Tab 1	**SB 192** by **Garcia**; (Compare to CS/CS/H 00437) Anchoring of Vessels in Anchoring Limitation Areas

309518 D S RCS EN, Garcia Delete everything after 01/23 04:48 PM

Tab 2	**SB 1692** by **Brodeur**; (Identical to H 01665) Preventing Contaminants of Emerging Concern from Discharging Into Wastewater Facilities and Waters of the State

426688 D S RCS EN, Brodeur Delete everything after 01/23 04:48 PM

Tab 3	**SB 1546** by **Stewart**; (Identical to H 01533) Statewide Drinking Water Standards

Tab 4	**SPB 7040** by **EN**; Ratification of the Department of Environmental Protection's Rules Relating to Stormwater

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

ENVIRONMENT AND NATURAL RESOURCES
Senator Rodriguez, Chair
Senator Harrell, Vice Chair

MEETING DATE: Tuesday, January 23, 2024
TIME: 3:30—5:30 p.m.
PLACE: 301 Senate Building

MEMBERS: Senator Rodriguez, Chair; Senator Harrell, Vice Chair; Senators Martin, Mayfield, Polsky, Stewart, and Wright

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 192** Garcia (Compare CS/CS/H 437)	Anchoring of Vessels in Anchoring Limitation Areas; Revising the sections of Biscayne Bay within which a person may not anchor a vessel during a specified timeframe, etc. EN 01/23/2024 Fav/CS CA RC	Fav/CS Yeas 7 Nays 0
2	**SB 1692** Brodeur (Identical H 1665)	Preventing Contaminants of Emerging Concern from Discharging Into Wastewater Facilities and Waters of the State; Establishing the PFAS and 1,4-dioxane pretreatment initiative within the Department of Environmental Protection for a specified purpose; providing requirements for certain wastewater facilities with industrial pretreatment programs which begin implementing an industrial pretreatment program after a specified date; providing discharge limits and surface water quality standards for industrial users beginning on a specified date, etc. EN 01/23/2024 Fav/CS AEG FP	Fav/CS Yeas 7 Nays 0
3	**SB 1546** Stewart (Identical H 1533)	Statewide Drinking Water Standards; Revising the policy of the state regarding safe drinking water; requiring the Department of Environmental Protection to adopt and implement rules for a statewide maximum contaminant level for 1,4-dioxane; requiring the department to provide public water systems financial assistance necessary to update system infrastructure to meet certain standards, etc. EN 01/23/2024 Favorable AEG FP	Favorable Yeas 7 Nays 0

Consideration of proposed bill:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SPB 7040**	Ratification of the Department of Environmental Protection's Rules Relating to Stormwater; Ratifying a specified rule relating to environmental resource permitting for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule exceeding the specified thresholds for likely adverse impact or increase in regulatory costs; ratifying rule 62-330.010, Florida Administrative Code, with specified changes; requiring that specified future amendments to such rule be submitted in bill form to and approved by the Legislature, etc.	Submitted and Reported Favorably as Committee Bill Yeas 7 Nays 0
	(Preliminary Draft Available - final draft will be made available at least 24 hours prior to the meeting)		
	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 Environment and Natural Resources

BILL:	CS/SB 192
INTRODUCER:	Environment and Natural Resources Committee and Senator Garcia
SUBJECT:	Anchoring of Vessels in Anchoring Limitation Areas
DATE:	January 24, 2023 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carroll	Rogers	EN	**Fav/CS**
2.			CA	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 192 expands the sections of Biscayne Bay that are designated as anchoring limitation areas. The bill designates as anchoring limitation areas the sections of Biscayne Bay within Miami Dade County that are within 200 yards of any part of the shore of the City of Miami Beach lying between State Road A1A and State Road 112.

The bill specifies that documentation used to prove that a vessel has not exceeded the limits of county-established anchoring limitation areas must show the vessel at least one *nautical* mile away within a certain period. Further the bill specifies that electronic evidence used as proof of location may include navigational or tracking devices if they are permanently affixed to the vessel.

II. Present Situation:

Fish and Wildlife Conservation Commission

The Florida Fish and Wildlife Conservation Commission (FWC) is governed by a board of seven members who are appointed by the Governor and confirmed by the Florida Senate.[1] The Division of Law Enforcement Boating and Waterways Section of FWC oversees and coordinates statewide regulatory waterway markers to ensure compliance with uniform markers and state boating and resource protection zones for the benefit of all waterway users and fish and wildlife

[1] FLA. CONST. art. IV, s. 9; *see also* s. 379.102(1), F.S.

resources in the state.[2] The Boating and Waterways Section takes public input and provides notice of proposed local boating-restricted areas.[3]

FWC's boating laws are enforced by the Division of Law Enforcement and its officers, county sheriffs and deputies, municipal police officers, and any other law enforcement officer.[4] The Division of Law Enforcement manages Florida's waterways to ensure boating safety for residents of and visitors to the state.[5] This includes enforcing boating rules and regulations, coordinating boating safety campaigns and education, managing public waters and access to the waters, conducting boating accident investigations, identifying and removing derelict vessels, and investigating vessel theft and title fraud.[6]

Anchoring

Anchoring refers to a boater's practice of seeking and using a safe harbor on the public waterway system for an undefined duration. Anchoring is accomplished using an anchor carried on the vessel.[7] Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated or managed for that purpose or not.[8]

Anchoring Limitation Areas

State law designates certain densely populated urban areas as anchoring limitation areas.[9] These areas usually have narrow state waterways, residential docking facilities, and significant recreational boating traffic. The listed anchoring limitation areas are:

- The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County;
- Sunset Lake in Miami-Dade County; and
- The sections of Biscayne Bay in Miami-Dade County lying between:
  - Rivo Alto Island and Di Lido Island,
  - San Marino Island and San Marco Island, and
  - San Marco Island and Biscayne Island.[10]

[2] FWC, *Waterway Management*, https://myfwc.com/boating/waterway/ (last visited Dec. 8, 2023).
[3] *Id*.
[4] Section 327.70(1), F.S.; *see* s. 943.10(1), F.S., which defines "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.
[5] Fish and Wildlife Conservation Commission (FWC), *Boating*, https://myfwc.com/boating/ (last visited Dec. 8, 2023).
[6] FWC, *Law Enforcement*, https://myfwc.com/about/inside-fwc/le/ (last visited Dec. 8, 2023). *See* s. 327.70(1) and (4), F.S.
[7] Section 327.02, F.S., defines the term "vessel" to include every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.
[8] Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2 (Rev. May 2012), *available at* https://repository.library.noaa.gov/view/noaa/36907.
[9] Section 327.4108(1), F.S.
[10] *Id*.

Counties, except for Monroe County, may establish an anchoring limitation area adjacent to urban areas that have residential docking facilities and significant recreational boating traffic.[11] The aggregate total of anchoring limitation areas in a county may not exceed 10 percent of the county's delineated navigable-in-fact waterways.[12] Each anchoring limitation area must meet the following requirements:

- Be less than 100 acres in size, not including any portion of the marked channel of the Florida Intracoastal Waterway contiguous to the anchoring limitation area;
- Not include any mooring field or marina; and
- Be clearly marked with signs and buoys.[13]

Unless otherwise exempt, person may not anchor a vessel for more than 45 consecutive days in any six-month period in an anchoring limitation area established by a county.[14]

Exceptions to anchoring prohibitions in any anchoring limitation area include the following:

- When a vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors;
- If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors; and
- During a regatta, tournament, or marine parade or exhibition or other special events, including, but not limited to, public music performances, local government waterfront activities, or fireworks displays.[15]

Vessels exempt from anchoring prohibitions in an anchoring limitation area include:

- Vessels owned or operated by a government entity for law enforcement, firefighting, military, or rescue purposes;
- Construction or dredging vessels on an active job site;
- Vessels actively engaged in commercial fishing; and
- Vessels engaged in recreational fishing if the persons onboard are actively tending hook and line fishing gear or nets.[16]

[11] Section 327.4108(2), F.S.
[12] *Id*. "Navigable-in-fact waterways" are waterways that are navigable in their natural or unimproved condition over which useful commerce or public recreation of a substantial and permanent character is or may be conducted in the customary mode of trade and travel on water. The term does not include lakes or streams that are theoretically navigable; have a potential for navigability; or are temporary, precarious, and unprofitable, but the term does include lakes or streams that have practical usefulness to the public as highways for transportation. *Id*.
[13] *Id*.
[14] *Id*.
[15] Section 327.4108 (4), F.S.
[16] Section 327.4108(5), F.S.

Anchoring Limitation Area Enforcement

For a vessel in a county-established anchoring limitation area, upon an inquiry by a law enforcement officer or agency, a vessel owner or operator must be given an opportunity to provide proof that the vessel has not exceeded the limitations for county-established anchoring limitation areas.[17] If a vessel owner or operator fails or refuses to provide proof that the vessel has not exceeded the limitations, the officer or agency may issue a citation. Proof may include any of the following:

- Documentation showing that the vessel was in another location at least 1 mile away within a period of less than 45 days before the inquiry.
- Electronic evidence, including, but not limited to, navigational devices or tracking devices that show the vessel was in another location at least 1 mile away within a period of less than 45 days before the inquiry.[18]

For a vessel in any anchoring limitation area, a law enforcement officer or agency may remove and impound the vessel for up to 48 hours if the vessel operator was previously issued a citation for violating anchoring limitation area regulations and:

- Anchors the vessel in an anchoring limitation area within 12 hours of being issued the citation; or
- Refuses to leave the anchoring limitation area after being directed to do so by a law enforcement officer or agency.[19]

In addition to the civil penalty imposed by a citation, a vessel operator whose vessel has been impounded must pay all of the applicable removal and storage fees before the vessel is released.[20]

An owner or operator of a vessel who anchors in an anchoring limitation area commits a noncriminal infraction and is subject to a uniform boating citation and penalties. The civil penalty provided is up to a maximum of:

- $100 for a first offense;
- $250 for a second offense; and
- $500 for a third or subsequent offense.[21]

Any person who fails to appear or otherwise properly respond to a uniform boating citation must, in addition to the charge relating to the violation of the boating laws, be charged with a second degree misdemeanor, which is punishable by a maximum fine of $500 and no more than a 60-day imprisonment.[22]

[17] Section 327.4108(6), F.S.
[18] *Id*.
[19] *Id*.
[20] *Id*.
[21] Section 327.73(1)(z), F.S.
[22] Sections 775.082 and 775.083, F.S.

Biscayne Bay

Biscayne Bay is a 428-square mile estuary extending nearly the entire length of Miami-Dade County.[23] The Bay is home to over 500 species of fish and other marine organisms, and its extensive areas of seagrasses are an important food source for the Florida manatee and as nursery areas for many ecologically and commercially important estuarine species.[24] Miami-Dade County is one of Florida's most populous counties, with approximately 2.7 million residents and the county sees millions of visitors each year.[25]

The map below shows where the municipal boundary of the City of Miami Beach lies in Biscayne Bay, as well as State Road (SR) 112 and SR A1A.[26]

III. Effect of Proposed Changes:

Section 1 amends s. 327.4108, F.S., to revise the sections of Biscayne Bay in Miami-Dade County that are anchoring limitation areas, within which a person may not anchor a vessel at any time between one-half hour after sunset and one-half hour before sunrise. The bill provides that the anchoring limitation areas are the sections of Biscayne Bay in Miami-Dade County which are within 200 yards of any part of the shore of the City of Miami Beach lying between State Road A1A and State Road 112.

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[23] Miami-Dade County, *About Biscayne Bay*, https://www.miamidade.gov/global/economy/environment/about-biscayne-bay.page (last visited Dec. 8, 2023).
[24] U.S. Army Corps of Engineers, *Biscayne Bay Coastal Wetlands Project*, https://www.saj.usace.army.mil/BBCW/ (last visited Dec. 8, 2023).
[25] Florida Department of Environmental Protection, *Biscayne Bay Aquatic Preserves*, https://floridadep.gov/rcp/aquatic-preserve/BiscayneBayAquaticPreserves (last visited Dec. 8, 2023); Miami-Dade County, *About Biscayne Bay*.
[26] City of Miami Beach, *2040 Miami Beach Comprehensive Plan*, 146 (2020), *available at* https://www.miamibeachfl.gov/wp-content/uploads/2021/05/2040-Comprehensive-Plan-12-9-2020-Adopted-Compressed.pdf.

The bill specifies that documentation used to prove that a vessel has not exceeded the limits of county-established anchoring limitation areas must show that the vessel was at least one *nautical* mile away with a certain period. Further, the bill specifies that electronic evidence used to prove the location of a vessel may include navigational devices or tracking devices if they are permanently affixed to the vessel.

Section 2 provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article III, section 10 of the Florida Constitution prohibits the Legislature from enacting any special law unless notice is first published or a referendum is conducted. A special law or "local law" relates to or operates upon a particular person, thing, or part of the state; it does not apply with geographic uniformity across the state and bears no reasonable relationship to differences in population or other legitimate criteria.[27] On the other hand, a general law of local application relates to a class of persons or things or subdivisions of the state, based upon distinctions or differences that are inherent or particular to the class or location. The Legislature is granted wide discretion in making such classifications.[28] If a particular condition exists in only a portion of the state, enactments that reference the limited geographic area may be general laws.[29] "[I]f a law utilizes a classification that is geographical in its terms but the purpose of the statue is one of statewide importance and impact, and the classification is reasonably related to the law's purpose, it is a valid general law."[30]

[27] *See State ex rel. Landis v. Harris*, 163 So. 237, 240 (Fla. 1934); and *Lawnwood Medical Center, Inc. v. Seeger*, 990 So.2d 503 (Fla. 2008).
[28] *Shelton v. Reeder*, 121 So. 2d 145, 151 (Fla. 1960). *But see also* FLA. CONST. Art. X, s. 11s.
[29] *Schrader v. Florida Keys Aqueduct Authority*, 840 So.2d 1050, 1055 (Fla. 2003).
[30] *Id*. at 1056.

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 327.4108 of the Florida Statutes.

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 Environment and Natural Resources on January 24, 2024:

- Expands the anchoring limitation areas in Biscayne Bay to include the sections of Biscayne Bay in Miami-Dade County that are within 200 yards of any part of the shore of the City of Miami Beach lying between State Road A1A and State Road 112.
- Specifies that documentation used to prove that a vessel has not exceeded the limits of a county-established anchoring limitation area must show the vessel at least one nautical mile away within a certain period.
- Specifies that electronic evidence used as proof of location may include navigational or tracking devices if they are permanently affixed to the vessel.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/23/2024	.	
	.	
	.	
	.	

The Committee on Environment and Natural Resources (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (c) of subsection (1) and paragraph (b) of subsection (6) of section 327.4108, Florida Statutes, are amended to read:

327.4108 Anchoring of vessels in anchoring limitation areas.—

(1) The following densely populated urban areas, which have

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narrow state waterways, residential docking facilities, and significant recreational boating traffic, are designated as and shall be considered to be grandfathered-in anchoring limitation areas, within which a person may not anchor a vessel at any time during the period between one-half hour after sunset and one-half hour before sunrise, except as provided in subsections (4) and (5):

(c) The sections of Biscayne Bay in Miami-Dade County that are within 200 yards of any part of the shore of the City of Miami Beach lying between State Road A1A and State Road 112~~:~~

~~1. Rivo Alto Island and Di Lido Island.~~

~~2. San Marino Island and San Marco Island.~~

~~3. San Marco Island and Biscayne Island~~.

(6)

(b)1. For a vessel in an anchoring limitation area established pursuant to subsection (2), upon an inquiry by a law enforcement officer or agency, a vessel owner or operator must be given an opportunity to provide proof that the vessel has not exceeded the limitations described in subsection (2). Such proof may include any of the following:

a. Documentation showing that the vessel was in another location at least 1 nautical mile away within a period of less than 45 days before the inquiry.

b. Electronic evidence, including, but not limited to, navigational devices or tracking devices permanently affixed to the vessel that show the vessel was in another location at least 1 nautical mile away within a period of less than 45 days before the inquiry.

2. If a vessel owner or operator fails or refuses to

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provide proof that the vessel has not exceeded the limitations described in subsection (2), the law enforcement officer or agency may issue a citation for a violation of this section.

Section 2. This act shall take effect July 1, 2024.

================ 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 anchoring limitation areas; amending s. 327.4108, F.S.; revising anchoring limitation areas in certain sections of Biscayne Bay in Miami-Dade County; revising documentation and evidence criteria for proving the location of a vessel within an anchoring limitation area; providing an effective date.

By Senator Garcia

36-00362A-24 2024192__

A bill to be entitled

An act relating to the anchoring of vessels in anchoring limitation areas; amending s. 327.4108, F.S.; revising the sections of Biscayne Bay within which a person may not anchor a vessel during a specified timeframe; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) of section 327.4108, Florida Statutes, is reordered and amended to read:

327.4108 Anchoring of vessels in anchoring limitation areas.—

(1) The following densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic, are designated as and shall be considered to be grandfathered-in anchoring limitation areas, within which a person may not anchor a vessel at any time during the period between one-half hour after sunset and one-half hour before sunrise, except as provided in subsections (4) and (5):

(c) The sections of Biscayne Bay in Miami-Dade County which are within 200 yards of any part of the shore of ~~lying between~~:

1. Biscayne Island.

2. Di Lido Island.

3. Hibiscus Island.

4. Palm Island.

5. Rivo Alto Island ~~and Di Lido Island~~.

7.~~2.~~ San Marino Island ~~and San Marco Island~~.

6.~~3.~~ San Marco Island ~~and Biscayne Island~~.

Section 2. This act shall take effect July 1, 2024.

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 Environment and Natural Resources

BILL:	CS/SB 1692
INTRODUCER:	Committee on Environment and Natural Resources and Senator Brodeur
SUBJECT:	Preventing Contaminants of Emerging Concern from Discharging Into Wastewater Facilities and Waters of the State
DATE:	January 24, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barriero	Rogers	EN	**Fav/CS**
2.			AEG	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1692 creates the Per- and Polyfluoroalkyl Substances (PFAS) and 1,4-Dioxane Pretreatment Initiative within the Department of Environmental Protection (DEP) to prevent contaminants of emerging concern from entering the waters of the state through wastewater facilities. The bill provides:

- By November 1, 2024, DEP must provide specific guidance to wastewater facilities with an industrial pretreatment program on the types of industrial users to be included in a required inventory of industrial users that are probable sources of 1,4-dioxane or certain types of PFAS;
- By July 1, 2025, each such wastewater facility must submit such an inventory to DEP, and DEP must develop its own inventory of major facilities that discharge directly into surface waters that are probable sources of these contaminants;
- DEP and wastewater facilities must provide written notice to all identified industrial users that they have been identified as a probable source of these contaminants and will be issued permits, orders, or other similar measures to enforce applicable pretreatment standards as early as one year after the written notice is sent; and
- Such permits, orders, or other similar measures must be issued by July 1, 2027.

