

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 789 Environmental Management

SPONSOR(S): Water Quality, Supply & Treatment Subcommittee, Overdorf and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 738

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Water Quality, Supply & Treatment Subcommittee	17 Y, 0 N, As CS	Guy-Hudson	Curtin
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Infrastructure Strategies Committee			

SUMMARY ANALYSIS

Florida averages 40-60 inches of rainfall a year, depending on the location, with approximately two-thirds falling between June and October. Because stormwater runoff contains pollutants including sediment, nutrients (such as nitrogen and phosphorous) and other chemicals, effective stormwater treatment systems should be designed to reduce nonpoint source pollution and protect surface water resources.

Stormwater ponds are one of the most widely used stormwater treatment controls and, in Florida, are often designed with side slopes no steeper than a 4:1 horizontal-to-vertical ratio to a depth of at least two feet below the control elevation. Statewide regulations include this maximum ratio but individual water management districts (WMDs) may include additional or differing requirements.

The Water Quality Assurance Act (Act) creates a private cause of action for all damages resulting from a pollutant discharge or other condition of pollution covered under the Act if the discharge was not authorized by a governmental approval or permit pursuant to ch. 403, F.S., relating to environmental control. The Act defines pollution and pollutants according to ch. 376, F.S., relating to pollutant discharge prevention and removal.

The Act imposes strict liability, meaning it is not necessary to show negligence, only that the prohibited discharge or other pollutive condition occurred. The Act allows for joint and several liability and provides that the only defenses to such a cause of action are those specified in s. 376.308, F.S.: an act of war; an act of government; an act of God; or, an act or omission of a third party.

The bill sets a maximum side slope design requirement of a 4:1 horizontal-to-vertical ratio to a depth of at least two feet below the control elevation for a nonindustrial stormwater management system that is accessible to the general public and is in or adjacent to residential or urban areas. The side slope must be stabilized with vegetation to prevent erosion and provide for pollutant removal. The bill provides that a side slope may be designed with a steeper ratio if the slope incorporates erosion prevention and sediment control tools as well as, for public safety purposes, barriers sufficient to prevent accidental incursion into the system.

The bill limits a cause of action under the Act to damages for real or personal property directly resulting from pollution which was not authorized by any government approval or permit pursuant to ch. 373, F.S., relating to water resources, ch. 376, F.S., relating to pollutant discharge prevention and removal, and ch. 403, F.S. The bill provides that the strict liability exceptions to such a cause of action include those specified in s. 376.308, F.S., and adds s. 376.82, F.S., relating to the rehabilitation of a brownfields site.

The bill may have a positive, though indeterminate, fiscal impact on the private sector. See Direct Economic Impact on Private Sector in Section II.

The bill has an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

According to a recent national water quality study, Florida ranks first for lakes impaired for swimming and aquatic life and second for lakes classified as impaired for any use.¹ Nationwide, polluted stormwater runoff is considered to be the greatest threat to clean water.² Nonpoint sources³ associated with stormwater account for over 40 percent of polluted waters.⁴ Stormwater is the flow of water resulting from, and immediately following, a rainfall event.⁵ 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.⁶ Florida averages 40-60 inches of rainfall a year, depending on the location, with approximately two-thirds falling between June and October.⁷

A stormwater management system is a system designed "...to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution. . . ."⁸ Most activities that create new impervious surfaces or alter surface water flows involve a stormwater management system.⁹

Effective stormwater management reduces nonpoint source pollution and protects surface water resources from stormwater pollution from existing and new land uses.¹⁰ These pollutants adversely impact drinking water supplies, recreation, fisheries and wildlife.¹¹ Inadequate stormwater management increases stormwater flows and velocities, contributes to erosion, overtaxes the carrying capacity of streams and other conveyances, reduces ground water recharge and threatens public health and safety.¹² Stormwater is the primary source of pollutant loading entering Florida's rivers, lakes and estuaries.¹³

¹ Environmental Integrity Project, *The Clean Water Act at 50*, p. 7 (Mar. 17, 2022), <https://environmentalintegrity.org/wp-content/uploads/2022/03/CWA@50-report-3-17-22.pdf> (last visited Jan. 21, 2024).

² South Florida Water Management District (SFWMD), *Your Impact on the Environment*, <https://www.sfwmd.gov/community-residents/what-can-you-do> (last visited Jan. 21, 2024).

