

Tab 1	SB 1136 by Trumbull ; (Compare to H 01163) Regulation of Water Resources				
Tab 2	SB 1360 by Gruters ; (Identical to H 01565) Florida Red Tide Mitigation and Technology Development Initiative				
Tab 3	SB 1386 by Calatayud ; (Identical to H 01557) Department of Environmental Protection				
Tab 4	SB 1532 by Brodeur ; (Similar to H 01073) Mitigation				
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Tab 5	SB 1210 by Martin ; (Identical to H 00957) Estero Bay Aquatic Preserve				
Tab 6	SM 800 by Rodriguez ; (Identical to H 00517) Foreign Polluters				
Tab 7	SB 1258 by Rodriguez ; (Identical to H 01187) Carbon Sequestration				
Tab 8	SB 1576 by Rodriguez ; (Identical to H 00495) Prohibition of Smoking and Vaping in State Parks				

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

ENVIRONMENT AND NATURAL RESOURCES

Senator Rodriguez, Chair
Senator Harrell, Vice Chair

MEETING DATE: Wednesday, January 17, 2024

TIME: 8:30—10:30 a.m.

PLACE: 301 Senate Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 1136 Trumbull (Compare H 1163)	Regulation of Water Resources; Revising the qualification requirements a person must meet in order to take the water well contractor license examination; authorizing certain authorities who have been delegated enforcement powers by water management districts to apply disciplinary guidelines adopted by the districts; prohibiting a person or business entity from advertising water well drilling or construction services in specified circumstances, etc. EN 01/17/2024 Favorable CA RC	Favorable Yeas 7 Nays 0
2	SB 1360 Gruters (Identical H 1565)	Florida Red Tide Mitigation and Technology Development Initiative; Requiring the initiative to develop certain deployment technologies and submit a report on the technologies to the Department of Environmental Protection; requiring the department to make certain determinations regarding the technologies within a specified time period; providing that the technologies are deemed approved for use in specified state waters under certain circumstances, etc. EN 01/17/2024 Favorable AEG FP	Favorable Yeas 7 Nays 0
3	SB 1386 Calatayud (Identical H 1557)	Department of Environmental Protection; Revising the aquatic preserves within which a person may not operate a vessel outside a lawfully marked channel under certain circumstances; defining the term "Florida Flood Hub"; requiring the Department of Environmental Protection to conduct enforcement activities for violations of certain onsite sewage treatment and disposal system regulations in accordance with specified provisions; requiring certain facilities and systems to include a domestic wastewater treatment plan as part of a basin management action plan for nutrient total maximum daily loads, etc. EN 01/17/2024 Favorable AEG FP	Favorable Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Environment and Natural Resources

Wednesday, January 17, 2024, 8:30—10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1532 Brodeur (Similar H 1073)	Mitigation; Defining the term "sponsor"; revising the entities to and purposes for which water quality enhancement credits may be sold; requiring the Department of Environmental Protection or water management districts to authorize the sale and use of such credits to applicants, rather than to governmental entities, to address adverse water quality impacts of certain activities; authorizing governmental entities to solicit proposals for mitigation bank projects on public land, etc. EN 01/17/2024 Fav/CS CA RC	Fav/CS Yeas 7 Nays 0
5	SB 1210 Martin (Identical H 957)	Estero Bay Aquatic Preserve; Revising the boundaries of the Estero Bay Aquatic Preserve, etc. EN 01/17/2024 Favorable AEG RC	Favorable Yeas 7 Nays 0
6	SM 800 Rodriguez (Identical HM 517)	Foreign Polluters; Urging Congress to support solutions that examine the pollution differential between United States production and that of other countries and that hold foreign polluters accountable for their pollution, etc. EN 01/17/2024 Favorable RC	Favorable Yeas 7 Nays 0
7	SB 1258 Rodriguez (Identical H 1187, Compare S 1630)	Carbon Sequestration; Creating the Carbon Sequestration Task Force adjunct to the Department of Environmental Protection; providing for task force membership and duties; requiring the task force to submit specified reports to the Secretary of Environmental Protection and to the Governor and Legislature by specified dates; providing for expiration of the task force, etc. EN 01/17/2024 Favorable AEG FP	Favorable Yeas 7 Nays 0
8	SB 1576 Rodriguez (Identical H 495)	Prohibition of Smoking and Vaping in State Parks; Prohibiting smoking and vaping within the boundaries of state parks, etc. EN 01/17/2024 Favorable AEG FP	Favorable Yeas 7 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1136

INTRODUCER: Senator Trumbull

SUBJECT: Regulation of Water Resources

DATE: January 16, 2024

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Carroll	Rogers	EN	Favorable
2. _____	_____	CA	_____
3. _____	_____	RC	_____

I. Summary:

SB 1136 revises the qualification requirements a person must meet to take the water well contractor licensure examination. The bill requires an applicant to have at least two years of experience in constructing, repairing, or abandoning water wells specifically permitted in Florida.

The bill authorizes an authority to whom a water management district has delegated enforcement powers to consistently apply disciplinary guideline rules relating to wells.

The bill includes business entities as possible violators of certain unlawful acts relating to wells. The bill adds that it is unlawful to advertise water well drilling or construction services if the business entity is not owned by a licensed water well contractor or does not employ a full-time water well contractor.

The bill removes a requirement that the Department of Environmental Protection must appoint and staff a variance review and advisory committee relating to onsite sewage treatment and disposal systems.

II. Present Situation:

Department of Environmental Protection and Water Management District Authority

The Department of Environmental Protection (DEP) is responsible for the administration of water resources at the state level and exercises general supervisory authority over the Water Management Districts (WMDs).¹ The state's five water management districts (WMDs) are

¹ DEP, *Water Management Districts*, <https://floridadep.gov/owper/water-policy/content/water-management-districts#:~:text=The%20state%27s%20five%20water%20management%20districts%20include%20the,District%2C%20and%20the%20South%20Florida%20Water%20Management%20District>. (last visited Jan. 12, 2024).

responsible for the administration of water resources at the regional level. The five regions are Northwest Florida, Suwannee River, St. Johns River, Southwest Florida, and South Florida.²

DEP has authorized the WMDs to implement a program for the issuance of permits for the location, construction, repair, and abandonment of water wells.³ Because of this authorization, the issuance of well permits are the sole responsibility of the WMDs, delegated local governments, or local county health departments. Further, DEP has authorized the WMDs to adopt rules and procedures relating in part to the location, construction, repair, and abandonment of water wells; to implement a program for the licensing of water well contractors; and to adopt by rule disciplinary guidelines applicable to each specific ground for disciplinary action which may be imposed by the WMDs.⁴

Water Well Regulations

Licensure of Water Well Contractors

A water well is defined as any excavation to acquire, locate, or artificially recharge groundwater.⁵ The law requires that every person who wishes to engage in business as a water well contractor must obtain a license from the appropriate WMD.⁶ Each person desiring to be licensed as a water well contractor must apply to take a licensure examination. The application must be made to the WMD in which the applicant resides or in which his or her principal place of business is located. If the applicant resides in another state, he or she must apply to the WMD in which most of his or her business will take place.⁷

An applicant who meets the following requirements shall be entitled to take the water well contractor licensure examination:

- Is at least 18 years of age.
- Has at least two years of experience in constructing, repairing, or abandoning water wells.
- Has completed the application form and remitted a nonrefundable application fee.⁸

An applicant must demonstrate satisfactory proof of his or her two years of experience by providing the following:

- Evidence of the length of time the applicant has been engaged in the business of the construction, repair, or abandonment of water wells as a major activity, as attested to by a letter from a water well contractor or a letter from a water well inspector employed by a governmental agency.

² *Id.*

³ Section 373.308, F.S.; DEP *Water Well Contractor Licensing and Permitting*, <https://floridadep.gov/water/source-drinking-water/content/water-well-contractor-licensing-and-permitting> (last visited Jan. 12, 2024).

⁴ *Id.*; see ss. 373.323, 373.333, and 373.336, F.S.; *see, e.g.*, ch. 40E-3, F.A.C. (South Florida Water Management District rules relating to water wells).

⁵ Institute of Food and Agricultural Sciences (UF/IFAS), *2021 Handbook of Florida Water Regulation: Water Wells*, <https://edis.ifas.ufl.edu/publication/FE603> (last visited Jan. 12, 2024).

⁶ Section 373.323, F.S.

⁷ *Id.*

⁸ *Id.*

- A list of at least ten water wells that the applicant has constructed, repaired, or abandoned within the preceding five years. Of these wells, at least seven must have been constructed by the applicant. The list shall also include:
 - The name and address of the owner or owners of each well.
 - The location, primary use, and approximate depth and diameter of each well that the applicant has constructed, repaired, or abandoned.
 - The approximate date the construction, repair, or abandonment of each well was completed.⁹

The WMD must issue a water well contracting license to any applicant who:

- Receives a passing grade on the examination,
- Has paid the initial application fee,
- Takes and completes a minimum of 12 hours of approved coursework, and
- Has complied with the requirements listed above.

Once licensed, a water well contractor may install, repair and modify pumps and tanks in accordance with the Florida Building Code, Plumbing; Section 612—Wells pumps and tanks used for private potable water systems.¹⁰ Due to revisions to the Florida Building Code, Section 612 now refers to solar systems and Section 614 refers to water wells.¹¹ In addition, licensed water well contractors may install pumps, tanks, and water conditioning equipment for all water systems.¹²

Exemptions to these licensing requirements may be made if the WMD finds that compliance with all requirements would result in undue hardship.¹³ A WMD may grant an exemption to the extent necessary to ameliorate such undue hardship and to the extent such exemption can be granted without impairing the intent and purpose of water well regulations. Further, a person who is not licensed may construct a well if the well is two inches or under in diameter, on his or her own or leased property intended for use only in a single-family house which is his or her residence, or intended for use only for farming purposes on the person's farm, and when the waters are not intended for use by the public or any residence other than his or her own, and he or she complies with all local and state rules and regulations relating to the construction of water wells.¹⁴

Disciplinary Guidelines

The WMDs may adopt by rule disciplinary guidelines applicable to each specific ground for disciplinary action which may be imposed by the WMDs.¹⁵ A specific finding of mitigating or aggravating circumstances shall allow a WMD to impose a penalty other than that provided in

⁹ *Id.*

¹⁰ *Id.*

¹¹ 2023 Florida Building Code, Plumbing, Eight Edition, Sections 612 and 614, available at https://codes.iccsafe.org/content/FLPC2023P1/chapter-6-water-supply-and-distribution#FLPC2023P1_Ch06_Sec614.

¹² Section 373.323, F.S.

¹³ Section 373.326, F.S.

¹⁴ *Id.*

¹⁵ Section 373.333, F.S.

the guidelines. Disciplinary action may be taken by any WMD, regardless of where the contractor's license was issued.¹⁶

When a WMD has reasonable grounds for believing that there has been a violation of water well regulations or of any rule or regulation adopted pursuant thereto, it must give written notice to the alleged violator. The notice must be served in the manner required by law for the service of process upon a person in a civil action or by registered U.S. mail to the last known address of the alleged violator.

Notice alleging a violation of a rule setting minimum standards for the location, construction, repair, or abandonment of wells shall be accompanied by an order of the WMD requiring remedial action which, if taken within the time specified in the order, will effect compliance with the requirements of water well regulations and regulations issued pursuant thereto. Such order shall become final unless a request for a hearing is made within 30 days from the date of service of such order. Upon compliance, the WMD shall serve notice stating that compliance with the order has been achieved.¹⁷

Unlawful Acts

The statutes provide that, with respect to water well regulations, it is unlawful for any person to:

- Practice water well contracting without an active license.
- Construct, repair, or abandon a water well, or operate drilling equipment for such purpose, unless employed by or under the supervision of a licensed water well contractor or exempt.
- Give false or forged evidence to obtain a license.
- Present as his or her own the license of another.
- Use or attempt to use a license to practice water well contracting that has been suspended, revoked, or placed on inactive status.
- Engage in willful or repeated violation of water well regulations or of any DEP rule or regulation or WMD or state agency rule or regulation relating to water wells which endangers the public health, safety, and welfare.¹⁸

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Section 373.336, F.S.

Onsite Sewage Treatment 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.¹⁹ 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.²⁰



There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state’s population.²¹ In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.²² For example, in rural areas and low-density developments, central sewer systems are not cost-effective. In 2008, less than one percent of OSTDSs in Florida were actively managed under operating permits and maintenance agreements.²³ The remainder of systems are generally serviced only when they fail, often leading to costly repairs that could have been avoided with routine maintenance.²⁴

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.²⁵ This still leaves a significant amount of nitrogen to percolate into the groundwater, which makes nitrogen from OSTDSs a potential contaminant in groundwater.²⁶

¹⁹ 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 Jan. 9, 2024); EPA, *Types of Septic Systems*, <https://www.epa.gov/septic/types-septic-systems> (last visited Jan. 10, 2024) (showing the graphic provided in the analysis).

²⁰ *Id.*

²¹ 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 Jan. 10, 2024).

²² 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.

²³ *Id.*

²⁴ *Id.*

²⁵ 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).

²⁶ 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>.

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).²⁷ DEP publishes on its website approved products and resources on advanced systems.²⁸ Determining which advanced system is the best option can depend on site-specific conditions.

In 2020, the Clean Waterways Act provided for the transfer of the Onsite Sewage Program from the Department of Health (DOH) to DEP.²⁹ The Onsite Sewage Program will be transferred over a period of five years, and guidelines for the transfer are provided by an interagency agreement.³⁰ 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.³¹ The county departments of health still handle permitting and inspection of OSTDS.³² 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.³³

Variances

DEP is required by law to grant variances in hardship cases relating to OSTDSs under certain conditions.³⁴ DEP may grant variances in hardship cases which may be less restrictive than OSTDSs regulations specified in law.³⁵ A variance may not be granted until DEP is satisfied of the following:

- The hardship was not caused intentionally by the action of the applicant;
- A reasonable alternative, taking into consideration factors such as cost, does not exist for the treatment of the sewage; and
- The discharge from the OSTDS will not adversely affect the health of the applicant or the public or significantly degrade the groundwater or surface waters.³⁶

The law provides that where soil conditions, water table elevation, and setback provisions are determined by DEP to be satisfactory, special consideration must be given to those lots platted before 1972.³⁷

²⁷ 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>.

²⁸ DEP, *Onsite Sewage Program, Product Listings and Approval Requirements*, <https://floridadep.gov/water/onsite-sewage/content/product-listings-and-approval-requirements>.

²⁹ DEP, *Program Transfer*, <https://floridadep.gov/water/onsite-sewage/content/program-transfer> (last visited Jan. 10, 2024).

³⁰ 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>.

³¹ *Id.* at 14.

³² *Id.* at 11; and DEP, *Onsite Sewage Program*, <https://floridadep.gov/water/onsite-sewage> (last visited Jan. 10, 2024).

³³ 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.

³⁴ Section 381.0065(3), F.S.

³⁵ Section 381.0065(4), F.S.

³⁶ *Id.*

³⁷ *Id.*

DEP is required to appoint and staff a variance review and advisory committee, which meets monthly to recommend agency action on variance requests.³⁸ The committee makes its recommendations of variance requests at the meeting in which the application is scheduled for consideration, except for an extraordinary change in circumstances, the receipt of new information that raises new issues, or when the applicant requests an extension. The committee must consider the criteria listed above in its recommended agency action on variance requests and must also strive to allow property owners the full use of their land where possible.³⁹

The variance review and advisory committee consists of the following:

- The Secretary of Environmental Protection or his or her designee.
- A representative from the county health departments.
- A representative from the home building industry recommended by the Florida Home Builders Association.
- A representative from the septic tank industry recommended by the Florida Onsite Wastewater Association.
- A representative from the Department of Health.
- A representative from the real estate industry who is also a developer in Florida who develops lots using onsite sewage treatment and disposal systems, recommended by the Florida Association of Realtors.
- A representative from the engineering profession recommended by the Florida Engineering Society.⁴⁰

Members of the variance review and advisory committee shall be appointed for a three-year term, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members shall serve without remuneration, but if requested, shall be reimbursed for per diem and travel expenses.⁴¹

III. Effect of Proposed Changes:

Section 1 amends s. 373.323, F.S., to specify that an applicant is eligible to take the water well contractor licensure examination if he or she has at least two years of experience in constructing, repairing, or abandoning water wells specifically permitted in this state.

The bill amends the requirement that an applicant must show proof that he or she is eligible by providing a list of at least ten water wells he or she has constructed, repaired, or abandoned within the preceding five years by requiring those water wells to be permitted in this state.

The bill updates a reference to the Florida Building Code, Plumbing. It provides that water well contractors licensed under this section may install, repair, and modify pumps and tanks in accordance with the Florida Building Code, Plumbing; Section 614—Wells pumps and tanks used for private potable water systems.

³⁸ *Id.*; DEP, *Variances*, <https://floridadep.gov/water/onsite-sewage/content/variances> (last visited Jan. 13, 2024).

³⁹ Section 381.0065(4), F.S.

⁴⁰ *Id.*; DEP, *Variance Review and Advisory Committee for Onsite Sewage Treatment and Disposal Systems*, available at https://floridadep.gov/sites/default/files/OSTDSVarianceReviewAdvisoryCommittee-Members_0.pdf.

⁴¹ Section 381.0065(4), F.S.

Section 2 amends s. 373.333, F.S., to provide that the disciplinary guideline rules must be consistently applied by the water management districts (WMDs) or by an authority to whom a WMD has delegated enforcement powers.

The bill requires that if a written notice for an alleged violation of this part or any rule or regulation adopted pursuant hereto is served by mail, it must be certified U.S. mail. Current law requires registered U.S. mail.

The bill provides that an order of a WMD requiring remedial action is final unless a request for hearing is made within 30 days after the date of service of such order.

Section 3 amends s. 373.336, F.S., to provide that the listed unlawful acts are also unlawful for a business entity, as applicable. The bill adds that it is unlawful to advertise water well drilling or construction services if the business entity is not owned by a licensed water well contractor or does not employ a full-time water well contractor.

The bill provides that a person who violates this part or a regulation or an order issued hereunder commits a misdemeanor of the second degree. The bill deletes language providing that a person shall, upon conviction, be guilty of a misdemeanor of the second degree.

Section 4 amends s. 381.0065, F.S., to delete language requiring the Department of Environmental Protection to appoint and staff a variance review and advisory committee, which shall meet monthly to recommend agency action on variance requests. The bill removes provisions relating to the advisory committee. The bill also removes language providing that an engineer-designed performance-based treatment system may be used to meet the requirements of the variance review and advisory committee recommendations.

Section 5 provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

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 sections 373.323, 373.333, 373.336, 381.0065 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 Trumbull

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A bill to be entitled

An act relating to the regulation of water resources; amending s. 373.323, F.S.; revising the qualification requirements a person must meet in order to take the water well contractor license examination; updating the reference to the Florida Building Code standards that a licensed water well contractor's work must meet; amending s. 373.333, F.S.; authorizing certain authorities who have been delegated enforcement powers by water management districts to apply disciplinary guidelines adopted by the districts; requiring that certain notices be delivered by certified, rather than registered, mail; making technical changes; amending s. 373.336, F.S.; prohibiting a person or business entity from advertising water well drilling or construction services in specified circumstances; amending s. 381.0065, F.S.; deleting provisions relating to the variance review and advisory committee for onsite sewage treatment and disposal system permits; providing an effective date.

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

Section 1. Subsections (3) and (10) of section 373.323, Florida Statutes, are amended to read:

373.323 Licensure of water well contractors; application, qualifications, and examinations; equipment identification.—

(3) An applicant who meets all of the following requirements is eligible ~~shall be entitled~~ to take the water

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well contractor licensure examination:

(a) Is at least 18 years of age.

(b) Has at least 2 years of experience in constructing, repairing, or abandoning water wells permitted in this state.

The applicant must demonstrate satisfactory proof of such experience ~~shall be demonstrated~~ by providing:

1. Evidence of the length of time he or she ~~the applicant~~ has been engaged in the business of the construction, repair, or abandonment of water wells as a major activity, as attested to by a letter from a water well contractor or a letter from a water well inspector employed by a governmental agency.

2. A list of at least 10 water wells permitted in this state which he or she ~~that the applicant~~ has constructed, repaired, or abandoned within the preceding 5 years. Of these wells, at least seven must have been constructed, as defined in s. 373.303(2), by the applicant. The list must ~~shall~~ also include:

a. The name and address of the owner or owners of each well.

b. The location, primary use, and approximate depth and diameter of each well that the applicant has constructed, repaired, or abandoned.

c. The approximate date the construction, repair, or abandonment of each well was completed.

(c) Has completed the application form and remitted a nonrefundable application fee.

(10) Water well contractors licensed under this section may install, repair, and modify pumps and tanks in accordance with the Florida Building Code, Plumbing; Section 614-Wells ~~Section~~

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~~612-Wells~~ Pumps And Tanks Used For Private Potable Water Systems. In addition, licensed water well contractors may install pumps, tanks, and water conditioning equipment for all water systems.

Section 2. Subsections (1) and (3) of section 373.333, Florida Statutes, are amended to read:

373.333 Disciplinary guidelines; adoption and enforcement; license suspension or revocation.—

(1) The department shall adopt by rule disciplinary guidelines applicable to each specific ground for disciplinary action which may be imposed by the water management districts, providing each water management district and representatives of the water well contracting industry with meaningful opportunity to participate in the development of the disciplinary guideline rules as they are drafted. The disciplinary guidelines must ~~shall~~ be adopted by each water management district. The guideline rules must ~~shall~~ be consistently applied by the water management districts, or by an authority to whom a water management district has delegated enforcement powers, and must do all of the following ~~shall~~:

(a) Specify a meaningful range of designated penalties based upon the severity and repetition of specific offenses.

(b) Distinguish minor violations from those which endanger public health, safety, and welfare or contaminate the water resources.

(c) Inform the public of likely penalties which may be imposed for proscribed conduct.

A specific finding of mitigating or aggravating circumstances

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shall allow a water management district to impose a penalty other than that provided in the guidelines. Disciplinary action may be taken by any water management district, regardless of where the contractor's license was issued.

(3) Such notice must ~~shall~~ be served in the manner required by law for the service of process upon a person in a civil action or by certified ~~registered~~ United States mail to the last known address of the person. The water management district shall send copies of such notice only to persons who have specifically requested such notice or to entities with which the water management district has formally agreed to provide such notice. Notice alleging a violation of a rule setting minimum standards for the location, construction, repair, or abandonment of wells must ~~shall~~ be accompanied by an order of the water management district requiring remedial action which, if taken within the time specified in such order, will effect compliance with ~~the requirements of~~ this part and regulations issued hereunder. Such order ~~is shall become~~ final unless a request for hearing as provided in chapter 120 is made within 30 days after ~~from~~ the date of service of such order. Upon compliance, notice must ~~shall~~ be served by the water management district in a timely manner upon each person and entity who received notice of a violation, stating that compliance with the order has been achieved.

Section 3. Subsections (1) and (3) of section 373.336, Florida Statutes, are amended to read:

373.336 Unlawful acts; penalties.—

(1) It is unlawful for any person or business entity, as applicable, to do any of the following:

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(a) Practice water well contracting without an active license issued pursuant to this part.

(b) Construct, repair, or abandon a water well, or operate drilling equipment for such purpose, unless employed by or under the supervision of a licensed water well contractor or exempt under s. 373.326.

(c) Give false or forged evidence to obtain a license.

(d) Present as his or her own the license of another.

(e) Use or attempt to use a license to practice water well contracting which license has been suspended, revoked, or placed on inactive status.

(f) Engage in willful or repeated violation of this part or of any department rule or regulation or water management district or state agency rule or regulation relating to water wells which endangers the public health, safety, and welfare.

(g) Advertise water well drilling or construction services if the business entity is not owned by a licensed water well contractor or does not employ a full-time water well contractor.

(3) A ~~Any~~ person who violates ~~any provision of~~ this part or a regulation or an order issued hereunder commits ~~shall, upon conviction, be guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Continuing violation after an order or a conviction constitutes ~~shall constitute~~ a separate violation for each day so continued.