The bill provides interim discharge limits and surface water quality standards for 1,4-dioxane and certain types of PFAS for industrial users until new specific discharge limits are established.

The interim limits go into effect beginning July 1, 2025. The bill allows a wastewater facility to develop and propose local limits for these contaminants to DEP.

II. Present Situation:

Wastewater Treatment

The proper treatment and disposal or reuse of wastewater is a crucial part of protecting Florida's water resources. The majority of the state's wastewater is controlled and treated by centralized treatment facilities regulated by the Department of Environmental Protection (DEP). There are over 4,100 active wastewater facilities regulated by DEP.[1] Approximately 2,100 of these facilities are classified as industrial and 2,000 as domestic wastewater.[2]

Under the federal Clean Water Act, any discharge of a pollutant from a point source[3] to surface waters (i.e., the navigable waters of the United States or beyond) must obtain a National Pollution Discharge Elimination System (NPDES) permit.[4] NPDES permit requirements for most wastewater facilities or activities (domestic or industrial) that discharge to surface waters are incorporated into a state-issued permit, thus giving the permittee one set of permitting requirements rather than one state and one federal permit.[5] DEP issues operation permits for a period of five years for facilities regulated under the NPDES program and up to 10 years for other domestic wastewater treatment facilities meeting certain statutory requirements.[6]

DEP oversees the development and implementation of local pretreatment programs in the state.[7] These local pretreatment programs are developed and implemented in accordance with the Clean Water Act, the state NPDES program within s. 403.0885, F.S., and Chapter 62-625 of the Florida Administrative Code. Pretreatment is the removal, reduction or alteration of pollutants in industrial wastewater prior to discharge or introduction into a domestic wastewater treatment facility. Metal finishing and related operations are a common source of industrial wastewater in Florida that typically requires treatment prior to discharge to a wastewater treatment facility.[8]

In general, a pretreatment program may be required if a publicly owned wastewater treatment facility receives discharge from significant industrial users and the wastewater treatment facility discharges to either surface waters of the state or various reuse systems. There are currently 67 active pretreatment programs.[9]

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[1] Dep't of Environmental Protection (DEP), *General Facts and Statistics about Wastewater in Florida*, https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida (last visited Jan. 18, 2023).
[2] *Id.*
[3] "Point source" is defined as any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. Fla. Admin. Code R. 62-620.200(37).
[4] 33 U.S.C. s. 1342.
[5] Sections 403.061 and 403.087, F.S.
[6] Section 403.087(3), F.S.
[7] DEP, *Domestic Wastewater Industrial Pretreatment Program*, https://floridadep.gov/water/domestic-wastewater/content/domestic-wastewater-industrial-pretreatment-program (last visited Jan. 18, 2024).
[8] *Id.*
[9] *Id.*

Biosolids

When domestic wastewater is treated, solid, semisolid, or liquid residue known as biosolids[10] accumulates in the wastewater treatment plant and must be removed periodically to keep the plant operating properly.[11] Biosolids also include products and treated material from biosolids treatment facilities and septage management facilities regulated by DEP.[12] The collected residue is high in organic content and contains moderate amounts of nutrients.[13]

According to DEP's estimates in 2019, wastewater treatment facilities produce about 340,000 dry tons of biosolids each year.[14] Biosolids can be disposed of in several ways: transfer to another facility, placement in a landfill, distribution and marketing as fertilizer, incineration, bioenergy, and land application to pasture or agricultural lands.[15] In 2019, about one-third of the total amount of biosolids produced was used for land application[16] and is subject to regulatory requirements established by DEP to protect public health and the environment.[17]

There is increasing concern over the presence of per- and polyfluoroalkyl substances (PFAS) in biosolids. While many PFASs have been found in biosolids, perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) are among the most abundant.[18] PFAS in biosolids is the result of the continued manufacture and use of these compounds throughout society, including by households, as well as industrial discharges of PFAS to wastewater.[19] EPA's Office of Water, the Environmental Council of the States, and the National Association of State Departments of Agriculture have jointly developed Principles for Preventing and Managing PFAS in Biosolids.[20] EPA is also currently conducting a risk assessment for PFOA and PFOS in biosolids, which is expected to be completed by December 2024.[21]

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[10] Biosolids are the solid, semisolid, or liquid residue generated during the treatment of domestic wastewater in a domestic wastewater treatment facility and include products and treated material from biosolids treatment facilities and septage management facilities. The term does not include the treated effluent or reclaimed water from a domestic wastewater treatment facility, solids removed from pump stations and lift stations, screenings and grit removed from the preliminary treatment components of domestic wastewater treatment facilities, or ash generated during the incineration of biosolids. Section 373.4595, F.S.

[11] DEP, *Domestic Wastewater Biosolids*, https://floridadep.gov/water/domestic-wastewater/content/domestic-wastewater-biosolids (last visited Jan. 24, 2024).

[12] Fla. Admin. Code R. 62-640.200(6).

[13] DEP, *Domestic Wastewater Biosolids*.

[14] DEP, *Biosolids in Florida*, 5 (2019), *available at* https://www.florida-stormwater.org/assets/MemberServices/Conference/AC19/02%20-%20Frick%20Tom.pdf#:~:text=Biosolids%20and%20Management%20in%20Florida%20Estimated%20Total%20Production,two-thirds%20are%20beneficially%20used%20and%20onethird%20is%20landfilled.

[15] *Id*. at 4.

[16] *Id*. at 5.

[17] Fla. Admin. Code R. 62-640.

[18] EPA, *EPA Biosolids PFOA & PFOS Problem Formulation Meeting Summary*, 1 (2020), *available at* https://www.epa.gov/sites/default/files/2021-02/documents/biosolids-pfoa-pfos-meeting-summary-nov-2020.pdf.

[19] EPA, *Joint Principles for Preventing and Managing PFAS in Biosolids*, 1 (2023), *available at* https://www.epa.gov/system/files/documents/2023-07/Joint-Principles-Preventing-Managing-PFAS.pdf.

[20] EPA, *Joint Principles for Preventing and Managing PFAS in Biosolids*, https://www.epa.gov/biosolids/joint-principles-preventing-and-managing-pfas-biosolids (last visited Jan. 24, 2024).

[21] EPA, *Risk Assessment of Pollutants in Biosolids*.

Penalties

Section 376.302, F.S., outlines the penalties for specific violations of Chapter 376, F.S., including:

- Discharge of pollutants or hazardous substances into the state's surface or ground waters or onto its lands in violation of any departmental standard;[22]
- Failure to obtain or comply with a permit required by Chapter 376, F.S., or to noncompliance with DEP rules, orders, permits, registrations, or certifications.

Violators are liable to the state for any damage caused and subject to civil penalties of up to $15,000 per offense, with each day during any portion of which such violation occurs constituting a separate offence.[23] There is an exception for discharges that are promptly reported and, where applicable, removed in accordance with DEP rules and orders when the site has been determined eligible for participation in a program described in s. 376.3078, F.S., (dry-cleaning facility restoration) or s. 376.3079, F.S. (third-party liability insurance for dry-cleaning facilities or wholesale supply facilities).[24]

However, any person who *willfully* commits these violations is guilty of a first-degree misdemeanor, punishable by a fine between $2,500 and $25,000, or one year in jail, or both, for each offense.[25] Each day during any portion of which such violation occurs constitutes a separate offense.[26]

In addition, it is a violation of Chapter 376, F.S., to:

- Knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under Chapter 376, F.S.; or
- Falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under Chapter 376, F.S., or by any permit, registration, rule, or order issued under this chapter.[27]

Any person who commits such violations is guilty of a first-degree misdemeanor, punishable by a fine of not more than $10,000 or by 6 months in jail, or by both, for each offense.[28]

Contaminants of Emerging Concern

Contaminants of Emerging Concern (CECs) are chemicals that are being discovered in water that previously had not been detected or are being detected at levels that may be different than

[22] "Standard" means any DEP rule relating to air and water quality, noise, solid-waste management, and electric and magnetic fields associated with electrical transmission and distribution lines and substation facilities. The term does not include rules which relate exclusively to the internal management of the department, the procedural processing of applications, the administration of rulemaking or adjudicatory proceedings, the publication of notices, the conduct of hearings, or other procedural matters. Section 403.803(13), F.S.
[23] Sections 376.302(2) and 403.141(1), F.S.
[24] Sections 376.302(2) and 376.311, F.S.
[25] Section 376.302(3), F.S.
[26] *Id.*
[27] Section 376.302(4), F.S.
[28] *Id.*

expected.[29] While there are no regulatory limits, there may be a long-term potential risk to human health or the environment associated with CECs. Additional studies may also bring new or changing health exposure information. The United States Environmental Protection Agency (EPA) prioritizes CECs for research and data collection. As part of this data collection, all large and selected smaller public water systems across the U.S. are required to monitor for the targeted CECs.[30]

PFAS

PFAS are a large and complex class of synthetic chemicals that are resistant to heat, water, and oil.[31] PFOA and PFOS are two of the most widely used and studied chemicals in the PFAS group.[32] PFOA and PFOS have been replaced in the U.S. with other PFAS in recent years.[33] In chemical and product manufacturing, GenX chemicals are considered a replacement for PFOA, and perfluorobutane sulfonate (PFBS) is considered a replacement for PFOS.[34]

PFAS have been used in a wide variety of consumer products and industrial processes since the 1940s.[35] Most people in the U.S. have been exposed to PFAS, primarily through touching, drinking, eating, or breathing in materials containing these chemicals.[36] PFAS may be present in:

- Drinking water;
- Waste sites, including soil and water at or near landfills, disposal sites, and hazardous waste sites;
- Fire extinguishing foam used in training and emergency response events at airports and firefighting training facilities;
- Manufacturing facilities, including chrome plating, electronics, and certain textile and paper manufacturers that produce or use PFAS;
- Consumer products, including stain- or water-repellent, or non-stick products, paints, sealants, and some personal care products;
- Food packaging, including grease-resistant paper, microwave popcorn bags, pizza boxes, and candy wrappers;
- Biosolids, including fertilizer from wastewater treatment plants used on agricultural lands; and
- Food, including fish caught from PFAS-contaminated water and dairy products from livestock exposed to PFAS.[37]

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[29] DEP, *Regulated Drinking Water Contaminants and Contaminants of Emerging Concern*, https://floridadep.gov/comm/press-office/content/regulated-drinking-water-contaminants-and-contaminants-emerging-concern (last visited Jan. 18, 2024).
[30] *Id.*
[31] DEP, *PFAS Dynamic Plan*, 3 (2022), *available at* https://floridadep.gov/sites/default/files/Dynamic_Plan_March_2022.pdf.
[32] EPA, *Drinking Water Health Advisories for PFAS: Fact Sheet for Communities*, 2 (2022) *available at* https://www.epa.gov/system/files/documents/2022-06/drinking-water-ha-pfas-factsheet-communities.pdf.
[33] *Id.*
[34] *Id.*
[35] EPA, *PFAS Explained*, 2 (2023), *available at* https://www.epa.gov/system/files/documents/2023-10/final-virtual-pfas-explainer-508.pdf.
[36] *Id.*
[37] *Id.*

Because PFAS do not break down in the environment—earning them the nickname "Forever Chemicals"—concentrations of PFAS can accumulate in people, wildlife, and the environment over time, infiltrate soils, and contaminate drinking water sources.[38] Even at very low levels, exposure to PFAS can cause serious health problems, including:

- Reproductive effects such as increased high blood pressure in pregnant people;
- Developmental effects or delays in children, including low birth weight, bone variations, or behavioral changes;
- Increased risk of some cancers, including kidney and testicular cancers;
- Reduced ability of the body's immune system to fight infections, including reduced vaccine effectiveness;
- Interference with the body's natural hormones, including thyroid hormones;
- Increased cholesterol levels; and
- Liver damage.[39]

Our understanding of these chemicals and their impact on human health is incomplete, and PFAS regulatory and technical developments are quickly evolving.[40] Currently, technologies capable of reducing PFAS in drinking water include granular activated carbon, anion exchange resins, reverse osmosis, and nanofiltration.[41]

In Florida, widespread use of PFAS has led to contamination of state groundwater resources, including private and public potable supply wells.[42] DEP has begun investigating potential sources of PFAS and has found PFAS at fire training facilities, state funded cleanup sites, and dry-cleaning sites. PFAS contamination has also been identified at federal facilities in Florida.[43]

Regulations and Guidance

The Safe Drinking Water Act gives EPA the authority to publish health advisories and set enforceable National Primary Drinking Water Regulations for drinking water contaminants.[44] EPA may also require monitoring of public water systems.[45]

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[38] *See* EPA, *Fact Sheet: EPA's Proposal to Limit PFAS in Drinking Water*, 5 (2023), *available at* https://www.epa.gov/system/files/documents/2023-04/Fact%20Sheet_PFAS_NPWDR_Final_4.4.23.pdf; U.S. Centers for Disease Control and Prevention, *Per- and Polyfluorinated Substances (PFAS)*, https://www.cdc.gov/biomonitoring/PFAS_FactSheet.html (last visited Jan. 17, 2024).
[39] EPA, *Fact Sheet: EPA's Proposal to Limit PFAS in Drinking Water*, 5 (2023), *available at* https://www.epa.gov/system/files/documents/2023-04/Fact%20Sheet_PFAS_NPWDR_Final_4.4.23.pdf.
[40] DEP, *PFAS Dynamic Plan*, 3 (2022), *available at* https://floridadep.gov/sites/default/files/Dynamic_Plan_March_2022.pdf.
[41] EPA, *Fact Sheet: EPA's Proposal to Limit PFAS in Drinking Water*, 2 (2023), *available at* https://www.epa.gov/system/files/documents/2023-04/Fact%20Sheet_PFAS_NPWDR_Final_4.4.23.pdf.
[42] DEP, *PFAS Dynamic Plan*, 3 (2022), *available at* https://floridadep.gov/sites/default/files/Dynamic_Plan_March_2022.pdf.
[43] *Id.*; DEP, *DEP's Efforts to Address PFAS in the Environment*, https://floridadep.gov/waste/waste-cleanup/content/dep%E2%80%99s-efforts-address-pfas-environment (last visited Jan. 16, 2024).
[44] EPA, *Fact Sheet: EPA's Proposal to Limit PFAS in Drinking Water*, 2 (2023), *available at* https://www.epa.gov/system/files/documents/2023-04/Fact%20Sheet_PFAS_NPWDR_Final_4.4.23.pdf.
[45] EPA, *Proposed PFAS National Primary Drinking Water Regulation*, https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas (last visited Jan. 16, 2024).

EPA has proposed enforceable maximum contaminant levels (MCLs) and published interim drinking water health advisories levels (HALs) for several types of PFAS. MCLs are legally enforceable standards that establish the maximum level of a contaminant allowed in drinking water which can be delivered to users of a public water system.[46] HALs are developed when a chemical is found in drinking water but no MCL has been established.[47] HALs are non-enforceable and non-regulatory and provide technical information to state agencies and other public health officials on health effects, analytical methods, and treatment technologies associated with drinking water contamination.[48] Lifetime HALs represent the concentration of a contaminant in drinking water at below which adverse health effects are not anticipated to occur over a lifetime.[49]

In 2016, EPA published drinking water HALs for PFOA and PFOS of 70 parts per trillion (ppt).[50] In 2022, EPA released updated HALs based on data indicating that the levels at which negative health effects could occur are much lower than previously understood.[51] The updated HALs included four types of PFAS and are as follows:

- PFOA 0.004 ppt or nanograms/Liter (ng/L).
- PFOS 0.02 ppt or ng/L.
- GenX 10 ppt or ng/L.
- PFBS 2,000 ppt or ng/L.[52]

The 2022 interim drinking water HALs for PFOA and PFOS will continue to remain available as EPA finalizes a national primary drinking water regulation for those contaminants.[53] In March 2023, EPA proposed MCLs for six types of PFAS known to occur in drinking water.[54] EPA is proposing to regulate PFOA and PFOS at a level they can be reliably measured—4.0 ppt or ng/L.[55] EPA is also proposing an enforceable MCL on a combination of PFBS, GenX chemicals, and other types of PFAS. For these PFAS, water systems would use an approach called a hazard

[46] EPA, *Fact Sheet: EPA's Proposal to Limit PFAS in Drinking Water*, 4 (2023), *available at* https://www.epa.gov/system/files/documents/2023-04/Fact%20Sheet_PFAS_NPWDR_Final_4.4.23.pdf.
[47] Florida Dep't of Health (DOH), *Chemical Contaminants–HALs and Chemical Fact Sheets*, https://www.floridahealth.gov/environmental-health/drinking-water/chemicals-hals.html (last visited Jan. 16, 2024).
[48] EPA, *Drinking Water Health Advisories for PFAS: Fact Sheet for Communities*, 2 (2022) *available at* https://www.epa.gov/system/files/documents/2022-06/drinking-water-ha-pfas-factsheet-communities.pdf.
[49] *Id.*
[50] *See* 87 Fed. Reb. 36848, 36849 (June 21, 2022). EPA also published interim recommendations for contaminated groundwater using the HAL of 70 ppt; however, that guidance has been rescinded. *See* EPA, *EPA Releases PFAS Groundwater Guidance for Federal Cleanup Programs, Fulfilling PFAS Action Plan Commitment*, https://www.epa.gov/newsreleases/epa-releases-pfas-groundwater-guidance-federal-cleanup-programs-fulfilling-pfas-action (last visited Jan. 17, 2024); EPA, *Interim Recommendations for Addressing Groundwater Contaminated with PFOA and PFOS*, https://www.epa.gov/pfas/interim-recommendations-addressing-groundwater-contaminated-pfoa-and-pfos (last visited Jan. 17, 2024).
[51] 87 Fed. Reb. 36848, 36849 (June 21, 2022).
[52] *Id.*
[53] EPA, *Drinking Water Health Advisories for PFAS: Fact Sheet for Communities*, 1 (2022) *available at* https://www.epa.gov/system/files/documents/2022-06/drinking-water-ha-pfas-factsheet-communities.pdf.
[54] 88 Fed. Reg. 18638, 18641 (Mar. 29, 2023); EPA, *Proposed PFAS National Primary Drinking Water Regulation*, https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas (last visited Jan. 16, 2024).
[55] *Id.*; 88 Fed. Reg. 18638, 18666.

index[56] to determine if the combined levels of these PFAS pose a potential risk. This approach protects communities from the additive effects of multiple PFAS when they occur together.[57]

EPA's proposed rule would also require public water systems to:
- Monitor for these types of PFAS;
- Notify the public of PFAS levels; and
- Reduce PFAS levels in drinking water if they exceed the proposed standards.[58]

In Florida, the Department of Health (DOH) has established a lifetime drinking water HAL for PFOA and PFOS of 70 ppt or ng/L, applied to PFOA and PFOS individually or combined.[59] This is consistent with EPA's initial HAL for these contaminants.

