HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1343 Water Quality Improvements
SPONSOR(S): Payne, Ingoglia and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N	Melkun	Moore
2) Appropriations Committee	28 Y, 0 N	White	Pridgeon
3) State Affairs Committee			

SUMMARY ANALYSIS

States are required by the Clean Water Act to maintain the quality of their waters. In Florida, water quality is addressed through water quality standards, total maximum daily loads (TMDLs), basin management action plans (BMAPs), and permits.

The bill addresses water quality impacts. Specifically, the bill addresses water quality issues resulting from onsite sewage treatment and disposal systems (OSTDSs) by:

- Transferring the Onsite Sewage Program from the Department of Health to the Department of Environmental Protection (DEP);
- Requiring the departments to submit recommendations to the Governor and Legislature regarding the transfer of the Onsite Sewage Program;
- Repealing certain advisory committees related to OSTDSs;
- Creating an OSTDS technical advisory committee to make recommendations that increase the availability of nutrient removing OSTDSs and assist DEP in the development of setback distances; and
- Requiring OSTDS remediation plans.

The bill addresses the water quality issues resulting from stormwater by:

- Requiring DEP staff training to include field inspections of stormwater structural controls;
- Requiring DEP and the water management districts to update the stormwater regulations using the most up to date science; and
- Requiring the model stormwater management program to contain model ordinances targeting nutrient reduction.

The bill addresses water quality issues resulting from domestic wastewater facilities by requiring:

- Local governments to create wastewater treatment plans;
- Sanitary sewage facilities to take steps to prevent sanitary sewer overflows;
- DEP to establish real-time water quality monitoring; and
- Advanced wastewater treatment for domestic wastewater discharges to the Indian River Lagoon.

The bill creates a wastewater grant program, subject to appropriation, and requires DEP to provide grants for projects that will reduce excess nutrient pollution.

With respect to agriculture, the bill requires the Department of Agriculture and Consumer Services to conduct inspections of producers enrolled in best management practices (BMPs) and requires the University of Florida to develop research plans for developing new BMPs.

The proposed House of Representatives' Fiscal Year 2020-2021 General Appropriations Act appropriates funding within DEP and DACS for the increase in the number of required site visits to be conducted, water quality improvement cost share grants, water quality monitoring, and TMDLs.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Water Quality

The federal Clean Water Act (CWA) requires states to adopt water quality standards (WQS) for navigable waters.[1] The CWA also requires states to develop lists of water bodies that do not meet WQS, which are called impaired waters. States must then develop a total maximum daily load (TMDL) for the particular pollutants causing the impairment. The TMDL is the maximum allowable amount of the pollutants the water body can receive while still maintaining WQS.[2]

Total Maximum Daily Loads and Basin Management Action Plans

The Florida Watershed Restoration Act guides the development and implementation of TMDLs.[3] TMDLs must include reasonable and equitable pollutant load allocations between or among point sources (e.g., pipes and culverts discharging from a permitted facility, such as a domestic wastewater treatment facility) and nonpoint sources (e.g., agriculture, septic tanks, golf courses) that will alone, or in conjunction with other management and restoration activities, reduce pollutants and achieve WQS.[4] The allocation must consider cost-effective approaches coordinated between contributing point and nonpoint sources of pollution for impaired water bodies and may include both non-regulatory and incentive-based programs.[5] Under the Florida Watershed Restoration Act, DEP is not required to develop a TMDL if there is existing reasonable assurance that there are existing or proposed pollution control mechanisms or programs that will effectively address the impairment.[6]

The Department of Environmental Protection (DEP) is the lead agency coordinating the development and implementation of TMDLs.[7] Once a TMDL is adopted,[8] DEP may develop and implement a basin management action plan (BMAP), which is a restoration plan for the watersheds and basins connected to the impaired water body.[9] A BMAP must integrate appropriate management strategies available to the state through existing water quality protection programs to achieve the TMDL.[10] The BMAP must also include milestones for implementation and water quality improvement, and associated water quality monitoring, which determines whether there has been reasonable progress in pollutant load reductions. DEP must conduct an assessment of progress every five years, and revisions to the BMAP must be made as appropriate.[11]

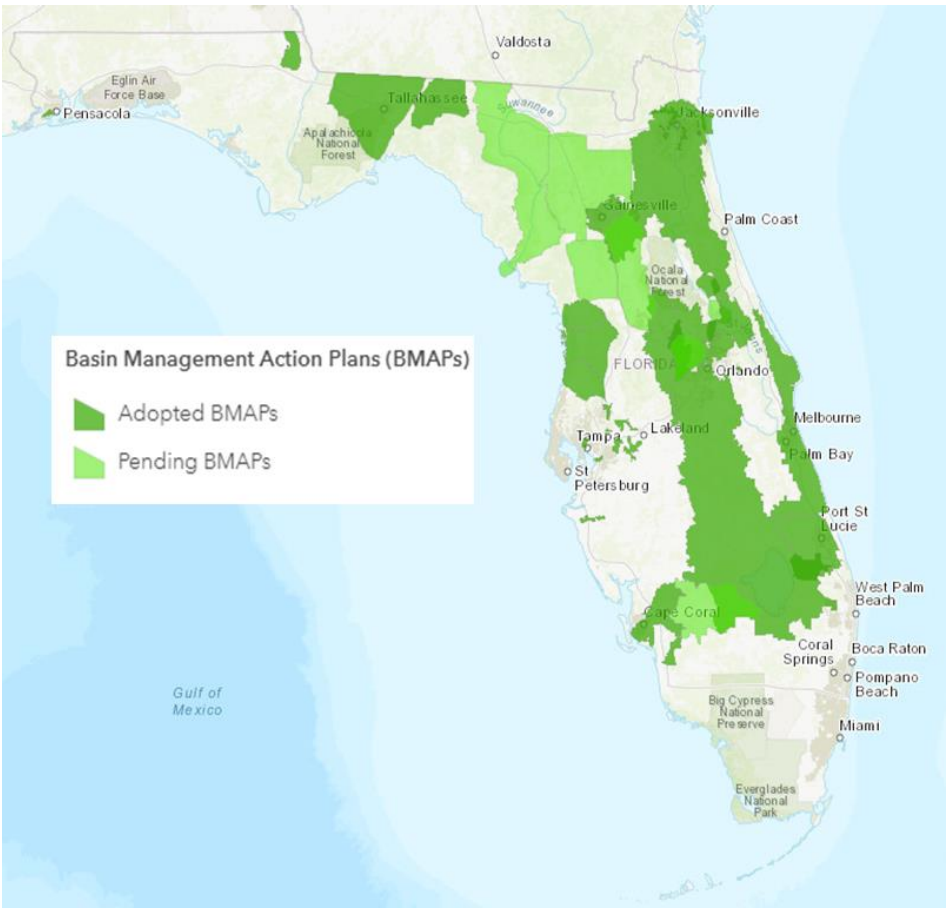
For point source discharges, any management strategies and pollutant reduction requirements associated with a TMDL must be incorporated into subsequent permits or permit modifications. DEP may not impose limits or conditions implementing an adopted TMDL in a permit until the permit expires, the discharge is modified, or the permit is reopened pursuant to an adopted BMAP.[12]

A best management practice (BMP) is a practice or combination of practices adopted by rule by the Department of Agriculture and Consumer Services (DACS), DEP, or the applicable water management

[1] 33 U.S.C. s. 1313.
[2] 33 U.S.C. s. 1313; *see* s. 403.067, F.S.
[3] Section 403.067, F.S.; ch. 99-223, Laws of Fla.
[4] Section 403.067(6)(b), F.S.
[5] Section 403.067(1), F.S.
[6] *Id*. at 2.
[7] Section 403.061, F.S. DEP has the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. Section 403.061(21), F.S., allows DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.
[8] Section 403.067(6)(c), F.S.
[9] Section 403.067(7)(a)1., F.S.
[10] *Id.*
[11] Section 403.067(7)(a)6., F.S.
[12] Section 403.067(7)(b)2., F.S.

district (WMD) as an effective and practicable means for reducing nutrient inputs and improving water quality, taking into account economic and technological considerations.[13] Where there is an adopted BMP for a nonpoint source, the BMAP must require the nonpoint source to implement the applicable BMPs. The nonpoint source discharger must demonstrate compliance with BMP implementation or conduct water quality monitoring prescribed by DEP or the WMD. If the discharger fails to demonstrate compliance, the discharger may be subject to enforcement action.[14]

The adopted and pending BMAPs are illustrated in the graphic below:[15]



Agricultural Best Management Practices

Agricultural BMPs are practical measures that agricultural producers undertake to reduce the impacts of fertilizer and water use and otherwise manage the landscape to further protect water resources. Agricultural BMPs are developed using the best available science with economic and technical consideration and, in certain circumstances, BMPs can maintain or enhance agricultural productivity.[16]

Agricultural BMPs are implemented by DACS. Since the implementation of the BMP program in 1999, DACS has adopted nine BMP manuals that cover nearly all major agricultural commodities in Florida. The University of Florida's Institute of Food and Agricultural Sciences (UF/IFAS) is also involved in the adoption and implementation of agricultural BMPs. UF/IFAS provides expertise to both DACS and

[13] Rule 62-306.200(2), F.A.C.; r. 62-503.200(4), F.A.C., defines "best management practice" as a control technique used for a given set of conditions to achieve water quality and water quantity enhancement at a feasible cost.
[14] Sections 403.067(7)(b)2.g. and 403.067(7)(b)2.h., F.S.
[15] DEP, *Impaired Waters, TMDLs, and Basin Management Action Plans Interactive Map*, available at https://floridadep.gov/dear/water-quality-restoration/content/impaired-waters-tmdls-and-basin-management-action-plans (last visited Jan. 17, 2020).
[16] DACS, *Status of Implementation of Agricultural Nonpoint Source Best Management Practices* (Jul. 1, 2019), 3, available at https://www.fdacs.gov/ezs3download/download/84080/2481615/Media/Files/Agricultural-Water-Policy-Files/Status-of-Implementation-of-BMPs-Report-2019.pdf (last visited Jan. 17, 2020).

