appearing on the ballot was approved or rejected by one-half of a percent or less of the votes cast on such measure, a recount shall be ordered of the votes cast with respect to such office or measure. The Secretary of State is responsible for ordering recounts in federal, state, and multicounty races. The county canvassing board or the local board responsible for certifying the election is responsible for

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ordering recounts in all other races. A recount need not be ordered with respect to the returns for any office, however, if the candidate or candidates defeated or eliminated from contention for such office by one-half of a percent or less of the votes cast for such office request in writing that a recount not be made.

(a) Each canvassing board responsible for conducting a recount shall put each marksense ballot through automatic tabulating equipment and determine whether the returns correctly reflect the votes cast. If any marksense ballot is physically damaged so that it cannot be properly counted by the automatic tabulating equipment during the recount, a true duplicate shall be made of the damaged ballot pursuant to the procedures in s. 101.5614(5). Immediately before the start of the recount, a test of the tabulating equipment shall be conducted as provided in s. 101.5612. If the test indicates no error, the recount tabulation of the ballots cast shall be presumed correct and such votes shall be canvassed accordingly. If an error is detected, the cause therefor shall be ascertained and corrected and the recount repeated, as necessary. The canvassing board shall immediately report the error, along with the cause of the error and the corrective measures being taken, to the Department of State. No later than 11 days after the election, the canvassing board shall file a separate incident report with the Department of State, detailing the resolution of the matter and identifying any measures that will avoid a future recurrence of the error. <u>If the automatic tabulating equipment used in a recount is not part of the voting system and the ballots have already been processed through such equipment, the canvassing board is not</u>

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<u>required to put each ballot through any automatic tabulating equipment again.</u>

Section 7. Subsections (1) and (2) and paragraph (d) of subsection (5) of section 102.166, Florida Statutes, are amended to read:

102.166 Manual recounts of overvotes and undervotes.—

(1) If the second set of unofficial returns pursuant to s. 102.141 indicates that a candidate for any office was defeated or eliminated by one-quarter of a percent or less of the votes cast for such office, that a candidate for retention to a judicial office was retained or not retained by one-quarter of a percent or less of the votes cast on the question of retention, or that a measure appearing on the ballot was approved or rejected by one-quarter of a percent or less of the votes cast on such measure, a manual recount of the overvotes and undervotes cast in the entire geographic jurisdiction of such office or ballot measure shall be ordered unless:

(a) The candidate or candidates defeated or eliminated from contention by one-quarter of 1 percent or fewer of the votes cast for such office request in writing that a recount not be made; or

(b) The number of overvotes and undervotes is fewer than the number of votes needed to change the outcome of the election.

The Secretary of State is responsible for ordering a manual recount for federal, state, and multicounty races. The county canvassing board or local board responsible for certifying the election is responsible for ordering a manual recount for all

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other races. A manual recount consists of a recount of marksense ballots or of digital images of those ballots by a person.

(2)(a) Any hardware or software used to identify and sort overvotes and undervotes for a given race or ballot measure must be certified by the Department of State ~~as part of the voting system pursuant to s. 101.015~~. Any such hardware or software must be capable of simultaneously counting votes.

(b) Overvotes and undervotes shall be identified and sorted while recounting ballots pursuant to s. 102.141, if the hardware or software for this purpose has been certified or the department's rules so provide. Overvotes and undervotes may be identified and sorted physically or digitally.

(5) Procedures for a manual recount are as follows:

(d) The Department of State shall adopt detailed rules prescribing additional recount procedures for each certified voting system which shall be uniform to the extent practicable. The rules shall address, at a minimum, the following areas:

1. Security of ballots during the recount process;

2. Time and place of recounts;

3. Public observance of recounts;

4. Objections to ballot determinations;

5. Record of recount proceedings; ~~and~~

6. Procedures relating to candidate and petitioner representatives; and

7. Procedures relating to the certification and the use of automatic tabulating equipment that is not part of a voting system.

Section 8. This act shall take effect on January 1, 2019.

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========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to voting systems; amending s. 97.021, F.S.; defining the term "automatic tabulating equipment" for purposes of the Florida Election Code; revising the definition of the term "marksense ballots" for purposes of the Florida Election Code; amending s. 101.151, F.S.; providing applicability of specified ballot requirements to a voter interface device; amending ss. 101.5603 and 101.56075, F.S.; conforming provisions to changes made by the act; amending s. 101.5614, F.S.; revising procedures governing the canvassing of returns to specify usage of a voting system's automatic tabulating equipment; amending s. 102.141, F.S.; providing that ballots processed through automatic tabulating equipment in a recount do not need to be reprocessed in certain circumstances; amending s. 102.166, F.S.; specifying the manner by which a manual recount may be conducted; revising requirements for hardware or software used in a manual recount; authorizing overvotes and undervotes to be identified and sorted physically or digitally in a manual recount; revising minimum requirements for Department of State rules to require procedures regarding the certification and use of automatic tabulating equipment for manual recounts; providing an

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effective date.

By Senator Baxley

12-01194-18 2018964__

A bill to be entitled

An act relating to voting systems; amending s. 97.021, F.S.; revising the definition of the term "marksense ballots" for purposes of the Florida Election Code; amending s. 101.151, F.S.; providing applicability of specified ballot requirements to a voter interface device; amending ss. 101.5603 and 101.56075, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (5) of section 97.021, Florida Statutes, is amended to read:

97.021 Definitions.—For the purposes of this code, except where the context clearly indicates otherwise, the term:

(5) "Ballot" or "official ballot" when used in reference to:

(a) "Marksense ballots" means that printed sheet of paper, used in conjunction with an electronic or electromechanical vote tabulation voting system, containing the names of candidates, ~~or~~ a statement of proposed constitutional amendments or other questions or propositions submitted to the electorate at any election, or the selections made by the elector of candidates or other questions or propositions at an election, on which sheet of paper an elector casts his or her vote either directly on a sheet of paper or indirectly through the use of a voter interface device used to designate the elector's ballot selections on the sheet of paper.

12-01194-18 2018964__

Section 2. Subsection (10) is added to section 101.151, Florida Statutes, to read:

101.151 Specifications for ballots.—

(10) With respect to any voting system that uses a voter interface device to designate the elector's ballot selections on a sheet of paper, the provisions of this section, s. 101.161, and ss. 101.2512-101.254 that prescribe the ballot layout apply only to the display of candidates and issues on the voter interface device.

Section 3. Subsection (5) of section 101.5603, Florida Statutes, is amended to read:

101.5603 Definitions relating to Electronic Voting Systems Act.—As used in this act, the term:

(5) "Marking device" means any approved device for marking a ballot with ink or other substance, including through a voter interface device, which will enable the ballot to be tabulated by means of automatic tabulating equipment.

Section 4. Subsection (1) of section 101.56075, Florida Statutes, is amended to read:

101.56075 Voting methods.—

(1) Except as provided in subsection (2), all voting shall be by marksense ballot using ~~utilizing~~ a marking device for the purpose of designating ballot selections.

Section 5. This act shall take effect July 1, 2018.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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 1814
INTRODUCER:	Senator Simmons
SUBJECT:	Safe Neighborhood Improvement Districts
DATE:	February 5, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Pre-meeting**
2.			ACJ	
3.			AP	

I. Summary:

SB 1814 creates the Safe Neighborhood Improvement District Revolving Loan Program.

Under the bill, the Department of Legal Affairs (the department) 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 department 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 department 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) 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]

As of February 1, 2018, 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

[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://specialdistrictreports.floridajobs.org/webreports/mainindex.aspx.
[5] Sections 163.506(1)(e) and 163.506(3), F.S.

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. 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.[7]

Local government SNIDs and special SNIDs are authorized to levy ad valorem taxes up to 2 mills annually. [8] Local government SNIDs are authorized to levy tax without a referendum; however, special SNIDs require a referendum to levy ad valorem taxes.[9] For a special *residential* SNID, taxes are approved by a majority of the electors voting in the referendum.[10] 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 endorse the referendum.[11]

All SNIDs 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 registered voters residing in the SNID. [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 SNIDs may also utilize community redevelopment trust funds to implement district planning and programming.[14]

SNID Dissolutions

Local government and community redevelopment SNIDs may be dissolved by the governing body that established them.[15] Property owners' association SNIDs continue in perpetuity as long as the property owners' association exists.[16] Special SNIDs are dissolved at the end of the tenth fiscal year of operation.[17]

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

[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 SNID powers enumerated in s. 163.514, F.S., may be prohibited by the SNID's enacting ordinance.
[13] *Id. See also* Footnote 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 SNIDs may continue for subsequent 10-year periods if the continuation of the district is approved through referendum.

the purposes of the SNID.[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 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.[19]

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.