Section 4. Paragraphs (h) and (w) of subsection (4) of section 381.0065, Florida Statutes, are amended to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(4) PERMITS; INSTALLATION; CONDITIONS.—A person may not

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construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system without first obtaining a permit approved by the department. The department may issue permits to carry out this section, except that the issuance of a permit for work seaward of the coastal construction control line established under s. 161.053 shall be contingent upon receipt of any required coastal construction control line permit from the department. A construction permit is valid for 18 months after the date of issuance and may be extended by the department for one 90-day period under rules adopted by the department. A repair permit is valid for 90 days after the date of issuance. An operating permit must be obtained before the use of any aerobic treatment unit or if the establishment generates commercial waste. Buildings or establishments that use an aerobic treatment unit or generate commercial waste shall be inspected by the department at least annually to assure compliance with the terms of the operating permit. The operating permit for a commercial wastewater system is valid for 1 year after the date of issuance and must be renewed annually. The operating permit for an aerobic treatment unit is valid for 2 years after the date of issuance and must be renewed every 2 years. If all information pertaining to the siting, location, and installation conditions or repair of an onsite sewage treatment and disposal system remains the same, a construction or repair permit for the onsite sewage treatment and disposal system may be transferred to another person, if the transferee files, within 60 days after the transfer of ownership, an amended application providing all corrected information and proof of ownership of the property. A fee is not associated with

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the processing of this supplemental information. A person may not contract to construct, modify, alter, repair, service, abandon, or maintain any portion of an onsite sewage treatment and disposal system without being registered under part III of chapter 489. A property owner who personally performs construction, maintenance, or repairs to a system serving his or her own owner-occupied single-family residence is exempt from registration requirements for performing such construction, maintenance, or repairs on that residence, but is subject to all permitting requirements. A municipality or political subdivision of the state may not issue a building or plumbing permit for any building that requires the use of an onsite sewage treatment and disposal system unless the owner or builder has received a construction permit for such system from the department. A building or structure may not be occupied and a municipality, political subdivision, or any state or federal agency may not authorize occupancy until the department approves the final installation of the onsite sewage treatment and disposal system. A municipality or political subdivision of the state may not approve any change in occupancy or tenancy of a building that uses an onsite sewage treatment and disposal system until the department has reviewed the use of the system with the proposed change, approved the change, and amended the operating permit.

(h)~~1.~~ The department may grant variances in hardship cases which may be less restrictive than the provisions specified in this section. If a variance is granted and the onsite sewage treatment and disposal system construction permit has been issued, the variance may be transferred with the system construction permit, if the transferee files, within 60 days

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after the transfer of ownership, an amended construction permit application providing all corrected information and proof of ownership of the property and if the same variance would have been required for the new owner of the property as was originally granted to the original applicant for the variance. A fee is not associated with the processing of this supplemental information. A variance may not be granted under this section until the department is satisfied that:

1.a. The hardship was not caused intentionally by the action of the applicant;

2.b. A reasonable alternative, taking into consideration factors such as cost, does not exist for the treatment of the sewage; and

3.e. The discharge from the onsite sewage treatment and disposal system will not adversely affect the health of the applicant or the public or significantly degrade the groundwater or surface waters.

Where soil conditions, water table elevation, and setback provisions are determined by the department to be satisfactory, special consideration must be given to those lots platted before 1972.

~~2. The department shall appoint and staff a variance review and advisory committee, which shall meet monthly to recommend agency action on variance requests. The committee shall make its recommendations on variance requests at the meeting in which the application is scheduled for consideration, except for an extraordinary change in circumstances, the receipt of new information that raises new issues, or when the applicant~~

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~~requests an extension. The committee shall consider the criteria in subparagraph 1. in its recommended agency action on variance requests and shall also strive to allow property owners the full use of their land where possible. The committee consists of the following:~~

~~a. The Secretary of Environmental Protection or his or her designee.~~

~~b. A representative from the county health departments.~~

~~c. A representative from the home building industry recommended by the Florida Home Builders Association.~~

~~d. A representative from the septic tank industry recommended by the Florida Onsite Wastewater Association.~~

~~e. A representative from the Department of Health.~~

~~f. A representative from the real estate industry who is also a developer in this state who develops lots using onsite sewage treatment and disposal systems, recommended by the Florida Association of Realtors.~~

~~g. A representative from the engineering profession recommended by the Florida Engineering Society.~~

~~Members shall be appointed for a term of 3 years, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members shall serve without remuneration, but if requested, shall be reimbursed for per diem and travel expenses as provided in s. 112.061.~~

~~(w) A governmental entity, including a municipality, county, or statutorily created commission, may not require an engineer-designed performance-based treatment system, excluding a passive engineer-designed performance-based treatment system,~~

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before the completion of the Florida Onsite Sewage Nitrogen Reduction Strategies Project. This paragraph does not apply to a governmental entity, including a municipality, county, or statutorily created commission, which adopted a local law, ordinance, or regulation on or before January 31, 2012.

~~Notwithstanding this paragraph, an engineer-designed performance-based treatment system may be used to meet the requirements of the variance review and advisory committee recommendations.~~

Section 5. This act shall take effect July 1, 2024.

The Florida Senate
APPEARANCE RECORD

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1/17/24

Meeting Date

ENR

Committee

1136

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Ryan Matthews

Phone

870 577 9190

Address

301 S. Bruneigh St

Email

Ryan.Matthews@gray-robinson.com

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:

FGWA

☐

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 \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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1/17/24
Meeting Date

ENR
Committee

1136
Bill Number or Topic

Amendment Barcode (if applicable)

Name Trent Clark

Phone 850-209-4599

Address 1650 Hwy 69, Grand Ridge FL
Street

Email Clarks Well Drilling 38@gmail.com

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:

Clark's Well Drilling / FGWA

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

APPEARANCE RECORD

SD 1836

Bill Number or Topic

Meeting Date

Deliver both copies of this form to
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name

Phone

Address

Email

Street

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:

American Flood Coalition

☐

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)

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 1360

INTRODUCER: Senator Gruters

SUBJECT: Florida Red Tide Mitigation and Technology Development Initiative

DATE: January 16, 2024

REVISED: _____

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

I. Summary:

SB 1360 amends s. 379.2273, F.S., to:

- Extend the expiration date for the Florida Red Tide Mitigation and Technology Development Initiative from June 30, 2025 to June 30, 2027.
- Direct the initiative to develop field trials for red tide mitigation approaches and technologies.

When the initiative develops a field trial deployment technology, the initiative will submit a report with its findings to the Department of Environmental Protection (DEP). Within 30 days after receipt of the report, DEP must review the technology and approve, approve with conditions, or deny with explanation the use of the technology in state waters for certain red tide bloom concentrations. If DEP does not act in 30 days, the technology is deemed approved.

The bill appropriates \$2 million for fiscal year 2025-2026 and 2026-2027 from the General Revenue Fund to the Fish and Wildlife Conservation Commission for the purposes of the Florida Red Tide Mitigation and Technology Development Initiative.

II. Present Situation:

Red Tide

Algae are a diverse group of plant-like organisms that produce oxygen and form the base of aquatic food webs, and they range from microscopic, single-celled organisms to large seaweeds.¹ When algae reproduce or accumulate far beyond their normal levels for a specific geographic

¹ U.S. National Oceanic and Atmospheric Administration (NOAA), *What is a Harmful Algal Bloom?*, <https://www.noaa.gov/what-is-harmful-algal-bloom> (last visited Jan. 10, 2024); Florida Fish and Wildlife Conservation Commission (FWC), *What Is a Harmful Algal Bloom*, <https://myfwc.com/research/redtide/general/harmful-algal-bloom/> (last visited Jan. 10, 2024). Microscopic algae produce around half of the oxygen we breathe.

area, it is known as a bloom.² When blooms occur they can have harmful effects such as smothering other marine life or blocking the sun, producing dangerous toxins, and depleting oxygen levels as the algae decays.³ These events are known as harmful algal blooms.⁴ In the waters around Florida, particularly in the Gulf of Mexico, such high concentrations of algae occur that the water turns red or brown.⁵ These harmful algal blooms are known as “red tide,” and have been observed for centuries.⁶ In the Gulf of Mexico and around Florida, the species that causes most red tide is *Karenia brevis* (*K. brevis*).⁷

K. brevis is a single-celled algae that occurs in marine and estuarine waters in Florida.⁸ *K. brevis* is always present in low concentrations in the Gulf of Mexico with no apparent adverse effects.⁹ However, when it blooms, typically in the late summer or early fall, this species can cause large-scale harmful algal blooms.¹⁰ *K. brevis* produces neurotoxins called brevetoxins that can sicken or kill fish, seabirds, turtles, and marine mammals.¹¹ Wave action can break open *K. brevis* cells and release the brevetoxins into the air. With winds blowing onshore, this can lead to respiratory irritation in humans and potentially serious illness for people with severe or chronic respiratory conditions.¹² The red tide toxins can also accumulate in animals such as oysters and clams, which can lead to Neurotoxic Shellfish Poisoning in people who consume contaminated shellfish.¹³ Though this is less common, blooms of *K. brevis* can also contribute to fish kills by depleting the water of dissolved oxygen.¹⁴

K. brevis cannot tolerate low-salinity waters for very long, so while red tide is found in bays and estuaries, it is not found in freshwater systems such as lakes or rivers.¹⁵ The algae causing red tide is different from the cyanobacteria (often called “blue-green algae”) found in freshwater

² FWC, *What Is a Harmful Algal Bloom?*, <https://myfwc.com/research/redtide/general/harmful-algal-bloom/> (last visited Jan. 10, 2024).

³ *Id.*; NOAA, *What is a Harmful Algal Bloom?*, <https://www.noaa.gov/what-is-harmful-algal-bloom> (last visited Jan. 10, 2024).

⁴ Gulf of Mexico Alliance, *A Primer on Gulf of Mexico Harmful Algal Blooms*, 2-5 (2013), available at <https://myfwc.com/media/15902/habprimer.pdf> (last visited Jan. 11, 2024). The term “harmful algal bloom” is sometimes abbreviated as “HAB.”

⁵ FWC, *Red Tide FAQ*, <https://myfwc.com/research/redtide/faq/> (last visited Jan. 10, 2024).

⁶ *Id.*

⁷ *Id.*

⁸ FWC, *Karenia Brevis: Fact Sheet*, <https://myfwc.com/media/12422/karenia-brevis-factsheet.pdf> (last visited Jan. 10, 2024); Mote Marine Laboratory, *Phytoplankton Ecology*, <https://mote.org/research/program/phytoplankton-ecology> (last visited Jan. 10, 2024). *K. brevis* is a “phytoplankton” because it does photosynthesis like a plant.

⁹ R. H. Pierce and M. S. Henry, *Harmful Algal Toxins of the Florida Red Tide (Karenia brevis): Natural Chemical Stressors In South Florida Coastal Ecosystems*, ECOTOXICOLOGY, vol. 17, 7 (2008): 623-631, 2 (2008), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2683401/pdf/nihms101414.pdf> (last visited Jan. 10, 2024).

¹⁰ FWC, *Karenia Brevis: Fact Sheet*, <https://myfwc.com/media/12422/karenia-brevis-factsheet.pdf> (last visited Jan. 10, 2024); FWC, *Red Tide Current Status*, <https://myfwc.com/research/redtide/statewide/> (last visited Jan. 10, 2024). FWC reports the current status of red tide using the concentration of *K. brevis* cells per liter of water.

¹¹ FWC, *Karenia Brevis: Fact Sheet*, <https://myfwc.com/media/12422/karenia-brevis-factsheet.pdf> (last visited Jan. 10, 2024).

¹² Mote Marine Laboratory, *Florida Red Tide FAQ's*, <https://mote.org/news/florida-red-tide> (last visited Jan. 10, 2024).

¹³ FWC, *Karenia Brevis: Fact Sheet*, <https://myfwc.com/media/12422/karenia-brevis-factsheet.pdf> (last visited Jan. 10, 2024).

¹⁴ *Id.*

¹⁵ FWC, *Red Tide FAQ*, <https://myfwc.com/research/redtide/faq/> (last visited Jan. 10, 2024).

systems such as Lake Okeechobee.¹⁶ Cyanobacteria is found in lakes, rivers, and estuaries, and it too is toxic and harmful.¹⁷

There is no demonstrated direct link between nutrient pollution and *K. brevis* red tide formation or frequency, and red tide has been observed since before Florida's coastlines were heavily developed.¹⁸ However, once red tides are transported to shore, they are capable of using human-caused nutrient pollution for their growth.¹⁹ Currently, there is no practical and acceptable way to control or kill red tide blooms.²⁰ Harmful algal blooms can result in significant costs associated with public health, commercial fishery reduction, decreases in recreation and tourism, and management and monitoring.²¹

Fish and Wildlife Research Institute

The Fish and Wildlife Conservation Commission (FWC) derives its authority from the State Constitution and chapter 379 of the Florida Statutes.²² The FWC is authorized to exercise regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life, and in these areas the FWC's staff is authorized to conduct management, research, and enforcement.²³ The Fish and Wildlife Research Institute (Institute) is the principal unit for research services within the FWC.²⁴

The FWC assigns to the Institute all of the following responsibilities and functions:

- Serve as the primary source of research and technical information and expertise on the status of marine life, freshwater aquatic life, and wild animal life resources in this state.
- Monitor the status and health of marine life, freshwater aquatic life, and wild animal life species and their habitat.
- Develop restoration and management techniques for habitat and enhancement of plant and animal populations.
- Respond to and provide critical technical support for catastrophes including oil spills, ship groundings, major species die-offs, hazardous spills, and natural disasters.
- Identify and monitor harmful algal blooms including red tides, evaluate their impacts, and provide technical support concerning state and local public health concerns.
- Provide state and local governments with technical information and research results concerning fish and wild animal life.²⁵

¹⁶ *Id.*

¹⁷ FWC, *Cyanobacteria in Florida's Waters*, <https://myfwc.com/research/redtide/general/cyanobacteria/> (last visited Jan. 10, 2024); U.S. EPA, *Harmful Algal Blooms & Cyanobacteria Research*, <https://www.epa.gov/water-research/harmful-algal-blooms-cyanobacteria-research> (last visited Jan. 10, 2024). Although they are often called "blue-green algae" and exhibit characteristics of algae, cyanobacteria are classified as bacteria.

¹⁸ Mote Marine Laboratory, *Florida Red Tide FAQ's*, <https://mote.org/news/florida-red-tide> (last visited Jan. 10, 2024).

¹⁹ *Id.*

²⁰ FWC, *Red Tide FAQ*, <https://myfwc.com/research/redtide/faq/> (last visited Jan. 10, 2024).

²¹ *Id.*

²² FLA. CONST. art. IV, s. 9., s. 9; see chapter 379, F.S.; see also s. 20.331, F.S.

²³ FLA. CONST. art. IV, s. 9.

²⁴ Section 20.331(4)(b), F.S.; FWC, *Fish and Wildlife Research Institute*, <https://myfwc.com/about/inside-fwc/fwri/> (last visited Jan. 10, 2024).

²⁵ Section 20.331(7)(a), F.S.

The Harmful Algal Bloom Task Force, whose members are appointed by the Institute, was created for the purpose of determining research, monitoring, control, and mitigation strategies for red tide and other harmful algal blooms in Florida waters.²⁶ The task force develops priorities and strategies for mitigation and control of harmful algal blooms and is tasked with making recommendations to the Institute regarding harmful algal blooms.²⁷ The Legislature also requires the Institute to implement a program designed to improve understanding and allow for early detection of harmful algal blooms, including red tide, to facilitate accurate predictions and successful efforts to control and mitigate the effects of harmful algal blooms.²⁸

The Institute provides many services and resources pertaining to red tide. It regularly publishes detailed information on the status of red tide in the state.²⁹ The Institute's teams of experts conduct cutting-edge ecological research and analysis on the organisms in Florida's waters, advancing the collective understanding of red tide and its impacts on the state.³⁰ The FWC scientists combine field sampling with tools maintained by state and federal partners to track red tide and its effects.³¹ Through its webpages on the FWC's website, the Institute provides comprehensive information and resources to the public relating to red tide.³² This includes resources for learning what causes red tide, tools for tracking red tide, and information for reporting on red tide and its effects.³³

Mote Marine Laboratory

Mote Marine Laboratory is a Florida nonprofit organization that was founded in 1955.³⁴ Mote Marine Laboratory's focus is the advancement of marine and environmental sciences through scientific research, education and public outreach, leading to new discoveries, revitalization and sustainability of the oceans and greater public understanding of marine resources.³⁵

The nonprofit organization is funded through federal, state, and local grants and through individual donors and foundations.³⁶ The FWC is authorized to expend certain money through grants and contracts to fund research with the Mote Marine Laboratory.³⁷ The proceeds of the annual use fee for the "Protect Our Reefs" license plates are distributed to the Mote Marine Laboratory.³⁸

²⁶ Section 379.2271(1), F.S.

²⁷ Section 379.2271, F.S.

²⁸ Section 379.2272, (1)(a), F.S.

²⁹ FWC, *Red Tide Current Status*, <https://myfwc.com/research/redtide/statewide/> (last visited Jan. 10, 2024).

³⁰ FWC, *Labs and People: About*, <https://myfwc.com/research/redtide/labs-people/about/> (last visited Jan. 10, 2024).

³¹ FWC, *Tools for Tracking Red Tides*, <https://myfwc.com/research/redtide/tools/> (last visited Jan. 10, 2024).

³² FWC, *Research: Red Tide*, <https://myfwc.com/research/redtide/> (last visited Jan. 10, 2024).

³³ FWC, *Red Tide-Related Hotlines and Information Sources*, <https://myfwc.com/research/redtide/contact/> (last visited Jan. 10, 2024).

³⁴ Mote Marine Laboratory, *Beyond 2020 Vision and Strategic Plan*, 26, available at https://mote.org/media/uploads/files/StratPlan3.0_ffw.pdf (last visited Jan. 10, 2024).

³⁵ Mote Marine Laboratory, *Beyond 2020 Vision and Strategic Plan*, 15, available at https://mote.org/media/uploads/files/StratPlan3.0_ffw.pdf (last visited Jan. 10, 2024).

³⁶ Mote Marine Laboratory, *Mote Marine Laboratory and Aquarium*, <https://mote.org/locations/details/mote-marine-laboratory-aquarium> (last visited Jan. 10, 2024).

³⁷ Section 379.2202, F.S.; Section 379.2201(1)(c), F.S. The section authorizes money from saltwater license and permit fees to be used for marine research and management; see s. 379.354, F.S.

³⁸ Section 320.08058(38), F.S.

Since early on in its development, the Mote Marine Laboratory has been conducting research on red tide.³⁹ Its experts are conducting research on red tide with the goal of understanding how the blooms form, how they dissipate into the environment, and what effects it has on humans and marine animals.⁴⁰ The Mote Marine Laboratory monitors red tide by taking samples, including with the use of technology such as detectors specially developed by the laboratory and autonomous underwater vehicles, providing continuous data that is communicated back to the laboratory for analysis.⁴¹ The laboratory's Beach Conditions Report provides detailed information on the conditions at a number of Florida beaches.⁴² Several of the laboratory's research programs cover areas of science related to red tide, such as the effects of toxins on aquatic organisms, the environmental health aspects of airborne toxins in coastal areas, and phytoplankton ecology.⁴³

Florida Red Tide Mitigation and Technology Development Initiative

The Florida Red Tide Mitigation & Technology Development Initiative is a partnership between Mote Marine Laboratory (Mote) and the Institute codified in s. 379.2273, F.S., that establishes an independent and coordinated effort among public and private research entities to develop prevention, control and mitigation technologies and approaches that will decrease the impacts of Florida red tide on the environment, economy and quality of life in Florida. The state has appropriated \$3 million annually for Mote to secure additional private and federal funding in order to:

- Bring together the best and brightest scientists from Florida and around the world;
- Utilize innovative approaches and technologies to determine the most effective and ecologically sound methods for mitigating adverse impacts from red tide;
- Test technologies with combinations of lab-based, large-scale mesocosm and pilot-scale field studies ultimately leading to permitting for large-scale field testing and application;
- Develop novel detection systems to support public red tide forecasting, emergency response, and implementation of control strategies;
- Enhance public health protection with expansion of the Beach Conditions Reporting System (visitbeaches.org), local community outreach and engagement; and
- Develop new technologies for smartphone apps to engage citizen science information collaborations and commercial fisherman reporting of red tide toxin concentrations.⁴⁴

The initiative is required to submit an annual report that contains an overview of its accomplishments to date and priorities for subsequent years to the Governor and Legislature.⁴⁵ According to its January 2023 report, to date, Mote has examined over 200 chemicals and

³⁹ Kumar Mahadevan, Mote Marine Laboratory, *Exploring the Secrets of the Sea Since 1955*, 3 (Nov. 19, 2010) available at <https://mote.org/media/uploads/files/MoteMarineLaboratory-history.pdf> (last visited Jan. 10, 2024).

⁴⁰ Mote Marine Laboratory, *Red Tide Research*, <https://mote.org/news/red-tide-research> (last visited Jan. 10, 2024).

⁴¹ *Id.*

⁴² Mote Marine Laboratory, Sarasota Operations Coastal Oceans Observation Lab, *Beach Conditions Reporting System*, <https://visitbeaches.org/#> (last visited Jan. 10, 2024).

⁴³ Mote Marine Laboratory, *Red Tide Research*, <https://mote.org/news/red-tide-research> (last visited Jan. 10, 2024).

⁴⁴ Florida Red Tide Mitigation and Technology Development Initiative, *Accomplishments and priorities report*, 2 (Jan. 2023) available at https://mote.org/media/uploads/files/RedTideInitiative_AccomplishmentsPrioritiesReport2022_ffw.pdf.

⁴⁵ Section 379.2273, F.S.

compounds and more than 30 projects have been completed or are underway.⁴⁶ Most of these projects focused on natural, manmade and technological mitigation techniques. A few projects are also dedicated to the development of red tide public communication and monitoring technologies specifically aimed at decreasing impacts of red tide. Such projects include updating the Programmable Hyperspectral Seawater Scanner, in-situ biosensor for detecting brevetoxins for use by shellfish farmers, cost/benefit analysis of removing red tide impacted dead fish and utilization as a fertilizer, unmanned aerial system for near-shore red tide reporting, updating the Beach Condition Reporting System (now with more than 50 reporting locations), and developing citizen science tools for red tide detection using a smartphone.⁴⁷

From the hundreds of mitigation tools and technologies that the initiative examined over the past 3 years and the more than 30 projects completed or underway, below are the most promising mitigation tools and technologies at reducing *K. brevis* cells and toxins:

- Six algicidal compounds from natural macroalgae;
- Ozonation, cavitation, oxidation water treatment process;
- Controlled release oxidant pellets;
- Nanotechnology enabled products;
- UV-C radiation from LEDs;
- Quaternary Ammonium Compounds;
- Clay or flocculant combined with an algaecide compound;
- Existing products with similar proven/approved uses such as Microbe-lift, Xtreme, and De-Oil-It.

The initiative's next steps include mesocosms/raceways,⁴⁸ regulatory approvals and field testing, public engagement, and commercialization. As part of commercialization of its approaches to red tide mitigation, Mote is coordinating with state and federal agencies to examine existing water and pesticide regulatory and licensing frameworks for field red tide mitigation testing and implementation during future bloom events. Mote has also hosted workshops addressing project status, regulatory requirements, deployment technologies, scalability, intellectual property rights, and how to effectively bring these science-based tools and technologies to the marketplace.⁴⁹

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 379.2273, F.S., to:

- Extend the expiration date for the Florida Red Tide Mitigation and Technology Development Initiative from June 30, 2025 to June 30, 2027.
- Direct the initiative to develop field trials for red tide mitigation approaches and technologies.

⁴⁶ Florida Red Tide Mitigation and Technology Development Initiative, *Accomplishments and priorities report*, 5 (Jan. 2023) available at https://mote.org/media/uploads/files/RedTideInitiative_AccomplishmentsPrioritiesReport2022_ffw.pdf.

⁴⁷ *Id.*

⁴⁸ A mesocosm is any outdoor experimental system that examines the natural environment under controlled conditions. A raceway, also known as a flow-through system, is an artificial channel used in aquaculture to culture aquatic organisms.

⁴⁹ Florida Red Tide Mitigation and Technology Development Initiative, *Accomplishments and priorities report*, 6 (Jan. 2023) available at https://mote.org/media/uploads/files/RedTideInitiative_AccomplishmentsPrioritiesReport2022_ffw.pdf.