agricultural producers, holds summits and workshops on agricultural BMPs,[17] conducts research to issue recommendations for improving agricultural BMPs,[18] and issues training certificates for agricultural BMPs that require licenses, such as Green Industry BMPs.[19] It is estimated that approximately 54 percent of the state's agricultural acreage is enrolled in the DACS BMP program.[20]

Producers implementing agricultural BMPs receive a presumption of compliance with WQS for the pollutants addressed by the BMPs,[21] and those who enroll in the BMP program are eligible for technical assistance and cost-share funding for BMP implementation. To enroll in the BMP program, a producer must meet with the Office of Agricultural Water Policy (OAWP) within DACS to determine the BMPs that are applicable to its operation and must submit a Notice of Intent to Implement the BMPs, along with the BMP checklist from the applicable manual. Where DEP adopts a BMAP that includes agriculture, producers must either implement DACS-adopted BMPs or conduct water quality monitoring (prescribed by DEP or the WMD and paid for by the producer) to show they are not violating WQS.[22]

DACS also has an implementation verification program to follow up with producers and help ensure that BMPs are being implemented properly. Representatives of DACS conduct site visits to enrolled operations, and some producers are asked to complete online surveys.[23]

Wastewater

A person generates approximately 100 gallons of domestic wastewater[24] per day.[25] This wastewater must be managed to protect public health, water quality, recreation, fish, wildlife, and the aesthetic appeal of the state's waterways.[26]

Onsite Sewage Treatment and Disposal Systems

One of the methods utilized to treat domestic wastewater is an onsite sewage treatment and disposal system (OSTDS),[27] commonly referred to as a septic system.[28] Approximately 30 percent of the population in Florida uses an OSTDS.[29]

An OSTDS must be permitted and inspected by the Department of Health (DOH) before it is placed into operation and must be located and installed so that, along with proper maintenance, the system functions in a sanitary manner, does not create a sanitary nuisance or health hazard, and does not endanger the safety of any domestic water supply, groundwater, or surface water.[30] Sewage waste and effluent from an OSTDS may not be discharged onto the ground surface or directly or indirectly

[17] UF/IFAS, *Best Management Practices Resource*, available at https://bmp.ifas.ufl.edu/ (last visited Jan. 21, 2020).
[18] UF/IFAS, *Best Management Practices & Water Resources*, available at https://erec.ifas.ufl.edu/featured-3-menus/research-/best-management-practices--water-resources/ (last visited Jan. 21, 2020).
[19] UF/IFAS, *GI-BMP Training Program Overview*, available at https://ffl.ifas.ufl.edu/professionals/BMP_overview.htm (last visited Jan. 21, 2020).
[20] *Id*. at 2.
[21] Section 403.067(7), F.S.
[22] DACS, *Agricultural Best Management Practices*, available at https://www.fdacs.gov/Agriculture-Industry/Water/Agricultural-Best-Management-Practices (last visited Jan. 21, 2020).
[23] DACS, *Agricultural Best Management Practices*, available at https://www.fdacs.gov/Agriculture-Industry/Water/Agricultural-Best-Management-Practices (last visited Jan. 21, 2020).
[24] Section 367.021(5), F.S., defines "domestic wastewater" as wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.
[25] DEP, *Domestic Wastewater Program*, available at https://floridadep.gov/water/domestic-wastewater (last visited Jan. 21, 2020).
[26] Sections 381.0065(1) and 403.021, F.S.
[27] Section 381.0065(2)(k), F.S., defines an "onsite sewage treatment and disposal system" as a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. This term does not include package sewage treatment facilities and other treatment works regulated under ch. 403, F.S.
[28] Sections 381.0065(2)(k) and 381.0065(3), F.S.; chs. 62-600 and 62-701, F.A.C.
[29] DOH, *Onsite Sewage*, available at http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html (last visited Jan. 21, 2020).
[30] Section 381.0065(4), F.S.; rr. 64E-6.003 and 64E-6.004, F.A.C.

discharged into ditches, drainage structures, groundwaters, surface waters, or aquifers.[31] DOH regulates an estimated 2.6 million OSTDSs.[32] The permitting and inspection of OSTDSs is handled mainly by county health departments with support from the Bureau of Onsite Sewage within DOH.[33]

DOH OSTDS Advisory Committees

DOH operates and serves three advisory organizations related to OSTDSs: the Research Review and Advisory Committee (RRAC),[34] the Technical Review and Advisory Panel (TRAP),[35] and the Variance Review and Advisory Committee (VRAC).[36] The TRAP assists in the adoption of rules for OSTDSs and reviews and comments on any legislation or existing policy related to OSTDSs. All rules proposed by DOH that relate to OSTDSs must be presented to the TRAP for review and comment prior to adoption.[37] The RRAC advises on new research, reviews and ranks proposals for research contracts, and reviews and provides comments on draft research reports regarding the OSTDS industry.[38]

The VRAC recommends agency action on variance requests. A person who applies for an OSTDS construction permit but cannot meet the requirements of the rule or statute will not be issued a permit; however, a person may request a variance from the standards.[39] DOH, in hardship cases, may grant variances, which may be less restrictive than the OSTDS provisions required by statute and rule.[40]

Outstanding Florida Springs

Nutrients, specifically nitrogen and phosphorous, are naturally present in the water and are necessary for the growth of plant and animal life. However, too much nitrogen or phosphorous can harm water quality. In some areas, the wastewater leaving OSTDSs has been identified as a contributor to nitrogen pollution.[41]

In 2016, the Legislature enacted the Springs and Aquifer Protection Act (act), which established additional protections to conserve and protect 30 Outstanding Florida Springs.[42] The act directed DEP to assess the Outstanding Florida Springs for nutrient impairment and, in collaboration with other state agencies and local governments, develop BMAPs by July 1, 2016.[43] Each BMAP was required to identify the sources of nitrogen pollution within the springshed and identify projects and strategies that will achieve the reductions needed to improve water quality in the region, including, as necessary, an OSTDS remediation plan that identifies cost-effective and financially feasible projects to reduce nitrogen contributions from OSTDSs.[44]

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[31] Rule 64E-6.005, F.A.C.

[32] DOH, *Onsite Sewage*, available at http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html (last visited Jan. 21, 2020).

[33] Sections 381.006(7) and 381.0065, F.S.; r. 62-600.120, F.A.C.; *see* DEP, *Domestic Wastewater - Septic Systems*, available at https://floridadep.gov/water/domestic-wastewater/content/septic-systems (last visited Jan. 21, 2020).

[34] Section 381.0065(4)(o), F.S.

[35] Section 381.0068, F.S.

[36] Section 381.0065(4)(h)2., F.S.; *see also*, DOH, *Boards, Councils and Committees*, available at http://www.floridahealth.gov/provider-and-partner-resources/advisory-councils-stakeholder-groups/index.html (last visited Jan. 21, 2020).

[37] Section 381.0068, F.S.

[38] Section 381.0065(4)(o), F.S.

[39] DOH, *Variances*, available at http://www.floridahealth.gov/environmental-health/onsite-sewage/variances/index.html (last visited Jan. 21, 2020).

[40] Section 381.0065(4)(h), F.S.

[41] DEP, *Meeting the Septic System Permitting Requirements: Springs and Aquifer Protection Act*, available at https://floridadep.gov/sites/default/files/Springs%20and%20Aquifer%20Protection%20Act_0.pdf (last visited Jan. 21, 2020).

[42] Section 373.802(4),F.S., defines an "Outstanding Florida Spring" as all historic first magnitude springs, including their associated spring runs, as determined by DEP using the most recent Florida Geological Survey springs bulletin, and the following additional springs, including their associated spring runs: De Leon Springs, Peacock Springs, Poe Springs, Rock Springs, Wekiwa Springs, and Gemini Springs. The term does not include submarine springs or river rises; ch. 2016-001, Laws of Fla.

[43] DEP, *Meeting the Septic System Permitting Requirements: Springs and Aquifer Protection Act*, available at https://floridadep.gov/sites/default/files/Springs%20and%20Aquifer%20Protection%20Act_0.pdf (last visited Jan. 21, 2020).

[44] Section 373.807, F.S.; DEP, *Meeting the Septic System Permitting Requirements: Springs and Aquifer Protection Act*, available at https://floridadep.gov/sites/default/files/Springs%20and%20Aquifer%20Protection%20Act_0.pdf (last visited Jan. 21, 2020).