While the Department of Legal Affairs 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.[20]

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

[18] Op. Atty. Gen. Fla. 2006-49 (2006).
[19] *See* s. 163.519, F.S.
[20] Email from the Department of Legal Affairs, dated Feb. 2, 2018.

the district."[21] Additionally, the SNID must provide some method for and measurement of the reduction of crime within the district.[22]

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.[23] 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.[24]

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.[25]

The Special District Information Program within the DEO currently lists one active Neighborhood Preservation and Enhancement District in the state.[26]

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 Neighborhoods Improvement Act created by this bill.

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[21] Section 163.516(3), F.S.
[22] *Id.*
[23] *See* s. 163.524, F.S.
[24] Section 163.524(1), F.S.
[25] Section 163.526(1)(a), F.S.
[26] 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.

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.[27] 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 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.[28]

III. Effect of Proposed Changes:

The bill 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.

[27] Fla. Const. Art. VII, s. 1(a)
[28] See *City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992).

Definitions (Subsection 2)

"Bonds" means bonds, certificates, or other obligations of indebtedness issued by the Department of Legal Affairs (the department) 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 department 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 department 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 for small SNIDs. However, if an insufficient number of projects for which funds are reserved have been submitted to the department at the time a funding priority list is adopted, the reservation of these funds no longer applies.

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 department may provide financial assistance to small SNIDs, as determined by the department, 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 department 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, shall 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. 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 department 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 department 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 department'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. 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 department 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 department from pursuing other remedies available for default on a loan, including 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 department 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 department 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 department shall 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 department 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 department 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.

The bill is effective 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.

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.[29]

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.

[29] Email from the Department of Legal Affairs, dated Feb. 2, 2018.

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 lines 71 and 84 of the bill. Additionally, on line 84, the bill refers to a "small neighborhood improvement district." In every other reference in the bill, we use "safe neighborhood improvement district" rather than "neighborhood improvement district."

Lines 87 through 92 authorize the Department of Legal Affairs 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 "qualified electors" in line 135 and "registered voters" in lines 147 and 192. The sponsor may want to consider using one term consistently to avoid confusion.

VIII. Statutes Affected:

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.

By Senator Simmons

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A bill to be entitled

An act relating to safe neighborhood improvement districts; creating s. 163.5161, F.S.; creating the Safe Neighborhood Improvement District Revolving Loan Program; providing legislative purpose; providing definitions; authorizing the Department of Legal Affairs to provide loans for specified projects within safe neighborhood improvement districts; authorizing a safe neighborhood improvement district to borrow funds made available under the program and pledge revenues to repay such funds; specifying the procedures by which the department is to administer and manage the loans; specifying the term of such loans; authorizing the department to provide financial assistance to small safe neighborhood improvement districts; authorizing the department to adopt rules related to the loan program; requiring the department to prepare an annual report and submit it to specified committees in the Legislature; specifying items that the safe neighborhood improvement districts must submit to the department before being approved for loans; requiring the approval of the use of the revolving loans by the registered voters of the district by referendum; specifying items to be included in the referendum; requiring the referendum to be by sent by mail and published; specifying audit procedures once a loan project is completed; authorizing the department to charge reasonable service fees on loans to ensure the Safe Neighborhood Improvement District Revolving Loan

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Trust Fund will be operated in perpetuity; specifying fee amounts; restricting uses of the trust fund; specifying procedures if a safe neighborhood improvement district defaults under the terms of its loan agreement; authorizing the department to levy penalties for delinquent loan payments; authorizing the department to terminate or rescind a financial assistance agreement under certain conditions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 163.5161, Florida Statutes, is created to read:

163.5161 Safe Neighborhood Improvement District Revolving Loan Program; use; rules.—

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

(2) For purposes of this section, the term:

(a) "Bonds" means bonds, certificates, or other obligations of indebtedness issued by the department under this section.

(b) "Neighborhood improvements" means all facilities, including land, water, utilities, and roads, necessary for providing critical infrastructure to implement the crime

prevention plans of a safe neighborhood improvement district.

(3) The department 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 and that have been approved by the department. A safe neighborhood improvement district may borrow funds made available pursuant to this section and may pledge any revenues or other adequate security available to the district to repay any funds borrowed.

(a) The department shall 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 for small safe neighborhood improvement districts.

(b) If an insufficient number of the projects for which funds are reserved under this subsection have been submitted to the department at the time a funding priority list is adopted, the reservation of these funds no longer applies. The department may award the unreserved funds as otherwise provided in this section.

(4) 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 such loans may not exceed that paid on the last bonds sold pursuant to s. 14, Art. VII of the State Constitution.

(5)(a) The department may provide financial assistance to small neighborhood improvement districts, as determined by the department, including providing forgiveness of the loan principal.

(b) The department shall establish by rule the criteria for

determining whether a safe neighborhood improvement district 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.

(6) 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 safe neighborhood improvement district during a fiscal year may not exceed 25 percent of the total funds available for making loans during that year.

(7) The department may adopt rules to:

(a) Establish a priority system for loans based on degree of likelihood of enhancing crime prevention and affordability within a safe neighborhood improvement district.

(b) Establish the requirements for the award and the repayment of financial assistance.

(c) 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.

(d) Require each project receiving financial assistance to be cost-effective, environmentally sound, implementable, and self-supporting.

(8) The department 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.

(9) Before being approved for a loan, the safe neighborhood improvement district must, at a minimum:

(a) Provide a repayment schedule.

(b) Submit evidence that the project proposed for financial assistance can be permitted or implemented.

(c) Submit plans and specifications, biddable contract documents, or other documentation of appropriate procurement of goods and services.

(d) Provide assurance that records will be kept using generally accepted accounting principles and that the department and the Auditor General will have access to all records pertaining to the loan.

(e) Provide assurance that the goods and services funded will be properly operated and maintained.

(10) A safe neighborhood improvement district may not receive a revolving loan under this section unless the local government approves a resolution that provides for a referendum, and the qualified electors of the district 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.

(a) The referendum to approve the loan funds shall be by mail ballot.

(b) 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, shall compile a list of the names and last known addresses of the

electors within the safe neighborhood improvement district from the list of registered voters of the municipality or county, as appropriate, as of the last day of the preceding month, which shall 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.

(c) 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.

(d) The registration list must remain open for 75 days after the date of the mailing of the notices to the electors as provided in paragraph (c).

(e) 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:

1. A description of the capital projects to be funded by the loan and the revenue sources that will be used to repay the loan.

2. The following statement:

"Do you favor authorizing the .... Safe Neighborhood Improvement District to use revolving loan funds in the amount of $.....to finance capital projects that are estimated

to cost $..... as provided by section 163.5161, Florida Statutes?

....Yes, I favor authorizing the use of revolving loan funds for district purposes.

....No, I am opposed to authorizing the use of revolving loan funds for district purposes."

(f) Ballots must be returned by mail or by personal delivery.

(g) All ballots received within 60 days after the closing of the registration list shall be tabulated by the city clerk or the supervisor of elections, as appropriate, who shall certify the results thereof to the city or county commission, as appropriate, no later than 5 days thereafter.

(h) 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 district voting on the issue.

(11) The department 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.

(12) The department may require reasonable service fees on loans made to safe neighborhood improvement districts 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 department'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.

(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. The principal and interest of all loans repaid and investment earnings thereon shall be deposited into the fund.

(14)(a) If a safe neighborhood improvement district defaults under the terms of its loan agreement, the department must so certify to the Chief Financial Officer, who shall forward the amount delinquent to the department from any unobligated funds due to the safe neighborhood improvement district 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 department from pursuing other remedies available for default on a loan, including 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 safe neighborhood improvement district.

(b) The department 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.

(15) The department may terminate or rescind a financial

assistance agreement if the recipient fails to comply with the terms and conditions of the agreement.

Section 2. This act shall take effect upon becoming a law.

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:	CS/SB 1308
INTRODUCER:	Environmental Preservation and Conservation Committee and Senator Perry
SUBJECT:	Environmental Regulation
DATE:	February 5, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mitchell	Rogers	EP	**Fav/CS**
2.	Cochran	Yeatman	CA	**Pre-meeting**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1308 provides that when a water management district (WMD) evaluates a consumptive use permit (CUP), impact offsets may be created if the applicant proposes reclaimed water use in certain ways to increase the quantity of water available for water supply.

The bill requires DEP to develop criteria for the application of an impact offset or a substitution credit to a CUP or to a minimum flows and levels recovery or prevention strategy and requires DEP and the WMDs to enter into a memorandum of agreement providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a CUP.