³ Nonpoint source pollution may come from land runoff, rain or hydrologic modification, among other diffuse sources. Environmental Protection Agency (EPA), Polluted Runoff: Nonpoint Source (NPS) Pollution, *Basic Information about Nonpoint Source (NPS) Pollution* (last updated Dec. 24, 2023), [Basic Information about Nonpoint Source \(NPS\) Pollution | US EPA](https://www.epa.gov/basic-information-about-nonpoint-source-nps-pollution) (last visited Jan. 22, 2024).

⁴ Department of Environmental Protection (DEP), *Stormwater Support*, <https://floridadep.gov/water/engineering-hydrology-geology/content/stormwater-support> (last visited Jan. 22, 2024). Traditional point sources (i.e., wastewater treatment plants) account for approximately 10 percent of these polluted or impaired waters.

⁵ DEP, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)*, p. 2-10 (Dec. 22, 2020) Modified Document, 1/6/2021, <https://www.flrules.org/gateway/reference.asp?No=Ref-12078> (last visited Jan. 21, 2024).

⁶ EPA, Source Water Protection, *Urbanization and Stormwater Runoff* (last updated Feb. 28, 2023), <https://www.epa.gov/sourcewaterprotection/urbanization-and-stormwater-runoff#:~:text=Stormwater%20runoff%20is%20generated%20from%20rain%20and%20snowmelt,chemicals%2C%20and%20dirt%20Fsediment%20into%20streams%2C%20lakes%2C%20and%20groundwater> (last visited Jan. 21, 2024).

⁷ University of Florida Institute of Food and Agricultural Sciences (UF/IFAS), *Florida Rainfall Data Sources and Types*, (Oct. 9, 2023), <https://edis.ifas.ufl.edu/publication/AE517> (last visited Jan. 24, 2024).

⁸ S. 373.403(10), F.S. See s. 403.031(18), F.S., relating to pollution control.

⁹ DEP, *Modernizing Florida's Stormwater Rules*, Presentation to the House Water Quality, Supply & Treatment Subcommittee, pp. 1-5 (Jan. 10, 2024), <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3251&Session=2024&DocumentType=Meeting+Packets&FileName=wst+1-10-24.pdf> (last visited Jan. 21, 2024).

¹⁰ R. 62-40.431(1), F.A.C.

¹¹ EPA, Polluted Runoff: Nonpoint Source (NPS) Pollution, *Basic Information about Nonpoint Source (NPS) Pollution*, *supra* note 3.

¹² R. 62-40.431(2)(b), F.A.C.

¹³ *Id.*

Stormwater ponds

Stormwater ponds are one of the most widely used stormwater treatment controls¹⁴ and are defined as either retention or detention ponds.¹⁵ Wet retention ponds retain all the water within them and allow the water to percolate into the soil and prevent it from moving to other surface waters.¹⁶ Pollutant removal is achieved by biological activity in the pond and associated soil.¹⁷ Wet retention ponds are traditionally used for large scale development projects.¹⁸ A dry detention pond captures stormwater runoff and temporarily stores it before slowly releasing the water downstream.¹⁹ Requiring at least 10 or more acres, dry detention ponds are typically used for flood control and may be less effective for water quality improvement as they allow pollutants to settle.²⁰

While a best management practice for pollutant removal, stormwater ponds may create safety hazards including the risk of drowning.²¹ Retention ponds are often deep because they are designed for maximum rainwater collection.²² As such, if a person falls into a retention pond, steep sides and slippery slopes can make it difficult to climb out.²³ The Department of Environmental Protection (DEP) and water management districts (WMDs) provide requirements, respectively, for side slope horizontal-to-vertical ratio and depth (see *Side Slope Ratios* below).