Further, the act prohibited new homes or businesses with new OSTDSs on lots less than one acre in priority focus areas[45] from installing conventional non-nitrogen reducing OSTDSs if the installation is inconsistent with a BMAP.[46] Instead, new construction must either connect to available central sewer lines, install a nitrogen-reducing OSTDS, such as "in-ground, passive nitrogen-reducing systems" that use additional soil and media layers to reduce nitrogen flowing into the aquifer, or install nitrogen-reducing Aerobic Treatment Units and Performance-Based Treatment Systems.[47]

Wastewater Treatment Facilities

Because domestic wastewater treatment facilities are stationary installations that are reasonably expected to be sources of water pollution, they must be operated, maintained, constructed, expanded, or modified with a permit issued by DEP.[48] Approximately 2,000 domestic wastewater treatment facilities in the state serve roughly two-thirds of the state's population.[49] Each day over 1.5 billion gallons of treated wastewater effluent[50] and reclaimed water[51] are disposed of from these facilities.[52] Methods of disposal include reuse and land application systems, groundwater disposal by underground injection, groundwater recharge using injection wells, surface water discharges, disposal to coastal and open ocean waters, and wetland discharges.[53]

Most domestic wastewater treatment facilities must meet either basic disinfection or high-level disinfection requirements, depending upon the type of discharge.[54] Basic disinfection requires the effluent to contain less than 200 fecal coliforms per 100 micrograms per milliliter,[55] while high-level disinfection requires fecal coliforms to be reduced below detection.[56] Domestic wastewater treatment facilities that discharge to surface waters[57] must also obtain a National Pollutant Discharge Elimination System (NPDES) permit, which is established by the CWA to control point source discharges.[58] NPDES permit requirements for most domestic wastewater facilities are incorporated into the DEP-issued permit.[59] 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.[60]

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[45] Section 373.802(5), F.S., defines a "priority focus area" as the area or areas of a basin where the Floridan Aquifer is generally most vulnerable to pollutant inputs where there is a known connectivity between groundwater pathways and an Outstanding Florida Spring, as determined by DEP in consultation with the appropriate WMDs, and delineated in a BMAP.

[46] DOH, *OSTDS Permitting in a County affected by the Florida Springs and Aquifer Protection Act* (May 14, 2018), available at http://www.floridahealth.gov/environmental-health/onsite-sewage/_documents/letter-to-builders-springs.pdf (last visited Jan. 21, 2020).

[47] *Id*.

[48] Section 403.087(1), F.S.

[49] DEP, *General Facts and Statistics about Wastewater in Florida*, available at https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida (last visited Jan. 21, 2020).

[50] Rule 62-600.200(22), F.A.C., defines the term "effluent" as, unless specifically stated otherwise, water that is not reused after flowing out of any plant or other works used for the purpose of treating, stabilizing, or holding wastes.

[51] Rule 62-600.200(54), F.A.C., defines the term "reclaimed water" as water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.

[52] DEP, *General Facts and Statistics about Wastewater in Florida*, available at https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida (last visited Jan. 21, 2020).

[53] Rule 62-600.440(4), F.A.C.

[54] DEP, *Ultraviolet Disinfection for Domestic Wastewater*, available at https://floridadep.gov/water/domestic-wastewater/content/ultraviolet-uv-disinfection-domestic-wastewater (last visited Jan. 21, 2020).

[55] Rules 62-600.510(1) and 62-600.440(5), F.A.C.

[56] Rule 62-600.440(6), F.A.C.

[57] Section 373.019(21), F.S., defines the term "surface water" as water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs is classified as surface water when it exits from the spring onto the earth's surface; s. 403.031(13), F.S., defines the term "waters" as rivers, lakes, streams, springs, impoundments, wetlands, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface, or underground waters; r. 62-620.200(56), F.A.C.

[58] 33 U.S.C. s. 1342.

[59] Section 403.0885, F.S.; ch. 62-620, F.A.C.; DEP, *Wastewater Permitting*, available at https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting (last visited Jan. 21, 2020); Florida's Water Permitting Portal, *Types of Permits*, available at http://flwaterpermits.com/typesofpermits.html (last visited Jan. 21, 2020).

[60] Section 403.087(3), F.S.

Advanced Waste Treatment
Under Florida law, facilities for sanitary sewage disposal are required to provide for advanced waste treatment, as deemed necessary by DEP.[61] The standard for advanced waste treatment requires high-level disinfection and is defined using the maximum concentrations of nutrients or contaminants that a reclaimed water product may contain, which are outlined in the following table:[62]

Nutrient or Contaminant	Maximum Concentration Annually
Biochemical Oxygen Demand	5 mg/L
Suspended Solids	5 mg/L
Total Nitrogen	3 mg/L
Total Phosphorus	1 mg/L

Facilities for sanitary sewage disposal are prohibited from disposing of waste into certain waters without providing advanced waste treatment approved by DEP.[63]

Sanitary Sewer Overflows, Leakages, and Inflow and Infiltration
Although domestic wastewater treatment facilities are permitted and designed to safely and properly collect and manage a specified wastewater capacity, obstructions or extreme conditions can cause a sanitary sewer overflow (SSO). Any overflow, spill, release, discharge, or diversion of untreated or partially treated wastewater from a sanitary sewer system is considered a SSO.[64] Factors contributing to SSOs may include:

- Build-up of solids, fats, oils, and greases in the wastewater collection system which impedes flow;
- Too much rainfall infiltrating the system through leaky infrastructure, roof drains, or poorly connected wastewater lines;
- Blocked, broken, or cracked pipes and other equipment or power failures that keep the system from functioning properly (e.g., tree roots growing into the system, pipe settling or shifting so pipe joints no longer match, buildup of sediment and other material causing pipes to break or collapse); and
- A deteriorating or aging system.[65]

A SSO may subject the owner or operator of a facility to civil penalties of not more than $10,000 for each offense, a criminal conviction or fines, and additional administrative penalties.[66] Each day during the period in which a violation occurs constitutes a separate offense.[67] However, administrative penalties are capped at $10,000.[68]

A key concern with SSOs entering rivers, lakes, or streams is their negative effect on water quality. Because SSOs contain partially treated or potentially untreated domestic wastewater, ingestion or similar contact may cause illness. People can be exposed through direct contact in areas of high public access, food that has been contaminated, inhalation, and skin absorption. DOH may issue health

[61] Section 403.086(2), F.S.
[62] Sections 403.086(4) and 403.086(4)(b), F.S.; r. 62-600.440(6), F.A.C.
[63] Section 403.086(1)(c), F.S. Facilities for sanitary sewage disposal may not dispose of any wastes into Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, or Charlotte Harbor Bay, or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto, without providing advanced waste treatment approved by DEP. This prohibition does not apply to facilities permitted before February 1, 1987, that discharge secondary treated effluent, followed by water hyacinth treatment, to tributaries of the named waters; or to facilities permitted to discharge to the nontidally influenced portions of the Peace River.
[64] DEP, *SSOs*, available at https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf (last visited Jan. 21, 2020).
[65] DEP, *Preventing SSOs*, available at https://floridadep.gov/sites/default/files/preventing-sanitary-sewer-overflows.pdf (last visited Jan. 21, 2020); DEP, *SSOs*, available at https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf (last visited Jan. 21, 2020).
[66] Sections 403.121 and 403.141, F.S.
[67] *Id*.
[68] Sections 403.121(2)(b), 403.121(8), and 403.121(9), F.S.

advisories when bacteria levels present a risk to human health, and may post warning signs when bacteria affect public beaches or other areas where there is a risk of human exposure.[69]

Reduction of SSOs can be achieved through cleaning and maintaining the sewer system; reducing inflow and infiltration through rehabilitation and repairing broken or leaking lines; enlarging or upgrading sewer, pump station, or sewage treatment plant capacity and reliability; and constructing wet weather storage and treatment facilities to treat excess flows.[70]

Inflow and Infiltration (I&I) occurs when groundwater and/or rainwater enters the sanitary sewer system and ends up at the wastewater treatment facility, necessitating its treatment as if it were wastewater.[71] I&I can be caused by groundwater infiltrating the sewer system through faulty pipes or infrastructure, or any inflows of rainwater or non-wastewater into the sewer system.

I&I is a major cause of SSOs in Florida.[72] When domestic wastewater facilities are evaluated for permit renewal, collection systems are not evaluated for issues such as excessive I&I, unless problems result at the treatment plant.[73] Another major cause of SSOs is the loss of electricity to the infrastructure for the collection and transmission of wastewater, such as pump stations, especially during storms.[74] Pump stations receiving flow from another station through a force main, or those discharging through pipes 12 inches or larger, must have emergency generators.[75] All other pump stations must have emergency pumping capability through one of three specified arrangements.[76] These requirements for emergency pumping capacity only apply to domestic wastewater collection/transmission facilities existing after November 6, 2003, unless facilities existing prior to that date are modified.[77]

Wastewater Asset Management

Asset management is the practice of managing infrastructure capital assets to minimize the total cost of owning and operating these assets while delivering the desired service levels.[78] Many utilities use asset management to pursue and achieve sustainable infrastructure. A high-performing asset management program includes detailed asset inventories, operation and maintenance tasks, and long-range financial planning.[79]

Each utility is responsible for making sure that its system stays in good working order, regardless of the age of its components or the availability of additional funds.[80] Asset management programs with good data can be the most efficient method of meeting this requirement. Some key steps for asset management are making an inventory of critical assets, evaluating the condition and performance of such assets, and developing plans to maintain, repair, and replace assets and to fund these activities.[81]

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[69] DEP, *SSOs*, available at https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf (last visited Jan. 21, 2020).
[70] *Id*.
[71] City of St. Augustine, *Inflow & Infiltration Elimination Program*, available at https://www.citystaug.com/549/Inflow-Infiltration-Elimination-Program (last visited Jan. 21, 2020).
[72] *See* RS&H, Inc., *Evaluation of Sanitary Sewer Overflows and Unpermitted Discharges Associated with Hurricanes Hermine and Matthew* (Jan. 2017), available at https://floridadep.gov/sites/default/files/Final%20Report_Evaluation%20of%20SSO%20and%20Unpermitted%20Discharges%2001_06_17.pdf (last visited Jan. 21, 2020).
[73] Rule 62-600.735, F.A.C.; *see* r. 62-600.200, F.A.C. "Collection/transmission systems" are defined as sewers, pipelines, conduits, pumping stations, force mains, and all other facilities used for collection and transmission of wastewater from individual service connections to facilities intended for the purpose of providing treatment prior to release to the environment.
[74] *See* RS&H, Inc., *Evaluation of Sanitary Sewer Overflows and Unpermitted Discharges Associated with Hurricanes Hermine and Matthew* (Jan. 2017), available at https://floridadep.gov/sites/default/files/Final%20Report_Evaluation%20of%20SSO%20and%20Unpermitted%20Discharges%2001_06_17.pdf (last visited Jan. 21, 2020).
[75] Rule 62-604.400, F.A.C.
[76] *Id*.
[77] Rule 62-604.100, F.A.C.
[78] EPA, *Sustainable Water Infrastructure - Asset Management for Water and Wastewater Utilities*, available at https://www.epa.gov/sustainable-water-infrastructure/asset-management-water-and-wastewater-utilities (last visited Jan. 22, 2020).
[79] *Id*.
[80] *Id*.
[81] *Id*.