Under s. 376.91, F.S., if EPA has not finalized its standards for PFAS by January 1, 2025, DEP must adopt rules providing statewide cleanup target levels (CTLs) for PFAS in drinking water, groundwater, and soil with priority given to PFOA and PFOS. The rules for statewide CTLs for PFOA and PFOS may not take effect until ratified by the Legislature.[60] A CTL is the concentration for each contaminant identified by an applicable analytical test method, in the medium of concern, at which a site rehabilitation program is deemed complete.[61] DEP establishes by rule CTLs for specific contaminants.[62] These CTLs apply to requirements for site rehabilitation across numerous programs.

DEP's provisional groundwater and soil CTLs for PFOA and PFOS are as follows:[63]

Provisional CTLs		
Groundwater	Soil	
	Residential	Commercial/ Industrial
70 ng/L	1.3 mg/kg	25 mg/kg

ng/L = nanograms per liter (parts per trillion)

mg/kg = milligram per kilogram (parts per million)

[56] The Hazard Index is a tool used to evaluate health risks of simultaneous exposure to mixtures of related chemicals. EPA, *Fact Sheet: EPA's Proposal to Limit PFAS in Drinking Water*, 4 (2023), *available at* https://www.epa.gov/system/files/documents/2023-04/Fact%20Sheet_PFAS_NPWDR_Final_4.4.23.pdf.
[57] EPA, *Fact Sheet: EPA's Proposal to Limit PFAS in Drinking Water*, 1-2 (2023), *available at* https://www.epa.gov/system/files/documents/2023-04/Fact%20Sheet_PFAS_NPWDR_Final_4.4.23.pdf.
[58] EPA, *Proposed PFAS National Primary Drinking Water Regulation*, https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas (last visited Jan. 16, 2024).
[59] DEP, *PFAS Dynamic Plan*, 5 (2022), *available at* https://floridadep.gov/sites/default/files/Dynamic_Plan_March_2022.pdf.
[60] Section 376.91(2)(a), F.S.
[61] Section 376.301(8), F.S.
[62] *See generally* Fla. Admin. Code Ch. 62-777.
[63] DEP, *PFAS Dynamic Plan*, 10 (2022), *available at* https://floridadep.gov/sites/default/files/Dynamic_Plan_March_2022.pdf.

DEP has also developed screening levels for irrigation and surface water, which are not considered CTLS and are not enforceable.[64] The screening levels for surface water consider the protection of human health for the consumption of freshwater and estuarine finfish and shellfish.[65]

Provisional Surface Water Screening Levels			
	Human Health*	Ecological	
	Freshwater and Estuarine Finfish and Shellfish	Freshwater	Marine
PFOA	0.5 µg/L	1,300 µg/L	*Not enough data*
PFOS	0.01 µg/L	37 µg/L	13 µg/L

µg/L = microgram per liter (parts per billion)

* Human Health values are based on a Probabilistic Risk Assessment

Provisional Irrigation Water Screening Levels			
	Residential	Commercial/ Industrial	Produce
PFOA	6.7 µg/L	750 µg/L	NA
PFOS	72 µg/L	370 µg/L	0.6 µg/L

µg/L = microgram per liter (parts per billion)

1,4-Dioxane

1,4-dioxane is a man-made chemical widely used in laboratory and manufacturing processes and has been a byproduct of chemicals used in personal care products, laundry detergents, and food.[66] It has also been used as a stabilizer for chlorinated solvents and in the production of medicines and glues. 1,4-dioxane is found in paints, lacquers, dyes, waxes, greases, cosmetics, detergents, and other consumer products. It is also found in food from packaging material, in some food supplements, and on crops treated with pesticides containing 1,4-dioxane.[67] 1,4-dioxane is released into the environment in places where it is produced and used, contaminating the air, groundwater, and soil.[68] While 1,4-dioxine does not accumulate in plants or animals over time, it normally does not break down in groundwater.[69]

[64] *Id.* at 10-11.
[65] *Id.* at 10.
[66] DOH, *1,4-Dioxane*, 1 (2021), *available at* https://www.floridahealth.gov/environmental-health/hazardous-waste-sites/contaminant-facts/_documents/final-faq-14dx.pdf#:~:text=The%20current%20EPA%20Health%20Advisory%20Level%20%28HAL%29%20for,added%20to%20approximately%20150%20million%20gallons%20of%20water.
[67] *Id.*
[68] *Id.*
[69] *Id.*

1,4-dioxane has been identified as a contaminant of emerging concern and as a likely human carcinogen.[70] Exposure to 1,4-dioxane can cause nausea, drowsiness, headache, irritation of the eyes, nose, and throat, liver and kidney damage, and death. People can be exposed to this chemical by:

- Drinking contaminated water sourced from surface water contaminated with 1,4-dioxane discharged from industrial facilities;[71]
- Breathing it in after it has been released into the air during bathing or laundering clothes with contaminated water;
- Getting it on their skin from contaminated soil;
- Eating contaminated foods.[72]

Regulations and Guidance

DEP has established CTLs for 1,4-dioxane in groundwater, surface water, and soil pursuant to Chapters 62-780 and 62-777 of the Florida Administrative Code as follows:[73]

Groundwater	Surface Water	Soil	
		Residential	Commercial
3.2 µg/L	120 µg/L	23 mg/kg	38 mg/kg

µg/L = microgram per liter (parts per billion)
mg/kg = milligram per kilogram (parts per million)

EPA has not established a drinking water MCL for 1,4-dioxane. However, EPA and DOH have set a drinking water HAL of 0.35 micrograms per liter (µg/L).[74] There is no required routine sampling of public or private drinking water wells for this chemical.[75]

III. Effect of Proposed Changes:

Section 1 creates s. 376.92, F.S., regarding contaminants of emerging concern. The bill creates the Per- and Polyfluoroalkyl Substances (PFAS) and 1,4-Dioxane Pretreatment Initiative within the Department of Environmental Protection (DEP). The bill defines "PFAS" as per- and polyfluoroalkyl substances, including perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS). The purpose of the initiative is to prevent contaminants of emerging concern, including PFOS, PFOA, and 1,4-dioxane, from entering the waters of the state through wastewater facilities. The bill requires DEP to coordinate with wastewater facilities to implement the pretreatment of contaminants of emerging concern pursuant to this bill. The bill defines

[70] *Id.*
[71] EPA, *Final Risk Evaluation for 1,4-Dioxane*, https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/final-risk-evaluation-14-dioxane (last visited Jan. 24, 2024).
[72] DOH, *1,4-Dioxane*, 1 (2021), *available at* https://www.floridahealth.gov/environmental-health/hazardous-waste-sites/contaminant-facts/_documents/final-faq-14dx.pdf#:~:text=The%20current%20EPA%20Health%20Advisory%20Level%20%28HAL%29%20for,added%20to%20approximately%20150%20million%20gallons%20of%20water.
[73] *Id.*
[74] DOH, *1,4-Dioxane Fact Sheet* 1 (2016), *available at* https://www.floridahealth.gov/environmental-health/drinking-water/_documents/dioxanefs2016updated.pdf.
[75] *Id.*

"pretreatment" as the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater before or in lieu of discharging or otherwise introducing such pollutants into a wastewater facility. The reduction or alteration may be obtained by physical, chemical, or biological processes, by process changes, or by other means, except as prohibited by rule 62-625.410(5) of the Florida Administrative Code.[76]

The bill defines "wastewater facility" as a facility that discharges waste into waters of the state or which can reasonably be expected to be a source of water pollution and includes any of the following:

- The collection and transmission system.
- The wastewater treatment works.
- The reuse or disposal system.
- The biosolids management facility.

The bill provides that by November 1, 2024, DEP must provide specific guidance to wastewater facilities with an industrial pretreatment program on the types of industrial users to be included in a required inventory of industrial users that are probable sources of PFOS, PFOA, or 1,4-dioxane. The bill defines "industrial user" as a nondomestic source of a discharge. Upon issuance of DEP's guidance, each such wastewater facility must conduct such an inventory and submit it to DEP by July 1, 2025.

Within 30 days after submitting the inventory to DEP, the wastewater facility must send all industrial users identified in the wastewater facility's inventory a written notice that the industrial user has been identified as a probable source of PFOS, PFOA, or 1,4-dioxane. The notice must:

- Inform the industrial user that it will be issued permits, orders, or similar measures to enforce applicable pretreatment standards for PFOS, PFOA, or 1,4-dioxane, including specific discharge limits, as early as 1 year after the date the written notice has been sent to the user by wastewater facility; and
- Encourage the industrial user to take action to reduce the probability that PFOS, PFOA, or 1,4-dioxane discharges exceed specific discharge limits before permits, orders, or similar measures are issued to enforce applicable pretreatment standards and requirements.

The bill provides that all industrial users identified as probable sources of PFOS, PFOA, or 1,4-dioxane discharges must be issued permits, orders, or similar measures to enforce applicable pretreatment standards and requirements for PFOS, PFOA, or 1,4-dioxane by July 1, 2027. Each permit, order, or similar measure must include monitoring, sampling, reporting, and recordkeeping requirements.

The bill provides that a wastewater facility that begins implementing an industrial pretreatment program after July 1, 2024, must complete an inventory of industrial users to identify probable sources of PFOS, PFOA, or 1,4-dioxane discharges and must issue a permit, an order, or a similar measure to enforce applicable pretreatment standards and requirements consistent with this bill.

[76] Rule 62-625.410(5) of the Florida Administrative Code prohibits dilution as a substitute for treatment.

The bill allows DEP to expand the initiative to other wastewater treatment plants to include wastewater facilities permitted under the National Pollutant Discharge Elimination System (NPDES).

The bill also provides that, by July 1, 2025, DEP must complete an inventory of all industrial users that are major facilities that discharge directly to surface waters to identify probable sources of PFOS, PFOA, or 1,4-dioxane discharges. The bill defines a "major facility" as a facility or an activity permitted under the NPDES which is classified as such by the United States Environmental Protection Agency with the concurrence of the department. DEP must issue a notice to such a major facility specifying that the facility has been identified as a probable source of PFOS, PFOA, or 1,4-dioxane discharges. DEP must issue to the major facility a permit, an order, or a similar measure to enforce applicable pretreatment standards and requirements consistent with this bill.

The bill also provides that, beginning July 1, 2025, the following interim specific discharge limits and surface water quality standards for PFOS, PFOA, and 1,4-dioxane are established for industrial users until new specific discharge limits are established:

- For PFOS, 10 nanograms per liter.
- For PFOA, 170 nanograms per liter.
- For 1,4-dioxane, 200,000 nanograms per liter.

The bill allows a wastewater facility to develop and propose local limits for PFOS, PFOA, or 1,4-dioxane to DEP and may include the local limits in permits, orders, or similar measures once they are approved by DEP.

In addition, the bill provides that an industrial user is not subject to civil or criminal penalties for violations of applicable pretreatment standards and requirements for PFOS, PFOA, or 1,4-dioxane during the first 2 years after a permit, an order, or a similar measure is issued to the industrial user. A wastewater facility and DEP must take into consideration the costs of implementing best management practices and other corrective actions when taking enforcement action for violations of discharge limits and other applicable pretreatment standards and requirements for PFOS, PFOA, or 1,4-dioxane.

Section 2 provides that the Legislature finds that this act fulfills an important state interest.

Section 3 provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18 of the Florida Constitution provides in part that a county or municipality may not be bound by a general law requiring a county or municipality to spend funds or take an action that requires the expenditure of funds unless certain specified exemptions or exceptions are met. However, an exception to the county/municipality provisions of Article VII, section 18 of the Florida Constitution may apply. The bill is expected to impact wastewater facilities with industrial pretreatment

programs, which are programs administered by a public utility.[77] Under current regulations, a public utility is defined as any state, county, or municipality owning, managing, controlling or operating a domestic wastewater treatment facility.[78] Because the bill would have the same impact on state and local wastewater facilities, it likely complies with the constitutional exception for all persons similarly situated, including the state and local governments. Accordingly, the bill may be excepted from the mandate provisions if the Legislature determines that the bill fulfills an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private industrial users may incur costs related to complying with applicable pretreatment standards and requirements.

C. Government Sector Impact:

Public wastewater facilities may incur costs related to fulfilling the requirements under this bill, including identifying and providing notice to industrial users and monitoring and enforcing compliance with the bill's discharge limits. The Department of Environmental Protection may also incur costs related to the requirements of this bill, including providing written guidance to wastewater facilities, identifying and providing notice to major facilities that are probable sources of 1,4-dioxane and certain types of PFAS, and issuing permits, orders, or other similar measures accordingly.

VI. Technical Deficiencies:

When material other than Florida law is incorporated in a statute by reference, only the version of that material in existence at the time the Legislature made the incorporation will be given effect. Instead of codifying a reference to a rule, staff recommends revising the sentence on lines

[77] *See* Fla. Admin. Code R. 62-625.200(18).
[78] Fla. Admin. Code R. 62-625.200(21).

73-76 to read, "The reduction or alteration may be obtained by physical, chemical, or biological processes, by process changes, or by other means, except dilution."

In addition, because "wastewater treatment plants" is not defined in the bill, staff recommends removing this language on line 131 of the bill so the sentence reads, "The department may expand the initiative to other wastewater facilities permitted under the National Pollutant Discharge Elimination System."

VII. Related Issues:

The bill does not provide criteria or guidelines on how the Department of Environmental Protection would determine if a proposed local limit should be approved.

VIII. Statutes Affected:

This bill creates section 376.92 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 Environment and Natural Resources on January 23, 2024:
The amendment:

- Narrows the definition of "industrial user" to a nondomestic source of a discharge;
- Extends the deadline for the Department of Environmental Protection (DEP) to issue guidance to wastewater facilities from September 1, 2024, to November 1, 2024, and amends other deadlines;
- Changes the date the interim discharge limits go into effect from July 1, 2026, to July 1, 2025;
- Removes the provision allowing recommendations from members of the public on industrial users that should be included in the inventory;
- Removes requirement that wastewater facilities complete a grab sampling at each identified industrial user's facility;
- Requires DEP to create an inventory of industrial users that are major facilities discharging directly to surface waters (DEP's inventory is separate from that required of wastewater facilities), provide notice to such facilities if they are identified as a probable source of PFOS, PFOA, and 1,4-dioxane, and issue permits or other enforcement measures accordingly;
- Defines "major facility" as a facility or an activity permitted under the National Pollutant Discharge Elimination System which is classified as such by the United States Environmental Protection Agency with the concurrence of DEP;
- Allows wastewater facilities to propose local limits for PFOS, PFOA, and 1,4-dioxane, which must be approved by DEP;
- Amends the penalties provision to provide that an industrial user is not subject to civil or criminal penalties during the first two years after a permit, an order, or similar

measures is used to the industrial user (instead of allowing such penalties after July 1, 2027); and

- Provides that this act fulfills an important state interest.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/23/2024	.	
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The Committee on Environment and Natural Resources (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 376.92, Florida Statutes, is created to read:

376.92 Contaminants of emerging concern; inventory of probable sources of contamination; pretreatment.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Department" means the Department of Environmental

426688

Protection.

(b) "Industrial user" means a nondomestic source of a discharge.

(c) "Major facility" means a facility or an activity permitted under the National Pollutant Discharge Elimination System which is classified as such by the United States Environmental Protection Agency with the concurrence of the department.

(d) "PFAS" means per- and polyfluoroalkyl substances, including perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS).

(e) "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater before or in lieu of discharging or otherwise introducing such pollutants into a wastewater facility. The reduction or alteration may be obtained by physical, chemical, or biological processes, by process changes, or by other means, except as prohibited by rule 62-625.410(5), Florida Administrative Code.

(f) "Wastewater facility" means a facility that discharges waste into waters of the state or which can reasonably be expected to be a source of water pollution and includes any of the following:

1. The collection and transmission system.

2. The wastewater treatment works.

3. The reuse or disposal system.

4. The biosolids management facility.

(2) PFAS AND 1,4-DIOXANE PRETREATMENT INITIATIVE.—

(a) The PFAS and 1,4-dioxane pretreatment initiative is

426688

established within the department. The purpose of the initiative is to prevent contaminants of emerging concern, including PFOS, PFOA, and 1,4-dioxane, from entering the waters of the state through wastewater facilities. The department shall coordinate with wastewater facilities to implement the pretreatment of contaminants of emerging concern pursuant to this section.

(b) By November 1, 2024, the department shall provide specific guidance to wastewater facilities with an industrial pretreatment program on the types of industrial users to be included in a required inventory of industrial users that are probable sources of PFOS, PFOA, or 1,4-dioxane. Upon issuance of the guidance, each such wastewater facility shall conduct such an inventory and submit it to the department by July 1, 2025.

(c) Within 30 days after submitting the inventory required by paragraph (b), the wastewater facility shall send all industrial users identified in the wastewater facility's inventory a written notice that the industrial user has been identified as a probable source of PFOS, PFOA, or 1,4-dioxane. The notice must:

1. Inform the industrial user that it will be issued permits, orders, or similar measures to enforce applicable pretreatment standards for PFOS, PFOA, or 1,4-dioxane, including specific discharge limits, as early as 1 year after the date the written notice has been sent to the user by wastewater facility.

2. Encourage the industrial user to take action to reduce the probability that PFOS, PFOA, or 1,4-dioxane discharges exceed specific discharge limits before permits, orders, or similar measures are issued to enforce applicable pretreatment standards and requirements.

(d) All industrial users identified as probable sources of PFOS, PFOA, or 1,4-dioxane discharges must be issued permits, orders, or similar measures to enforce applicable pretreatment standards and requirements for PFOS, PFOA, or 1,4-dioxane by July 1, 2027. Each permit, order, or similar measure must include monitoring, sampling, reporting, and recordkeeping requirements.