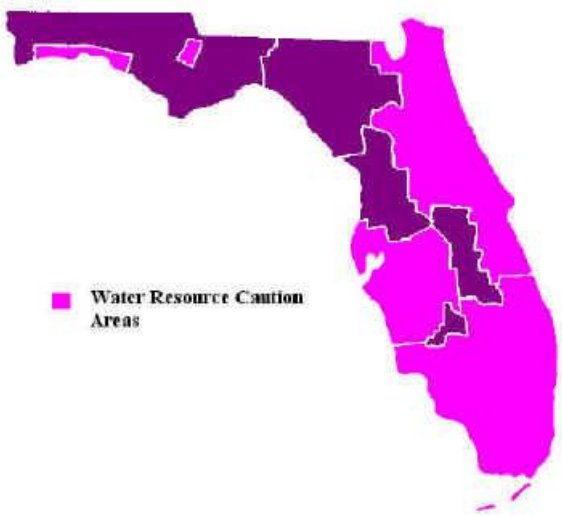
The bill provides criteria by which counties and municipalities must address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material, including that residential recycling collectors and materials recovery facilities may not be required to collect, transport, or process contaminated recyclable material. The criteria apply to contracts between a municipality or county and a residential recycling collector or materials recovery facility executed or renewed after the effective date of the act.

The bill revises the exemption from the requirement to obtain an environmental resource permit (ERP) for the replacement or repair of an existing dock or pier and prevents a local government from requiring further verification from DEP for all of the activities and projects exempted from ERP requirements.

II. Present Situation:

Water Supply and Constraints

By 2030, Florida's population is estimated to reach 23,609,000 – almost a 26 percent increase over 2010.[1] Fresh water demand is projected to reach 7.7 billion gallons per day by 2030, an additional 1.3 billion gallons more than the water use for the state in 2010.[2] In Florida, groundwater accounts for about 90 percent of public and domestic water supply.[3] The major source of groundwater supply in Florida is the Floridan Aquifer System, which underlies the entire state.[4]



Water Management Districts (WMDs) are required to ensure an adequate supply of water and water resources for all citizens and natural features, provide protection and improvement of natural systems and water quality, minimize harm to water resources, and promote the reuse of reclaimed water.[5] The WMDs set minimum flows and minimum levels (MFLs) for surface waters and groundwater, respectively. The purpose of setting MFLs is to prevent significant harm to the water resources or ecology of an area as a result of water withdrawals.[6] The WMDs regulate consumptive use of water through a permitting process.[7] WMD governing boards are required to conduct regional water supply planning for areas where existing water sources are insufficient to meet projected 20-year demands while sustaining water resources and related natural systems. Those areas are also to be designated as Water Resource Caution Areas. Chapter 62-40 of the Florida Administrative Code, requires the reuse of reclaimed water in these areas.[8]

Consumptive Use Permits (CUPs)

A consumptive use permit (CUP) establishes the duration and type of water use as well as the maximum amount of water that may be withdrawn daily. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the issuing WMD or the Department of Environmental Protection (DEP) and may not be harmful to the water resources of the area. To obtain a CUP, an

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[1] Department of Environmental Protection (DEP), *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater and Excess Surface Water*, 11 (December 1, 2015) *available at* https://floridadep.gov/sites/default/files/SB536%20Final%20Report.pdf.
[2] *Id.*
[3] *Id*. at 14.
[4] DEP, *Aquifers*, *available at* https://fldep.dep.state.fl.us/swapp/Aquifer.asp# (last visited Feb. 1, 2018).
[5] Section 373.036, F.S.
[6] Section 373.042, F.S.
[7] Section 373.219, F.S. Note that a water management district may not require a permit for the use of reclaimed water. Section 373.250 (3)(b), F.S.
[8] *See also* s. 403.064(2), F.S.

applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as "the three-prong test." Specifically, the proposed water use must:

- Be a "reasonable-beneficial use;"[9]
- Not interfere with any presently existing legal use of water; and
- Be consistent with the public interest.[10]

If two or more competing applications qualify equally, the applicable WMD or the DEP must give preference to a renewal application over an initial application.[11] If neither application is a renewal, preference is given to the applicant nearest the source.[12]

Reclaimed Water

Section 373.019(17), F.S., defines the term "reclaimed water" as "water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility." Water conservation and the promotion of reuse of reclaimed water have been established as formal state objectives in ss. 403.064 and 373.250, F.S. Florida tracks its reuse inventory in an annual report compiled by DEP.[13] In 2016, a total of 478 domestic wastewater treatment facilities reported making reclaimed water available for reuse.[14] The 760 million gallons per day (mgd) of reclaimed water use represents approximately 44 percent of the total domestic wastewater flow in the state.[15] The 1,645 mgd of reuse capacity represents approximately 64 percent of the total domestic wastewater treatment capacity in the state.[16] Reclaimed water from these systems was used to irrigate 397,750 residences, 574 golf courses, 1,053 parks, and 381 schools.[17] Over 12,739 acres of edible crops on 65 farms were reported to be irrigated with reclaimed water.[18] Approximately 43 wastewater treatment facilities do not provide reuse of any kind.[19] Reclaimed water is a type of alternative water supply as defined in s. 373.019(1), F.S., and is eligible for alternative water supply funding.

Originally, water reuse was required only within water resource caution areas, unless such reuse was not economically, environmentally, or technically feasible as determined by a reuse feasibility study. Currently, ch. 62-40 of the Florida Administrative Code requires use of reclaimed water statewide. A domestic wastewater facility located within, discharging within, or serving a population within designated water resource caution areas is required to prepare a reuse

[9] Section 373.019(16), F.S., defines reasonable-beneficial use as, "the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest." *See also* Fla. Admin. Code R. 62-40.410(2) for additional factors to help determine if a water use is a reasonable-beneficial use.
[10] Fla. Admin. Code R. 62-40.410(1).
[11] Section 373.233(2), F.S.
[12] *Id.*
[13] DEP, *2016 Reuse Inventory*, *available at* https://floridadep.gov/sites/default/files/2016_reuse-report_0.pdf (last visited Feb. 1, 2018); compiled from reports collected pursuant to Fla. Admin. Code R. Ch. 62-610 (note that this report tracks wastewater facilities with permitted capacities of 0.1 million gallons per day or greater).
[14] *Id.* at 2.
[15] *Id*. at 3.
[16] *Id*.
[17] *Id*. at 2.
[18] *Id*., noting that "[a]round 79 percent of the farmland was dedicated to the production of citrus (i.e., oranges, tangerines, grapefruit, etc.)."
[19] *Id*. at 3.

feasibility study before receiving a domestic wastewater permit.[20] Section 403.064, F.S., provides that if the study shows that reuse is feasible, the permit applicant must give significant consideration to making reuse available.

Discharges of Reclaimed Water into Surface Waters

DEP may issue permits for backup discharges. A "backup discharge" is a surface water discharge that occurs as part of a functioning reuse system which has been permitted under DEP rules and which provides reclaimed water for irrigation of public access areas, residential properties, or edible food crops, or for industrial cooling or other acceptable reuse purposes. Backup discharges may occur during periods of reduced demand for reclaimed water in the reuse system. Backup discharges of reclaimed water meeting advanced water treatment standards are presumed to be allowable and are permitted in all waters in the state at a reasonably accessible point where such discharge results in minimal negative impact. Discharges of reclaimed water must meet applicable water quality standards.[21]

Impact Offsets and Substitution Credits

The water resource implementation rule (Florida Administrative Code Chapter 62-40), formerly known as the state water policy rule, is part of the Florida water plan and sets forth the goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources, based on statutory policies and directives.[22] DEP adopts changes or additions to the water resource implementation rule and has adopted a rule establishing criteria for the use of proposed impact offsets and substitution credits when a water management district evaluates applications for CUPs.[23] Substitution credits may be considered if a water management district has adopted rules establishing withdrawal limits from a specified water resource within a defined geographic area.

An impact offset is the use of reclaimed water to reduce or eliminate a harmful impact that has occurred or would otherwise occur as a result of other surface water or groundwater withdrawals. A substitution credit is the use of reclaimed water to replace all or a portion of an existing permitted use of resource-limited surface water or groundwater which then allows a different user or use to initiate a withdrawal or increase its withdrawal from the same resource-limited surface water or groundwater source.[24] CUP permit applicants may propose impact offsets or substitution credits as part of a permit application. The portion of a surface water or groundwater allocation made available by an impact offset will be based on the beneficial water resource impact provided by the impact offset project. The proposed withdrawal, after application of a substitution credit, must result in no net adverse impact on the limited water resource or create a net positive impact if required by district rule as part of a strategy to protect or recover a water resource.[25]

[20] *Id.* at 20
[21] Section 403.086, F.S.
[22] Section 373.036(1), F.S.
[23] Fla. Admin. Code R. 62-40.416.
[24] Section 373.250(5), F.S.
[25] Fla. Admin. Code R. 62-40.416.