The U.S. Environmental Protection Agency (EPA) provides guidance and reference manuals for utilities to aid in developing asset management plans.[82]

Many states, including Florida, provide financial incentives for the development and implementation of an asset management plan when requesting funding under a State Revolving Fund or other state funding mechanism.[83] Florida's incentives include priority scoring,[84] reduction of interest rates,[85] principal forgiveness for financially disadvantaged small communities,[86] and eligibility for small community wastewater facilities grants.[87]

In 2016, the Legislature authorized the Public Service Commission (PSC) to allow a utility to create a utility reserve fund for repair and replacement of existing distribution and collection infrastructure that is nearing the end of its useful life or is detrimental to water quality or reliability of service. The utility reserve fund is funded by a portion of the rates charged by the utility, by a secured escrow account, or through a letter of credit.

The PSC adopted rules governing the implementation, management, and use of the fund, including expenses for which the fund may be used, segregation of reserve account funds, requirements for a capital improvement plan, and requirements for the PSC authorization before fund disbursements.[88] The PSC requires an applicant to provide a capital improvement plan or an asset management plan in seeking authorization to create a utility reserve fund.[89]

Biosolids

When domestic wastewater is treated, a solid byproduct accumulates in the wastewater treatment plant and must be removed periodically to keep the plant operating properly. The collected material, called biosolids or "sewage sludge," is high in organic content and contains moderate amounts of nutrients.[90] Wastewater facilities can dispose of biosolids by transferring them to another facility, placing them in a landfill, incinerating them, distributing them as fertilizer, or land applying them to permitted sites.[91] The option selected for use or disposal is typically stated in the permit issued to the wastewater treatment facility by DEP.[92] Florida produces a total of 340,000 dry tons of biosolids annually, of which approximately two-thirds are beneficially used and one-third is landfilled.[93]

Three classes of biosolids are regulated for beneficial use and are categorized based on treatment and quality: Class B, Class A, and Class AA.[94] Treatment is required to either reduce or completely

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[82] EPA, *Asset Management: A Best Practices Guide* (2008), available at https://nepis.epa.gov/Exe/ZyPDF.cgi/P1000LP0.PDF?Dockey=P1000LP0.PDF (last visited Jan. 22, 2020); EPA, *Reference Guide for Asset Management Tools/Asset Management Plan Components and Implementation Tools for Small and Medium Sized Drinking Water and Wastewater Systems* (May 2014), available at https://www.epa.gov/sites/production/files/2016-04/documents/am_tools_guide_may_2014.pdf (last visited Jan. 22, 2020).

[83] EPA, *State Asset Management Initiatives* (Aug. 2012), available at https://www.epa.gov/sites/production/files/2016-04/documents/state_asset_management_initiatives_11-01-12.pdf (last visited Jan. 22, 2020).

[84] Rule 62-503.300(e), F.A.C.

[85] Rules 62-503.300(5)(b)1. and 62-503.700(7), F.A.C.

[86] Rule 62-503.500(4), F.A.C.

[87] Rules 62-505.300(d) and 62-505.350(5)(c), F.A.C.

[88] Rule 25-30.444, F.A.C.

[89] Rules 25-30.444(2)(e) and 25-30.444(2)(m), F.A.C.

[90] DEP, *Domestic Wastewater Biosolids*, available at https://floridadep.gov/water/domestic-wastewater/content/domestic-wastewater-biosolids (last visited Jan. 21, 2020); "Biosolids" is defined as the solid, semisolid, or liquid residue generated during the treatment of domestic wastewater in a domestic wastewater treatment facility, formerly known as "domestic wastewater residuals" or "residuals." Rule 62-640.200(6), F.A.C. The treated effluent or reclaimed water from a domestic wastewater treatment plant is not included. Also, solids removed from pump stations and lift stations, screenings and grit removed from the preliminary treatment components of domestic wastewater treatment facilities, other solids as defined in subsection 62-640.200(31), F.A.C., and ash generated during the incineration of biosolids are not included.

[91] DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 3, available at https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf (last visited Jan. 21, 2020).

[92] *Id.* at slide 4.

[93] *Id*. at slide 5.

[94] *Id*. at slide 6.

eliminate pathogens. Class B treatment significantly reduces pathogens, but does not completely eliminate them. Class AA treatment essentially eliminates pathogens and meets strict concentration limits for heavy metals. The Class A treatment level is between Class B and Class AA. While Class A and Class AA can be used for a variety of beneficial purposes, Class B, the lowest quality of biosolids, is typically only used for land application.[95]

Land application is the use of biosolids at a permitted site, such as agricultural land or a golf course, forest, park, or reclamation site, to provide nutrients or organic matter to the soil. The biosolids are applied in accordance with restrictions based on crop nutrient needs, phosphorus limits in the area, and soil fertility.[96] Biosolids contain macronutrients (such as nitrogen and phosphorus) and micronutrients (such as copper, iron, and manganese) that are utilized by crops. The application of these nutrient-rich biosolids increases the organic content of the soil, fostering more productive plant growth.[97] To prevent odor or the contamination of soils, crops, and livestock, land application sites must meet site management requirements such as constructing site slopes and establishing setbacks.[98] There are approximately 140 permitted land application sites in Florida.[99]

Class AA biosolids can be land applied or can be distributed and marketed as a commercial fertilizer.[100] Class AA biosolids products are also not subject to site management requirements if distributed and marketed as a fertilizer or distributed and marketed to a person or entity that will sell or give away the biosolids products as a fertilizer or component of a fertilizer.[101] There are approximately 39 facilities in Florida that produce Class AA biosolids.[102] In 2016, 197,115 dry tons of Class AA biosolids product was distributed and marketed in Florida.[103]

The beneficial use of biosolids is regulated by DEP under ch. 62-640, F.A.C., and by the EPA under Title 40 Code of Federal Regulations Part 503 (Part 503).[104] Adopted in 1993, Part 503 created standards for the final use or disposal of biosolids generated during domestic wastewater treatment. The standards included general requirements, pollutant limits, management practices, and operational standards for biosolids. Standards were also included for biosolids applied to the land, placed on a surface disposal site, or fired in a sewage sludge incinerator.[105]

In 1990, DEP adopted rules governing biosolids based on the draft of Part 503 and previously adopted solid waste rules.[106] DEP's rules were revised in 1998 to be consistent with the final version of Part 503. Part 503, a self-implementing program, did not address phosphorus, a major pollutant in Florida.[107] As a result, DEP amended its rules in 2010 to improve site accountability and nutrient management by requiring site permits for the land application of biosolids, requiring nutrient

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[95] *Id*. at slide 7.
[96] DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 23, available at https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf (last visited Jan. 21, 2020); *see also,* United States Environmental Protection Agency (EPA), *A Plain English Guide to the EPA Part 503 Biosolids Rule* (Sept. 1994), 26, available at https://www.epa.gov/sites/production/files/2018-12/documents/plain-english-guide-part503-biosolids-rule.pdf (last visited Jan. 21, 2020).
[97] DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 20, available at https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf (last visited Jan. 21, 2020).
[98] *Id*. at slides 8-9.
[99] *Id*. at slide 20.
[100] *Id.* at slide 6.
[101] DEP, *Biosolids in Florida: 2013 Summary* (Dec. 2014), 4, available at https://floridadep.gov/sites/default/files/BiosolidsFlorida-2013-Summary_2.pdf (last visited Jan. 21, 2020).
[102] DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 13, available at https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf (last visited Jan. 21, 2020).
[103] *Id*. at slide 19.
[104] EPA, *Biosolids Laws and Regulations*, available at https://www.epa.gov/biosolids/biosolids-laws-and-regulations (last visited Jan. 21, 2020).
[105] 40 C.F.R. Part 503.
[106] Chapters 62-701 and 62-709, F.A.C.
[107] DEP, *Biosolids Rule/Permitting* (Nov. 2018), slide 2, available at https://floridadep.gov/water/domestic-wastewater/documents/tac-3-biosolids-rulepermitting (last visited Jan. 21, 2020); *see also*, DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 11, available at https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf (last visited Jan. 21, 2020).

management plans (NMPs), establishing phosphorus limitations, and specifying site management requirements.[108] Additionally, the rules clarified that the disposal and incineration of biosolids must be in accordance with DEP's solid waste[109] and air[110] rules to protect water quality and human health.

NMPs are site-specific plans that specify the rate at which biosolids can be applied in the area, the method of application allowed (i.e., surface application, injection, incorporation, etc.), the zone in which biosolids can be applied, pollutant concentration targets, and cumulative pollutant loading limits from all sources at the application site.[111] NMPs are submitted to DEP along with the permit application for each agricultural site.