(e) A wastewater facility that begins implementing an industrial pretreatment program after July 1, 2024, shall complete an inventory of industrial users to identify probable sources of PFOS, PFOA, or 1,4-dioxane discharges and shall issue a permit, an order, or a similar measure to enforce applicable pretreatment standards and requirements consistent with this section.

(f) The department may expand the initiative to other wastewater treatment plants to include wastewater facilities permitted under the National Pollutant Discharge Elimination System.

(g) By July 1, 2025, the department shall complete an inventory of all industrial users that are major facilities that discharge directly to surface waters to identify probable sources of PFOS, PFOA, or 1,4-dioxane discharges. The department shall issue a notice to such a major facility specifying that the facility has been identified as a probable source of PFOS, PFOA, or 1,4-dioxane discharges, and shall issue to the major facility a permit, an order, or a similar measure to enforce applicable pretreatment standards and requirements consistent with this section.

(3) DISCHARGE LIMITS.—

426688

(a) Beginning July 1, 2025, the following interim specific discharge limits for PFOS, PFOA, and 1,4-dioxane for industrial users are established until new specific discharge limits are established:

1. For PFOS, 10 nanograms per liter.

2. For PFOA, 170 nanograms per liter.

3. For 1,4-dioxane, 200,000 nanograms per liter.

(b) A wastewater facility may develop and propose local limits for PFOS, PFOA, or 1,4-dioxane to the department and may include the local limits in permits, orders, or similar measures once they are approved by the department.

(4) VIOLATIONS AND ADMINISTRATIVE ACTION.—An industrial user is not subject to civil or criminal penalties for violations of applicable pretreatment standards and requirements for PFOS, PFOA, or 1,4-dioxane during the first 2 years after a permit, an order, or a similar measure is issued to the industrial user. A wastewater facility and the department shall take into consideration the costs of implementing best management practices and other corrective actions when taking enforcement action for violations of discharge limits and other applicable pretreatment standards and requirements for PFOS, PFOA, or 1,4-dioxane.

Section 2. The Legislature finds that this act fulfills an important state interest.

Section 3. This act shall take effect July 1, 2024.

================ 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

426688

and insert:

A bill to be entitled

An act relating to preventing contaminants of emerging concern from discharging into wastewater facilities and waters of the state; creating s. 376.92, F.S.; defining terms; establishing the PFAS and 1,4-dioxane pretreatment initiative within the Department of Environmental Protection for a specified purpose; requiring the department to coordinate with wastewater facilities in implementing the pretreatment of contaminants of emerging concern; requiring the department, by a specified date, to provide certain guidance to wastewater facilities with an industrial pretreatment program; requiring such wastewater facilities to conduct an inventory of industrial users that are probable sources of specified contaminants and to submit the inventory to the department by a specified date; requiring wastewater facilities to notify identified industrial users; providing requirements for the notice; requiring that industrial users identified as probable sources of the specified contaminants be issued permits, orders, or similar measures to enforce specified pretreatment standards by a specified date; providing requirements for such measures; providing requirements for certain wastewater facilities that have industrial pretreatment programs which begin implementing an industrial treatment program after a specified date; authorizing the department to expand the initiative;

426688

requiring the department to conduct an inventory of major facilities that discharge directly to surface waters to identify probable sources of the specified contaminants; requiring the department to issue a notice and permits, orders, or similar measures to such a major facility to enforce specified pretreatment standards; providing interim discharge limits for industrial users beginning on a specified date; providing that such limits are effective for a specified timeframe; authorizing wastewater facilities to develop and propose local limits for PFOS, PFOA, or 1,4-dioxane to the department for approval; providing that industrial users are not subject to civil or criminal penalties for violations of certain standards and requirements during a specified period; requiring wastewater facilities and the department to take into consideration specified factors when taking enforcement actions for such violations; providing a declaration of important state interest; providing an effective date.

By Senator Brodeur

10-00784-24 20241692__

A bill to be entitled

An act relating to preventing contaminants of emerging concern from discharging into wastewater facilities and waters of the state; creating s. 376.92, F.S.; defining terms; establishing the PFAS and 1,4-dioxane pretreatment initiative within the Department of Environmental Protection for a specified purpose; providing requirements for certain wastewater facilities with industrial pretreatment programs which begin implementing an industrial pretreatment program after a specified date; authorizing the department to expand the initiative; providing discharge limits and surface water quality standards for industrial users beginning on a specified date; providing that such limits and standards are effective until the department adopts specified rules and such rules are ratified by the Legislature; requiring the department to incorporate such limits and standards into certain permitting requirements; requiring the department to create a schedule for ongoing sampling, reporting, and compliance; providing requirements for enforcement actions for violations after a specified date; providing an effective date.

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

Section 1. Section 376.92, Florida Statutes, is created to read:

376.92 Contaminants of emerging concern; inventory of

probable sources of contamination; pretreatment.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Department" means the Department of Environmental Protection.

(b) "Industrial user" means a source of discharge.

(c) "PFAS" means per- and polyfluoroalkyl substances, including perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS).

(d) "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater before or in lieu of discharging or otherwise introducing such pollutants into a wastewater facility. The reduction or alteration may be obtained by physical, chemical, or biological processes, by process changes, or by other means, except as prohibited by rule 62-625.410(5), Florida Administrative Code.

(e) "Wastewater facility" means a facility that discharges waste into waters of the state or which can reasonably be expected to be a source of water pollution and includes any of the following:

1. The collection and transmission system.

2. The wastewater treatment works.

3. The reuse or disposal system.

4. The biosolids management facility.

(2) PFAS AND 1,4-DIOXANE PRETREATMENT INITIATIVE.—

(a) The PFAS and 1,4-dioxane pretreatment initiative is established within the department. The purpose of the initiative is to coordinate wastewater facility industrial pretreatment programs. A wastewater facility with an industrial pretreatment

program shall do all of the following:

1. Complete and provide to the department between June 1, 2025, and July 1, 2025, an inventory of industrial users to identify probable sources of PFOS, PFOA, or 1,4-dioxane.

a. The department shall provide written guidance to all wastewater facilities with industrial pretreatment programs on or before September 1, 2024, which includes, but is not limited to, the industry types and other known at-risk sites that should be included as part of each wastewater facility's inventory of probable sources of PFOS, PFOA, or 1,4-dioxane discharge.

b. On or before January 1, 2025, a member of the public may recommend to the waste water facilities and the department industrial users that should be included in the probable sources inventory of each wastewater facility with an industrial pretreatment program.

2. On or before March 1, 2025, provide notice to the department and to any industrial user that has been initially identified by the inventory as being a probable source of PFOS, PFOA, or 1,4-dioxane discharges.

a. The notice must include a statement that the identified industrial users may become subject to applicable pretreatment standards and requirements, including specific discharge limits for PFOS, PFOA, or 1,4-dioxane pursuant to the pretreatment program, and that these contaminants may be controlled through permit, order, or similar means beginning on July 1, 2026.

b. An industrial user may respond to the notice by May 1, 2025, to provide any compelling information as to why the industrial user is not a probable source of PFOS, PFOA, or 1,4-dioxane discharge.

3. Submit to the department the final inventory of the industrial users that are subject to applicable pretreatment standards and requirements, including specific discharge limits for PFOS, PFOA, or 1,4-dioxane, and provide notice to the industrial users on the list that such users will be issued permits, orders, or similar measures to enforce applicable pretreatment standards and requirements for PFOS, PFOA, or 1,4-dioxane beginning on July 1, 2026. The wastewater facility and the department shall encourage an industrial user identified by the final inventory to take action to reduce the likelihood that its PFOS, PFOA, or 1,4-dioxane discharges exceed specific discharge limits before the issuance of a permit, order, or similar measures to enforce applicable pretreatment standards and requirements.

4. Issue a permit, order, or similar measure to enforce applicable pretreatment standards and requirements for PFOS, PFOA, or 1,4-dioxane, including specific discharge limits, which will become effective on July 1, 2026. A wastewater facility shall require that each industrial user perform self-monitoring and sampling and meet reporting, notification, and record-keeping requirements, including identification of how the industrial user shall monitor PFOS, PFOA, or 1,4-dioxane, sampling locations, sampling frequency, and sample types.

5. Complete, between July 1, 2026, and January 1, 2027, a grab sampling at each identified industrial user’s facilities and other at-risk sites that are probable sources of PFOS, PFOA, or 1,4-dioxane discharges. If the self-reported data or a department grab sample is at or above specified discharge limits for PFOS, PFOA, or 1,4-dioxane, the wastewater facility must

implement on or before July 1, 2027, appropriate corrective action, including, but not limited to, the use of best management practices, changes in processes, product replacements, equipment or tank change-outs or clean-outs, or pretreatment technologies to reduce or eliminate PFOS, PFOA, or 1,4-dioxane at such industrial facilities and other at-other risk sites.

(b) A wastewater facility that begins implementing an industrial pretreatment program after July 1, 2024, shall complete an inventory of industrial users to identify probable sources of PFOS, PFOA, or 1,4-dioxane discharges and must issue a permit, order, or similar measure to enforce applicable pretreatment standards and requirements consistent with this section.

(c) The department may expand the initiative to other wastewater treatment plants to include wastewater facilities permitted under the National Pollutant Discharge Elimination System.

(3) DISCHARGE LIMITS AND WATER QUALITY STANDARDS.—

(a) Beginning July 1, 2026, the following specific discharge limits and surface water quality standards for PFOS, PFOA, and 1,4-dioxane are established for industrial users until new specific discharge limits are adopted by the department using criteria set forth in s. 376.30701 and ratified by the Legislature:

1. For PFOS, 10 nanograms per liter.

2. For PFOA, 170 nanograms per liter.

3. For 1,4-dioxane, 200,000 nanograms per liter.

(b) The department shall incorporate the interim surface

water quality standards for PFOS, PFOA, or 1,4-dioxane into the permitting requirements for wastewater facilities with industrial pretreatment programs with an industrial user that has a self-reported violation of discharge limits or if the wastewater facility has taken a grab sample at or above discharge limits for PFOS, PFOA, or 1,4-dioxane. The department shall create a schedule for ongoing sampling, reporting, and compliance for wastewater facilities with these new permitting requirements for PFOS, PFOA, and 1,4-dioxane.

(4) VIOLATIONS AND ADMINISTRATIVE ACTION.—On or before July 1, 2027, an entity may not be subject to civil or criminal penalties for violations of this section. After July 1, 2027, the department shall take into consideration the financial situation and the costs of implementing best management practices and other corrective actions for each wastewater facility out of compliance with its permit, order, or similar means when considering enforcement actions for violations of applicable pretreatment standards and requirements or violations of water quality standards.

Section 2. This act shall take effect July 1, 2024.

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 Environment and Natural Resources

BILL:	SB 1546
INTRODUCER:	Senator Stewart
SUBJECT:	Statewide Drinking Water Standards
DATE:	January 22, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barriero	Rogers	EN	**Favorable**
2.			AEG	
3.			FP	

I. Summary:

SB 1546 requires the Department of Environmental Protection (DEP) to adopt rules that establish a statewide drinking water maximum contaminant level for 1,4-dioxane of less than or equal to 0.35 micrograms per liter. Such rules must require a public water system to test all of its groundwater wells for 1,4-dioxane by January 1, 2025. If such testing detects 1,4-dioxane at levels greater than 0.35 micrograms per liter, the public water system must:

- Develop and submit to DEP for approval a mitigation plan to bring any such concentration to an amount at or below such level, and comply with the new standards within 5 years after such rules are adopted;
- Retest for 1,4-dioxane at a frequency determined by DEP; and
- Make the mitigation plan and the results of any testing publicly available.

If such testing detects 1,4-dioxane at a level of 0.35 micrograms per liter or less, the public water system must:

- Make the results of such testing publicly available; and
- Retest for 1,4-dioxane in the system's groundwater wells within five years.

The bill also requires DEP to provide financial assistance to a public water system for the purpose of updating any infrastructure necessary to meet the standards for 1,4-dioxane. Such assistance must include, at a minimum, 20 percent of the funding necessary to update the infrastructure to meet such standards. The bill requires DEP to establish by rule criteria for determining the needs of a public water system and the amount of funds necessary to meet the applicable requirements when 1,4-dioxane levels exceed state standards (i.e., developing a mitigation plan and retesting).

II. Present Situation:

Federal and State Safe Drinking Water Act

The federal Safe Drinking Water Act regulates drinking water standards for all states.[1] To ensure the standards are met, the U.S. Environmental Protection Agency (EPA) sets the maximum allowable amount of a contaminant in drinking water, known as a maximum contaminant level (MCL).[2] EPA calculates these standards based on a lifetime of exposure.[3] A person would need to drink two liters of water that exceeds the standard every day for 70 years before having an increased chance of adverse health effects.[4] EPA establishes testing schedules and methods that water systems must follow to monitor for contaminants.[5] EPA may also develop health advisory levels (HALs) when a chemical is found in drinking water but no MCL has been established.[6] HALs are non-enforceable and non-regulatory and provide technical information to state agencies and other public health officials on health effects, analytical methods, and treatment technologies associated with drinking water contamination.[7]

The Department of Environmental Protection (DEP) implements the Safe Drinking Water Act in Florida and has adopted EPA regulations and rules.[8] DEP's rules on drinking water standards, monitoring, and reporting are found within Chapter 62-500 of the Florida Administrative Code. Requirements for public water systems that are not in compliance with established standards are within Chapter 62-560 of the Florida Administrative Code.

DEP issues permits to public water systems[9] and conducts site inspections to ensure that water quality standards and permit requirements are being met.[10] If a compliance issue is identified, facilities must increase the frequency of their water testing. DEP makes the water-quality test results available to the public. DEP may only require testing for those contaminants for which MCLs have been set by DEP or for which the EPA or DEP has established a correlation between pollutant concentration and human health effects.[11]

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[1] *See* 42 USC § 300f et seq.
[2] DEP, *Standards and Facts: Drinking Water*,1 (2016), *available at* https://floridadep.gov/sites/default/files/drinking-water-standards-facts.pdf.
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] Florida Dep't of Health (DOH), *Chemical Contaminants–HALs and Chemical Fact Sheets*, https://www.floridahealth.gov/environmental-health/drinking-water/chemicals-hals.html (last visited Jan. 16, 2024).
[7] EPA, *Drinking Water Health Advisories for PFAS: Fact Sheet for Communities*, 2 (2022) *available at* https://www.epa.gov/system/files/documents/2022-06/drinking-water-ha-pfas-factsheet-communities.pdf.
[8] DEP, *Standards and Facts: Drinking Water*,1 (2016), *available at* https://floridadep.gov/sites/default/files/drinking-water-standards-facts.pdf.
[9] "Public water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances if such system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days of the year. A public water system is either a community or noncommunity water system and includes: (a) any collection, treatment, storage, and distribution facility or facilities under control of the operator of such system and used primarily in connection with such system; and (b) any collection or pretreatment storage facility or facilities not under control of the operator of such system but used primarily in connection with such system. Section 403.852(2), F.S.
[10] DEP, *Standards and Facts: Drinking Water*,1 (2016), *available at* https://floridadep.gov/sites/default/files/drinking-water-standards-facts.pdf.
[11] Section 403.853(7), F.S.

State drinking water regulations apply to all public water systems, unless the system:

- Consists of distribution and storage facilities only and does not have any collection or treatment facilities;
- Obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;
- Does not sell water to any person; and
- Is not a carrier which conveys passengers in interstate commerce.[12]

Drinking Water State Revolving Loan Fund

The Drinking Water State Revolving Loan Fund is a federal-state partnership through which a permanent drinking water infrastructure revolving loan fund has been created in every state.[13] The federal government provides capitalization grants to states, and states provide a 20 percent match. The principal objective of the fund is to facilitate compliance with national primary drinking water regulations and advance the public health protection objectives of the Safe Drinking Water Act. States are required to give priority for the use of revolving loan funds to:

- Address the most serious risks to human health;
- Ensure compliance with the requirements of the Safe Drinking Water Act; and
- Assist systems most in need on a per household basis according to state affordability criteria.[14]

States have the option of taking a variety of set-asides which help fund state programs and activities to ensure safe drinking water.[15] In total, states may take approximately 31 percent of their capitalization grant in set-asides. There are four types of set-asides:

- Four percent, $400,000, or 1/5th percent of the current valuation of the fund for revolving fund program administration
- Two percent for technical assistance to small systems (systems serving 10,000 or fewer persons);
- Ten percent for state program management;
- Fifteen percent for local assistance and other state programs.[16]

After taking the set-asides, states then place the balance of their capitalization grant, together with the state match, into a dedicated revolving loan fund. This revolving fund provides loans and other authorized assistance to water systems for eligible infrastructure projects. As water systems repay their loans, the repayments and interest flow back into the dedicated revolving fund. These funds may be used to make additional loans.[17]

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[12] Section 403.853(2), F.S.
[13] *See* 42 USC §300j-12.; EPA, *How the Drinking Water State Revolving Fund Works*, https://www.epa.gov/dwsrf/how-drinking-water-state-revolving-fund-works#tab-1 (last visited Jan. 20, 2024).
[14] *Id.*
[15] EPA, *How the Drinking Water State Revolving Fund Works*, https://www.epa.gov/dwsrf/how-drinking-water-state-revolving-fund-works#tab-1 (last visited Jan. 20, 2024).
[16] *Id.*
[17] *Id.*

There are six categories of projects that are eligible to receive revolving loan funds:

- Treatment: Projects to install or upgrade facilities to improve drinking water quality to comply with SDWA regulations;
- Transmission and distribution: Rehabilitation, replacement, or installation of pipes to improve water pressure to safe levels or to prevent contamination caused by leaky or broken pipes;
- Source: Rehabilitation of wells or development of eligible sources to replace contaminated sources;
- Storage: Installation or upgrade of finished water storage tanks to prevent microbiological contamination from entering the distribution system;
- Consolidation: Interconnecting two or more water systems; and
- Creation of new systems: Constructing a new system to serve homes with contaminated individual wells or consolidate existing systems into a new regional water system.[18]

Florida's revolving loan fund was created to provide infrastructure financing, technical assistance, and source water protection programs to assist public drinking water systems in achieving and maintaining compliance with the state and federal Safe Drinking Water Act.[19] DEP may make loans, grants, and deposits to:

- Community water systems;
- For-profit, privately owned, or investor-owned water systems;
- Nonprofit, transient, noncommunity water systems; and
- Nonprofit, *nontransient*, noncommunity water systems to assist them in planning, designing, and constructing public water systems.[20]

DEP may provide loan guarantees, purchase loan insurance, and refinance local debt through the issue of new loans for projects approved by DEP.[21] Public water systems may pledge any revenues or other adequate security available to them to repay any funds borrowed.[22] DEP may also provide financial assistance to financially disadvantaged communities for the purpose of planning, designing, and constructing public water systems.[23] Such assistance may include the forgiveness of loan principal.[24] To the extent not allowed by federal law, DEP may not provide financial assistance for projects primarily intended to serve future growth.[25]

DEP must administer loans so that amounts credited to the Drinking Water State Revolving Loan Fund in any fiscal year are reserved for the following purposes:

- At least 15 percent for qualifying small public water systems; and
- Up to 15 percent for qualifying financially disadvantaged communities.[26]

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[18] EPA, *Drinking Water State Revolving Fund Eligibilities*, https://www.epa.gov/dwsrf/dwsrf-eligibilities (last visited Jan. 22, 2024).
[19] Section 403.8532(1), F.S.
[20] Section 403.8532(3), F.S.
[21] *Id.*
[22] *Id.*
[23] Section 403.8532(6)(a), F.S.
[24] *Id.*
[25] Section 403.8532(7), F.S.
[26] Section 403.8532(3)(a), F.S.

