

Tab 2	SPB 7002 by EN ; Ratification of Rules of the Department of Environmental Protection
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Tab 3	SPB 7004 by EN ; OGSR/Written Valuations of Surplus Lands
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Tab 4	SB 320 by Harrell ; (Similar to H 00547) Land Acquisition Trust Fund
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

ENVIRONMENT AND NATURAL RESOURCES

Senator Rodriguez, Chair
Senator Harrell, Vice Chair

MEETING DATE: Tuesday, February 21, 2023

TIME: 9:30—11:30 a.m.

PLACE: 301 Senate Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Presentation by the Florida Department of Environmental Protection on Rules Developed Pursuant to the 2020 Clean Waterways Act that Require Legislative Ratification		Presented
Consideration of proposed bill:			
2	SPB 7002	Ratification of Rules of the Department of Environmental Protection; Ratifying specified rules relating to standards for onsite sewage treatment and disposal systems and for domestic wastewater facility planning for facilities expansion, collection/transmission systems, and an operation and maintenance manual for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule exceeding the specified thresholds for likely adverse impact or increase in regulatory costs, etc.	Submitted and Reported Favorably as Committee Bill Yeas 9 Nays 0
Consideration of proposed bill:			
3	SPB 7004	OGSR/Written Valuations of Surplus Lands; Amending a provision which provides an exemption from public records requirements for written valuations of surplus lands, documents used to form or pertaining to such a valuation, and written offers to purchase surplus land held by a water management district; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 9 Nays 0
4	SB 320 Harrell (Similar H 547)	Land Acquisition Trust Fund; Providing an annual appropriation for certain projects related to the Indian River Lagoon Comprehensive Conservation and Management Plan; authorizing the Department of Environmental Protection to make grants for such projects; requiring the department to coordinate such grants with certain water management districts, etc. EN 02/21/2023 Favorable AEG AP	Favorable Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Environment and Natural Resources

Tuesday, February 21, 2023, 9:30—11:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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Other Related Meeting Documents

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Onsite Sewage Treatment and Disposal Systems (OSTDS) Rule Ratification

Senate Environment and Natural Resources Committee



Feb. 21, 2023

- SB 712 (Clean Waterways Act), directed DEP to adopt new rules to support the goal of improving water quality in Florida, including rules relating to onsite sewage treatment and disposal systems.
- In support of SB 712, DEP is requesting legislative ratification for Rule 62-6.001, F.A.C.





- OSTDS Technical Advisory Committee.
 - Six meetings held in 2021.
 - Recommendations submitted to Governor and Legislature.
 - Increase availability of enhanced nutrient-reducing (ENR) OSTDS in the marketplace.
 - Expedite permitting of enhanced OSTDS.
 - Further study appropriate setback distances to surface water, groundwater and wells.

- Several OSTDS Rules did not require legislative ratification, including:
 - Setback distances.
 - Allow more options for ENR OSTDS.
 - Allow NSF 245 aerobic treatment units (ATUs).
 - Update the ATU product approval application processes.
 - Clarify lot size calculations.
 - Update technical standards.



OSTDS

PROPOSED REVISIONS



- Rule 62-6.001, F.A.C.
 - Requires development and implementation of OSTDS remediation plans within Basin Management Action Plans by July 1, 2025.
 - Expands application of OSTDS remediation plans to other priority focus areas, not limited to Outstanding Florida Springs.
 - Makes OSTDS remediation plan requirements effective for OSTDS permitting.
 - If OSTDS remediation plan requires, applicant must install ENR OSTDS for not only new OSTDS, but also repair or modification of OSTDS.
 - Allows for variance under certain conditions.



- SERC for these rule revisions and the resulting increased regulatory costs is estimated to be ~\$57 million, near Outstanding Florida Springs alone, over five years after implementation for OSTDS needing repair/modification.
 - ~1% of existing OSTDS require a repair permit each year (~2,000 systems/year).
 - An estimated 95% of impacted properties will be residential and 5% will be non-residential.
- In BMAPs, which will have more stringent requirements for the use of an OSTDS, homeowners or businesses will be required to install an ENR OSTDS.
- Grant or incentive programs would reduce the cost impacts on individual OSTDS owners and could accelerate adoption of ENR OSTDS.



- Implementation of more stringent OSTDS permitting requirements when required by an OSTDS remediation plan.
- Current remediation plans require reduction of Total Nitrogen by at least 50% compared to conventional septic tanks. Drain field reduces another 15% (65% overall).
- Reduce impacts of growth and increase protections for water quality in nutrient impaired waters.



THANK YOU

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PROTECTING FLORIDA TOGETHER

Stormwater Rule Ratification

Senate Environment and Natural Resources Committee



Feb. 21, 2023

STORMWATER

SB 712 (CLEAN WATERWAYS ACT)



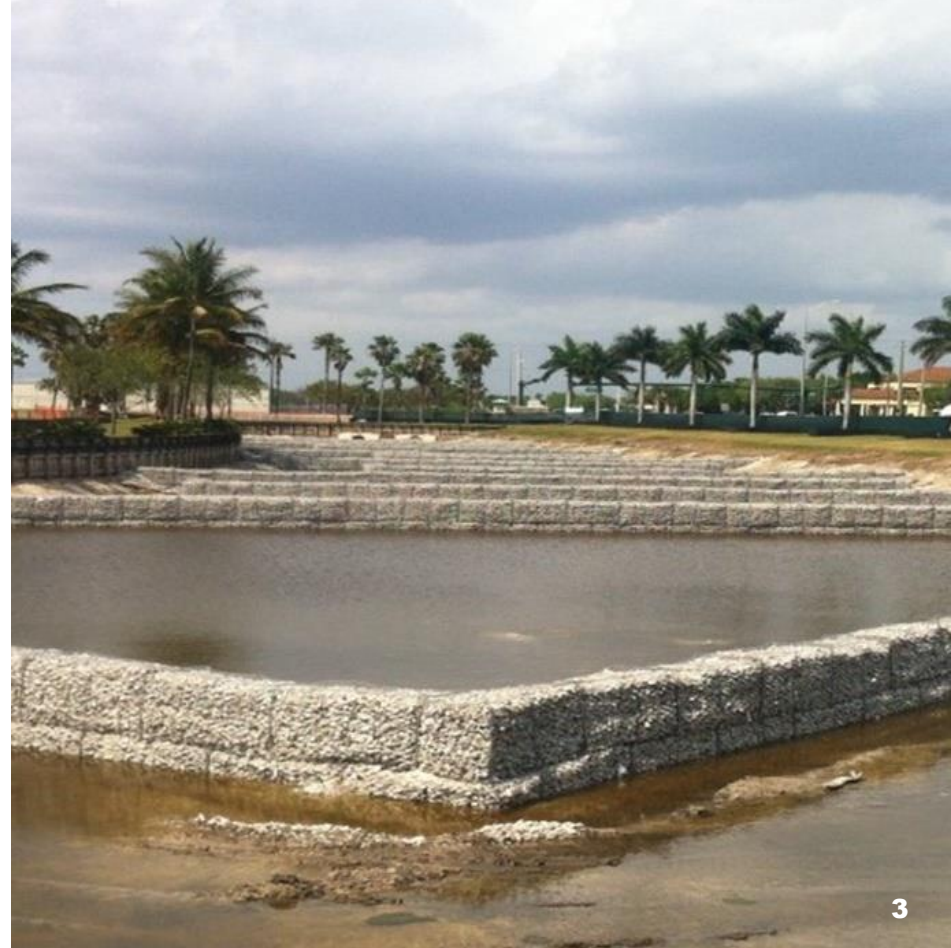
- SB 712 (Clean Waterways Act), directed DEP to adopt new rules to support the goal of improving water quality in Florida, including updating the stormwater design and operation regulations.
- Environmental Resource Permit (ERP) applicants for stormwater management systems must abide by current provisions under, Chapter 62-330, F.A.C.



STORMWATER PUBLIC ENGAGEMENT



- DEP is currently in rulemaking to update the stormwater design and operation regulations, including updates to the ERP Applicant's Handbook, using the most recent scientific information available.
- DEP held two public outreach meetings in 2020 and established a Technical Advisory Committee (TAC) in November 2020.
 - TAC met 13 times from December 2020 to November 2021.
- DEP held four rule development workshops between May and December 2022.
 - Additional workshops were held in January 2023 by the five water management districts to provide proposed updates to their respective Applicant's Handbooks.



STORMWATER

PROPOSED AMENDMENTS



- Additional Permitting Requirements.
 - Establish minimum stormwater treatment performance standards.
 - Treatment designs would provide 80% nutrient reduction for both total phosphorous (TP) and total nitrogen (TN).
 - Additional removal requirements of 95% for projects discharging within Outstanding Florida Waters.
 - Additional provisions for projects discharging to impaired waters to ensure consistent procedures for demonstrating that a project will provide a net improvement to receiving waters.
- Redevelopment.
 - Proposed provisions would allow a reduced TN performance standard of 45%, under limited conditions which are expected to support redevelopment in areas where there are likely little or no historical stormwater treatment.

STORMWATER

PROPOSED AMENDMENTS



- Increased Operation and Maintenance Requirements.
 - Strengthened training, documentation and inspection frequency requirements help ensure that new stormwater management systems will be properly operated and maintained over time.
 - New permitting requirements to ensure that entities will be capable of performing operation and maintenance over time.
- Dam Safety Requirements.
 - Provide for basic dam safety information during permitting review.
 - Establish a downstream hazard potential classification for new projects.
 - Require emergency action plans where needed.
 - Provide condition assessment reports for High Hazard or Significant Hazard dams.

STORMWATER

PROPOSED REVISIONS FOR RATIFICATION



- Proposed revisions are estimated to affect up to ~14,030 individual ERP projects, over the first five years of rule implementation.
- Rule revisions for new permitting requirements, specifically for dam systems, are projected to affect ~29 ERP projects over the first five years of rule implementation.
- Implementation requirements for proposed rule revisions are primarily incorporated in ERP Applicant's Handbook, Volume I, which would be revised and incorporated by reference in Rule 62-330.010, F.A.C.

STORMWATER

STATEMENT OF ESTIMATED REGULATORY COSTS (SERC)



Proposed Revisions	Estimated Costs (First Five Years of Rule Implementation)
Stormwater Quality Nutrient Treatment	\$1,441,877,000 (~\$3,112 per acre developed statewide)
Additional Permit Design Requirements	\$14,082,400 (~\$1,004 for each new ERP project application)
Permitting Requirements for New or Altered Dams	\$620,200 (~\$21,390 per new/altered dam statewide)
Operation and Maintenance Requirements	\$22,883,900 (~\$1,631 per year for each new ERP project)
Stormwater Inspection and Reporting	\$6,210,400 (~\$443 per ERP project)

STORMWATER

PROPOSED RULES AND RULEMAKING TIMELINE



- The Notice of Proposed Rule is anticipated to be published by Feb. 24, 2023.
- Once the rule revisions are adopted, Rule 62-330.010, F.A.C., which incorporates Volume 1 of the statewide ERP Applicant's Handbook would require ratification during the 2023 Legislative Session.



STORMWATER SUMMARY



- Provide minimum stormwater treatment performance criteria.
- Increase treatment and removal of nutrients (TP and TN).
- Establish updated stormwater best management practices that more accurately reflect latest scientific information on their performance.
- Strengthens Florida's overall water resource protections.
- Ensures consistent application of net improvement performance standards.
- Strengthens requirements for operation and maintenance of stormwater systems.
- Improved permitting requirements and information for dam systems.



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PROTECTING FLORIDA TOGETHER

Collection Systems Rule Ratification

Senate Environment and Natural Resources Committee



Feb. 21, 2023

WASTEWATER COLLECTION SYSTEMS

SB 712 (CLEAN WATERWAYS ACT)



- SB 712 (Clean Waterways Act), directed DEP to adopt new rules to support the goal of improving water quality in Florida.
- In support of SB 712, DEP is requesting legislative ratification for Rules 62-600.405, .705 and .720, F.A.C.

WASTEWATER COLLECTION SYSTEMS

PUBLIC ENGAGEMENT



- Three public workshops.
- Industry participation.
 - Florida Water Environment Association's Utility Council.
 - "STOPR Group" (City of St. Cloud, Toho Water Authority, Orange County Utilities, Polk County Utilities, and Reedy Creek Improvement District).
- Written comments.
- GovDelivery system.



WASTEWATER COLLECTION SYSTEMS

ADOPTED RULES



Last year, DEP adopted several rules which did not require ratification.

- Rule 62-620.610, F.A.C., became effective Sept. 14, 2021.
 - Revised reporting and submittal requirements for noncompliance events related to sanitary sewer overflows.
- Rules 62-604.100, .130, .200, .300, .400, .500, .550, .600 and .700, F.A.C., became effective Oct. 4, 2021.
 - Required systems to be operated to minimize infiltration, inflow and leakages and required corrective actions.
- Rules 62-600.410, .680, .700 and .735, F.A.C., became effective Dec. 6, 2021.
 - Added required annual reports for facilities subject to SB 64.
- Rules 62-600.200, .300, .400 and .520, F.A.C., became effective Jan. 6, 2022.
 - Updated guidance documents related to collection system rehabilitation.

WASTEWATER COLLECTION SYSTEMS

PROPOSED REVISIONS



- Rule 62-600.405, F.A.C.
 - Adds a requirement that system flows be reviewed as part of the collection system action plans required in Rule 62-600.705, F.A.C.
- Rule 62-600.705, F.A.C.
 - Requires utilities to develop collection system pipe assessment, repair and replacement action plans.
 - Requires utilities to develop power outage contingency plans.
 - Requires annual progress reports for facilities implementing action plans.
- Rule 62-600.720, F.A.C.
 - Requires facilities to address cybersecurity in emergency response plans.

WASTEWATER COLLECTION SYSTEMS

STATEMENT OF ESTIMATED REGULATORY COSTS (SERC)



- SERC for these rule revisions and the resulting increased regulatory costs is estimated to be ~\$300 million.
 - Rule 62-600.705, F.A.C.
 - ~\$81,345,000 total initial cost to develop action plan (average of ~\$49,000 per facility).
 - ~\$235,380,000 total estimate to implement plan and prepare report over 5 years (average \$28,580 per facility per year).
 - Rule 62-600.720, F.A.C.
 - This applies only to Type I facilities ($\geq 500,000$ gallons per day).
 - \$11,424,000 total estimated one-time cost (~\$32,000 per facility).

WASTEWATER COLLECTION SYSTEMS

SUMMARY



- Ensures proper planning for future facility expansion.
- Implements power outage contingency plans for collection systems.
- Implements collection system action plans for assessment, repair and replacement of collection system components.
- Implements annual reporting on the implementation of the facility's collection system action plan and related financial expenditures.
- Reduces the potential for cybersecurity attacks.
- Increases resiliency of domestic wastewater collection system infrastructure.



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Statement of Estimated Regulatory Cost for Proposed Changes to Rule 62-6.001, F.A.C. Onsite Sewage Treatment and Disposal System Remediation Plans

Division: Water Resource Management

Rule Number: 62-6.001(7)

Contact Person: Eberhard Roeder, 850-245-8402, Eb.Roeder@FloridaDEP.gov

1. Introduction.

In 2020, the Florida Legislature passed the Clean Waterways Act (CWWA). As part of the CWWA, an onsite sewage treatment and disposal system (OSTDS) remediation plan developed pursuant to s. 403.067(7)(a)9.b, Florida Statutes (F.S.), is included in the development of the basin management action plan (BMAP) for nutrient-impaired water bodies. Such an OSTDS remediation plan identifies existing OSTDS that will be replaced with or upgraded to enhanced nutrient-reducing OSTDS. The CWWA also amended s. 381.0065(4)(e), F.S., authorizing the Department of Environmental Protection (Department) to adopt rules to administer the requirements of an OSTDS remediation plan in OSTDS permitting.

This rulemaking supports implementation of the nutrient-reducing criteria and requirements by incorporating them within the proposed rule revisions to Chapter 62-6, F.A.C. and incorporates the requirements into OSTDS permitting.

In order to estimate regulatory costs, the Department reviewed nutrient-reducing requirements of its existing OSTDS remediation plans for impaired Outstanding Florida Springs. In 2016, the Florida Legislature passed the Florida Springs and Aquifer Protection Act (Act), (Part VIII of Chapter 373, F.S. The Act in s. 373.807, F.S., requires the Department to assess and protect impaired Outstanding Florida Springs and initiate development of basin management action plans (BMAP), as specified in s. 403.067, F.S. During the development of a BMAP where an onsite sewage treatment and disposal system (OSTDS) contributes at least 20 percent of nonpoint source nitrogen pollution or if the Department determines that remediation is necessary, the BMAP must include an OSTDS remediation plan. The OSTDS remediation plan must “identify cost-effective and financially feasible projects necessary to reduce the nutrient impacts of OSTDS...”. The plan must also “...include options for repair, upgrade, replacement... or other action for an onsite sewage treatment and disposal system or group of systems within a priority focus area...” and include a priority ranking for each OSTDS or group of systems requiring remediation and the award of funds to implement the remediation projects contingent on an appropriation in the General Appropriations Act (see s. 373.807(3)(a)(b), F.S.) The Act prohibits within a priority focus area delineated in the BMAP “new OSTDSs on lots of less than 1 acre, if the addition of the specific systems conflicts with an OSTDS remediation plan incorporated into a BMAP...” (see s. 373.811(2), F.S.).

The Department adopted BMAPs that include an OSTDS remediation plan for impaired Outstanding Florida Springs. In January 2019, the spring BMAPs for Crystal River, DeLeon, Gemini, Homosassa, Chassahowitzka, Wakulla, Weeki-Wachee, Jackson Blue and Wacissa became effective. Five other BMAPs for Suwannee, Santa Fe, Volusia, Wekiwa and

Statement of Estimated Regulatory Cost for Proposed Changes to Rule 62-6.001, F.A.C. Onsite Sewage Treatment and Disposal System Remediation Plans

Silver/Rainbow became effective on May 18, 2021. The BMAPs for springs with identified OSTDS-contributions to nitrogen pollution, affecting Crystal River, Chassahowitzka, DeLeon, Gemini, Homosassa, Silver/Rainbow, Volusia Blue, Wakulla, Weeki-Wachee, and Wekiwa include nitrogen-reducing options and requirements for the repair and upgrade of existing systems. Further rule making is needed to implement these requirements into the OSTDS rules and current permitting standards.

The CWWA also transferred the OSTDS program from the Department of Health (DOH) to the Department, effective July 1, 2021. In 2021, pursuant to the CWWA and the transfer of the OSTDS program, Chapter 62-6 F.A.C. was renumbered and transferred from the DOH rule reference, 64E-6 F.A.C.

On December 20, 2021, the Department published a public Notice of Development of Rulemaking, which includes revisions to the General Section, Rule 62-6.001, F.A.C. On January 25, 2022, the Department held a public rule development workshop by webinar. At the workshop the Department shared the proposed rule revisions, which will incorporate an OSTDS remediation plan into permitting requirements under Chapter 62-6, F.A.C.

2. Summary of Proposed Revisions.

The proposed rule revisions create a new subsection 62-6.001(7), F.A.C., and addresses the requirements of an OSTDS remediation plan as authorized by s. 381.0065(4)(e), F.S. Upon application for an OSTDS construction permit in a location where an OSTDS remediation plan is adopted as part of a BMAP pursuant to s. 403.067, F.S., the more stringent permit requirements of the OSTDS remediation plan will apply and not the usual construction permit requirements of Chapter 62-6, F.A.C.

For the purposes of determining this Statement of Estimated Regulatory Costs (SERC), information is based on known data from the requirements of the existing Outstanding Florida Springs BMAPs that have an OSTDS remediation plan. The BMAP-OSTDS remediation plans require enhanced treatment of nitrogen, which they define as inclusion of features such as in-ground nitrogen-reducing biofilters (INRBs or media layer systems) and approved treatment systems (ATUs or performance-based treatment systems (PBTS)) capable of meeting or exceeding a nitrogen reduction standard of 50% before disposing the wastewater in the drainfield. For new systems, the proposed rule revisions do not constitute a change from the existing prohibition of s. 373.811, F.S., mentioned above. For repairs and modifications of an existing system, the proposed rule revisions represent more stringent requirements than currently established in Chapter 62-6, F.A.C.

3. Florida Statutes and SERCs.

Section 120.54, F.S., sets out the procedures for the Department and the state's other regulatory agencies regarding the preparation, scheduling, development, public notice, and adoption of rules and revisions. The regulatory agency is expected (and required, under certain conditions) to produce a Statement of Estimated Regulatory Cost (SERC). The purpose of a SERC is to collect and present information on the potential costs that may be imposed upon individuals, firms, or

Statement of Estimated Regulatory Cost for Proposed Changes to Rule 62-6.001, F.A.C. Onsite Sewage Treatment and Disposal System Remediation Plans

activities that are affected by a particular rule. In Section 120.541, F.S., the Legislature has identified and described the types of information a SERC is expected to present. As the required components of a SERC, shown below, suggest, the Department and other rulemaking agencies are called upon by statute to collect information on the number of people and businesses that may be affected by a proposed rule, costs to the regulated people, firms, or activities, and to state, county, local, or other governments. The statute also directs the regulatory agency to consider any lower-cost regulatory alternative proposals that may be submitted, and to include an explanation of why the alternative was or was not accepted.

Section 120.541, F.S., provides that anyone potentially affected by the proposed rule or revision may, within 21 days of public announcement and notification of a rule, submit a lower cost regulatory alternative to the proposed rule. The Department must then either adopt the lower cost proposal or be able to show why the lower cost proposal does not meet the underlying purpose of the statute.

Section 120.541(2), (a)-(f), F.S., mandates that SERCs should provide the following information and are cited in the order as they appear in the statute, with a discussion of the Department's data and information relied on for the good faith estimates and analysis of the regulatory costs.

4. Economic Growth and Private-Sector Job Creation, Employment, and Investment.

This rule is not likely to have an adverse impact directly or indirectly on economic growth, private-sector job creation or employment, or private-sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule (Table 1). There is no resulting reduction in personal income, wages, or salaries. Property income is not expected to be impacted and the number of private housing starts will also not be impacted.

Table 1. Consideration of Adverse Impact on Economic Growth and Private-Sector Job Creation, Employment, and Investment

Adverse Impact Economic Growth Considerations	Yes	No
Is the rule likely to reduce personal income?	☐	☒
Is the rule likely to reduce total non-farm employment?	☐	☒
Is the rule likely to reduce private housing starts?	☐	☒
Is the rule likely to reduce visitors to Florida?	☐	☒
Is the rule likely to reduce wages or salaries?	☐	☒
Is the rule likely to reduce property income?	☐	☒

5. Adverse Impact on Business.

This rule is not likely to have an adverse impact directly or indirectly on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule (Table 2). The price of goods and services provided by Florida businesses will not likely be raised, but there is a possibility that commercial properties impacted by this rule may pass some costs to the

Statement of Estimated Regulatory Cost for Proposed Changes to Rule 62-6.001, F.A.C. Onsite Sewage Treatment and Disposal System Remediation Plans

consumer. Annually, there are currently approximately 94 commercial properties that would be impacted by this rule. There is no expectation that workforces will be reduced.

Comparatively when considering business in other states or domestic markets, other states have also enacted requirements for nutrient reducing OSTDS in environmentally sensitive areas. Impairment by nutrients is a widespread problem for water bodies in the United States. An example is the Chesapeake Bay. There, multiple states are working towards reducing nutrient inputs from all sources to meet the nutrient total maximum daily load¹. This includes addressing upgrading onsite sewage treatment and disposal systems. States in the Chesapeake Bay watershed have established requirements (Virginia², Maryland³) that require nitrogen-reducing treatment systems in critical areas and Maryland has established a particularly comprehensive funding program, the Bay Restoration Fund⁴. Another example is the New Jersey⁵ Pinelands where groundwater is particularly sensitive to nitrogen pollution.

Table 2. Consideration of Adverse Impact Business Competitiveness

Adverse Impact Business Competitiveness Considerations	Yes	No
Is the rule likely to raise the price of goods or services provided by Florida business?	☒	☐
Is the rule likely to add regulation that is not present in other states or markets?	☐	☒
Is the rule likely to reduce the quantity of goods or services Florida businesses are able to produce, i.e. will goods or services become too expensive to produce?	☐	☒
Is the rule likely to cause Florida businesses to reduce workforces?	☐	☒
Is the rule likely to increase regulatory costs to the extent that Florida businesses will be unable to invest in product development or other innovation?	☐	☒
Is the rule likely to make illegal any product or service that is currently legal?	☐	☒

6. Overall Regulatory Cost Impact.

Costs are reflected as those in excess of existing required costs. This assumption is made because current requirements do not require consideration of nutrient reduction. A property that has an OSTDS in failure currently requires conventional system permitting, construction, and inspection, although at a lower cost. This proposed rule amendment would require additional costs above that of a conventional OSTDS.

An overall summary of known implementation costs is shown in Table 3 below. Total cost impact over five years is \$56,838,918. Because the increase of regulatory costs for

¹ <https://www.epa.gov/chesapeake-bay-tmdl/chesapeake-bay-tmdl-fact-sheet>

² <https://www.deq.virginia.gov/home/showpublisheddocument/4481/637469262077670000>

³ <http://www.dsd.state.md.us/comar/comarhtml/26/26.04.02.07.htm>

⁴ <https://mde.maryland.gov/programs/Water/BayRestorationFund/OnsiteDisposalSystems/Pages/index.aspx>

⁵ <https://nj.gov/pinelands/cmp/CMP.pdf>

Statement of Estimated Regulatory Cost for Proposed Changes to Rule 62-6.001, F.A.C. Onsite Sewage Treatment and Disposal System Remediation Plans

implementation of this rule is greater than \$1 million the rule must be submitted to the Legislature for ratification.