Agricultural sites that are required to have a NMP for the application of biosolids are also often required to participate in DACS's agricultural BMP program if the site is located in an impaired watershed because of the potential impact biosolids may have on water quality.[112] Typical BMP practices include nutrient management, irrigation and water table management, and water resource protection. Nutrient management practices for biosolids land application address appropriate source, rate, timing, and placement of nutrients to minimize impacts to water resources. Irrigation and water table management practices address methods for irrigating to reduce water and nutrient losses to the environment and to maximize the efficient use and distribution of water. Finally, water resource protection practices, such as the site management requirements for biosolids, help to reduce or prevent the transport of nutrients and sediments from production areas to water resources.[113] The BMPs for the site are typically included in facility permits.[114]

Biosolids Technical Advisory Committee

In 2018, DEP created a Biosolids Technical Advisory Committee (Biosolids TAC) to evaluate current management practices and explore opportunities to better protect Florida's water resources.[115] The Biosolids TAC was composed of various stakeholders, including environmental and agricultural industry experts, representatives of large and small utilities, waste haulers, consultants, and academics.[116] The meetings included presentations and public comments as well as discussions among the Biosolids TAC members, the audience, and DEP.

Based on the deliberations of the Biosolids TAC and feedback from public participants, the Biosolids TAC recommended that DEP take the following actions:

- Permit biosolids in a manner that minimizes migration of nutrients to prevent impairment to waterbodies and amend current permitting rules to:
    - Establish the rate of biosolids application based on site specifics, such as soil characteristics/adsorption capacity, water table, hydrogeology, site use, and distance to surface water;
    - Evaluate the percentage of water extractable phosphorus in all biosolids to inform the appropriate application rate; and
    - Establish criteria for low, medium, and high-risk sites that guide application practices and required water quality monitoring.
- Increase the inspection rate of land application.

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[108] DEP, *Biosolids Rule/Permitting* (Nov. 2018), slide 2, available at https://floridadep.gov/water/domestic-wastewater/documents/tac-3-biosolids-rulepermitting (last visited Jan. 21, 2020); *see* ch. 62-640, F.A.C.

[109] Chapter 62-701, F.A.C.

[110] *See* Chapters 62-204, 62-210, 62-212, 62-213, 62-296, and 62-297, F.A.C.

[111] DEP, *NMPs*, available at https://floridadep.gov/water/domestic-wastewater/documents/nutrient-management-plans-biosolids (last visited Jan. 21, 2020); *see also*, r. 62-640.500, F.A.C.

[112] Rule 62-303.200(7), F.A.C., defines "impaired water" to mean 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.

[113] DACS, *Agriculture and Water Quality*, available at https://www.freshfromflorida.com/content/download/33106/813038/Agriculture_and_water_quality_2018.pdf (last visited Jan. 21, 2020).

[114] Section 403.067(7)(c), F.S.; *see* ch. 2016-1, Laws of Fla.

[115] DEP, *DEP Biosolids Technical Advisory Committee*, available at https://floridadep.gov/water/domestic-wastewater/content/dep-biosolids-technical-advisory-committee (last visited Jan. 21, 2020).

[116] *Id*.

- Develop site-specific groundwater and surface water monitoring protocols to detect nutrient migration.
- Develop and conduct biosolids and nutrient management research on nutrient run-off through surface and groundwater flow using various application rates, types of biosolids application, and different geologic conditions.
- Promote innovative technology pilot projects for biosolids processing that could provide a wider range of beneficial end products.[117]

DEP published a notice of rule development to amend its biosolids rules[118] on March 22, 2019. DEP held rulemaking workshops on June 25, 26, and 27, 2019, in various locations across the state and accepted public comments until August 15, 2019. A notice of proposed rule was published on October 29, 2019.[119]

The statement of estimated regulatory costs (SERC) for the proposed rule includes the following statewide cost estimates:

- $10 million in capital costs for new permitting and land application sites;
- At least $31 million in recurring costs for additional sites and transportation of wet biosolids; and
- $1 million in additional monitoring costs.[120]

DEP expects more biosolids to be converted to Class AA biosolids/fertilizer as a result of the proposed rule and estimates the capital cost for additional Class AA biosolids projects to be between $300 and $400 million.[121] DEP is currently reviewing lower cost regulatory alternatives that have been submitted. Because the SERC shows that the adverse impact or regulatory cost of the proposed rule exceeds $1 million in the aggregate within five years after implementation, the proposed rule must be submitted to the Legislature for ratification and may not take effect until it is ratified by the Legislature.[122]

Stormwater

Stormwater is the flow of water resulting from, and immediately following, a rainfall event.[123] When stormwater falls on pavement, buildings, and other impermeable surfaces, the runoff flows quickly and can pick up sediment, nutrients (such as nitrogen and phosphorous), chemicals, and other pollutants.[124] A stormwater management system is a system designed to control discharges necessitated by rainfall events, incorporating methods to collect, convey, store, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution.[125] Most activities that create new impermeable surfaces or alter surface water flows will involve a stormwater management system.[126]

Effective stormwater management is essential to reducing nonpoint source pollution.[127] Methods such as low-impact design technologies and BMPs can be implemented to address pollution in stormwater

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[117] DEP, *Biosolids Technical Advisory Committee Recommendations* (January 2019), available at https://floridadep.gov/water/domestic-wastewater/documents/tac-4-biosolids-tac-considerations (last visited Jan. 21, 2020).
[118] Chapter 62-640, F.A.C.
[119] The public comment period was originally scheduled to end July 29, 2019, but the deadline was extended; *see* Florida Administrative Register, *Notice List: 62-640*, available at https://www.flrules.org/gateway/result.asp (last visited Jan. 21, 2020).
[120] *Id*.
[121] *Id*.
[122] Section 120.541, F.S.
[123] DEP, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)* (June 1, 2018), 2-10, available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Appliicant_Hanbook_I_-_Combined.pd_0.pdf (last visited Jan. 21, 2020).
[124] DEP, *Stormwater Management* (2016), 1, available at https://floridadep.gov/sites/default/files/stormwater-management_0.pdf (last visited Jan. 21, 2020). When rain falls on fields, forests, and other areas with naturally permeable surfaces the water not absorbed by plants filters through the soil and replenishes Florida's groundwater supply.
[125] Section 373.403(10), F.S.
[126] DEP, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)* (June 1, 2018), 1-5, available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Appliicant_Hanbook_I_-_Combined.pd_0.pdf (last visited Jan. 21, 2020).
[127] Rule 62-40.431(1), F.A.C.

discharges.[128] Low-impact development refers to systems and practices that mimic or preserve natural drainage processes to manage stormwater.[129] This approach is also known as "green infrastructure," and instead of moving stormwater away from the built environment, these methods treat stormwater at its source.[130] Low-impact designs, including green roofs, permeable pavements, or bioswales, can result in stormwater being reused, soaking into vegetation that performs evaporative cooling, or infiltrating the soil and replenishing groundwater.[131]

Since the 1980s, Florida has regulated the discharge of stormwater to prevent pollution of the waters of the state and protect the designated beneficial use of surface waters.[132] Florida has established minimum stormwater treatment performance standards, which require design and performance criteria for new stormwater management 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 WQS and further achieve at least a 95 percent reduction of the average annual load of pollutants that would cause or contribute to violations of state WQS in Outstanding Florida Waters.[133] When a stormwater management system complies with rules establishing applicable design and performance criteria, there is a rebuttable presumption that the system's discharge will comply with WQS.[134]

Through its Environmental Resource Permitting (ERP) Program, DEP regulates activities that create stormwater runoff, as well as dredging and filling in wetlands and other surface waters.[135] ERPs are designed to prevent flooding, protect wetlands and other surface waters, and protect Florida's water quality from stormwater pollution.[136] DEP implements the statewide ERP Program in conjunction with the WMDs and certain local governments. The ERP Applicant Handbook, which is incorporated by reference into DEP rules, provides guidance on DEP's ERP Program, including stormwater topics such as the design of stormwater management systems.[137]

2010 Stormwater Rulemaking

From 2008 to 2010, DEP and the WMDs worked together to develop a statewide unified stormwater rule to protect Florida's surface waters from the effects of excessive nutrients in stormwater runoff.[138] A TAC was established and, in 2010, DEP announced a series of workshops to allow for public comment on the statewide stormwater quality draft rule.[139] The goal of the rule was to increase the level of

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[128] South Florida WMD, *Quick Facts on the Statewide Unified Stormwater Rule* (2009), available at https://www.sfwmd.gov/sites/default/files/documents/spl_stormwater_rule.pdf (last visited Jan. 21, 2020).
[129] EPA, *Benefits of Low Impact Development* (2012), 1, available at https://www.epa.gov/sites/production/files/2015-09/documents/bbfs1benefits.pdf (last visited Jan. 21, 2020); EPA, *Urban Runoff: Low Impact Development*, available at https://www.epa.gov/nps/urban-runoff-low-impact-development (last visited Jan. 21, 2020).
[130] DEP, *Green Infrastructure*, available at https://floridadep.gov/wra/319-tmdl-fund/content/green-infrastructure (last visited Jan. 21, 2020).
[131] EPA, *Benefits of Low Impact Development* (2012), 1, available at https://www.epa.gov/sites/production/files/2015-09/documents/bbfs1benefits.pdf (last visited Jan. 21, 2020); South Florida WMD, *Quick Facts on the Statewide Unified Stormwater Rule* (2009), available at https://www.sfwmd.gov/sites/default/files/documents/spl_stormwater_rule.pdf (last visited Jan. 21, 2020).
[132] DEP, *Evaluation of Current Stormwater Design Criteria within the State of Florida* (2007), 1-1, available at https://www.sfwmd.gov/sites/default/files/documents/sw%20treatment%20report-final71907.pdf (last visited Jan. 21, 2020).
[133] Rule 62-40.432(2), F.A.C.; DEP, *Outstanding Florida Waters*, available at https://floridadep.gov/dear/water-quality-standards/content/outstanding-florida-waters (last visited Jan. 21, 2020). Rule 62-302.200(26), F.A.C., defines "Outstanding Florida Water" to mean waters designated by the Environmental Regulation Commission as worthy of special protection because of their natural attributes.
[134] Rule 62-40.432(2), F.A.C.
[135] DEP, *DEP 101: Environmental Resource Permitting*, available at https://floridadep.gov/comm/press-office/content/dep-101-environmental-resource-permitting (last visited Jan. 22, 2020).
[136] South Florida WMD, *Environmental Resource Permits*, available at https://www.sfwmd.gov/doing-business-with-us/permits/environmental-resource-permits (last visited Jan. 22, 2020).
[137] Rule 62-330.010(4), F.A.C.; DEP, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)* (June 1, 2018), 2-10, available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Appliicant_Hanbook_I_-_Combined.pd_0.pdf (last visited Jan. 22, 2020).
[138] South Florida WMD, *Quick Facts on the Statewide Unified Stormwater Rule*, available at https://www.sfwmd.gov/sites/default/files/documents/spl_stormwater_rule.pdf (last visited Jan. 21, 2020).
[139] Chapter 62-347, F.A.C.; Florida Administrative Register, *Notice of Rescheduling* (Apr. 23, 2010), 1885, available at https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2010/3616/3616doc.pdf (last visited Jan. 21, 2020).