Ground Water Regulations

DEP regulates underground injection;[26] water well permitting;[27] water well construction;[28] source water and wellhead protection programs;[29] and ground water classes, standards, and monitoring.[30] DEP's Aquifer Protection Program is responsible for regulatory programs affecting ground water.[31] DEP exercises regulatory authority over ground water quality under Chapter 62-520 of the Florida Administrative Code. In Florida, ground water standards are equivalent to the drinking water standards. By definition, a violation of any ground water standard or criterion constitutes pollution.[32]

The Safe Drinking Water Act

The Safe Drinking Water Act (SDWA) is the federal law that protects public drinking water supplies throughout the nation.[33] Under the SDWA, the U.S. Environmental Protection Agency (EPA) sets standards for drinking water quality and, with its partners, implements various technical and financial programs to ensure drinking water safety.[34] Florida has the primary authority to implement the SDWA, having adopted a Florida SDWA that has been demonstrated to be at least as stringent as the federal law.[35] These statutes direct DEP to formulate and enforce rules pertaining to drinking water. The rules adopt the federal primary and secondary drinking water standards and create additional rules to fulfill state requirements. Drinking water standards are set out in ch. 62-550 of the Florida Administrative Code.

Local Government Solid Waste Responsibilities

The governing body of a county has the responsibility and power to provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas of the county.[36] Municipalities are responsible for collecting and transporting solid waste from their jurisdictions to a solid waste disposal facility operated by a county or operated under a contract with a county. Counties may charge reasonable fees for the handling and disposal of solid waste at their facilities. Each county must have a recyclable materials recycling program that has a goal of recycling 40 percent of recyclable solid waste by December 31, 2012; 50 percent by December 31, 2014; 60 percent by December 31, 2016; 70 percent by December 31, 2018; and 75 percent by December 31, 2020.[37]

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[26] Fla. Admin. Code R. Ch. 62-528.
[27] Fla. Admin. Code R. Ch. 62-532.
[28] Fla. Admin. Code R. Chs. 62-531 (Water Well Contractors) and 62-532 (Water Well Permitting and Construction Requirements)
[29] Fla. Admin. Code R. Ch. 62-521.
[30] Fla. Admin. Code R. Ch. 62-520
[31] DEP, *Aquifer Protection Program- UIC*, *available at* https://floridadep.gov/water/aquifer-protection (last visited Feb. 1, 2018).
[32] Florida Admin. Code s. 62-520.310.
[33] The Public Health Service Act, 42 U.S. ss. 300f to 300j-26 (2016).
[34] U.S. Environmental Protection Agency, *Summary of the Safe Water Drinking Act*, *available at* https://www.epa.gov/laws-regulations/summary-safe-drinking-water-act (last visited Feb. 1, 2018).
[35] Sections 403.850-403.864, F.S.
[36] Section 403.706(1), F.S.
[37] Section 403.706(2), F.S.

Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs. Each county must implement a program for recycling construction and demolition debris. If the state's recycling rate is below 60 percent by January 1, 2017; below 70 percent by January 1, 2019; or below 75 percent by January 1, 2021, DEP must provide a report to the President of the Senate and the Speaker of the House of Representatives. The report must identify those additional programs or statutory changes needed to achieve the state's recycling goals. The programs must be designed to recover a significant portion of at least four of the following materials from the solid waste stream prior to final disposal at a solid waste disposal facility and to offer these materials for recycling:

- Newspapers;
- Aluminum cans;
- Steel cans;
- Glass;
- Plastic bottles;
- Cardboard;
- Office paper; and
- Yard trash.[38]

Each county must ensure, to the maximum extent possible, that municipalities within its boundaries participate in the preparation and implementation of recycling and solid waste management programs through interlocal agreements or other means provided by law.[39]

"Municipal solid waste" includes any solid waste, except for sludge, resulting from the operation of residential, commercial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. The term includes yard trash but does not include solid waste from industrial, mining, or agricultural operations.[40] DEP may reduce or modify the municipal solid waste recycling goal that a county is required to achieve if the county demonstrates to DEP that:

- The achievement of the goal would have an adverse effect on the financial obligations of the county that are directly related to the county's waste-to-energy facility; and
- The county cannot remove normally combustible materials from solid waste that is to be processed at a waste-to-energy facility because of the need to maintain a sufficient amount of solid waste to ensure the financial viability of the facility.

The goal may only be reduced or modified to the extent necessary to alleviate the adverse effects on the financial viability of a county's waste-to-energy facility.[41]

In the development and implementation of a curbside recyclable materials collection program, a county or municipality must enter into negotiations with a franchisee who is operating to exclusively collect solid waste within a service area of a county or municipality to undertake curbside recyclable materials collection responsibilities for a county or municipality. Local governments are authorized to enact ordinances that require and direct all residential properties, multifamily dwellings, and apartment complexes and industrial, commercial, and institutional

[38] Section 403.706(2)(f), F.S.
[39] Section 403.706(3), F.S.
[40] Section 403.706(5), F.S.
[41] Section 403.706(6), F.S.

establishments as defined by the local government to establish programs for the separation of recyclable materials designated by the local government. A market must exist for the recyclable materials and the local government must specifically intend for them to be recycled. Local governments are authorized to provide for the collection of the recyclable materials. Such ordinances may include, but are not limited to, provisions that prohibit any person from knowingly disposing of recyclable materials designated by the local government and that ensure the collection of recovered materials as necessary to protect public health and safety.[42]

A local government may not:

- Require a commercial establishment that generates source-separated recovered materials to sell or otherwise convey its recovered materials to the local government or to a facility designated by the local government;
- Restrict such a generator's right to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer who has registered with DEP; and
- Enact any ordinance that prevents such a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.[43]

Local governments may require a commercial establishment to source separate the recovered materials generated on the premises.[44]

Florida's Recycling Goal

In recognition of the volume of waste generated by Floridians and visitors every year and the value of some of these discarded commodities, the Legislature set a goal to recycle at least 75 percent of the municipal solid waste that would otherwise be disposed of in waste management facilities, landfills, or incineration facilities by 2020.[45] DEP established several programs and initiatives to reach that goal. In 2015, Florida's recycling rate was 54 percent, meeting the 50 percent target rate specified in statute.[46]

Florida achieved the interim recycling goals established for 2012 and 2014, but Florida's recycling rate for 2016 was 56 percent, falling short of the 2016 interim recycling goal of 60 percent. The current practices in Florida are not expected to significantly increase the recycling rate beyond the 56 percent rate. Without significant changes to Florida's current approach, the state's recycling rate will likely fall short of the 2020 goal of 75 percent.[47]

DEP, in partnership with material recycling facilities (MRFs) across the state, has developed a statewide public education campaign, entitled "Rethink. Reset. Recycle." The campaign addresses the need to educate Florida residents on how to reduce single stream curbside

[42] Section 403.706(21), F.S.
[43] Section 403.7046(3), F.S.
[44] Section 403.7046(3)(a), F.S.
[45] Section 403.7032, F.S.; DEP, *Florida and the 2020 75% Recycling Goal* (2017) 5 https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf (last visited Feb. 1, 2018).
[46] DEP, *Recycling*, http://www.dep.state.fl.us/waste/categories/recycling/default.htm (last visited Feb. 1, 2018).
[47] DEP, *Florida and the 2020 75% Recycling Goal* (2017) 5 https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf (last visited Feb. 1, 2018).

recycling contamination. Plastic bags, cords, clothing and packaging are causing contamination problems that can shut down MRF operations and cause good loads of recyclables to become trash. The campaign also serves to remind Florida residents of the basics of curbside recycling: clean and dry aluminum and steel cans, plastic bottles and jugs and paper and cardboard. DEP is also working on the following recycling options:

- Evaluating the implications of shifting from a weight-based recycling goal to sustainable materials management processes;
- Researching the concept of moving from a weight-based recycling goal of 75 percent by 2020, to market specific goals such as a food diversion goal or an organics recycling goal;
- Engaging Florida's state universities and the Florida Department of Education to review potential K-12 curriculum programs emphasizing waste reduction and recycling practices;
- Continuing to work with state agencies to identify recycling/cost saving measures specific to their operations; and
- Providing counties not achieving the 2016 interim recycling goal with assistance in analyzing, planning and executing opportunities to increase recycling.[48]

A number of counties and municipalities have instituted single stream recycling programs. Single stream recycling programs allow all accepted recyclables to be placed in a single, curbside recycling cart, comingling materials from paper and plastic bottles to metal cans and glass containers. Single stream recycling programs have been marginally successful in providing curbside collection efficiency by increasing the amount of recyclables collected and residential participation. While there are many advantages to single stream recycling, it has not consistently yielded positive results for the recycling industry. The unexpected consequence of single stream recycling has been the collection of unwanted materials and poorly sorted recyclables, resulting in increased contamination originating in the curbside recycling cart.[49]