Environmental Resource Permitting

The Clean Water Act (CWA) is the primary federal law that regulates water pollution in the United States and it prohibits the discharge of any pollutant²⁴ into waters of the United States (WOTUS).²⁵ The discharge of dredged or fill material into WOTUS, including wetlands, is regulated by a program established in Section 404 of the CWA.²⁶ States may apply to the U.S. Environmental Protection Agency (EPA) to assume the federal dredge and fill permitting program; Florida assumed the 404 permitting program in 2020.²⁷ DEP's Submerged Lands and Environmental Resources Coordination Program is responsible for the consistent implementation of both the State 404 Program and the Environmental Resource Permit (ERP) Program.²⁸

DEP regulates surface water flows via the ERP Program, a permitting process that addresses and regulates impacts to the landscape including clearing, grading, construction of structures and filling and dredging, whether the work occurs in uplands, wetlands or other surface waters.²⁹ An ERP permit may

¹⁴ EPA, *Stormwater Best Management Practices: Dry Ponds*, (Dec. 2021), [NPDES: Stormwater Best Management Practices, Dry Detention Ponds \(epa.gov\)](#) (last visited Jan. 21, 2024).

¹⁵ EPA, *Stormwater Best Management Practices: Wet Ponds*, (Dec. 2021), [NPDES: Stormwater Best Management Practice, Wet Ponds \(epa.gov\)](#) (last visited Jan. 21, 2024).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ EPA, *Dry Ponds*, *supra* note 14.

²⁰ *Id.*

²¹ Safe Kids World Wide, *Hidden Hazards: An Exploration of Open Water Drowning and Risks for Children*, p. 3 (May 2018) [water_safety_study_2018.pdf \(safekids.org\)](#) (last visited Jan. 21, 2024). See also EPA, *Wet Ponds*, *supra* note 15.

²² Brotherhood Mutual, *Retention Ponds: Attractions or Liabilities?*, [Retention Ponds: Attractions or Liabilities? - Brotherhood Mutual](#) (last visited Jan. 21, 2024).

²³ City of Jacksonville, *Retention Pond Safety*, (June 1, 2020), <https://www.jacksonville.gov/welcome/welcome-news/retention-pond-safety> (last visited Jan. 21, 2024).

²⁴ 33 U.S.C. § 1311(a). The definition of the term “pollutant” is quite broad. 33 U.S.C. § 1362(6).

²⁵ 33 U.S.C. § 1362(12)(A). “The term ‘navigable waters’ means the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

²⁶ EPA, *Section 404 of the Clean Water Act, Permit Program under CWA Section 404* (last updated Mar. 31, 2023), <https://www.epa.gov/cwa-404/permit-program-under-cwa-section-404> (last visited Jan. 21, 2024).

²⁷ 40 C.F.R. § 233.1. See also DEP, *State 404 Program* (last updated Oct. 17, 2023), <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/state-404-program> (last visited Jan. 21, 2024).

²⁸ DEP, *Submerged Lands and Environmental Resources Coordination Program*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination> (last visited Jan. 21, 2024).

²⁹ DEP, *Environmental Resource Permitting Online Help* (last updated Feb. 8, 2022), <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/environmental-resource-0> (last visited Jan. 21, 2024).

be issued by DEP, a WMD or a local government to which DEP delegated ERP permitting authority.³⁰ ERPs are designed to prevent flooding, protect wetlands and other surface waters and protect Florida's water quality from stormwater pollution.³¹

While the State 404 Program and the ERP Program are separate programs, approximately 85 percent of review requirements of the two programs overlap.³² Both programs require avoidance and minimization measures to reduce impacts to wetlands and any remaining adverse impacts to be offset by mitigation. The methodology ratified by the Legislature for identifying and delineating the extent of wetlands and surface waters³³ is also the methodology used to establish the boundary of state-assumed waters under the State 404 Program.³⁴ Provisions of state law that conflict with federal requirements under the CWA do not apply to state-administered 404 permits.³⁵

ERP permitting for stormwater management systems as well as dams, reservoirs and water impoundment is governed by s. 373.4131, F.S. DEP implements this section of law in ch. 62-330, F.A.C., which provides for the permitting rules, application process and standards by which applications are considered and approved or denied. The ERP Applicant's Handbook, which is incorporated by reference into DEP rules, provides guidance on DEP's ERP program, which includes all permitted activities governed by ch. 373, part IV, F.S., relating to management and storage of surface waters, as well as stormwater management systems-specific activities.³⁶ Applicants for an ERP must adhere to requirements in both the Applicant's Handbook, Volume I, which governs general permitting while WMD-specific permitting requirements are contained in the Applicant's Handbook, Volume II, for which there is one per WMD.³⁷