Costs for the first year are split into two categories: a one-time cost, and a recurring cost for impacted property owners and for state agencies. Residential property owners are potentially the most impacted by this proposed rule amendment.

After five years the total cost to upgrade 8,940 residential properties to nutrient reducing OSTDS is \$50,686,750. For commercial properties, 470 systems will be upgraded for a cost of \$2,678,500. State government cost impacts are for staffing to manage the increased workload, for a total cost of \$3,473,668 over five years.

Detailed breakdowns on the methodology used to calculate these costs are provided after the summary table in the sections below.

Table 3. Summary of Regulatory Costs Associated with 62-6.001(7), F.A.C. Rule Update for the First Year and After Five Years

Cost Component	Amount
Residential Property Owner Year 1 Cost	\$9,636,850
One time	\$9,386,600
Recurring	\$250,250
Commercial Property Owner Year 1 Cost	\$509,100
One time	\$495,800
Recurring	\$13,300
Residential and Commercial Property Owner Year 1 Cost	\$10,145,950
DEP Year 1 Cost	\$137,158
One time	\$4,474
Recurring	\$132,684
DOH Year 1 Cost	\$372,128
One time	\$22,370
Recurring	\$349,758
State and Local Government Year 1 Cost	\$509,286
Total Year One Cost	\$10,655,236
Residential Property Owner 5-year Cost	\$50,686,750
Commercial Property Owner 5-year Cost	\$2,678,500
Residential and Commercial Property Owner 5-year Cost	\$53,365,250
DEP 5-year Cost	\$667,894
DOH 5-year Cost	\$2,805,774
State and Local Government 5-year Cost	\$3,473,668
Total 5-year Cost	\$56,838,918

7. Number and Types of Individuals Impacted.

To determine the impact of the proposed rule amendment, the Department evaluated data from OSTDS permits in BMAPS for Outstanding Florida Springs with an OSTDS remediation plan. For this estimate, impacted individuals and entities are owners of property served by an existing

Statement of Estimated Regulatory Cost for Proposed Changes to Rule 62-6.001, F.A.C. Onsite Sewage Treatment and Disposal System Remediation Plans

OSTDS in need of repair located within the boundaries of a Priority Focus Area (PFA) delineated in BMAPs established for Outstanding Florida Springs that require nutrient-reducing upgrades as part of repairs or modifications. When an owner applies for a repair permit for the OSTDS it will be subject to the upgrade requirements of an OSTDS remediation plan developed pursuant to s. 403.067(7)(a)9.b., F.S.

The number of individuals impacted is estimated based on the annual number of OSTDS repair permits issued in the PFAs established in the BMAPs for Outstanding Florida Springs that will require nutrient-reducing upgrades as part of repairs.

A spatial analysis was performed in the year 2017 overlaying the BMAP PFA boundaries, and the number of built properties served by OSTDS from the Florida Water Management Inventory. BMAPs included in the calculations involved those established for Wakulla, Silver Springs, Rainbow Spring, Wekiva and Rock Springs Run, Volusia Blue Spring, Kings-Bay-Crystal River, Homosassa-Chassahowitzka, Weeki Wachee-Aripeka, DeLeon Springs and Gemini Springs. Agriculturally dominated BMAPs (i.e. Jackson Blue, Wacissa, Santa Fe, and Suwannee basins) were not included in the estimates because they lack requirements for OSTDS upgrades. Results showed a total of 360,832 OSTDS in the non-agriculturally dominated BMAPs and 188,153 OSTDS in their PFAs.

Annual repairs are estimated at one percent of the number of systems within the PFA. The one percent repair rate estimate was calculated using the year 2015 permit data captured prior to the OSTDS program transfer to the Department, from the statewide Environmental Health Database housed at DOH, and a geospatial analysis, using the Florida Water Management Inventory for the number of OSTDS in BMAPs. There were 8,067 total repair permits issued in the counties that had an active or proposed OSTDS remediation plan. To calculate the portion of OSTDS within a BMAP boundary, the total number of OSTDS in each BMAP basin by county was divided into the total number of OSTDS in the county. The resulting percent of OSTDS within a BMAP is then multiplied by the 2015 yearly repair permit numbers to determine the total estimated repairs within the BMAP for each county. It is assumed that these numbers will not be impacted by septic to sewer projects over the analysis timeframe. These numbers were totaled (n=4,298) and then divided by the total OSTDS within BMAP basins (n=360,832) to give a one percent annual repair rate.

Applying the repair rate of one percent to the total number of OSTDS in the PFAs (n=188,153), the total number of impacted properties comes to 1,882. Table 4 shows the annual number of systems estimated to be impacted by this proposed rule amendment.

Table 4. Annual Number of Systems estimated to be impacted by 62-6.001(7), F.A.C. rule Amendment.

BMAP Basin OSTDS Count ⁽¹⁾	PFA OSTDS Count ⁽²⁾	Annual Repairs in BMAP ⁽³⁾	Annual Number of Systems Subject to New Rule ⁽⁴⁾
360,832	188,153	4,298	1,882

Statement of Estimated Regulatory Cost for Proposed Changes to Rule 62-6.001, F.A.C. Onsite Sewage Treatment and Disposal System Remediation Plans

- (1) Built parcels served by OSTDS per Florida Water Management Inventory located within a non-agriculturally dominated BMAP (Wakulla, Silver Springs, Rainbow Spring, Wekiva and Rock Springs Run, Volusia Blue Spring, Kings-Bay-Crystal River, Homosassa, Chassahowitzka, Weeki Wachee, Aripeka, Deleon Springs, and Gemini Springs).
- (2) Built parcels served by OSTDS per Florida Water Management Inventory located within a PFA.
- (3) Calculated as the number of repair permits issued in 2015 for counties containing an OSTDS PFA multiplied by the proportion of OSTDS in that county estimated to be within an OSTDS PFA.
- (4) Calculated as one percent of the total number of OSTDS in non-agriculturally dominated PFAs.

It is also estimated that five percent of the 1,882 total systems impacted will be non-residential properties, totaling approximately 94 systems per year and a total of 470 after five years. U.S. Census data from the American Community Survey 5-year estimate (2015-2019) approximates 2.65 persons per household in Florida⁶. Extrapolating to the 1,787 residential properties impacted per year, the number of individuals impacted is 4,737 annually. After five years, the number of impacted individuals is 23,684.

8. State and Local Government Impact.

Department of Environmental Protection

Workload is expected to increase to accommodate additional requests for consultation and dispute resolution with the impacted public and for the DOH County Health Departments (DOH-CHD) staff implementing the rule in their current capacity at the local level pursuant to the *Interagency Agreement between Florida Department of Environmental Protection and Florida Department of Health in Compliance with Florida's Clean Waterways Act for Transfer of the Onsite Sewage Program (Interagency Agreement)*, available at http://www.floridahealth.gov/environmental-health/onsite-sewage/_documents/interagency-agreement-between-fdoh-fdep-onsite-signed-06302021.pdf

Nutrient-reducing OSTDS are more complex to permit and inspect, so requests from the DOH-CHDs for permit assistance will increase. There will also likely be an increase in the number of rule-related individual property variances requested and processed. Other activities include implementation of new, or modification of existing, processes and procedures and coordination of enforcement activities.

The cost to the Department for implementing the proposed rule amendment are split into categories by salaries and benefits, one-time expense costs, recurring operating costs, and contractual services.

The Department will need one full-time Environmental Consultant employee, with benefits plus recurring and non-recurring expense. Salaries and benefits are calculated using the pay grade associated with the class title description for an Environmental Consultant from the Department of Management Services (DMS)⁷. A pay grade of 026 was cross-referenced to the July 1, 2021,

⁶ <https://www.census.gov/quickfacts/FL>

⁷ https://www.dms.myflorida.com/content/download/125196/677097/4823-ENVIRONMENTAL_CONSULTANT-CS.docx

Statement of Estimated Regulatory Cost for Proposed Changes to Rule 62-6.001, F.A.C. Onsite Sewage Treatment and Disposal System Remediation Plans

DMS pay grade table for career service state employees⁸. Base salary for a career service Environmental Consultant is \$46,381. Due to the documented history of difficulties in filling these positions, an eight percent increase above base was used for salary calculations and comes to an annual salary of \$50,092. Benefits are calculated at 40% of salary cost, adding \$20,037 to the salary for a total annual salary and benefit estimate of \$70,129.

One-time, non-recurring expense costs for a computer with necessary software, office equipment, and other standard costs for a new professional employee is estimated to be \$4,474. Recurring operating costs for a professional employee include co-located expenses, printing/scanning/copying services, phone services, supplies, limited travel expenses, and other related costs. Using expense standards developed by DOH, \$10,555 is estimated to cover these recurring operating costs.

Recurring contractual costs will be needed to develop, update, and maintain database modules and manage related help-desk issues in the existing statewide centralized Environmental Health Database at DOH. Twenty five percent of a full time Database Developer sourced through the DMS State Term Contract for information technology staff augmentation is needed. Estimated cost is 25% of 2,080 total annual hours for a full-time employee, or 520 hours, at \$100 per hour for \$52,000 annually.

Recurring salary, benefits, expense and contractual costs are \$132,684 and \$4,474 one-time non-recurring expense for computing and other equipment. Total need over the first five years to implement the requirements of this proposed rule is \$667,894.

Other State Agencies

To implement the laws and rules governing the OSTDS in a centralized manner, the Department contracted with the DOH-CHDs. Pursuant to the Interagency Agreement the CHDs provide the local inspection, permitting and enforcement services. Workload is expected to increase to accommodate the additional permitting, inspections, surveillance and enforcement necessary for the increase in complex nutrient-reducing OSTDS. Estimates for resources and staff are based on assumptions that certain types of staff will be needed for certain aspects of the permitting process.

Data used for this evaluation include results of the year 2017 survey from the DOH-CHD Environmental Health Directors regarding how much extra time is needed for nutrient-reducing system permitting and data from the DOH-CHD contract management (CONMAN) data system. The CONMAN system captures for every employee working in the OSTDS program the time spent per program component, including time to conduct a construction plan review, site evaluation, system inspection, operating permit review, operating permit inspection and enforcement.

⁸ <https://www.dms.myflorida.com/content/download/152988/1017435/July2021CareerServicePayGrades.xlsx>

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Additional time required for DOH-CHD staff beyond that for a conventional construction permit was calculated at 2 hours and 16 minutes (2.28 decimal hours) per nutrient reducing system. With 1,882 total nutrient-reducing systems permitted each year, this comes to 4,290 hours. The number of work hours per year for a full-time employee is 2,080, including holidays and accrued leave. Dividing the number of extra hours (4,290 hours) by the available time for a full-time employee (2,080 hours), shows that two full-time employees are needed on a recurring basis to handle the extra construction permitting and inspection work.

Operating permit review, issuance, inspection, and enforcement time is calculated at two hours per system per year. This time was applied to the number of ATU/PBTs that are expected to be needed, or 753 systems annually, to give 1,506 hours for year one. This number compounds each year due to additional systems upgrading in subsequent years. For example, year one pays for five years of operating and maintenance costs, year two pays for four years, and so on (Table 5). Essentially, each year after program implementation, one additional full-time employee is needed to handle the increasing operating permit workload.

Table 5. Assessment of the Number and Time Spent to Review, Issue, Inspect and Enforce Operating Permits Compounding over Years 1-5.

Year	Number of operating permits	Time spent on operating permits (hours) ⁽¹⁾	Number of FTEs needed to conduct operating permit work	Cost of FTEs needed to conduct operating permit work ⁽²⁾
Year 1	753	1,506	1	\$70,168
Year 2	1,506	3,012	2	\$135,862
Year 3	2,259	4,518	3	\$210,501
Year 4	3,012	6,024	4	\$280,665
Year 5	3,765	7,530	5	\$337,418
Total after five years				\$1,034,614

(1) Estimating two hours for operating permit work per system per year.

(2) Sum of salary, benefits, one-time and recurring expense for the first five years of implementation for full-time Environmental Specialist II's conducting operating permit work.

Additionally, two full-time Select Exempt Environmental Health Program Consultants are needed to provide management support and engineering consultations for complex system reviews.

The cost to DOH to fulfill requirements in the proposed rule are broken down by salaries and benefits, one-time expense costs, recurring operating costs, and contractual services.

Recurring positions for years one through five include:

- Two full-time Environmental Specialist II's with benefits plus recurring and non-recurring expense. Salaries and benefits are calculated using the pay grade associated

Statement of Estimated Regulatory Cost for Proposed Changes to Rule 62-6.001, F.A.C. Onsite Sewage Treatment and Disposal System Remediation Plans

with the class title description for an Environmental Specialist II from the Department of Management Services (DMS)⁹. A pay grade of 022 was cross-referenced to the July 1, 2021, DMS pay grade table for career service state employees⁸. Base salary for a career service Environmental Specialist II is \$36,468. Due to the documented history of difficulties in filling these positions, an eight percent increase above base was used for salary calculations and comes to an annual salary of \$39,385. Benefits are calculated at 40% of salary cost, adding \$15,754 to the salary for a total annual salary and benefit estimate of \$55,139.

- Two full-time Environmental Health Program Consultant's with benefits plus recurring and non-recurring expense. Salaries and benefits are calculated using the pay grade associated with the class title description for an Environmental Health Program Consultant from the Department of Management Services (DMS)¹⁰. A pay grade of 425 was cross-referenced to the July 1, 2021, DMS pay grade table for select exempt service state employees¹¹. Base salary for a career service Environmental Health Program Consultant is \$43,507. Due to the documented history of difficulties in filling these positions, an eight percent increase above base was used for salary calculations and comes to an annual salary of \$46,988. Benefits are calculated at 40% of salary cost, adding \$18,795 to the salary for a total annual salary and benefit estimate of \$65,783.

Table 5 shows the compounding new positions required for operating permit work. These employees will be Environmental Specialist II's and have the same per employee cost calculations as for the recurring Environmental Specialist II's mentioned previously. After the first five years, five full-time employees are necessary, with one new FTE added annually. At the end of year 5, the total cost for these employees is \$1,034,614.

One-time, non-recurring expense costs for a computer with necessary software, office equipment, and other standard costs for a new professional employee is estimated to be \$4,474. Recurring operating costs for a professional employee include co-located expenses, printing/scanning/copying services, phone services, supplies, limited travel expenses, and other related costs. Using expense standards developed by DOH, \$10,555 per employee is estimated to cover these recurring operating costs.

Total annual salary, benefits, and expense over the first five years to implement the requirements of this proposed rule is \$2,805,774.

There are no other state agencies expected to be impacted by this rule.

⁹ https://www.dms.myflorida.com/content/download/125194/677091/4809-ENVIRONMENTAL_SPECIALIST_II-CS.docx

¹⁰ https://www.dms.myflorida.com/content/download/124354/674347/7256-ENVIRONMENTAL_HEALTH_PROGRAM_CONSULTANT-SES.docx

¹¹ <https://www.dms.myflorida.com/content/download/152989/1017438/July2021SelectedExemptServicePayGrades.xlsx>

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Local Government

The number of government owned properties impacted is assumed to be negligible in comparison to commercial properties. Due to the difficulty of identifying which non-residential properties are commercially owned or owned by local government, any impact to local government owned properties is already included in the calculations for commercial business property owners and follows the same methodology used.

9. Property Owner Impact.

Residential Property Owners

Residential property owners are estimated to be 95% of all the 1,882 annually impacted properties, which comes to 1,787 properties for year 1 and a total of 8,935 properties over five-years. The proposed rule amendment will require an OSTDS providing nutrient reduction to levels set by the OSTDS remediation plans. For estimating purposes, the complex, site specific considerations and technology choices property owners have for enhanced OSTDS nutrient reduction, are simplified into three categories: inground nitrogen reducing biofilters (INRBs), aerobic treatment units, and performance-based treatment systems (ATU/PBTSs).

The cost of a conventional system is the baseline used to determine the additional costs of implementing the proposed rule amendment. A conventional system that is in failure will require upgrading to either an INRB or an ATU/PBTS. Statewide regulatory system construction permitting fees¹², per 62-6.030, F.A.C., are the same, regardless of the type of system installed and are not included in these cost estimates. Local governments can have ordinances that increase these fees, but there is variability in where and how much those fees are and are not included in this cost estimate. The construction cost for a conventional system was validated using three cost estimates. First, a life-cycle cost assessment tool¹³ was developed in the DOH sponsored Florida Onsite Sewage Nitrogen Reduction Strategies (FOSNRS) study, assuming a 300 gallon-per-day system representing a typical three-bedroom, 2,000 square-foot single-family residence with well-drained fine sandy soils and an estimated seasonal high water table depth at 42 inches was \$4,000 in 2015, which is equal to \$4,800 in 2022 accounting for inflation¹⁴. The second cost estimate considered was a previous cost assessment done on the Wekiva area of Central Florida. Estimated construction costs for a similar configuration was \$3,886 in 2007. Accounting for inflation¹⁴, the current one-time cost would be \$5,400. The third cost estimate considered was from a 2021 report to Leon County¹⁵, which estimated a cost between \$2,100 and \$9,500 for a similarly sized 300 gallon per day system in Leon and Wakulla counties. The

¹² Permitting costs are \$50 application and existing system evaluation + \$115 site evaluation + \$55 permit for repair + \$5 training surcharge + system inspection \$75 = \$300.

¹³ Hazen and Sawyer. 2015. Life Cycle Cost Assessment User Guide. <https://www.floridahealth.gov/environmental-health/onsite-sewage/research/bl2b.pdf>

¹⁴ Inflation estimates are from the Bureau of Labor Statistics Consumer Price Index (CPI) Inflation Calculator, which estimates the changes in the price of goods and services purchased for consumption by urban households. https://www.bls.gov/data/inflation_calculator.htm

¹⁵ JSA. 2021. Comprehensive Wastewater Treatment Facilities Plan. Task 2: Cost-Effectiveness of Alternative Technologies. https://leoncountyfl.gov/documents/projects/CWTFP_Task_2_Report.pdf

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median cost was \$6,055. Comparison of these three costs (\$4,800, \$5,400, and \$6,055) show that estimates are relatively close. The average of the three, rounded to the nearest hundred, was used for estimation purposes, resulting in an estimated conventional system construction cost of \$5,400.

INRBs generally have a lower installation cost as compared to ATU/PBTs and do not have recurring required operating permits and routine maintenance inspections. It is estimated that 60% of all systems requiring upgrade will fall into the INRB category, or 1,072 annually. Using the life-cycle cost assessment tool¹³ developed in FOSNRS study and assuming the same site conditions for a conventional system an INRB cost \$8,700 in 2015, or \$10,430 in 2022 accounting for inflation¹⁴. In 2021, a report to Leon County estimated construction costs for INRBs at \$6,800. Averaging these two cost estimates and rounding to the nearest hundred, gives a construction cost for INRBs of \$8,600. Costs used for impact calculations for INRBs subtract the conventional system cost and comes to \$3,200.

ATU/PBTs are often more complex and have recurring operating permit and maintenance requirements. It is estimated that 40% of all systems requiring upgrade will fall into the ATU/PBT category, or 715 annually. It is estimated that approximately five percent of these will be a PBT, which comes to 38 systems and requires an additional \$2,500 for engineering costs based on Appendix D of the 2021 report to Leon County¹⁵. Other than the engineering cost difference, construction costs for ATUs and PBTs are estimated to be the same. Construction costs include septic contractor labor costs and materials. There is a wide range of costs for ATUs and PBTs and with increasing numbers of these systems being installed nationwide the costs have been declining. The Leon County 2021 report¹⁵ estimates a cost of \$11,889 for an ATU and \$13,216 for a PBT if using the existing drainfield. A 2021 document¹⁶ prepared by the state of Maryland ranked the best available technologies for removal of nitrogen and included the cost of purchase and installation. Averaging the costs, which range from \$12,244 to \$21,130, comes to \$15,727 for the construction cost for an ATU/PBT. Averaging the cost estimates from the two reports, gives an estimated construction cost of \$13,600 after rounding to the nearest hundred. Construction costs used for impact calculations for ATUs subtract the conventional system cost and comes to \$8,200 per system. For PBTs engineering costs are added and come to \$10,700 per system.

Table 6 shows a summary of the one-time construction cost impact for residential property owners by type of system, and results in a total annual cost of \$9,386,600 for 1,788 systems. For the first five years, the cost estimate is \$46,933,000 to upgrade 8,940 systems.

¹⁶ Maryland Department of the Environment. 2021. Bay Restoration Fund Ranking Documentation. <https://mde.maryland.gov/programs/water/BayRestorationFund/OnsiteDisposalSystems/Documents/BAT%20Ranking%20Document.pdf>

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Onsite Sewage Treatment and Disposal System Remediation Plans**

Table 6. Summary of Annual One-time Construction Cost Impact to Residential Property Owners

Type of System	Cost per System Over Conventional System Cost ⁽¹⁾	Number of Systems Upgraded Annually	Total Annual Cost – Residential Property Owners
INRB	\$3,200	1,073	\$3,433,600
ATU	\$8,200	679	\$5,567,800
PBTS	\$10,700	36	\$385,200
Total		1,788	\$9,386,600

(1) Estimated conventional system cost is \$5,400. See narrative for methodology.

Recurring costs for operating permits and maintenance only apply to ATU/PBTSs. These systems must be maintained through a contract with a property owner for the life of the system. There are two components to the recurring cost: a biennial operating permit and ongoing system maintenance. The regulatory biennial operating permit fee is \$100, which is considered in the calculations as \$50 annually. The system maintenance is performed by a DEP approved maintenance entity and includes the two annual inspections. Septic tank contractors around the Leon County, Florida area, according to the 2021 report to Leon County¹⁵, estimated a range between \$440 and \$600 for two years, or \$220 and \$300 for one year. A tank pump out is not included in these costs. A summary of annual operating and maintenance costs in Appendix D of the Leon County 2021 report¹⁵ range from \$185 to \$500 annually, with most of the ATU systems around \$300. Based on these sources, calculations are based on a \$300 annual maintenance cost. For the 715 ATU/PBTSs in the first year comes to \$250,250. Operating and maintenance costs occur annually and will compound due to additional systems upgrading in subsequent years. For example, year one pays for five years of operating and maintenance costs, year two pays for four years, and so on. After five years the total cost is \$3,753,750.

The total cost estimate for impacted residential property owners over the next five years is \$50,263,750.

Commercial Business Property Owners

Commercial property owners are estimated to be five percent of the 1,882 impacted properties, which comes to 94 properties for the first year and a total of 470 properties over five-years. The same estimation methods were applied to commercial properties as were to residential property owners. The estimated annual number of commercial property INRBs is 56 systems and of ATU/PBTSs is 38 systems.

Table 7 shows a summary of the one-time construction cost impact for commercial property owners by type of system, and results in a total annual cost of \$495,800 for 94 systems. For the first five years, the cost estimate is \$2,479,000 to upgrade 470 systems.

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Onsite Sewage Treatment and Disposal System Remediation Plans**

Table 7. Summary of Annual One-time Construction Cost Impact to Commercial Property Owners

Type of System	Cost per System Over Conventional System Cost ⁽¹⁾	Number of Systems Upgraded Annually	Total Annual Cost – Commercial Property Owners
INRB	\$3,200	56	\$179,200
ATU	\$8,200	36	\$295,200
PBTS	\$10,700	2	\$21,400
Total		94	\$495,800

(1) Estimated conventional system cost is \$5,400. See narrative for methodology.

Using the same methodology as for residential properties, recurring costs for operating permits and maintenance for ATU/PBTs is estimated as \$350 annually. For the 38 ATU/PBTs in the first year comes to \$13,300. Operating and maintenance costs occur annually and will compound due to additional systems upgrading in subsequent years. For example, year one pays for five years of operating and maintenance costs, year two pays for four years, and so on. After five years the total cost is \$199,500.

It is assumed that any effects on construction companies, real estate services, and certified septic tank contractors will have a net zero impact on them. Any additional business costs due to the requirements will become part their cost structure and passed on to their customers.

The total cost estimate for impacted commercial property owners over the next five years is \$2,678,500.

10. Impact to Small Businesses, Small Counties, and Small Cities.

A small business is defined in Section 288.703, F.S., as “...an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.” A small county is defined in Section 120.52(19), F.S., as “any county that has an unincorporated population of 75,000 or less according to the most recent decennial census.” And, a small city is defined in Section 120.52(18), F.S., as “any municipality that has an unincorporated population of 10,000 or less according to the most recent decennial census.”

There are about 28 small businesses per year that are estimated to be subject to the proposed rule amendment, or 140 systems over five years. This is estimated to be 30% of the 94 businesses impacted annually under the assumption that OSTDS are more common in rural areas where central sewer is not available. Large businesses, which are less likely to be in rural areas, would likely exceed sewage flow allowances and fall outside of Department’s Onsite Sewage Program regulations.

The estimation method is the same as for all commercial property owners. For these 140 small businesses one-time installation costs for the first five-years would be \$735,500. Recurring costs

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would include the cost of obtaining and maintaining an operating permit and maintenance entity contract to verify the system operational.

Recurring costs compound over time, with the year one businesses paying five years of maintenance and monitoring and systems installed in year five only pay once for these services. An operating permit fee is \$50 per year for about 40% of the systems (56 total systems) and ongoing system maintenance is \$300 per year for these 56 systems, which comes to \$49,000 over five years.

The overall cost impact over five years to small businesses for compliance with this proposed rule is \$784,500. This was calculated through estimation of the number of businesses and the estimated one-time and recurring costs for implementation of this requirement for certain OSTDS in environmentally sensitive areas to upgrade to a nitrogen reducing system when the existing system is in failure.