The total amount of money loaned to any public water system during a fiscal year must be no more than 25 percent of the total funds available for making loans during that year.[27] The minimum amount of a loan is $75,000.[28]

DEP's rules governing the Drinking Water State Revolving Loan Fund are found within Chapter 62-552 of the Florida Administrative Code.

1,4-Dioxane

1,4-dioxane is a man-made chemical widely used in laboratory and manufacturing processes and has been a byproduct of chemicals used in personal care products, laundry detergents, and food.[29] It has also been used as a stabilizer for chlorinated solvents and in the production of medicines and glues. 1,4-dioxane is found in paints, lacquers, dyes, waxes, greases, cosmetics, detergents, and other consumer products. It is also found in food from packaging material, in some food supplements, and on crops treated with pesticides containing 1,4-dioxane.[30] 1,4-dioxane is released into the environment in places where it is produced and used, contaminating the air, groundwater, and soil.[31] While 1,4-dioxine does not accumulate in plants or animals over time, it normally does not break down in groundwater.[32]

1,4-dioxane has been identified as a contaminant of emerging concern and as a likely human carcinogen.[33] Exposure to 1,4-dioxane can cause nausea, drowsiness, headache, irritation of the eyes, nose, and throat, liver and kidney damage, and death. People can be exposed to this chemical by:

- Drinking contaminated tap water;
- Breathing it in after it has been released into the air during bathing or laundering clothes with contaminated water;
- Getting it on their skin from contaminated soil;
- Eating contaminated foods.[34]

Regulations and Guidance

DEP enforces state regulated levels for 1,4-dioxane in groundwater, surface water, and soil pursuant to Chapters 62-780 and 62-777 of the Florida Administrative Code as follows:[35]

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[27] Section 403.8532(8), F.S.
[28] *Id.*
[29] DOH, *1,4-Dioxane*, 1 (2021), *available at* https://www.floridahealth.gov/environmental-health/hazardous-waste-sites/contaminant-facts/_documents/final-faq-14dx.pdf#:~:text=The%20current%20EPA%20Health%20Advisory%20Level%20%28HAL%29%20for,added%20to%20approximately%20150%20million%20gallons%20of%20water.
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] DOH, *1,4-Dioxane*, 2 (2021), *available at* https://www.floridahealth.gov/environmental-health/hazardous-waste-sites/contaminant-facts/_documents/final-faq-14dx.pdf#:~:text=The%20current%20EPA%20Health%20Advisory%20Level%20%28HAL%29%20for,added%20to%20approximately%20150%20million%20gallons%20of%20water.

Groundwater	Surface Water	Soil	
		Residential	Commercial
3.2 µg/L	120 µg/L	23 mg/kg	38 mg/kg

µg/L = microgram per liter (parts per billion)
mg/kg = milligram per kilogram (parts per million)

EPA has not established a drinking water MCL for 1,4-dioxane. However, EPA and DOH have set a drinking water HAL of 0.35 micrograms per liter (µg/L).[36] There is no required routine sampling of public or private drinking water wells for this chemical.[37]

III. Effect of Proposed Changes:

Section 1 amends s. 403.851, F.S., regarding the declaration of policy and intent of the Florida Safe Drinking Water Act. Currently, this statute provides that it is the policy of the state that citizens of Florida be assured of the availability of safe drinking water. The bill amends this language to provide that it is the policy of the state that the *residents of this state be protected from harmful toxins in drinking water* and be assured of the availability of safe drinking water.

Section 2 amends s. 403.853, F.S., regarding drinking water standards. The bill requires the Department of Environmental Protection (DEP) to adopt and implement rules that establish a statewide drinking water maximum contaminant level for 1,4-dioxane of less than or equal to 0.35 micrograms per liter. Such rules must require a public water system to test all of the system's groundwater wells for 1,4-dioxane by January 1, 2025. If such testing detects 1,4-dioxane at levels greater than 0.35 micrograms per liter, the public water system must:

- Develop and submit to DEP for approval a mitigation plan to bring any such concentration to an amount at or below such level, and comply with the new standards within 5 years after such rules are adopted. The mitigation plan may include installing any required infrastructure to meet such requirements;
- Retest for 1,4-dioxane in the system's groundwater wells at a frequency determined by DEP; and
- Make the mitigation plan submitted to and approved by DEP and the results of any testing publicly available.

If such testing detects 1,4-dioxane at a level of 0.35 micrograms per liter or less, the public water system must:

- Make the results of such testing publicly available; and
- Retest for 1,4-dioxane in the system's groundwater wells within five years after the previous test.

Section 3 amends s. 403.8532, F.S., regarding the drinking water state revolving loan fund. The bill requires DEP to provide financial assistance to a public water system for the purpose of

[36] DOH, *1,4-Dioxane Fact Sheet* 1 (2016), *available at* https://www.floridahealth.gov/environmental-health/drinking-water/_documents/dioxanefs2016updated.pdf.
[37] *Id.*

updating any infrastructure necessary to meet the standards for 1,4-dioxane under s. 403.853(3)(b), F.S., as amended by this bill. The bill provides that such assistance must include, at a minimum, 20 percent of the funding necessary to update the infrastructure to meet such standards.

The bill requires DEP to establish by rule criteria for determining the needs of a public water system and the amount of funds necessary to meet the requirements of s. 403.853(3)(b)2., F.S., as amended by this bill.

Section 4 provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18 of the Florida Constitution provides in part that a county or municipality may not be bound by a general law requiring a county or municipality to spend funds or take an action that requires the expenditure of funds unless certain specified exemptions or exceptions are met. The county and municipality mandate provisions of Article VII, section 18 of the Florida Constitution may apply because the bill requires the Department of Environmental Protection to adopt rules requiring public water systems to expend funds to comply with the statewide standards for 1,4-dioxane. Accordingly, the bill must be found to fulfill an important state interest and have a 2/3 vote of the membership of each house.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Environmental Protection may incur costs to develop and implement rules establishing the maximum contaminant level (MCL) for 1,4-dioxane. Public water systems may incur costs to test their system's groundwater wells, develop a mitigation plan, if necessary, and otherwise comply with the MCL for 1,4-dioxane.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that the Department of Environmental Protection (DEP) must adopt and implement rules requiring public water systems to test their groundwater wells by January 1, 2025, six months from the effective date of this bill. DEP and public water systems may benefit from having more time to comply with the bill's requirements.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 403.851, 403.853, and 403.8532.

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 Stewart

17-00294B-24 20241546__

A bill to be entitled

An act relating to statewide drinking water standards; amending s. 403.851, F.S.; revising the policy of the state regarding safe drinking water; amending s. 403.853, F.S.; requiring the Department of Environmental Protection to adopt and implement rules for a statewide maximum contaminant level for 1,4-dioxane; providing requirements for such rules; amending s. 403.8532, F.S.; requiring the department to provide public water systems financial assistance necessary to update system infrastructure to meet certain standards; requiring the department to establish by rule criteria for a public water system to receive such financial assistance; providing an effective date.

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

Section 1. Section 403.851, Florida Statutes, is amended to read:

403.851 Declaration of policy; intent.—It is the policy of the state that the residents of this state be protected from harmful toxins in drinking water and ~~citizens of Florida shall~~ be assured of the availability of safe drinking water. Recognizing that this policy encompasses both environmental and public health aspects, it is the intent of the Legislature to provide a water supply program operated jointly by the department, in a lead-agency role of primary responsibility for the program, and by the Department of Health and its units,

including county health departments, in a supportive role with specific duties and responsibilities of its own. Without any relinquishment of Florida's sovereign powers and responsibilities to provide for the public health, public safety, and public welfare of the people of Florida, the Legislature intends:

(1) To give effect to Pub. L. No. 93-523 promulgated under the commerce clause of the United States Constitution, to the extent that interstate commerce is directly affected.

(2) To encourage cooperation between federal, state, and local agencies, not only in their enforcement role, but also in their service and assistance roles to city and county elected bodies.

(3) To provide for safe drinking water at all times throughout this ~~the~~ state, with due regard for economic factors and efficiency in government.

Section 2. Subsection (3) of section 403.853, Florida Statutes, is amended to read:

403.853 Drinking water standards.—

(3)(a) The department shall adopt and implement adequate rules specifying procedures for the enforcement of state primary and secondary drinking water regulations, including monitoring and inspection procedures, which ~~that~~ comply with regulations established by the administrator pursuant to the federal act.

(b) The department shall adopt and implement rules that establish a statewide drinking water maximum contaminant level for 1,4-dioxane of less than or equal to 0.35 micrograms per liter. Such rules must require a public water system to:

1. By January 1, 2025, test all of the system's groundwater

wells for 1,4-dioxane.

2. If such testing detects 1,4-dioxane at levels greater than 0.35 micrograms per liter:

a. Develop and submit to the department for approval a mitigation plan to bring any such concentration to an amount at or below such level, and comply with the new standards within 5 years after such rules are adopted. The mitigation plan may include installing any required infrastructure to meet such requirements;

b. Retest for 1,4-dioxane in the system's groundwater wells at a frequency determined by the department; and

c. Make the mitigation plan submitted to and approved by the department and the results of any testing publicly available.

3. If such testing detects 1,4-dioxane at a level of 0.35 micrograms per liter or less:

a. Make the results of such testing publicly available; and

b. Retest for 1,4-dioxane in the system's groundwater wells within 5 years after the previous test.

Section 3. Present subsections (7) through (16) of section 403.8532, Florida Statutes, are redesignated as subsections (8) through (17), respectively, and a new subsection (7) is added to that section, to read:

403.8532 Drinking water state revolving loan fund; use; rules.—

(7) The department shall provide financial assistance to a public water system for the purpose of updating any infrastructure necessary to meet the standards for 1,4-dioxane under s. 403.853(3)(b). Such assistance must include, at a

minimum, 20 percent of the funding necessary to update the infrastructure to meet such standards. The department shall establish by rule criteria for determining the needs of a public water system and the amount of funds necessary to meet the requirements of s. 403.853(3)(b)2.

Section 4. This act shall take effect July 1, 2024.

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:

BILL:	SPB 7040
INTRODUCER:	Environment and Natural Resources Committee
SUBJECT:	Ratification of Department of Environmental Protection Rules
DATE:	January 22, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barriero	Rogers		**EN Submitted as Comm. Bill/Fav**
2.				
3.				

I. Summary:

SPB 7040 ratifies the Department of Environmental Protection's (DEP) revisions to the stormwater rules within Chapter 62-330 of the Florida Administrative Code with several changes, including:

- Clarifying provisions relating to grandfathered projects,
- Providing that entities implementing stormwater best management practices also regulated under different provisions of law are not subject to duplicate inspections for the same practices, and
- Allowing alternative treatment standards for redevelopment projects in areas with impaired waters.

As required by the Clean Waterways Act, DEP and the water management districts initiated rulemaking to update the stormwater design and operation regulations for environmental resource permitting, including updates to the Environmental Resource Permit Applicant's Handbook. The proposed rules were developed to increase the removal of nutrients from stormwater to protect the state's waterways.

The Statement of Estimated Regulatory Costs developed by DEP concluded that the proposed rules will likely increase stormwater treatment costs by $1.21 billion (or $2,600 per acre developed) in the aggregate within five years after the rules' implementation. This amount triggers the statutory requirement for the rule to be ratified by the Legislature before it may go into effect.

II. Present Situation:

Legislative Ratification

A rule is subject to legislative ratification if it:

- Has an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within five years after the implementation of the rule;
- Has an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within five years after the implementation of the rule; or
- Increases regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within five years after the implementation of the rule.[1]

If a rule requires ratification by the Legislature, the rule must be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the regular legislative session. The rule may not go into effect until it is ratified by the Legislature.[2]

Statement of Estimated Regulatory Costs Requirements

A statement of estimated regulatory costs (SERC) is an analysis prepared by an agency before the adoption, amendment, or repeal of a rule other than an emergency rule. A SERC must be prepared by an agency for a proposed rule that:

- Will have an adverse impact on small businesses; or
- Is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in the state within one year after the implementation of the rule.[3]

A SERC must include:

- An economic analysis showing whether the rule exceeds the thresholds requiring legislative ratification;
- A good faith estimate of the number and types of individuals and entities likely to be required to comply with the rule, and a general description of the types of individuals likely to be affected by the rule;
- A good faith estimate of the cost to the agency, and to other state and local government entities, of implementing and enforcing the proposed rule, including anticipated effects on state or local revenues;
- A good faith estimate of the transactional costs (direct business costs) likely to be incurred by individuals and entities required to comply with the requirements of the rule;
- An analysis of the impact on small businesses, small counties, and small cities; and
- A description of regulatory alternatives submitted to the agency and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.[4]

[1] Section 120.541(2)(a), F.S.
[2] Section 120.541(3), F.S.
[3] Section 120.54(3)(b)1., F.S.
[4] Section 120.541(2), F.S.

Statement of Estimated Regulatory Costs for Chapter 62-330, F.A.C.

DEP determined that a SERC was required for the revisions to the stormwater rules within Chapter 62-330 of the Florida Administrative Code and prepared one in advance of rule adoption.[5] DEP estimates the revised rules will increase stormwater treatment costs by approximately $1.21 billion[6] (or $2,600 per acre developed) for all expected development projects within a five-year period from implementation.[7] This includes lower cost regulatory alternatives.[8]

Water Quality and Nutrients

Nutrient pollution and the excessive accumulation of nitrogen and phosphorus in water is one of the most widespread, costly, and challenging environmental problems.[9] In Florida, 35 percent of waterbodies are impaired for nutrients and 87 percent of counties have nutrient impaired waters within their boundaries.[10]

The nutrients nitrogen and phosphorus are a natural part of aquatic ecosystems.[11] They support the growth of algae and aquatic plants, which provide food and habitat for fish, shellfish, and smaller organisms that live in water. However, the presence of too much nitrogen and phosphorus can cause algae to grow faster than ecosystems can handle. These algal blooms can harm water quality, food resources, and habitats, and decrease the oxygen that fish and other aquatic life need to survive. Algal blooms can also be harmful to humans because they produce elevated toxins and bacterial growth that can make people sick if they come into contact with polluted water, consume tainted fish or shellfish, or drink contaminated water.[12] Nutrient pollution in ground water—used by millions of people in the United States as their drinking water source—can be harmful even at low levels.[13] Infants are especially vulnerable to a nitrogen-based compound called nitrates in drinking water.[14]

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[5] *See* DEP, *SERC: Chapter 62-330, F.A.C.* (2023), *available at* http://publicfiles.dep.state.fl.us/dwrm/draftruledocs/stormwater/noc/serc-template-updated.pdf.

[6] Prior to receipt of lower cost regulatory alternatives (LCRAs), DEP estimated the revised rules would increase stormwater treatment costs by $1.44 billion in the aggregate within five years from the rules' implementation, or $1.486 billion when including additional transactional costs (i.e., new requirements for system design, operation and maintenance, inspections, and reporting) and costs related to the rules' new requirements for dam systems. *Id.* at 2-3. DEP estimates the LCRAs will lower stormwater treatment costs (excluding transactional and dam system costs) by approximately 16 percent from the original estimate. *Id.* at 10. Accordingly, DEP's revised estimate for stormwater treatment costs under the proposed rules is $1.21 billion. DEP, *Presentation to the Florida Senate Committee on Environment and Natural Resources*, 13 (Dec. 6, 2023), *available at* https://www.flsenate.gov/Committees/Show/EN/MeetingPacket/6001/10561_MeetingPacket_6001.6.23.pdf; DEP, *Rulemaking Update: Stormwater | Chapter 62-330, F.A.C., Environmental Resource Permitting*, 2 (2023), (on file with the Senate Committee on Environment and Natural Resources).

[7] DEP, *Presentation to the Florida Senate Committee on Environment and Natural Resources*, 13 (Dec. 6, 2023), *available at* https://www.flsenate.gov/Committees/Show/EN/MeetingPacket/6001/10561_MeetingPacket_6001.6.23.pdf; DEP, *Rulemaking Update: Stormwater | Chapter 62-330, F.A.C., Environmental Resource Permitting* at 2 (2023); DEP, *SERC: Chapter 62-330, F.A.C.* at 2, 10.

[8] DEP, *Presentation to the Florida Senate Committee on Environment and Natural Resources* at 13.

[9] U.S. Environmental Protection Agency (EPA), *Basic Information on Nutrient Pollution*, https://www.epa.gov/nutrientpollution/problem (last visited Dec. 11, 2023).

[10] DEP, *Rulemaking Update: Stormwater | Chapter 62-330, F.A.C., Environmental Resource Permitting* at 2.

[11] EPA, *Nutrient Pollution: The Problem*, https://www.epa.gov/nutrientpollution/problem (last visited Dec. 11, 2023).