Contamination hinders processing at MRFs when unwanted items are placed into recycling carts. Those items are often harmful to the automated equipment typically used to process and separate recyclable materials from single stream collections. While MRFs are equipped to handle some non-recyclable materials, excessive contamination can undermine the recycling process resulting in additional sorting, processing, energy consumption, and other increased costs due to equipment downtime, repair or replacement costs and delays. In addition to increased recycling processing costs, contamination also results in poorer quality recyclables, and increased rejection and landfilling on unusable materials. Although some local governments have implemented successful single stream recycling programs with low contamination rates, contamination rates for other programs have continued to rise, in some case reaching contamination rates of more than 30-40 percent by weight.[50]

Exceptions to Requirements for Environmental Permits

An environmental resource permit (ERP) is required, if a project exceeds certain thresholds, for surface water management systems and, more specifically, for the construction, alteration, operation, maintenance, repair, abandonment, and removal of stormwater management systems,

[48] *Id.* at 11.
[49] *Id.* at 13.
[50] *Id.*

dams, impoundments, reservoirs, appurtenant works, and works (including docks, piers, structures, dredging, and filling located in, on or over wetlands or other surface waters).[51] However, for a number of low impact activities and projects that are narrow in scope, an environmental permit under state law is not required.[52] Engaging in these activities and projects requires compliance with applicable local requirements, but generally requires no notice to an agency.[53] Activities exempted from an ERP are varied and include the installation of overhead transmission lines, installation and maintenance of boat ramps, work on sea walls and mooring pilings, swales, and foot bridges, the removal of aquatic plants, construction of floating vessel platforms, and work on county roads and bridges, among many others.[54] Included among activities exempt from the requirement to obtain a permit is the replacement or repair of existing docks and piers, if fill material is not used and the replacement or repaired dock or pier is in the same location and of the same configuration and dimensions as the dock or pier being replaced or repaired.[55] Although permitting is not required for these activities, there may be a requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a water management district in its governmental or proprietary capacity.[56]

III. Effect of Proposed Changes:

Impact Offsets and Substitution Credits

CS/SB 1308 provides that when a water management district (WMD) evaluates a consumptive use permit (CUP), impact offsets may be created if the applicant proposes reclaimed water use to:

- Prevent or stop further saltwater intrusion;
- Raise aquifer levels;
- Improve the water quality of an aquifer; or
- Augment surface water to increase the quantity of water available for water supply.

The bill requires the water resource implementation rule to include criteria for the application of an impact offset or a substitution credit to a consumptive use permit or to a minimum flows and levels recovery or prevention strategy.

Memorandum of Agreement

The bill includes a legislative finding that reuse through aquifer recharge is a critical component of meeting the state's existing and future water supply needs while sustaining natural systems. The bill requires the Department of Environmental Protection (DEP) and the WMDs to develop and enter into a memorandum of agreement (MOA) no later than December 1, 2018 providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit. The MOA must

[51] Fla. Admin. Code R. 62-330.010.
[52] Section 403.813, F.S.
[53] Fla. Admin. Code R. 62-330.50.
[54] Section 403.813, F.S., Fla. Admin. Code R. 62-330.051.
[55] Section 403.813(1)(d), F.S.
[56] Section 403.813(1), F.S.

provide that the coordinated review is performed only if the applicant for such permits requests a coordinated review. The goal of the coordinated review is to share information, avoid the need for an applicant to submit redundant information, and ensure, to the extent feasible, a harmonized review of the reclaimed water project under these various permitting programs, including the use of a proposed impact offset or substitution credit.

Contaminated Recyclable Material

The bill provides the following criteria by which counties and municipalities must address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material:

- A residential recycling collector may not be required to collect or transport contaminated recyclable material.
- A materials recovery facility may not be required to process contaminated recyclable material.
- Contracts between a residential recycling collector and a county or municipality, each request for proposal for residential recyclable material, and contracts between a materials recovery facility and a county or municipality must include:
  - A definition of the term "contaminated recyclable material" that is appropriate for the local community, based on the available markets for recyclable material.
  - The respective strategies and obligations of the parties to reduce the amount of contaminated recyclable material being collected or processed;
  - The procedures for identifying, documenting, managing, and rejecting residential recycling containers, carts, bins, or loads that contain contaminated recyclable material; and
  - The remedies that will be used if a container, cart, bin, or load contains contaminated recyclable material.
- Contracts between a collector and a county or municipality and each request for proposal for residential recyclable material must include the education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.
- Provides that the above criteria apply to contracts between a municipality or county and a residential recycling collector or materials recovery facility executed or renewed after the effective date of the act.

The bill provides that "residential recycling collector" means a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality.

ERP Exemptions for Repair or Replacement of Existing Docks or Piers/Verification from DEP

The bill revises the ERP exemption for the repair or replacement of existing docks and piers. Existing law requires the replaced or repaired dock or pier to be in the same location and of the same configuration and dimensions as the deck or pier being replaced or repaired. The bill provides that, in order to be exempt from permitting, the replaced or repaired dock or pier must be in approximately the same location and no larger in size than the existing dock or pier. It also requires that no additional aquatic resources be adversely and permanently impacted by the replacement or repair. The bill provides that for all of the activities and projects excluded from

the requirement to obtain a permit, a local government may not require further verification from DEP.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county and municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because the bill requires counties and municipalities to address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material according to certain restrictions and criteria specified in the bill. This may affect the revenue stream or the costs of operating recycling or waste collection programs for counties and municipalities. However, an exemption to the mandates provision may apply if revenue stream and cost effects result in insignificant fiscal impacts to local governments. These effects are indeterminate at this time.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

The bill may have an indeterminate fiscal effect on local government recycling and waste removal services.

The bill may have an indeterminate, negative fiscal impact on DEP as a result of the costs of rulemaking to develop criteria for use of impact offsets or substitution credits. The bill may also have indeterminate negative fiscal impacts on DEP and the WMDs as a result of the costs of developing an MOA for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit.

D. Other Constitutional Issues:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

C. Government Sector Impact:

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 373.250, 403.064, 403.706, and 403.813.

IX. Additional Information:

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

CS by Environmental Preservation and Conservation on January 22, 2018:
The amendment removes provisions in the bill related to contaminated recycling and adds the following criteria by which counties and municipalities must address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material:

- A residential recycling collector may not be required to collect or transport contaminated recyclable material.
- A materials recovery facility may not be required to process contaminated recyclable material.
- Each contract between a residential recycling collector and a county or municipality for the collection or transport of residential recyclable material, and each request for proposal for residential recyclable material, must define the term "contaminated recyclable material" in a manner that is appropriate for the local community, based on the available markets for recyclable material. The amendment specifies elements that the contract and request for proposal must include.
- Each contract between a materials recovery facility and a county or municipality for processing residential recyclable material must define the term "contaminated recyclable material" in a manner that is appropriate for the local community, based on the available markets for recyclable material. The amendment specifies elements that the contract must include.
- Provides that the above criteria apply to contracts between a municipality or county and a residential recycling collector or materials recovery facility executed or renewed after the effective date of the act.

The amendment provides that "residential recycling collector" means a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality.

B. Amendments:

None.

200016

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Community Affairs (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete lines 120 - 167
and insert:
(22) Counties and municipalities must address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material based upon the following:
(a) A residential recycling collector may not be required to collect or transport contaminated recyclable material, except

200016

pursuant to a contract consistent with paragraph (c). As used in this subsection, the term "residential recycling collector" means a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality.

(b) A recovered materials processing facility may not be required to process contaminated recyclable material, except pursuant to a contract consistent with subsection (d).