Any potential impact to small counties and cities is included in the commercial business property owners' calculations. The impact is estimated to be the cost of upgrading the OSTDS to meet the proposed rule amendment requirements. Due to the difficulty of identifying which non-residential properties are commercially owned or owned by county or city government, the overall cost impact to commercial properties is used.

**Department of Environmental Protection
Statement of Estimated Regulatory Costs (SERC)**

Division: Water Resource Management
Rule Number: Chapter 62-600, F.A.C.
Rule Description: Domestic Wastewater Facilities
Contact Person: Maurice Barker

**Please remember to analyze the impact of the rule, NOT the statute, when
completing this form.**

A. Is the rule likely to, **directly or indirectly**, have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

- | | | |
|--|------------------------------|--|
| 1. Is the rule likely to reduce personal income? | ☐ Yes | ☒ No |
| 2. Is the rule likely to reduce total non-farm employment? | ☐ Yes | ☒ No |
| 3. Is the rule likely to reduce private housing starts? | ☐ Yes | ☒ No |
| 4. Is the rule likely to reduce visitors to Florida? | ☐ Yes | ☒ No |
| 5. Is the rule likely to reduce wages or salaries? | ☐ Yes | ☒ No |
| 6. Is the rule likely to reduce property income? | ☐ Yes | ☒ No |

Explanation:

The key direct and indirect costs of the revised rule primarily affect utilities and no significant adverse impacts are expected related to questions A.1. – A.6.

If any of these questions are answered "Yes," presume that there is a likely and adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

B. Is the rule likely to, **directly or indirectly**, have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

1. Is the rule likely to raise the price of goods or services provided by Florida business?
- ☐ Yes ☒ No

**Department of Environmental Protection
Statement of Estimated Regulatory Costs (SERC)**

2. Is the rule likely to add regulation that is not present in other states or markets?
☐ Yes ☒ No
3. Is the rule likely to reduce the quantity of goods or services Florida businesses are able to produce, i.e. will goods or services become too expensive to produce?
☐ Yes ☒ No
4. Is the rule likely to cause Florida businesses to reduce workforces?
☐ Yes ☒ No
5. Is the rule likely to increase regulatory costs to the extent that Florida businesses will be unable to invest in product development or other innovation?
☐ Yes ☒ No
6. Is the rule likely to make illegal any product or service that is currently legal?
☐ Yes ☒ No

Explanation:

The key direct and indirect costs of the revised rule primarily affect utilities and no significant adverse impacts are expected related to questions B.1. – B.6.

If any of these questions are answered “Yes,” presume that there is a likely and adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

C. Is the rule likely, **directly or indirectly**, to increase regulatory costs, including any transactional costs (see F below for examples of transactional costs), in excess of \$1 million in the aggregate within 5 years after the implementation of this rule?

1. Current one-time costs	\$0 to Unknown
2. New one-time costs	\$93 million
3. Subtract 1 from 2	\$93 million
4. Current recurring costs	\$0
5. New recurring costs	\$47 million
6. Subtract 4 from 5	\$47 million
7. Number of times costs will recur in 5 years	5
8. Multiply 6 times 7	\$235 million

**Department of Environmental Protection
Statement of Estimated Regulatory Costs (SERC)**

9. Add 3 to 8 **\$328 million**

If 9. is greater than \$1 million, there is likely an increase of regulatory costs in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

Proposed Rules 62-600.705 and .720, F.A.C., will require legislative ratification. Proposed Rule 62-600.405, F.A.C., references proposed Rule 62-600.705, F.A.C., and will also be submitted as a rule for ratification.

D. Good faith estimates (numbers/types):

1. The number of individuals and entities likely to be required to comply with the rule.
(Please provide a reasonable explanation for the estimate used for the number of individuals and methodology used for deriving the estimate).

There are approximately 1647 domestic wastewater facilities that will likely be required to comply with the rule.

- **Approximately 357 domestic wastewater facilities are Type I facilities (i.e. permitted capacity of 500,000 gallons per day or greater)**
- **Approximately 160 domestic wastewater facilities are Type II facilities (i.e. permitted capacity of 100,000 gallons per day or greater but less than 500,000 gallons per day)**
- **Approximately 1130 domestic wastewater facilities are Type III facilities (i.e. permitted capacity of less than 100,000 gallons per day)**

2. A general description of the types of individuals likely to be affected by the rule.

The provisions in Chapter 2020-150, Laws of Florida, being implemented in this rule regulate facilities and the collection systems that are connected to the facility. Domestic wastewater facilities treat the wastewater from about 70 percent of Florida's population as well as wastewater from many businesses and industry. This includes the largest municipal wastewater treatment facilities serving Florida's largest communities, facilities in small rural towns, and even very small privately-owned wastewater treatment facilities that serve a mobile home park or similar business.

E. Good faith estimates (costs):

1. Cost to the department of implementing the proposed rule:

☒ **None.** The department intends to implement the proposed rule within its current workload, with existing staff.

☐ **Minimal.** *(Provide a brief explanation).*

**Department of Environmental Protection
Statement of Estimated Regulatory Costs (SERC)**

☐ Other. (Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).

2. Cost to any other state and local government entities of implementing the proposed rule:

☐ None. This proposed rule will only affect the department.

☐ Minimal. *(Provide a brief explanation).*

☒ Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

The majority of large domestic wastewater treatment facilities are owned and operated by local government entities. Therefore, estimates for one-time capital costs and recurring costs for Type I facilities given later in this document will cover local governments entities.

3. Cost to the department of enforcing the proposed rule:

☒ None. The department intends to enforce the proposed rule within its current workload with existing staff.

☐ Minimal. *(Provide a brief explanation).*

☐ Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

4. Cost to any other state and local government of enforcing the proposed rule:

☐ None. This proposed rule will only affect the department.

☒ Minimal. *(Provide a brief explanation).*

Four county programs are delegated to permit domestic wastewater facilities and regulate approximately 135 domestic wastewater treatment facilities. Almost all these facilities are small, Type III facilities and the required plans and reports resulting from the new regulations should be relatively simple, requiring minimal additional work by the delegated programs.

☐ Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

- F. Good faith estimates (transactional costs) likely to be incurred by individuals and entities, including local government entities, required to comply with the

**Department of Environmental Protection
Statement of Estimated Regulatory Costs (SERC)**

requirements of the proposed rule. (Includes filing fees, cost of obtaining a license, cost of equipment required to be installed or used, cost of implementing processes and procedures, cost of modifying existing processes and procedures, additional operating costs incurred, cost of monitoring, and cost of reporting, or any other costs necessary to comply with the rule).

- ☐ None. This proposed rule will only affect the department.
- ☐ Minimal. *(Provide a brief explanation).*
- ☒ Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

The following are the key costs related to the primary rule revisions:

- 1. Cost to prepare and submit an annual report for pollution mitigation;**
- 2. Cost to prepare a power outage contingency plan;**
- 3. Cost to develop the initial collection system action plan with an asset management plan for the collection system;**
- 4. Cost to implement and manage a collection system action plan;**
- 5. Cost to prepare and submit annual report(s) for collection system action plan; and,**
- 6. Cost for large facilities to update the facility emergency response plan to address cybersecurity.**

The department believes that the cost of items 1 and 2 are the direct result of statutory requirements and costs for items 1 and 2 are not included in this SERC. For items 3 through 5, the statutes provide the basic requirements for a collection system action plan and annual report but not the details or procedures which the department developed to implement the requirements. It is difficult to separate what costs may be statutory in nature from those resulting from proposed rule requirements. For the purposes of this SERC, all costs for items 3 through 5 will be assumed to result from the proposed rule requirements.

Item 6 is challenging because it has been mentioned to the department by industry sources that the majority of larger, Type I wastewater facilities are likely to already have cybersecurity incorporated into their emergency response plans since this has been part of industry guidance for several years. For this SERC, the department has chosen to assume that cybersecurity needs to be added to the plan or at least updated, including conducting a vulnerability assessment, for all Type I facilities. If this assumption is conservative in nature, then it may be offset if the estimated time involved to address cybersecurity is lower than actual values.

For the costs of items 3 through 6, the department has very little information on the amount of time and effort required to meet each

**Department of Environmental Protection
Statement of Estimated Regulatory Costs (SERC)**

requirement. However, to provide a good faith estimate for the costs it was decided to base the estimates on general facility size categories, use a general average cost per hour for labor, and use very general estimates on the amount of hours it might take for each facility category to meet the requirement. A cost of \$100 per hour for labor is being used as it appears reasonable based on information that civil engineers cost an estimated \$65 to \$200 per hour.

Although these estimates may vary widely by facility, especially for extremely large facilities, it is believed that the estimates provide an acceptable approximation of the expected costs when averaged over all facilities. In the event the estimates may be low, it has been expressed to the department that many larger facilities already have maintenance plans, information, and programs for their collection systems that contain much of the required information and these plans would only need to be revised to meet the new rule requirements. Also, some utilities may automate the collection and compiling of much of the information used to prepare the annual report, which would reduce the time and cost to prepare the annual report.

Estimated costs to develop an initial collection system action plan for a collection system (one-time cost):

Facility Type	Estimated Hours (Labor)	Number of Facilities	Estimated Cost
Type III	40	1130	\$4,520,000
Type II	160	160	\$2,569,000
Type I	2080	357	\$74,256,000

Estimated costs to implement and manage a collection system action plan for a collection system (annual cost):

Facility Type	Estimated Hours (Labor)	Number of Facilities	Estimated Cost
Type III	52	1130	\$5,876,000
Type II	160	160	\$2,560,000
Type I	480	357	\$17,136,000

Estimated costs to prepare the annual report(s) for the collection system action plan for a collection system (annual cost):

Facility Type	Estimated Hours (Labor)	Number of Facilities	Estimated Cost
Type III	16	1130	\$1,808,000
Type II	160	160	\$2,560,000

**Department of Environmental Protection
Statement of Estimated Regulatory Costs (SERC)**

Type I	480	357	\$17,136,000
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Estimated costs to update the facility emergency response plan for large Type I domestic wastewater facilities to address cybersecurity including incorporation into the emergency response plan and conducting a vulnerability assessment (one-time cost for Type I facilities):

Facility Type	Estimated Hours (Labor)	Number of Facilities	Estimated Cost
Type I	320	357	\$11,424,000

Note, local governments may experience revenue issues related to the pandemic that may impact their ability to comply with the proposed requirements in the near future.

G. An analysis of the impact on small business as defined by s. 288.703, F.S., and an analysis of the impact on small counties and small cities as defined by s. 120.52, F.S. *(Includes:*

- *Why the regulation is needed [e.g., How will the regulation make the regulatory process more efficient? Required to meet changes in federal law? Required to meet changes in state law?];*
These regulatory revisions are needed to reduce the frequency and size of sanitary sewer overflows and leaks that impact public health and the environment, as well as guard against cyber-related attacks on wastewater systems. Impacts to Florida's waters include degradation of water quality resulting in algae blooms as well as beach closures which can impact tourism and recreational activities. Although the implementation of the rule will adversely affect certain small counties, it will also serve to protect the other interests of small businesses and small counties.
- *The type of small businesses that would be subject to the rule;*
The typical small businesses affected are mobile home parks and recreational vehicle (RV) parks that have their own wastewater treatment plant.
- *The probable impact on affected small businesses [e.g., increased reporting requirements; increased staffing; increased legal or accounting fees?];*
The statutory requirements apply to all wastewater treatment facilities – all facilities are required to have a collection system action plan. This will require the preparation of at least a basic plan for these small facilities as well as submittal of a brief annual report.
- *The likely per-firm regulatory cost increase, if any).*
The cost will vary by the size of the wastewater treatment facility. Most small wastewater treatment plants are privately-owned and these facilities have a very small collection system. Therefore, the cost for small facilities should be minimal – estimated to be \$4000 for the preparation of a plan and \$1600 cost for the annual report. There are a few larger facilities that are privately owned, but these are similar to

**Department of Environmental Protection
Statement of Estimated Regulatory Costs (SERC)**

small municipality or small county facilities. The initial plan for these facilities may cost \$50,000 - \$100,000 to prepare a plan, an estimated \$10,000 to track and implement the plan, and another \$5,000 to prepare the annual report.

A small business is defined in Section 288.703, F.S., as "...an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments."

A small county is defined in Section 120.52(19), F.S., as "any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census." And, a small city is defined in Section 120.52(18), F.S., as "any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census."

The estimated number of small businesses that would be subject to the rule:

- | | | |
|---|--|---|
| ☐ 1-99 | ☐ 100-499 | ☒ 500-999 |
| ☐ 1,000-4,999 | ☐ More than 5,000 | |
| ☐ Unknown, please explain: | | |

☒ Analysis of the impact on small business:

Small businesses would likely include approximately 970 – 999 businesses such as mobile home parks that own a small wastewater treatment facility. These facilities typically have a permitted capacity of 10,000 gallons per day or less, although some are larger. These facilities will need to prepare a collection system action plan, implement the plan, and submit annual reports. However, these systems only have a very small collection system internal to the property and any plan and report should be relatively simple.

☐ There is no small county or small city that will be impacted by this proposed rule.

☒ A small county or small city will be impacted. Analysis:

The majority of small counties and small cities own at least a small wastewater treatment facility serving a portion of their community. These facilities typically range in size from 100,000 to 5 million gallons per day in permitted capacity.

The facilities for smaller cities or counties are unlikely to have an engineer on staff to prepare a collection system action plan and will likely need to hire a consultant. Implementing the plan and preparing the annual report will present an administrative burden for these facilities as well. In general, the

**Department of Environmental Protection
Statement of Estimated Regulatory Costs (SERC)**

cost to prepare an initial collection system action plan is estimated to range from \$50,000 - \$100,000. The cost to implement the plan would likely range from approximately \$10,000 to \$20,000 with the cost to prepare the annual report ranging from \$5,000 to \$20,000.

Because labor costs for a civil engineer may range from \$60 per hour to \$200 per hour, an estimate of \$100 per hour will be used for estimates. For small Type I facilities, it is estimated to take less than the 2080 hours for the Type I facility category and might be around 500 - 1000 hours.

Note, small counties and small cities may experience revenue issues in the short-term related to the pandemic that may impact their ability to comply with the proposed requirements.

☐ Lower impact alternatives were not implemented? Describe the alternatives and the basis for not implementing them.

H. Any additional information that the agency determines may be useful.

☐ None.

☒ Additional.

The rule revisions implement the legislative requirements from Chapter 2020-150, Laws of Florida, which do not give consideration for small cities and counties.

I. A description of any good faith written proposal for a lower cost regulatory alternative to the proposed rule which substantially accomplishes the objectives of the law being implemented and either a statement adopting the alternative or a statement of the reasons rejecting the alternative in favor of the proposed rule.

☒ No good faith written proposals for a lower cost regulatory alternative to the proposed rule were received.

☐ See attachment "A".

☐ Adopted in entirety.

☐ Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

☐ Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

**Department of Environmental Protection
Statement of Estimated Regulatory Costs (SERC)**

☐ See attachment "B".

☐ Adopted in entirety.

☐ Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

☐ Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

☐ See attachment "C".

☐ Adopted in entirety.

☐ Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

☐ Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

☐ See attachment "D".

☐ Adopted in entirety.

☐ Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

☐ Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

☐ See attachment "E".

☐ Adopted in entirety.

☐ Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

☐ Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

#

2/21/23

Meeting Date

Environment and Natural Resources

Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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Rule Ratification Presentations

Bill Number or Topic

Amendment Barcode (if applicable)

Name Michael Lynch - DEP Director of Division of Water Resource Management

Phone _____

Address 3900 Commonwealth Blvd

Email _____

Street

Tallahassee

FL

32399

City

State

Zip

Speaking: ☐ For ☐ Against ☒ Information

OR

Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/21/23
Meeting Date

ENR
Committee

7002
Bill Number or Topic

Amendment Barcode (if applicable)

Name Alex Kernan - DEP Phone _____

Address 3900 Commonwealth Blvd Email _____
Street

Tallahassee FL 32399
City State Zip

Speaking: ☐ For ☐ Against ☒ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:
FL Dept. of
Environmental
Protection

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

2/21/2023

Meeting Date

Environment and Natural Resources

Committee

The Florida Senate
APPEARANCE RECORD

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SPB 7002

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Beth Alvi** Phone **850-999-1028**

Address **308 N. Monroe** Email **beth.alvi@audubon.org**
Street

Tallahassee **Fl** **32301**
City State Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Audubon Florida

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Environment and Natural Resources

BILL: SPB 7002

INTRODUCER: Environment and Natural Resources Committee

SUBJECT: Ratification of Rules of the Department of Environmental Protection

DATE: February 21, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Carroll	Rogers		EN Submitted as Comm.Bill/Fav

I. Summary:

SPB 7002 ratifies Florida Administrative Code Rule 62-6.001, which incorporates more stringent permitting requirements for onsite sewage treatment and disposal systems (OSTDSs), commonly referred to as septic systems, in areas where the Department of Environmental Protection has adopted an OSTDS remediation plan as part of a basin management action plan.

The bill also ratifies Florida Administrative Code Rules 62-600.405, 62-600.705, and 62-600.720, relating to domestic wastewater facilities, which:

- Require a pipe assessment, repair, and replacement plan and an annual report on the plan;
- Include statutory requirements for a power outage contingency plan;
- Include statutory requirements for an annual report on utilities' expenditures on pollution mitigation efforts; and
- Require certain domestic wastewater facilities' emergency response plans to address cybersecurity.

II. Present Situation:

The Clean Waterways Act

The Florida Legislature passed the Clean Waterways Act in 2020 to address a number of environmental issues relating to water quality improvement.¹ Major topics in the Act included onsite sewage treatment and disposal systems (OSTDSs), wastewater, stormwater, agriculture, and biosolids, and it directed the Department of Environmental Protection (DEP) to make rules to implement these policies.

The Act expanded OSTDS remediation plan requirements by requiring a remediation plan to be included in the development of a basin management action plan (BMAP) for nutrient-impaired water bodies if OSTDSs contribute at least 20 percent of the nutrient pollution or if DEP

¹ Chapter 2020-150, Laws of Fla.

determines that remediation is necessary to achieve the total maximum daily load (TMDL). The Act authorized DEP to adopt rules to administer the requirements of an OSTDS remediation plan.

The Act also addressed prevention of sanitary sewer overflows (SSOs), underground pipe leaks, and inflow and infiltration (I&I). DEP's rules must reasonably limit, reduce, and eliminate domestic wastewater collection and transmission system pipe leakages and I&I. The Act authorized DEP to adopt rules relating to pipe assessment, repair, and replacement action plans, power outage contingency plans, and reports relating to expenditures on pollution mitigation and prevention.²

Legislative Ratification of Agency Rules

A rule is subject to legislative ratification if it:

- Has an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within five years after the implementation of the rule;
- Has an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within five years after the implementation of the rule; or
- Increases regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within five years after the implementation of the rule.³

If a rule requires ratification by the Legislature, the rule must be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the regular legislative session. The rule may not go into effect until it is ratified by the Legislature.⁴

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

- Will have an adverse impact on small business; or
- Is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in the state within one year after the implementation of the rule.⁵

A SERC must include:

- An economic analysis showing whether the rule exceeds the thresholds requiring legislative ratification;
- A good faith estimate of the number and types of individuals and entities likely to be required to comply with the rule, and a general description of the types of individuals likely to be affected by the rule;

² *Id.*

³ Section 120.541(2)(a), F.S.

⁴ Section 120.541(3), F.S.

⁵ Section 120.54(3)(b)1., F.S.

- A good faith estimate of the cost to the agency, and to other state and local government entities, of implementing and enforcing the proposed rule, including anticipated effects on state or local revenues;
- A good faith estimate of the transactional costs (direct business costs) likely to be incurred by individuals and entities required to comply with the requirements of the rule;
- An analysis of the impact on small businesses, small counties, and small cities; and
- A description of regulatory alternatives submitted to the agency and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.⁶

Statement of Estimated Regulatory Costs for Rule 62-6.001, F.A.C.

DEP determined that a SERC was required for rule 62-6.001, Florida Administrative Code, and prepared one in advance of rule adoption.⁷ DEP found that the rule will increase regulatory costs for OSTDS upgrades in excess of existing required costs.⁸ DEP estimates that the total cost impact over five years will be approximately \$5.7 million.⁹ Over a five-year period:

- The cost to upgrade 8,940 residential properties to nutrient-reducing OSTDSs will be approximately \$5.1 million;
- The cost to upgrade 470 OSTDSs for commercial properties will be approximately \$2.7 million; and
- The state government cost impacts for staffing to manage the increased workload will be approximately \$3.5 million.¹⁰

Statement of Estimated Regulatory Costs for Chapter 62-600, F.A.C.

DEP determined that a SERC was required for chapter 62-600, Florida Administrative Code, and prepared one in advance of rule adoption.¹¹ DEP found that the rules will increase regulatory costs for 1,647 wastewater facilities, including the largest municipal wastewater treatment facilities, facilities in small rural towns, and even small privately-owned wastewater treatment facilities that serve a mobile home park or similar business.¹² The key costs related to the primary rule revisions include the cost to:

- Prepare and submit an annual report for pollution mitigation;
- Prepare a power outage contingency plan;
- Develop and implement the initial collection system action plan;
- Prepared and submit annual report(s) for the collection system action plan; and
- For large facilities, update the facility emergency response plan to address cybersecurity.¹³

⁶ Section 120.541(2), F.S.

⁷ DEP, *SERC, Rule 62-6.001, F.A.C.* (on file with the Senate Committee on Environment and Natural Resources).

⁸ *Id.* at 4.

⁹ *Id.*

¹⁰ *Id.* at 5.

¹¹ DEP, *SERC, Chapter 62-600, F.A.C.* (on file with the Senate Committee on Environment and Natural Resources).

¹² *Id.* at 3.

¹³ *Id.* at 5.

DEP estimates that the total increase in cost within five years of the implementation of the rules will be \$328 million.¹⁴ The cost to each wastewater treatment facility will vary according to the size of the facility.¹⁵ DEP provided the following estimates:

- A one-time cost to develop an initial collection system action plan with an asset management plan between \$4.5 million and \$74 million;
- Annual costs to implement and manage a collection system action plan between \$5.9 million and \$17 million;
- Annual costs to prepare a report for the collection system action plan between \$1.8 million and \$17 million; and
- A cost for large Type I domestic wastewater facilities to address cybersecurity concerns of \$11 million.¹⁶

Water Quality and Nutrients

Phosphorus and nitrogen are naturally present in water and are essential nutrients for the healthy growth of plant and animal life.¹⁷ The correct balance of both nutrients is necessary for a healthy ecosystem; however, excessive nitrogen and phosphorus can cause significant water quality problems.¹⁸

Phosphorus and nitrogen are derived from natural and human-made sources.¹⁹ Human-made sources include sewage disposal systems (wastewater treatment facilities and septic systems), overflows of storm and sanitary sewers (untreated sewage), agricultural production and irrigation practices, and stormwater runoff.²⁰

Excessive nutrient loads may result in harmful algal blooms, nuisance aquatic weeds, and the alteration of the natural community of plants and animals.²¹ Dense, harmful algal blooms can also cause human health problems, fish kills, problems for water treatment plants, and impairment of the aesthetics and taste of waters. Growth of nuisance aquatic weeds tends to increase in nutrient-enriched waters, which can impact recreational activities.²²

Total Maximum Daily Loads

A TMDL, which must be adopted by rule, is a scientific determination of the maximum amount of a given pollutant that can be absorbed by a waterbody and still meet water quality standards.²³ Waterbodies or sections of waterbodies that do not meet the established water quality standards

¹⁴ *Id.* at 3.

¹⁵ *Id.* at 7.

¹⁶ *Id.* at 6-7.

¹⁷ U.S. Environmental Protection Agency, *The Issue*, <https://www.epa.gov/nutrientpollution/issue> (last visited Feb. 10, 2023).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ U.S. Environmental Protection Agency (EPA), *Sources and Solutions*, <https://www.epa.gov/nutrientpollution/sources-and-solutions> (last visited Feb 10, 2023).

²¹ EPA, *The Issue*, <https://www.epa.gov/nutrientpollution/issue> (last visited Feb. 10, 2023).

²² *Id.*

²³ Department of Environmental Protection (DEP), *Total Maximum Daily Loads Program*, <https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program> (last visited Feb. 10, 2023).

are deemed impaired. Pursuant to the federal Clean Water Act, DEP must establish a TMDL for impaired waterbodies.²⁴

Basin Management Action Plans

DEP is the lead agency in coordinating the development and implementation of TMDLs.²⁵ BMAPs are one of the primary mechanisms DEP uses to achieve TMDLs. BMAPs are plans that address the entire pollution load, including point and nonpoint discharges,²⁶ for a watershed. BMAPs generally include:

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Best management practices and non-regulatory and incentive-based programs, including cost-sharing, waste minimization, pollution prevention, agreements, and public education;
- Public works projects, including capital facilities; and
- Land acquisition.²⁷

DEP may establish a BMAP as part of the development and implementation of a TMDL for a specific waterbody. First, the BMAP equitably allocates pollutant reductions to individual basins, to all basins as a whole, or to each identified point source or category of nonpoint sources.²⁸ Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations. The BMAP development process provides an opportunity for local stakeholders, local government, community leaders, and the public to collectively determine and share water quality cleanup responsibilities.²⁹ BMAPs are adopted by secretarial order.³⁰

BMAPs must include milestones for implementation and water quality improvement. They must also include an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones must be conducted every five years, and revisions to the BMAP must be made as appropriate.³¹

In 2020, the Clean Waterways Act required BMAPs for nutrient TMDLs to include an OSTDS remediation plan if DEP identifies OSTDSs as contributors of at least 20 percent of nutrient

²⁴ Section 403.067(1), F.S.