Specifically, the bill states that upon successful completion of science-based laboratory testing of prevention, control, and mitigation approaches and technologies, the initiative shall develop field trial deployment technologies for the approaches and technologies. When the initiative develops a field trial deployment technology, the initiative shall submit a report with its findings to the Department of Environmental Protection (DEP). Within 30 business days after receipt of the report, DEP shall review the technology and approve, approve with conditions, or deny with explanation the use of the technology in state waters exhibiting red tide bloom concentrations of greater than 10,000 cells per liter. If DEP fails to approve, approve with conditions, or deny with explanation a field trial deployment technology within 30 business days after receipt of the report, the technology shall be deemed approved for use in state waters exhibiting red tide bloom concentrations of greater than 10,000 cells per liter.

Section 2 of the bill appropriates \$2 million for fiscal year 2025-2026 and 2026-2027 from the General Revenue Fund to the Fish and Wildlife Conservation Commission for the purposes of the Florida Red Tide Mitigation and Technology Development Initiative.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides for an additional \$4 million for Florida Red Tide Mitigation and Technology Development Initiative which is a partnership between the Fish and Wildlife Research Institute within the commission and Mote Marine Laboratory.

C. Government Sector Impact:

The Florida Red Tide Mitigation and Technology Development Initiative currently has an annual appropriation of \$3 million in the base budget. The language in the bill would create an additional appropriation of \$2 million annually for two more years.

VI. Technical Deficiencies:

The reference on line 49 should be s. 379.223, F.S., not s. 329.2273, F.S.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 379.2273 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 Gruters

22-01157A-24

20241360__

A bill to be entitled
An act relating to the Florida Red Tide Mitigation and
Technology Development Initiative; amending s.
379.2273, F.S.; requiring the initiative to develop
certain deployment technologies and submit a report on
the technologies to the Department of Environmental
Protection; requiring the department to make certain
determinations regarding the technologies within a
specified time period; providing that the technologies
are deemed approved for use in specified state waters
under certain circumstances; extending the expiration
date of the initiative; providing appropriations;
providing an effective date.

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

Section 1. Present paragraphs (c) and (d) of subsection (2)
of section 379.2273, Florida Statutes, are redesignated as
paragraphs (d) and (e), respectively, a new paragraph (c) is
added to that subsection, and subsection (4) of that section is
amended, to read:

379.2273 Florida Red Tide Mitigation and Technology
Development Initiative; Initiative Technology Advisory Council.—

(2) The Florida Red Tide Mitigation and Technology
Development Initiative is established as a partnership between
the Fish and Wildlife Research Institute within the commission
and Mote Marine Laboratory.

(c) Upon successful completion of science-based laboratory
testing of prevention, control, and mitigation approaches and

22-01157A-24

20241360__

30 technologies, the initiative shall develop field trial
31 deployment technologies for the approaches and technologies.
32 When the initiative develops a field trial deployment
33 technology, the initiative shall submit a report with its
34 findings to the department. Within 30 business days after
35 receipt of the report, the department shall review the
36 technology and approve, approve with conditions, or deny with
37 explanation the use of the technology in state waters exhibiting
38 red tide bloom concentrations of greater than 10,000 cells per
39 liter. If the department fails to approve, approve with
40 conditions, or deny with explanation a field trial deployment
41 technology within 30 business days after receipt of the report,
42 the technology shall be deemed approved for use in state waters
43 exhibiting red tide bloom concentrations of greater than 10,000
44 cells per liter.

45 (4) This section expires June 30, 2027 ~~2025~~.

46 Section 2. For the 2025-2026 fiscal year and the 2026-2027
47 fiscal year, the sum of \$2 million is appropriated from the
48 General Revenue Fund to the Fish and Wildlife Conservation
49 Commission for the purpose of implementing s. 329.2273, Florida
50 Statutes.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1386

INTRODUCER: Senator Calatayud

SUBJECT: Department of Environmental Protection

DATE: January 16, 2024

REVISED: _____

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

I. Summary:

SB 1386 amends provisions relating to aquatic preserves, resilience, onsite sewage treatment and disposal systems (OSTDSs, otherwise known as septic systems), and wastewater treatment facilities.

The bill provides that a representative of the Department of Environmental Protection (DEP) may at any reasonable time enter and inspect any property, except a building which is used exclusively for a private residence, that has an OSTDS to ascertain compliance with applicable law, rules, and regulations. Under current law, DEP personnel must have reason to believe noncompliance exists and must first obtain permission from the owner or occupant of a residence of private building to secure an inspection warrant.

The bill requires all applicants for permits to construct and operate a domestic wastewater treatment facility to prepare a reuse feasibility study. Domestic treatment facilities that dispose of effluent by certain means must implement reuse to the extent feasible and consider the ecological or public water supply benefits afforded by any disposal.

The bill makes revisions to facilitate the transfer of the OSTDS program including:

- Creating new procedures for DEP regarding the processing and enforcement of septic tank requirements.
- Directing DEP to adopt rules for a general permit for projects which have, individually or cumulatively, a minimal adverse impact on public health or the environment.
- Directing DEP to establish an enhanced nutrient-reducing OSTDS approval program.

Regarding domestic wastewater treatment facilities and wastewater treatment plans, the bill:

- Requires certain public and private facilities to participate in developing the domestic wastewater treatment plan including providing certain information to the applicable local government.

- Requires certain wastewater treatment facilities that provide reclaimed water within a basin management action plan or reasonable assurance plan area to meet advanced waste treatment standards.

Regarding reclaimed water, the bill:

- Directs the water management districts and DEP to develop rules to promote reclaimed water and encourage potable water offsets that produce significant water savings.
- Authorizes extended permits for those applicants or permittees that propose a development or water resource development project using reclaimed water.

Regarding the Resilient Florida Grant Program, the bill:

- Authorizes DEP to provide grants to counties or municipalities to fund:
 - An update of their inventory of critical assets, including those that are currently or reasonably expected to be impacted by flooding and sea level rise;
 - Development of strategies to enhance community preparations for threats from flooding and sea level rise, including adaptation plans; and
 - Permitting for projects designed to achieve reductions in the risks or impacts of flooding and sea level rise using nature-based solutions.
- Requires vulnerability assessments to use data from the Florida Flood Hub that is certified by the Chief Resilience Officer.
- Requires certain data and planning horizons to be used in the assessment.

The bill requires the Comprehensive Statewide Flood Vulnerability and Sea Level Rise Data Set and Assessment to include the 20- and 50-year projected sea level rise at each active NOAA tidal gauge off the Florida coast as derived from statewide sea level rise projections.

Regarding the Statewide Flooding and Sea Level Rise Resilience Plan, the bill:

- Authorizes the plan to include projects not yet identified in the comprehensive statewide flood vulnerability and sea level rise assessment at DEP and the Chief Resilience Officer's discretion.
- Expands the types of projects can be submitted by local or regional entities.

Regarding aquatic preserves, the bill:

- Provides that it is a noncriminal infraction to operate a vessel outside a lawfully marked channel in a careless manner that causes seagrass scarring within the Nature Coast Aquatic Preserve.
- Declares the Kristin Jacobs Coral Reef Ecosystem Conservation Area to be an aquatic preserve.

II. Present Situation:

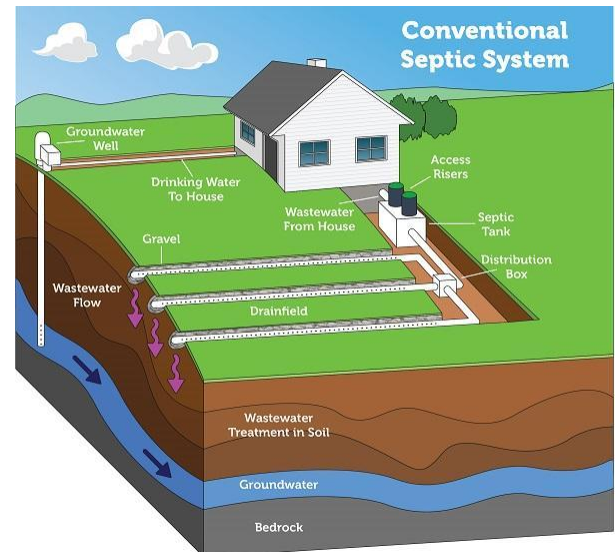
Water Quality and Nutrients

Nutrient pollution and the excessive accumulation of nitrogen and phosphorus in water is one of the most widespread, costly, and challenging environmental problems.¹ In Florida, 35 percent of waterbodies are impaired for nutrients and 87 percent of counties have nutrient impaired waters within their boundaries.²

Phosphorus and nitrogen are derived from natural and human-made sources.³ 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.⁴

Onsite Sewage Treatment 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.⁵ 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.⁶



Please note: Septic systems vary. Diagram is not to scale.

There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state’s population.⁷ In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install

¹ U.S. Environmental Protection Agency (EPA), *Nutrient Pollution: The Problem*, <https://www.epa.gov/nutrientpollution/problem> (last visited Jan. 10, 2024).

² DEP, *Rulemaking Update: Stormwater | Chapter 62-330, F.A.C., Environmental Resource Permitting*, 2 (2023), (on file with the Senate Committee on Environment and Natural Resources).

³ *Id.*

⁴ U.S. Environmental Protection Agency (EPA), *Sources and Solutions*, <https://www.epa.gov/nutrientpollution/sources-and-solutions> (last visited Jan. 10, 2024).

⁵ 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 Jan. 9, 2024); EPA, *Types of Septic Systems*, <https://www.epa.gov/septic/types-septic-systems> (last visited Jan. 10, 2024) (showing the graphic provided in the analysis).

⁶ *Id.*

⁷ DEP, *Onsite Sewage Program*, <https://floridadep.gov/water/onsite-sewage#:~:text=Onsite%20sewage%20treatment%20and%20disposal%20systems%20%28OSTDS%29%2C%20commonly,r%20represents%2012%25%20of%20the%20United%20States%20E2%80%99%20septic%20systems> (last visited Jan. 10, 2024).

central sewer systems.⁸ For example, in rural areas and low-density developments, central sewer systems are not cost-effective.⁹

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.¹⁰ This still leaves a significant amount of nitrogen to percolate into the groundwater, which makes nitrogen from OSTDSs a potential contaminant in groundwater.¹¹

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).¹² DEP publishes on its website approved products and resources on advanced systems.¹³ Determining which advanced system is the best option can depend on site-specific conditions.

In 2023, the Florida Legislature passed a law requiring enhanced nutrient-reducing OSTDSs in places where waterbodies do not meet water quality standards and there is a plan in place, such as a basin management action plan (BMAP) or alternative restoration plan, to address water quality issues.¹⁴ Enhanced nutrient-reducing OSTDSs are required for new systems on lots of one acre or less within all BMAP areas, reasonable assurance plan areas, and pollution reduction plan areas when sewer is not available.¹⁵ Within the Banana River Lagoon BMAP, the Central Indian River Lagoon BMAP, the North Indian River Lagoon BMAP, and the Mosquito Lagoon reasonable assurance plan area, all new OSTDSs are prohibited unless central sewerage is not available, in which case only enhanced nutrient-reducing OSTDSs are authorized.¹⁶

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.¹⁷ Owners of an OSTDS in need of repair or modification must connect within 90 days of notification from DEP.¹⁸

⁸ 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.

⁹ *Id.*

¹⁰ 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).

¹¹ 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/files/SS/SS55000.pdf>.

¹² 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.

¹³ DEP, *Onsite Sewage Program, Product Listings and Approval Requirements*, <https://floridadep.gov/water/onsite-sewage/content/product-listings-and-approval-requirements>.

¹⁴ DEP, *Permitting of Enhanced Nutrient Reducing Onsite Sewage Treatment and Disposal Systems*, <https://floridadep.gov/water/onsite-sewage/content/permitting-enhanced-nutrient-reducing-onsite-sewage-treatment-and> (last visited Jan. 11, 2024); No. 2023-169, Laws of Fla.; Sections 373.811 and 403.067(7)(a)10., F.S.

¹⁵ Section 403.067(7)(a)10., F.S.

¹⁶ Section 373.469, F.S.

¹⁷ Section 381.00655, F.S.

¹⁸ *Id.*

In 2020, the Clean Waterways Act provided for the transfer of the Onsite Sewage Program from the Department of Health (DOH) to DEP.¹⁹ The Onsite Sewage Program will be transferred over a period of five years, and guidelines for the transfer are provided by an interagency agreement.²⁰ 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.²¹ The county departments of health still handle permitting and inspection of OSTDS.²² In the event of an alleged violation of OSTDS laws, county departments of health are responsible for conducting an inspection to gather information regarding the allegations.²³

In 2008, less than one percent of OSTDSs in Florida were actively managed under operating permits and maintenance agreements.²⁴ The remainder of systems are generally serviced only when they fail, often leading to costly repairs that could have been avoided with routine maintenance.²⁵ Current law directs DEP to administer permits, site evaluations, and inspections associated with the construction, installation, maintenance, modification, abandonment, operation, use, or repair of an OSTDS.²⁶ Although this statutory authority is broad, inspections for traditional OSTDS generally occur during OSTDS construction, repair, or abandonment.²⁷ Buildings that use an aerobic treatment unit or generate commercial waste must be inspected by DEP at least annually to assure compliance with the operating permit.²⁸

Under s. 381.0065(5), F.S., DEP personnel who have reason to believe noncompliance exists, may at any reasonable time, enter a premises with an OSTDS permit or the business premises of any septic tank contractor to ascertain compliance with applicable statutes and rule. The term “premises” does not include a residence or private building. To gain entry to a residence or private building, DEP must obtain permission from the owner or occupant or secure an inspection warrant from a court of competent jurisdiction. DEP may issue citations that may contain an order of correction or an order to pay a fine, or both when a violation of applicable laws or rules is enforceable by an administrative, civil remedy, or is a misdemeanor of the second degree.²⁹ The fines imposed by citation may not exceed \$500 per violation. Each day the violation exists constitutes a separate violation.³⁰ The department may reduce or waive the fine imposed by the citation. Fines are deposited into the county health department trust fund.³¹

¹⁹ DEP, *Program Transfer*, <https://floridadep.gov/water/onsite-sewage/content/program-transfer> (last visited Jan. 10, 2024).

²⁰ 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>.

²¹ *Id.* at 14.

²² *Id.* at 11; and DEP, *Onsite Sewage Program*, <https://floridadep.gov/water/onsite-sewage> (last visited Jan. 10, 2024).

²³ 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.

²⁴ 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>.

²⁵ *Id.*

²⁶ Section 381.0065(3)(b); Fla. Admin. Code 62-6.003.

²⁷ See Fla. Admin. Code 62-6.003, 62-6.011.

²⁸ Section 381.0065(4), F.S.

²⁹ Section 381.0065(5), F.S.

³⁰ *Id.*

³¹ *Id.*

DEP is also required by law to make rules relating to the location of OSTDSs, including establishing setback distances, to prevent groundwater contamination and surface water contamination and to preserve the public health. The rules must consider:

- Conventional and enhanced nutrient-reducing onsite sewage treatment and disposal system designs,
- Impaired or degraded water bodies,
- Domestic wastewater and drinking water infrastructure,
- Potable water sources,
- Nonpotable wells,
- Stormwater infrastructure,
- The onsite sewage treatment and disposal system remediation plans developed for purposes of a BMAP,
- Nutrient pollution, and
- The recommendations of the onsite sewage treatment and disposal systems technical advisory committee established pursuant to former s. 381.00652, F.S.³²

The rules are required to allow a variance from a rule requirement upon demonstration that the requirement would cause an undue hardship and granting the variance would not cause or contribute to the exceedance of a total maximum daily load.³³ DEP updated Chapter 62-6 of the Florida Administrative Code in 2022 to address these requirements.

A county or municipality that contains a first magnitude spring must, and any county or municipality that does not contain a first magnitude spring may, develop and adopt by local ordinance an OSTDS evaluation and assessment program meeting the requirements of state law.³⁴ If adopted, the OSTDS evaluation and assessment program requires that each OSTDS within all or part of the county's or municipality's jurisdiction be evaluated once every five years to assess the fundamental operational condition of the system and to identify system failures.

³² Section 381.0065(4)(e), F.S.

³³ *Id.*

³⁴ Section 381.00651(2), F.S. There are exceptions. If a county or municipality that contains a first magnitude spring has already adopted an OSTDS evaluation and assessment program, and it meets the grandfathering provisions of the statute, it is exempt from the requirement. The governing body of a local government can also choose to opt out of the requirement by adopting a resolution by a 60 percent vote that indicates an intent to not adopt an OSTDS evaluation and assessment program.

The following table includes administrative and judicial remedies available pursuant to part I of ch. 403 for violations of OSTDSs regulations, part I of ch. 386, relating to sanitary nuisances involving OSTDSs, or part III of ch. 489.

Statute	Administrative Remedies	Judicial Remedies
Part I, ch. 403, F.S.	<ul style="list-style-type: none"> • Institute an administrative proceeding to establish liability and recover damages for any injury to air, waters, or property of the state caused by any violation; the department may order the violator to pay damages to the state. • Institute an administrative proceeding to order the prevention, abatement, or control of the conditions creating the violation or other appropriate corrective action. Except for violations involving hazardous wastes, asbestos, or underground injection, the department shall proceed administratively when penalties sought do not exceed \$50,000 per assessment. • Institute an administrative proceeding by serving a written notice of violation upon the alleged violator by certified mail. • In any administrative proceeding brought by the department, the prevailing party shall recover all costs as provided by law. • For a drinking water contamination violation, a penalty of \$3,000 for a maximum containment level violation; plus \$1,500 if the violation is for a primary inorganic, organic, or radiological maximum contaminant level or it is a fecal coliform bacteria violation. • For failure to obtain a required wastewater permit, other than a permit required for surface water discharge, a penalty of \$2,000. • For failure to install, maintain, or use a required pollution control system or device, \$6,000. • For failure to obtain a required permit before construction or modification, \$4,500. • For failure to conduct required monitoring or testing; failure to conduct required release detection; or failure to construct in compliance with a permit, \$3,000.³⁵ 	<ul style="list-style-type: none"> • Institute a civil action in a court of competent jurisdiction to establish liability and to recover damages for any injury to the air, waters, or property, including animal, plant and aquatic life, of the state caused by any violation. • Institute a civil action in a court of competent jurisdiction to impose and to recover a civil penalty for each violation in an amount of not more than \$15,000 per offense.³⁶ • Institute a civil action in a court of competent jurisdiction to seek injunctive relief.³⁷

³⁵ Section 403.121, F.S.

³⁶ *Id.*

³⁷ Section 403.131, F.S.

Part I, ch. 386, F.S.	<ul style="list-style-type: none"> • Undertake required correctional procedures regarding sanitary nuisances, the cost or expense of which must be paid by the person(s) committing, creating, keeping, or maintaining such nuisance; institute a civil action if the cost and expense is not paid within 10 days of removal. • Institute administrative proceedings authorized pursuant to s. 381.0061, F.S., (DEP may impose a fine, which may not exceed \$500 for each violation of regulations relating to OSTDSs, septic tank contracting, and sanitary nuisances).³⁸ 	<ul style="list-style-type: none"> • Institute criminal proceedings in the county court in the jurisdiction of which the condition exists against all persons failing to comply with notices to correct sanitary nuisance conditions. • Institute legal proceedings authorized pursuant to s. 381.0012, F.S., (DEP may apply for an injunction in the proper circuit court; DEP may receive a warrant from a trial court judge to carry out the purpose and intent of ch. 381, F.S., relating to public health).³⁹
Part III, ch. 489, F.S.	<ul style="list-style-type: none"> • Revoke or suspend a certificate of registration for certain violations.⁴⁰ • Deny a registration if the department determines that an applicant does not meet all requirements of this part or has violated any provisions of this part.⁴¹ 	<ul style="list-style-type: none"> • None.

Impaired Waters

Under section 303(d) of the federal Clean Water Act, states must establish water quality standards for waters within their borders and develop a list of impaired waters that do not meet the established water quality standards.⁴² States must also develop a list of threatened waters that may not meet water quality standards in the following reporting cycle.⁴³

DEP sorted those waters into 29 major watersheds, or basins, and further organized them into five basin groups for assessment purposes.⁴⁴ If DEP determines that any waters are impaired, the waterbody must be placed on the verified list of impaired waters and a total maximum daily load

³⁸ Section 386.03, F.S.

³⁹ *Id.*

⁴⁰ Section 489.556, F.S.

⁴¹ Section 489.558, F.S.

⁴² EPA, *Overview of Identifying and Restoring Impaired Waters under Section 303(d) of the CWA*, <https://www.epa.gov/tmdl/overview-identifying-and-restoring-impaired-waters-under-section-303d-cwa> (last visited Dec. 12, 2023); 40 C.F.R. 130.7. Following the development of the list of impaired waters, states must develop a total maximum daily load for every pollutant/waterbody combination on the list. A total maximum daily load is a scientific determination of the maximum amount of a given pollutant that can be absorbed by a waterbody and still meet water quality standards. DEP, *Watershed Evaluation and Total Maximum Daily Loads (TMDL) Section*, <https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program> (last visited Dec. 12, 2023).

⁴³ *Id.*

⁴⁴ DEP, *Assessment Lists*, <https://floridadep.gov/dear/watershed-assessment-section/content/assessment-lists> (last visited Dec. 12, 2023).

(TMDL) must be calculated.⁴⁵ A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards.⁴⁶ A waterbody may be removed from the verified list at any time during the TMDL process if it attains water quality standards.⁴⁷

Basin Management Action Plans

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,⁴⁸ for a watershed.

Producers of nonpoint source pollution included in a BMAP must comply with the established pollutant reductions by implementing appropriate best management practices (BMPs) or conducting water quality monitoring.⁴⁹ A nonpoint source discharger may be subject to enforcement action by DEP or a water management district for failure to implement these requirements.⁵⁰

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.⁵¹ Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations.⁵²

BMAPs must include five-year milestones for implementation and water quality improvement and an associated water quality monitoring component to evaluate the progress of pollutant load reductions.⁵³ Every five years an assessment of progress toward these milestones must be conducted and revisions to the plan made as appropriate.⁵⁴

Each BMAP must also include:

- The management strategies available through existing water quality protection programs to achieve TMDLs;
- A description of BMPs adopted by rule;
- For the applicable five-year implementation milestones, a list of projects that will achieve the pollutant load reductions needed to meet a TMDL or other established load allocations, including a planning-level cost estimate and an estimated date of completion;

⁴⁵ *Id.*; DEP, *Verified List Waterbody Ids (WBIDs)*, <https://geodata.dep.state.fl.us/datasets/FDEP::verified-list-waterbody-ids-wbids/about> (last visited Dec. 12, 2023); section 403.067(4), F.S.

⁴⁶ Section 403.067(6)(a), F.S. *See also* 33 U.S.C. § 1251, s. 303(d) (the Clean Water Act).

⁴⁷ Section 403.067(5), F.S.

⁴⁸ “Point source” is defined as any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. Nonpoint sources of pollution are sources of pollution that are not point sources. Fla. Admin. Code R. 62-620.200(37).

⁴⁹ Section 403.067(7)(b)2.g., F.S. For example, BMPs for agriculture include activities such as managing irrigation water to minimize losses, limiting the use of fertilizers, and waste management.

⁵⁰ Section 403.067(7)(b)2.h., F.S.

⁵¹ *Id.*

⁵² *Id.*

⁵³ Section 403.067(7)(a)6., F.S.

⁵⁴ *Id.*

- A list of regional nutrient reduction projects submitted by the Department of Agriculture and Consumer Services which will achieve pollutant load reductions established for agricultural nonpoint sources;⁵⁵
- The source and amount of financial assistance to be made available; and
- A planning-level estimate of each project's expected load reduction, if applicable.⁵⁶

Flooding and Sea Level Rise

Given Florida's flat topography⁵⁷ and extreme rainfall events, flooding has been an issue throughout the state's history.⁵⁸ The effects of climate change—including sea level rise, increased storm intensity, and increased frequency and severity of extreme rainfall events—have increased flooding in inland and coastal areas.⁵⁹

Sea level rise is a direct effect of climate change, resulting from a combination of thermal expansion of warming ocean waters and the addition of water mass into the ocean, largely associated with the loss of ice from glaciers and ice sheets.⁶⁰ The global mean sea level has risen about 8–9 inches since 1880, and the rate of rise is accelerating: 0.06 inches per year throughout most of the twentieth century, 0.14 inches per year from 2006–2015, and 0.24 inches per year from 2018–2019.⁶¹ In 2021, global sea levels set a new record high—3.8 inches above 1993 levels.⁶²

The latest projections from the National Oceanic and Atmospheric Administration (NOAA) estimate that an average of two feet sea level rise can be expected over the next 50 years.⁶³ All coastal areas of Florida will be affected under this scenario.⁶⁴

⁵⁵ This is required only where agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges or DEP determines that additional measures are necessary to achieve a TMDL. Section 403.067(7)(e)1., F.S.