(c) Each contract between a residential recycling collector and a county or municipality for the collection or transport of residential recyclable material, and each request for proposal or other solicitation for residential recyclable material, must define the term "contaminated recyclable material." The term must be defined in a manner that is appropriate for the local community, taking into consideration available markets for recyclable material, available waste composition studies, and other relevant factors. The contract and request for proposal or other solicitation must include:

1. The respective strategies and obligations of the county or municipality and the collector to reduce the amount of contaminated recyclable material being collected;

2. The procedures for identifying, documenting, managing, and rejecting residential recycling containers, carts, or bins that contain contaminated recyclable material;

3. The remedies authorized to be used if a container, cart, or bin contains contaminated recyclable material; and

4. The education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.

(d) Each contract between a recovered materials processing

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facility and a county or municipality for processing residential recyclable material, and each request for proposal or other solicitation for processing residential recyclable material, must define the term "contaminated recyclable material." The term must be defined in a manner that is appropriate for the local community, taking into consideration available markets for recyclable material, available waste composition studies, and other relevant factors. The contract and request for proposal must include:

1. The respective strategies and obligations of the county or municipality and the facility to reduce the amount of contaminated recyclable material being collected;

2. The procedures for identifying, documenting, managing, and rejecting residential recycling containers, carts, or bins that contain contaminated recyclable material;

3. The remedies authorized to be used if a container, cart, or bin contains contaminated recyclable material; and

(e) This subsection applies to each contract between a municipality or county and a residential recycling collector or recovered materials processing facility executed or renewed after July 1, 2018.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete lines 22 - 25

and insert:

residential recycling collectors except under certain conditions; defining the term "residential recycling collector"; prohibiting counties and municipalities

from requiring the processing of contaminated recyclable material by recovered materials processing facilities except under certain conditions; specifying required contract provisions in residential recycling collector and recovered materials processing facility contracts with

979634

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Community Affairs (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete lines 173 - 174
and insert:
chapter 25270, 1949, Laws of Florida, and a local government may not require an individual claiming this exemption to provide further department verification, for

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:

979634

Delete lines 28 - 29

and insert:

government may not require an individual to provide further department verification for certain projects; revising the

605428

LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Perry) recommended the following:

Senate Amendment

Delete lines 233 - 236

and insert:

repaired dock or pier must be within 5 feet of the same location and no larger in size than the existing dock or pier, and no additional aquatic resources may be adversely and permanently impacted by such replacement or repair ~~in the same location and of~~

By the Committee on Environmental Preservation and Conservation; and Senator Perry

592-02315-18 20181308c1

A bill to be entitled

An act relating to environmental regulation; amending s. 373.250, F.S.; deleting an obsolete provision; providing examples of reclaimed water use that may create an impact offset; revising the required provisions of the water resource implementation rule; amending s. 403.064, F.S.; revising legislative findings; requiring the Department of Environmental Protection and the water management districts to develop and enter into a memorandum of agreement providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit; specifying the required provisions of such memorandum; specifying the date by which the memorandum must be developed and executed; amending s. 403.706, F.S.; requiring counties and municipalities to address contamination of recyclable material in specified contracts; prohibiting counties and municipalities from requiring the collection or transport of contaminated recyclable material by residential recycling collectors; defining the term "residential recycling collector"; specifying required contract provisions in residential recycling collector and materials recovery facility contracts with counties and municipalities; providing applicability; amending s. 403.813, F.S.; providing that a local government may not require further verification from the department for certain projects; revising the

592-02315-18 20181308c1

types of dock and pier replacements and repairs that are exempt from such verification and certain permitting requirements; providing a directive to the Division of Law Revision and Information; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) of section 373.250, Florida Statutes, is amended to read:

373.250 Reuse of reclaimed water.—

(5)(a) ~~No later than October 1, 2012, the department shall initiate rulemaking to adopt revisions to~~ The water resource implementation rule, as defined in s. 373.019(25), must ~~which shall~~ include:

1. Criteria for the use of a proposed impact offset derived from the use of reclaimed water when a water management district evaluates an application for a consumptive use permit. As used in this subparagraph, the term "impact offset" means the use of reclaimed water to reduce or eliminate a harmful impact that has occurred or would otherwise occur as a result of other surface water or groundwater withdrawals. Examples of reclaimed water use that may create an impact offset include, but are not limited to, the use of reclaimed water to:

a. Prevent or stop further saltwater intrusion;

b. Raise aquifer levels;

c. Improve the water quality of an aquifer; or

d. Augment surface water to increase the quantity of water available for water supply.

2. Criteria for the use of substitution credits where a water management district has adopted rules establishing withdrawal limits from a specified water resource within a defined geographic area. As used in this subparagraph, the term "substitution credit" means the use of reclaimed water to replace all or a portion of an existing permitted use of resource-limited surface water or groundwater, allowing a different user or use to initiate a withdrawal or increase its withdrawal from the same resource-limited surface water or groundwater source provided that the withdrawal creates no net adverse impact on the limited water resource or creates a net positive impact if required by water management district rule as part of a strategy to protect or recover a water resource.

3. Criteria by which an impact offset or substitution credit may be applied to the issuance, renewal, or extension of the utility's or another user's consumptive use permit or may be used to address additional water resource constraints imposed through the adoption of a recovery or prevention strategy under s. 373.0421.

(b) Within 60 days after the final adoption by the department of the revisions to the water resource implementation rule required under paragraph (a), each water management district must ~~shall~~ initiate rulemaking to incorporate those revisions by reference into the rules of the district.

Section 2. Subsection (1) of section 403.064, Florida Statutes, is amended, and subsection (17) is added to that section, to read:

403.064 Reuse of reclaimed water.—

(1) The encouragement and promotion of water conservation,

and reuse of reclaimed water, as defined by the department, are state objectives and are considered to be in the public interest. The Legislature finds that the reuse of reclaimed water, including reuse through aquifer recharge, is a critical component of meeting the state's existing and future water supply needs while sustaining natural systems. The Legislature further finds that for those wastewater treatment plants permitted and operated under an approved reuse program by the department, the reclaimed water shall be considered environmentally acceptable and not a threat to public health and safety. The Legislature encourages the development of incentive-based programs for reuse implementation.

(17) The department and the water management districts shall develop and enter into a memorandum of agreement providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit. The memorandum of agreement must provide that the coordinated review is performed only if the applicant for such permits requests a coordinated review. The goal of the coordinated review is to share information, avoid requesting the applicant to submit redundant information, and ensure, to the extent feasible, a harmonized review of the reclaimed water project under these various permitting programs, including the use of a proposed impact offset or substitution credit in accordance with s. 373.250(5). The department and the water management districts must develop and execute such memorandum of agreement no later than December 1, 2018.

Section 3. Present subsection (22) of section 403.706,

Florida Statutes, is renumbered as subsection (23), and a new subsection (22) is added to that section, to read:

403.706 Local government solid waste responsibilities.—

(22) Counties and municipalities shall address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material based upon the following:

(a) A residential recycling collector may not be required to collect or transport contaminated recyclable material. As used in this subsection, the term "residential recycling collector" means a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality.

(b) A materials recovery facility may not be required to process contaminated recyclable material.

(c) Each contract between a residential recycling collector and a county or municipality for the collection or transport of residential recyclable material, and each request for proposal for residential recyclable material, must define the term "contaminated recyclable material" in a manner that is appropriate for the local community, based on the available markets for recyclable material. The contract and request for proposal must include:

1. The respective strategies and obligations of the county or municipality and the collector to reduce the amount of contaminated recyclable material being collected;

2. The procedures for identifying, documenting, managing, and rejecting residential recycling containers, carts, or bins that contain contaminated recyclable material;

3. The remedies that will be used if a container, cart, or bin contains contaminated recyclable material; and

4. The education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.

(d) Each contract between a materials recovery facility and a county or municipality for processing residential recyclable material must define the term "contaminated recyclable material" in a manner that is appropriate for the local community, based on the available markets for recyclable material. The contract must include:

1. The respective strategies and obligations of the parties to reduce the amount of contaminated recyclable material being processed;

2. The procedures for identifying, documenting, managing, and rejecting residential recycling containers or loads that contain contaminated recyclable material; and

3. The remedies that will be used if a container or load contains contaminated recyclable material.

(e) This subsection shall apply to each contract between a municipality or county and a residential recycling collector or materials recovery facility executed or renewed after the effective date of this act.

Section 4. Subsection (1) of section 403.813, Florida Statutes, is amended to read:

403.813 Permits issued at district centers; exceptions.—

(1) A permit is not required under this chapter, chapter 373, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 25270, 1949, Laws of Florida, and a local government may not require further verification from the department, for

activities associated with the following types of projects; however, except as otherwise provided in this subsection, this subsection does not relieve an applicant from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a water management district in its governmental or proprietary capacity or from complying with applicable local pollution control programs authorized under this chapter or other requirements of county and municipal governments:

(a) The installation of overhead transmission lines, having ~~with~~ support structures that ~~which~~ are not constructed in waters of the state and which do not create a navigational hazard.

(b) The installation and repair of mooring pilings and dolphins associated with private docking facilities or piers and the installation of private docks, piers, and recreational docking facilities, or piers and recreational docking facilities of local governmental entities when the local governmental entity's activities will not take place in any manatee habitat, any of which docks:

1. Has 500 square feet or less of over-water surface area for a dock ~~which is~~ located in an area designated as Outstanding Florida Waters or 1,000 square feet or less of over-water surface area for a dock ~~which is~~ located in an area that ~~which~~ is not designated as Outstanding Florida Waters;

2. Is constructed on or held in place by pilings or is a floating dock ~~which is~~ constructed so as not to involve filling or dredging other than that necessary to install the pilings;

3. May ~~Shall~~ not substantially impede the flow of water or create a navigational hazard;

4. Is used for recreational, noncommercial activities associated with the mooring or storage of boats and boat paraphernalia; and

5. Is the sole dock constructed pursuant to this exemption as measured along the shoreline for a distance of 65 feet, unless the parcel of land or individual lot as platted is less than 65 feet in length along the shoreline, in which case there may be one exempt dock allowed per parcel or lot.