²⁵ 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. Furthermore, s. 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.

²⁶ Fla. Admin. Code R. 62-620.200(37). “Point source” is defined as “any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.” Nonpoint sources of pollution are sources of pollution that are not point sources.

²⁷ Section 403.067(7), F.S.

²⁸ *Id.*

²⁹ DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Feb. 10, 2023).

³⁰ Section 403.067(7)(a)5., F.S.

³¹ Section 403.067(7)(a)6., F.S.

pollution or if DEP determines that remediation is necessary to achieve the TMDLs.³² This was an expansion of the statutory requirement that an OSTDS remediation plan must be developed if DEP determines that OSTDSs within a spring priority focus area contribute at least 20 percent of nonpoint source nitrogen pollution or that remediation is necessary to achieve the TMDL.³³ OSTDS remediation plans for springs BMAPs can be found in Appendix D of the BMAPs.³⁴ Appendix D remediation plan elements include requirements for the installation of new OSTDSs, modification and repair of existing OSTDSs, and other plan elements, such as:

- An evaluation of credible scientific information on the effect of nutrients on springs and spring systems;
- Options for repair, upgrade, replacement, drain field modification, the addition of effective nitrogen-reducing features, connection to a central sewer system, or other action;
- A public education plan to provide area residents with reliable, understandable information about OSTDSs and springs;
- Cost-effective and financially feasible projects necessary to reduce the nutrient impacts of OSTDSs; and
- A priority ranking for each project for funding contingent on appropriations in the General Appropriations Act.³⁵

Onsite Sewage Treatment and Disposal Systems

OSTDSs, commonly referred to as “septic systems,” generally consist of two basic parts: the septic tank and the drainfield.³⁶ Waste from toilets, sinks, washing machines, and showers flows through a pipe into the septic tank, where anaerobic bacteria break the solids into a liquid form. The liquid portion of the wastewater flows into the drainfield, which is generally a series of perforated pipes or panels surrounded by lightweight materials such as gravel or Styrofoam. The drainfield provides a secondary treatment where aerobic bacteria continue deactivating the germs. The drainfield also provides filtration of the wastewater, as gravity draws the water down through the soil layers.³⁷

There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state’s population.³⁸ In Florida, development in some areas is dependent on

³² Chapter 2020-150, Laws of Fla.

³³ Section 373.807, F.S.

³⁴ See, e.g., DEP, *Wacissa River and Wacissa Spring Group Basin Management Action Plan*, 56-61 (June 2018) available at <https://floridadep.gov/sites/default/files/Wacissa%20Final%202018.pdf>.

³⁵ *Id.* at 56-57.

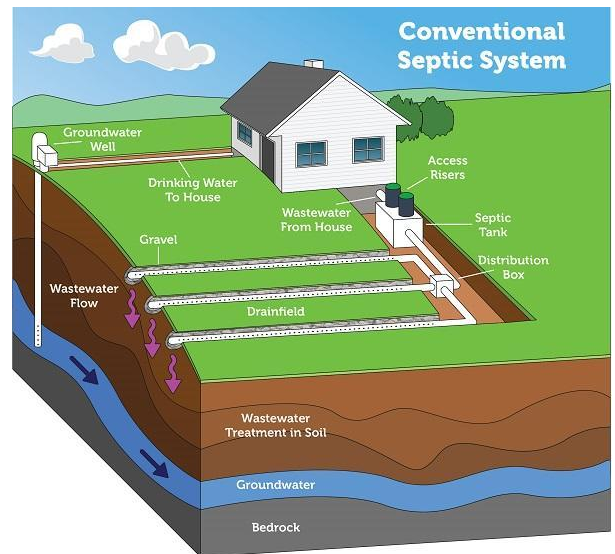
³⁶ DOH, *Septic System Information and Care*, <http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html> (last visited Feb, 2023); EPA, *Types of Septic Systems*, <https://www.epa.gov/septic/types-septic-systems> (last visited Feb. 10, 2023) (showing the graphic provided in the analysis).

³⁷ *Id.*

³⁸ DEP, *Onsite Sewage Program*, <https://floridadep.gov/water/onsite-sewage#:~:text=Onsite%20sewage%20treatment%20and%20disposal%20systems%20%28OSTDS%29%2C%20commonly,represents%2012%25%20of%20the%20United%20States%E2%80%99%20septic%20systems> (last visited Feb. 10, 2023).

OSTDSs due to the cost and time it takes to install central sewer systems.³⁹ For example, in rural areas and low-density developments, central sewer systems are not cost-effective. Less than one percent of OSTDSs in Florida are actively managed under operating permits and maintenance agreements.⁴⁰ The remainder of systems are generally serviced only when they fail, often leading to costly repairs that could have been avoided with routine maintenance.⁴¹

In a conventional OSTDS, a septic tank does not reduce nitrogen from the raw sewage. In Florida, approximately 30-40 percent of the nitrogen levels are reduced in the drainfield of a system that is installed 24 inches or more from groundwater.⁴² This still leaves a significant amount of nitrogen to percolate into the groundwater, which makes nitrogen from OSTDSs a potential contaminant in groundwater.⁴³



Different types of advanced OSTDSs exist that can remove greater amounts of nitrogen than a typical septic system (often referred to as “advanced” or “nutrient-reducing” septic systems).⁴⁴ DEP publishes on its website approved products and resources on advanced systems.⁴⁵ Determining which advanced system is the best option can depend on site-specific conditions.

The owner of a properly functioning OSTDS must connect to a sewer system within one year of receiving notification that a sewer system is available for connection.⁴⁶ Owners of an OSTDS in need of repair or modification must connect within 90 days of notification from DEP.⁴⁷

In 2020, the Clean Waterways Act provided for the transfer of the Onsite Sewage Program from the Department of Health (DOH) to DEP.⁴⁸ The Onsite Sewage Program will be transferred over

³⁹ DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, Executive Summary (Oct. 1, 2008), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/documents/costs-implement-mandatory-statewide-inspection.pdf> (last visited Feb. 10, 2023).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² DOH, *Florida Onsite Sewage Nitrogen Reduction Strategies Study, Final Report 2008-2015*, 21 (Dec. 2015), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/research/draftlegreportsm.pdf>; see Fla. Admin. Code R. 64E-6.006(2).

⁴³ University of Florida Institute of Food and Agricultural Sciences (IFAS), *Onsite Sewage Treatment and Disposal Systems: Nitrogen*, 3 (Oct. 2020), available at <http://edis.ifas.ufl.edu/pdf/SS/SS55000.pdf> (last visited Feb. 10, 2023).

⁴⁴ DOH, *Nitrogen-Reducing Systems for Areas Affected by the Florida Springs and Aquifer Protection Act* (updated May 2021), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/products/documents/bmap-n-reducing-tech-18-10-29.pdf>.

⁴⁵ DEP, *Onsite Sewage Program, Product Listings and Approval Requirements*, <https://floridadep.gov/water/onsite-sewage/content/product-listings-and-approval-requirements> (last visited Feb. 10, 2023).

⁴⁶ Section 381.00655, F.S.

⁴⁷ *Id.*

⁴⁸ DEP, *Program Transfer*, <https://floridadep.gov/water/onsite-sewage/content/program-transfer> (last visited Feb. 10, 2023).

a period of five years, and guidelines for the transfer are provided by an interagency agreement.⁴⁹ Per the agreement, DEP has the primary powers and duties of the Onsite Sewage Program, meaning that the county departments of health will implement the OSTDS program under the direction of DEP instead of DOH.⁵⁰ The county departments of health still handle permitting and inspection of OSTDS.⁵¹ In the event of an alleged violation of OSTDS laws, county departments of health will be responsible for conducting an inspection to gather information regarding the allegations.⁵²

Wastewater Treatment Facilities

The proper treatment and disposal or reuse of domestic wastewater is an important part of protecting Florida's water resources. The majority of Florida's domestic wastewater is controlled and treated by centralized treatment facilities regulated by DEP. Florida has approximately 2,000 permitted domestic wastewater treatment facilities.⁵³

Chapter 403, F.S., requires that any facility or activity which discharges waste into waters of the state or which will reasonably be expected to be a source of water pollution must obtain a permit from DEP.⁵⁴ Generally, persons who intend to collect, transmit, treat, dispose, or reuse wastewater are required to obtain a wastewater permit. A wastewater permit issued by DEP is required for both operation and certain construction activities associated with domestic or industrial wastewater facilities or activities. A DEP permit must also be obtained prior to construction of a domestic wastewater collection and transmission system.⁵⁵

Under section 402 of the federal Clean Water Act, any discharge of a pollutant from a point source to surface waters (i.e., the navigable waters of the United States or beyond) must obtain a National Pollution Discharge Elimination System (NPDES) permit.⁵⁶ NPDES permit requirements for most wastewater facilities or activities (domestic or industrial) that discharge to surface waters are incorporated into a state-issued permit, thus giving the permittee one set of permitting requirements rather than one state and one federal permit.⁵⁷ 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.⁵⁸

⁴⁹ DOH, DEP, *Interagency Agreement between DEP and DOH in Compliance with Florida's Clean Waterways Act for Transfer of the Onsite Sewage Program*, 5 (June 30, 2021), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/documents/interagency-agreement-between-fdoh-fdep-onsite-signed-06302021.pdf> (last visited Feb. 10, 2023).

⁵⁰ *Id.* at 14.

⁵¹ *Id.* at 11; and DEP, *Onsite Sewage Program*, <https://floridadep.gov/water/onsite-sewage> (last visited Feb. 10, 2023).

⁵² DOH, DEP, *Interagency Agreement between DEP and DOH in Compliance with Florida's Clean Waterways Act for Transfer of the Onsite Sewage Program* at 11.

⁵³ DEP, *General Facts and Statistics about Wastewater in Florida*, <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Feb. 10, 2023).

⁵⁴ Section 403.087, F.S.

⁵⁵ DEP, *Wastewater Permitting*, <https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting> (last visited Feb. 10, 2023).

⁵⁶ 33 U.S.C. s. 1342.

⁵⁷ Sections 403.061 and 403.087, F.S.

⁵⁸ Section 403.087(3), F.S.

Cybersecurity

Cyber-attacks on water and wastewater systems are increasingly common.⁵⁹ Attacks that target water or wastewater utility business processes or process control systems can result in:

- Malfunctioning treatment and conveyance processes;
- Compromise of a utility's website or email system;
- Stolen personal data or credit card information from a utility's billing system; and
- Installation of malicious programs like ransomware, which can disable operations.⁶⁰

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 an SSO. Any overflow, spill, release, discharge, or diversion of untreated or partially treated wastewater from a sanitary sewer system is an SSO.⁶¹ An 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.⁶² Each day during the period in which a violation occurs constitutes a separate offense.⁶³ However, administrative penalties are capped at \$10,000.⁶⁴

A key concern with SSOs entering rivers, lakes, or streams is their negative effect on water quality. In addition, 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 issues health 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.⁶⁵

Reduction of SSOs can be achieved through:

- Cleaning and maintaining the sewer system;
- Reducing I&I through rehabilitation and repairing broken or leaking lines;
- Enlarging or upgrading sewer, pump station, or sewage treatment plant capacity and/or reliability; and
- Constructing wet weather storage and treatment facilities to treat excess flows.⁶⁶

⁵⁹ EPA, *Water Sector Cybersecurity Brief for States*, 1 (2018) available at https://www.epa.gov/sites/default/files/2018-06/documents/cybersecurity_guide_for_states_final_0.pdf (last visited Feb. 13, 2023).

⁶⁰ *Id.*

⁶¹ DEP, *Sanitary Sewer Overflows (SSOs)*, available at <https://floridadep.gov/sites/default/files/Sanitary%20Sewer%20Overflows.pdf> (last visited Feb. 10, 2023).

⁶² Sections 403.121 and 403.141, F.S.

⁶³ *Id.*

⁶⁴ Section 403.121(2)(b),(8), and (9), F.S.

⁶⁵ DEP, *SSOs*, available at <https://floridadep.gov/sites/default/files/Sanitary%20Sewer%20Overflows.pdf>.

⁶⁶ *Id.*

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.⁶⁷ 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.⁶⁸ When domestic wastewater facilities are evaluated for permit renewal, collection systems are not evaluated for issues such as excessive inflow or infiltration unless problems result at the treatment plant.⁶⁹ 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.⁷⁰ Pump stations receiving flow from another station through a force main, or those discharging through pipes 12 inches or larger, must have emergency generators.⁷¹ All other pump stations must have emergency pumping capability through one of three specified arrangements.⁷² 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.⁷³

In 2020, the Clean Waterways Act required DEP to adopt rules to reasonably limit, reduce, and eliminate leaks, seepages, or inputs into the underground pipes of wastewater collection systems.⁷⁴ The Act required facilities for sanitary sewage disposal to have a power outage contingency plan to mitigate the impacts of power outages on the utility's collection system and pump stations. It also required facilities to use I&I studies and leakage surveys to develop pipe assessment, repair, and replacement action plans with at least a five-year planning horizon.⁷⁵

III. Effect of Proposed Changes:

The bill ratifies Florida Administrative Code Rule 62-6.001, titled “General,” which is amended to incorporate more stringent permitting requirements for onsite sewage treatment and disposal systems (OSTDSs) in areas where the Department of Environmental Protection (DEP) has adopted an OSTDS remediation plan as part of a basin management action plan. The permitting requirements are projected to assure DEP that the installed system will not cause or contribute to

⁶⁷ City of St. Augustine, *Inflow & Infiltration Elimination Program*, <https://www.citystaug.com/549/Inflow-Infiltration-Elimination-Program> (last visited Jan. 10, 2023).

⁶⁸ See generally 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%20Evaluation%20of%20SSO%20and%20Unpermitted%20Discharges%2001_06_17.pdf (last visited Feb. 10, 2023).

⁶⁹ Fla. Admin. Code R. 62-600.735; see Fla. Admin. Code R. 62-600.200. “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.”

⁷⁰ See generally 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%20Evaluation%20of%20SSO%20and%20Unpermitted%20Discharges%2001_06_17.pdf (last visited Feb. 10, 2023).

⁷¹ Fla. Admin. Code R. 62-604.400.

⁷² *Id.*

⁷³ Fla. Admin. Code R. 62-604.100.

⁷⁴ Chapter 2020-150, Laws of Fla.

⁷⁵ *Id.*

the exceedance of a nutrient total maximum daily load established as of the date of the permit application.

The bill ratifies Florida Administrative Code Rules 62-600.405, 62-600.705, and 62-600.720, titled “Domestic Wastewater Facilities: Planning for Wastewater Facilities Expansion,” “Domestic Wastewater Facilities: Collection/Transmission Systems,” and “Domestic Wastewater Facilities: Operation and Maintenance Manual,” respectively. These rules are amended to:

- Require a pipe assessment, repair, and replacement plan and an annual report on the plan;
- Specify the scope and content of the plan and the content of the annual report;
- Include statutory requirements for a power outage contingency plan;
- Include statutory requirements for an annual report on utilities’ expenditures on pollution mitigation efforts;
- Require certain domestic wastewater facilities to address cybersecurity in their emergency response plan.

The bill:

- Serves no other purpose and may not be codified in the Florida Statutes;
- Directs that its enactment and effective dates must be noted in the Florida Administrative Code, the Florida Administrative Register, or both;
- Does not alter rulemaking authority delegated by prior law, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rule cited, and is intended to preserve the status of any cited rule as a rule under ch. 120, F.S.; and
- Does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

The bill will take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Rule 62-6.001, F.A.C., will increase regulatory costs for onsite sewage treatment and disposal system (OSTDS) upgrades for properties in certain areas. The Department of Environmental Protection (DEP) estimates that in one year residential property owners will pay a one-time amount of approximately \$9,386,600 and a recurring amount of approximately \$250,250. After five years, the total cost to upgrade 8,940 residential properties to nutrient-reducing OSTDSs is approximately \$50,686,750.⁷⁶

Rules 62-600.405, 62-600.705, and 62-600.720, F.A.C., will increase costs for small businesses like mobile home parks and RV parks that have their own wastewater treatment facility.⁷⁷ DEP estimates that the cost for these small facilities will be approximately \$4,000 for the preparation of the plan and \$1,600 for preparation of the annual report. The few larger facilities that are privately owned will likely see costs similar to small municipality or small county facilities.⁷⁸

C. Government Sector Impact:

Rule 62-6.001, F.A.C., will increase costs for DEP and the Department of Health (DOH) due to increased staffing. In one year, DEP will pay a one-time amount of approximately \$4,474 and a recurring amount of approximately \$132,684. In one year, DOH will pay a one-time amount of approximately \$22,370 and a recurring amount of approximately \$349,758. After five years, DEP will have paid approximately \$667,894 and DOH will have paid approximately \$2,805,774. The cost to state and local government over five years adds up to approximately \$3,473,668.⁷⁹

Rules 62-600.405, 62-600.705, and 62-600.720, F.A.C., will increase regulatory costs for local government entities that own and operate large domestic wastewater treatment facilities. DEP estimates that these local government entities will be required to pay

⁷⁶ DEP, *SERC, Rule 62-6.001, F.A.C.*, 5 (on file with the Senate Committee on Environment and Natural Resources).

⁷⁷ DEP, *SERC, Chapter 62-600, F.A.C.*, 7 (on file with the Senate Committee on Environment and Natural Resources).

⁷⁸ *Id.*

⁷⁹ DEP, *SERC, Rule 62-6.001, F.A.C.* at 5.

approximately \$120 million for one-time capital costs and recurring costs.⁸⁰ A small county or city that owns a small wastewater treatment facility may pay \$50,000-\$100,000 to prepare an initial collection system action plan, \$10,000-\$20,000 to implement the plan, and \$5,000-\$20,000 to prepare the annual report.⁸¹ DEP notes that these estimates may vary widely by facility, especially for extremely large facilities.⁸²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates an undesignated section of Florida law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁸⁰ DEP, *SERC, Chapter 62-600, F.A.C.*, 4, 6-7 (on file with the Senate Committee on Environment and Natural Resources).

⁸¹ *Id.* at 8.

⁸² *Id.* at 6.

FOR CONSIDERATION By the Committee on Environment and Natural Resources

592-02048-23

20237002pb

A bill to be entitled

An act relating to ratification of rules of the Department of Environmental Protection; ratifying specified rules relating to standards for onsite sewage treatment and disposal systems and for domestic wastewater facility planning for facilities expansion, collection/transmission systems, and an operation and maintenance manual for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule exceeding the specified thresholds for likely adverse impact or increase in regulatory costs; providing construction; providing an effective date.

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

Section 1. (1) The following rules are ratified for the sole and exclusive purpose of satisfying any condition on the effectiveness imposed under s. 120.541(3), Florida Statutes:

(a) Rule 62-6.001, Florida Administrative Code, titled "General," as filed for adoption with the Department of State pursuant to the certification package dated May 10, 2022.

(b) Rules 62-600.405, 62-600.705, and 62-600.720, Florida Administrative Code, titled "Domestic Wastewater Facilities: Planning for Wastewater Facilities Expansion," "Domestic Wastewater Facilities: Collection/Transmission Systems," and "Domestic Wastewater Facilities: Operation and Maintenance Manual," respectively, as filed for adoption with the Department of State pursuant to the certification package dated November

592-02048-23

20237002pb

30 16, 2021.

31 (2) This act serves no other purpose and may not be
32 codified in the Florida Statutes. After this act becomes a law,
33 its enactment and effective dates must be noted in the Florida
34 Administrative Code, the Florida Administrative Register, or
35 both, as appropriate. This act does not alter rulemaking
36 authority delegated by prior law, does not constitute
37 legislative preemption of or exception to any provision of law
38 governing adoption or enforcement of the rule cited, and is
39 intended to preserve the status of any cited rule as a rule
40 under chapter 120, Florida Statutes. This act does not cure any
41 rulemaking defect or preempt any challenge based on a lack of
42 authority or a violation of the legal requirements governing the
43 adoption of any rule cited.

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

**House Government Operations Subcommittee
Senate Committee on Environment and Natural Resources
August 26, 2022**

**Open Government Sunset Review Questionnaire
(Certain records relating to the sale of surplus land by a water management district)**

PLEASE RETURN THIS QUESTIONNAIRE BY SEPTEMBER 14, 2022, TO BOTH:

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In 2018, the Legislature created a public record exemption in s. 373.089(1)(b) and (c), F.S., for a written valuation of land determined by a governing board of a water management district to be surplus; related documents used to form, or which pertain to, such a valuation; and written offers to purchase such surplus land. The exemption expires two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district. This public record exemption stands repealed on October 2, 2023, unless reviewed and saved from repeal by the Legislature under the Open Government Sunset Review Act (s. 119.15, F.S.).

To assist committee staff as part of their review of this public record exemption, please answer the following questions. A copy of s. 373.089, F.S., is attached for your convenience.

Water Management District Completing the Questionnaire:

St. Johns River Water Management District

Name and title of Person Completing the Questionnaire:

Erin Preston, Interim General Counsel
Sheila Theus, Director, Office of Real Estate Services

Telephone Number of Person Completing the Questionnaire:

386-329-4176 (Preston)
386-312-2342 (Theus)

E-mail Address of Person Completing the Questionnaire:

epreston@sjrwmd.com
stheus@sjrwmd.com

I. Sale of Surplus Land by a Water Management District

1. Approximately how many acres of land does your district hold title to?
 - a. *As of 9/6/2022, the District holds title to 452,859.33 acres in 100% fee simple interest, 162,086.68 acres in joint fee interest with local government or the Board of Trustees of the Internal Improvement Trust Fund. The District holds a real estate interest in an additional 162,765.27 acres in less-than-fee (wholly or jointly via easements).*
 - b. How many of those acres were acquired for conservation purposes?
 - i. *Less than 100 acres of the District's ownership (wholly or joint) in fee simple was designated "not for conservation purposes" by the Governing Board.*
 - ii. *Of the 162,765.27 acres held in less-than-fee interest, 2,210.96 acres are encumbered by right-of-way easement designated "not for conservation purposes" and 35,053.3 acres are encumbered by flowage easements granted in favor of the District.*
 - c. How many of those acres were conveyed by a state agency, county, drainage district, municipality, or governmental agency or public corporation to your district pursuant to s. 373.056, F.S.? *The District does not track Seller's information in these categories. Our best estimate is 84,000 acres in fee or joint fee simple interest and approximately 15,000 in less than fee interest was conveyed by a state agency, county, drainage district, municipality, or governmental agency or public corporation to SJRWMD¹.*
2. In the past five years, approximately how many acres of land has your district determined to be surplus land? *The Governing Board approved the surplus of 23.66 acres.*
 - a. How many of those acres were previously acquired for conservation purposes? *10.39 acres acquired in 1995 from Union Camp, as part of the Bayard Conservation Area. Because this property was acquired prior to July 1, 1999, it was determined by the Legislature to be "acquired for conservation purposes" (373.089(6)(c), F.S.)*
 - b. How many of those acres were originally conveyed by a state agency, county, drainage district, municipality, or governmental agency or public corporation to your district pursuant to s. 373.056, F.S.? *The initial acquisition of the Pine Street property was from a private entity for the purpose of stormwater management; the District conveyed ownership to the City of Ocoee with a reverter; the reverter was exercised after the City determined the stormwater pond was no longer needed and title to the 13.01 acres transferred back to the District. After the District determined it was not needed*

¹37,376 acres from CSFFCD (1977 land transfer)

24,070 acres from Rayonier

104 from SRWMD

3,747 acres from County governments

874 LTF acres from City governments

469 LTF acres Airport

14,578 acres from Melbourne Tillman Water Control District

13,703 LTF acres from Miami Corp

4,186 Fellsmere Joint Venture

for stormwater management purpose, the property was declared surplus and transferred to a private entity.

3. In the past five years, how many acres of surplus land has your district sold? 23.66
 - a. How many of those acres were previously acquired for conservation purposes? 10.39
 - b. How many of those acres were originally conveyed by a state agency, county, drainage district, municipality, or governmental agency or public corporation to your district pursuant to s. 373.056, F.S.? 0
 - c. Did your district's governing board determine that these lands were not required for the district's purposes prior to the sale or lease of the land? If "no," please explain. Yes

II. Public Record Exemption under Review

Section 373.089(1)(b) and (c), F.S., provide a public record exemption for a written valuation of land determined by a governing board of a water management district to be surplus; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land. The exemption expires two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district.

1. Is your district aware of any other governmental entities that possess the confidential and exempt information protected by the public record exemption under review? If "yes," please list those governmental entities. *The other water management districts and Florida Department of Environmental Protection². There is no exemption for Counties in chapter 125, F.S.*
2. The public record exemption under review provides that the protected records are confidential and exempt from public disclosure, which forbids an agency from sharing the protected records with any entity or under any circumstance other than those authorized in the exemption. The exemption under

² **Section 253.0341(8)(a), F.S.** – A written valuation of land determined to be surplus and related documents are confidential and exempt. The exemption expires 2 weeks before the contract or agreement regarding the disposition of the surplus land is first considered for approval by the Board of Trustees of the Internal Improvement Trust Fund. Prior to expiration of the exemption, disclosure of certain information is authorized under the circumstances described in the exemption.

review allows the protected records to be disclosed to potential purchasers in the following circumstances:

- During negotiations for the sale or exchange of the land;
- During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;
- When the passage of time has made the conclusions of value invalid; or
- When negotiations or marketing efforts concerning the land are concluded.