nutrient treatment in stormwater discharges and provide statewide consistency by establishing revised stormwater quality treatment performance standards and BMP design criteria.[140]

These rulemaking efforts produced a draft document called the "ERP Stormwater Quality Applicant's Handbook: Design Requirements for Stormwater Treatment in Florida."[141] The 2010 draft handbook's stormwater quality permitting requirements:

- Provided for different stormwater treatment performance standards based on various classifications of water quality.[142]
- Included instructions for calculating a project's required nutrient load reduction based on comparing the predevelopment and post-development loadings.[143]
- Provided the required criteria for stormwater BMPs.
- Listed 15 different types of stormwater treatment systems, including low impact design, pervious pavements, and stormwater harvesting.[144]

The proposed rule and revised handbook were expected to be adopted in 2011; however, neither the rules nor a revised handbook were ever adopted.

Rural Areas of Opportunity

A rural area of opportunity (RAO) is a rural community or region of rural communities that presents a unique economic development opportunity of regional impact or that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster.[145] By executive order, the Governor may designate up to three RAOs, establishing each region as a priority assignment for Rural Economic Development Initiative agencies. The Governor can waive the criteria, requirements, or any similar provisions of any state economic development incentive for projects in a RAO.[146]

The currently designated RAOs are:

- Northwestern RAO: Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington Counties, and part of Walton County.
- South Central RAO: DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee Counties, and the cities of Pahokee, Belle Glade, South Bay (Palm Beach County), and Immokalee (Collier County).
- North Central RAO: Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union Counties.[147]

Indian River Lagoon

The Indian River Lagoon (IRL) system is an estuary[148] that runs along 156 miles of Florida's east coast and borders Volusia, Brevard, Indian River, St. Lucie, and Martin counties.[149] The IRL system is composed of three main waterbodies: Mosquito Lagoon, Banana River, and the Indian River Lagoon.[150] Four BMAPs have been adopted for the IRL region.[151]

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[140] *Id.*

[141] DEP, *March 2010 Draft, Environmental Resource Permit Stormwater Quality Applicant's Handbook, Design Requirements for Stormwater Treatment Systems in Florida* (2010), available at https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/content2/roadway/drainage/files/stormwaterqualityapphb-draft.pdf?sfvrsn=579bf184_0 (last visited Jan. 21, 2020).

[142] *Id.* at 6-7.

[143] *Id.* at 8-11.

[144] *Id.* at 3.

[145] Section 288.0656(2)(d), F.S.

[146] Section 288.0656(7), F.S.

[147] Department of Economic Opportunity, *Rural Areas of Opportunity*, available at http://www.floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity (last visited Jan. 21, 2020).

[148] An estuary is a partially enclosed coastal waterbody where freshwater from rivers and streams mixes with saltwater from the ocean. EPA, *What Is An Estuary?*, available at https://www.epa.gov/nep/basic-information-about-estuaries (last visited Jan. 21, 2020).

[149] IRL National Estuary Program, *About the Indian River Lagoon*, available at http://www.irlcouncil.com/ (last visited Jan. 21, 2020).

[150] *Id*.

[151] East Central Florida Regional Planning Council and the Treasure Coast Regional Planning Council, *Indian River Lagoon Economic Valuation Update* (Aug. 26, 2016), x, available at http://tcrpc.org/special_projects/IRL_Econ_Valu/FinalReportIRL08_26_2016.pdf (last visited Jan. 21, 2020); DEP, *Basin Management Action Plans (BMAPs)*, available at https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps (last visited Jan. 21, 2020).

The IRL is one of the most biologically diverse estuaries in North America and is home to more than 2,000 species of plants, 600 species of fish, 300 species of birds, and 53 endangered or threatened species.[152] The estimated economic value received from the IRL in 2014 was approximately $7.6 billion.[153] Industry groups that are directly influenced by the IRL support nearly 72,000 jobs.[154]

The IRL ecosystem has been harmed by human activities in the region. Specifically, stormwater runoff from urban and agricultural areas, wastewater treatment facility discharges, canal discharges, septic systems, animal waste, and fertilizer applications have led to harmful levels of nutrients and sediments entering the lagoon.[155] These pollutants create cloudy conditions, feed algal blooms, and lead to muck accumulation, all of which negatively impact the seagrass that provides habitat for much of the IRL's marine life.[156]

Consolidated Annual Reports

By March 1 of each year, the WMDs must submit a consolidated annual report to the Governor, the Legislature, and DEP. The WMDs must also provide copies of the report to the chairs of the legislative committees having substantive or fiscal jurisdiction over the WMDs and to the governing boards of all county entities having jurisdiction or deriving any funds for operations of the district. The report must also be made available to the public in either a printed or an electronic format.[157]

The consolidated annual report includes several legislatively mandated plans and reports regarding the status of water resource programs. The consolidated annual report includes: the Strategic Water Management Plan Annual Work Plan Report; the Minimum Flows and Minimum Water Levels Annual Priority List and Schedule; the Annual Five-Year Capital Improvement Plan; the Alternative Water Supplies Annual Report; the Five-Year Water Resource Development Work Program; the Florida Forever WMD Work Plan Annual Report; the Mitigation Donation Annual Report; the Water Projects in the Five-Year Water Resources Development Work Program; and the Surface Water Improvement and Management Program Annual Report.[158]

The Office of Economic and Demographic Research

The Office of Economic and Demographic Research (EDR) is a research arm of the Legislature that is principally concerned with forecasting economic and social trends that affect policymaking, revenues, and appropriations.[159] EDR publishes all of the official economic, demographic, revenue, and agency workload forecasts that are developed by Consensus Estimating Conferences and makes them available to the Legislature, state agencies, universities, research organizations, and the general public.[160]

Type Two Transfer

A type two transfer is the merging of an existing department, program, or activity into another department.[161] Any program or activity transferred by a type two transfer retains all the statutory powers, duties, and functions it held before the transfer. The program or activity also retains its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, unless

[152] IRL National Estuary Program, *About the Indian River Lagoon*, available at http://www.irlcouncil.com/ (last visited Jan. 21, 2020).
[153] East Central Florida Regional Planning Council and the Treasure Coast Regional Planning Council, *Indian River Lagoon Economic Valuation Update* (Aug. 26, 2016), x, available at http://tcrpc.org/special_projects/IRL_Econ_Valu/FinalReportIRL08_26_2016.pdf (last visited Jan. 21, 2020).
[154] *Id.* at ix.
[155] Tetra Tech, Inc. & Closewaters, LLC, *Draft Save Our Indian River Lagoon Project Plan 2019 Update for Brevard County, Florida* (Mar. 2019), xii, available at https://www.dropbox.com/s/j9pxd59mt1baf7q/Revised%202019%20Save%20Our%20Indian%20River%20Lagoon%20Project%20Plan%20Update%20032519.pdf?dl=0 (last visited Jan. 21, 2020).
[156] *Id*.
[157] Northwest Florida WMD, *Consolidated Annual Reports*, available at https://www.nwfwater.com/Data-Publications/Reports-Plans/Consolidated-Annual-Reports (last visited Jan. 21, 2020).
[158] Section 373.036(7), F.S.
[159] EDR, *Welcome*, available at http://edr.state.fl.us/Content/ (last visited Jan. 21, 2020).
[160] EDR, *About Us*, available at http://edr.state.fl.us/Content/about/index.cfm (last visited Jan. 21, 2020).
[161] Section 20.06(2), F.S.

otherwise provided by law. The transfer of segregated funds must be made in such a manner that the relation between the program and the revenue source is retained.[162]

Effect of the Bill

Onsite Sewage Program

Effective July 1, 2021, the bill transfers the duties and powers related to regulation of the Onsite Sewage Program from DOH to DEP by a type two transfer and requires DEP and DOH to submit recommendations to the Governor and the Legislature regarding the transfer by December 31, 2020. The bill further requires DOH to submit a report by July 1, 2020, detailing the number of permits issued per year, costs and expenditures related to equipment and contracting, and other employee-related information.

The bill requires DEP and DOH, by June 30, 2021, to enter into an interagency agreement that addresses agency cooperation following the transfer. The bill allows employees transferred from DOH to DEP to retain any accrued leave.