⁵⁶ Section 403.067(7)(a)4., F.S.

⁵⁷ The Florida coastline has an average elevation of approximately 15 to 20 feet above mean sea level (MSL) with barrier islands typically at elevation zero to five feet above MSL. The southern portion of the state (south of Lake Okeechobee) is typically lower than 15 feet MSL. U.S. Army Corps of Engineers, *South Atlantic Coastal Study: Florida Appendix*, 3-26 (2022), available at

https://www.sad.usace.army.mil/Portals/60/siteimages/SACS/SACS_FL_Appendix_508_20220812.pdf?ver=XGRM8v-69_bdLAFPXEmlOg%3d%3d.

⁵⁸ Florida Office of Economic and Demographic Research (EDR), *Annual Assessment of Flooding and Sea Level Rise*, 2 (2023), available at http://edr.state.fl.us/Content/natural-resources/2023_AnnualAssessmentFloodingandSeaLevelRise_Chapter6.pdf.

⁵⁹ National Aeronautics and Space Administration (NASA), *The Effects of Climate Change*, <https://climate.nasa.gov/effects/> (last visited Mar. 6, 2023).

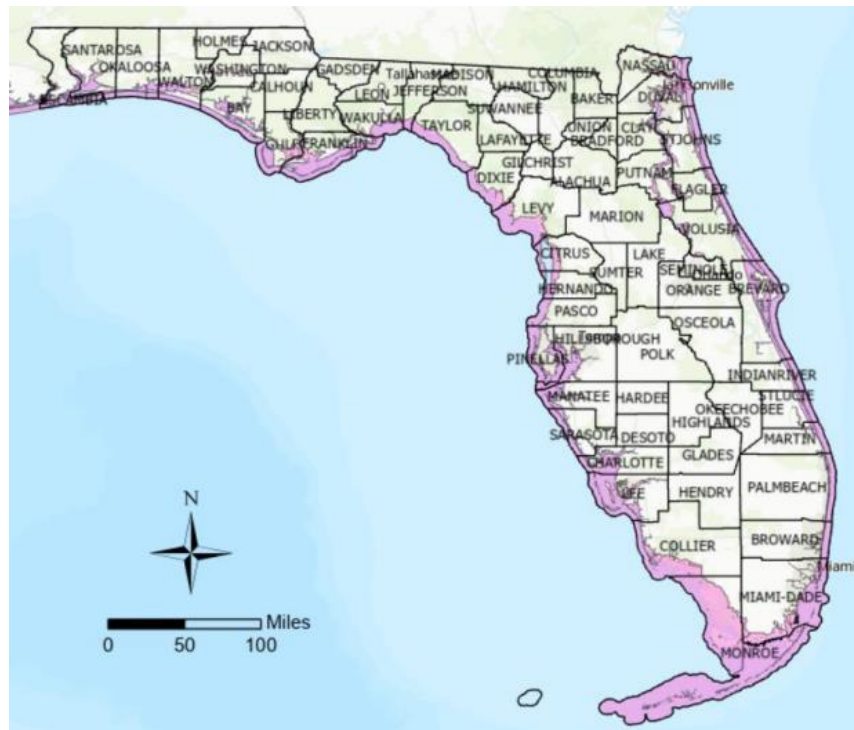
⁶⁰ National Oceanic and Atmospheric Administration (NOAA) et al., *Global and Regional Sea Level Rise Scenarios for the U.S.*, (2022) available at <https://oceanservice.noaa.gov/hazards/sealevelrise/sealevelrise-tech-report.html>.

⁶¹ NOAA, *Climate Change: Global Sea Level*, <https://www.climate.gov/news-features/understanding-climate/climate-change-global-sea-level> (last visited Jan. 10, 2024).

⁶² *Id.*

⁶³ EDR, *Annual Assessment of Flooding and Sea Level Rise* at 20; NOAA, *Global and Regional Sea Level Rise Scenarios for the U.S.*, (2022) available at <https://oceanservice.noaa.gov/hazards/sealevelrise/sealevelrise-tech-report.html>.

⁶⁴ EDR, *Annual Assessment of Flooding and Sea Level Rise* at 21.



Projection of 2 ft. Sea Level Rise⁶⁵

Over five million structures are estimated to be affected by flooding under a two-foot sea level rise scenario. The estimated value of these at-risk properties exceeds \$576 billion.⁶⁶

Due to its porous geology, economic and property value, and the potential impact of various flooding hazards, southeast Florida is the area most at risk from sea level rise.⁶⁷ The effects of sea level rise are already apparent in this region and pose a threat to lives, livelihoods, economies, and the environment.⁶⁸ Physical impacts of sea level rise include coastal inundation and erosion, increased frequency of flooding in vulnerable coastal and inland areas due to impairment of the region's largely gravity-driven stormwater infrastructure system, reduced soil infiltration capacity, and saltwater intrusion of drinking-water supply. Moreover, the impacts of surge from tropical storms or hurricanes are exacerbated by sea level rise. Increased pollution and contamination from flooding degrades natural resources critical to the region's economy. Sea level rise can also result in displacement, decrease in property values and tax base, increases in insurance costs, loss of services, and impairment of infrastructure such as roads and septic systems.⁶⁹

⁶⁵ *Id.* at 21.

⁶⁶ *Id.* at 24, 25.

⁶⁷ EDR, *Annual Assessment of Flooding and Sea Level Rise* at 2.

⁶⁸ Sea Level Rise Ad Hoc Work Group, Southeast Florida Regional Climate Change Compact (SFRCCC), *Unified Sea Level Rise Projection: Southeast Florida*, 5 (2019), available at https://southeastfloridacclimatecompact.org/wp-content/uploads/2020/04/Sea-Level-Rise-Projection-Guidance-Report_FINAL_02212020.pdf.

⁶⁹ Sea Level Rise Ad Hoc Work Group, Southeast Florida Regional Climate Change Compact (SFRCCC), *Unified Sea Level Rise Projection: Southeast Florida* at 5.

Sea Level Rise Projections

Entities from the international to the local level use scientific data and modeling to create projections of future sea level rise for planning and decision-making. The National Oceanic and Atmospheric Administration (NOAA) operates tide gauges along the nation's coasts and satellites that measure changes in sea level. In 2017 and 2022, NOAA published sea level rise projections for the U.S.⁷⁰ NOAA's projections include observation-based extrapolations and five scenarios ranging from "low" to "high."⁷¹ Interactive maps have been developed to depict local conditions under each NOAA scenario.⁷²

Resilience and Nature-Based Solutions

Resilience is the ability of a community to prepare for anticipated natural hazards, adapt to changing conditions, and withstand and recover rapidly from disruptions.⁷³ Resilience planning includes preparing for hazard events, risk mitigation, and post-event recovery and should be proactive, continuous, and integrated into other community goals and plans.⁷⁴

Nature-based solutions are an important part of resilience planning. Nature-based solutions use natural features and processes to combat climate change, reduce flood risks, improve water quality, protect coastal property, restore and protect wetlands, and stabilize shorelines.⁷⁵

Examples of nature-based solutions include:

- Living shorelines, which stabilize a shore by combining living components, such as plants, with structural elements, such as rock or sand. Living shorelines can slow waves, reduce erosion, and protect coastal property.
- Oyster reefs. Oysters are often referred to as "ecosystem engineers" because of their tendency to attach to hard surfaces and create large reefs made of thousands of individuals. In addition to offering shelter and food to coastal species, oyster reefs buffer coasts from waves and filter surrounding waters.
- Dunes, which often have dune grasses or other vegetation and serve as a barrier between the water's edge and inland areas.⁷⁶

⁷⁰ NOAA, *Global and Regional Sea Level Rise Scenarios for the United States*, (2017), available at https://tidesandcurrents.noaa.gov/publications/techrpt83_Global_and_Regional_SLR_Scenarios_for_the_US_final.pdf;

NOAA, *Global and Regional Sea Level Rise Scenarios for the United States*, (2022), available at <https://aambpublicoceanservice.blob.core.windows.net/oceanserviceprod/hazards/sealevelrise/noaa-nos-techrpt01-global-regional-SLR-scenarios-US.pdf>.

⁷¹ NOAA, *Global and Regional Sea Level Rise Scenarios for the United States*, 15 (2022). The 2017 projections also included an "extreme" scenario, which has been removed from the 2022 report. See NOAA, *Global and Regional Sea Level Rise Scenarios for the United States*, 23 (2017).

⁷² University of Florida, *Florida Sea Level Scenario Sketch Planning Tool*, <https://sls.geoplan.ufl.edu/viewer/> (last visited Jan. 10, 2024).

⁷³ Federal Emergency Management Agency (FEMA), *National Risk Index: Community Resilience*, <https://hazards.fema.gov/nri/community-resilience> (last visited Jan. 10, 2024).

⁷⁴ National Institute of Standards and Technology, U.S. Dep't of Commerce, *Community Resilience Planning Guide for Buildings and Infrastructure Systems*, 1 (2016), available at <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.1190v1.pdf>.

⁷⁵ FEMA, *FEMA Resources for Climate Resilience*, 5 (2021), available at https://www.fema.gov/sites/default/files/documents/fema_resources-climate-resilience.pdf.

⁷⁶ FEMA, *Types of Nature-Based Solutions*, <https://www.fema.gov/emergency-managers/risk-management/nature-based-solutions/types> (last visited Mar. 8, 2023).

The Resilient Florida Grant Program

The Florida Legislature has established several statewide resilience programs, including the Resilient Florida Grant Program, the Comprehensive Statewide Flood Vulnerability and Sea Level Rise Data Set, and the Statewide Flooding and Sea Level Rise Resilience Plan.

The Resilient Florida Grant Program provides grants to counties or municipalities for community resilience planning, including vulnerability assessments, plan development, and projects to adapt critical assets.⁷⁷ In the program's first two years, 263 implementation projects were awarded a total of nearly \$954 million.⁷⁸ Vulnerability assessments funded through this program must encompass the entire county or municipality; use the most recent publicly available Digital Elevation Model and dynamic modeling techniques, if available; and analyze the vulnerability of and risks to critical assets,⁷⁹ including regionally significant assets.⁸⁰ In addition, vulnerability assessments must include, where applicable:

- Peril of flood comprehensive plan amendments that address the requirements of s. 163.3178(2)(f), F.S.,⁸¹ if the county or municipality is subject to, but has not complied with, such requirements;
- The depth of tidal flooding, current and future storm surge flooding, rainfall-induced flooding (including for a 100-year and 500-year storm), and compound flooding or the combination of tidal, storm surge, and rainfall-induced flooding; and
- The following scenarios and standards:
 - All analyses in the North American Vertical Datum of 1988;⁸²
 - At least two local sea level rise scenarios, which must include the 2017 NOAA intermediate-low and intermediate-high sea level rise projections;
 - At least two planning horizons that include planning horizons for the years 2040 and 2070; and

⁷⁷ Section 380.093(2)(a), F.S. "Critical asset" is defined to include broad lists of assets relating to transportation, critical infrastructure, emergency facilities, natural resources, and historical and cultural resources.

⁷⁸ This figure includes \$270 million of state funding for the Statewide Flooding and Sea Level Resilience Plan. DEP, *Presentation to the Florida Senate Committee on Environment and Natural Resources* (Feb. 23, 2023), available at https://www.flsenate.gov/Committees/Show/SSHR/MeetingPacket/5700/10150_MeetingPacket_5700_2.23.23.pdf.

⁷⁹ Critical assets include transportation assets and evacuation routes (airports, bridges, bus terminals, major roadways, etc.), critical infrastructure (wastewater and stormwater treatment facilities, drinking water facilities, solid and hazardous waste facilities, etc.), critical community and emergency facilities (schools, correctional facilities, fire stations, hospitals, etc.), and natural, cultural, and historical resources (conservation lands, parks, shorelines, wetlands, etc.). Section 380.093(2)(a), F.S.

⁸⁰ Section 380.093(3)(c), F.S. Regionally significant assets are critical assets that support the needs of communities spanning multiple geopolitical jurisdictions. Section 380.093(2)(d), F.S.

⁸¹ This section provides that, in communities abutting the Gulf of Mexico or Atlantic Ocean or other coastal areas defined by statute, a local government's comprehensive plan must include a coastal management element. Sections 163.3178(2) and 163.3177(6)(g), F.S. This element must contain a redevelopment component that outlines the principles that must be used to eliminate inappropriate and unsafe development in the coastal areas when opportunities arise. Section 163.3178(2)(f), F.S.

⁸² A vertical datum is a surface of zero elevation to which heights of various points are referenced. Traditionally, vertical datums have used classical survey methods to measure height differences (i.e. geodetic leveling) to best fit the surface of the earth. The current vertical datum for the contiguous United States and Alaska is the North American Vertical Datum of 1988. NOAA, *National Geodetic Survey: Vertical Datums*, <https://www.ngs.noaa.gov/datums/vertical/#:~:text=TABLE%201%3A%20Current%20Vertical%20Datums%20for%20United%20States,%20202002-present%20201%20more%20rows%20> (last visited Jan. 10, 2024).

- Local sea level data that has been interpolated between the two closest NOAA tide gauges.⁸³

The Comprehensive Statewide Flood Vulnerability and Sea Level Rise Data Set and Assessment will provide information necessary to determine the risks to inland and coastal communities.⁸⁴ By July 1, 2023, DEP must develop a data set providing statewide sea level rise projections and information necessary to determine the risks of flooding and sea level rise to inland and coastal communities. By July 1, 2024, DEP must develop a statewide assessment (using the statewide data set) identifying vulnerable infrastructure, geographic areas, and communities. The statewide assessment must include an inventory of critical assets and be updated every five years.⁸⁵

The Statewide Flooding and Sea Level Rise Resilience Plan consists of ranked projects that address risks of flooding and sea level rise to coastal and inland communities.⁸⁶ Examples of projects include construction of living shorelines, seawalls, and pump stations, elevation projects, and infrastructure hardening.⁸⁷ Counties, municipalities, water management districts, regional water supply authorities, and other entities may submit to DEP an annual list of proposed projects. Each project must have a minimum 50 percent cost share, unless the project assists or is within a financially disadvantaged community.⁸⁸ DEP ranks the projects using a four-tier scoring system.⁸⁹ DEP has adopted rules to implement s. 380.093, F.S., relating to the Statewide Flooding and Sea Level Rise Resilience Plan and project submittal requirements. These rules can be found in Chapter 62S-8 of the Florida Administrative Code.⁹⁰ In December 2022, DEP submitted the FY 23-24 Statewide Flooding and Sea Level Rise Resilience Plan totaling nearly \$408 million over the next three years.⁹¹

DEP may also provide funding for regional resilience entities to assist local governments with planning for the resilience needs of communities and coordinating intergovernmental solutions to mitigate adverse impacts of flooding and sea level rise.⁹² As of February 2023, \$4 million had been appropriated to regional resilience entities.⁹³

⁸³ Section 380.093(3)(d)

⁸⁴ Section 380.093(4), F.S.; DEP, *Resilient Florida Program – Statewide Assessment*, <https://floridadep.gov/rcp/resilient-florida-program/content/resilient-florida-program-statewide-assessment> (last visited Jan. 10, 2024).

⁸⁵ *Id.* See also DEP, *Resilient Florida Program – Statewide Assessment*.

⁸⁶ Section 380.093(5), F.S.

⁸⁷ DEP, *2023-2024 Statewide Flooding and Sea Level Rise Resilience Plan*, available at https://floridadep.gov/sites/default/files/2023-24%20Statewide%20Flooding%20and%20Sea%20Level%20Rise%20Resilience%20Plan_0.pdf.

⁸⁸ Section 380.093(5)(e), F.S. A financially disadvantaged small community is a municipality with a population of 10,000 or fewer, or a county with a population of 50,000 or fewer, where the per capita annual income is less than the state's per capita annual income. *Id.*

⁸⁹ Section 380.093(5)(h), F.S.

⁹⁰ Fla. Admin. Code Chapter 62S-8, available at https://floridadep.gov/sites/default/files/Final%20Rule%20Language_0.pdf.

⁹¹ DEP and Florida Statewide Office of Resilience, *2022 Flood Resilience and Mitigation Efforts Across Florida*, 9, available at https://floridadep.gov/sites/default/files/2022%20Flood%20Resilience%20and%20Mitigation%20Efforts%20Report%20Only_0.pdf

⁹² Section 380.093(6), F.S.

⁹³ DEP, *Presentation to the Florida Senate Committee on Environment and Natural Resources*, 18 (Feb. 23, 2023), available at https://www.flsenate.gov/Committees/Show/SSHR/MeetingPacket/5700/10150_MeetingPacket_5700_2.23.23.pdf.

In 2022, the Statewide Office of Resilience was created within the Executive Office of the Governor for the purpose of reviewing all flood resilience and mitigation activities in the state and coordinating flood resilience and mitigation efforts with federal, state, and local governmental entities and other stakeholders. The office's Chief Resilience Officer and DEP worked together to provide the Governor and Legislature with a report on flood resilience and mitigation efforts across Florida.⁹⁴

Florida Flood Hub for Applied Research and Innovation

The Florida Flood Hub for Applied Research and Innovation was established within the University of South Florida College of Marine Science to coordinate efforts between the academic and research institutions of the state.⁹⁵ The Florida Flood Hub is tasked with, among other things, organizing existing data needs for a comprehensive statewide flood vulnerability and sea level rise analysis and performing gap analyses to determine data needs; developing statewide open source hydrologic models for physically based flood frequency estimation and real-time forecasting of flood; establishing community-based programs to improve flood monitoring and prediction along major waterways; and providing tidal and storm surge flooding data to counties and municipalities for vulnerability assessments.⁹⁶

Water Reuse

Water reuse is an important component of both wastewater management and water resource management in Florida. Reuse is defined as the deliberate application of reclaimed water for a beneficial purpose.⁹⁷ Whereas, reclaimed water is defined as water from a domestic wastewater⁹⁸ treatment facility that has received at least secondary treatment⁹⁹ and basic disinfection¹⁰⁰ for reuse.¹⁰¹

Florida has approximately 2,000 permitted domestic wastewater treatment facilities.¹⁰² These facilities may require state and federal permits for discharges to surface waters.¹⁰³ Federal requirements for most facilities or activities are generally incorporated into a state-issued

⁹⁴ DEP and Florida Statewide Office of Resilience, *2022 Flood Resilience and Mitigation Efforts Across Florida*, 2, available at

https://floridadep.gov/sites/default/files/2022%20Flood%20Resilience%20and%20Mitigation%20Efforts%20Report%20Only_0.pdf; Letter from Department of Economic Opportunity to DEP, 1-2 (Nov. 9, 2022), available at https://floridadep.gov/DEO_PoF_Letter2022.

⁹⁵ Section 380.0933(1), F.S.

⁹⁶ Section 380.0933(2) and (3), F.S.

⁹⁷ Fla. Admin. Code R. 62-610.200(52).

⁹⁸ Section 367.021(5), F.S., defines the term “domestic wastewater” to mean wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.

⁹⁹ Fla. Admin. Code R. 62-610.200(54) defines the term “secondary treatment” to mean “wastewater treatment to a level that will achieve the effluent limitations specified in paragraph 62-600.420(1)(a), F.A.C.”

¹⁰⁰ Fla. Admin. Code R. 62-600.440(5) provides the requirements for basic disinfection.

¹⁰¹ Section 373.019(17), F.S.; Fla. Admin. Code R. 62-610.200(48).

¹⁰² DEP, *General Facts and Statistics about Wastewater in Florida*, <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Jan. 10, 2024).

¹⁰³ For required state permits, see Section 403.087, F.S.; see also DEP, *Wastewater Permitting*, available at <https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting> (last visited Jan. 10, 2024). For federal permits, see 33 U.S.C. s. 1342.

permit.¹⁰⁴ DEP also regulates the construction and operation of domestic wastewater treatment facilities and establishes disinfection requirements for the reuse of reclaimed water.¹⁰⁵

Reusing water helps conserve drinking water supplies by replacing the use of drinking quality water for non-drinking water purposes, such as irrigation, industrial cooling, groundwater recharge, and prevention of saltwater intrusion in coastal groundwater aquifers.¹⁰⁶ Water reuse also provides environmental benefits, including reduced groundwater withdrawals, reduced needs for new drinking water supplies and infrastructure, and improved water quality of the natural environment by reducing the amount of nutrients that are discharged directly to surface water and groundwater by wastewater treatment facilities.¹⁰⁷ The use of reclaimed water also provides for the recovery of water that would otherwise be lost to tide and evaporation.

In its rules, DEP requires promotion of reuse of reclaimed water, recycling of stormwater for irrigation and other beneficial uses, recycling of industrial wastewater, and encourages local governments to create programs for reuse.¹⁰⁸ Water conservation and the promotion of water reuse have also been established as formal state objectives by the Legislature.¹⁰⁹ State law further provides that the use of reclaimed water provided by wastewater treatment plants permitted and operated under a reuse program by DEP are considered environmentally acceptable and are not a threat to public health and safety.¹¹⁰

Florida tracks its reuse inventory in an annual report compiled by DEP.¹¹¹ In 2021, a total of 455 domestic wastewater treatment facilities reported making reclaimed water available for reuse.¹¹² Approximately 908 million gallons per day (mgd) of reclaimed water were used for beneficial purposes in 2021,¹¹³ which represents approximately 53 percent of the total domestic wastewater flow in the state.¹¹⁴ The total reuse flow associated with reuse systems was 1,701 mgd,¹¹⁵ which represents approximately 61 percent of the total domestic wastewater treatment flow in the state.¹¹⁶

¹⁰⁴ Sections 403.061 and 403.087, F.S.

¹⁰⁵ Fla. Admin. Code R. 62-600.

¹⁰⁶ Martinez, Christopher J. and Clark, Mark W., *Reclaimed Water and Florida's Water Reuse Program*, UF/IFAS Agricultural and Biological Engineering Department (rev. 07/2012), available at <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.590.5063&rep=rep1&type=pdf>.

¹⁰⁷ *Id.*

¹⁰⁸ Fla. Admin. Code R. 62-40.416.

¹⁰⁹ Sections 403.064(1) and 373.250(1), F.S.

¹¹⁰ *Id.*

¹¹¹ See DEP, *2021 Reuse Inventory Report* (2022), available at

<https://floridadep.gov/sites/default/files/2021%20Reuse%20Inventory.pdf>; compiled from reports collected pursuant to chapter 62-610 of the Florida Administrative Code.

¹¹² DEP, *2019 Reuse Inventory Report* at 2.

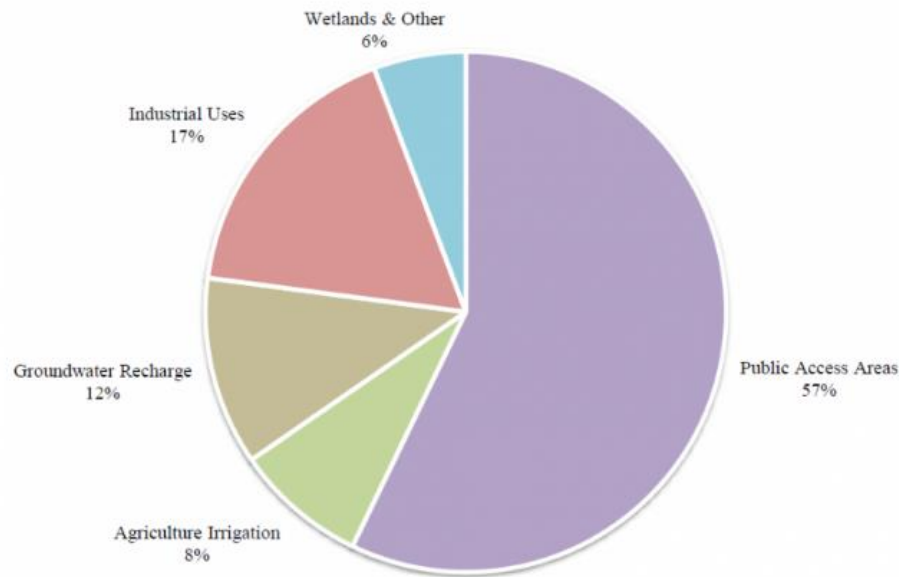
¹¹³ This represents an average per capita reuse of 38.66 gallons per day per person. DEP, *Florida's Reuse Activities*, <https://floridadep.gov/water/domestic-wastewater/content/floridas-reuse-activities> (last visited Jan. 10, 2024).