- a. Has your district shared the confidential and exempt records in any of the circumstances listed above? If “yes,” which circumstances? *The District utilizes the sealed bid procurement process when surplus real property to ensure the District receives the highest price obtainable. The Invitation to Offer (ITO) includes a minimum bid. The District does not provide the exempt record; however, the appraised value of the property is part of the basis of the calculation for the minimum bid.*
- b. Is there any entity or circumstance that is not listed with which your district believes sharing should be allowed? If “yes,” which entities or circumstances and why? *No.*
3. Has your district had any difficulties interpreting or applying the public record exemption under review? If “yes,” please explain. *No.*
4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. *To our knowledge, no.*
5. Does any other state or federal law protect the confidential and exempt information? If “yes:” *To our knowledge, no.*
 - a. Please provide the specific state or federal citation for each exemption and specify the types of information each state or federal law protects.
 - b. Please explain which exemption your district relies upon when responding to a public record request.
 - c. Can the public record exemption under review be repealed or merged with the other exemption(s)? Please explain.
6. Is your district aware of any litigation, case law, administrative orders, or Attorney General opinions involving the exemption? If “yes,” please provide the appropriate citation(s). *No*
7. Has your district received any complaints regarding the exemption? If “yes,” please explain. *No*
8. Does your district think the public record exemption under review has positively impacted your district’s ability to negotiate with potential purchasers and maximize the return on the sale of surplus land? Please explain. *Yes. Obtaining fair market value for the property enables the District to use the proceeds to acquire other critical conservation lands.*

9. Does your district think the public record exemption under review has facilitated successful or expedited closure of the sale of surplus lands? Please explain. *The exemption has facilitated successful marketing and closure of sale of surplus lands.*
10. Which of the following actions does your district recommend the Legislature take (please select one):
- ☐ Repeal the public record exemption
 - ☒ Reenact the public record exemption as is
 - ☐ Reenact the public record exemption with changes
11. If “reenact the public record exemption with changes” was selected, please explain what changes your district recommends.
12. Please provide any additional comments regarding the public record exemption under review.

2022 Florida Statutes

373.089(1) Sale or exchange of lands, or interests or rights in lands.—

(b) A written valuation of land determined to be surplus pursuant to this section; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption expires 2 weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district.

(c) Before expiration of the exemption established in paragraph (b), and in order to facilitate successful or expedited closure of the sale of surplus land, the district may disclose confidential and exempt valuations and valuation information which are related to surplus land, or written offers to purchase such surplus land, to potential purchasers:

1. During negotiations for the sale or exchange of the land;
2. During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;
3. When the passage of time has made the conclusions of value invalid; or
4. When negotiations or marketing efforts concerning the land are concluded.

(d) Paragraphs (b) and (c) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

**House Government Operations Subcommittee
Senate Committee on Environment and Natural Resources
August 26, 2022**

**Open Government Sunset Review Questionnaire
(Certain records relating to the sale of surplus land by a water management district)**

PLEASE RETURN THIS QUESTIONNAIRE BY SEPTEMBER 14, 2022, TO BOTH:

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In 2018, the Legislature created a public record exemption in s. 373.089(1)(b) and (c), F.S., for a written valuation of land determined by a governing board of a water management district to be surplus; related documents used to form, or which pertain to, such a valuation; and written offers to purchase such surplus land. The exemption expires two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district. This public record exemption stands repealed on October 2, 2023, unless reviewed and saved from repeal by the Legislature under the Open Government Sunset Review Act (s. 119.15, F.S.).

To assist committee staff as part of their review of this public record exemption, please answer the following questions. A copy of s. 373.089, F.S., is attached for your convenience.

Water Management District Completing the Questionnaire:

Suwannee River Water Management District

Name and title of Person Completing the Questionnaire:

Ben Glass, Legislative and Governmental Affairs Chief

Telephone Number of Person Completing the Questionnaire:

Office: 386-362-0433 Cell: 386-688-5000

E-mail Address of Person Completing the Questionnaire:

Ben.Glass@srwmd.org

I. Sale of Surplus Land by a Water Management District

1. Approximately how many acres of land does your district hold title to? **160,00 Acres**
 - a. How many of those acres were acquired for conservation purposes? **All lands acquired with the exception of District headquarters and land acquired through regulatory action, was acquired for conservation purposes.**
 - b. How many of those acres were conveyed by a state agency, county, drainage district, municipality, or governmental agency or public corporation to your district pursuant to s. 373.056, F.S.? **600**
2. In the past five years, approximately how many acres of land has your district determined to be surplus land? **1,463**
 - a. How many of those acres were previously acquired for conservation purposes? **1,382**
 - b. How many of those acres were originally conveyed by a state agency, county, drainage district, municipality, or governmental agency or public corporation to your district pursuant to s. 373.056, F.S.? **None**
3. In the past five years, how many acres of surplus land has your district sold? **None**
 - a. How many of those acres were previously acquired for conservation purposes? **N/A**
 - b. How many of those acres were originally conveyed by a state agency, county, drainage district, municipality, or governmental agency or public corporation to your district pursuant to s. 373.056, F.S.? **N/A**
 - c. Did your district's governing board determine that these lands were not required for the district's purposes prior to the sale or lease of the land? If "no," please explain. **N/A**

II. Public Record Exemption under Review

Section 373.089(1)(b) and (c), F.S., provide a public record exemption for a written valuation of land determined by a governing board of a water management district to be surplus; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land. The exemption expires two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district.

1. Is your district aware of any other governmental entities that possess the confidential and exempt information protected by the public record exemption under review? If "yes," please list those governmental entities. **No**
2. The public record exemption under review provides that the protected records are confidential and exempt from public disclosure, which forbids an agency from sharing the protected records with any entity or under any circumstance other than those authorized in the exemption. The exemption under

review allows the protected records to be disclosed to potential purchasers in the following circumstances:

- During negotiations for the sale or exchange of the land;
- During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;
- When the passage of time has made the conclusions of value invalid; or
- When negotiations or marketing efforts concerning the land are concluded.

- a. Has your district shared the confidential and exempt records in any of the circumstances listed above? If “yes,” which circumstances? **No**
- b. Is there any entity or circumstance that is not listed with which your district believes sharing should be allowed? If “yes,” which entities or circumstances and why? **No**
3. Has your district had any difficulties interpreting or applying the public record exemption under review? If “yes,” please explain. **N/A (no sales)**
4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. **Not to the best of our knowledge.**
5. Does any other state or federal law protect the confidential and exempt information? If “yes:” **Not to the best of our knowledge.**
 - a. Please provide the specific state or federal citation for each exemption and specify the types of information each state or federal law protects.
 - b. Please explain which exemption your district relies upon when responding to a public record request.
 - c. Can the public record exemption under review be repealed or merged with the other exemption(s)? Please explain.
6. Is your district aware of any litigation, case law, administrative orders, or Attorney General opinions involving the exemption? If “yes,” please provide the appropriate citation(s). **No**
7. Has your district received any complaints regarding the exemption? If “yes,” please explain. **No**
8. Does your district think the public record exemption under review has positively impacted your district’s ability to negotiate with potential purchasers and maximize the return on the sale of surplus land? Please explain. **N/A, no sales of surplus land.**
9. Does your district think the public record exemption under review has facilitated successful or expedited closure of the sale of surplus lands? Please explain. **N/A, no sales of surplus land.**

10. Which of the following actions does your district recommend the Legislature take (please select one):
- ☐ Repeal the public record exemption
 - ☒ Reenact the public record exemption as is
 - ☐ Reenact the public record exemption with changes
11. If “reenact the public record exemption with changes” was selected, please explain what changes your district recommends.
12. Please provide any additional comments regarding the public record exemption under review.

2022 Florida Statutes

373.089(1) Sale or exchange of lands, or interests or rights in lands.—

(b) A written valuation of land determined to be surplus pursuant to this section; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption expires 2 weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district.

(c) Before expiration of the exemption established in paragraph (b), and in order to facilitate successful or expedited closure of the sale of surplus land, the district may disclose confidential and exempt valuations and valuation information which are related to surplus land, or written offers to purchase such surplus land, to potential purchasers:

1. During negotiations for the sale or exchange of the land;
2. During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;
3. When the passage of time has made the conclusions of value invalid; or
4. When negotiations or marketing efforts concerning the land are concluded.

(d) Paragraphs (b) and (c) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

**House Government Operations Subcommittee
Senate Committee on Environment and Natural Resources
August 26, 2022**

**Open Government Sunset Review Questionnaire
(Certain records relating to the sale of surplus land by a water management district)**

PLEASE RETURN THIS QUESTIONNAIRE BY SEPTEMBER 14, 2022, TO BOTH:

Chris Villa
Attorney
Government Operations Subcommittee
Chris.Villa@myfloridahouse.gov
Phone: (850) 717-4890

Janelle Barriero
Attorney
Committee on Environment and Natural Resources
Barriero.Janelle@flsenate.gov
Phone: (850) 487-5372

In 2018, the Legislature created a public record exemption in s. 373.089(1)(b) and (c), F.S., for a written valuation of land determined by a governing board of a water management district to be surplus; related documents used to form, or which pertain to, such a valuation; and written offers to purchase such surplus land. The exemption expires two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district. This public record exemption stands repealed on October 2, 2023, unless reviewed and saved from repeal by the Legislature under the Open Government Sunset Review Act (s. 119.15, F.S.).

To assist committee staff as part of their review of this public record exemption, please answer the following questions. A copy of s. 373.089, F.S., is attached for your convenience.

Water Management District Completing the Questionnaire:

[Southwest Florida Water Management District](#)

Name and title of Person Completing the Questionnaire:

[Ellen Morrison, Bureau Chief, Land Resources Bureau](#)

Telephone Number of Person Completing the Questionnaire:

[352-796-7211](#)
[352-303-0552 \(cell\)](#)

E-mail Address of Person Completing the Questionnaire:

ellen.morrison@swfwmd.state.fl.us

I. Sale of Surplus Land by a Water Management District

1. Approximately how many acres of land does your district hold title to? **453,808 acres**
 - a. How many of those acres were acquired for conservation purposes? **449,528 acres**
 - b. How many of those acres were conveyed by a state agency, county, drainage district, municipality, or governmental agency or public corporation to your district pursuant to s. 373.056, F.S.? **1,950 acres**
2. In the past five years, approximately how many acres of land has your district determined to be surplus land? **64 acres**
 - a. How many of those acres were previously acquired for conservation purposes? **64 acres**
 - b. How many of those acres were originally conveyed by a state agency, county, drainage district, municipality, or governmental agency or public corporation to your district pursuant to s. 373.056, F.S.? **None.**
3. In the past five years, how many acres of surplus land has your district sold? **2,607 acres**
 - a. How many of those acres were previously acquired for conservation purposes? **2,607 acres**
 - b. How many of those acres were originally conveyed by a state agency, county, drainage district, municipality, or governmental agency or public corporation to your district pursuant to s. 373.056, F.S.? **None.**
 - c. Did your district's governing board determine that these lands were not required for the district's purposes prior to the sale or lease of the land? **Yes.** If "no," please explain.

II. Public Record Exemption under Review

Section 373.089(1)(b) and (c), F.S., provide a public record exemption for a written valuation of land determined by a governing board of a water management district to be surplus; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land. The exemption expires two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district.

1. Is your district aware of any other governmental entities that possess the confidential and exempt information protected by the public record exemption under review? If "yes," please list those governmental entities. **No.**
2. The public record exemption under review provides that the protected records are confidential and exempt from public disclosure, which forbids an agency from sharing the protected records with any entity or under any circumstance other than those authorized in the exemption. The exemption under

review allows the protected records to be disclosed to potential purchasers in the following circumstances:

- During negotiations for the sale or exchange of the land;
- During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;
- When the passage of time has made the conclusions of value invalid; or
- When negotiations or marketing efforts concerning the land are concluded.

- a. Has your district shared the confidential and exempt records in any of the circumstances listed above? If “yes,” which circumstances? **Yes, under all circumstances listed above.**
 - b. Is there any entity or circumstance that is not listed with which your district believes sharing should be allowed? If “yes,” which entities or circumstances and why? **No.**
3. Has your district had any difficulties interpreting or applying the public record exemption under review? If “yes,” please explain. **No.**
 4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. **No.**
 5. Does any other state or federal law protect the confidential and exempt information? **No.** If “yes:”
 - a. Please provide the specific state or federal citation for each exemption and specify the types of information each state or federal law protects.
 - b. Please explain which exemption your district relies upon when responding to a public record request.
 - c. Can the public record exemption under review be repealed or merged with the other exemption(s)? Please explain.
 6. Is your district aware of any litigation, case law, administrative orders, or Attorney General opinions involving the exemption? **No.** If “yes,” please provide the appropriate citation(s).
 7. Has your district received any complaints regarding the exemption? If “yes,” please explain. **No.**
 8. Does your district think the public record exemption under review has positively impacted your district’s ability to negotiate with potential purchasers and maximize the return on the sale of surplus land? **Yes.** Please explain. **The ability to disclose the written valuations pursuant to the exemption creates transparency with the potential purchaser as well as the general public. This also assists in negotiations when there is a question about valuation of the property.**
 9. Does your district think the public record exemption under review has facilitated successful or expedited closure of the sale of surplus lands? **Yes.** Please explain. **The ability to disclose certain otherwise**

exempt information such as valuation reports creates transparency with the potential purchaser so that they feel confident that they have received a fair offer.

10. Which of the following actions does your district recommend the Legislature take (please select one):
- ☐ Repeal the public record exemption
 - ☒ Reenact the public record exemption as is
 - ☐ Reenact the public record exemption with changes
11. If “reenact the public record exemption with changes” was selected, please explain what changes your district recommends. [N/A](#)
12. Please provide any additional comments regarding the public record exemption under review. [None](#).

2022 Florida Statutes

373.089(1) Sale or exchange of lands, or interests or rights in lands.—

(b) A written valuation of land determined to be surplus pursuant to this section; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption expires 2 weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district.

(c) Before expiration of the exemption established in paragraph (b), and in order to facilitate successful or expedited closure of the sale of surplus land, the district may disclose confidential and exempt valuations and valuation information which are related to surplus land, or written offers to purchase such surplus land, to potential purchasers:

1. During negotiations for the sale or exchange of the land;
2. During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;
3. When the passage of time has made the conclusions of value invalid; or
4. When negotiations or marketing efforts concerning the land are concluded.

(d) Paragraphs (b) and (c) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

**House Government Operations Subcommittee
Senate Committee on Environment and Natural Resources
August 26, 2022**

**Open Government Sunset Review Questionnaire
(Certain records relating to the sale of surplus land by a water management district)**

PLEASE RETURN THIS QUESTIONNAIRE BY SEPTEMBER 14, 2022, TO BOTH:

Chris Villa
Attorney
Government Operations Subcommittee
Chris.Villa@myfloridahouse.gov
Phone: (850) 717-4890

Janelle Barriero
Attorney
Committee on Environment and Natural Resources
Barriero.Janelle@flsenate.gov
Phone: (850) 487-5372

In 2018, the Legislature created a public record exemption in s. 373.089(1)(b) and (c), F.S., for a written valuation of land determined by a governing board of a water management district to be surplus; related documents used to form, or which pertain to, such a valuation; and written offers to purchase such surplus land. The exemption expires two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district. This public record exemption stands repealed on October 2, 2023, unless reviewed and saved from repeal by the Legislature under the Open Government Sunset Review Act (s. 119.15, F.S.).

To assist committee staff as part of their review of this public record exemption, please answer the following questions. A copy of s. 373.089, F.S., is attached for your convenience.

Water Management District Completing the Questionnaire:

Northwest Florida Water Management District

Name and title of Person Completing the Questionnaire:

Danny Layfield, Director, Division of Asset Management and Carol Bert, Asset Management Administrator

Telephone Number of Person Completing the Questionnaire:

(850) 539-5999

E-mail Address of Person Completing the Questionnaire:

Danny.Layfield@nwfwater.com
Carol.Bert@nwfwater.com

I. Sale of Surplus Land by a Water Management District

1. Approximately how many acres of land does your district hold title to? **211,452 acres**
 - a. How many of those acres were acquired for conservation purposes? **204,278 acres**
 - b. How many of those acres were conveyed by a state agency, county, drainage district, municipality, or governmental agency or public corporation to your district pursuant to s. 373.056, F.S.? **430 acres**
2. In the past five years, approximately how many acres of land has your district determined to be surplus land? **64.17 acres**
 - a. How many of those acres were previously acquired for conservation purposes? **63.19 acres**
 - b. How many of those acres were originally conveyed by a state agency, county, drainage district, municipality, or governmental agency or public corporation to your district pursuant to s. 373.056, F.S.? **0 acres**
3. In the past five years, how many acres of surplus land has your district sold? **38 acres**
 - a. How many of those acres were previously acquired for conservation purposes? **38 acres**
 - b. How many of those acres were originally conveyed by a state agency, county, drainage district, municipality, or governmental agency or public corporation to your district pursuant to s. 373.056, F.S.? **0 acres**
 - c. Did your district's governing board determine that these lands were not required for the district's purposes prior to the sale or lease of the land? If "no," please explain. **Yes**

II. Public Record Exemption under Review

Section 373.089(1)(b) and (c), F.S., provide a public record exemption for a written valuation of land determined by a governing board of a water management district to be surplus; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land. The exemption expires two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district.

1. Is your district aware of any other governmental entities that possess the confidential and exempt information protected by the public record exemption under review? If "yes," please list those governmental entities. **No.**
2. The public record exemption under review provides that the protected records are confidential and exempt from public disclosure, which forbids an agency from sharing the protected records with any entity or under any circumstance other than those authorized in the exemption. The exemption under

review allows the protected records to be disclosed to potential purchasers in the following circumstances:

- During negotiations for the sale or exchange of the land;
- During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;
- When the passage of time has made the conclusions of value invalid; or
- When negotiations or marketing efforts concerning the land are concluded.

- a. Has your district shared the confidential and exempt records in any of the circumstances listed above? If “yes,” which circumstances? **Yes. *During negotiations for the sale or exchange of land, passage of time has made the conclusions of value invalid.***
- b. Is there any entity or circumstance that is not listed with which your district believes sharing should be allowed? If “yes,” which entities or circumstances and why? **No.**
3. Has your district had any difficulties interpreting or applying the public record exemption under review? If “yes,” please explain. **No.**
4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain. **No.**
5. Does any other state or federal law protect the confidential and exempt information? If “yes:” **Unknown.**
 - a. Please provide the specific state or federal citation for each exemption and specify the types of information each state or federal law protects.
 - b. Please explain which exemption your district relies upon when responding to a public record request.
 - c. Can the public record exemption under review be repealed or merged with the other exemption(s)? Please explain.
6. Is your district aware of any litigation, case law, administrative orders, or Attorney General opinions involving the exemption? If “yes,” please provide the appropriate citation(s). **No.**
7. Has your district received any complaints regarding the exemption? If “yes,” please explain. **No.**
8. Does your district think the public record exemption under review has positively impacted your district’s ability to negotiate with potential purchasers and maximize the return on the sale of surplus land? Please explain. **Yes. *This public record exemption is helpful in negotiating with potential purchasers.***
9. Does your district think the public record exemption under review has facilitated successful or expedited closure of the sale of surplus lands? Please explain. **Yes. *This public record exemption is helpful in facilitating successful sale of surplus land.***

10. Which of the following actions does your district recommend the Legislature take (please select one):
- ☐ Repeal the public record exemption
 - ☒ Reenact the public record exemption as is
 - ☐ Reenact the public record exemption with changes
11. If “reenact the public record exemption with changes” was selected, please explain what changes your district recommends.
12. Please provide any additional comments regarding the public record exemption under review.

2022 Florida Statutes

373.089(1) Sale or exchange of lands, or interests or rights in lands.—

(b) A written valuation of land determined to be surplus pursuant to this section; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption expires 2 weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district.

(c) Before expiration of the exemption established in paragraph (b), and in order to facilitate successful or expedited closure of the sale of surplus land, the district may disclose confidential and exempt valuations and valuation information which are related to surplus land, or written offers to purchase such surplus land, to potential purchasers:

1. During negotiations for the sale or exchange of the land;
2. During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;
3. When the passage of time has made the conclusions of value invalid; or
4. When negotiations or marketing efforts concerning the land are concluded.

(d) Paragraphs (b) and (c) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

**House Government Operations Subcommittee
Senate Committee on Environment and Natural Resources
August 26, 2022**

**Open Government Sunset Review Questionnaire
(Certain records relating to the sale of surplus land by a water management district)**

PLEASE RETURN THIS QUESTIONNAIRE BY SEPTEMBER 14, 2022, TO BOTH:

Chris Villa
Attorney
Government Operations Subcommittee
Chris.Villa@myfloridahouse.gov
Phone: (850) 717-4890

Janelle Barriero
Attorney
Committee on Environment and Natural Resources
Barriero.Janelle@flsenate.gov
Phone: (850) 487-5372

In 2018, the Legislature created a public record exemption in s. 373.089(1)(b) and (c), F.S., for a written valuation of land determined by a governing board of a water management district to be surplus; related documents used to form, or which pertain to, such a valuation; and written offers to purchase such surplus land. The exemption expires two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district. This public record exemption stands repealed on October 2, 2023, unless reviewed and saved from repeal by the Legislature under the Open Government Sunset Review Act (s. 119.15, F.S.).

To assist committee staff as part of their review of this public record exemption, please answer the following questions. A copy of s. 373.089, F.S., is attached for your convenience.

Water Management District Completing the Questionnaire:

South Florida Water Management District

Name and title of Person Completing the Questionnaire:

Stephen Collins
Division Director, Real Estate and Land Management

Telephone Number of Person Completing the Questionnaire:

561-682-2959

E-mail Address of Person Completing the Questionnaire:

smcollins@sfwmd.gov

I. Sale of Surplus Land by a Water Management District

1. Approximately how many acres of land does your district hold title to? 1,066,000+/-
 - a. How many of those acres were acquired for conservation purposes? 685,000+/-
 - b. How many of those acres were conveyed by a state agency, county, drainage district, municipality, or governmental agency or public corporation to your district pursuant to s. 373.056, F.S.? 77,045+/-
2. In the past five years, approximately how many acres of land has your district determined to be surplus land? 3,621+/-
 - a. How many of those acres were previously acquired for conservation purposes? 3,385+/-
 - b. How many of those acres were originally conveyed by a state agency, county, drainage district, municipality, or governmental agency or public corporation to your district pursuant to s. 373.056, F.S.? 0
3. In the past five years, how many acres of surplus land has your district sold? 3,621+/-
 - a. How many of those acres were previously acquired for conservation purposes? 3,385+/-
 - b. How many of those acres were originally conveyed by a state agency, county, drainage district, municipality, or governmental agency or public corporation to your district pursuant to s. 373.056, F.S.? 0
 - c. Did your district's governing board determine that these lands were not required for the district's purposes prior to the sale or lease of the land? If "no," please explain. Yes

II. Public Record Exemption under Review

Section 373.089(1)(b) and (c), F.S., provide a public record exemption for a written valuation of land determined by a governing board of a water management district to be surplus; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land. The exemption expires two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district.

1. Is your district aware of any other governmental entities that possess the confidential and exempt information protected by the public record exemption under review? If "yes," please list those governmental entities.
No
2. The public record exemption under review provides that the protected records are confidential and exempt from public disclosure, which forbids an agency from sharing the protected records with any entity or under any circumstance other than those authorized in the exemption. The exemption under

review allows the protected records to be disclosed to potential purchasers in the following circumstances:

- i) During negotiations for the sale or exchange of the land;
- ii) During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;
- iii) When the passage of time has made the conclusions of value invalid; or
- iv) When negotiations or marketing efforts concerning the land are concluded.

a. Has your district shared the confidential and exempt records in any of the circumstances listed above? If “yes,” which circumstances?

Yes; 2i and 2ii shown above

b. Is there any entity or circumstance that is not listed with which your district believes sharing should be allowed? If “yes,” which entities or circumstances and why?

No

3. Has your district had any difficulties interpreting or applying the public record exemption under review? If “yes,” please explain.

No

4. Can the confidential and exempt information be readily obtained by alternative means? If “yes,” please explain.

No

5. Does any other state or federal law protect the confidential and exempt information? If “yes:”

None known

a. Please provide the specific state or federal citation for each exemption and specify the types of information each state or federal law protects.

None known

b. Please explain which exemption your district relies upon when responding to a public record request.

c. Can the public record exemption under review be repealed or merged with the other exemption(s)? Please explain.

6. Is your district aware of any litigation, case law, administrative orders, or Attorney General opinions involving the exemption? If “yes,” please provide the appropriate citation(s).

None known

7. Has your district received any complaints regarding the exemption? If “yes,” please explain.

None known

8. Does your district think the public record exemption under review has positively impacted your district’s ability to negotiate with potential purchasers and maximize the return on the sale of surplus land? Please explain.

No

9. Does your district think the public record exemption under review has facilitated successful or expedited closure of the sale of surplus lands? Please explain.

No

10. Which of the following actions does your district recommend the Legislature take (please select one):
- ☐ Repeal the public record exemption
 - ☒ Reenact the public record exemption as is
 - ☐ Reenact the public record exemption with changes
11. If “reenact the public record exemption with changes” was selected, please explain what changes your district recommends. **N/A**
12. Please provide any additional comments regarding the public record exemption under review.

2022 Florida Statutes

373.089(1) Sale or exchange of lands, or interests or rights in lands.—

(b) A written valuation of land determined to be surplus pursuant to this section; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption expires 2 weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district.

(c) Before expiration of the exemption established in paragraph (b), and in order to facilitate successful or expedited closure of the sale of surplus land, the district may disclose confidential and exempt valuations and valuation information which are related to surplus land, or written offers to purchase such surplus land, to potential purchasers:

1. During negotiations for the sale or exchange of the land;
2. During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;
3. When the passage of time has made the conclusions of value invalid; or
4. When negotiations or marketing efforts concerning the land are concluded.