OSTDSs

The bill requires the consolidated WMD annual report to be submitted to EDR in addition to DEP, the Governor, and the Legislature and requires the report to include projects to connect OSTDSs to central sewerage systems and to convert OSTDSs to advanced nutrient removing OSTDSs.

The bill requires DOH to determine that a hardship exists when an applicant for a variance demonstrates that the lot is at least 0.85 acres and that lots in the immediate proximity average at least one acre. The bill defines the term "immediate proximity" to mean lots within the same unit or phase of a subdivision as, adjacent or contiguous to, or across the road from the lot subject to the variance request.

The bill repeals the TRAP and the RRAC.

By July 1, 2020, the bill requires DOH to allow the use of American National Standards Institute 245 systems approved by the National Sanitation Foundation International (NSF/ANSI 245).[163]

The bill creates an OSTDS TAC to provide recommendations to increase the availability of nutrient removing OSTDSs in the marketplace, to consider and recommend regulatory options to facilitate the use of nutrient removing OSTDSs approved by a national agency or organization, and provide recommendations on appropriate setback distances for OSTDSs from surface water, groundwater, and wells. The bill requires DEP to use existing and available resources to administer and support the activities of the TAC.

The bill requires DEP, in consultation with DOH, to appoint no more than nine members to the TAC, who must include:

- A professional engineer;
- A septic tank contractor;
- A representative from the home building industry;
- A representative from the real estate industry;
- A representative from the OSTDS industry;
- A representative from local government;
- Two representatives from the environmental community; and

[162] Section 20.06(2), F.S.

[163] NSF/ANSI 245 is a certification applied to an OSTDS that defines total nitrogen reduction requirements. A NSF/ANSI 245 certified system covers residential wastewater treatment systems with rated capacities between 400 and 1,500 gallons per day. To achieve certification, treatment systems must produce an acceptable quality of effluent during a six-month (26-week) test; *see also*, The Public Health and Safety Organization, *NSF/ANSI 245: Nitrogen Reduction*, available at http://www.nsf.org/services/by-industry/water-wastewater/onsite-wastewater/nitrogen-reduction (last visited Jan. 21, 2020).

- A representative of the scientific and technical community who has expertise in water pollutants, toxicology, epidemiology, geology, biology, or environmental sciences.

The bill requires the TAC to submit its recommendations to the Governor and the Legislature by January 1, 2022, and requires the TAC to expire August 15, 2022.

The bill requires DEP to adopt rules to locate OSTDSs, including establishing setback distances, to prevent surface water and groundwater contamination. The bill further requires the rulemaking process for such rules to be completed by July 1, 2022, and requires DEP to notify the Division of Law Revision upon adoption of such rules. The bill requires the rules to consider conventional and advanced OSTDS designs, impaired or degraded water bodies, wastewater and drinking water infrastructure, potable water sources, non-potable wells, stormwater infrastructure, OSTDS remediation plans, nutrient pollution, and recommendations by the OSTDS TAC. The bill specifies that OSTDSs permitted before the rules take effect must comply with the statutory setback distances.

Stormwater

The bill requires DEP local pollution control staff training to include coordinating field inspections of public and privately-owned stormwater structural controls.

The bill requires DEP and the WMDs to initiate rulemaking by January 1, 2021, to update the stormwater design and operation regulations using the most up-to-date scientific information. In addition, the bill requires DEP to evaluate inspection data relating to compliance by entities that self-certify for the construction, alteration, and maintenance of a stormwater management system serving a total project area of up to 10 acres. DEP must recommend improvements to the self-certification process to the Legislature.

The bill requires the model stormwater management program to contain model ordinances targeting nutrient reduction practices and utilizing green infrastructure.

Wastewater Treatment Facilities

The bill requires DEP to adopt rules to reasonably limit, reduce, and eliminate leaks, seepages, or inputs into wastewater collection systems' underground pipes.

The bill requires public utilities, or their affiliated companies, that hold or are seeking a wastewater discharge permit to file reports regarding transactions or allocations of common costs among the utility and such affiliates. DEP must adopt rules that specify requirements for the report, which may include data necessary to ensure a permitted entity is reporting expenditures on pollution mitigation and prevention, including, but not limited to, the prevention of SSOs, collection and transmission system pipe leaks, and I&I.

The bill requires DEP, subject to appropriation, to establish a real-time water quality monitoring program to assist in the restoration, preservation, and enhancement of impaired waterbodies and coastal resources. The bill encourages DEP to form public-private partnerships with established scientific entities that have proven existing real-time water quality monitoring equipment in order to expedite creation of the program.

The bill requires BMAPs for nutrient TMDLs to include a wastewater treatment plan developed by a local government in consultation with DEP, the WMD, and the public and private domestic wastewater facilities within the local government's jurisdiction if DEP identifies domestic wastewater facilities or OSTDSs as contributors of at least 20 percent of point source or nonpoint source nutrient pollution or if DEP determines remediation is necessary to achieve nutrient TMDLs. The bill further requires BMAPs to include an OSTDS remediation plan developed by a local government, in consultation with DOH, the WMD, DEP, and public and private domestic wastewater facilities, if DEP determines that OSTDSs contribute to at least 20 percent of nonpoint source nutrient pollution or that the plan is necessary to achieve the TMDL.

The bill requires the OSTDS remediation plans to include an inventory of OSTDSs; identify OSTDSs that would be upgraded to advanced nutrient-removal systems, that would be connected to existing or future central wastewater infrastructure, or that would remain conventional; estimate the cost of these upgrades; and identify deadlines and interim milestones for the planning, design, and construction of projects. The bill further requires DEP to adopt the OSTDS remediation plan as part of a BMAP by July 1, 2025, or as required for Outstanding Florida Springs.

When identifying wastewater projects in a BMAP, the bill prohibits DEP from requiring the higher cost project if a lower cost option achieves the same nutrient load reduction. However, the bill allows the regulated entity to choose a different cost option if it provides additional benefits or meets other water quality or supply requirements.
By July 1, 2021, the bill requires DEP, in consultation with county health departments, wastewater treatment facilities, and other governmental entities, to submit a report to the Governor and the Legislature evaluating the costs of wastewater projects identified in BMAPs, OSTDS remediation plans, and other restoration plans developed to meet TMDLs. The report must include:

- Projects to replace OSTDSs with enhanced nutrient removing OSTDSs; install or retrofit OSTDSs with enhanced nutrient removing technologies; construct, upgrade, or expand domestic wastewater treatment facilities to meet the wastewater treatment plan; and connect OSTDSs to domestic wastewater treatment facilities;
- The estimated costs, nutrient load reduction estimates, and other benefits of each project;
- The estimated implementation timeline for each project;
- A proposed five-year funding plan for each project and the source and amount of financial assistance DEP, the WMD, or other project partner will make available to fund the project; and
- The projected costs of installing enhanced nutrient removing OSTDSs on buildable lots in priority focus areas to comply with statutory restrictions on the activities allowed in such areas.

The bill requires DEP to submit a report to the Governor and the Legislature by July 1, 2021, that provides an assessment of the water quality monitoring being conducted for each BMAP implementing a nutrient TMDL. The bill specifies that DEP may coordinate with the WMDs and any applicable university in developing the report. The bill requires the report to:

- Evaluate the water quality monitoring prescribed for each BMAP to determine if it is sufficient to detect changes in water quality caused by the implementation of a project;
- Identify gaps in water quality monitoring; and
- Recommend water quality needs.

The bill requires DEP, beginning January 1, 2022, to submit annual cost estimates for projects listed in the wastewater treatment plans or OSTDS remediation plans to EDR, and requires EDR to include the estimates in its annual assessment of water resources and conservation lands.

The bill creates a wastewater grant program and allows DEP, in consultation with the WMDs, to provide grants, subject to appropriation, for projects within BMAPs, alternative restoration plans adopted by final order, or RAOs that will reduce excess nutrient pollution. Projects eligible for funding include projects to retrofit OSTDSs to upgrade them to nutrient-reducing OSTDSs; projects to provide advanced waste treatment; and projects to connect OSTDSs to central sewer facilities. The bill requires each grant for a project to have a minimum 50 percent local match, but allows DEP to waive such match for projects within an area designated as a RAO. Priority must be given to projects that subsidize the connection of OSTDSs to a wastewater treatment plant. The bill further requires DEP, in determining priorities, to consider the estimated reduction in nutrient load per project; project readiness; cost-effectiveness of the project; overall environmental benefit of a project; the location of a project; the availability of local matching funds; and projected water savings or quantity improvements associated with a project. The bill requires DEP, beginning January 1, 2021, and each January 1 thereafter, to submit a report to the Governor and the Legislature regarding the projects funded pursuant to the grant program.

Beginning July 1, 2025, the bill prohibits wastewater treatment facilities from discharging into the IRL without providing advanced waste treatment.

The bill requires DEP, by July 1, 2020, to submit a report to the Governor and the Legislature that provides the status of upgrades made by each wastewater treatment facility discharging into specified waterbodies to meet the advanced waste treatment requirements. The report must include a list of wastewater treatment facilities that will be required to upgrade to advanced waste treatment, the preliminary cost estimates for the upgrades, and a projected timeline for the upgrades.

The bill requires any facility for sanitary sewage disposal to have a power outage contingency plan that mitigates the impacts of power outages on the utility's collection system and pump stations.

The bill requires sanitary sewage facilities that control a collection or transmission system of pipes and pumps to collect or transmit wastewater to the facility to take steps to prevent SSOs or underground pipe leaks and ensure collected wastewater reaches the facility. The bill further requires these facilities to develop pipe assessment, repair, and replacement action plans using I&I studies and leakage surveys. The facilities must report such plans to DEP and include information regarding the annual expenditures dedicated to the I&I studies and replacement action plans as well as expenditures dedicated to pipe assessment, repair, and replacement. The bill requires DEP to adopt rules regarding the implementation of I&I studies and leakage surveys. The bill specifies that substantial compliance with these replacement action plan requirements must be considered evidence in mitigation for the purposes of assessing penalties.