[12] *Id.*

[13] *Id.*

[14] *Id.*

One of the primary sources of excess nitrogen and phosphorus is stormwater runoff.[15] This runoff typically traverses impervious surfaces, such as concrete and asphalt, flowing directly into waterbodies or storm drains without the benefit of natural filtration through soil and vegetation or processing by a water treatment facility.[16] Human activities frequently exacerbate the problem by introducing nitrogen and phosphorus pollutants derived from fertilizers, yard and pet waste, and certain soaps and detergents.[17]

Impaired Waters

Under section 303(d) of the federal Clean Water Act, states must establish water quality standards for waters within their borders and develop a list of impaired waters that do not meet the established water quality standards.[18] States must also develop a list of threatened waters that may not meet water quality standards in the following reporting cycle.[19]

Due to limited funds and the wide variety of surface waters in Florida, DEP sorted those waters into 29 major watersheds, or basins, and further organized them into five basin groups for assessment purposes.[20] If DEP determines that any waters are impaired, the waterbody must be placed on the verified list of impaired waters and a total maximum daily load (TMDL) must be calculated.[21] A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards.[22] A waterbody may be removed from the verified list at any time during the TMDL process if it attains water quality standards.[23] If DEP determines that a waterbody is impaired but further study is needed to determine the causative pollutants or other factors contributing to impairment before the waterbody is placed on the verified list, the waterbody will be placed on a statewide comprehensive study list.[24]

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[15] EPA, *Nutrient Pollution: Sources and Solutions*, https://www.epa.gov/nutrientpollution/sources-and-solutions (last visited Dec. 11, 2023). Other sources of excess nitrogen and phosphorus include agriculture, wastewater, fossil fuels, and fertilizers. *Id.*

[16] *EPA, Nutrient Pollution: Sources and Solutions: Stormwater,* https://www.epa.gov/nutrientpollution/sources-and-solutions-stormwater (last visited Dec. 11, 2023).

[17] *Id.*

[18] EPA, *Overview of Identifying and Restoring Impaired Waters under Section 303(d) of the CWA*, https://www.epa.gov/tmdl/overview-identifying-and-restoring-impaired-waters-under-section-303d-cwa (last visited Dec. 12, 2023); 40 C.F.R. 130.7. Following the development of the list of impaired waters, states must develop a total maximum daily load for every pollutant/waterbody combination on the list. A total maximum daily load is a scientific determination of the maximum amount of a given pollutant that can be absorbed by a waterbody and still meet water quality standards. DEP, *Watershed Evaluation and Total Maximum Daily Loads (TMDL) Section*, https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program (last visited Dec. 12, 2023).

[19] *Id.*

[20] DEP, *Assessment Lists*, https://floridadep.gov/dear/watershed-assessment-section/content/assessment-lists (last visited Dec. 12, 2023).

[21] *Id.*; DEP, *Verified List Waterbody Ids (WBIDs)*, https://geodata.dep.state.fl.us/datasets/FDEP::verified-list-waterbody-ids-wbids/about (last visited Dec. 12, 2023); section 403.067(4), F.S.

[22] Section 403.067(6)(a), F.S. *See also* 33 U.S.C. § 1251, s. 303(d) (the Clean Water Act).

[23] Section 403.067(5), F.S.

[24] Section 403.067(2), F.S.; ch. 62-303.150, F.A.C.

Basin Management Action Plans (BMAPs)

BMAPs are one of the primary mechanisms DEP uses to achieve TMDLs. BMAPs are plans that address the entire pollution load, including point and nonpoint discharges,[25] for a watershed. There are currently 34 adopted BMAPs in Florida.[26]

Producers of nonpoint source pollution included in a BMAP must comply with the established pollutant reductions by implementing appropriate best management practices (BMPs) or conducting water quality monitoring.[27] A nonpoint source discharger may be subject to enforcement action by DEP or a water management district for failure to implement these requirements.[28]

DEP may establish a BMAP as part of the development and implementation of a TMDL for a specific waterbody. First, the BMAP equitably allocates pollutant reductions to individual basins, to all basins as a whole, or to each identified point source or category of nonpoint sources.[29] Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations.[30]

BMAPs must include five-year milestones for implementation and water quality improvement and an associated water quality monitoring component to evaluate the progress of pollutant load reductions.[31] Every five years an assessment of progress toward these milestones must be conducted and revisions to the plan made as appropriate.[32]

Each BMAP must also include:

- The management strategies available through existing water quality protection programs to achieve TMDLs;
- A description of BMPs adopted by rule;
- For the applicable five-year implementation milestones, a list of projects that will achieve the pollutant load reductions needed to meet a TMDL or other established load allocations, including a planning-level cost estimate and an estimated date of completion;
- A list of regional nutrient reduction projects submitted by the Department of Agriculture and Consumer Services which will achieve pollutant load reductions established for agricultural nonpoint sources;[33]
- The source and amount of financial assistance to be made available; and

[25] "Point source" is defined as any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. Nonpoint sources of pollution are sources of pollution that are not point sources. Fla. Admin. Code R. 62-620.200(37).
[26] DEP, *Basin Management Action Plans (BMAPs)*, https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps (last visited Dec. 18, 2023).
[27] Section 403.067(7)(b)2.g., F.S. For example, BMPs for agriculture include activities such as managing irrigation water to minimize losses, limiting the use of fertilizers, and waste management.
[28] Section 403.067(7)(b)2.h., F.S.
[29] *Id.*
[30] *Id.*
[31] Section 403.067(7)(a)6., F.S.
[32] *Id.*
[33] This is required only where agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges or DEP determines that additional measures are necessary to achieve a TMDL. Section 403.067(7)(e)1., F.S.

- A planning-level estimate of each project's expected load reduction, if applicable.[34]

Stormwater Runoff

Nationwide, polluted stormwater runoff is considered to be the greatest threat to clean water.[35] Over 40 percent of waters assessed by the states are too polluted for fishing or swimming.[36] Nonpoint sources associated with stormwater account for over 40 percent of these polluted waters.[37] Conversely, traditional point sources (i.e., wastewater treatment plants) account for only about 10 percent of these polluted or "impaired" waters.[38] Hundreds of impaired water segments in Florida have lost their designated use due, in part, to stormwater pollution.[39]

Florida averages 40-60 inches of rainfall a year, depending on the location, with about two-thirds falling between June and October.[40] Stormwater runoff generated during these rain events flows over land or impervious surfaces, such as paved streets, parking lots, driveways, sidewalks, and rooftops, and picks up pollutants like trash, chemicals, oils, and sediment along the way. This unfiltered water ends up in streams, ponds, lakes, bays, wetlands, oceans, and groundwater. Construction sites, lawns, improperly stored hazardous wastes, and illegal dumping are all potential sources of stormwater pollutants.[41]

Stormwater runoff can cause a multitude of problems:

- Excess nutrients, primarily nitrogen and phosphorus from lawn fertilizers or natural sources, such as manure, can cause algal and bacterial blooms that proliferate rapidly. Algae will consume oxygen, increase turbidity in the waterbody, and eventually die along with the fish and other aquatic life that need oxygen to live.[42]
- Pathogenic bacteria and microorganisms can be carried by stormwater into a waterbody. This creates health hazards and can cause lakes and beaches to close to the public.[43]
- Sediment can increase the turbidity (a measure of water cloudiness) of a waterbody. Turbidity can block sunlight from reaching aquatic plants, making it impossible for them to grow. Without plants, animals lose a food source, and it is more difficult to filter pollutants

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[34] Section 403.067(7)(a)4., F.S.
[35] South Florida Water Management District (SFWMD), *Your Impact on the Environment*, https://www.sfwmd.gov/community-residents/what-can-you-do (last visited Dec. 12, 2023).
[36] DEP, *Stormwater Support*, https://floridadep.gov/water/engineering-hydrology-geology/content/stormwater-support (last visited Dec. 12, 2023). A recent study examining water quality across the U.S. shows Florida ranks first in the nation for total acres of lakes classified as impaired for swimming and aquatic life (873,340 acres), and second for total lake acres listed as impaired for any use (935,808 acres). Environmental Integrity Project, *The Clean Water Act at 50*, 28 (2022), *available at* https://environmentalintegrity.org/wp-content/uploads/2022/03/CWA@50-report-3-17-22.pdf. Florida also has the second most total square miles of impaired estuaries (2,533 square miles). *Id.* at 29.
[37] DEP, *Stormwater Support*, https://floridadep.gov/water/engineering-hydrology-geology/content/stormwater-support (last visited Dec. 12, 2023).
[38] *Id.*
[39] *Id.*
[40] University of Florida Institute of Food and Agricultural Sciences (UF/IFAS), *Florida Rainfall Data Sources and Types*, 1 (2023), *available at* https://edis.ifas.ufl.edu/publication/AE517.
[41] EPA, *Urbanization and Stormwater Runoff*, https://www.epa.gov/sourcewaterprotection/urbanization-and-stormwater-runoff (last visited Dec. 12, 2023).
[42] Southwest Florida Water Management District (SWFWMD), *Stormwater Runoff*, https://www.swfwmd.state.fl.us/residents/education/kids/stormwater-runoff (last visited Dec. 12, 2023).
[43] *Id.*

from the water. Instead, pollutants collect at the bottom of the waterbody and remain there indefinitely.[44]

- Debris such as plastic bags, bottles, and cigarette butts can wash into a waterbody and interfere with aquatic life[45] and flood prevention and decrease water quality.[46] When a stormwater drain gets clogged with debris, rainwater that normally would be collected cannot enter into the drainage system. Water will accumulate around the drain, causing flooded sidewalks or streets and increasing the chances for flooding buildings.
- Other hazardous wastes, such as insecticides, herbicides, paint, motor oil, and heavy metals, can be carried by stormwater runoff to waterbodies and cause illness to aquatic life and humans alike.[47]

In addition, inadequate stormwater management increases stormwater flows and velocities, contributes to erosion, overtaxes the carrying capacity of streams and other conveyances, reduces ground water recharge, threatens public health and safety, and is the primary source of pollutant loading entering Florida's rivers, lakes, and estuaries.[48]

Best Management Practices for Stormwater Treatment

A BMP is as a practice or combination of practices based on research, field-testing, and expert review to be the most effective and practicable means, including economic and technological considerations, for improving water quality.[49] BMPs for stormwater treatment promote the natural movement of water and reduce the amount of pollutants entering waterways through runoff.[50]

Stormwater BMPs include dry retention and wet detention ponds, engineered media and filtration, and the use of low impact development and green stormwater infrastructure such as rain gardens, bioswales, tree wells, pervious pavement, littoral zones, floating wetlands, and harvesting systems.[51] BMPs can be implemented in combination or in conjunction with other BMPs in a series as a treatment train.[52]

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[44] *Id.*
[45] *Id.*
[46] SFWMD, *Your Impact on the Environment*, https://www.sfwmd.gov/community-residents/what-can-you-do (last visited Nov. 27, 2023).
[47] SWFWMD, *Stormwater Runoff*, https://www.swfwmd.state.fl.us/residents/education/kids/stormwater-runoff (last visited Nov. 27, 2023).
[48] Fla. Admin. Code R. 62-40.431(2)(b).
[49] Section 373.4595(2)(a), F.S.; *see also* section 373.4592(2)(b), F.S.
[50] EPA, *Best Management Practices (BMPs) Siting Tool*, https://www.epa.gov/water-research/best-management-practices-bmps-siting-tool (last visited Dec. 12, 2023).
[51] DEP, *Rulemaking Update: Stormwater | Chapter 62-330, F.A.C., Environmental Resource Permitting*, 2 (2023), (on file with the Senate Committee on Environment and Natural Resources).
[52] *Id.*; *see also* EPA, *Stormwater Best Management Practice Design Guide: Volume 1*, 72 (2004), *available at* https://cfpub.epa.gov/si/si_public_record_report.cfm?Lab=NRMRL&dirEntryId=99739.

Green Stormwater Infrastructure (GSI)

Historically, communities have used gray infrastructure[53] to convey stormwater to treatment systems or straight to local water bodies.[54] However, gray infrastructure can present a variety of challenges, including high construction, maintenance, and repair costs, increased combined sewer overflow events, and the introduction of pollutants into source waters.[55] These problems are exacerbated as population and development continue to increase and new challenges arise, such as changing weather patterns, increasing energy costs, and aging water infrastructure.[56] To meet these challenges, many communities are installing GSI systems to bolster their capacity to manage stormwater.[57]

GSI uses natural processes to improve water quality and manage water quantity by restoring the hydrologic function of the urban landscape, managing stormwater at its source, and reducing the need for additional gray infrastructure.[58] When GSI is employed as part of a larger-scale stormwater management system, it reduces the volume of stormwater that requires conveyance and treatment through conventional means, such as detention ponds.[59] Overall, GSI is more cost-effective than traditional gray infrastructure and offers numerous ancillary benefits.[60]

[53] Gray infrastructure includes curbs, gutters, drains, piping, and collection systems. Traditional gray infrastructure collects and conveys stormwater from impervious surfaces, such as roadways, parking lots and rooftops, into a series of piping that ultimately discharges untreated stormwater into a local water body. EPA, *Why You Should Consider Green Stormwater Infrastructure for Your Community*, https://www.epa.gov/G3/why-you-should-consider-green-stormwater-infrastructure-your-community (last visited Dec. 12, 2023).
[54] EPA, *What is Green Infrastructure?*, https://www.epa.gov/green-infrastructure/what-green-infrastructure (last visited Dec. 12, 2023).
[55] EPA, *Case Studies Analyzing the Economic Benefits of Low Impact Development and Green Infrastructure Programs*, 9 (2013), *available at* https://www.epa.gov/sites/default/files/2015-10/documents/lid-gi-programs_report_8-6-13_combined.pdf.
[56] *Id.*
[57] EPA, *What is Green Infrastructure?*, https://www.epa.gov/green-infrastructure/what-green-infrastructure (last visited Dec. 12, 2023).
[58] EPA, *Green Infrastructure Opportunities that Arise During Municipal Operations*, 1 (2015), *available at* https://www.epa.gov/sites/default/files/2015-09/documents/green_infrastructure_roadshow.pdf.
[59] *Id.*
[60] *Id.* at 2-3.

Green Roofs

- Have a longer lifespan than traditional roofs
- Reduce energy costs
- Buildings with green roofs can command rental premiums
- Vegetation provides habitat for wildlife

Trees

- Intercept and absorb rainfall
- Reduce urban heat island
- Improve habitat and aesthetic value
- Provide shade in summer and block wind in winter, reducing heating and cooling costs
- Reduce greenhouse gases by absorbing CO_2
- Capture urban air pollutants (dust, O_3, CO)

Rain Barrels and Cisterns

- Reduce water consumption and associated costs
- Reduce demand for potable water
- Increase available water supply for other uses
- Can significantly reduce stormwater discharges from roofs

Bioswales and Rain Gardens

- Improve property and neighborhood aesthetics
- Reduce localized flooding
- Promote infiltration and groundwater recharge
- Enhance pedestrian safety when used in traffic calming applications

Permeable Pavements

- Reduce stormwater runoff and standing water
- Promote infiltration and groundwater recharge
- Improve the longevity of infrastructure
- May be easier to maintain than standard pavement

Green Space

- Increase soil porosity
- Reduces stormwater runoff volume
- Reduces peak stormwater flows
- Helps reduce the risk of flooding

Low Impact Design

Low Impact Design or Low Impact Development (LID) is a stormwater management set of practices used to reduce runoff and pollutant loadings by managing the runoff as close to the source as possible.[61] LID practices, including the use of GSI, promote the use of natural systems. By working to mimic the natural water cycle, LID practices protect downstream resources from adverse pollutant and hydrologic impacts that can degrade water quality and harm aquatic life.[62] LID practices include:

- Conservation designs that preserve open space, including cluster development, open space preservation, reduced setbacks and widths of streets and sidewalks, and shared driveways;
- Infiltration practices, including porous or permeable pavement, disconnected downspouts, and rain gardens and other vegetated treatment systems;
- Runoff storage practices, including rain barrels and cisterns, green roofs, and depressional storage in landscape islands and in tree, shrub, or turf depressions;
- Runoff conveyance practices, including eliminating curbs and gutters and creating grassed swales and long flow paths over landscaped areas; and

[61] EPA, *Reducing Stormwater Costs through Low Impact Development (LID) Strategies and Practices*, 2 (2007), *available at* https://www.epa.gov/sites/default/files/2015-10/documents/2008_01_02_nps_lid_costs07uments_reducingstormwatercosts-2.pdf.
[62] *Id.*

- Low impact landscaping, including planting native, drought-tolerant plants, converting turf areas to shrubs and trees, reforestation, and amending soil to improve infiltration.[63]

Stormwater Management in Florida

Florida was the first state in the country to adopt a rule requiring the treatment of stormwater to a specified level of pollutant load reduction for all new development.[64] Florida's original stormwater rule was adopted in 1981 and went into effect in February 1982.[65] The rule is a technology-based rule that relies upon four key components:

- A performance standard or goal for the minimum level of treatment;
- Design criteria for BMPs that will achieve the required performance standard;
- A rebuttable presumption that discharges from a stormwater treatment system designed in accordance with the BMP design criteria will not cause harm to water resources; and
- Periodic review and updating of BMP design criteria as more information becomes available to increase their effectiveness in removing pollutants.[66]

One of the primary goals of Florida's stormwater management program is to maintain, to the maximum extent practical, the predevelopment stormwater characteristics of a site during and after construction and development.[67] Accordingly, the state's stormwater rules were developed to establish a minimum treatment performance standard that requires stormwater systems to achieve at least an 80 percent reduction of the average annual load of pollutants that would cause or contribute to violations of state water quality standards and a 95 percent reduction for Outstanding Florida Waters (OFW).[68] DEP selected this level of treatment for two reasons:

- To establish equitability in treatment requirements between point and nonpoint sources of pollution. The minimum level of treatment for domestic wastewater point sources was "secondary treatment" which equated to an 80 percent reduction in total suspended solids.
- The costs of stormwater treatment greatly increased as the level of treatment rose above 80 percent.[69]

However, studies show that the rules' existing stormwater presumptive design criteria fail to consistently meet either the 80 or 95 percent target reduction goals, with pollutant removal efficiencies varying greatly depending on the amount of runoff and other conditions.[70]

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[63] *Id.* at 3-5.
[64] DEP, *ERP Stormwater*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/erp-stormwater#:~:text=To%20manage%20urban%20stormwater%20and%20minimize%20these%20impacts,1981%20and%20went%20into%20effect%20in%20February%201982 (last visited Nov. 27, 2023).
[65] *Id.*
[66] *Id.*
[67] Fla. Admin. Code R. 62-40.431(2)(a).
[68] Fla. Admin. Code R. 62-40.432(2)(a). An OFW is a water designated worthy of special protection because of its natural attributes. DEP, *Outstanding Florida Waters*, https://floridadep.gov/dear/water-quality-standards/content/outstanding-florida-waters (last visited Dec. 11, 2023); *see* Fla. Admin. Code R. 62-302.700(2) and (9).
[69] DEP, *ERP Stormwater*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/erp-stormwater#:~:text=To%20manage%20urban%20stormwater%20and%20minimize%20these%20impacts,1981%20and%20went%20into%20effect%20in%20February%201982 (last visited Dec. 19, 2023).
[70] *See* Harvey H. Harper and David M. Baker, *Evaluation of Current Stormwater Design Criteria within the State of Florida*, 6-1 (2007), *available at* https://tmp.nationalstormwater.com/wp/wp-content/uploads/2020/07/Evaluation-of-Current-Stormwater-Design-Criteria-within-the-State-of-Florida_Final_71907.pdf.