(d) Paragraphs (b) and (c) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Barriero, Janelle

From: Flood, Philip <pflood@sfwmd.gov>
Sent: Thursday, October 27, 2022 1:20 PM
To: Barriero, Janelle
Subject: RE: Open Government Sunset Review of s. 373.089, F.S.

Hey Janelle,

I spoke with our Real Estate staff to get further clarification on our response to the questionnaire. The question asked on the survey was whether the exemption has had a positive impact on the ability to negotiate and/or expedite the sale of surplus lands. The District responded with a negative to this question because the District's current process for selling surplus lands is very transparent, minimizing the benefit of confidentiality. The District follows a sealed bid process and provides extensive information to the public, including appraisals, any environmental data, title research, etc. that we have available. This allows potential bidders to have access to a significant amount of information about the property, which helps them make an informed decision before placing a bid. This process seems to result in the District obtaining the highest price possible through the bidding process. The District recommends reenactment of the exemption however, because it is possible that this procedure could change in the future and the exemption would assist the District at that time. We can also see how the exemption may assist other agencies in negotiations, without prejudicing the public.

I hope this clarifies our response. Let me know if you have any further questions.



Phil Flood

Legislative Liaison, Regional Representative
Office of Communications and Public Engagement
South Florida Water Management District
Office: 239-338-2929, ext. 7768 **Cell:** 239-464-7022
pflood@sfwmd.gov | 2301 McGregor Blvd., Ft. Myers, FL 33901

From: Barriero, Janelle <Barriero.Janelle@flsenate.gov>
Sent: Friday, October 21, 2022 3:18 PM
To: Flood, Philip <pflood@sfwmd.gov>
Subject: RE: Open Government Sunset Review of s. 373.089, F.S.

[Please remember, this is an external email]

Hi Phil,

I wanted to follow-up with you regarding this questionnaire, specifically questions 8 - 10. The answers to those questions indicate that the public record exemption has *not* had a positive impact on the district's ability to negotiate and/or expedite the sale of surplus lands, but the district nevertheless recommends that the exemption be reenacted. Can you please confirm that your district recommends reenactment of the exemption, and, if possible, provide additional information regarding why the exemption hasn't been beneficial in your district?

Please feel free to call me if you'd like to discuss or have any questions.

Thank you!

Janelle Barriero
Senior Attorney
Florida Senate
Committee on Environment and Natural Resources
850-487-5386

From: Flood, Philip <pflood@sfwmd.gov>
Sent: Tuesday, September 13, 2022 2:36 PM
To: Villa, Chris <Chris.Villa@myfloridahouse.gov>; caitlin.Brongel@nwfwater.com; ben.glass@srwmd.org; ALovejoy@sjrwmd.com; cara.martin@swfwmd.state.fl.us
Cc: Toliver, Lance <Lance.Toliver@myfloridahouse.gov>; Rogers, Ellen <ROGERS.ELLEN@flsenate.gov>; Barriero, Janelle <Barriero.Janelle@flsenate.gov>; Bickley, Alex M. <Alex.Bickley@floridadep.gov>; Cooley, Sean <scooley@sfwmd.gov>
Subject: RE: Open Government Sunset Review of s. 373.089, F.S.

Attached is the completed questionnaire from the South Florida Water Management District. Should you have any questions, please let me know.



Phil Flood

Legislative Liaison, Regional Representative
Office of Communications and Public Engagement
South Florida Water Management District
Office: 239-338-2929, ext. 7768 **Cell:** 239-464-7022
pflood@sfwmd.gov | 2301 McGregor Blvd., Ft. Myers, FL 33901

From: Villa, Chris <Chris.Villa@myfloridahouse.gov>

Sent: Friday, August 26, 2022 3:07 PM

To: caitlin.Brongel@nwfwater.com; ben.glass@srwmd.org; ALovejoy@sjrwmd.com; cara.martin@swfwmd.state.fl.us; Flood, Philip <pflood@sfwmd.gov>

Cc: Toliver, Lance <Lance.Toliver@myfloridahouse.gov>; Rogers, Ellen <ROGERS.ELLEN@flsenate.gov>; Barriero, Janelle <Barriero.Janelle@flsenate.gov>

Subject: Open Government Sunset Review of s. 373.089, F.S.

You don't often get email from chris.villa@myfloridahouse.gov. [Learn why this is important](#)

[Please remember, this is an external email]

Good afternoon,

House and Senate staff are conducting an Open Government Sunset Review (OGSR) of a public record exemption in which Florida Water Management Districts are the custodians of the records: s. 373.089, F.S., regarding certain records relating to the sale of surplus land by a water management district. The OGSR Act (s. 119.15, F.S.) requires the Legislature to review each public record exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment. A summary of the exemption is included below. As part of the Legislature's review required by statute, we request you complete the attached questionnaire.

Please return the completed questionnaire via email to Janelle Barriero and me by September 14, 2022.

Section 373.089, F.S. – In 2018, the Legislature created a public record exemption in s. 373.089(1)(b) and (c), F.S., for a written valuation of land determined by a governing board of a water management district to be surplus; related documents used to form, or which pertain to, such a valuation; and written offers to purchase such surplus land. The exemption expires two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district.

Thank you for your help and please let me know if you have any questions,

Chris Villa, Attorney
Government Operations Subcommittee
State Affairs Committee
Florida House of Representatives
Suite 209, House Office Building
402 South Monroe Street
Tallahassee, FL 32399-1300
Phone: (850) 717-5453

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Environment and Natural Resources

BILL: SPB 7004

INTRODUCER: Environment and Natural Resources Committee

SUBJECT: OGSR/Written Valuations of Surplus Lands

DATE: February 21, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Barriero</u>	<u>Rogers</u>	_____	EN Submitted as a Comm.Bill/Fav

I. Summary:

SPB 7004 amends s. 373.089(1), F.S., to save from repeal the public records exemption for written valuations of land determined by a governing board of a water management district to be surplus; related documents used to form, or which pertain to, such valuations; and written offers to purchase such surplus land. The exemption expires two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district.

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. The exemption in s. 373.089, F.S., is scheduled to repeal on October 2, 2023. This bill removes the scheduled repeal to continue the confidential and exempt status of the information.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect October 1, 2023.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act provides:

It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.^[4]

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions are often located in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

Section 119.011(12), F.S., defines “public records” to include:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

Only the Legislature may create an exemption to public records requirements.⁹ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); see also *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with certain exceptions.¹⁷ The Act requires the repeal of such exemptions on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹⁸ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

The Act provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than necessary.¹⁹ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁰
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²¹ or
- It protects trade or business secrets.²²

¹² FLA. CONST., art. I, s. 24(c)

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

¹⁷ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ Section 119.15(6)(b)1., F.S.

²¹ Section 119.15(6)(b)2., F.S.

²² Section 119.15(6)(b)3., F.S.

In reviewing an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption. The Act also requires the Legislature to consider specific questions during the review process.²³

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁴ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁵

Water Management District Surplus Land

Water management districts (WMDs) are responsible for the administration of water resources at a regional level. There are five WMDs established within the state: Northwest Florida, South Florida, Southwest Florida, St. Johns River, and Suwannee River. The WMDs may acquire real property for flood control; water storage; water management; conservation and protection of water resources; aquifer recharge; water resource and water supply development; and preservation of wetlands, streams, and lakes.²⁶

A WMD's governing board can sell land, or interests or rights in land, that the board determines to be surplus.²⁷ For lands that were acquired for conservation purposes, the governing board must make a determination that the lands are no longer needed for conservation purposes and may dispose of them by a two-thirds vote.²⁸ For all other lands, the governing board must make a determination that such lands are no longer needed and may dispose of them by majority vote.²⁹ Surplus lands must be sold at the highest price obtainable, but not be less than the appraised value of the lands, as determined by a certified appraisal obtained within 360 days before the effective date of the contract for sale.³⁰ Sales must be for cash or upon terms and security approved by the governing board, but a deed cannot be executed and delivered until full payment is made.³¹ Before selling any surplus land, the WMD must publish a notice of intention to sell on its website and in a newspaper published in the county where the land is situated once each week

²³ Section 119.15(6)(a), F.S. The questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁴ FLA. CONST. art. I, s. 24(c).

²⁵ Section 119.15(7), F.S.

²⁶ Section 373.139(2), F.S.

²⁷ Section 373.089(1)(a), F.S.

²⁸ Section 373.089(6)(a), F.S. and FLA. CONST. art. X, s. 18.

²⁹ Section 373.089(6)(b), F.S.

³⁰ *Id.*

³¹ Section 373.089(2), F.S.

for three successive weeks.³² The first publication must occur at least 30 days, but not more than 360 days, before any sale is approved by the WMD.³³

For lands acquired with Florida Forever funds and no longer needed for conservation purposes, the governing board must first offer title to the Board of Trustees of the Internal Improvement Trust Fund unless the disposition of those lands is for the following purposes:

- Linear facilities, including electric transmission and distribution facilities, telecommunication transmission and distribution facilities, pipeline transmission and distribution facilities, public transportation corridors, and related appurtenances.
- The disposition of the fee interest in the land where a conservation easement is retained by the district to fulfill the conservation objectives for which the land was acquired.
- An exchange of the land for other lands that meet or exceed the conservation objectives for which the original land was acquired.
- To be used by a governmental entity for a public purpose.
- The portion of an overall purchase deemed surplus at the time of the acquisition.³⁴

Open Government Sunset Review Findings and Recommendations

Section 373.089(1)(b), F.S., provides that the following documents are confidential and exempt from public records requirements: written valuations of land determined by a governing board of a WMD to be surplus; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land. Finding that the public availability of this information can negatively impact a WMD's ability to negotiate with potential purchasers and maximize the return on the sale of surplus land, the Legislature created this exemption to facilitate the successful and/or expedited closure of the sale of such land.³⁵

The exemption expires two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district.³⁶ WMDs may also disclose these otherwise confidential documents to potential purchasers in the following circumstances:

- During negotiations for the sale or exchange of the land;
- During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;
- When the passage of time has made the conclusions of value invalid; or
- When negotiations or marketing efforts concerning the land are concluded.³⁷

This public records exemption stands repealed on October 2, 2023, unless reenacted or saved from repeal by the Legislature.

³² Section 373.089(3), F.S.

³³ Section 373.089(3), F.S.

³⁴ Section 373.089(7), F.S.

³⁵ Chapter 2018-156, Laws of Fla.

³⁶ Section 373.089(1)(b), F.S.

³⁷ Section 373.089(1)(c), F.S.

A questionnaire was sent to each WMD asking whether the exemption in s. 373.089(1)(b) and (c), F.S., should be repealed or reenacted. All five WMDs recommend the exemption's reenactment without any changes. WMD representatives explained that having the option to withhold or disclose the information covered by this exemption has assisted them in negotiating with potential purchasers and maximizing the return on the sale of surplus land.

With the exception of Suwannee River WMD, which did not sell any surplus land since the exemption's creation,³⁸ the WMDs have disclosed the valuation of surplus land for sale and related documentation with varying degrees of transparency. For example, St. Johns River WMD (SJRWMD) uses a sealed bid procurement process and discloses the appraised value of the property—but not the exempt record itself—as part of its minimum bid calculation, which is included in invitations to offer.³⁹ South Florida WMD (SFWMD) provides more extensive information to the public during the bidding process, including appraisals, environmental data, and title research. SFWMD's representatives explained this transparency allows potential bidders to have access to a significant amount of information about the property, helping them make an informed decision before placing a bid.⁴⁰ SFWMD nevertheless recommends reenacting the exemption, recognizing that the exemption may assist other agencies in negotiations and that its own sealed bid procedure could change in the future and the exemption would assist SFWMD at that time.⁴¹

III. Effect of Proposed Changes:

Section 1 repeals the October 2, 2023 sunset date for the public records exemption in s. 373.089(1)(b) and (c), F.S., for the following documents relating to the sale of surplus lands by a water management district:

- Written valuations of surplus land;
- Documents pertaining to such valuations; and
- Written offers to purchase surplus land.

Section 2 provides an effective date of October 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

³⁸ Suwannee River WMD, *Open Government Sunset Review Questionnaire*, at 2.

³⁹ St. Johns River WMD, *Open Government Sunset Review Questionnaire*, at 4.

⁴⁰ Email from Phil Flood, Legislative Liaison, South Florida Water Management District to Senate Committee on Environment and Natural Resources (Oct. 27, 2022).

⁴¹ See generally South Florida WMD, *Open Government Sunset Review Questionnaire*, at 3-5.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 373.089 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Environment and Natural Resources

592-00499-23

20237004pb

A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act; amending s. 373.089, F.S., which
provides an exemption from public records requirements
for written valuations of surplus lands, documents
used to form or pertaining to such a valuation, and
written offers to purchase surplus land held by a
water management district; removing the scheduled
repeal of the exemption; providing an effective date.

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

Section 1. Subsection (1) of section 373.089, Florida
Statutes, is amended to read:

373.089 Sale or exchange of lands, or interests or rights
in lands.—The governing board of the district may sell lands, or
interests or rights in lands, to which the district has acquired
title or to which it may hereafter acquire title in the
following manner:

(1)(a) Any lands, or interests or rights in lands,
determined by the governing board to be surplus may be sold by
the district, at any time, for the highest price obtainable;
however, the selling price may not be less than the appraised
value of the lands, or interests or rights in lands, as
determined by a certified appraisal obtained within 360 days
before the effective date of a contract for sale.

(b) A written valuation of land determined to be surplus
pursuant to this section; related documents used to form, or
which pertain to, the valuation; and written offers to purchase

592-00499-23

20237004pb

such surplus land are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption expires 2 weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district.

(c) Before expiration of the exemption established in paragraph (b), and in order to facilitate successful or expedited closure of the sale of surplus land, the district may disclose confidential and exempt valuations and valuation information which are related to surplus land, or written offers to purchase such surplus land, to potential purchasers:

1. During negotiations for the sale or exchange of the land;

2. During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;

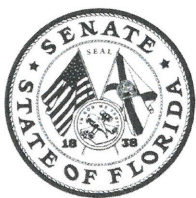
3. When the passage of time has made the conclusions of value invalid; or

4. When negotiations or marketing efforts concerning the land are concluded.

~~(d) Paragraphs (b) and (c) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.~~

If the Board of Trustees of the Internal Improvement Trust Fund declines to accept title to the lands offered under this section, the land may be disposed of by the district under the provisions of this section.

Section 2. This act shall take effect October 1, 2023.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Transportation, *Chair*
Military and Veterans Affairs, Space,
and Domestic Security, *Vice Chair*
Appropriations Subcommittee on Health and
Human Services
Children, Families, and Elder Affairs
Finance and Tax

SELECT COMMITTEE:

Select Committee on Pandemic
Preparedness and Response

SENATOR GAYLE HARRELL

25th District

February 10, 2023

Senator Rodriguez
325 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Rodriguez,

I respectfully request that **SB 320 – Land Acquisition Trust Fund** be placed on the next available agenda for the Environment and Natural Resources Committee Meeting.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in blue ink that reads "Gayle".

Senator Gayle Harrell
Senate District 25

Cc: Ellen Rogers, Staff Director
Kim Bonn, Committee Administrative Assistant

REPLY TO:

- ☐ 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019 FAX: (888) 263-7895
- ☐ 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore



FLORIDA DEPARTMENT OF Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, FL 32399

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

FLORIDA WILDLIFE FEDERATION, INC., ET AL. V. DEP, ET AL.: (Leon County Circuit Court)

The Florida Wildlife Federation and other environmental groups sued the Florida Legislature, the Department of Environmental Protection (Department), and other State Agencies challenging the constitutionality of 2015 and 2016 appropriations from the Land Acquisition Trust Fund, alleging that the appropriations violated article X, section 28 of the Florida Constitution (“Amendment 1”). The trial court entered final judgment in favor of plaintiffs, ordering a broad injunction on appropriation and spending. Legislative parties, joined by the agencies, appealed the final judgment. The appellate court issued a favorable opinion on September 9, 2019, reversing the circuit court's final judgment and remanding for further proceedings consistent with the opinion.

On January 3, 2022, the Trial Court granted the defendant’s motion for summary judgment on the grounds that the case is now moot. The circuit judge must issue a final judgment in order to close the case. When the judge issues the final judgment, the case becomes final for appellate purposes. At that time, plaintiffs will have fifteen days to file a motion for rehearing. If they do not file such a motion, they would have thirty days to file a notice of appeal. On July 20, 2022, Florida Wildlife Federation filed a motion to reopen the case. Currently, awaiting action by presiding judge.

BMAPS (SPRINGS PROTECTION) V. DEP: (1st DCA)

As required by chapter 373, Part VIII, Florida Statutes, the Department of Environmental Protection (Department) adopted 13 Basin Management Action Plans (BMAPs) to protect Florida’s springs on June 29, 2018. The BMAPs are secretarial orders authorized under chapter 403, Florida Statutes, that identify comprehensive restoration strategies across the identified basins to restore water quality. Various industry and environmental groups along with several individuals filed petitions challenging the BMAPS.

Following an administrative hearing and a recommended order, the Department issued its final order on May 18, 2021, approving the BMAPs. The challenging parties filed an appeal of the final order with the First District Court of Appeal on June 3, 2021. The parties have completed and filed their briefs. The Court heard oral argument on June 14, 2022. No additional action is required until the Court renders a decision.

US V. DEP & SWFMD: (Southern District Court of Florida)

This is a 1988 lawsuit filed by the United States against the Department of Environmental Protection (DEP) and the South Florida Water Management District (SFWMD) asserting violations of state water quality standards in Everglades National Park and the Arthur R. Marshall Loxahatchee Wildlife Refuge. In 1992, the court entered a Consent Decree based on a 1991 settlement. The 30-year-old Consent Decree, as amended, imposes various requirements on DEP and the SFWMD aimed at achieving phosphorus water quality targets in the Everglades.

The parties regularly discuss the terms of the Consent Decree and when may end.

CENTER FOR BIOLOGICAL DIVERSITY, ET AL V. ANDREW WHEELER, ET AL: (US District Court District of Columbia)

On January 14, 2021, Earth Justice filed a nine-count complaint in the United States District Court for the District of Columbia on behalf of several Plaintiffs challenging the U.S. Environmental Protection Agency's (EPA) approval of Florida's application to assume the Clean Water Act Section 404 permitting program. The complaint seeks declaratory and injunctive relief and asks the court to vacate EPA's decision.

The State of Florida and the Florida Department of Environmental Protection (collectively the "Intervenors") intervened in the case on February 1, 2021.

Following a first round of motion practice, count IX of the original complaint was dismissed by the court on March 30, 2022, and Plaintiffs' First Amended Complaint is filed as of April 19, 2022. Defendants' and Intervenors' Answers to the Amended Complaint were filed on May 19, 2022, and May 26, 2022, respectively. In addition, further briefing on count VIII is underway – Plaintiffs filed their supplemental brief on April 26, 2022, Defendants filed their supplemental brief on May 26, 2022, and Florida filed its supplemental brief on June 9, 2022. The parties are now compiling the administrative record. Florida must notify DOJ by September 1, 2022, of any record issues. A hearing on Count VIII is scheduled for October 17, 2022. A status conference is scheduled for November 22, 2022.

CENTER FOR BIOLOGICAL DIVERSITY, TAMPA BAY WATERKEEPER, SUNCOAST WATERKEEPER, MANASOTA-88, AND OUR CHILDREN'S EARTH FOUNDATION V. GOVERNOR RON DESANTIS, SHAWN HAMILTON AS ACTING SECRETARY, FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, HRK HOLDINGS, LLC:
(Middle District Court of Florida)

On June 24, 2021, the Center For Biological Diversity, Tampa Bay Waterkeeper, Suncoast Waterkeeper, Manasota-88, and Our Children's Earth Foundation (collectively

the Plaintiffs), filed a complaint in the United States District Court in Tampa Florida against Shawn Hamilton in his capacity as Acting Secretary, Florida Department of Environmental Protection (DEP), Governor DeSantis, in his official capacity (Governor), HRK Holdings LLC (HRK) and Port Manatee (Port) (DEP, Governor, HRK and Port, collectively, Defendants). On August 12, 2021 Plaintiffs filed their first amended complaint (Complaint) against Defendants. In sum, the Complaint alleges that Defendants' past or present handling, storage, treatment, or disposal of solid and/or hazardous waste at the Piney Point Facility (Facility) presents an imminent and substantial endangerment to health and or the environmental and that Defendants' discharge of pollutants from the Facility is a violation of the Clean Water Act. The Complaint alleges that DEP has exercised so much control over the Facility in its regulatory capacity that it has become an operator. Plaintiffs are asking the court to order Defendants to assess and remediate contamination at the Facility and not to discharge until they obtain a National Pollutant Discharge Elimination System (NPDES) permit and/or comply with the existing NPDES permit. Plaintiffs are also asking the court to assess penalties and attorney's fees against Defendants.

On March 28, 2022, the Court stayed this federal action for a period of six months while a related state-court action proceeds, *Fortress 2020 Landco, LLC v. HRK Holdings, LLC et al.*, Case No. 2020-CA-04459-AX AX. A status report regarding closure of the Facility was filed by each party on May 27, 2022. a status conference with the court is currently scheduled for October 2022.

DEPARTMENT OF ENVIRONMENTAL PROTECTION V. HRK HOLDINGS, LLC: (Manatee County Circuit Court)

On August 5, 2021, the Department of Environmental Protection (DEP) filed a complaint for injunctive relief, cost recovery, damages, civil penalties and attorney fees for violations committed by HRK in the maintenance and operation of its phosphogypsum stack at Piney Point (Facility). More specifically, HRK failed to remove process water at Piney Point in a timely manner and provide financial assurance for closure of the Facility, thereby causing damage to the environment. In addition, the DEP has alleged violations of surface and ground water quality standards by HRK and a failure to adequately assess and remediate the contamination.

DEP filed Complaint against HRK on August 5, 2021. Because HRK did not file an answer to the Department's complaint by the September 7, 2021, deadline a clerk's default has been entered against HRK.

FORTRESS 2020 LANDCO, LLC., V. HRK HOLDINGS, LLC ET AL & DEP: (Manatee County Circuit Court)

In November 2020, Fortress 2020 Landco LLC, (Fortress) filed a complaint for foreclosure of real property in Manatee County where the Piney Point phosphogypsum

stack (Facility) is located. The complaint named several Defendants, including HRK Holdings, as owner and the Department of Environmental Protection (Department), as junior mortgagee. Fortress had purchased and was assigned the Notes and mortgage on the property from Regions Bank in early 2020. All Defendants have either filed responses to the complaint or defaulted and discovery is ongoing.

On August 25, 2021, the Judge entered an Agreed Order on the Department's Motion to Appoint Receiver to close the Facility. The Court's Order appointed Herb Donica, Esq. (also a CPA) to act as Receiver of the Facility with the duty of day-to-day maintenance of the Facility, water management as well as the ultimate closure of the phosphogypsum stack.

On March 30, 2022, the Department issued an Order Approving Conceptual Closure Plan detailing the plan for closure of the Facility.

WILDE CYPRESS BRANCH, BOGGY BRANCH, CROSBY ISLAND MARSH, LAKE MARY JANE; AND CHARLES O'NEAL FOR SPEAK UP WEKIVA, ET AL V. BEACHLINE SOUTH RESIDENTIAL, LLC AND NOAH VALENSTEIN AS SECRETARY OF THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION: (Orange County Circuit Court)

A local government has adopted an ordinance purporting to allow certain natural features "the right to exist," and for individuals to sue on behalf of certain natural resources (such as water bodies). A developer has applied to the Department of Environmental Protection (Department) for an Environmental Resource Permit (ERP) and 404 authorization. The Plaintiff, an individual, has filed a lawsuit on behalf of certain water bodies to restrain the Department from issuing an ERP/404 permit. The Plaintiff alleges that local laws prohibit the Department from issuing a permit.

The Court dismissed the complaint, with prejudice, by an Order dated July 6, 2022. Plaintiffs filed a notice of appeal on July 28, 2022.

Plaintiffs' initial brief is due October 6, 2022. The Department's brief would be due 30 days after filing of the initial brief.

KEY HAVEN ASSOCIATED ENTERPRISES, INC. V. DEPARTMENT OF ECONOMIC OPPORTUNITY AND DEPARTMENT OF ENVIRONMENTAL PROTECTION: (Leon County Circuit Court)

Plaintiff, Key Haven Associated Enterprises, Inc. (Key Haven), seeks compensation from Defendants, Department of Economic Opportunity (DEO) and Department of Environmental Protection (Department) for an alleged taking of its property under the Florida Constitution, together with various declarations related to its alleged rights as the result of a permit denial.

The Department filed a Motion to Dismiss on December 13, 2021. Plaintiff filed an amended complaint, and the Department filed its motion to dismiss the amended complaint on February 25, 2022. At a hearing on June 6, 2022, the Court orally denied DEP's motion to dismiss. The trial court granted the motion to dismiss as to Monroe County, on the grounds that they are not a proper party.

The Department filed its answer and affirmative defenses on July 11, 2022.

NE 32ND ST. & WATERFRONT ICW PROPERTIES, LLC V. BOARD OF TRUSTEES & DEP, ET AL.: (Circuit Court)

In 2016, Plaintiff sued seven cable companies for damages, trespass, and ejectment due to cables running beneath submerged land in the Intracoastal Waterway that Plaintiff claims to own. The Board of Trustees (the Board) is a co- defendant because it claims the submerged land at issue is sovereignty land. On May 13, 2022, Plaintiff filed a Notice of Voluntary Dismissal, Without Prejudice, of All Counts In its Third Amended Complaint against the Board. On June 6, 2022, the Board filed a Notice of Appeal of Final Order with the Fourth District Court of Appeal regarding the Partial Final Summary Judgment against the Board of Trustees of the Internal Improvement Trust Fund, rendered by the trial court on June 28, 2021.