~~Nothing in~~ This paragraph does not ~~shall~~ prohibit the department from taking appropriate enforcement action pursuant to this chapter to abate or prohibit any activity otherwise exempt from permitting pursuant to this paragraph if the department can demonstrate that the exempted activity has caused water pollution in violation of this chapter.

(c) The installation and maintenance to design specifications of boat ramps on artificial bodies of water where navigational access to the proposed ramp exists or the installation of boat ramps open to the public in any waters of the state where navigational access to the proposed ramp exists and where the construction of the proposed ramp will be less than 30 feet wide and will involve the removal of less than 25 cubic yards of material from the waters of the state, and the maintenance to design specifications of such ramps; however, the material to be removed shall be placed upon a self-contained upland site so as to prevent the escape of the spoil material into the waters of the state.

(d) The replacement or repair of existing docks and piers, except that fill material may not be used and the replacement or

repaired dock or pier must be in approximately the same location and no larger in size than the existing dock or pier, and no additional aquatic resources may be adversely and permanently impacted by such replacement or repair ~~the same location and of the same configuration and dimensions as the dock or pier being replaced or repaired~~. This does not preclude the use of different construction materials or minor deviations to allow upgrades to current structural and design standards.

(e) The restoration of seawalls at their previous locations or upland of, or within 18 inches waterward of, their previous locations. However, this may ~~shall~~ not affect the permitting requirements of chapter 161, and department rules shall clearly indicate that this exception does not constitute an exception from the permitting requirements of chapter 161.

(f) The performance of maintenance dredging of existing manmade canals, channels, intake and discharge structures, and previously dredged portions of natural water bodies within drainage rights-of-way or drainage easements which have been recorded in the public records of the county, where the spoil material is to be removed and deposited on a self-contained, upland spoil site which will prevent the escape of the spoil material into the waters of the state, provided that no more dredging is to be performed than is necessary to restore the canals, channels, and intake and discharge structures, and previously dredged portions of natural water bodies, to original design specifications or configurations, provided that the work is conducted in compliance with s. 379.2431(2)(d), provided that no significant impacts occur to previously undisturbed natural areas, and provided that control devices for return flow and

best management practices for erosion and sediment control are utilized to prevent bank erosion and scouring and to prevent turbidity, dredged material, and toxic or deleterious substances from discharging into adjacent waters during maintenance dredging. Further, for maintenance dredging of previously dredged portions of natural water bodies within recorded drainage rights-of-way or drainage easements, an entity that seeks an exemption must notify the department or water management district, as applicable, at least 30 days before ~~prior to~~ dredging and provide documentation of original design specifications or configurations where such exist. This exemption applies to all canals and previously dredged portions of natural water bodies within recorded drainage rights-of-way or drainage easements constructed before ~~prior to~~ April 3, 1970, and to those canals and previously dredged portions of natural water bodies constructed on or after April 3, 1970, pursuant to all necessary state permits. This exemption does not apply to the removal of a natural or manmade barrier separating a canal or canal system from adjacent waters. When no previous permit has been issued by the Board of Trustees of the Internal Improvement Trust Fund or the United States Army Corps of Engineers for construction or maintenance dredging of the existing manmade canal or intake or discharge structure, such maintenance dredging shall be limited to a depth of no more than 5 feet below mean low water. The Board of Trustees of the Internal Improvement Trust Fund may fix and recover from the permittee an amount equal to the difference between the fair market value and the actual cost of the maintenance dredging for material removed during such maintenance dredging. However, no

charge shall be exacted by the state for material removed during such maintenance dredging by a public port authority. The removing party may subsequently sell such material; however, proceeds from such sale that exceed the costs of maintenance dredging shall be remitted to the state and deposited in the Internal Improvement Trust Fund.

(g) The maintenance of existing insect control structures, dikes, and irrigation and drainage ditches, provided that spoil material is deposited on a self-contained, upland spoil site which will prevent the escape of the spoil material into waters of the state. In the case of insect control structures, if the cost of using a self-contained upland spoil site is so excessive, as determined by the Department of Health, pursuant to s. 403.088(1), that it will inhibit proposed insect control, then-existing spoil sites or dikes may be used, upon notification to the department. In the case of insect control where upland spoil sites are not used pursuant to this exemption, turbidity control devices shall be used to confine the spoil material discharge to that area previously disturbed when the receiving body of water is used as a potable water supply, is designated as shellfish harvesting waters, or functions as a habitat for commercially or recreationally important shellfish or finfish. In all cases, no more dredging is to be performed than is necessary to restore the dike or irrigation or drainage ditch to its original design specifications.

(h) The repair or replacement of existing functional pipes or culverts the purpose of which is the discharge or conveyance of stormwater. In all cases, the invert elevation, the diameter,

and the length of the culvert may ~~shall~~ not be changed. However, the material used for the culvert may be different from the original.

(i) The construction of private docks of 1,000 square feet or less of over-water surface area and seawalls in artificially created waterways where such construction will not violate existing water quality standards, impede navigation, or affect flood control. This exemption does not apply to the construction of vertical seawalls in estuaries or lagoons unless the proposed construction is within an existing manmade canal where the shoreline is currently occupied in whole or part by vertical seawalls.

(j) The construction and maintenance of swales.

(k) The installation of aids to navigation and buoys associated with such aids, provided the devices are marked pursuant to s. 327.40.

(l) The replacement or repair of existing open-trestle foot bridges and vehicular bridges that are 100 feet or less in length and two lanes or less in width, provided that no more dredging or filling of submerged lands is performed other than that which is necessary to replace or repair pilings and that the structure to be replaced or repaired is the same length, the same configuration, and in the same location as the original bridge. No debris from the original bridge shall be allowed to remain in the waters of the state.

(m) The installation of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms of waters in the state, except in Class I and Class II waters and aquatic preserves, provided no dredging or filling is necessary.

(n) The replacement or repair of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms of waters of the state.

(o) The construction of private seawalls in wetlands or other surface waters where such construction is between and adjoins at both ends existing seawalls; follows a continuous and uniform seawall construction line with the existing seawalls; is no more than 150 feet in length; and does not violate existing water quality standards, impede navigation, or affect flood control. However, in estuaries and lagoons the construction of vertical seawalls is limited to the circumstances and purposes stated in s. 373.414(5)(b)1.-4. This paragraph does not affect the permitting requirements of chapter 161, and department rules must clearly indicate that this exception does not constitute an exception from the permitting requirements of chapter 161.

(p) The restoration of existing insect control impoundment dikes which are less than 100 feet in length. Such impoundments shall be connected to tidally influenced waters for 6 months each year beginning September 1 and ending February 28 if feasible or operated in accordance with an impoundment management plan approved by the department. A dike restoration may involve no more dredging than is necessary to restore the dike to its original design specifications. For the purposes of this paragraph, restoration does not include maintenance of impoundment dikes of operating insect control impoundments.

(q) The construction, operation, or maintenance of stormwater management facilities which are designed to serve single-family residential projects, including duplexes, triplexes, and quadruplexes, if they are less than 10 acres

total land and have less than 2 acres of impervious surface and if the facilities:

1. Comply with all regulations or ordinances applicable to stormwater management and adopted by a city or county;

2. Are not part of a larger common plan of development or sale; and

3. Discharge into a stormwater discharge facility exempted or permitted by the department under this chapter which has sufficient capacity and treatment capability as specified in this chapter and is owned, maintained, or operated by a city, county, special district with drainage responsibility, or water management district; however, this exemption does not authorize discharge to a facility without the facility owner's prior written consent.

(r) The removal of aquatic plants, the removal of tussocks, the associated replanting of indigenous aquatic plants, and the associated removal from lakes of organic detrital material when such planting or removal is performed and authorized by permit or exemption granted under s. 369.20 or s. 369.25, provided that:

1. Organic detrital material that exists on the surface of natural mineral substrate shall be allowed to be removed to a depth of 3 feet or to the natural mineral substrate, whichever is less;

2. All material removed pursuant to this paragraph shall be deposited in an upland site in a manner that will prevent the reintroduction of the material into waters in the state except when spoil material is permitted to be used to create wildlife islands in freshwater bodies of the state when a governmental

entity is permitted pursuant to s. 369.20 to create such islands as a part of a restoration or enhancement project;

3. All activities are performed in a manner consistent with state water quality standards; and

4. No activities under this exemption are conducted in wetland areas, as defined in s. 373.019(27), which are supported by a natural soil as shown in applicable United States Department of Agriculture county soil surveys, except when a governmental entity is permitted pursuant to s. 369.20 to conduct such activities as a part of a restoration or enhancement project.