Side Slope Ratios

In Florida, generally, stormwater ponds are designed with side slopes no steeper than a 4:1 horizontal-to-vertical ratio to a depth of at least two feet below the control elevation.³⁸ Florida's Clean Waterways Act³⁹ required DEP and the WMDs to initiate rulemaking for Rule Chapter 62-330, F.A.C., to update stormwater design and operation regulations and the ERP Applicant's Handbook using the most recent scientific information available.⁴⁰ The adopted ERP Applicant Handbook, Vol. I, includes a maximum of 4:1 horizontal-to-vertical ratio for side slopes of stormwater treatment system easements.⁴¹ Graphics included in the appendices depict a typical side slope ratio of: 4:1 for dry retention systems; 6:1 for wet detention systems; and, 2:1 for wet detention slopes below the control elevation.⁴²

³⁰ *Id.*

³¹ *Id.*

³² DEP, *State 404 Program*, *supra* note 27.

³³ S. 373.4211, F.S.

³⁴ R. 62-331.010(3), F.A.C.

³⁵ S. 373.4146(3), F.S.

³⁶ R. 62-330.010(4), F.A.C. See DEP, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)*, *supra* note 5, p. 1-4.

³⁷ DEP, *ERP Stormwater* (last updated June 7, 2022), [ERP Stormwater | Florida Department of Environmental Protection](#) (last visited Jan. 21, 2024).

³⁸ Northwest Florida Water Management District (NFWMD), *ERP Applicant's Handbook: Vol. II*, Figure 5.1-1, p.8-10 (Sept. 30, 2013), <https://www.flrules.org/Gateway/reference.asp?No=Ref-03172> (last visited Jan. 22, 2024); SFWMD, *ERP Applicant's Handbook: Vol. II*, s. 5.4.2, p. 27 (Dec. 16, 2013), <https://www.flrules.org/Gateway/reference.asp?No=Ref-02528> (last visited Jan. 22, 2024); St. Johns River Water Management District (SJRWMD), *ERP Applicant's Handbook: Vol. II*, s. 2.6.1, p. 2-7 (Feb. 27, 2014) <https://www.flrules.org/Gateway/reference.asp?No=Ref-03181> (last visited Jan. 22, 2024); Suwannee River Water Management District (SRWMD), *ERP Applicant's Handbook: Vol. II*, s. 4.5.1, (Aug. 30, 2013), <https://www.flrules.org/Gateway/reference.asp?No=Ref-03182> (last visited Jan. 22, 2024); Southwest Florida Water Management District (SWFWMD), *ERP Applicant's Handbook: Vol. II*, s. 5.4.1 (Sept. 24, 2014) <https://www.flrules.org/Gateway/reference.asp?No=Ref-03176> (last visited Jan. 22, 2024).

³⁹ Ch. 2020-150, Laws of Fla.

⁴⁰ Rule Chapter 62-300, F.A.C., requires legislative ratification to become effective.

⁴¹ DEP, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)*, p. 12-9, [TABLE OF CONTENTS](#) (state.fl.us) (last visited Jan. 22, 2024).

⁴² DEP, *Environmental Resource Permit Applicant's Handbook Volume I (Appendix L through Appendix P)*, ss. P-5, P-6, [Appendices L-P_1.pdf](#) (floridadep.gov) (last visited Jan. 22, 2024).

Each WMD has specific side slope requirements contained within the ERP Applicant Handbook, Vol. II. With respect to side slope requirements, some of the WMDs' Applicant Handbook, Vol II, contain additional and/or differing requirements despite state law requiring statewide, consistent ERP regulations.⁴³ For example, the South Florida WMD (SFWMD) provides alternative criteria for golf courses,⁴⁴ while other WMDs include exceptions for fenced ponds⁴⁵ or ponds with slopes that incorporate erosion and sediment control best management practices.⁴⁶ In addition, some WMDs require the stabilization of pond side slopes with vegetation⁴⁷ or the creation of vegetative littoral zones.⁴⁸ Where necessary, littoral zones are generally required to have slopes with a horizontal-to-vertical ratio of 6:1 or flatter.⁴⁹