On August 1, 2022, the Fourth District Court of Appeal judge granted an order permitting the appeal to proceed.

LITTLE CARDINAL, LLC V. SOUTH SPANISH TRAIL, LLC AND BTIIF
(Circuit Court)

South Spanish Trail, LLC is seeking to quiet title to submerged lands against Little Cardinal, LLC. On June 23, 2020, the Board of Trustees (Board) was named as a third-party Defendant in Little Cardinal, LLC's counterclaim for declaratory relief against South Spanish Trail, LLC. The counterclaim alleges the Board is the owner of the submerged lands at issue in the litigation. The case is being handled by Tim Newhall with the Attorney General's Office.

On August 4, 2021, the U.S. District Court granted the United States' unopposed Motion for Leave to exceed Page Limit for Omnibus Motion to Dismiss Cross-Complaints. The United States will file a Motion to Dismiss the Cross Complaints.

GLOBENET CABOS SUBMARINOS AMERICA, INC. V. SOUTH SPANISH TRAIL, LLC AND BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND:
(Circuit Court)

In 2018, Plaintiff sued Globenet for damages, trespass, and ejectment due to cables running beneath submerged land in the Intracoastal Waterway that Plaintiff claims to own. On June 9, 2020, Globenet filed a counterclaim action against Plaintiff and the Board of Trustees (the Board) seeking declaratory relief and recognition of a Board easement issued to Globenet for placement of the cables within the Intracoastal Waterway. The case is being handled by Tim Newhall with the Attorney General's Office.

On June 10, 2022, the Plaintiff filed a Motion to Amend Affirmative Defenses, and BOT filed a Motion for Extension of Time to Produce Documents in Response to Plaintiff's Third Request for Production of Documents.

HILLSBORO INLET INVESTMENTS, LLC V. HEAVEN'S U.S.A., ET AL:
(Circuit Court)

Plaintiff Hillsboro Inlet Investments, LLC sued defunct corporations seeking to quiet title to upland and submerged land lying within the Hillsboro Inlet and surrounding areas. The Board of Trustees (the Board) filed an Answer and a Counterclaim against Plaintiff for Quiet Title.

On July 29, 2022, Plaintiff filed a Motion to Dismiss BOT's Counterclaim and a Reply to BOT's Affirmative Defenses.

HILLSBORO INLET INVESTMENTS, LLC V. HILLSBORO INLET CORPORATION, ET AL: (Circuit Court)

Plaintiff sued defunct corporations seeking to quiet title to upland and submerged land lying within the Hillsboro Inlet and surrounding areas. A Final Judgment quieting title to Plaintiff was issued on December 10, 2020. The Board of Trustees (Board) and several waterfront owners filed Motions to Intervene in the case and to set aside the Final Judgment. The Board of Trustees (Board) and several waterfront owners filed Motions to Intervene in the case and to set aside the Final Judgment. The Judge set aside the Final Judgment and Plaintiff filed an Amended Complaint. The Board filed an answer and a counterclaim against Plaintiff for Quiet Title. (Tim Newhall, AG's Office & Nicholas Meros, Office of the Governor)

On July 29, 2022, Plaintiff filed a Motion to Dismiss BOT's Counterclaim and a Reply to BOT's Affirmative Defenses.

A hearing will be scheduled on Plaintiff's Motion to Dismiss.

NE 32 STREET, LLC, HILLSBORO INLET INVESTMENTS, LLC, BROWARD ICW INVESTMENTS, LLC AND SOUTH SPANISH TRAIL, LLC V. THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND AND THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION: (DOAH)

On August 17, 2021, NE 32 Street, LLC, Hillsboro Inlet Investments, LLC, Broward ICW Investments, LLC and South Spanish Trail, LLC (the Petitioners) filed a Petition for A Determination of the Invalidity of a Portion of Chapter 18-21, Florida Administrative Code (Rule Challenge) with the Division of Administrative Hearings (DOAH), on the ground that it is an invalid exercise of delegated legislative authority. More specifically that the Department of Environmental Protection (Department) must adopt a rule defining the procedure by which the Department will determine state ownership of submerged lands.

On February 3, 2022 the Administrative Law Judge entered a Final Order dismissing the Petition concluding that chapter 18-21, Florida Administrative Code, was not an invalid exercise of legislative authority and that the Department's procedure for determining ownership of state lands is valid. Petitioners filed a notice of appeal on February 23, 2022, to the First District Court of Appeal. Petitioners filed their initial brief on April 18, 2022. On April 19, 2022, the First District issued an order striking the initial brief because it lacked a certificate regarding word count. Petitioners filed their amended initial brief on April 19, 2022. The Department filed its answer brief on July 20, 2022.

No further action required by the Department unless the Court schedules oral argument.

DEP is not a Party to the following cases.

U.S. Sugar, Okeelanta (Florida Crystals), and Sugar Cane Growers Co-op v. U.S. Army Corps of Engineers (Central Everglades Planning Project and EAA Reservoir Operations) (US District Court Southern District of Florida)

On August 26, 2021, U.S. Sugar Corporation, Okeelanta Corporation (Florida Crystals), and the Sugar Cane Growers Cooperative of Florida filed separate, but similar, lawsuits in the United States District Court for the Southern District of Florida challenging several actions by the U.S. Army Corps of Engineers (Corps) related to the EAA Reservoir Project. Plaintiffs generally assert two overarching causes of action: (1) The Corps violated the “Saving Clause” provision of the Water Resources Development Act of 2000 (WRDA 2000) when undertaking various agency actions related to the EAA Reservoir Project. Plaintiffs claim that less water will be available to them as a result of the asserted violations of the Savings Clause and (2) the Corp’s National Environmental Policy Act (NEPA) analysis is flawed related to the EAA Reservoir project.

On February 10, 2022, the United States moved to dismiss the lawsuit for failure to state a claim, specifically whether the plaintiffs have standing to bring the claim. The court denied the motion on April 28, 2022. The United States then answered the amended

complaint. On July 15, 2022, the Plaintiffs moved for Summary Judgement alleging the United States violated WRDA 2000 and NEPA by failing to properly analyze the effects of the EAA project on water supply. The court has not ruled on this motion. The court granted leave for the Florida Fruit and Vegetable Association and the Florida Farm Bureau Federation to file amicus briefs.

State of Florida v. Tyco Fire Products LP; Chemguard Inc.; Buckeye Fire Equipment Co.; National Foam, Inc.; Kidde-Fenwal, Inc.; Dynax Corp. E.I. Du Pont De Nemours & CO.; The Chemours Co.; The Chemours Co. FC, LLC; Corteva, Inc.; Dupont De Nemours, Inc.; UTC Fire & Security Americas Corp., Inc.; and Carrier Global Corp.: (Hillsborough County Circuit Court)

On April 15, 2022, the Office of the Attorney General (“OAG”) filed a lawsuit against the above manufacturers of aqueous film forming foam (“AFFF”) and/or components thereof which contain or transform into the so-called “forever chemicals” per- and polyfluorinated alkyl substances (“PFAS”), such as perfluorooctanoic acid/perfluorooctanoate (“PFOA”) and perfluorooctane sulfonic acid/perfluorooctane sulfonate (“PFOS”). The lawsuit alleges claims of public nuisance, product liability, failure to warn, negligence, restitution, trespass, and, with respect to some defendants, violation of Florida's Uniform Fraudulent Transfer Act, related to the discharge of these substances into Florida's soil and groundwater. The suit seeks a variety of relief, including injunctive relief, damages, and abatement. The complaint, which demanded a jury trial, was filed in the Circuit Court of the Thirteenth Judicial Circuit in Hillsborough County, Florida. The Department of Environmental Protection (“DEP”), which has provided background information to the OAG, received a litigation hold from the OAG regarding this matter requesting the DEP preserve all records relating to AFFF and PFAS.

On August 8, 2022, the Court granted Florida an extension of time to effect service of process of the complaint.

IN RE: Aqueous Film-Forming Foams Products Liability Litigation: (US District Court for the district of South Carolina, Charleston Division. MDL No. 2873)

This multidistrict litigation (MDL) is comprised of over 2,000 cases. As cases related to AFFF are filed through-out the country, they are typically transferred to the MDL. These cases involve varied causes of action and claims relating to per- or polyfluoroalkyl substances (PFAS). Plaintiffs generally allege that aqueous film-forming foams (AFFFs) containing perfluorooctanoic acid (PFOA) and/or perfluorooctane sulfonate (PFOS), two types of PFAS, contaminated groundwater near various military bases, airports, and other industrial sites where AFFFs were used to extinguish liquid fuel fires. The plaintiffs allege that they were caused personal injury, a need for medical monitoring, property damage or other economic losses. In 2019, the Court held a “science day” hearing at which Plaintiffs and Defendants offered experts to present on the scientific issues. The cases have been divided into various bellwether topics. (Bellwether trials are basically test cases developed around a specific issue or type of plaintiff in large tort litigation like this MDL).

Recently Judge Richard M. Gergel outlined the schedule for the first of a series of bellwether trials (the bellwether trial of 10 of the Water Provider cases), which will begin going before juries in 2023. Oral argument regarding the government contract immunity defense will be held August 19, 2022.

The Florida Senate

APPEARANCE RECORD

320

2/21/23

Meeting Date

ENR 301 SB`

Committee

Deliver both copies of this form to
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Bill Number or Topic

Amendment Barcode (if applicable)

Name **David Cullen**

Phone **941-323-2404**

Address **2838 Little Deal Rd**

Email **cullenasea@gmail.com**

Street

Tallahassee

FL

32308

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Sierra Club Florida

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

02/21/23

Meeting Date

Environment and Natural Resources

Committee

The Florida Senate
APPEARANCE RECORD

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SB 320 - Land Acquisition Trust Fund

Bill Number or Topic

Name **Natalie Fausel**

Phone **561-317-0889**

Amendment Barcode (if applicable)

Address **201 West Park Ave.**

Street

Email **natalie@anfieldflorida.com**

Tallahassee

FL

32301

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
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☒ I am a registered lobbyist,
representing:

St. Lucie County

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
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This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

2/21/23

Meeting Date

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SB320

Bill Number or Topic

ENV. + NAT. RESOURCES

Committee

Amendment Barcode (if applicable)

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Tallahassee
City

FL
State

32301
Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:
Florida League
of Women Voters

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Environment and Natural Resources

BILL: SB 320

INTRODUCER: Senator Harrell

SUBJECT: Land Acquisition Trust Fund

DATE: February 20, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Carroll	Rogers	EN	Favorable
2. _____	_____	AEG	_____
3. _____	_____	AP	_____

I. Summary:

SB 320 appropriates from the Land Acquisition Trust Fund a minimum of the lesser of 7.6 percent¹ of the funds remaining after debt service or \$50 million annually for projects dedicated to the conservation of the Indian River Lagoon. The Department of Environmental Protection (DEP) will use the funds to provide grants for projects that implement the 2008 updated Indian River Lagoon Comprehensive Conservation and Management Plan. Priority must be given to projects for ecosystem monitoring and habitat restoration, septic to sewer conversion, and management of stormwater, freshwater, and agricultural discharges. Grants for septic to sewer conversion and discharge management projects must require a minimum 50 percent local match.

Beginning January 1, 2024, DEP must annually submit a report regarding the projects to the Governor and the Legislature.

II. Present Situation:

The Indian River Lagoon

The Indian River Lagoon (IRL) is a 156-mile-long estuary spanning approximately 40 percent of Florida's east coast.² There are six coastal counties in the IRL watershed: Volusia, Brevard, Indian River, St. Lucie, Martin, and Palm Beach.³ The IRL extends from Ponce de Leon Inlet near New Smyrna Beach in Volusia County to the southern border of Jupiter Inlet in Martin

¹ Approximately \$93 million based on estimates for Fiscal Year 2023-2024.

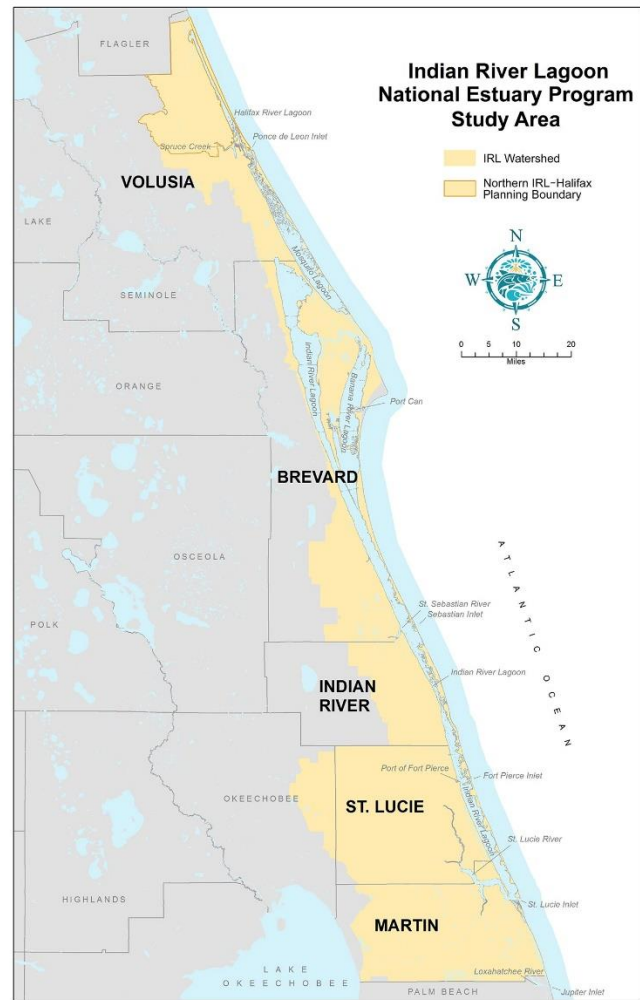
² DEP, Basin Management Action Plan, *Indian River Lagoon Basin Central Indian River Lagoon*, 14 (2021), available at https://publicfiles.dep.state.fl.us/DEAR/BMAP/IndianRiverLagoon/BMAP_Documents/2021_IRL_BMAP_Final/CIRL/Final_CIRL_BMAP_02102021.pdf; IRLNEP, *Importance*, <https://onelagoon.org/importance/> (last visited Feb. 15, 2023).

³ DEP, Basin Management Action Plan, *Indian River Lagoon Basin Central Indian River Lagoon*, 14 (2021).

County.⁴ There are three interconnected lagoons in the IRL basin: Mosquito Lagoon, Banana River Lagoon, and Indian River Lagoon.⁵ Seventy-one percent of its area and nearly half its length is within Brevard County.⁶

The IRL is considered the most biologically diverse estuary in North America.⁷ It is home to more than 2,000 species of plants, 600 species of fish, 300 species of birds, and 53 threatened or endangered species.⁸ In 2014, the estimated annual economic value received from the IRL was approximately \$7.6 billion, around \$1.57 billion of which was attributable to recreation and visitor-related activity.⁹ Industry groups directly influenced by the IRL supported nearly 72,000 jobs.¹⁰

The IRL ecosystem has been harmed by human activities in the region. 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



⁴ *Id.*

⁵ DEP, TMDL Report, *Nutrient and Dissolved Oxygen TMDLs for the Indian River Lagoon and Banana River Lagoon*, 1 (Mar. 2009), available at <https://floridadep.gov/sites/default/files/indian-banana-nutrient-do-tmdl.pdf>.

⁶ Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update*, xi (Feb. 2023)[hereinafter *Save Our Lagoon*], available at <https://www.brevardfl.gov/SaveOurLagoon/ProjectPlan>. The map on this page shows the IRL watershed. IRLNEP, *IRLWatershedMap_With PlBound*, https://onelagoon.org/irlwatershedmap_withplbound/# (last visited Feb. 17, 2023).

⁷ DEP, Basin Management Action Plan, *Indian River Lagoon Basin Central Indian River Lagoon*, 45 (2021), available at <https://floridadep.gov/sites/default/files/central-irl-bmap.pdf>; An estuary is a partially enclosed, coastal waterbody where freshwater from rivers and streams mixes with saltwater from the ocean. Estuaries are among the most productive ecosystems on earth, home to unique plant and animal communities that have adapted to brackish water: freshwater mixed with saltwater. U.S. EPA, *What Is An Estuary?*, <https://www.epa.gov/nep/basic-information-about-estuaries> (last visited Feb. 15, 2023); NOAA, *What Is An Estuary?*, <https://oceanservice.noaa.gov/facts/estuary.html> (last visited Feb. 15, 2023).

⁸ Indian River Lagoon Species Inventory, *Biodiversity*, https://www.irlspecies.org/misc/Total_Biodiv.php#:~:text=Home%20to%20over%204%2C200%20species%20of%20plants%2C%20birds%2C,species%20of%20fish%20and%20370%20species%20of%20birds (last visited Feb. 15, 2023).

⁹ East Central Florida Regional Planning Council and Treasure Coast Regional Planning Council, *Indian River Lagoon Economic Valuation Update*, vi, ix (Aug. 26, 2016), available at https://files.tcrpc.org/portfolio%20of%20work/Economic%20Development/IRL%20Valuation/FinalReportIRL08_26_2016.pdf.

¹⁰ *Id.* at ix.

entering the lagoon.¹¹ 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.¹² During the 2011 "Superbloom," intense algal blooms of phytoplankton occurred throughout most of the IRL, lasting for seven months and resulting in massive losses of seagrass that has yet to fully recover.¹³ There have also been recurring brown tides; unusual mortalities of dolphins, manatees, and shorebirds; and large fish kills due to low dissolved oxygen from decomposing algae.¹⁴ Brown tide is a type of algal bloom dominated by a brown, microscopic marine algae, which can be harmful to ecosystems in high concentrations, and was first documented in state waters in 2012.¹⁵ The St. Lucie Estuary is a major tributary to the southern IRL, so freshwater discharges from Lake Okeechobee, which can include toxic cyanobacteria ("blue-green algae"), also impact the IRL.¹⁶

The St. Johns River Water Management District, South Florida Water Management District, and local governments implement projects that address water quality issues in the IRL.¹⁷ Brevard County established the Save Our Indian River Lagoon Project Plan, which outlines local projects to meet water quality targets and improve the health, productivity, aesthetic appeal, and economic value of the IRL.¹⁸ In 2016, Brevard County passed a referendum, approved by 62.4 percent of voters, to authorize the issuance of a half-cent infrastructure sales tax to pay for a portion of the plan.¹⁹ The sales tax will generate an estimated \$542 million over ten years.²⁰

¹¹ Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update* at xi; Marine Resources Council, *Indian River Lagoon Health Update*, 4-7 (2018), available at <https://savetheirl.org/wp-content/uploads/mrc-report-card-2018-min.pdf>.

¹² Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update* at xi.

¹³ IRL 2011 Consortium, *Indian River Lagoon 2011 Superbloom - Plan of Investigation*, 2-3 (2012), available at https://www.sjrwmd.com/static/waterways/irl-technical/2011superbloom_investigationplan_June_2012.pdf; Marine Resources Council, *Indian River Lagoon Coastal Community Report Card*, 2,4 (2022), available at <https://savetheirl.org/wp-content/uploads/IRLReportCard2022-opt.pdf>.

¹⁴ Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update* at xi.

¹⁵ SJRWMD, *Renewing the Lagoon - Frequently Asked Questions*, <https://www.sjrwmd.com/waterways/renew-lagoon/#faq-01> (last visited Feb. 15, 2023); FWC, *Effects of Brown Tide in the Indian River Lagoon* (2012), <https://myfwc.com/research/redtide/monitoring/historical-events/brown-tide/> (last visited Feb. 15, 2023).

¹⁶ DEP, Basin Management Action Plan, *St. Lucie River and Estuary Basin*, 15 (2020), available at https://publicfiles.dep.state.fl.us/DEAR/DEARweb/BMAP/NEEP_2020_Updates/St_Lucie_BMAP_01-31-20.pdf; DEP, Basin Management Action Plan, *Lake Okeechobee*, 14 (2020), available at https://publicfiles.dep.state.fl.us/DEAR/DEARweb/BMAP/NEEP_2020_Updates/Lake%20Okeechobee%20BMAP_01-31-20.pdf.

¹⁷ SJRWMD, *The Indian River Lagoon*, <https://www.sjrwmd.com/waterways/indian-river-lagoon/> (last visited Feb. 15, 2023); SFWMD, *Celebrating the Indian River Lagoon-South C-23/24 Stormwater Treatment Area Groundbreaking*, <https://www.sfwmd.gov/news-events/news/celebrating-indian-river-lagoon-south-c-2324-stormwater-treatment-area> (last visited Feb. 15, 2023).

¹⁸ Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update* at xi.

¹⁹ Brevard County Supervisor of Elections, *2016 General Election Official Results*, <https://enr.electionsfl.org/BRE/1616/Summary/> (last visited Feb. 15, 2023); Brevard County, *Save our Indian River Lagoon Project Plan*, <https://www.brevardfl.gov/SaveOurLagoon/ProjectPlan> (last visited Feb. 15, 2023).

²⁰ *Id.*

On January 10, 2023, Governor DeSantis signed Executive Order 23-6, directing the Department of Environmental Protection (DEP) to identify and prioritize strategies and projects to expedite water quality restoration in the IRL.²¹ The executive order instructed DEP to:

- Work with the Legislature to establish the IRL Protection Program and secure at least \$100 million annually for priority projects;
- Coordinate with stakeholders to expand partnerships to identify and prioritize projects for water quality restoration;
- Undertake enhanced water quality monitoring in the IRL to better identify sources of nutrient loading to inform project prioritization and improve water quality in the IRL;
- Take actions to reduce nutrient contributions to the IRL from septic tanks and wastewater facilities, stormwater discharges, and agriculture non-point sources; and
- Support innovative nature-based solutions including living shorelines, freshwater and coastal wetland restoration, and seagrass recovery utilizing strategic propagation and planting efforts.²²

Pollution from Onsite Sewage and Disposal Systems

Onsite sewage treatment and disposal systems (OSTDSs), commonly referred to as “septic systems,” generally consist of two basic parts: the septic tank and the drainfield.²³ Waste from toilets, sinks, washing machines, and showers flows through a pipe into the septic tank, where anaerobic bacteria break the solids into a liquid form. The liquid portion of the wastewater flows into the drainfield, which is generally a series of perforated pipes or panels surrounded by lightweight materials such as gravel or Styrofoam. The drainfield provides a secondary treatment where aerobic bacteria continue deactivating the germs. The drainfield also provides filtration of the wastewater, as gravity draws the water down through the soil layers.²⁴ In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.²⁵ For example, in rural areas and low-density developments, central sewer systems are not cost-effective.²⁶

In a conventional OSTDS, a septic tank does not reduce nitrogen from the raw sewage. In Florida, approximately 30-40 percent of the nitrogen levels are reduced in the drainfield of a system that is installed 24 inches or more from groundwater. This still leaves a significant amount of nitrogen to percolate into the groundwater, which makes nitrogen from OSTDSs a potential contaminant in groundwater.

OSTDSs account for much of the nitrogen enrichment in groundwater in the IRL watersheds because the six counties adjacent to the IRL rely heavily on OSTDS for wastewater

²¹ Office of the Governor, *Executive Order 23-6*, 6 (Jan. 10, 2023), available at <https://www.flgov.com/wp-content/uploads/2023/01/EO-23-06.pdf>.

²² *Id.* at 7.

²³ DOH, *Septic System Information and Care*, <http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html> (last visited Feb. 2023); EPA, *Types of Septic Systems*, <https://www.epa.gov/septic/types-septic-systems> (last visited Feb. 10, 2023) (showing the graphic provided in the analysis).

²⁴ *Id.*

²⁵ DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, Executive Summary (Oct. 1, 2008), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/documents/costs-implement-mandatory-statewide-inspection.pdf> (last visited Feb. 10, 2023).

²⁶ *Id.*

management.²⁷ As of 2021, there were approximately 300,000 permitted OSTDSs in the IRL watershed. Indian River and Martin Counties used OSTDSs for over 50 percent of their wastewater management and there were approximately 31,000 septic systems in each county.²⁸ As of 2019, Brevard County, which borders nearly half of the IRL, had an estimated 53,204 OSTDSs and contributed approximately 17,863 pounds per year of total nitrogen from failing OSTDSs.²⁹

The Indian River Lagoon National Estuary Program

The U.S. Environmental Protection Agency's (EPA) National Estuary Program is a community-based program to protect and restore the water quality and ecological integrity of estuaries of national significance.³⁰ Currently, 28 estuaries located along the Atlantic, Gulf, and Pacific coasts and in Puerto Rico are designated as estuaries of national significance. Each National Estuary Program focuses within a study area that includes the estuary and surrounding watershed. Through a process of involving community stakeholders, the 28 National Estuary Programs develop and implement Comprehensive Conservation and Management Plans, which are long-term plans that contain actions to address water quality and living resource challenges and priorities. The National Estuary Program challenges and priorities are defined by local, city, state, federal, private, and non-profit stakeholders.³¹

The IRL National Estuary Program was established in 1990 under the sponsorship of the St. Johns River and South Florida Water Management Districts.³² The program developed the IRL Comprehensive Conservation and Management Plan Update, first published in 1997 and updated in 2008 and 2018.³³ The plan provides goals and action plan outputs regarding water quality, habitats, and living resources within the IRL.³⁴

In 2015, the IRL Council was established to carry out the IRL National Estuary Program.³⁵ The Council includes DEP, the St. Johns River Water Management District, the South Florida Water Management District, Volusia County, Brevard County, St. Lucie County, Martin County, and a collection of local governments known as the Indian River County Lagoon Coalition.³⁶ The goals of the parties to the IRL Council's interlocal agreement are the goals set forth in the amended

²⁷ L.W. Herren, et al., Septic systems drive nutrient enrichment of groundwaters and eutrophication in the urbanized Indian River Lagoon, Florida, *Marine Pollution Bulletin* 172, 2 (2021), available at <https://reader.elsevier.com/reader/sd/pii/S0025326X21009620?token=1384E4307B3A786FC65C7DD3270D91440566F5E2793CAE8F859A2139CF19FE68102D54027EEFF164F8492399C7F65B49&originRegion=us-east-1&originCreation=20230217141616>.