¹¹⁴ DEP, *2019 Reuse Inventory Report* at 2, 3.

¹¹⁵ *Id.* at 2.

¹¹⁶ *Id.* at 3.

The chart below shows the percentage of reclaimed water utilization by flow.¹¹⁷



Note: Agriculture irrigation includes edible crops (e.g., citrus) as well as feed and fodder crops (e.g., spray fields).

In 2021, the Legislature passed SB 64, which required domestic wastewater utilities that dispose of effluent, reclaimed water, or reuse water by surface water discharge to submit a plan for eliminating non-beneficial surface water discharge by January 2032.¹¹⁸ The plan must include the average gallons per day that discharges are reduced, the average gallons per day of discharges that will continue, the level of treatment discharged water receives, and any modified or new plans submitted by a utility since the last report.¹¹⁹

SB 64 authorized discharges that are being beneficially used or otherwise regulated, including discharges associated with an indirect potable reuse project; permitted wet weather discharge; discharges into a stormwater management system, which are subsequently withdrawn for irrigation purposes; utilities that operate domestic wastewater treatment facilities with reuse systems that reuse at least 90 percent of a facility's annual average flow; or discharges that provide direct ecological or public water supply benefits.¹²⁰ The bill further specified that potable reuse is an alternative water supply and made reuse projects eligible for alternative water supply funding and incentivized the development of potable reuse projects.¹²¹

Reclaimed Water as Alternative Water Supply

When traditional water supplies are constrained, alternative water supplies must be developed in addition to water conservation efforts. Alternative water supply can include reclaimed water,

¹¹⁷ DEP, *Florida's Reuse Activities*.

¹¹⁸ Chapter 2021-168, Laws of Fla.; s. 403.064(17), F.S.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

brackish groundwater, surface water, and excess surface water captured and stored in reservoirs or aquifer storage and recovery wells.¹²²

Reclaimed water is a type of alternative water supply and is eligible to receive alternative water supply funding.¹²³ Reclaimed water can be used for many purposes to meet water demand, including:

- Irrigation of golf courses, parks, residential properties, and landscaped areas;
- Urban uses, such as toilet flushing, car washing, and aesthetic purposes;
- Agricultural uses, such as irrigation of food crops, pasture lands, and at nurseries;
- Wetlands creation, restoration, and enhancement;
- Recharging groundwater through rapid infiltration basins, absorption fields, and direct injection;
- Augmentation of surface waters used for drinking water supplies; and
- Industrial uses such as processing and cooling water.¹²⁴

Regulation of Reclaimed Water

Both DEP and the water management districts play a regulatory role in the use of reclaimed water. DEP regulations focus on water quality and ensure that reclaimed water is appropriately treated for its intended use to ensure protection of public health and the environment. Water management districts work with local utilities and water users to maximize the beneficial use of reclaimed water as an alternative water supply. The districts include alternative water supply projects in their regional water supply plans¹²⁵ and implement cost-share programs to assist communities in developing reclaimed water systems.¹²⁶

In its rules, DEP provides detailed reclaimed water treatment requirements depending upon how the reclaimed water will be used, including for groundwater recharge, surface water discharge, or to protect water quality.¹²⁷ In order to be reused as reclaimed water, domestic wastewater must meet, at minimum, a treatment standard of secondary treatment, basic disinfection, and pH control.¹²⁸ The regulations also include requirements for groundwater monitoring at reuse and land application sites.¹²⁹

¹²² DEP, *Alternative Water Supply*, <https://floridadep.gov/water-policy/water-policy/content/alternative-water-supply#Alternative%20Water%20Supply> (last visited Jan. 10, 2024).

¹²³ Section 373.250(2), F.S.

¹²⁴ DEP, *Uses of Reclaimed Water*, <https://floridadep.gov/water/domestic-wastewater/content/uses-reclaimed-water> (last visited Jan. 10, 2024).

¹²⁵ Section 373.036(2), F.S.

¹²⁶ DEP, *Water Management District Reuse Programs*, <https://floridadep.gov/water/domestic-wastewater/content/water-management-district-reuse-programs> (last visited Jan. 10, 2024).

¹²⁷ Fla. Admin. Code R. 62-610.

¹²⁸ DEP, *Applicable Rules for Reuse Projects*, <https://floridadep.gov/water/domestic-wastewater/content/applicable-rules-reuse-projects#:~:text=Treatment%20and%20disinfection%20requirements%20for%20reuse%20of%20reclaimed,in%20order%20to%20be%20reused%20as%20reclaimed%20water> (last visited Jan. 10, 2024).

¹²⁹ Fla. Admin. Code R. 62-610.412.

Water management districts are responsible for the administration of water resources at a regional level, including programs to protect water supply, water quality, and natural systems.¹³⁰ Water management districts issue consumptive use permits (CUPs) to manage the use of water. A CUP allows the holder to withdraw a specified amount of water from surface water and groundwater sources for reasonable and beneficial use.¹³¹ CUPs require water conservation to prevent wasteful uses, require the reuse of reclaimed water instead of higher-quality groundwater where appropriate, and set limits on the amount of water that can be withdrawn.¹³² Water management districts may not require CUPs for reclaimed water.¹³³

Districts also implement minimum flows and minimum water levels (MFLs) to balance public water supply needs with protection of the state's natural systems.¹³⁴ For water bodies that are below or projected to fall below their MFL, the districts are required to implement a recovery or prevention strategy to ensure the MFL is maintained.¹³⁵

¹³⁰ DEP, *Water Management Districts*, <https://floridadep.gov/water-policy/water-policy/content/water-management-districts> (last visited Jan. 10, 2024).

¹³¹ South Florida Water Management District, *Consumptive Water Use Permits*, <https://www.sfwmd.gov/doing-business-with-us/permits/water-use-permits> (last visited Jan. 10, 2024).

¹³² *Id.*

¹³³ Section 373.250, F.S.

¹³⁴ DEP, *Minimum Flows and Minimum Water Levels and Reservations*, <https://floridadep.gov/water-policy/water-policy/content/minimum-flows-and-minimum-water-levels-and-reservations> (last visited Jan. 10, 2024); *see also* section 373.042(1), F.S. Minimum flows and minimum water levels are the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area.

¹³⁵ *Id.*

Class I Injection Wells

Class I injections wells are used to inject hazardous and non-hazardous wastes into deep, confined rock formations (see the image to the right).¹³⁶ Class I wells are typically drilled thousands of feet below the lowermost underground source of drinking water.¹³⁷ There are more than 180 active Class I wells in Florida, the majority of which dispose of non-hazardous, secondary-treated effluent from domestic wastewater treatment plants.¹³⁸ New hazardous waste wells were banned in Florida in 1983.¹³⁹

Class I injections wells are required to be constructed, maintained, and operated so that the injection fluid remains in the injection zone, and the unapproved interchange of water between aquifers is prohibited. The wells are monitored so that any migration of injection fluids would be detected before reaching the underground source of drinking water.¹⁴⁰

Aquatic Preserves

The State of Florida passed the Aquatic Preserve Act in 1975 to ensure that the state-owned submerged lands in areas with exceptional biological, aesthetic, and scientific value were set aside forever as aquatic preserves or sanctuaries for the benefit of future generations.¹⁴¹ There are currently 42 aquatic preserves encompassing about 2.2 million acres.¹⁴² All but four are located along Florida's 8,400 miles of coastline.¹⁴³

Aquatic preserves only include lands or water bottoms owned by the state. The Aquatic Preserve Act excludes any privately owned lands or water bottoms, or any publicly owned and maintained navigation channel or other public works project authorized by the U.S. Congress designed to improve or maintain commerce and



¹³⁶ U.S. Environmental Protection Agency, *Underground Injection Control, Class I Industrial and Municipal Waste Disposal Wells*, <https://www.epa.gov/uic/class-i-industrial-and-municipal-waste-disposal-wells> (last visited Jan. 13, 2024).

¹³⁷ *Id.*

¹³⁸ DEP, *UIC Wells Classification*, <https://floridadep.gov/water/aquifer-protection/content/uic-wells-classification#:~:text=In%20Florida%2C%20there%20are%20six%20classes%20of%20injection,than%20180%20active%20Class%20I%20wells%20in%20Florida> (last visited Jan., 13, 2024).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Section 258.36, F.S.; DEP, *Aquatic Preserve Program*, <https://floridadep.gov/rcp/aquatic-preserve> (last visited Jan. 9, 2024).

¹⁴² DEP, *Aquatic Preserve Program*; DEP, Geospatial Open Data, *Florida Aquatic Preserves*, <https://geodata.dep.state.fl.us/datasets/FDEP::florida-aquatic-preserves/explore?location=27.492338%2C-83.860873%2C5.95> (last visited Jan. 9, 2024); DEP, Office of Resilience and Coastal Protection, *Aquatic Preserve Program*, https://floridaapdata.org/about_FCO.php (last visited Jan. 9, 2024).

¹⁴³ DEP ORCP, *Aquatic Preserve Program*.

navigation.¹⁴⁴ Further, the Aquatic Preserve Act excludes all lands lost by avulsion or artificially induced erosion.¹⁴⁵

The Board of Trustees of the Internal Improvement Trust Fund (Board) may establish additional aquatic preserves, subject to confirmation by the Legislature.¹⁴⁶ Following public notice and public hearing in the county or counties in which the proposed preserve is to be located, the Board may adopt a resolution formally setting aside such areas. The resolution must include:

- A legal description of the area to be included;
- The designation of the type of aquatic preserve being set aside;
- A general statement of what is sought to be preserved; and
- A clear statement of the management responsibilities for the area.¹⁴⁷

Privately-owned lands and water bottoms may be included in an aquatic preserve upon specific authorization from the owner as a dedication in perpetuity or a lease.¹⁴⁸

Current law restricts certain activities in aquatic preserves, including the construction of utility cables and pipes and spoil disposal.¹⁴⁹ Further, the Board may not:

- Sell, lease, or transfer sovereign submerged lands¹⁵⁰ unless it is in the public interest.
- Approve the waterward relocation or setting of bulkhead lines waterward of the line of mean high water within the preserve, except when public road and bridge construction projects have no reasonable alternative and it is not contrary to the public interest.
- Approve further dredging or filling of submerged lands, except for certain activities that must be authorized pursuant to a permit.¹⁵¹

Only minimal or maintenance dredging is permitted in an aquatic preserve and any alteration of the preserves' physical conditions is restricted unless the alteration enhances the quality or utility of the preserve or the public health generally.¹⁵² Oil and gas well drilling is prohibited within the aquatic preserve. Docking facilities and structures for shore protection are restricted as to size and location.¹⁵³

No wastes or effluents may be discharged into an aquatic preserve if they substantially inhibit the accomplishment of the purposes of the Aquatic Preserve Act. Riparian owners may selectively trim or alter mangroves on adjacent publicly owned submerged lands, provided that the selective

¹⁴⁴ Section 258.40, F.S.

¹⁴⁵ *Id.*

¹⁴⁶ Section 258.41, F.S.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Section 258.42, F.S.

¹⁵⁰ Sovereign submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally influenced waters. The Board holds title to sovereign submerged lands. DEP, *Submerged Lands Management*, <https://floridadep.gov/lands/bureau-public-land-administration/content/submerged-lands-management> (last visited Jan 10, 2024).

¹⁵¹ Section 258.42, F.S.

¹⁵² Fla. Admin. Code R. 18-20.004. Note that every aquatic preserve in the state has specific restrictions and policies that are set out in the Florida Administrative Code and/or ch. 258, F.S.

¹⁵³ Section 258.42, F.S. Administrative rules applicable to aquatic preserves generally may be found in Chapters 18-20, F.A.C., Management Policies, Standards and Criteria.

trimming or alteration is in compliance with the requirements of state law including permit requirements for mangrove trimming.¹⁵⁴

Leases of sovereign submerged lands are more costly within aquatic preserves. A rate of two times the existing rate is applied to aquatic preserve leases if 75 percent or more of the lease shoreline and the adjacent 1000 feet on either side of the leased area is in a natural, unbulkheaded, non-seawalled or non-riprapped condition.¹⁵⁵

The Board has a duty to conserve and improve state-owned lands and the products thereof, which includes the preservation and regeneration of seagrass.¹⁵⁶ A person operating a vessel outside a lawfully marked channel in a careless manner that causes seagrass scarring within an aquatic preserve, with the exception of the Lake Jackson, Oklawaha River, Wekiva River, and Rainbow Springs aquatic preserves, commits a noncriminal infraction. The Nature Coast Aquatic Preserve is also not included. The penalties are as follows:

- \$100 for a first offense;
- \$250 for a second offense occurring within 12 months of a prior conviction;
- \$500 for a third offense occurring within 36 months of a prior conviction; and
- \$1,000 for a fourth or subsequent offense occurring within 72 months of a prior conviction.¹⁵⁷

The Nature Coast Aquatic Preserve

The Florida Legislature designated the Nature Coast Aquatic Preserve in 2020¹⁵⁸ and it is the 42nd aquatic preserve.¹⁵⁹ The preserve is the second-largest in Florida. It encompasses 800 square miles of coastal waters, including 625 miles of shoreline along Citrus, Hernando, and Pasco Counties. The preserve is bordered to the north and south by three other aquatic preserves. The combination of all four aquatic preserves protects the largest contiguous seagrass meadow in the Gulf of Mexico and the largest spring-fed seagrass habitat in the world.¹⁶⁰

The preserve by itself protects nearly 400,000 acres of seagrass that support working waterfront industries, including fisheries, seafood production, and ecotourism. The preserve also includes mangrove islands, saltmarsh, sponge beds, marine springs, oyster reefs, and limestone hardbottom habitats.¹⁶¹

Kristin Jacobs Coral Reef Ecosystem Conservation Area

The Kristin Jacobs Coral Reef Ecosystem Conservation Area, formerly known as the Southeast Florida Coral Reef Initiative, was officially established on July 1, 2018.¹⁶² The conservation area

¹⁵⁴ Section 258.42, F.S.

¹⁵⁵ Fla. Admin. Code Rule 18-21.011(1)(b)5.

¹⁵⁶ Section 253.04(3), F.S.

¹⁵⁷ Section 327.73(x), F.S.

¹⁵⁸ Section 258.3991, F.S.

¹⁵⁹ DEP, *Nature Coast Aquatic Preserve*, <https://floridadep.gov/NatureCoastAP> (last visited Jan. 9, 2024).

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Section 253.90, F.S.; DEP, *Coral ECA: Kristin Jacobs Coral Reef Ecosystem Conservation Area*, <https://floridadep.gov/rcp/coral/content/coral-eca-kristin-jacobs-coral-reef-ecosystem-conservation-area> (last visited Jan. 9, 2024).

is the northernmost section of Florida's coral reef and runs 105 miles from the St. Lucie Inlet to the northern boundary of Biscayne National Park. The conservation area is part of the only barrier reef system in the continental U.S. and is home to more than 6,000 species of marine life including fish, stony corals, gorgonians, sponges, and other marine invertebrates.¹⁶³

III. Effect of Proposed Changes:

Section 1 amends s. 253.04, F.S., to extend the area in which a person operating a vessel outside a lawfully marked channel in a careless manner that causes seagrass scarring within an aquatic preserve commits a noncriminal infraction. The area now includes the Nature Coast Aquatic Preserve.

Section 2 amends s. 258.39, F.S., to declare as an aquatic preserve the Kristin Jacobs Coral Reef Ecosystem Conservation Area, as designated by chapter 2021-107, Laws of Florida, the boundaries of which consist of the sovereignty submerged lands and waters of the state offshore of Broward, Martin, Miami-Dade, and Palm Beach Counties from the St. Lucie Inlet to the northern boundary of the Biscayne National Park.

Section 3 amends s. 373.250, F.S., to direct each water management district, in coordination with the Department of Environmental Protection (DEP), to develop rules by December 31, 2025 to promote the use of reclaimed water and encourage potable water offsets that produce significant water savings beyond those required in a consumptive use permit.

The bill requires that the rules must provide that if an applicant proposes a water supply development or water resource development project using reclaimed water as part of an application for consumptive use, the applicant is eligible for a permit duration of up to 30 years if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. The bill provides that the rules developed pursuant to this paragraph must include, at a minimum:

- A requirement that the permittee demonstrate how quantifiable groundwater or surface water savings associated with the new water supply development or water resource development project helps meet water demands beyond a 20-year permit duration or is completed to benefit a waterbody with a minimum flow or minimum water level with a recovery or prevention strategy; and
- Guidelines for a district to follow in determining the permit duration based on the project's implementation.

The bill requires that the rules must also provide authorization for a consumptive use permittee to seek a permit extension of up to 10 years if the permittee proposes a water supply development or water resource development project using reclaimed water during the term of its permit which results in the reduction of groundwater or surface water withdrawals or is completed to benefit a waterbody with a minimum flow or minimum water level with a recovery or prevention strategy. The bill provides that rules associated with this paragraph must include, at a minimum:

¹⁶³ DEP, *Coral ECA: Kristin Jacobs Coral Reef Ecosystem Conservation Area*.

- A requirement that the permittee be in compliance with the permittee's consumptive use permit;
- A requirement that the permittee demonstrate how the quantifiable groundwater or surface water savings associated with the new water supply development or water resource development project helps meet water demands beyond the issued permit duration or benefits a waterbody with a minimum flow or minimum water level with a recover or prevention strategy;
- A requirement that the permittee demonstrate a water demand for the permit's allocation through the term of the extension; and
- Guidelines for a district to follow in determining the number of years extended, including a minimum year requirement, based on the project implementation.

The bill expressly states that these provisions do not limit the existing authority of a water management district to protect from harm the water resources or ecology of the area, or to otherwise ensure compliance with the conditions for permit issuance.

Section 4 amends s. 380.093, F.S., to define the "Florida Flood Hub" as the Florida Flood Hub for Applied Research and Innovation established pursuant to s. 380.0933.

The bill amends the definition of "preconstruction activities" to specify that the activities are those associated with a project that *addresses the risks of flooding and sea level rise* that occur before construction begins.

Resilient Florida Grant Program

The bill provides that DEP may provide grants to a county or municipality to fund updates to the county's or municipality's inventory of critical assets, including regionally significant assets that are currently or reasonably expected to be impacted by flooding and sea level rise. The bill adds that the updated inventory must be submitted to DEP and, at the time of submission, must reflect all such assets that are currently, or within 50 years may reasonably be expected to be, impacted by flooding and sea level rise.

The bill adds that DEP may provide grants to a county or municipality to fund the development of strategies, in addition to projects, plans, and policies, that enhance community preparations for threats from flooding and sea level rise, including adaptation plans that help local governments prioritize project development and implementation across one or more jurisdictions in a manner consistent with departmental guidance.

The bill specifies that, under the grant program, DEP may provide grants to a county or municipality for the cost of permitting for projects designed to achieve reductions in the risks or impacts of flooding and sea level rise using nature-based solutions.

The bill requires that, upon completion of a vulnerability assessment, the county or municipality must submit to DEP an inventory of critical assets, including regionally significant assets that are currently, or within 50 years are reasonably expected to be, impacted by flooding and sea level rise.

The bill requires that a vulnerability assessment make use of the best available information through the Florida Flood Hub as certified by the Chief Science Officer, in consultation with the Chief Resilience Officer. The bill adds that this includes analyzing impacts related to the depth of tidal flooding, current and future storm surge flooding, and rainfall-induced flooding, which are already listed in statute. With regard to current and future storm surge flooding, the bill removes language directing the use of publicly available National Oceanic and Atmospheric Administration (NOAA) or Federal Emergency Management Agency storm surge data, unless there is an absence of applicable data from the Florida Flood Hub. Further, the bill adds that higher frequency storm events may be analyzed to understand the exposure of a regionally significant asset. With regard to rainfall-induced flooding, the bill specifies that a spatiotemporal analysis used in the analysis must be GIS-based.

The bill requires that a vulnerability assessment initiated after July 1, 2024, must apply at a minimum the 2022 NOAA intermediate-low and intermediate sea level rise scenarios or the statewide sea level rise projections developed pursuant to the comprehensive statewide flood vulnerability and sea level rise assessment. This replaces language in current law requiring two local sea level rise scenarios that must include the 2017 NOAA intermediate-low and intermediate-high sea level rise scenarios.

The bill adds that a vulnerability assessment apply at least two planning horizons that are identified in the following table which correspond with the appropriate comprehensive statewide flood vulnerability and sea level rise assessment for which DEP, at the time of award, determines such local vulnerability assessment will be incorporated:

Year of assessment	20-year planning horizon	50-year planning horizon
2024	2040	2070
2029	2050	2080
2034	2055	2085
2039	2060	2090
2044	2065	2095
2049	2070	2100

The bill requires that the local sea level data required to be applied in a vulnerability assessment must be the data maintained by the Florida Flood Hub which reflect the best available scientific information as certified by the Chief Science Officer, in consultation with the Chief Resilience Officer. If such data is not available, then the bill allows the use of local sea level data that may be interpolated between the two closest NOAA tide gauges.

Comprehensive Statewide Flood Vulnerability and Sea Level Rise Data Set and Assessment

The bill updates an out-of-date requirement, to require DEP to develop and maintain a comprehensive statewide flood vulnerability and sea level rise data set. The bill directs DEP to develop and maintain the data set in coordination with the Chief Resilience Officer. The bill requires the compilation, analysis, and incorporation of information related to critical asset inventories. The bill requires the Chief Science Officer to coordinate specifically with the Chief Resilience Officer and the Florida Flood Hub to develop statewide sea level rise projections.

The bill updates an out-of-date provision and requires DEP to coordinate with the Chief Resilience Officer and the Florida Flood Hub, to complete a comprehensive statewide flood vulnerability and sea level rise assessment. The bill requires that the assessment must include the 20- and 50-year projected sea level rise at each active NOAA tidal gauge off the coast of this state as derived from the statewide sea level rise projections.

The bill requires DEP to coordinate with the Chief Resilience Officer and the Florida Flood Hub to update the comprehensive statewide flood vulnerability and sea level rise data set using the best available information each year at least every five years. The bill removes language requiring DEP to update the data set and assessment more frequently than every five years if it determines that updates are necessary to maintain their validity.

Statewide Flooding and Sea Level Rise Resilience Plan

The bill removes an out-of-date requirement regarding a preliminary plan to be submitted by December 1, 2021. The bill requires that each annual plan must *primarily* address risks of flooding and sea level rise, but adds that it may also include, at DEP's discretion in consultation with the Chief Resilience Officer, certain other projects that address risks of flooding and sea level rise to critical assets not yet identified in the comprehensive statewide flood vulnerability and sea level rise assessment.

The bill specifies that local governments, special districts, and regional resilience entities may submit proposed projects that address risks of flooding or sea level rise identified in the comprehensive statewide flood vulnerability and sea level rise assessment.

The bill extends the deadline for counties, municipalities, special districts, and regional resilience entities acting on behalf of one or more member counties or municipalities to submit projects identified in existing vulnerability assessments that do not comply with the requirements of the Resilient Florida Grant Program to December 1, 2024. Such entities may submit those projects only if the entity is actively developing a vulnerability assessment that is either under a signed grant agreement with DEP pursuant to the grant program or funded by another state or federal agency, or is self-funded and intended to meet the grant program's vulnerability assessment requirements.

The bill specifies that water management, drainage, erosion control, and flood control districts and regional water supply authorities may submit proposed projects that address risks of flooding or sea level rise identified in the comprehensive statewide flood vulnerability and sea level rise assessment or vulnerability assessments that meet the requirements of the Resilient Florida Grant Program.

The bill removes language requiring that for a project to be eligible for inclusion in the plan, it must have been submitted by an authorized entity or must have been identified in the comprehensive statewide flood vulnerability and sea level rise assessment, as applicable.

The bill authorizes DEP to adopt rules to implement this section.

Regional Resilience Entities

The bill specifically includes regional planning councils and estuary partnerships as regional entities that may receive funding for certain purposes.

The bill specifies that one of the purposes for which DEP may provide funding to certain regional entities is to coordinate and conduct activities authorized by the Resilient Florida Grant Program with broad regional benefit or on behalf of multiple member counties and municipalities. This replaces language authorizing DEP to provide funding for the purpose of coordinating multijurisdictional vulnerability assessments.