Water Quality Assurance Act

The Water Quality Assurance Act (Act)⁵⁰ creates a private cause of action for all damages resulting from a discharge⁵¹ or other condition of pollution covered under the Act if the discharge was not authorized pursuant to ch. 403, F.S., relating to environmental control.⁵² The Act defines pollution as "the presence on the land or in the waters of the state of pollutants in quantities that are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation."⁵³ The definition of pollutants includes any commodity made from oil or gas, pesticides, ammonia, chlorine and derivatives thereof, excluding liquefied petroleum gas.⁵⁴

The Act imposes strict liability, meaning it is not necessary to show negligence; it is only necessary to show the prohibited discharge or other pollutive condition occurred.⁵⁵ The Act allows for joint and several liability⁵⁶ and provides that the only defenses to such a cause of action are those specified in s. 376.308, F.S.: an act of war; an act of government;⁵⁷ an act of God;⁵⁸ or, an act or omission of a third party.⁵⁹

⁴³ S. 373.4131(1)(a), F.S.

⁴⁴ SFWMD, *ERP Applicant's Handbook: Vol. II*, s. 5.4.2(e), *supra* note 38, p. 27.

⁴⁵ SJRWMD, *ERP Applicant's Handbook, Vol. II*, *supra* note 38.

⁴⁶ SRWMD, *ERP Applicant's Handbook: Vol. II*, *supra* note 38.

⁴⁷ *Id.*

⁴⁸ A littoral zone is a portion of a wet detention pond which is designed to contain rooted aquatic plants. SJRWMD, *ERP Applicant's Handbook: Vol. II*, s. 2.1, *supra* note 38, p. 2-4. See SJRWMD, *ERP Applicant's Handbook: Vol. II*, s. 8.6, *supra* note 38, p. 8-8; NFWMD, *ERP Applicant's Handbook: Vol. II*, s. 8.6, *supra* note 38, p. 8-3.

⁴⁹ *Id.*

⁵⁰ Ss. 376.30-376.317, F.S.

⁵¹ S. 376.301(13), F.S. "Discharge" includes, but is not limited to, any spilling, leaking, seeping, pouring, misapplying, emitting, emptying, releasing, or dumping of any pollutant or hazardous substance which occurs and which affects lands and the surface and ground waters of the state not regulated by the Water Quality Assurance Act."

⁵² S. 376.313(3), F.S. Chapter 403, F.S., relates to environmental control, including pollution control, environmental regulation, water supply and water treatment plants, among other things.

⁵³ S. 376.301(37), F.S.

⁵⁴ S. 376.301(36), F.S.

⁵⁵ S. 376.313(3), F.S. Certain exceptions exist for suits involving petroleum storage systems or drycleaning facility or wholesale supply facility; see *Irizarry v. Orlando Utilities Commission*, 393 F. Supp. 3d 1110, 1116 (M.D. Fla. 2019) (explaining that to state a plausible claim under s. 376.313(3), F.S., a plaintiff must allege: (1) a prohibited discharge or other pollutive condition occurred; and, (2) damages).

⁵⁶ S. 376.313(3), F.S. Joint and several liability generally means liability that may be apportioned among two or more parties. See BLACK'S LAW DICTIONARY 997 (9th ed. 2009).

⁵⁷ S. 376.308(2)(b), F.S. This includes state, federal, or local acts of government, unless the person claiming the defense is a governmental body, in which case the defense is available only by acts of other governmental bodies.

⁵⁸ S. 376.308(2)(c), F.S. This includes only unforeseeable acts exclusively occasioned by the violence of nature without the interference of any human agency.

⁵⁹ S. 376.308(2)(d), F.S. This does not include acts or omissions by an employee or agent of the defendant or one whose act or omission occurs in connection with a contractual relationship. An exception may apply when the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier or by rail.

The Act does not define the term “damages.” In a 2010 case involving a claim arising under s. 376.313(3), F.S., the Florida Supreme Court applied a definition from a different section of ch. 376, F.S., which defines damages as “the documented extent of any destruction to or loss of any real or personal property, or the documented extent, pursuant to s. 376.121, of any destruction of the environment and natural resources, including all living things except human beings, as the direct result of the discharge of a pollutant.”⁶⁰

In 2019, the Court receded from this definition and held the meaning of “all damages” in s. 376.313(3), F.S., includes personal injury damages.⁶¹ The Court relied on the plain meaning of the term “all damages” together with the Legislature’s directive that the Act be liberally construed.⁶² In this case, the appellee suggested the Act was overly broad but the Court rejected this interpretation and said it would be “...an issue for the Legislature to address.”⁶³

Effect of the Bill

The bill requires side slope design for a nonindustrial stormwater management system that is accessible to the general public and is in or adjacent to residential or urban areas have a horizontal-to-vertical ratio no steeper than 4:1 to a depth of at least two feet below the control elevation. The side slope must be stabilized with vegetation to prevent erosion and provide for pollutant removal.