²⁸ *Id.*

²⁹ Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update* at 22-23.

³⁰ 33 U.S.C. s. 1330; U.S. EPA, National Estuary Program (NEP), *Overview of the National Estuary Program*, <https://www.epa.gov/nep/overview-national-estuary-program> (last visited Feb. 15, 2023).

³¹ EPA, *Overview of the National Estuary Program*.

³² IRLNEP, *The Indian River Lagoon NEP*, <https://onelagoon.org/irlnep/> (last visited Feb. 15, 2023).

³³ IRLNEP, *Indian River Lagoon Comprehensive Conservation and Management Plan Update*, 15 (2019), available at https://onelagoon.org/wp-content/uploads/IRLNEP_Final-Draft-CCMP-REVISION_2018-12-07_LowRes_20200204.pdf.

³⁴ *Id.* at 18.

³⁵ IRLNEP, *the Indian River Lagoon NEP*.

³⁶ *First Amended and Restated Indian River Lagoon National Estuary Program Interlocal Agreement*, 1-3 (Sept. 2015), available at https://onelagoon.net/wp-content/uploads/irlnep_amended_interlocal_agreement_2015.pdf.

Comprehensive Conservation and Management Plan.³⁷ The interlocal agreement established minimum annual funding contributions from each party to the IRL Council.³⁸ These contributions supplement annual funding from the EPA.³⁹

DEP has designated the IRL as an impaired waterbody. In 2009, DEP adopted total maximum daily load (TMDL) water quality restoration targets for the North and Central IRL and the Banana River Lagoon.⁴⁰ In 2013, DEP adopted three basin management action plans to achieve these TMDLs.⁴¹ In 2019, 2020, 2021, and 2022, the Legislature appropriated recurring funds from the General Revenue Fund to the IRL National Estuary Program for activities necessary to achieve the TMDLs for the North and Central IRL and the Banana River Lagoon.⁴²

Indian River Lagoon Comprehensive Conservation and Management Plan

The 2008 IRL Comprehensive Conservation and Management Plan was revised in 2019 to respond to a combination of events that dramatically reinforced scientific concerns about the health of the IRL, including ongoing algal blooms, widespread loss of seagrass, and episodic wildlife mortality events.⁴³ Goals of the Plan include, but are not limited to:

- Achieving water quality standards to remove waterbodies from the Impaired Waters list;⁴⁴
- Improving wastewater infrastructure to increase capacity and treatment and achieving advanced wastewater treatment;⁴⁵
- Reducing stormwater runoff entering the IRL and improving the quality of runoff that does enter the IRL;⁴⁶
- Improving scientific understanding of IRL hydrology and hydrodynamics to improve management;⁴⁷ and
- Removing muck in the IRL to reduce nutrient loads and improve water clarity.⁴⁸

Land Acquisition Trust Fund

Documentary stamp tax revenues are collected under ch. 201, F.S., which requires an excise tax to be levied on two classes of documents: deeds and other documents related to real property,

³⁷ *Id.* at 4.

³⁸ *Id.* at 10.

³⁹ IRLNEP, *5-Year Program Evaluation Report FY 2017-2021*, 13, available at https://onelagoon.org/wp-content/uploads/IRLNEP_EPA-PE-Report-2021_Draft_2022_03_28.pdf.

⁴⁰ DEP, TMDL Report, *Nutrient and Dissolved Oxygen TMDLs for the Indian River Lagoon and Banana River Lagoon*, 49-64 (Mar. 2009), available at <https://floridadep.gov/sites/default/files/indian-banana-nutrient-do-tmdl.pdf>; see also DEP, TMDL Report, *Dissolved Oxygen and Nutrient TMDLs for Eight Tributary Segments of the Indian River Lagoon* (2013), available at http://publicfiles.dep.state.fl.us/DEAR/DEARweb/TMDL/Final_TMDL/gp5/irltrib_donut_tmdl_mainreport.pdf.

⁴¹ DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Feb. 15, 2023). Links to the three plans are located under “adopted BMAPS.”

⁴² Chapter 2019-115, Laws of Fla., Specific Appropriation 1678; Chapter 2020-157, Laws of Fla., Specific Appropriation 1658; Chapter 2021-36, Laws of Fla., Specific Appropriation 1630; Chapter 2022-156, Laws of Fla., Specific Appropriation 1690.

⁴³ IRLNEP, *A 10-Year Comprehensive Conservation and Management Plan for the Indian River Lagoon, Florida*, 13 (2019), available at https://onelagoon.org/wp-content/uploads/IRLNEP_CCMP-Looking-Ahead-to-2030_eBook.pdf.

⁴⁴ *Id.* at 29.

⁴⁵ *Id.* at 33.

⁴⁶ *Id.* at 40.

⁴⁷ *Id.* at 46.

⁴⁸ *Id.* at 50.

which are taxed at the rate of 70 cents per \$100; and certificates of indebtedness, promissory notes, wage assignments, and retail charge account agreements, which are taxed at 35 cents per \$100.⁴⁹

In 2014, Florida voters approved Amendment One, a constitutional amendment to provide a dedicated funding source for land and water conservation and restoration.⁵⁰ The amendment required that starting on July 1, 2015, and for 20 years thereafter, 33 percent of net revenues derived from documentary stamp taxes be deposited into the Land Acquisition Trust Fund (LATF).⁵¹ Article X, s. 28 of the State Constitution requires that funds in the LATF be expended only for the following purposes:

As provided by law, to finance or refinance: the acquisition and improvement of land, water areas, and related property interests, including conservation easements, and resources for conservation lands including wetlands, forests, and fish and wildlife habitat; wildlife management areas; lands that protect water resources and drinking water sources, including lands protecting the water quality and quantity of rivers, lakes, streams, springsheds, and lands providing recharge for groundwater and aquifer systems; lands in the Everglades Agricultural Area and the Everglades Protection Area, as defined in Article II, Section 7(b); beaches and shores; outdoor recreation lands, including recreational trails, parks, and urban open space; rural landscapes; working farms and ranches; historic or geologic sites; together with management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands.⁵²

To implement Art. X, s. 28 of the State Constitution, the Legislature passed ch. 2015-229, Laws of Florida. This act, in part, amended the following sections of law:

- Section 201.15, F.S., to conform to the constitutional requirement that the LATF receive at least 33 percent of net revenues derived from documentary stamp taxes; and
- Section 375.041, F.S., to designate the LATF within DEP as the trust fund to serve as the constitutionally mandated depository for the percentage of documentary stamp tax revenues.⁵³

Under s. 375.041, F.S., funds deposited into the LATF must be distributed in the following order and amounts:

- First, obligations relating to debt service, specifically, payments relating to debt service on Florida Forever Bonds and Everglades restoration bonds.
- Then, unless superseded by the General Appropriations Act, before funds are authorized to be appropriated for other uses:

⁴⁹ See ss. 201.02(1)(a) and 201.08(1)(a), F.S.

⁵⁰ The Florida Senate, *Water and Land Conservation*, <https://www.flsenate.gov/media/topics/WLC> (last visited Feb 15, 2023).

⁵¹ *Id.*

⁵² FLA. CONST. art. X, s. 28(b)(1).

⁵³ Ch. 2015-229, ss. 9 and 50, Laws of Fla.

- A minimum of the lesser of 25 percent of the funds remaining after the payment of debt service or \$200 million annually for Everglades projects that implement the Comprehensive Everglades Restoration Plan (CERP), the Long-Term Plan, or the Northern Everglades and Estuaries Protection Program (NEEPP), with priority given to Everglades restoration projects that reduce harmful discharges of water from Lake Okeechobee to the St. Lucie or Caloosahatchee estuaries in a timely manner. From these funds, the following specified distributions are required:
 - \$32 million annually through the 2023-2024 fiscal year for the Long-Term Plan;
 - After deducting the \$32 million, the minimum of the lesser of 76.5 percent of the remainder or \$100 million annually through the 2025-2026 fiscal year for the CERP; and
 - Any remaining funds for Everglades projects under the CERP, the Long-Term Plan, or the NEEPP.
- A minimum of the lesser of 7.6 percent of the funds remaining after the payment of debt service or \$50 million annually for spring restoration, protection, and management projects;
- \$5 million annually through the 2025-2026 fiscal year to the St. Johns River Water Management District for projects dedicated to the restoration of Lake Apopka;
- \$64 million to the Everglades Trust Fund in the 2018-2019 fiscal year and each fiscal year thereafter, for the Everglades Agricultural Area reservoir project, and any funds remaining in any fiscal year shall be made available only for Phase II of the C-51 Reservoir Project or projects that implement the CERP, the Long Term Plan, or the NEEPP; and
- \$50 million annually to the South Florida Water Management District for the Lake Okeechobee Watershed Restoration Project.
- Then, any remaining moneys are authorized to be appropriated for the purposes set forth in Art. X, s. 28 of the State Constitution.⁵⁴

During the 2022 session, the Legislature added language that specifies that the purposes set forth in s. 375.041(3)(a)3., F.S., relating to Lake Apopka would instead be appropriated as provided in the General Appropriations Act.⁵⁵ In August 2022, the General Revenue Estimating Conference estimated that for fiscal year 2023-2024 a total of \$4.04 billion will be collected in documentary stamp taxes.⁵⁶ Thirty-three percent of the net revenues collected, or approximately \$1.33 billion, must be deposited into the LATF in accordance with Art. X, s. 28 of the State Constitution. Of that amount, approximately \$105 million is committed to debt service, leaving approximately \$1.22 billion to be distributed for the uses specified by s. 375.041, F.S., and other purposes in accordance with the General Appropriations Act.⁵⁷

⁵⁴ Section 375.041(3)-(4), F.S.

⁵⁵ Chapter 2022-157, Laws of Fla.

⁵⁶ Office of Economic & Demographic Research, Revenue Estimating Conference, *Documentary Stamp Tax, Conference Results* (Aug. 2022) available at <http://edr.state.fl.us/Content/conferences/docstamp/docstampexecsummary.pdf> (last visited Feb. 15, 2023).

⁵⁷ *Id.*

Litigation

In 2015, two lawsuits were filed challenging the constitutionality of appropriations from the LATF and expenditures by state agencies.⁵⁸ The cases were consolidated and a hearing was held in June of 2018.⁵⁹ The plaintiffs argued that funds from the LATF were appropriated and expended for general state expenses in ways that were inconsistent with the State Constitution. The circuit court held for the plaintiffs, stating the amendment requires the funds be used for acquiring conservation lands, and for improving, managing, restoring, and enhancing public access to conservation lands acquired after the effective date of the amendment.⁶⁰ The decision described how the LATF funds may be used, and ruled that numerous appropriations from 2015 and 2016 were unconstitutional.⁶¹

On appeal, the First District Court of Appeal overturned the circuit court ruling, holding that the LATF funds are not restricted to use on land purchased by the state after the constitutional amendment took effect in 2015.⁶² The court held that the plain language in the Constitution authorizing the use of funds for management, restoration, and enhancement activities would specifically authorize use of the funds on activities beyond land acquisition.⁶³ The case was then remanded to the circuit court to rule on the legality of appropriations made since the enactment of the constitutional amendment.⁶⁴

The circuit court dismissed the lawsuit on January 3, 2022, finding that it was moot because the money approved by the Legislature in 2015 had already been spent.⁶⁵ On July 20, 2022, the Florida Wildlife Federation filed a motion to reopen the case.⁶⁶ The case is now on appeal in the First District Court of Appeal.⁶⁷

III. Effect of Proposed Changes:

Section 1 amends s. 371.041, F.S., to appropriate from the Land Acquisition Trust Fund (LATF) a minimum of the lesser of 7.6 percent⁶⁸ of the LATF funds remaining after the payments of the debt service or \$50 million annually for projects dedicated to the conservation and management of the Indian River Lagoon (IRL). The distribution must be reduced by an amount equal to the debt service paid out of the LATF on bonds issued for conservation and management of the IRL after July 1, 2023.

⁵⁸ *Fla. Wildlife Fed'n v. Negron*, No. 2015-CA-001423 (Fla. 2d Cir. Ct. 2015); *Fla. Defenders of the Env't, Inc., v. Detzner*, No. 2015-CA-002682 (Fla. 2d Cir. Ct. 2015).

⁵⁹ *Fla. Wildlife Fed'n v. Negron*, Nos. 2015-CA-001423, 2015-CA-002682 (Fla. 2d Cir. Ct. 2018).

⁶⁰ *Id.* at 3.

⁶¹ *Id.* at 7–8.

⁶² *Oliva v. Fla. Wildlife Fed'n*, 281 So. 3d 531, 539 (Fla. 1st DCA, 2019).

⁶³ *Id.* at 537.

⁶⁴ *Id.* at 539.

⁶⁵ *Fla Wildlife Fed'n v. Negron*, Nos. 2015-CA-001423, 2015-CA-002682 (Fla. 2d Cir. Ct. 2022), available at <https://www.politico.com/states/fl/?id=0000017e-21d8-d3d7-a37f-afdee5cb0000&source=email> (last visited Feb. 14, 2023).

⁶⁶ Dep't of Environmental Protection, *Fla. Enviro. Cases August*, 1 (Aug. 2022) (on file with the Senate Committee on Environment and Natural Resources).

⁶⁷ *Fla. Wildlife Fed'n v. Fla. Legislature*, No. 1D22-3142 (Fla. 1st DCA 2022).

⁶⁸ 7.6 percent would amount to approximately \$93 million based on estimates for Fiscal Year 2023-2024. This amount can be calculated by taking the total amount of documentary stamp tax collections to LATF (1,329.2 million), subtracting the debt service (104.8 million), and then calculating 7.6 percent of the remainder (multiply 1,224.3 million by .076).

The Department of Environmental Protection (DEP) must use the funds to make grants for projects that implement the 2008 updated Indian River Lagoon Comprehensive Conservation and Management Plan, including multiyear grants for the planning and construction of the projects. DEP must coordinate all grants with the St. Johns River and South Florida Water Management Districts. DEP and the St. Johns and South Florida Water Management Districts must coordinate with other water management districts, as necessary.

Priority must be given to projects for:

- Ecosystem monitoring and habitat restoration;
- Connection of onsite sewage treatment and disposal systems to central sewer systems; and
- Management of stormwater, freshwater, and agricultural discharges.

Grants for sewer system connection projects and discharge management projects must require a minimum 50 percent local match. Beginning January 1, 2024, DEP must submit an annual report regarding the projects funded pursuant to this bill to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill deletes obsolete language that directed LATF funds to be appropriated for the 2022-2023 fiscal year as provided in the General Appropriations Act.

Section 2 provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

See Present Situation.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Environmental Protection may incur costs in administering grants and producing an annual report.

The bill would provide grant funding opportunities to local governments for certain water quality and wastewater infrastructure projects. This funding may pay up to 50 percent of the project costs, where local governments may otherwise be paying the entire cost of such projects. Therefore, this bill may have an indeterminate, positive fiscal impact on local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 375.041 of the Florida Statutes:

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Harrell

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1 A bill to be entitled
2 An act relating to the Land Acquisition Trust Fund;
3 amending s. 375.041, F.S.; providing an annual
4 appropriation for certain projects related to the
5 Indian River Lagoon Comprehensive Conservation and
6 Management Plan; authorizing the Department of
7 Environmental Protection to make grants for such
8 projects; requiring the department to coordinate such
9 grants with certain water management districts;
10 requiring the department to submit an annual report to
11 the Governor and the Legislature by a specified date;
12 removing an obsolete provision; providing an effective
13 date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Subsection (3) of section 375.041, Florida
18 Statutes, is amended to read:

19 375.041 Land Acquisition Trust Fund.—

20 (3) Funds distributed into the Land Acquisition Trust Fund
21 pursuant to s. 201.15 shall be applied:

22 (a) First, to pay debt service or to fund debt service
23 reserve funds, rebate obligations, or other amounts payable with
24 respect to Florida Forever bonds issued under s. 215.618; and
25 pay debt service, provide reserves, and pay rebate obligations
26 and other amounts due with respect to Everglades restoration
27 bonds issued under s. 215.619; and

28 (b) Of the funds remaining after the payments required
29 under paragraph (a), but before funds may be appropriated,

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pledged, or dedicated for other uses:

1. A minimum of the lesser of 25 percent or \$200 million shall be appropriated annually for Everglades projects that implement the Comprehensive Everglades Restoration Plan as set forth in s. 373.470, including the Central Everglades Planning Project subject to congressional authorization; the Long-Term Plan as defined in s. 373.4592(2); and the Northern Everglades and Estuaries Protection Program as set forth in s. 373.4595. From these funds, \$32 million shall be distributed each fiscal year through the 2023-2024 fiscal year to the South Florida Water Management District for the Long-Term Plan as defined in s. 373.4592(2). After deducting the \$32 million distributed under this subparagraph, from the funds remaining, a minimum of the lesser of 76.5 percent or \$100 million shall be appropriated each fiscal year through the 2025-2026 fiscal year for the planning, design, engineering, and construction of the Comprehensive Everglades Restoration Plan as set forth in s. 373.470, including the Central Everglades Planning Project, the Everglades Agricultural Area Storage Reservoir Project, the Lake Okeechobee Watershed Project, the C-43 West Basin Storage Reservoir Project, the Indian River Lagoon-South Project, the Western Everglades Restoration Project, and the Picayune Strand Restoration Project. The Department of Environmental Protection and the South Florida Water Management District shall give preference to those Everglades restoration projects that reduce harmful discharges of water from Lake Okeechobee to the St. Lucie or Caloosahatchee estuaries in a timely manner. For the purpose of performing the calculation provided in this subparagraph, the amount of debt service paid pursuant to

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paragraph (a) for bonds issued after July 1, 2016, for the purposes set forth under this paragraph shall be added to the amount remaining after the payments required under paragraph (a). The amount of the distribution calculated shall then be reduced by an amount equal to the debt service paid pursuant to paragraph (a) on bonds issued after July 1, 2016, for the purposes set forth under this subparagraph.

2. A minimum of the lesser of 7.6 percent or \$50 million shall be appropriated annually for spring restoration, protection, and management projects. For the purpose of performing the calculation provided in this subparagraph, the amount of debt service paid pursuant to paragraph (a) for bonds issued after July 1, 2016, for the purposes set forth under this paragraph shall be added to the amount remaining after the payments required under paragraph (a). The amount of the distribution calculated shall then be reduced by an amount equal to the debt service paid pursuant to paragraph (a) on bonds issued after July 1, 2016, for the purposes set forth under this subparagraph.

3. The sum of \$5 million shall be appropriated annually each fiscal year through the 2025-2026 fiscal year to the St. Johns River Water Management District for projects dedicated to the restoration of Lake Apopka. This distribution shall be reduced by an amount equal to the debt service paid pursuant to paragraph (a) on bonds issued after July 1, 2016, for the purposes set forth in this subparagraph.

4. The sum of \$64 million is appropriated and shall be transferred to the Everglades Trust Fund for the 2018-2019 fiscal year, and each fiscal year thereafter, for the EAA

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88 reservoir project pursuant to s. 373.4598. Any funds remaining
89 in any fiscal year shall be made available only for Phase II of
90 the C-51 reservoir project or projects identified in
91 subparagraph 1. and must be used in accordance with laws
92 relating to such projects. Any funds made available for such
93 purposes in a fiscal year are in addition to the amount
94 appropriated under subparagraph 1. This distribution shall be
95 reduced by an amount equal to the debt service paid pursuant to
96 paragraph (a) on bonds issued after July 1, 2017, for the
97 purposes set forth in this subparagraph.

98 5. The sum of \$50 million shall be appropriated annually to
99 the South Florida Water Management District for the Lake
100 Okeechobee Watershed Restoration Project in accordance with s.
101 373.4599. This distribution must be reduced by an amount equal
102 to the debt service paid pursuant to paragraph (a) on bonds
103 issued after July 1, 2021, for the purposes set forth in this
104 subparagraph.

105 6. A minimum of the lesser of 7.6 percent or \$50 million
106 shall be appropriated annually each fiscal year for projects
107 dedicated to the conservation and management of the Indian River
108 Lagoon. This distribution must be reduced by an amount equal to
109 the debt service paid pursuant to paragraph (a) on bonds issued
110 after July 1, 2023, for the purposes set forth in this
111 subparagraph. The Department of Environmental Protection shall
112 use the funds to make grants for projects that implement the
113 2008 updated Indian River Lagoon Comprehensive Conservation and
114 Management Plan, including multiyear grants for the planning and
115 construction of such projects. The department shall coordinate
116 all such grants with the South Florida Water Management District

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117 and the St. Johns River Water Management District. The
118 department, the South Florida Water Management District, and the
119 St. Johns River Water Management District shall coordinate such
120 grants with other water management districts as necessary.
121 Preference must be given to projects for ecosystem monitoring
122 and habitat restoration, projects to connect onsite sewage
123 treatment and disposal systems to central sewer systems, and
124 projects for the management of stormwater, freshwater, and
125 agricultural discharges. Grants for sewer system connection
126 projects and discharge management projects must require a
127 minimum 50 percent local match. Beginning January 1, 2024, and
128 each January 1 thereafter, the department shall submit a report
129 regarding the projects funded pursuant to this subparagraph to
130 the Governor, the President of the Senate, and the Speaker of
131 the House of Representatives ~~Notwithstanding subparagraph 3.,~~
132 ~~for the 2022-2023 fiscal year, funds shall be appropriated as~~
133 ~~provided in the General Appropriations Act. This subparagraph~~
134 ~~expires July 1, 2023.~~

135 Section 2. This act shall take effect July 1, 2023.

CourtSmart Tag Report

Room: SB 301
Caption: Senate Committee on Environment and Natural Resources

Case No.:

Type:
Judge:

Started: 2/21/2023 9:31:20 AM

Ends: 2/21/2023 10:12:32 AM

Length: 00:41:13

9:31:22 AM Chair Rodriguez calls meeting to order
9:31:30 AM CAA calls roll
9:31:36 AM Quorum present
9:31:42 AM Pledge of allegiance
9:32:04 AM Chair Rodriguez in opening remarks
9:32:20 AM Tab 1 Presentation by Florida Department of Environmental Protection
9:32:40 AM Michael Lynch, DEP Director of Division of Water Resource Management presents
9:38:28 AM Questions:
9:38:37 AM Vice chair Harrell in questions
9:38:50 AM Mr. Lynch responds
9:39:13 AM Senator Wright
9:39:24 AM Mr. Lynch responds
9:39:40 AM Senator Wright follow up
9:39:58 AM Mr. Lynch responds
9:40:20 AM Senator Powell
9:41:24 AM Mr. Lynch responds
9:41:51 AM Senator Powell follow up
9:42:20 AM Mr. Lynch responds
9:42:43 AM Senator Powell follow up
9:43:09 AM Mr. Lynch responds
9:43:23 AM No discussion
9:43:45 AM Presentation part 2 - Michael Lynch presents on Wastewater Collection Systems
9:49:50 AM Questions:
9:49:55 AM No questions
9:50:03 AM Presentation part 3 - Michael Lynch presents on Stormwater Rule
9:57:06 AM Questions:
9:57:13 AM Senator Powell in questions
9:57:48 AM Mr. Lynch responds
9:58:27 AM Vice Chair Harrell
9:59:45 AM Mr. Lynch responds
9:59:55 AM No discussion
10:00:05 AM Tab 2 SPB 7002 by Environment and Natural Resources
10:00:26 AM Chair Rodriguez introduces proposed bill
10:00:44 AM Appearance forms:
10:00:49 AM Beth Alvi, Audubon Florida speaks in support
10:03:40 AM Alex Kernan, FL Dept of Environmental Protection waives in support
10:03:48 AM No debate
10:03:50 AM Senator Martin moves proposed bill be submitted as a committee bill
10:04:02 AM Roll call on SPB 7002
10:04:16 AM SPB favorably reported as committee bill
10:04:25 AM Tab 3 SPB 7004 introduced by Chair Rodriguez
10:05:01 AM Questions:
10:05:05 AM Senator Powell in questions
10:05:40 AM Chair Rodriguez responds
10:05:50 AM No debate
10:05:53 AM Senator Wright moves proposed bill be submitted as committee bill
10:06:03 AM Roll call on SPB 7004
10:06:15 AM SPB 7004 favorably reported as a committee bill
10:06:27 AM Tab 4 SB 320 by Senator Harrell
10:06:34 AM Vice Chair Harrell explains bill
10:08:33 AM Questions:
10:08:38 AM No questions

10:08:41 AM Appearance forms:
10:08:45 AM David Cullen, Sierra Club of Florida speaking against
10:09:46 AM Natalie Fausel, St. Lucie County waives in support
10:09:56 AM Isabella Wilcolai, Florida League of Women Voters waives in support
10:10:17 AM Debate:
10:10:19 AM Senator Wright in debate
10:10:43 AM Chair Rodriguez comments
10:10:51 AM Vice Chair Harrell closes on bill
10:11:48 AM Roll Call on SB 320
10:12:03 AM SB 320 reported favorably
10:12:17 AM Senator Stewart moves to adjourn
10:12:22 AM Meeting adjourned