Under the newly expanded Water Quality Improvement Grant Program,[71] DEP may provide grants for repairing, upgrading, expanding, or constructing stormwater treatment facilities that result in improvements to surface water or groundwater quality.[72]

Stormwater Rulemaking

In 2020, the Florida Legislature passed Senate Bill 712, also known as the Clean Waterways Act (the Act).[73] This legislation passed with unanimous, bipartisan support and included a wide range of water-quality protection provisions aimed at minimizing the impact of known sources of nutrient pollution and strengthening regulatory requirements. Among other things, the Act directs DEP and WMDs to update stormwater regulations using the latest scientific information.[74]

Over the last three years, DEP has undertaken rulemaking efforts, including holding two public outreach meetings in 2020 and four rule development workshops between May and December 2022.[75] Interested parties were able to provide public comments and feedback on the proposed rules during these workshops.[76]

In November 2020, DEP established a technical advisory committee (TAC) to offer recommendations for strengthening the state's regulations on stormwater system design and operation.[77] The TAC conducted 13 meetings between December 2020 and November 2021 and published a report summarizing its recommendations in March 2022.[78]

A Notice of Proposed Rule was published in the Florida Administrative Register on February 24, 2023, and DEP held a rule adoption hearing on March 22.[79] A Notice of Change, which incorporated stakeholder feedback and comments as well as four lower cost regulatory alternatives, was published on March 24, 2023.[80] The final rule was filed with the Department of State in April of 2023.[81]

[71] Ch. 2023-169, s. 15, Laws of Fla. (amending s. 403.0673, F.S., effective July 1, 2023)
[72] Section 403.0673(2)(c), F.S.
[73] Ch. 2020-150, Laws of Fla.
[74] *Id.*at s. 5 (amending s. 373.4131, F.S., effective July 1, 2020).
[75] DEP, *Rulemaking Update: Stormwater | Chapter 62-330, F.A.C., Environmental Resource Permitting*, 2 (2023), (on file with the Senate Committee on Environment and Natural Resources).
[76] DEP, *Clean Waterways Act Stormwater Rulemaking Workshops*, https://floridadep.gov/water/engineering-hydrology-geology/content/clean-waterways-act-stormwater-rulemaking-workshops (last visited Dec. 19, 2023).
[77] DEP, *Presentation to the Florida Senate Committee on Environment and Natural Resources*, 5-6 (Dec. 6, 2023), *available at* https://www.flsenate.gov/Committees/Show/EN/MeetingPacket/6001/10561_MeetingPacket_6001.6.23.pdf.
[78] DEP, *Clean Waterways Act Technical Advisory Committee Summary Report*, 2-3 (2022), *available at* https://floridadep.gov/sites/default/files/CleanWaterwaysAct-TAC-SummaryReport.pdf.
[79] 49 Fla. Admin. Reg. 644 (Feb. 24, 2023); DEP, *Clean Waterways Act Stormwater Rulemaking Workshops*, https://floridadep.gov/water/engineering-hydrology-geology/content/clean-waterways-act-stormwater-rulemaking-workshops (last visited Dec. 19, 2023).
[80] *Id.*; 49 Fla. Admin. Reg. 1064 (Mar. 24, 2023).
[81] DEP, *Presentation to the Florida Senate Committee on Environment and Natural Resources*, 6 (Dec. 6, 2023), *available at* https://www.flsenate.gov/Committees/Show/EN/MeetingPacket/6001/10561_MeetingPacket_6001.6.23.pdf.

Dam Systems

A dam is a structure that is built across a river or body of water to hold, divert, or regulate water.[82] Dams are a critical part of Florida's infrastructure for the vital benefits they provide, including flood protection, water supply, irrigation, and recreation.[83] Dams must be properly maintained throughout their lifespan to operate as intended.[84] As dams age, they require greater attention and investment to ensure their safe operation.[85] Continuous dam safety practices are particularly important for dams that are upstream of human populations, where dam misoperation or failure has the potential for loss of life and property.[86]

Various classification systems are used to describe dams. Under the National Dam Safety Program's classification system, dams are divided into three categories—Low Hazard Potential, Significant Hazard Potential, and High Hazard Potential—based on the probable loss of human life and the impacts on economic, environmental, and lifeline interests should the dam fail or be misoperated.[87] Owners of High Hazard Potential and Significant Hazard Potential dams are strongly encouraged to develop emergency action plans to provide a comprehensive and consistent plan to implement in the event of a developing or imminent emergency in order to protect lives and reduce damage to property, infrastructure, and wetlands and other surface waters.[88]

The construction, operation, alteration, repair, or abandonment of a dam may require an environmental resource permit pursuant to Chapter 62-330 of the Florida Administrative Code.

Environmental Resource Permitting (ERP)

Part IV of Chapter 373, F.S., and Chapter 62-330 of the Florida Administrative Code regulate the statewide ERP program, which is the primary tool used by DEP and water management districts (WMDs) for preserving natural resources and fish and wildlife, minimizing degradation of water resources caused by stormwater discharges, and providing for the management of water and related land resources. The program governs the construction, alteration, operation, maintenance, repair, abandonment, and removal of stormwater management systems, dams, impoundments, reservoirs, appurtenant works, and other works such as docks, piers, structures, dredging, and filling located in, on, or over wetlands or other surface waters.[89]

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[82] U.S. Army Corps of Engineers (USACE), *National Inventory of Dams: Dams 101*, https://nid.sec.usace.army.mil/#/learn/dams101 (last visited Dec. 13, 2023).
[83] DEP, *Florida Dam Safety Program*, https://floridadep.gov/water/engineering-hydrology-geology/content/florida-dam-safety-program (last visited Dec. 13, 2023).
[84] *Id.*
[85] *Id.*
[86] *Id.*
[87] USACE, *National Inventory of Dams: Managing Dams*, https://nid.sec.usace.army.mil/#/learn/manage-dams (last visited Dec. 13, 2023); Federal Emergency Management Agency (FEMA), *Federal Guidelines for Dam Safety: Hazard Potential Classification System for Dams*, 5-6 (2004), *available at* https://damsafety.org/sites/default/files/FEMA%20Federal%20Guidelines%20HazPotential%20333_04.pdf.
[88] DEP, *Florida Dam Safety Program*, https://floridadep.gov/water/engineering-hydrology-geology/content/florida-dam-safety-program (last visited Dec. 13, 2023).
[89] Fla. Admin. Code R. 62-330.010(2).

The ERP rules within Chapter 62-330 of the Florida Administrative Code contain:

- Criteria and thresholds for requiring permits;
- Types of permits;
- Procedures governing the review of applications and notices, duration and modification of permits, operational maintenance requirements, transfers of permits, provisions for emergencies, and provisions for abandonment and removal of systems;
- Exemptions and general permits that do not allow significant adverse impacts to occur individually or cumulatively;
- Conditions for issuance;
- General permit conditions, including monitoring, inspection, and reporting requirements;
- Standardized fee categories to promote consistency;
- Application, notice, and reporting forms; and
- An Applicant's Handbook containing general program information, application and review procedures, stormwater quality and quantity criteria, and how environmental criteria are evaluated.[90]

ERP Applicant's Handbook

An integral part of the ERP program is the Applicant's Handbook, which consists of two volumes.[91] Volume I applies statewide to all activities regulated under the ERP program.[92] It provides background information on the program, including points of contact, a summary of the statutes and rules used to authorize and implement the ERP program, and the forms used to notice or apply to agencies for an ERP authorization. Volume I also contains detailed information regarding:

- Types of permits, permit thresholds, and exemptions;
- Procedures used to review exemptions and permits, and procedures for inspections, compliance, and enforcement;
- Conditions for issuance of an ERP, including the environmental criteria used for activities located in wetlands and other surface waters;
- Erosion and sediment control practices to prevent water quality violations; and
- Operation and maintenance requirements.[93]

Volume II consists of five separate handbooks, one for each WMD. These handbooks address regional differences in hydrology, soils, geology, and rainfall and provide region-specific design and performance standards.[94] Specifically, it provides:

- Design and performance standards and criteria for water quality and quantity, including those for specific types of stormwater management systems, dams, impoundments, reservoirs, and appurtenant works;
- Standards and criteria pertaining to special basins that may exist within the geographic area of each WMD;

[90] Section 373.4131(1)(a), F.S.
[91] *See* section 373.4131(1)(a)9, F.S.
[92] Fla. Admin. Code R. 62-330.010(4)(a).
[93] DEP, *ERP Applicant's Handbook, Vol. I*, s. 1.1 (2020), *available at* https://www.flrules.org/gateway/reference.asp?No=Ref-12078.
[94] *Id.*

- Standards and criteria pertaining to flood protection; and
- Design and performance standards for dams.[95]

Volume II handbooks generally are not applicable to the construction, alteration, modification, maintenance, or removal of projects that cause no more than an incidental amount of stormwater runoff.[96]

III. Effect of Proposed Changes:

Section 1 ratifies the revised stormwater rules under Chapter 62-330 of the Florida Administrative Code, titled "Environmental Resource Permitting" (ERP). Chapter 62-330 of the Florida Administrative Code, as proposed by the Department of Environmental Protection (DEP) and filed for adoption with the Florida Department of State pursuant to the certification package dated April 28, 2023.

The bill provides that, except for the changes set forth in section 2 as to rule 62-330.010, Florida Administrative Code, this section serves no other purpose and may not be codified in the Florida Statutes. After this act becomes a law, its enactment and effective dates must be noted in the Florida Administrative Code, the Florida Administrative Register, or both, as appropriate. This section does not alter rulemaking authority delegated by prior law, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rule cited, and is intended to preserve the status of any cited rule as a rule under chapter 120, Florida Statutes. This section does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing adoption of any rule cited.

DEP's Revisions to ERP Rules and Volume I of the ERP Applicant's Handbook

As discussed in further detail below, the revised ERP rules and Applicant's Handbook:

- Create new minimum performance standards for all ERP stormwater systems;
- Require applicants to demonstrate through modeling and calculations based on local conditions and annual runoff volumes that their proposed stormwater treatment system is designed to discharge to the required treatment level;
- Create new requirements for periodic inspections and the operation and maintenance of stormwater treatment systems; and
- Provide new permitting criteria applicable to the construction of new dams or alteration of existing dams.

New Minimum Performance Standards

Under the revised rules, stormwater treatment systems must be designed to achieve at least an 80 percent reduction of the average annual post-development total suspended solids (TSS) load, or 95 percent if the proposed project is located within a hydrologic unit code (HUC) 12[97]

[95] *Id.*
[96] *Id.*
[97] "Hydrologic Unit Code" or "HUC" means the hydrologic cataloging unit assigned to a geographic area representing a surface watershed drainage basin. Each unit is assigned a two- to 12-digit number that uniquely identifies each of the six

watershed containing an Outstanding Florida Water (OFW)[98] and located upstream of that OFW. In addition, stormwater treatment systems must provide a level of treatment sufficient to accomplish the greater of the following:

- The minimum percent reduction of the average annual loading[99] of total phosphorus (TP) and total nitrogen (TN) as established in the revised rules; or
- A reduction such that the post-development condition[100] average annual loading of nutrients does not exceed the predevelopment condition[101] nutrient loading.

To calculate pre- and post-development loadings of TN and TP, the predevelopment annual runoff volume is multiplied by the land-use-specific runoff characterization data (event meant concentrations or EMCs).[102] EMC values quantify the concentration of pollutants washed off a surface during a rain event and vary by location and land use type. EMC values are calculated by dividing the total annual pollutant load for a given parameter (e.g., TN or TP) by the total annual runoff volume.[103]

The revised rules provide that the most up-to-date verified EMC values available for the project region must be used.[104] ERP applicants may propose the use of EMC values derived from regional or local government studies or other studies accepted by the agency or adopted by DEP.[105] If no appropriate regional studies or EMC values exist for the proposed project area, the applicant must use the EMC values listed in Volume I of the ERP Applicant's Handbook.[106]

The required percent reduction of TP and TN depends primarily on the location of the stormwater treatment system. In general, systems located within a HUC 12 watershed containing

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levels of classification within six two-digit fields. United States Geological Survey (USGS), *Hydrologic Unit Codes (HUCs) Explained*, https://nas.er.usgs.gov/hucs.aspx (last visited Dec. 11, 2023). Eight-digit HUCs are used for large watersheds known as subbasins; 10-digit HUCs divide the large subbasins into watersheds; and 12-digit HUCs divide watersheds into subwatersheds that capture local tributary systems. EPA, *Hydrologic Unit Codes: HUC 4, HUC 8, and HUC 12*, *available at* https://enviroatlas.epa.gov/enviroatlas/datafactsheets/pdf/Supplemental/HUC.pdf; DEP, *About the Florida National Hydrography Dataset*, https://floridadep.gov/dear/watershed-services-program/content/about-florida-national-hydrography-dataset (last visited Dec. 11, 2023).

[98] An OFW is a water designated worthy of special protection because of its natural attributes. DEP, *Outstanding Florida Waters*, https://floridadep.gov/dear/water-quality-standards/content/outstanding-florida-waters (last visited Dec. 11, 2023); *see* Fla. Admin. Code R. 62-302.700(2) and (9).

[99] "Average annual nutrient load or loading" means the product of annual runoff volumes and land use appropriate event mean nutrient concentrations for TP and TN.

[100] The proposed rules define "post-development condition" as the average annual nutrient loading based on the proposed project area that would exist in accordance with the permitted project design. DEP, *ERP Applicant's Handbook: Vol. I*, s. 2.0(a)89 (proposed 2023), *available at* http://publicfiles.dep.state.fl.us/dwrm/draftruledocs/stormwater/noc/Updated%20AH_I_thru%20Clean%20Copy.pdf.

[101] The proposed rules define "predevelopment condition" as the average annual nutrient loading based on the land use, land cover, and other site conditions that are legally in existence at the time of the application. DEP, *ERP Applicant's Handbook: Vol. I*, s. 2.0(a)90 (proposed 2023).

[102] 49 Fla. Admin. Reg. 647 (Feb. 24, 2023). *Id.* at s. 9.2.2.

[103] Harper, *Evaluation of Current Stormwater Design Criteria within the State of Florida*, 4-11 (2007), *available at* https://tmp.nationalstormwater.com/wp/wp-content/uploads/2020/07/Evaluation-of-Current-Stormwater-Design-Criteria-within-the-State-of-Florida_Final_71907.pdf.

[104] DEP, *ERP Applicant's Handbook: Vol. I* at s. 9.2.2a. (proposed 2023).

[105] *Id.* at s. 9.2.2b. (proposed 2023).

[106] 49 Fla. Admin. Reg. 647 (Feb. 24, 2023).

an OFW or impaired water[107]—and located upstream of such OFW or impaired water—must achieve a higher percent reduction of TP and TN than systems located elsewhere. In addition, sites undergoing redevelopment[108] are subject to different reduction criteria and may be exempt from permitting requirements if under one acre and other conditions are met. Below is an overview of the TP and TN reductions required under the proposed rules:

Site Location	Required Reduction	
	TP	TN
OFWs	90%	80%
Impaired Waters	80%	80%
Impaired OFWs	95%	95%
Redevelopment (nonimpaired waters)	80%	45%
Redevelopment OFWs	90%	60%
All other sites	80%	55%

Where the stormwater treatment system is located upstream of and within a HUC 12 watershed which contains an impaired water where basin-specific design and performance criteria for load reductions of nonpoint sources were included to achieve an adopted Total Maximum Daily Load (TMDL), Basin Management Action Plan (BMAP), an approved alternative restoration plan,[109] or other watershed management plan, the applicant must provide a level of treatment sufficient to accomplish:

- The level of treatment prescribed in such TMDL, BMAP, approved alternative restoration plan, or other watershed management plan; and
- The post-development condition average annual loading of those pollutants not meeting water quality standards are less than that of the predevelopment condition.[110]

Best Management Practices (BMPs) are an effective tool for achieving the required minimum performance standards.[111] If the required nutrient reductions are not met by a single BMP, the ERP applicant must either modify the selected BMP or incorporate additional BMPs to achieve the required load reductions. DEP encourages the use of low impact design (LID) approaches,

[107] The proposed rules define "impaired water" as a waterbody or waterbody segment that does not meet its applicable water quality standards due in whole or in part to discharges of pollutants from point or nonpoint sources. Impaired waters include those waters on the verified list of impaired waters, waters with a Total Maximum Daily Load, waters with an alternative restoration plan, and waters with other evidence demonstrating that water quality standards are not being met. DEP, *ERP Applicant's Handbook: Vol. I*, s. 2.0(a)60 (proposed 2023).
[108] The proposed rules define "redevelopment" as the construction on sites having existing commercial, industrial, institutional, roadway, or residential land uses, excluding silviculture or agriculture, where the existing land use has not been previously permitted, where all or part of the existing impervious surface is removed and replaced with new impervious surface, which has the same or lesser area as the existing impervious surface, and the same or less intense land uses. DEP, *ERP Applicant's Handbook: Vol. I*, s. 2.0(a)97 (proposed 2023).
[109] Alternative restoration plans are water quality improvement plans that employ the early implementation of restoration activities to avoid being placed on the verified list of impaired waters and the development of TMDLs and BMAPs. DEP, *Alternative Restoration Plans*, https://floridadep.gov/DEAR/Alternative-Restoration-Plans (last visited Jan. 18, 2023).
[110] DEP, *ERP Applicant's Handbook: Vol. I*, s. 8.3.4(b) (proposed 2023).
[111] DEP, *ERP Applicant's Handbook: Vol. I*, ss. 9.5 and 9.5.1 (proposed 2023).

such as green stormwater infrastructure (GSI), to supplement or replace traditional stormwater infrastructure.[112]

Offsite stormwater treatment, overtreatment,[113] and regional stormwater management systems[114] may be used as an alternative to, or in combination with, onsite treatment to meet the required performance standards.