The bill provides that a side slope may be designed with a steeper ratio than a 4:1 horizontal-to-vertical ratio if the slope incorporates adequate temporary and permanent erosion and sediment control best management practices. For purposes of public safety, the bill requires a stormwater management system designed or authorized with a side slope steeper than a 4:1 ratio to be fenced, greenscaped⁶⁴ or other barriers installed, sufficient to prevent accidental incursion into the system.

The bill provides that all side slope rules adopted by DEP, WMDs or delegated local programs as of July 1, 2024, are superseded by the bill’s requirements and may be repealed without further rulemaking by publication of a notice of repeal in the Florida Administrative Register and subsequent filing of a list of the rules repealed with the Department of State.

The bill narrows the cause of action for damages under the Water Quality Assurance Act (the Act) to permit damages only *to real or personal property* directly resulting from a discharge or other condition of pollution covered under the Act. Damages under the Act derive from the absence of governmental approval or permit activities. The bill expands the aforementioned government activities to include *Ch. 373, F.S., relating to water resources, as well as ch. 376, F.S., relating to pollutant discharge prevention and removal* in addition to ch. 403, F.S., relating to environmental control.

The bill removes “defenses” to a Water Quality Assurance Act cause of action and requires only *strict-liability exceptions* to be those specified in s. 376.308, F.S., relating to an act of war; an act of government; an act of God; an act or omission of a third party; and adds s. 376.82, F.S., *relating to eligibility criteria and liability protection for the successful completion of a brownfield site rehabilitation agreement*.

B. SECTION DIRECTORY:

Section 1: Amends section 373.4131, F.S., relating to statewide environmental resource permitting rules.

⁶⁰ *Curd v. Mosaic Fertilizer, LLC*, 39 So. 3d 1216, 1221 (Fla. 2010); s. 376.031(5), F.S.

⁶¹ *Lieupo v. Simon’s Trucking, Inc.*, 286 So. 3d 143, 147 (Fla. 2019).

⁶² *Id.* See also s. 376.315, F.S.

⁶³ *Id.*

⁶⁴ “Greenscaping” refers to environmentally beneficial lawncare practices that help to preserve natural resources and prevent waste and pollution. EPA, *Green Scaping: The Easy Way to a Greener, Healthier Yard*, (June 2006), [Green Scaping - The Easy Way to a Greener, Healthier Yard \(epa.gov\)](#) (last visited Jan. 21, 2024). At one time the EPA operated a Greenscapes program but appears to no longer do so. Instead, the EPA provides recommendations to individuals performing lawncare in the *Pesticides and Consumers* section of the EPA website. EPA, *GreenScapes: Environmentally Beneficial Landscaping* (last updated Feb. 21, 2016), [Resource Conservation | GreenScapes: Environmentally Beneficial Landscaping | US EPA](#) (last visited Jan. 21, 2024).

Section 2: Amends section 376.313, F.S., relating to nonexclusiveness of remedies and individual cause of action for damages under ss. 376.30-376.317.

Section 3: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on parties prevailing in cases related to damages for real or personal property caused by a discharge or other condition of pollution covered under the Water Quality Assurance Act when such an activity was not authorized by a government approval or permit issued pursuant to chs. 373, 376 or 403, F.S. The fiscal impact is indeterminate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 24, 2024, the Water Quality, Supply and Treatment Subcommittee adopted a Proposed Committee Substitute (PCS) and reported the bill favorably as a committee substitute. The PCS:

- Removes revisions to s. 120.595, F.S., relating to attorneys' fees that would entitle a prevailing party to recover reasonable costs and fees when challenging or defending a DEP or WMD authorization issued pursuant to chs. 403 or 373, F.S., respectively.
- Removes a mandated review and specific reporting requirements for DEP and each WMD relating to their respective coastal permitting processes and programs.

This analysis is drafted to the committee substitute as approved by the Water Quality, Supply and Treatment Subcommittee.