Section 5 amends s. 381.0061, F.S., to remove an authorization allowing the Department of Health (DOH) to impose a fine for a violation of the laws relating to onsite sewage treatment and disposal systems (OSTDSs) regulations, OSTDS fees, and septic tank contracting.

The bill specifies that DOH may impose a fine for a violation of any rule adopted by DOH under ch. 381, F.S., relating to public health, or for a violation of ch. 386, F.S., relating to sanitary nuisances and the Florida Clean Air Act, that does not involve OSTDSs.

Section 6 provides that the Legislature intends that the transfer of the regulation of the Onsite Sewage Program from DOH to the Department of Environmental Protection (DEP), as required by the Clean Waterways Act, be completed in a phased approach.

The bill directs that before the phased transfer, DEP must coordinate with DOH to identify equipment and vehicles that were previously used to carry out the program in each county and that are no longer needed for such purpose. DOH must transfer the agreed-upon equipment and vehicles to DEP, to the extent that each county agrees to relinquish ownership of such equipment and vehicles to DOH.

The bill provides that when DEP begins implementing the program within a county, DOH may no longer implement or collect fees for the program unless specified by separate delegation or contract with DEP.

Section 7 amends s. 381.0065, F.S., to specify that DEP must conduct enforcement activities in accordance with part I of chapter 403, F.S., relating to pollution control, as well as for a violation of any rule adopted by DEP under laws regulating OSTDSs, sanitary nuisances relating to OSTDSs, or septic tank contracting.

The bill adds that all references in this section (s. 381.0065, F.S.) to part I of chapter 386, regarding sanitary nuisances, relate solely to nuisances that involve improperly built or maintained septic tanks or other OSTDSs and untreated or improperly treated or transported waste from OSTDSs. The bill provides that DEP shall have all the duties and authorities of DOH for sanitary nuisances involving OSTDSs. The bill provides that this authority is in addition to and may be pursued independently of or simultaneously with the enforcement remedies provided under this section relating to OSTDSs regulations and ch. 403, F.S., relating to pollution control.

The bill directs DEP to adopt rules establishing and implementing a program of general permits for projects, or categories of projects, which have, individually or cumulatively, a minimal adverse impact on public health or the environment. The rules must:

- Specify design or performance criteria which, if applied, would result in compliance with appropriate standards; and
- Authorize a person who complies with the general permit eligibility requirements to use the permit 30 days after giving notice to DEP without any agency action by DEP. Within the 30-day notice period, DEP shall determine whether the activity qualifies for a general permit. Further, if the activity does not qualify or the notice does not contain all the required information, DEP must notify the person.

The bill specifies that for DEP personnel to gain entry to a residence or private building, DEP must obtain permission from the owner or occupant or secure an inspection warrant from a court of competent jurisdiction pursuant to the procedures of s. 403.091, F.S., relating to inspections (see Section 13 of the bill). The bill removes language authorizing DEP to issue citations that may contain an order of correction or an order to pay a fine, or both, and instead provides that DEP has all the judicial and administrative remedies available to it pursuant to part I of ch. 403, F.S., relating to pollution control.

The bill removes all requirements relating to DEP issuing citations.

The bill provides that DEP shall deposit any damages, costs, or penalties it collects pursuant to this section on OSTDSs regulations and part I of ch. 403, F.S., relating to pollution control, in the Water Quality Assurance Trust Fund. The bill removes language directing DEP to deposit money from fines into the county health department trust fund.

Section 8 amends s. 381.0066, F.S., relating to OSTDS fees, to provide that the fee schedule for application review, permit issuance, or system inspection applies when performed by DEP or a private provider inspector.

The bill removes language providing that fees collected with respect to OSTDS must be deposited in a trust fund administered by DEP, to be used for purposes stated in the OSTDS fees and regulations laws. The bill directs that funds collected for the implementation of OSTDS regulation, connection of existing OSTDSs to central sewerage systems, and corrective orders relating to OSTDSs and private and certain public water systems, subsequent to any phased transfer of implementation from DOH to DEP within any county, must be deposited in the Florida Permit Fee Trust Fund, to be administered by DEP.

Section 9 amends s. 403.061, F.S., to direct that, upon direction of DEP, all counties must make available necessary scientific, technical, research, administrative, and operational services and facilities. Current law only requires all state agencies to make these services and facilities available.

Section 10 amends s. 403.064, F.S., to provide a Legislative finding that the reuse of reclaimed water is a critical component of meeting the state's existing and future water supply needs while sustaining natural systems and encouraging its best and most beneficial use.

Therefore, the bill would require *all* applicants for permits to construct and operate a domestic wastewater treatment facility to prepare a reuse feasibility study. Currently, this requirement is limited to wastewater treatment facilities discharging to a water resource caution area.

The bill makes the following changes to the content requirements of reuse feasibility studies:

- A reuse feasibility study must include an evaluation of the estimated water savings resulting from different types of reuse, if implemented;
- A reuse feasibility study must include an evaluation of environmental and water resource benefits associated with different types of reuse;
- A reuse feasibility study must include an evaluation of economic, environmental, and technical constraints associated with the different types of reuse, including any constraints caused by potential water quality impacts.

The bill requires that a domestic wastewater treatment facility that disposes of effluent or a portion thereof by Class I deep well injection, surface water discharge, land application, or other method to dispose of effluent or a portion thereof must give consideration to direct ecological or public water supply benefits afforded by any disposal and implement reuse to the degree that it is feasible.

Section 11 amends s. 403.067, F.S., to specify that if a local government is required to develop a wastewater treatment plan as part of a basin management action plan (BMAP), that plan is a *domestic* wastewater treatment plan. The bill adds that public and private domestic wastewater treatment facilities that specifically provide services or are located within the jurisdiction of the local government must participate in developing the domestic wastewater treatment plan.

The bill adds that private domestic wastewater facilities and special districts providing domestic wastewater services must provide the required wastewater facility information to the applicable local governments.

Section 12 amends s. 403.086, F.S., to require that by July 1, 2034, within a BMAP or a reasonable assurance plan area, any wastewater treatment facility providing reclaimed water that will be used for commercial or residential irrigation or be otherwise land applied must meet the standards for advanced waste treatment as set in statute,¹⁶⁴ as approved by DEP, or a more stringent treatment standard if DEP determines it is necessary to achieve the total daily maximum load or applicable water quality criteria.

Section 13 amends s. 403.091, F.S., to provide that any duly authorized representative of DEP may at any reasonable time enter and inspect, for the purpose of ascertaining the state of compliance with the law or rules and regulations of DEP, any property, premises, or place, except a building used exclusively for a private residence, on or at which an OSTDS is located or is being constructed or installed or where certain required records are kept.

The bill provides that any authorized representative may at any reasonable times obtain any other information necessary to determine compliance with permit conditions or other requirements of OSTDSs regulations, sanitary nuisances for purposes of OSTDSs only, septic tank contracting,

¹⁶⁴ Section 403.086(4), F.S.

or rules of standards adopted pursuant thereto. The bill adds that an inspection warrant may be issued:

- When it appears that the properties to be inspected may be connected with or contain evidence of the violation of any of the laws listed above.
- When the inspection sought is an integral part of a larger scheme of systematic routine inspections which are necessary to, and consistent with, the continuing efforts of DEP to ensure compliance with the law listed above.

Section 14 amends s. 403.121, F.S., to provide that DEP shall have certain judicial and administrative remedies available to it for violations of statutes relating to:

- General requirements for OSTDSs (ss. 381.0065-381.0067, F.S.);
- Sanitary nuisances for purposes of OSTDSs only (part I of ch. 386, F.S.);
- Septic tank contracting (part III of ch. 489, F.S., or any rule promulgated thereunder).

With regard to the schedule for administrative penalties, DEP shall assess a penalty of \$2,000 for the following violations:

- Failure to obtain an OSTDS permit or for another violation of s. 381.0065, F.S., relating to OSTDSs regulations;
- The creation of or maintenance of a nuisance related to an OSTDS under part I of ch. 386, F.S.; or
- For a violation of part III of ch. 489, relating to septic tank contracting, or any rule properly promulgated thereunder.

The bill adds that each day the cause of a sanitary nuisance is not addressed constitutes a separate offense.

Section 15 amends s. 403.0671, F.S., to clarify that BMAP wastewater reports must include projects to construct, upgrade, or expand domestic wastewater treatment facilities to meet the *domestic* wastewater treatment plan. This change conforms to amendments made in Section 11 of the bill.

Section 16 amends s. 403.0673, F.S., to clarify that DEP may provide grants for projects identified in specified *domestic* wastewater treatment plans. This change conforms to amendments made in Section 11 of the bill.

Sections 17 reenacts s. 327.73(1)(x), F.S., relating to noncriminal infractions, to incorporate the amendment made by this bill in a reference to the amended section.

Section 18 reenacts s. 381.0072(4)(a) and (6)(a), F.S., relating to food service protection, to incorporate the amendment made by this bill in a reference to the amended section.

Section 19 reenacts s. 381.0086(4), F.S., relating to public health rules, variances, and penalties, to incorporate the amendment made by this bill in a reference to the amended section.

Section 20 reenacts s. 381.0098(7), F.S., relating to biomedical waste, to incorporate the amendment made by this bill in a reference to the amended section.

Section 21 reenacts s. 513.10(2), F.S., relating to operating a mobile home or recreational vehicle park without a permit, enforcement, and penalties, to incorporate the amendment made by this bill in a reference to the amended section.

Section 22 provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18 of the Florida Constitution prohibits a general law that requires a county or municipality to spend funds to take an action requiring the expenditure of funds, unless the law fulfills an important state interest and unless an exception applies. This bill may contain a local mandate because it requires all counties, at the direction of the Department of Environmental Protection, to make available necessary scientific, technical, research, administrative, and operational services and facilities. Because these are services and facilities that the local government would already have available, the exemption for insignificant fiscal impacts may apply.

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:

The Department of Environmental Protection (DEP) shall assess a penalty of \$2,000 for the following violations:

- Failure to obtain an OSTDS permit or for another violation of s. 381.0065, F.S., relating to OSTDSs regulations;

- The creation of or maintenance of a nuisance related to an OSTDS under part I of ch. 386, F.S.; or
- For a violation of part III of ch. 489, relating to septic tank contracting, or any rule properly promulgated thereunder.

C. Government Sector Impact:

This bill may have a positive fiscal impact on certain local governments, because of increased funding opportunities under the Resilient Florida Grant Program. This bill may have a negative fiscal impact on local governments due to the requirement that all counties must make available necessary scientific, technical, research, administrative, and operational services and facilities. Further, county health departments will lose revenue and staffing that is being taken over by DEP, but they will also no longer have to provide those services.

This bill may have a positive fiscal impact on state government, because DEP is directed to deposit certain damages, costs, or penalties it collects relating to onsite sewage treatment and disposal systems regulations into the Water Quality Assurance Trust Fund. Local governments may experience a negative fiscal impact, because the bill removes language directed DEP to deposit funds from fines into the county health department trust fund.

VI. Technical Deficiencies:

There is a typographical error on line 178 of the bill. The line reads “development project helps meets water demands beyond a 20-year,” however it should read “development project helps meet water demands beyond a 20-year.”

Section 381.0065(5), F.S., and section 403.091, F.S., would both authorize inspections by DEP for the same purposes. However, these sections differ in what premises are excluded and whether DEP must have a reason to believe that noncompliance exists. If both of these sections govern the same activity, they should be identical or one could be deleted.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 253.04, 258.39, 373.250, 380.093, 381.0061, 381.0065, 381.0066, 403.061, 403.064, 403.067, 403.086, 403.091, 403.121, 403.0671, 403.0673 of the Florida Statutes.

This bill reenacts sections 327.73(1)(x), 381.0072(4)(a) and (6)(a), 381.0086(4), 381.0098(7), and 513.10(2) 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.

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

By Senator Calatayud

38-00749A-24

20241386__

A bill to be entitled

An act relating to the Department of Environmental Protection; amending s. 253.04, F.S.; revising the aquatic preserves within which a person may not operate a vessel outside a lawfully marked channel under certain circumstances; amending s. 258.39, F.S.; declaring the Kristin Jacobs Coral Reef Ecosystem Conservation Area an aquatic preserve area; amending s. 373.250, F.S.; requiring each water management district, in coordination with the department, to develop rules that promote the use of reclaimed water and encourage potable water offsets; providing requirements for such rules; providing construction; amending s. 380.093, F.S.; defining the term "Florida Flood Hub"; revising the definition of the term "preconstruction activities"; revising the purposes for which counties and municipalities may use Resilient Florida Grant Program funds; revising vulnerability assessment requirements; revising requirements for the development and maintenance of the comprehensive statewide flood vulnerability and sea level rise data set and assessment; requiring the department to coordinate with the Chief Resilience Officer and the Florida Flood Hub to update the data set and assessment at specified intervals; revising requirements for the Statewide Flooding and Sea Level Rise Resilience Plan; revising the purposes of the funding for regional resilience entities; making technical changes; amending s. 381.0061, F.S.;

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revising the violations for which the department may impose a specified fine; providing legislative intent regarding a phased transfer of the Department of Health's Onsite Sewage Program to the Department of Environmental Protection; requiring the Department of Environmental Protection to coordinate with the Department of Health regarding the identification and transfer of certain equipment and vehicles under certain circumstances; prohibiting the Department of Health from implementing or collecting fees for the program when the Department of Environmental Protection begins implementing the program; providing exceptions; amending s. 381.0065, F.S.; requiring the Department of Environmental Protection to conduct enforcement activities for violations of certain onsite sewage treatment and disposal system regulations in accordance with specified provisions; specifying the department's authority with respect to specific provisions; requiring the department to adopt rules for a program for general permits for certain projects; providing requirements for such rules; revising department enforcement provisions; deleting certain criminal penalties; requiring the damages, costs, or penalties collected to be deposited into the Water Quality Assurance Trust Fund rather than the relevant county health department trust fund; requiring the department to establish an enhanced nutrient-reducing onsite sewage treatment and disposal system approval program; authorizing the department to

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contract with or delegate certain powers and duties to a county; amending s. 381.0066, F.S.; requiring certain fees to be deposited into the Florida Permit Fee Trust Fund after a specified timeframe; amending s. 403.061, F.S.; requiring counties to make certain services and facilities available upon the direction of the department; amending s. 403.064, F.S.; revising legislative findings; revising the domestic wastewater treatment facilities required to submit a reuse feasibility study as part of a permit application; revising the contents of a required reuse feasibility study; revising the domestic wastewater facilities required to implement reuse under certain circumstances; revising applicability; revising construction; amending s. 403.067, F.S.; requiring certain facilities and systems to include a domestic wastewater treatment plan as part of a basin management action plan for nutrient total maximum daily loads; amending s. 403.086, F.S.; requiring wastewater treatment facilities within a basin management action plan or reasonable assurance plan area which provide reclaimed water for specified purposes to meet advanced waste treatment or a more stringent treatment standard under certain circumstances; amending s. 403.091, F.S.; authorizing certain department representatives to enter and inspect premises on which an onsite sewage treatment and disposal system is located or being constructed or installed or where certain records are kept; revising

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requirements for such access; revising the circumstances under which an inspection warrant may be issued; amending s. 403.121, F.S.; revising department enforcement provisions; revising administrative penalty calculations for failure to obtain certain required permits and for certain violations; amending ss. 403.0671 and 403.0673, F.S.; conforming provisions to changes made by the act; reenacting s. 327.73(1)(x), F.S., relating to noncriminal infractions, to incorporate the amendment made to s. 253.04, F.S., in a reference thereto; reenacting ss. 381.0072(4)(a) and (6)(a), 381.0086(4), 381.0098(7), and 513.10(2), F.S., relating to food service protection, penalties, biomedical waste, and operating without a permit, respectively, to incorporate the amendment made to s. 381.0061, F.S., in references thereto; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 253.04, Florida Statutes, is amended to read:

253.04 Duty of board to protect, etc., state lands; state may join in any action brought.—

(3)(a) The duty to conserve and improve state-owned lands and the products thereof includes ~~shall include~~ the preservation and regeneration of seagrass, which is deemed essential to the oceans, gulfs, estuaries, and shorelines of the state. A person operating a vessel outside a lawfully marked channel in a

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careless manner that causes seagrass scarring within an aquatic preserve established in ss. 258.39-258.3991 ~~ss. 258.39-258.399~~, with the exception of the Lake Jackson, Oklawaha River, Wekiva River, and Rainbow Springs aquatic preserves, commits a noncriminal infraction, punishable as provided in s. 327.73. Each violation is a separate offense. As used in this subsection, the term:

1. "Seagrass" means Cuban shoal grass (*Halodule wrightii*), turtle grass (*Thalassia testudinum*), manatee grass (*Syringodium filiforme*), star grass (*Halophila engelmannii*), paddle grass (*Halophila decipiens*), Johnson's seagrass (*Halophila johnsonii*), or widgeon grass (*Ruppia maritima*).

2. "Seagrass scarring" means destruction of seagrass roots, shoots, or stems that results in tracks on the substrate commonly referred to as prop scars or propeller scars caused by the operation of a motorized vessel in waters supporting seagrasses.

Section 2. Subsection (33) is added to section 258.39, Florida Statutes, to read:

258.39 Boundaries of preserves.—The submerged lands included within the boundaries of Nassau, Duval, St. Johns, Flagler, Volusia, Brevard, Indian River, St. Lucie, Charlotte, Pinellas, Martin, Palm Beach, Miami-Dade, Monroe, Collier, Lee, Citrus, Franklin, Gulf, Bay, Okaloosa, Marion, Santa Rosa, Hernando, and Escambia Counties, as hereinafter described, with the exception of privately held submerged lands lying landward of established bulkheads and of privately held submerged lands within Monroe County where the establishment of bulkhead lines is not required, are hereby declared to be aquatic preserves.

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Such aquatic preserve areas include:

(33) Kristin Jacobs Coral Reef Ecosystem Conservation Area, as designated by chapter 2021-107, Laws of Florida, the boundaries of which consist of the sovereignty submerged lands and waters of the state offshore of Broward, Martin, Miami-Dade, and Palm Beach Counties from the St. Lucie Inlet to the northern boundary of the Biscayne National Park.

Any and all submerged lands theretofore conveyed by the Trustees of the Internal Improvement Trust Fund and any and all uplands now in private ownership are specifically exempted from this dedication.

Section 3. Subsection (9) is added to section 373.250, Florida Statutes, to read:

373.250 Reuse of reclaimed water.—

(9) To promote the use of reclaimed water and encourage potable water offsets that produce significant water savings beyond those required in a consumptive use permit, each water management district, in coordination with the department, shall develop rules by December 31, 2025, which provide all of the following:

(a) If an applicant proposes a water supply development or water resource development project using reclaimed water as part of an application for consumptive use, the applicant is eligible for a permit duration of up to 30 years if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. Rules developed pursuant to this paragraph must include, at a minimum:

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175 1. A requirement that the permittee demonstrate how
176 quantifiable groundwater or surface water savings associated
177 with the new water supply development or water resource
178 development project helps meets water demands beyond a 20-year
179 permit duration or is completed to benefit a waterbody with a
180 minimum flow or minimum water level with a recovery or
181 prevention strategy; and

182 2. Guidelines for a district to follow in determining the
183 permit duration based on the project's implementation.
184

185 This paragraph does not limit the existing authority of a water
186 management district to issue a shorter duration permit to
187 protect from harm the water resources or ecology of the area, or
188 to otherwise ensure compliance with the conditions for permit
189 issuance.

190 (b) Authorization for a consumptive use permittee to seek a
191 permit extension of up to 10 years if the permittee proposes a
192 water supply development or water resource development project
193 using reclaimed water during the term of its permit which
194 results in the reduction of groundwater or surface water
195 withdrawals or is completed to benefit a waterbody with a
196 minimum flow or minimum water level with a recovery or
197 prevention strategy. Rules associated with this paragraph must
198 include, at a minimum:

199 1. A requirement that the permittee be in compliance with
200 the permittee's consumptive use permit;

201 2. A requirement that the permittee demonstrate how the
202 quantifiable groundwater or surface water savings associated
203 with the new water supply development or water resource

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development project helps meet water demands beyond the issued permit duration or benefits a waterbody with a minimum flow or minimum water level with a recovery or prevention strategy;

3. A requirement that the permittee demonstrate a water demand for the permit's allocation through the term of the extension; and

4. Guidelines for a district to follow in determining the number of years extended, including a minimum year requirement, based on the project implementation.

This paragraph does not limit the existing authority of a water management district to protect from harm the water resources or ecology of the area, or to otherwise ensure compliance with the conditions for permit issuance.

Section 4. Present paragraphs (c) and (d) of subsection (2) of section 380.093, Florida Statutes, are redesignated as paragraphs (d) and (e), respectively, a new paragraph (c) is added to that subsection, and present paragraph (c) of subsection (2), paragraphs (b), (c), and (d) of subsection (3), and subsections (4), (5), and (6) of that section are amended, to read:

380.093 Resilient Florida Grant Program; comprehensive statewide flood vulnerability and sea level rise data set and assessment; Statewide Flooding and Sea Level Rise Resilience Plan; regional resilience entities.—

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

(c) "Florida Flood Hub" means the Florida Flood Hub for Applied Research and Innovation established pursuant to s. 380.0933.

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(d) ~~(e)~~ "Preconstruction activities" means activities associated with a project that addresses the risks of flooding and sea level rise that occur before construction begins, including, but not limited to, design of the project, permitting for the project, surveys and data collection, site development, solicitation, public hearings, local code or comprehensive plan amendments, establishing local funding sources, and easement acquisition.

(3) RESILIENT FLORIDA GRANT PROGRAM.—

(b) Subject to appropriation, the department may provide grants to each of the following entities:

1. A county or municipality to fund:

a. The costs of community resilience planning and necessary data collection for such planning, including comprehensive plan amendments and necessary corresponding analyses that address the requirements of s. 163.3178(2)(f).

b. Vulnerability assessments that identify or address risks of inland or coastal flooding and sea level rise.

c. Updates to the county's or municipality's inventory of critical assets, including regionally significant assets that are currently or reasonably expected to be impacted by flooding and sea level rise. The updated inventory must be submitted to the department and, at the time of submission, must reflect all such assets that are currently, or within 50 years may reasonably be expected to be, impacted by flooding and sea level rise.

d. The development of projects, plans, strategies, and policies that enhance community preparations ~~allow communities to prepare~~ for threats from flooding and sea level rise,

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including adaptation plans that help local governments
prioritize project development and implementation across one or
more jurisdictions in a manner consistent with departmental
guidance.

e.d. Preconstruction activities for projects to be
submitted for inclusion in the Statewide Flooding and Sea Level
Rise Resilience Plan which ~~that~~ are located in a municipality
that has a population of 10,000 or fewer or a county that has a
population of 50,000 or fewer, according to the most recent
April 1 population estimates posted on the Office of Economic
and Demographic Research's website.

f.e. Feasibility studies ~~and the cost of permitting~~ for
nature-based solutions that reduce the impact of flooding and
sea level rise.

g. The cost of permitting for projects designed to achieve
reductions in the risks or impacts of flooding and sea level
rise using nature-based solutions.

2. A water management district identified in s. 373.069 to
support local government adaptation planning, which may be
conducted by the water management district or by a third party
on behalf of the water management district. Such grants must be
used for the express purpose of supporting the Florida Flood Hub
~~for Applied Research and Innovation~~ and the department in
implementing this section through data creation and collection,
modeling, and the implementation of statewide standards.
Priority must be given to filling critical data gaps identified
by the Florida Flood Hub ~~for Applied Research and Innovation~~
under s. 380.0933(2) (a).

(c) A vulnerability assessment conducted pursuant to

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paragraph (b) must encompass the entire county or municipality; include all critical assets owned or maintained by the grant applicant; and use the most recent publicly available Digital Elevation Model and generally accepted analysis and modeling techniques. An assessment may encompass a smaller geographic area or include only a portion of the critical assets owned or maintained by the grant applicant with appropriate rationale and upon approval by the department. Locally collected elevation data may also be included as part of the assessment as long as it is submitted to the department pursuant to this paragraph.

1. The assessment must include an analysis of the vulnerability of and risks to critical assets, including regionally significant assets, owned or managed by the county or municipality.

2. Upon completion of a vulnerability assessment, the county or municipality shall submit to the department all of the following:

a. A report detailing the findings of the assessment.

b. All electronic mapping data used to illustrate flooding and sea level rise impacts identified in the assessment. When submitting such data, the county or municipality shall include:

(I) Geospatial data in an electronic file format suitable for input to the department's mapping tool.