The bill requires DEP to issue an operation permit for a domestic wastewater treatment facility not regulated under the NPDES program for a term of up to 10 years if the facility is meeting the goals stated in its action plan.

The bill requires water pollution operation permits to include procedures to investigate or survey the wastewater collection system to determine pipe integrity. The bill further requires the permittee to submit an annual report to DEP including annual facility revenues and expenditures and detailing any deviation from annual expenditures related to I&I studies; model pipe assessment, repair, and replacement action plans; and pipe assessment, repair, and replacement. The bill directs DEP to adopt rules establishing requirements for the annual report. The bill specifies that substantial compliance with these requirements must be considered evidence in mitigation for the purposes of assessing penalties.

The bill requires DEP, by March 1 of each year, to submit a report to the Governor and the Legislature identifying all wastewater utilities that experienced a SSO in the preceding calendar year. The report must include the utility name, operator, number of overflows, and total quantity released. The bill further requires that, for each facility that experienced an overflow, DEP submit with the SSO report the annual report required for water pollution operation permits regarding facility revenues and expenditures.

The bill requires DEP to assess a penalty of $2,000 for the failure to survey the wastewater collection system and take steps to reduce SSOs, pipe leaks, and I&I for a wastewater violation not involving a surface water or groundwater violation.

The bill requires DEP to give funding priority to grant proposals submitted by a domestic wastewater utility under the water projects grant program that implement the replacement action plans and water pollution operation permit conditions.

<u>Agricultural BMPs</u>

The bill requires DACS to conduct onsite inspections at least every two years for agricultural producers enrolled in a BMP to ensure proper implementation of BMPs. The bill further requires verification to include a review of BMP documentation, including nitrogen and phosphorus fertilizer application records. The bill requires DACS to provide all documentation regarding BMPs to DEP.

The bill requires UF/IFAS, in cooperation with DACS, to annually develop research plans and legislative budget requests related to evaluating and developing BMPs. The bill further requires UF/IFAS to submit such research plans to DEP and DACS by August 1 of each year to be considered for funding.

Biosolids
The bill requires DEP to adopt rules for biosolids management and specifies that such rules may not take effect until ratified by the Legislature.

Important State Interest
The bill specifies that the Legislature determines that the bill fulfills an important state interest.

B. SECTION DIRECTORY:

Section 1. Transfers the authority of the Onsite Sewage Program from DOH to DEP via a type two transfer.

Section 2. Amends s. 373.036, F.S., relating to consolidated annual reports.

Section 3. Amends s. 373.4131, F.S., relating to statewide ERP rules.

Section 4. Effective July 1, 2020, amends s. 381.0065, F.S., relating to OSTDSs.

Section 5. Amends s. 381.0065, F.S., relating to OSTDSs.

Section 6. Amends s. 381.00651, F.S., relating to periodic evaluation and assessment of OSTDSs.

Section 7. Effective July 1, 2020, creates s. 381.00652, F.S., to create the OSTDS TAC.

Section 8. Repeals s. 381.0068, F.S., relating to the TRAP.

Section 9. Amends s. 381.0101, F.S., to make conforming changes.

Section 10. Amends s. 403.061, F.S., relating to DEP powers and duties.

Section 11. Creates s. 403.0616, F.S., to create a real-time water quality monitoring program.

Section 12. Amends s. 403.067, F.S., relating to the development of BMAPs and implementation of TMDLs.

Section 13. Effective July 1, 2020, creates s. 403.0671, F.S., relating to BMAP wastewater reports.

Section 14. Creates s. 403.0673, F.S., relating to the wastewater grant program.

Section 15. Creates s. 403.0855, F.S., relating to biosolids management.

Section 16. Amends s. 403.086, F.S., relating to sewage disposal facilities.

Section 17. Amends s. 403.087, F.S., relating to permits.

Section 18. Amends s. 403.088, F.S., relating to water pollution operation permits.

Section 19. Amends s. 403.0891, F.S., relating to state, regional, and local stormwater management plans and programs.

Section 20. Amends s. 403.121, F.S., relating to enforcement, procedure, and remedies.

Section 21. Amends s. 403.885, F.S., relating to the Water Projects Grant Program.

Section 22. Provides an important state interest.

Section 23. Amends s. 153.54, F.S., to make conforming changes.

Section 24. Amends s. 153.73, F.S., to make conforming changes.

Section 25. Amends s. 163.3180, F.S., to make conforming changes.

Section 26. Amends s. 180.03, F.S., to make conforming changes.
Section 32. Amends s. 311.105, F.S., to make conforming changes.

Section 27. Amends s. 327.46, F.S., to make conforming changes.

Section 28. Amends s. 373.250, F.S., to make conforming changes.

Section 29. Amends s. 373.414, F.S., to make conforming changes.

Section 30. Amends s. 373.707, F.S., to make conforming changes.

Section 31. Amends s. 373.705, F.S., to make conforming changes.

Section 32. Amends s. 373.709, F.S., to make conforming changes.

Section 33. Amends s. 373.807, F.S., to make conforming changes.

Section 34. Amends s. 376.307, F.S., to make conforming changes.

Section 35. Amends s. 380.0552, F.S., to make conforming changes.

Section 36. Amends s. 381.006, F.S., to make conforming changes.

Section 37. Amends s. 381.0061, F.S., to make conforming changes.

Section 38. Amends s. 381.0064, F.S., to make conforming changes.

Section 39. Amends s. 403.08601, F.S., to make conforming changes.

Section 40. Amends s. 403.0871, F.S., to make conforming changes.

Section 41. Amends s. 403.0872, F.S., to make conforming changes.

Section 42. Amends s. 403.1835, F.S., to make conforming changes.

Section 43. Amends s. 403.707, F.S., to make conforming changes.

Section 44. Amends s. 403.861, F.S., to make conforming changes.

Section 45. Amends s. 489.551, F.S., to make conforming changes.

Section 46. Amends s. 590.02, F.S., to make conforming changes.

Section 47. Provides an effective date of July 1, 2021, except as otherwise expressly provided in the bill, and except for the effective date, which takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive impact on state government revenues because some revenue could be realized from enforcement citations and fines, but this revenue stream would likely be insignificant.

2. Expenditures:

The bill may have an insignificant negative fiscal impact on DEP and DOH that can be absorbed within existing resources to complete recommendations on the type two transfer. The bill transfers all of the resources and personnel for the OSTDS program by a type two transfer from DOH to DEP, so DEP would use these resources to regulate the OSTDS program beginning July 1, 2021. There may also be an insignificant negative fiscal impact on DEP that can be absorbed within existing resources to administer and support the OSTDS TAC.

The bill requires DEP to make changes to multiple regulatory programs, update BMAPs, and develop, submit, and review multiple new reports.

The bill requires DEP to establish a real-time water quality monitoring program. The bill also requires DEP to create a wastewater grant program. These requirements are subject to appropriation, so there is no fiscal impact.

The bill requires DACS to conduct onsite inspections at least every two years for agricultural producers enrolled in a BMP

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The proposed House of Representatives' Fiscal Year 2020-2021 General Appropriations Act appropriates $955,592 in trust funds and 8.00 FTE to DACS for the expected increase in the number of required site visits to be conducted; $122 million in nonrecurring general revenue funds for water quality improvement cost share grants; $10.8 million in nonrecurring general revenue funds for water quality improvements and monitoring; and $50 million in nonrecurring general revenue and trust funds for TMDLs.

FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on local governments because they will be required to create wastewater treatment plans and OSTDS remediation plans.

The bill may have an indeterminate negative fiscal impact to any local government-owned wastewater facilities discharging into the IRL because they must upgrade to provide advanced waste treatment.

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It is unclear whether the transfer of the OSTDS program to DEP on July 1, 2021, will result in changes to the program that could affect the private sector, such as changes in the cost of permit fees or the approval of using lower cost, nutrient reducing OSTDSs.

The bill may have an indeterminate negative fiscal impact to the private sector because the bill requires updates to stormwater rules and the adoption of new OSTDS and wastewater rules. However, if that impact exceeds $1 million over 5 years, the rules will require legislative ratification.

The additional requirements of OSTDS remediation plans and wastewater treatment plans may result in a negative fiscal impact on the private sector entities within BMAPs that must address OSTDS or wastewater pollution to meet the TMDL.

The bill may have an indeterminate negative fiscal impact to any private wastewater facilities discharging into the IRL because the facility must make facility improvements to provide advanced waste treatment.

C. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires local governments to develop wastewater treatment plans and OSTDS remediation plans. An exemption may apply if the requirement results in an insignificant fiscal impact. In addition, an exception may apply because the requirement applies to similarly situated persons and the bill provides a legislative finding that the requirements of the bill fulfill an important state interest.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DEP and the WMDs to adopt rules to implement the various programs, reports, and other requirements related to water quality that are established by the bill. DEP and the WMDs appear to have sufficient rulemaking authority to adopt the rules required by the bill. In addition, the bill requires the rules for biosolids management to be ratified by the Legislature; as such, the biosolids rules will not take effect until ratified.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In Section 21 of the bill, it is unclear whether the utilities at issue get priority funding for the Water Projects Grant Program or grants under the State Revolving Loan fund program under s. 403.1835, F.S., or both.

On line 2272 of the bill, the bill section that amends s. 311.105, F.S., is designated as Section 32; however, this section should be designated as Section 27, and each subsequent section should be renumbered.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.