New requirements for Inspections and Operation and Maintenance

The revised ERP rules and Applicant's Handbook provide that an applicant for the construction, alteration, or operation of a stormwater management system must provide a written operation and management plan. The plan must be prepared and certified by a registered professional.

Under the revised rules, operation and maintenance entities for stormwater management systems are required to estimate expected annual operating expenses, including inspection and routine maintenance costs, and certify that they have the financial capability to maintain the system over time. In addition, all operation and maintenance entities, other than MS4 entities,[115] must conduct periodic inspections to ensure that the stormwater management system, and each component thereof, continues to function as designed and permitted. An inspection report must be provided to the permitting agency within 30 days of the inspection.

New Requirements for Dam Systems

The revised ERP rules and Applicant's Handbook provide new permitting criteria applicable to the construction of new dams or alteration of existing dams. The criteria require an ERP applicant to:

- Provide dam system information for collection in a repository maintained by DEP;
- Establish a downstream hazard potential[116] for each dam indicating the potential adverse impact on the downstream areas should the dam or its appurtenant structures fail or be misoperated;

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[112] *Id.* at s. 9.5.3.

[113] The proposed rules define "overtreatment" as the treatment of the runoff from the project area that flows to a treatment system to a higher level than the rule requires to make up for the lack of sufficient treatment for a portion of the project area. DEP, *ERP Applicant's Handbook: Vol. I*, s. 9.7.1 (proposed 2023).

[114] The proposed rules define "regional stormwater management system" as a system designed, constructed, operated, and maintained to collect convey, store, absorb, inhibit, treat, use or reuse stormwater to prevent or reduce flooding, overdrainage, environmental degradation and water pollution or otherwise affect the quantity and quality of discharges from multiple parcels and projects within the drainage area served by the regional system, where the term "drainage area" refers to the land or development that is served by or contributes stormwater to the regional system. DEP, *ERP Applicant's Handbook: Vol. I*, s. 2.0(a)98 (proposed 2023).

[115] MS4 means municipal separate storm sewer systems, which are publicly-owned conveyance systems (e.g., ditches, curbs, catch basins, underground pipes) designed for collecting or conveying stormwater. DEP, *Municipal Separate Storm Sewer Systems (MS4)*, https://floridadep.gov/water/stormwater/content/municipal-separate-storm-sewer-systems-ms4#:~:text=A%20municipal%20separate%20storm%20sewer%20system%20%28MS4%29%20is,that%20discharges%20to%20surface%20waters%20of%20the%20state (last visited Dec. 12, 2023). Under the revised rules, an MS4 entity must conduct and report inspections of ERP-permitted stormwater management systems in accordance with their MS4 permit requirements and any associated standard operating procedures. DEP, *ERP Applicant's Handbook: Vol. I*, s. 12.5(b) (proposed 2023).

[116] "Downstream Hazard Potential" means the category of a dam that indicates its potential adverse impact on the downstream areas should the dam or its appurtenant structures fail or be mis-operated. The Downstream Hazard Potential

- Develop an emergency action plan for dams with a high hazard potential or significant hazard potential; and
- Provide a condition assessment report for each existing high hazard potential or significant hazard potential dam.

Grandfathered/Exempt Activities

The revised ERP requirements do not apply to certain activities, including:

- Projects and activities already approved by an unexpired conceptual, general, or individual permit;
- Any non-major modification of such permits and to subsequent permits to construct and operate future phases consistent with an unexpired conceptual approval permit;
- Transfer of approved permits or conversions of such permits to the operation phase;
- Projects or activities that are the subject of a general or individual permit application that are deemed complete within twelve months after the effective date of the revised rules;
- Major permit modifications where the purpose of the modification is solely to bring the system into compliance with applicable design and performance criteria that were applicable at the time of the current permit's issuance; and
- Certain public transportation projects and project modifications.

Section 2 amends s. 373.4131, F.S., regarding the statewide environmental resource permitting rules. The bill ratifies rule 62-330.010 of the Florida Administrative Code, titled "Purpose and Implementation," as filed for adoption with the Department of State pursuant to the certification package dated April 28, 2023, with the following changes to Volume I of the ERP Applicant's Handbook:

- Amending section 3.1.2(e)3. to clarify that nothing in the rule eliminates any grandfather provisions[117] in in existence prior to the effective date of the ratified rules. The bill provides that certain grandfathered projects must use all forms in effect at the time the permit was originally issued, except for those subsequent permits to construct and operate the future phases consistent with an unexpired conceptual approval permit.[118]
- Amending sections 8.3.4(a)3. and 8.3.4(b)2. to add commas to language currently in the proposed rule providing that the minimum level of treatment must be sufficient to accomplish a reduction such that "the post-development condition average annual loading**,** of those pollutants not meeting water quality standards**,** that is less than that of the predevelopment condition"; and

reflects probable loss of human life or adverse impacts on economic, environmental, or lifeline interests, or other concerns, such as water quality degradation. The Downstream Hazard may be one of three categories: High Hazard Potential, Significant Hazard Potential, and Low Hazard Potential. DEP, *ERP Applicant's Handbook: Vol. I*, s. 2.0(a)(37) (proposed 2023).

[117] Grandfather provisions are contained within sections 1.4.2 and 3.1.2 of Volume I of the ERP Applicant's Handbook. DEP, *ERP Applicant's Handbook: Vol. I*, ss. 1.4.2 and 3.1.2 (2020), *available at* https://www.flrules.org/gateway/reference.asp?No=Ref-12078.

[118] These projects must use the following forms effective July 1, 2024: Form 62-330.301(26) Financial Capability Certification; Form 62-330.301(25) Dam System Information; Form 62-330.311(1) Operation and Maintenance Certification; or Form 62-330.311(3) Inspection Checklists.

- Amending section 12.5(a) to provide exceptions to the rules' inspection requirements for the following activities and BMPs, and providing such activities must be inspected in accordance with the applicable rules and laws:
  - Activities and BMPs regulated by the South Florida Water Management District pursuant to rule 40E-63 of Florida Administrative Code regarding the Everglades Program; and
  - Activities and BMPs regulated by the Department of Agriculture and Consumer Services pursuant to Title 5M of the Florida Administrative Code, regarding agricultural BMPs, and s. 403.067(7)(c)2., F.S., regarding the establishment and implementation of TMDLs.

The bill also amends section 8.3.5 of the Applicant's Handbook, which provides alternative treatment standards for stormwater systems serving redevelopment[119] activities. The bill permits an alternative level of treatment for redevelopment projects in areas with impaired waters, which DEP's proposed rules currently do not allow.[120] Specifically, the bill provides that stormwater treatment systems located within a HUC 12 subwatershed which contains an impaired water and located upstream of that impaired water may provide an alternative level of treatment sufficient to accomplish:

- An 80 percent reduction of the post-development average annual loading of TP and a 45 percent reduction of the post-development average annual loading of TN from the project area; and
- A post-development condition average annual loading, of those pollutants not meeting water quality standards, that is less than that of the predevelopment condition.

Under DEP's proposed rules, stormwater systems for redevelopment projects located within a such a subwatershed containing an impaired water and located upstream of that impaired water would have to meet the minimum performance standards for impaired waters under section 8.3.4 of the Applicant's Handbook.[121] Section 8.3.4 provides that stormwater systems in these areas must generally provide a level of treatment sufficient to accomplish:

- An 80 percent reduction of the average annual loading of TP and TN from the proposed project, or 95 percent where located within such HUC 12 subwatershed containing an OFW and located upstream of that OFW; and
- A reduction such that the post-development condition average annual loading of nutrients does not exceed the predevelopment condition nutrient loading; and
- The post-development condition average annual loading of those pollutants not meeting water quality standards are less than that of the predevelopment condition.

The bill does not change the required pollutant reductions for redevelopment projects within a HUC 12 subwatershed containing an OFW (a 90 percent reduction of the post-development average annual loading of TP and a 60 percent reduction of the post-development average annual loading of TN from the project area). However, the bill specifies that these alternative standards apply to stormwater systems within an OFW subwatershed if they are *located upstream* of the

[119] The proposed rules define "redevelopment" as the construction on sites having existing commercial, industrial, institutional, roadway, or residential land uses, excluding silviculture or agriculture, where the existing land use has not been previously permitted, where all or part of the existing impervious surface is removed and replaced with new impervious surface, which has the same or lesser area as the existing impervious surface, and the same or less intense land uses. DEP, *ERP Applicant's Handbook: Vol. I*, s. 2.0(a)97 (proposed 2023).
[120] DEP, *ERP Applicant's Handbook: Vol. I*, s. 8.3.5 (proposed 2023).
[121] *Id.*

OFW. In contrast, under DEP's proposed rules, these alternative standards would be applicable to all stormwater systems within such a subwatershed, irrespective of their location relative to the OFW.[122]

Below is a table summarizing how the bill changes the required reductions for redevelopment:

Site Location	Required Reduction under DEP's Proposed Rules		Required Reduction as Amended by Bill	
	TP	TN	TP	TN
Impaired Waters	80%	80%	No Change	No Change
Impaired Waters - Redevelopment	80%*	80%*	80%	45%
OFWs	90%	80%	No Change	No Change
OFWs - Redevelopment	90%	60%	90%**	60%**
All other Redevelopment Sites	80%	45%	No Change	No Change

* Alternative standards for redevelopment do not apply. Stormwater systems must comply with the minimum level of treatment for impaired waters.
** Applies to stormwater systems located upstream of OFW.

In addition, the bill provides that any future changes to those portions of the Applicant's Handbook that are amended by the bill must be submitted in bill form to the Speaker of the House of Representatives and to the President of the Senate for their consideration and referral to the appropriate committees. Such amendments would become effective only upon approval by act of the Legislature.

Section 3 provides that the bill will take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The municipality/county mandates provision of Art. VII, s. 18(a) of the Florida Constitution may not apply to this bill. The Florida Constitution limits the ability of the State to impose unfunded mandates on local governments. However, if a bill merely reauthorizes existing statutory authority, it is exempt from the unfunded mandates provision. This bill likely falls under this exemption and will therefore not be subject to the unfunded mandates prohibition.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[122] *Id.*at s.

D. State Tax or Fee Increases:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Revisions to Chapter 62-330 of the Florida Administrative Code will increase costs associated with the new requirements for stormwater treatment, operation and maintenance, inspections and reporting, and dam systems information and safety.[123] The Department of Environmental Protection (DEP) estimates that approximately 14,032 entities will be required to comply with the revised rules within five years of the rules' implementation.[124] This includes private and public entities of all sizes that are ordinarily involved in construction or development of residential, commercial, and light industrial properties.[125]

The estimated total cost for developing stormwater infrastructure in compliance with *current* treatment standards is $12.6 billion in the aggregate over a five-year period.[126] DEP estimates that the proposed rules revisions will increase these costs by approximately $1.21 billion[127] (or $2,600 per acre developed) within a five-year period after implementation.[128] This includes lower cost regulatory alternatives.[129] The provisions of this bill allowing redevelopment projects in areas with impaired waters are likely to reduce the fiscal impact of the rules. However, the provisions of this bill creating new law are likely to reduce the fiscal impact of the rules.

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[123] DEP, *SERC: Chapter 62-330, F.A.C.*, 2-3 (2023), *available at* http://publicfiles.dep.state.fl.us/dwrm/draftruledocs/stormwater/noc/serc-template-updated.pdf.
[124] *Id.* at 3.
[125] *Id.*
[126] *Id.* at 2.
[127] Prior to receipt of lower cost regulatory alternatives (LCRAs), DEP estimated the revised rules would increase stormwater treatment costs by $1.44 billion in the aggregate within five years from the rules' implementation, or $1.486 billion when including additional transactional costs (i.e., new requirements for system design, operation and maintenance, inspections, and reporting) and costs related to the rules' new requirements for dam systems. *Id.* at 2-3. DEP estimates the LCRAs will lower stormwater treatment costs (excluding transactional and dam system costs) by approximately 16 percent from the original estimate. *Id.* at 10. Accordingly, DEP's revised estimate for stormwater treatment costs under the proposed rules is $1.21 billion. DEP, *Presentation to the Florida Senate Committee on Environment and Natural Resources*, 13 (Dec. 6, 2023), *available at* https://www.flsenate.gov/Committees/Show/EN/MeetingPacket/6001/10561_MeetingPacket_6001.6.23.pdf; DEP, *Rulemaking Update: Stormwater | Chapter 62-330, F.A.C., Environmental Resource Permitting*, 2 (2023), (on file with the Senate Committee on Environment and Natural Resources).
[128] *Id.* at 2, 10; DEP, *Rulemaking Update: Stormwater | Chapter 62-330, F.A.C., Environmental Resource Permitting*, 2 (2023), (on file with the Senate Committee on Environment and Natural Resources); DEP, *Presentation to the Florida Senate Committee on Environment and Natural Resources*, 13 (Dec. 6, 2023), *available at* https://www.flsenate.gov/Committees/Show/EN/MeetingPacket/6001/10561_MeetingPacket_6001.6.23.pdf.
[129] DEP, *Presentation to the Florida Senate Committee on Environment and Natural Resources* at 13.

C. Government Sector Impact:

DEP intends to implement the proposed rule within its current workload, with existing staff.[130] Local governments that need to comply with the stormwater rule would be subject to the same costs discussed in the private sector impact section above.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates an undesignated section of Florida law and amends s. 373.4131 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.

[130] DEP, *SERC: Chapter 62-330, F.A.C.*, 4 (2023), *available at* http://publicfiles.dep.state.fl.us/dwrm/draftruledocs/stormwater/noc/serc-template-updated.pdf.

FOR CONSIDERATION By the Committee on Environment and Natural Resources

592-02234B-24 20247040pb

A bill to be entitled

An act relating to the ratification of the Department of Environmental Protection's rules relating to stormwater; ratifying a specified rule relating to environmental resource permitting for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule exceeding the specified thresholds for likely adverse impact or increase in regulatory costs; providing construction; amending s. 373.4131, F.S.; ratifying rule 62-330.010, Florida Administrative Code, with specified changes; requiring that specified future amendments to such rule be submitted in bill form to and approved by the Legislature; providing an effective date.

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

Section 1. (1) The following rule is ratified for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), Florida Statutes: rule 62-330, Florida Administrative Code, titled "Environmental Resource Permitting," as filed for adoption with the Department of State pursuant to the certification package dated April 28, 2023.

(2) Except for the changes set forth in section 2 as to rule 62-330.010, Florida Administrative Code, this section serves no other purpose and may not be codified in the Florida Statutes. After this act becomes a law, its enactment and

effective dates must be noted in the Florida Administrative Code, the Florida Administrative Register, or both, as appropriate. This section does not alter rulemaking authority delegated by prior law, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rule cited, and is intended to preserve the status of any cited rule as a rule under chapter 120, Florida Statutes. This section does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing adoption of any rule cited.

Section 2. Subsection (7) is added to section 373.4131, Florida Statutes, to read:

373.4131 Statewide environmental resource permitting rules.—

(7) The Legislature ratifies rule 62-330.010, Florida Administrative Code, titled "Purpose and Implementation," as filed for adoption with the Department of State pursuant to the certification package dated April 28, 2023, with the following changes:

(a) Section 3.1.2(e)3. of the Applicant's Handbook Volume I, incorporated in rule 62-330.010(4)(a), Florida Administrative Code, is changed to add, after the last sentence, the following: "Nothing in Section 3.1.2(e)3. shall eliminate any grandfather provisions in Section 1.4.2 and other grandfather provisions of Section 3.1.2 in existence prior to [effective date]. Projects listed in Section 3.1.2(e)3. shall use all forms in effect at the time the permit was originally issued, except for those subsequent permits to construct and operate the future phases

consistent with an unexpired conceptual approval permit which shall use the following forms effective [effective date]: Form 62-330.301(26) Financial Capability Certification; Form 62-330.301(25) Dam System Information; Form 62-330.311(1) Operation and Maintenance Certification; and Form 62-330.311(3) Inspection Checklists, as applicable."

(b) Section 8.3.4(a)3 of the Applicant's Handbook Volume I, incorporated in rule 62-330.010(4)(a), Florida Administrative Code, is changed to read: "the post-development condition average annual loading, of those pollutants not meeting water quality standards, that is less than that of the predevelopment condition."

(c) Section 8.3.4(b)2 of the Applicant's Handbook Volume I, incorporated in rule 62-330.010(4)(a), Florida Administrative Code, is changed to read: "the post-development condition average annual loading, of those pollutants not meeting water quality standards, that is less than that of the predevelopment condition."

(d) Section 8.3.5 of the Applicant's Handbook Volume I, incorporated in rule 62-330.010(4)(a), Florida Administrative Code, is changed to read: "Stormwater treatment systems serving redevelopment activities shall either meet the requirements of Sections 8.3.2 through 8.3.4 or provide an alternate level of treatment sufficient to accomplish:

(a) an 80 percent reduction of the post-development average annual loading of TP and a 45 percent reduction of the post-development average annual loading of TN from the project area; and

(b) for stormwater systems located within a HUC 12

subwatershed containing an OFW and located upstream of that OFW, a 90 percent reduction of the post-development average annual loading of TP and a 60 percent reduction of the post-development average annual loading of TN from the project area; and

(c) for stormwater treatment systems located within a HUC 12 subwatershed which contains an impaired water and located upstream of that impaired water, a level of treatment sufficient to accomplish a post-development condition average annual loading, of those pollutants not meeting water quality standards, that is less than that of the predevelopment condition."

(e) The first sentence of Section 12.5(a) of the Applicant's Handbook Volume I, incorporated in rule 62-330.010(4)(a), Florida Administrative Code, is changed to read: "All operation and maintenance entities, other than MS4 Entities, shall conduct and report inspections in accordance with this section; except that those specific activities and best management practices regulated by the South Florida Water Management District pursuant to Chapter 40E-63, F.A.C., or by the Department of Agriculture and Consumer Services pursuant to Title 5M, F.A.C., and Section 403.067(7)(c)2., F.S., shall be inspected in accordance with such applicable rules and laws."

Any future amendments to those portions of the Applicant's Handbook Volume I, incorporated in rule 62-330.010(4)(a), Florida Administrative Code, included in this subsection must be submitted in bill form to the Speaker of the House of Representatives and to the President of the Senate for their consideration and referral to the appropriate committees. Such

amendments shall become effective only upon approval by act of the Legislature.

Section 3. This act shall take effect upon becoming a law.