(II) Geographic information system (GIS) data that has been projected into the appropriate Florida State Plane Coordinate System and that is suitable for the department's mapping tool. The county or municipality must also submit metadata using standards prescribed by the department.

c. An inventory ~~A list~~ of critical assets, including

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regionally significant assets, that are currently, or within 50
years are reasonably expected to be, impacted by flooding and
sea level rise.

(d) A vulnerability assessment conducted pursuant to
paragraph (b) must do ~~include~~ all of the following:

1. Include peril of flood comprehensive plan amendments
that address the requirements of s. 163.3178(2)(f), if the
county or municipality is subject to such requirements and has
not complied with such requirements as determined by the
Department of Commerce ~~Economic Opportunity~~.

2. Make use of the best available information through the
Florida Flood Hub as certified by the Chief Science Officer, in
consultation with the Chief Resilience Officer, including, as if
applicable, analyzing impacts related to the depth of:

a. Tidal flooding, including future high tide flooding,
which must use thresholds published and provided by the
department. To the extent practicable, the analysis should also
geographically display the number of tidal flood days expected
for each scenario and planning horizon.

b. Current and future storm surge flooding ~~using publicly~~
~~available National Oceanic and Atmospheric Administration or~~
~~Federal Emergency Management Agency storm surge data~~. The
initial storm surge event used must equal or exceed the current
100-year flood event. Higher frequency storm events may be
analyzed to understand the exposure of a critical asset or
regionally significant asset. Publicly available National
Oceanic and Atmospheric Administration (NOAA) or Federal
Emergency Management Agency storm surge data may be used in the
absence of applicable data from the Florida Flood Hub.

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349 c. To the extent practicable, rainfall-induced flooding
350 using a GIS-based spatiotemporal analysis or existing hydrologic
351 and hydraulic modeling results. Future boundary conditions
352 should be modified to consider sea level rise and high tide
353 conditions. Vulnerability assessments for rainfall-induced
354 flooding must include the depth of rainfall-induced flooding for
355 a 100-year storm and a 500-year storm, as defined by the
356 applicable water management district or, if necessary, the
357 appropriate federal agency. Future rainfall conditions should be
358 used, if available. Noncoastal communities must perform a
359 rainfall-induced flooding assessment.

360 d. To the extent practicable, compound flooding or the
361 combination of tidal, storm surge, and rainfall-induced
362 flooding.

363 3. Apply the following scenarios and standards:

364 a. All analyses in the North American Vertical Datum of
365 1988.

366 b. For a vulnerability assessment initiated after July 1,
367 2024, at a minimum ~~least two local sea level rise scenarios,~~
368 ~~which must include the 2022 NOAA 2017 National Oceanic and~~
369 ~~Atmospheric Administration intermediate-low and intermediate~~
370 ~~intermediate-high~~ sea level rise scenarios or the statewide sea
371 level rise projections developed pursuant to paragraph (4) (a)
372 projections.

373 c. At least two planning horizons identified in the
374 following table which correspond with the appropriate
375 comprehensive statewide flood vulnerability and sea level rise
376 assessment for which the department, at the time of award,
377 determines such local vulnerability assessment will be

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incorporated:

<u>Year of assessment</u>	<u>20-year planning horizon</u>	<u>50-year planning horizon</u>
<u>2024</u>	<u>2040</u>	<u>2070</u>
<u>2029</u>	<u>2050</u>	<u>2080</u>
<u>2034</u>	<u>2055</u>	<u>2085</u>
<u>2039</u>	<u>2060</u>	<u>2090</u>
<u>2044</u>	<u>2065</u>	<u>2095</u>
<u>2049</u>	<u>2070</u>	<u>2100</u>

~~that include planning horizons for the years 2040 and 2070.~~

d. Local sea level data maintained by the Florida Flood Hub
which reflect the best available scientific information as
certified by the Chief Science Officer, in consultation with the
Chief Resilience Officer. If such data is not available, local
sea level data may be ~~that has been~~ interpolated between the two
 closest ~~NOAA National Oceanic and Atmospheric Administration~~
 tide gauges; however, such. ~~Local sea level~~ data may be taken
 from only one of the two closest NOAA tide gauges ~~such gauge~~ if
 the gauge has a higher mean sea level or may be. ~~Data~~ taken from
 an alternate tide gauge ~~may be used~~ with appropriate rationale

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and department approval, as long as it is publicly available or submitted to the department pursuant to paragraph (b).

(4) COMPREHENSIVE STATEWIDE FLOOD VULNERABILITY AND SEA LEVEL RISE DATA SET AND ASSESSMENT.—

(a) ~~By July 1, 2023,~~ The department shall develop and maintain ~~complete the development of~~ a comprehensive statewide flood vulnerability and sea level rise data set sufficient to conduct a comprehensive statewide flood vulnerability and sea level rise assessment. In developing and maintaining the data set, the department shall, in coordination with the Chief Resilience Officer and the Florida Flood Hub ~~for Applied Research and Innovation~~, compile, analyze, and incorporate, as appropriate, information related to vulnerability assessments and critical asset inventories submitted to the department pursuant to subsection (3) or any previously completed assessments that meet the requirements of subsection (3).

1. The Chief Science Officer shall, in coordination with the Chief Resilience Officer and the Florida Flood Hub ~~necessary experts and resources~~, develop statewide sea level rise projections that incorporate temporal and spatial variability, to the extent practicable, for inclusion in the data set. This subparagraph does not supersede regionally adopted projections.

2. The data set must include information necessary to determine the risks to inland and coastal communities, including, but not limited to, elevation, tidal levels, and precipitation.

(b) ~~By July 1, 2024,~~ The department, in coordination with the Chief Resilience Officer and the Florida Flood Hub, shall complete a comprehensive statewide flood vulnerability and sea

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level rise assessment that identifies inland and coastal infrastructure, geographic areas, and communities in this ~~the~~ state which ~~that~~ are vulnerable to flooding and sea level rise and the associated risks.

1. The department shall use the comprehensive statewide flood vulnerability and sea level rise data set to conduct the assessment.

2. The assessment must incorporate local and regional analyses of vulnerabilities and risks, including, as appropriate, local mitigation strategies and postdisaster redevelopment plans.

3. The assessment must include an inventory of critical assets, including regionally significant assets, that are essential for critical government and business functions, national security, public health and safety, the economy, flood and storm protection, water quality management, and wildlife habitat management, and must identify and analyze the vulnerability of and risks to such critical assets. When identifying critical assets for inclusion in the assessment, the department shall also take into consideration the critical assets identified by local governments and submitted to the department pursuant to subsection (3).

4. The assessment must include the 20-year and 50-year projected sea level rise at each active NOAA tidal gauge off the coast of this state as derived from the statewide sea level rise projections developed pursuant to paragraph (a).

(c) The department, in coordination with the Chief Resilience Officer and the Florida Flood Hub, shall update the comprehensive statewide flood vulnerability and sea level rise

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456 data set with the best available information each year and shall
457 update the assessment at least every 5 years. ~~The department may~~
458 ~~update the data set and assessment more frequently if it~~
459 ~~determines that updates are necessary to maintain the validity~~
460 ~~of the data set and assessment.~~

461 (5) STATEWIDE FLOODING AND SEA LEVEL RISE RESILIENCE PLAN.—

462 (a) ~~By December 1, 2021, and~~ Each December 1 thereafter,
463 the department shall develop a Statewide Flooding and Sea Level
464 Rise Resilience Plan on a 3-year planning horizon and submit it
465 to the Governor, the President of the Senate, and the Speaker of
466 the House of Representatives. The plan must consist of ranked
467 projects that address risks of flooding and sea level rise to
468 coastal and inland communities in the state. All eligible
469 projects submitted to the department pursuant to this section
470 must be ranked and included in the plan. Each plan must include
471 a detailed narrative overview describing how the plan was
472 developed, including a description of the methodology used by
473 the department to determine project eligibility, a description
474 of the methodology used to rank projects, the specific scoring
475 system used, the project proposal application form, a copy of
476 each submitted project proposal application form separated by
477 eligible projects and ineligible projects, the total number of
478 project proposals received and deemed eligible, the total
479 funding requested, and the total funding requested for eligible
480 projects.

481 (b) ~~The plan submitted by December 1, 2021, before the~~
482 ~~comprehensive statewide flood vulnerability and sea level rise~~
483 ~~assessment is completed, will be a preliminary plan that~~
484 ~~includes projects that address risks of flooding and sea level~~

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~~rise identified in available local government vulnerability assessments and projects submitted by water management districts that mitigate the risks of flooding or sea level rise on water supplies or water resources of the state. The plan submitted by December 1, 2022, and the plan submitted by December 1, 2023, will be updates to the preliminary plan. The plan submitted by December 1, 2024, and each plan submitted by December 1 thereafter;~~

1. Shall primarily address risks of flooding and sea level rise identified in the comprehensive statewide flood vulnerability and sea level rise assessment; and

2. May include, at the discretion of the department in consultation with the Chief Resilience Officer, other projects submitted pursuant to paragraph (d) which address risks of flooding and sea level rise to critical assets not yet identified in the comprehensive statewide flood vulnerability and sea level rise assessment.

(c) Each plan submitted by the department pursuant to this subsection must include all of the following information for each recommended project:

1. A description of the project.
2. The location of the project.
3. An estimate of how long the project will take to complete.
4. An estimate of the cost of the project.
5. The cost-share percentage available for the project.
6. A summary of the priority score assigned to the project.
7. The project sponsor.

(d) ~~1. By September 1, 2021, and~~ Each September 1

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~~thereafter~~, all of the following entities may submit to the department a list of proposed projects that address risks of flooding or sea level rise identified in the comprehensive statewide flood vulnerability and sea level rise assessment or vulnerability assessments that meet the requirements of subsection (3):

a. Counties.

b. Municipalities.

c. Special districts as defined in s. 189.012 which ~~that~~ are responsible for the management and maintenance of inlets and intracoastal waterways or for the operation and maintenance of a potable water facility, a wastewater facility, an airport, or a seaport facility.

d. Regional resilience entities acting on behalf of one or more member counties or municipalities.

For the plans submitted by December 1, 2024, such entities may submit projects identified in existing vulnerability assessments that do not comply with subsection (3) only if the entity is actively developing a vulnerability assessment that is either under a signed grant agreement with the department pursuant to subsection (3) or funded by another state or federal agency, or is self-funded and intended to meet the requirements of paragraph (3) (d) 2021; December 1, 2022; and December 1, 2023, ~~such entities may submit projects identified in existing vulnerability assessments that do not comply with subsection (3). A regional resilience entity may also submit proposed projects to the department pursuant to this subparagraph on behalf of one or more member counties or municipalities.~~

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543 2. ~~By September 1, 2021, and Each September 1 thereafter,~~
544 all of the following entities may submit to the department a
545 list of any proposed projects that address risks of flooding or
546 sea level rise identified in the comprehensive statewide flood
547 vulnerability and sea level rise assessment or vulnerability
548 assessments that meet the requirements of subsection (3), or
549 that mitigate the risks of flooding or sea level rise on water
550 supplies or water resources of the state and a corresponding
551 evaluation of each project:

- 552 a. Water management districts.
- 553 b. Drainage districts.
- 554 c. Erosion control districts.
- 555 d. Flood control districts.
- 556 e. Regional water supply authorities.

557 3. Each project submitted to the department pursuant to
558 this paragraph for consideration by the department for inclusion
559 in the plan must include all of the following information:

- 560 a. A description of the project.
- 561 b. The location of the project.
- 562 c. An estimate of how long the project will take to
563 complete.
- 564 d. An estimate of the cost of the project.
- 565 e. The cost-share percentage available for the project.
- 566 f. The project sponsor.

567 (e) Each project included in the plan must have a minimum
568 50 percent cost share unless the project assists or is within a
569 financially disadvantaged small community. For purposes of this
570 section, the term "financially disadvantaged small community"
571 means:

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1. A municipality that has a population of 10,000 or fewer, according to the most recent April 1 population estimates posted on the Office of Economic and Demographic Research's website, and a per capita annual income that is less than the state's per capita annual income as shown in the most recent release from the Bureau of the Census of the United States Department of Commerce that includes both measurements; or

2. A county that has a population of 50,000 or fewer, according to the most recent April 1 population estimates posted on the Office of Economic and Demographic Research's website, and a per capita annual income that is less than the state's per capita annual income as shown in the most recent release from the Bureau of the Census of the United States Department of Commerce that includes both measurements.

~~(f) To be eligible for inclusion in the plan, a project must have been submitted pursuant to paragraph (d) or must have been identified in the comprehensive statewide flood vulnerability and sea level rise assessment, as applicable.~~

~~(g)~~ Expenses ineligible for inclusion in the plan include, but are not limited to, expenses associated with any of the following:

1. Aesthetic vegetation.

2. Recreational structures such as piers, docks, and boardwalks.

3. Water quality components of stormwater and wastewater management systems, except for expenses to mitigate water quality impacts caused by the project or expenses related to water quality which are necessary to obtain a permit for the project.

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4. Maintenance and repair of over-walks.

5. Park activities and facilities, except expenses to control flooding or erosion.

6. Navigation construction, operation, and maintenance activities.

7. Projects that provide only recreational benefits.

(g) ~~(h)~~ The department shall implement a scoring system for assessing each project eligible for inclusion in the plan pursuant to this subsection. The scoring system must include the following tiers and associated criteria:

1. Tier 1 must account for 40 percent of the total score and consist of all of the following criteria:

a. The degree to which the project addresses the risks posed by flooding and sea level rise identified in the local government vulnerability assessments or the comprehensive statewide flood vulnerability and sea level rise assessment, as applicable.

b. The degree to which the project addresses risks to regionally significant assets.

c. The degree to which the project reduces risks to areas with an overall higher percentage of vulnerable critical assets.

d. The degree to which the project contributes to existing flooding mitigation projects that reduce upland damage costs by incorporating new or enhanced structures or restoration and revegetation projects.

2. Tier 2 must account for 30 percent of the total score and consist of all of the following criteria:

a. The degree to which flooding and erosion currently affect the condition of the project area.

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b. The overall readiness of the project to proceed in a timely manner, considering the project's readiness for the construction phase of development, the status of required permits, the status of any needed easement acquisition, and the availability of local funding sources.

c. The environmental habitat enhancement or inclusion of nature-based options for resilience, with priority given to state or federal critical habitat areas for threatened or endangered species.

d. The cost-effectiveness of the project.

3. Tier 3 must account for 20 percent of the total score and consist of all of the following criteria:

a. The availability of local, state, and federal matching funds, considering the status of the funding award, and federal authorization, if applicable.

b. Previous state commitment and involvement in the project, considering previously funded phases, the total amount of previous state funding, and previous partial appropriations for the proposed project.

c. The exceedance of the flood-resistant construction requirements of the Florida Building Code and applicable flood plain management regulations.

4. Tier 4 must account for 10 percent of the total score and consist of all of the following criteria:

a. The proposed innovative technologies designed to reduce project costs and provide regional collaboration.

b. The extent to which the project assists financially disadvantaged communities.

(h) ~~(i)~~ The total amount of funding proposed for each year

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of the plan may not be less than \$100 million. Upon review and subject to appropriation, the Legislature shall approve funding for the projects as specified in the plan. Multiyear projects that receive funding for the first year of the project must be included in subsequent plans and funded until the project is complete, provided that the project sponsor has complied with all contractual obligations and funds are available.

~~(i)-(j)~~ The department shall adopt rules ~~initiate rulemaking~~ ~~by August 1, 2021,~~ to implement this section.

(6) REGIONAL RESILIENCE ENTITIES.—Subject to specific legislative appropriation, the department may provide funding for all of the following purposes to regional entities, including regional planning councils and estuary partnerships, that are established by general purpose local governments and whose responsibilities include planning for the resilience needs of communities and coordinating intergovernmental solutions to mitigate adverse impacts of flooding and sea level rise:

(a) Providing technical assistance to counties and municipalities.

(b) Coordinating and conducting activities authorized by subsection (3) with broad regional benefit or on behalf of multiple member counties and municipalities ~~multijurisdictional vulnerability assessments.~~

(c) Developing project proposals to be submitted for inclusion in the Statewide Flooding and Sea Level Rise Resilience Plan.

Section 5. Subsection (1) of section 381.0061, Florida Statutes, is amended to read:

381.0061 Administrative fines.—

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(1) In addition to any administrative action authorized by chapter 120 or by other law, the department may impose a fine, which may not exceed \$500 for each violation, for a violation of s. 381.006(15) ~~or, s. 381.0065, s. 381.0066,~~ s. 381.0072, ~~or part III of chapter 489,~~ for a violation of any rule adopted by the department under this chapter, or for a violation of chapter 386 not involving onsite sewage treatment and disposal systems. The department shall give an alleged violator a notice of intent to impose such fine shall be given by the department to the alleged violator. Each day that a violation continues may constitute a separate violation.

Section 6. The Legislature intends that the transfer of the regulation of the Onsite Sewage Program from the Department of Health to the Department of Environmental Protection, as required by the Clean Waterways Act, chapter 2020-150, Laws of Florida, be completed in a phased approach.

(1) Before the phased transfer, the Department of Environmental Protection shall coordinate with the Department of Health to identify equipment and vehicles that were previously used to carry out the program in each county and that are no longer needed for such purpose. The Department of Health shall transfer the agreed-upon equipment and vehicles to the Department of Environmental Protection, to the extent that each county agrees to relinquish ownership of such equipment and vehicles to the Department of Health.

(2) When the Department of Environmental Protection begins implementing the program within a county, the Department of Health may no longer implement or collect fees for the program unless specified by separate delegation or contract with the

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Department of Environmental Protection.

Section 7. Paragraph (h) of subsection (3) and subsections (5) and (7) of section 381.0065, Florida Statutes, are amended, paragraph (o) is added to subsection (3) of that section, and subsection (9) is added to that section, to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(3) DUTIES AND POWERS OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION.—The department shall:

(h) Conduct enforcement activities in accordance with part I of chapter 403, including imposing fines, issuing citations, suspensions, revocations, injunctions, and emergency orders for violations of this section, part I of chapter 386, or part III of chapter 489 or for a violation of any rule adopted by the department under this section, part I of chapter 386, or part III of chapter 489. All references to part I of chapter 386 in this section relate solely to nuisances involving improperly built or maintained septic tanks or other onsite sewage treatment and disposal systems, and untreated or improperly treated or transported waste from onsite sewage treatment and disposal systems. The department shall have all the duties and authorities of the Department of Health in part I of chapter 386 for nuisances involving onsite sewage treatment and disposal systems. The department's authority under part I of chapter 386 is in addition to and may be pursued independently of or simultaneously with the enforcement remedies provided under this section and chapter 403.

(o) Adopt rules establishing and implementing a program of general permits for this section for projects, or categories of

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746 projects, which have, individually or cumulatively, a minimal
747 adverse impact on public health or the environment. Such rules
748 must:

749 1. Specify design or performance criteria which, if
750 applied, would result in compliance with appropriate standards;
751 and

752 2. Authorize a person who complies with the general permit
753 eligibility requirements to use the permit 30 days after giving
754 notice to the department without any agency action by the
755 department. Within the 30-day notice period, the department
756 shall determine whether the activity qualifies for a general
757 permit. If the activity does not qualify or the notice does not
758 contain all the required information, the department must notify
759 the person.

760 (5) ENFORCEMENT; RIGHT OF ENTRY;~~CITATIONS.~~—

761 (a) Department personnel who have reason to believe
762 noncompliance exists, may at any reasonable time, enter the
763 premises permitted under ss. 381.0065-381.0066, or the business
764 premises of any septic tank contractor or master septic tank
765 contractor registered under part III of chapter 489, or any
766 premises that the department has reason to believe is being
767 operated or maintained not in compliance, to determine
768 compliance with the provisions of this section, part I of
769 chapter 386, or part III of chapter 489 or rules or standards
770 adopted under ss. 381.0065-381.0067, part I of chapter 386, or
771 part III of chapter 489. As used in this paragraph, the term
772 "premises" does not include a residence or private building. To
773 gain entry to a residence or private building, the department
774 must obtain permission from the owner or occupant or secure an

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inspection warrant from a court of competent jurisdiction pursuant to the procedures of s. 403.091.

(b)~~1~~. The department has all of the judicial and administrative remedies available to it pursuant to part I of chapter 403 ~~may issue citations that may contain an order of correction or an order to pay a fine, or both,~~ for violations of ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489 or the rules adopted by the department, ~~when a violation of these sections or rules is enforceable by an administrative or civil remedy, or when a violation of these sections or rules is a misdemeanor of the second degree. A citation issued under ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489 constitutes a notice of proposed agency action.~~

~~2. A citation must be in writing and must describe the particular nature of the violation, including specific reference to the provisions of law or rule allegedly violated.~~

~~3. The fines imposed by a citation issued by the department may not exceed \$500 for each violation. Each day the violation exists constitutes a separate violation for which a citation may be issued.~~

~~4. The department shall inform the recipient, by written notice pursuant to ss. 120.569 and 120.57, of the right to an administrative hearing to contest the citation within 21 days after the date the citation is received. The citation must contain a conspicuous statement that if the recipient fails to pay the fine within the time allowed, or fails to appear to contest the citation after having requested a hearing, the recipient has waived the recipient's right to contest the~~

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804 ~~citation and must pay an amount up to the maximum fine.~~

805 ~~5. The department may reduce or waive the fine imposed by~~
806 ~~the citation. In determining whether to reduce or waive the~~
807 ~~fine, the department must consider the gravity of the violation,~~
808 ~~the person's attempts at correcting the violation, and the~~
809 ~~person's history of previous violations including violations for~~
810 ~~which enforcement actions were taken under ss. 381.0065-~~
811 ~~381.0067, part I of chapter 386, part III of chapter 489, or~~
812 ~~other provisions of law or rule.~~

813 ~~6. Any person who willfully refuses to sign and accept a~~
814 ~~citation issued by the department commits a misdemeanor of the~~
815 ~~second degree, punishable as provided in s. 775.082 or s.~~
816 ~~775.083.~~

817 ~~7. The department, pursuant to ss. 381.0065-381.0067, part~~
818 ~~I of chapter 386, or part III of chapter 489, shall deposit any~~
819 ~~damages, costs, or penalties it collects pursuant to this~~
820 ~~section and part I of chapter 403 in the Water Quality Assurance~~
821 ~~Trust Fund county health department trust fund for use in~~
822 ~~providing services specified in those sections.~~

823 ~~8. This section provides an alternative means of enforcing~~
824 ~~ss. 381.0065-381.0067, part I of chapter 386, and part III of~~
825 ~~chapter 489. This section does not prohibit the department from~~
826 ~~enforcing ss. 381.0065-381.0067, part I of chapter 386, or part~~
827 ~~III of chapter 489, or its rules, by any other means. However,~~
828 ~~the department must elect to use only a single method of~~
829 ~~enforcement for each violation.~~

830 (7) USE OF ENHANCED NUTRIENT-REDUCING ONSITE SEWAGE
831 TREATMENT AND DISPOSAL SYSTEMS.-To meet the requirements of a
832 total maximum daily load, the department shall implement a fast-

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track approval process of no longer than 6 months for the determination of the use of American National Standards Institute 245 systems approved by NSF International before July 1, 2020. The department shall also establish an enhanced nutrient-reducing onsite sewage treatment and disposal system approval program that will expeditiously evaluate and approve such systems for use in this state to comply with ss. 403.067(7)(a)10. and 373.469(3)(d).

(9) CONTRACT OR DELEGATION AUTHORITY.—The department may contract with or delegate its powers and duties under this section to a county as provided in s. 403.061 or s. 403.182.

Section 8. Subsection (2) of section 381.0066, Florida Statutes, is amended to read:

381.0066 Onsite sewage treatment and disposal systems; fees.—

(2) The minimum fees in the following fee schedule apply until changed by rule by the department within the following limits:

(a) Application review, permit issuance, or system inspection, when performed by the department or a private provider inspector, including repair of a subsurface, mound, filled, or other alternative system or permitting of an abandoned system: a fee of not less than \$25, or more than \$125.

(b) Site evaluation, site reevaluation, evaluation of a system previously in use, or a per annum septage disposal site evaluation: a fee of not less than \$40, or more than \$115.

(c) Biennial operating permit for aerobic treatment units or performance-based treatment systems: a fee of not more than \$100.

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(d) Annual operating permit for systems located in areas zoned for industrial manufacturing or equivalent uses or where the system is expected to receive wastewater which is not domestic in nature: a fee of not less than \$150, or more than \$300.