The department may not adopt implementing rules for this paragraph, notwithstanding any other provision of law.

(s) The construction, installation, operation, or maintenance of floating vessel platforms or floating boat lifts, provided that such structures:

1. Float at all times in the water for the sole purpose of supporting a vessel so that the vessel is out of the water when not in use;

2. Are wholly contained within a boat slip previously permitted under ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or part IV of chapter 373, or do not exceed a combined total of 500 square feet, or 200 square feet in an Outstanding Florida Water, when associated with a dock that is exempt under this subsection or associated with a permitted dock with no defined boat slip or attached to a bulkhead on a parcel of land where there is no other docking structure;

3. Are not used for any commercial purpose or for mooring vessels that remain in the water when not in use, and do not substantially impede the flow of water, create a navigational hazard, or unreasonably infringe upon the riparian rights of adjacent property owners, as defined in s. 253.141;

4. Are constructed and used so as to minimize adverse impacts to submerged lands, wetlands, shellfish areas, aquatic plant and animal species, and other biological communities, including locating such structures in areas where seagrasses are least dense adjacent to the dock or bulkhead; and

5. Are not constructed in areas specifically prohibited for boat mooring under conditions of a permit issued in accordance with ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or part IV of chapter 373, or other form of authorization issued by a local government.

Structures that qualify for this exemption are relieved from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund and, with the exception of those structures attached to a bulkhead on a parcel of land where there is no docking structure, may ~~shall~~ not be subject to any more stringent permitting requirements, registration requirements, or other regulation by any local government. Local governments may require either permitting or one-time registration of floating vessel platforms to be attached to a bulkhead on a parcel of land where there is no other docking structure as necessary to ensure compliance with local ordinances, codes, or regulations. Local governments may require either permitting or one-time

registration of all other floating vessel platforms as necessary to ensure compliance with the exemption criteria in this section; to ensure compliance with local ordinances, codes, or regulations relating to building or zoning, which are no more stringent than the exemption criteria in this section or address subjects other than subjects addressed by the exemption criteria in this section; and to ensure proper installation, maintenance, and precautionary or evacuation action following a tropical storm or hurricane watch of a floating vessel platform or floating boat lift that is proposed to be attached to a bulkhead or parcel of land where there is no other docking structure. The exemption provided in this paragraph shall be in addition to the exemption provided in paragraph (b). The department shall adopt a general permit by rule for the construction, installation, operation, or maintenance of those floating vessel platforms or floating boat lifts that do not qualify for the exemption provided in this paragraph but do not cause significant adverse impacts to occur individually or cumulatively. The issuance of such general permit shall also constitute permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund. No local government shall impose a more stringent regulation, permitting requirement, registration requirement, or other regulation covered by such general permit. Local governments may require either permitting or one-time registration of floating vessel platforms as necessary to ensure compliance with the general permit in this section; to ensure compliance with local ordinances, codes, or regulations relating to building or zoning that are no more stringent than the general permit in this section; and to ensure proper

installation and maintenance of a floating vessel platform or floating boat lift that is proposed to be attached to a bulkhead or parcel of land where there is no other docking structure.

(t) The repair, stabilization, or paving of existing county maintained roads and the repair or replacement of bridges that are part of the roadway, within the Northwest Florida Water Management District and the Suwannee River Water Management District, provided:

1. The road and associated bridge were in existence and in use as a public road or bridge, and were maintained by the county as a public road or bridge on or before January 1, 2002;

2. The construction activity does not realign the road or expand the number of existing traffic lanes of the existing road; however, the work may include the provision of safety shoulders, clearance of vegetation, and other work reasonably necessary to repair, stabilize, pave, or repave the road, provided that the work is constructed by generally accepted engineering standards;

3. The construction activity does not expand the existing width of an existing vehicular bridge in excess of that reasonably necessary to properly connect the bridge with the road being repaired, stabilized, paved, or repaved to safely accommodate the traffic expected on the road, which may include expanding the width of the bridge to match the existing connected road. However, no debris from the original bridge shall be allowed to remain in waters of the state, including wetlands;

4. Best management practices for erosion control shall be employed as necessary to prevent water quality violations;

5. Roadside swales or other effective means of stormwater treatment must be incorporated as part of the project;

6. No more dredging or filling of wetlands or water of the state is performed than that which is reasonably necessary to repair, stabilize, pave, or repave the road or to repair or replace the bridge, in accordance with generally accepted engineering standards; and

7. Notice of intent to use the exemption is provided to the department, if the work is to be performed within the Northwest Florida Water Management District, or to the Suwannee River Water Management District, if the work is to be performed within the Suwannee River Water Management District, 30 days before ~~prior to~~ performing any work under the exemption.

Within 30 days after this act becomes a law, the department shall initiate rulemaking to adopt a no fee general permit for the repair, stabilization, or paving of existing roads that are maintained by the county and the repair or replacement of bridges that are part of the roadway where such activities do not cause significant adverse impacts to occur individually or cumulatively. The general permit shall apply statewide and, with no additional rulemaking required, apply to qualified projects reviewed by the Suwannee River Water Management District, the St. Johns River Water Management District, the Southwest Florida Water Management District, and the South Florida Water Management District under the division of responsibilities contained in the operating agreements applicable to part IV of chapter 373. Upon adoption, this general permit shall, pursuant to ~~the provisions of~~ subsection (2), supersede and replace the

exemption in this paragraph.

(u) Notwithstanding any provision to the contrary in this subsection, a permit or other authorization under chapter 253, chapter 369, chapter 373, or this chapter is not required for an individual residential property owner for the removal of organic detrital material from freshwater rivers or lakes that have a natural sand or rocky substrate and that are not Aquatic Preserves or for the associated removal and replanting of aquatic vegetation for the purpose of environmental enhancement, providing that:

1. No activities under this exemption are conducted in wetland areas, as defined in s. 373.019(27), which are supported by a natural soil as shown in applicable United States Department of Agriculture county soil surveys.

2. No filling or peat mining is allowed.

3. No removal of native wetland trees, including, but not limited to, ash, bay, cypress, gum, maple, or tupelo, occurs.

4. When removing organic detrital material, no portion of the underlying natural mineral substrate or rocky substrate is removed.

5. Organic detrital material and plant material removed is deposited in an upland site in a manner that will not cause water quality violations.

6. All activities are conducted in such a manner, and with appropriate turbidity controls, so as to prevent any water quality violations outside the immediate work area.

7. Replanting with a variety of aquatic plants native to the state shall occur in a minimum of 25 percent of the preexisting vegetated areas where organic detrital material is

removed, except for areas where the material is removed to bare rocky substrate; however, an area may be maintained clear of vegetation as an access corridor. The access corridor width may not exceed 50 percent of the property owner's frontage or 50 feet, whichever is less, and may be a sufficient length waterward to create a corridor to allow access for a boat or swimmer to reach open water. Replanting must be at a minimum density of 2 feet on center and be completed within 90 days after removal of existing aquatic vegetation, except that under dewatered conditions replanting must be completed within 90 days after reflooding. The area to be replanted must extend waterward from the ordinary high water line to a point where normal water depth would be 3 feet or the preexisting vegetation line, whichever is less. Individuals are required to make a reasonable effort to maintain planting density for a period of 6 months after replanting is complete, and the plants, including naturally recruited native aquatic plants, must be allowed to expand and fill in the revegetation area. Native aquatic plants to be used for revegetation must be salvaged from the enhancement project site or obtained from an aquatic plant nursery regulated by the Department of Agriculture and Consumer Services. Plants that are not native to the state may not be used for replanting.

8. No activity occurs any farther than 100 feet waterward of the ordinary high water line, and all activities must be designed and conducted in a manner that will not unreasonably restrict or infringe upon the riparian rights of adjacent upland riparian owners.

9. The person seeking this exemption notifies the

applicable department district office in writing at least 30 days before commencing work and allows the department to conduct a preconstruction site inspection. Notice must include an organic-detrital-material removal and disposal plan and, if applicable, a vegetation-removal and revegetation plan.

10. The department is provided written certification of compliance with the terms and conditions of this paragraph within 30 days after completion of any activity occurring under this exemption.

(v) Notwithstanding any other provision in this chapter, chapter 373, or chapter 161, a permit or other authorization is not required for the following exploratory activities associated with beach restoration and nourishment projects and inlet management activities:

1. The collection of geotechnical, geophysical, and cultural resource data, including surveys, mapping, acoustic soundings, benthic and other biologic sampling, and coring.

2. Oceanographic instrument deployment, including temporary installation on the seabed of coastal and oceanographic data collection equipment.

3. Incidental excavation associated with any of the activities listed under subparagraph 1. or subparagraph 2.

Section 5. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date the act becomes a law.

Section 6. This act shall take effect upon becoming a law.