(e) Innovative technology: a fee not to exceed \$25,000.

(f) Septage disposal service, septage stabilization facility, portable or temporary toilet service, tank manufacturer inspection: a fee of not less than \$25, or more than \$200, per year.

(g) Application for variance: a fee of not less than \$150, or more than \$300.

(h) Annual operating permit for waterless, incinerating, or organic waste composting toilets: a fee of not less than \$15, or more than \$30.

(i) Aerobic treatment unit or performance-based treatment system maintenance entity permit: a fee of not less than \$25, or more than \$150, per year.

(j) Reinspection fee per visit for site inspection after system construction approval or for noncompliant system installation per site visit: a fee of not less than \$25, or more than \$100.

(k) Research: An additional \$5 fee shall be added to each new system construction permit issued to be used to fund onsite sewage treatment and disposal system research, demonstration, and training projects. Five dollars from any repair permit fee collected under this section shall be used for funding the hands-on training centers described in s. 381.0065(3)(j).

(l) Annual operating permit, including annual inspection

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and any required sampling and laboratory analysis of effluent,
for an engineer-designed performance-based system: a fee of not
less than \$150, or more than \$300.

The funds collected pursuant to this subsection for the
implementation of onsite sewage treatment and disposal system
regulation and for the purposes of ss. 381.00655 and 381.0067,
subsequent to any phased transfer of implementation from the
Department of Health to the department within any county
pursuant to s. 381.0065, must be deposited in the Florida Permit
Fee Trust Fund under s. 403.0871, to be administered by the
department ~~a trust fund administered by the department, to be~~
~~used for the purposes stated in this section and ss. 381.0065~~
~~and 381.00655.~~

Section 9. Subsection (4) of section 403.061, Florida
Statutes, is amended to read:

403.061 Department; powers and duties.—The department shall
have 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 and, for this purpose, to:

(4) Secure necessary scientific, technical, research,
administrative, and operational services by interagency
agreement, by contract, or otherwise. All state agencies and
counties, upon direction of the department, shall make these
services and facilities available.

The department shall implement such programs in conjunction with
its other powers and duties and shall place special emphasis on
reducing and eliminating contamination that presents a threat to

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humans, animals or plants, or to the environment.

Section 10. Subsections (1), (2), (14), and (15) of section 403.064, Florida Statutes, are amended to read:

403.064 Reuse of reclaimed water.—

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

(2) All applicants for permits to construct or operate a domestic wastewater treatment facility ~~located within, serving a population located within, or discharging within a water resource caution area~~ shall prepare a reuse feasibility study as part of their application for the permit. Reuse feasibility studies must ~~shall~~ be prepared in accordance with department guidelines adopted by rule and shall include, but are not limited to:

(a) Evaluation of monetary costs and benefits for several levels and types of reuse.

(b) Evaluation of the estimated water savings resulting from different types of ~~if~~ reuse, if ~~is~~ implemented.

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949 (c) Evaluation of rates and fees necessary to implement
950 reuse.

951 (d) Evaluation of environmental and water resource benefits
952 associated with the different types of reuse.

953 (e) Evaluation of economic, environmental, and technical
954 constraints associated with the different types of reuse,
955 including any constraints caused by potential water quality
956 impacts.

957 (f) A schedule for implementation of reuse. The schedule
958 must ~~shall~~ consider phased implementation.

959 (14) After conducting a feasibility study under subsection
960 (2), a domestic wastewater treatment facility ~~facilities~~ that
961 disposes ~~dispose~~ of effluent by Class I deep well injection, as
962 defined in 40 C.F.R. s. 144.6(a), surface water discharge, land
963 application, or other method to dispose of effluent or a portion
964 thereof must implement reuse to the degree that reuse is
965 feasible, based upon the applicant's reuse feasibility study,
966 with consideration given to direct ecological or public water
967 supply benefits afforded by any disposal. Applicable permits
968 issued by the department must ~~shall~~ be consistent with the
969 requirements of this subsection.

970 (a) This subsection does not limit the use of a Class I
971 deep well injection as defined in 40 C.F.R. s. 144.6(a), surface
972 water discharge, land application, or another method to dispose
973 of effluent or a portion thereof for backup use only ~~facility as~~
974 ~~backup for a reclaimed water reuse system.~~

975 (b) ~~This subsection applies only to domestic wastewater~~
976 ~~treatment facilities located within, serving a population~~
977 ~~located within, or discharging within a water resource caution~~

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978 ~~area.~~

979 ~~(15) After conducting a feasibility study under subsection~~
980 ~~(2), domestic wastewater treatment facilities that dispose of~~
981 ~~effluent by surface water discharges or by land application~~
982 ~~methods must implement reuse to the degree that reuse is~~
983 ~~feasible, based upon the applicant's reuse feasibility study.~~
984 This subsection does not apply to surface water discharges or
985 land application systems which are currently categorized as
986 reuse under department rules. ~~Applicable permits issued by the~~
987 ~~department shall be consistent with the requirements of this~~
988 ~~subsection.~~

989 ~~(a) This subsection does not limit the use of a surface~~
990 ~~water discharge or land application facility as backup for a~~
991 ~~reclaimed water reuse system.~~

992 ~~(b) This subsection applies only to domestic wastewater~~
993 ~~treatment facilities located within, serving a population~~
994 ~~located within, or discharging within a water resource caution~~
995 ~~area.~~

996 Section 11. Paragraph (a) of subsection (7) of section
997 403.067, Florida Statutes, is amended to read:

998 403.067 Establishment and implementation of total maximum
999 daily loads.—

1000 (7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND
1001 IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

1002 (a) *Basin management action plans.*—

1003 1. In developing and implementing the total maximum daily
1004 load for a waterbody, the department, or the department in
1005 conjunction with a water management district, may develop a
1006 basin management action plan that addresses some or all of the

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watersheds and basins tributary to the waterbody. Such plan must integrate the appropriate management strategies available to the state through existing water quality protection programs to achieve the total maximum daily loads and may provide for phased implementation of these management strategies to promote timely, cost-effective actions as provided for in s. 403.151. The plan must establish a schedule implementing the management strategies, establish a basis for evaluating the plan's effectiveness, and identify feasible funding strategies for implementing the plan's management strategies. The management strategies may include regional treatment systems or other public works, when appropriate, and voluntary trading of water quality credits to achieve the needed pollutant load reductions.

2. A basin management action plan must equitably allocate, pursuant to paragraph (6)(b), pollutant reductions to individual basins, as a whole to all basins, or to each identified point source or category of nonpoint sources, as appropriate. For nonpoint sources for which best management practices have been adopted, the initial requirement specified by the plan must be those practices developed pursuant to paragraph (c). When appropriate, the plan may take into account the benefits of pollutant load reduction achieved by point or nonpoint sources that have implemented management strategies to reduce pollutant loads, including best management practices, before the development of the basin management action plan. The plan must also identify the mechanisms that will address potential future increases in pollutant loading.

3. The basin management action planning process is intended to involve the broadest possible range of interested parties,

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with the objective of encouraging the greatest amount of cooperation and consensus possible. In developing a basin management action plan, the department shall assure that key stakeholders, including, but not limited to, applicable local governments, water management districts, the Department of Agriculture and Consumer Services, other appropriate state agencies, local soil and water conservation districts, environmental groups, regulated interests, and affected pollution sources, are invited to participate in the process. The department shall hold at least one public meeting in the vicinity of the watershed or basin to discuss and receive comments during the planning process and shall otherwise encourage public participation to the greatest practicable extent. Notice of the public meeting must be published in a newspaper of general circulation in each county in which the watershed or basin lies at least 5 days, but not more than 15 days, before the public meeting. A basin management action plan does not supplant or otherwise alter any assessment made under subsection (3) or subsection (4) or any calculation or initial allocation.

4. Each new or revised basin management action plan must include all of the following:

a. The appropriate management strategies available through existing water quality protection programs to achieve total maximum daily loads, which may provide for phased implementation to promote timely, cost-effective actions as provided for in s. 403.151.

b. A description of best management practices adopted by rule.

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c. For the applicable 5-year implementation milestone, a list of projects that will achieve the pollutant load reductions needed to meet the total maximum daily load or the load allocations established pursuant to subsection (6). Each project must include a planning-level cost estimate and an estimated date of completion.

d. A list of projects developed pursuant to paragraph (e), if applicable.

e. The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project, if applicable.

f. A planning-level estimate of each listed project's expected load reduction, if applicable.

5. The department shall adopt all or any part of a basin management action plan and any amendment to such plan by secretarial order pursuant to chapter 120 to implement this section.

6. The basin management action plan must include 5-year milestones for implementation and water quality improvement, and 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 shall be conducted every 5 years, and revisions to the plan shall be made as appropriate. Any entity with a specific pollutant load reduction requirement established in a basin management action plan shall identify the projects or strategies that such entity will undertake to meet current 5-year pollution reduction milestones, beginning with the first 5-year milestone for new basin management action

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1094 plans, and submit such projects to the department for inclusion
1095 in the appropriate basin management action plan. Each project
1096 identified must include an estimated amount of nutrient
1097 reduction that is reasonably expected to be achieved based on
1098 the best scientific information available. Revisions to the
1099 basin management action plan shall be made by the department in
1100 cooperation with basin stakeholders. Revisions to the management
1101 strategies required for nonpoint sources must follow the
1102 procedures in subparagraph (c)4. Revised basin management action
1103 plans must be adopted pursuant to subparagraph 5.

1104 7. In accordance with procedures adopted by rule under
1105 paragraph (9)(c), basin management action plans, and other
1106 pollution control programs under local, state, or federal
1107 authority as provided in subsection (4), may allow point or
1108 nonpoint sources that will achieve greater pollutant reductions
1109 than required by an adopted total maximum daily load or
1110 wasteload allocation to generate, register, and trade water
1111 quality credits for the excess reductions to enable other
1112 sources to achieve their allocation; however, the generation of
1113 water quality credits does not remove the obligation of a source
1114 or activity to meet applicable technology requirements or
1115 adopted best management practices. Such plans must allow trading
1116 between NPDES permittees, and trading that may or may not
1117 involve NPDES permittees, where the generation or use of the
1118 credits involve an entity or activity not subject to department
1119 water discharge permits whose owner voluntarily elects to obtain
1120 department authorization for the generation and sale of credits.

1121 8. The department's rule relating to the equitable
1122 abatement of pollutants into surface waters do not apply to

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water bodies or waterbody segments for which a basin management plan that takes into account future new or expanded activities or discharges has been adopted under this section.

9. In order to promote resilient wastewater utilities, if the department identifies domestic wastewater treatment facilities or onsite sewage treatment and disposal systems as contributors of at least 20 percent of point source or nonpoint source nutrient pollution or if the department determines remediation is necessary to achieve the total maximum daily load, a basin management action plan for a nutrient total maximum daily load must include the following:

a. A domestic wastewater treatment plan developed by each local government, in cooperation with the department, the water management district, and the public and private domestic wastewater treatment facilities providing services or located within the jurisdiction of the local government, which ~~that~~ addresses domestic wastewater. Private domestic wastewater facilities and special districts providing domestic wastewater services must provide the required wastewater facility information to the applicable local governments. The domestic wastewater treatment plan must:

(I) Provide for construction, expansion, or upgrades necessary to achieve the total maximum daily load requirements applicable to the domestic wastewater treatment facility.

(II) Include the permitted capacity in average annual gallons per day for the domestic wastewater treatment facility; the average nutrient concentration and the estimated average nutrient load of the domestic wastewater; a projected timeline of the dates by which the construction of any facility

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improvements will begin and be completed and the date by which operations of the improved facility will begin; the estimated cost of the improvements; and the identity of responsible parties.

The domestic wastewater treatment plan must be adopted as part of the basin management action plan no later than July 1, 2025. A local government that does not have a domestic wastewater treatment facility in its jurisdiction is not required to develop a domestic wastewater treatment plan unless there is a demonstrated need to establish a domestic wastewater treatment facility within its jurisdiction to improve water quality necessary to achieve a total maximum daily load. A local government is not responsible for a private domestic wastewater facility's compliance with a basin management action plan unless such facility is operated through a public-private partnership to which the local government is a party.

b. An onsite sewage treatment and disposal system remediation plan developed by each local government in cooperation with the department, the Department of Health, water management districts, and public and private domestic wastewater treatment facilities.

(I) The onsite sewage treatment and disposal system remediation plan must identify cost-effective and financially feasible projects necessary to achieve the nutrient load reductions required for onsite sewage treatment and disposal systems. To identify cost-effective and financially feasible projects for remediation of onsite sewage treatment and disposal systems, the local government shall:

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(A) Include an inventory of onsite sewage treatment and disposal systems based on the best information available;

(B) Identify onsite sewage treatment and disposal systems that would be eliminated through connection to existing or future central domestic wastewater infrastructure in the jurisdiction or domestic wastewater service area of the local government, that would be replaced with or upgraded to enhanced nutrient-reducing onsite sewage treatment and disposal systems, or that would remain on conventional onsite sewage treatment and disposal systems;

(C) Estimate the costs of potential onsite sewage treatment and disposal system connections, upgrades, or replacements; and

(D) Identify deadlines and interim milestones for the planning, design, and construction of projects.

(II) The department shall adopt the onsite sewage treatment and disposal system remediation plan as part of the basin management action plan no later than July 1, 2025, or as required for Outstanding Florida Springs under s. 373.807.

10. The installation of new onsite sewage treatment and disposal systems constructed within a basin management action plan area adopted under this section, a reasonable assurance plan, or a pollution reduction plan is prohibited where connection to a publicly owned or investor-owned sewerage system is available as defined in s. 381.0065(2)(a). On lots of 1 acre or less within a basin management action plan adopted under this section, a reasonable assurance plan, or a pollution reduction plan where a publicly owned or investor-owned sewerage system is not available, the installation of enhanced nutrient-reducing onsite sewage treatment and disposal systems or other wastewater

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treatment systems that achieve at least 65 percent nitrogen reduction is required.

11. When identifying wastewater projects in a basin management action plan, the department may not require the higher cost option if it achieves the same nutrient load reduction as a lower cost option. A regulated entity may choose a different cost option if it complies with the pollutant reduction requirements of an adopted total maximum daily load and meets or exceeds the pollution reduction requirement of the original project.

12. Annually, local governments subject to a basin management action plan or located within the basin of a waterbody not attaining nutrient or nutrient-related standards must provide to the department an update on the status of construction of sanitary sewers to serve such areas, in a manner prescribed by the department.

Section 12. Paragraph (c) of subsection (1) of section 403.086, Florida Statutes, is amended to read:

403.086 Sewage disposal facilities; advanced and secondary waste treatment.—

(1)

(c)1. Notwithstanding this chapter or chapter 373, sewage disposal facilities may not dispose any wastes into the following waters without providing advanced waste treatment, as defined in subsection (4), as approved by the department or a more stringent treatment standard if the department determines the more stringent standard is necessary to achieve the total maximum daily load or applicable water quality criteria:

a. Old Tampa Bay; Tampa Bay; Hillsborough Bay; Boca Ciega

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Bay; St. Joseph Sound; Clearwater Bay; Sarasota Bay; Little Sarasota Bay; Roberts Bay; Lemon Bay; Charlotte Harbor Bay; Biscayne Bay; or any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto.

b. Beginning July 1, 2025, Indian River Lagoon, or any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto.

c. By January 1, 2033, waterbodies that are currently not attaining nutrient or nutrient-related standards or that are subject to a nutrient or nutrient-related basin management action plan adopted pursuant to s. 403.067 or adopted reasonable assurance plan.

2. For any waterbody determined not to be attaining nutrient or nutrient-related standards after July 1, 2023, or subject to a nutrient or nutrient-related basin management action plan adopted pursuant to s. 403.067 or adopted reasonable assurance plan after July 1, 2023, sewage disposal facilities are prohibited from disposing any wastes into such waters without providing advanced waste treatment, as defined in subsection (4), as approved by the department within 10 years after such determination or adoption.

3. By July 1, 2034, within a basin management action plan or a reasonable assurance plan area, any wastewater treatment facility providing reclaimed water that will be used for commercial or residential irrigation or be otherwise land applied must meet the standards for advanced waste treatment as defined in subsection (4), as approved by the department, or a more stringent treatment standard if the department determines the more stringent standard is necessary to achieve the total

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1268 maximum daily load or applicable water quality criteria.

1269 Section 13. Paragraphs (a) and (b) of subsection (1) and
1270 paragraph (b) of subsection (3) of section 403.091, Florida
1271 Statutes, are amended to read:

1272 403.091 Inspections.—

1273 (1)(a) Any duly authorized representative of the department
1274 may at any reasonable time enter and inspect, for the purpose of
1275 ascertaining the state of compliance with the law or rules and
1276 regulations of the department, any property, premises, or place,
1277 except a building which is used exclusively for a private
1278 residence, on or at which:

1279 1. A hazardous waste generator, transporter, or facility or
1280 other air or water contaminant source;

1281 2. A discharger, including any nondomestic discharger which
1282 introduces any pollutant into a publicly owned treatment works;

1283 3. An onsite sewage treatment and disposal system as
1284 defined in s. 381.0065(2)(m);

1285 4. Any facility, as defined in s. 376.301; or

1286 5.4. A resource recovery and management facility

1287
1288 is located or is being constructed or installed or where records
1289 which are required under this chapter, ss. 376.30-376.317, or
1290 department rule are kept.

1291 (b) Any duly authorized representative may at reasonable
1292 times have access to and copy any records required under this
1293 chapter or ss. 376.30-376.317; inspect any monitoring equipment
1294 or method; sample for any pollutants as defined in s. 376.301,
1295 effluents, or wastes which the owner or operator of such source
1296 may be discharging or which may otherwise be located on or

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underlying the owner's or operator's property; and obtain any other information necessary to determine compliance with permit conditions or other requirements of this chapter, ss. 376.30-376.317, ss. 381.0065-381.0067, part I of chapter 386 for purposes of onsite sewage treatment and disposal systems, part III of chapter 489, or rules or standards adopted under ss. 381.0065-381.0067, part I of chapter 386 for purposes of onsite sewage treatment and disposal systems, or part III of chapter 489, or department rules.

(3)

(b) Upon proper affidavit being made, an inspection warrant may be issued under ~~the provisions of~~ this chapter or ss. 376.30-376.317:

1. When it appears that the properties to be inspected may be connected with or contain evidence of the violation of ~~any of the provisions of~~ this chapter or ss. 376.30-376.317, ss. 381.0065-381.0067, part I of chapter 386 for purposes of onsite sewage treatment and disposal systems, part III of chapter 489, or rules or standards adopted under ss. 381.0065-381.0067, part I of chapter 386 for purposes of onsite sewage treatment and disposal systems, or part III of chapter 489 or any rule properly promulgated thereunder; or

2. When the inspection sought is an integral part of a larger scheme of systematic routine inspections which are necessary to, and consistent with, the continuing efforts of the department to ensure compliance with the provisions of this chapter or ss. 376.30-376.317, ss. 381.0065-381.0067, part I of chapter 386 for purposes of onsite sewage treatment and disposal systems, part III of chapter 489, or rules or standards adopted

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under ss. 381.0065-381.0067, part I of chapter 386 for purposes of onsite sewage treatment and disposal systems, or part III of chapter 489 and any rules adopted thereunder.

Section 14. Section 403.121, Florida Statutes, is amended to read:

403.121 Enforcement; procedure; remedies.—The department shall have the following judicial and administrative remedies available to it for violations of this chapter, as specified in s. 403.161(1), ss. 381.0065-381.0067, part I of chapter 386 for purposes of onsite sewage treatment and disposal systems, part III of chapter 489, or any rule promulgated thereunder.

(1) Judicial Remedies:

(a) The department may institute a civil action in a court of competent jurisdiction to establish liability and to recover damages for any injury to the air, waters, or property, including animal, plant, and aquatic life, of the state caused by any violation.

(b) The department may institute a civil action in a court of competent jurisdiction to impose and to recover a civil penalty for each violation in an amount of not more than \$15,000 per offense. However, the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense.

(c) Except as provided in paragraph (2)(c), it is not a defense to, or ground for dismissal of, these judicial remedies for damages and civil penalties that the department has failed to exhaust its administrative remedies, has failed to serve a notice of violation, or has failed to hold an administrative hearing before the institution of a civil action.

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(2) Administrative Remedies:

(a) The department may institute an administrative proceeding to establish liability and to recover damages for any injury to the air, waters, or property, including animal, plant, or aquatic life, of the state caused by any violation. The department may order that the violator pay a specified sum as damages to the state. Judgment for the amount of damages determined by the department may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

(b) If the department has reason to believe a violation has occurred, it may institute an administrative proceeding to order the prevention, abatement, or control of the conditions creating the violation or other appropriate corrective action. Except for violations involving hazardous wastes, asbestos, or underground injection, the department shall proceed administratively in all cases in which the department seeks administrative penalties that do not exceed \$50,000 per assessment as calculated in accordance with subsections (3), (4), (5), (6), and (7). Pursuant to 42 U.S.C. s. 300g-2, the administrative penalty assessed pursuant to subsection (3), subsection (4), or subsection (5) against a public water system serving a population of more than 10,000 may not be less than \$1,000 per day per violation. The department may not impose administrative penalties in excess of \$50,000 in a notice of violation. The department may not have more than one notice of violation seeking administrative penalties pending against the same party at the same time unless the violations occurred at a different site or the violations were discovered by the department subsequent to the filing of a previous notice of violation.

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(c) An administrative proceeding shall be instituted by the department's serving of a written notice of violation upon the alleged violator by certified mail. If the department is unable to effect service by certified mail, the notice of violation may be hand delivered or personally served in accordance with chapter 48. The notice shall specify the law, rule, regulation, permit, certification, or order of the department alleged to be violated and the facts alleged to constitute a violation thereof. An order for corrective action, penalty assessment, or damages may be included with the notice. When the department is seeking to impose an administrative penalty for any violation by issuing a notice of violation, any corrective action needed to correct the violation or damages caused by the violation must be pursued in the notice of violation or they are waived. However, an order is not effective until after service and an administrative hearing, if requested within 20 days after service. Failure to request an administrative hearing within this time period constitutes a waiver thereof, unless the respondent files a written notice with the department within this time period opting out of the administrative process initiated by the department to impose administrative penalties. Any respondent choosing to opt out of the administrative process initiated by the department in an action that seeks the imposition of administrative penalties must file a written notice with the department within 20 days after service of the notice of violation opting out of the administrative process. A respondent's decision to opt out of the administrative process does not preclude the department from initiating a state court action seeking injunctive relief, damages, and the judicial

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imposition of civil penalties.

(d) If a person timely files a petition challenging a notice of violation, that person will thereafter be referred to as the respondent. The hearing requested by the respondent shall be held within 180 days after the department has referred the initial petition to the Division of Administrative Hearings unless the parties agree to a later date. The department has the burden of proving with the preponderance of the evidence that the respondent is responsible for the violation. Administrative penalties should not be imposed unless the department satisfies that burden. Following the close of the hearing, the administrative law judge shall issue a final order on all matters, including the imposition of an administrative penalty. When the department seeks to enforce that portion of a final order imposing administrative penalties pursuant to s. 120.69, the respondent may not assert as a defense the inappropriateness of the administrative remedy. The department retains its final-order authority in all administrative actions that do not request the imposition of administrative penalties.

(e) After filing a petition requesting a formal hearing in response to a notice of violation in which the department imposes an administrative penalty, a respondent may request that a private mediator be appointed to mediate the dispute by contacting the Florida Conflict Resolution Consortium within 10 days after receipt of the initial order from the administrative law judge. The Florida Conflict Resolution Consortium shall pay all of the costs of the mediator and for up to 8 hours of the mediator's time per case at \$150 per hour. Upon notice from the respondent, the Florida Conflict Resolution Consortium shall

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1442 provide to the respondent a panel of possible mediators from the
1443 area in which the hearing on the petition would be heard. The
1444 respondent shall select the mediator and notify the Florida
1445 Conflict Resolution Consortium of the selection within 15 days
1446 of receipt of the proposed panel of mediators. The Florida
1447 Conflict Resolution Consortium shall provide all of the
1448 administrative support for the mediation process. The mediation
1449 must be completed at least 15 days before the final hearing date
1450 set by the administrative law judge.

1451 (f) In any administrative proceeding brought by the
1452 department, the prevailing party shall recover all costs as
1453 provided in ss. 57.041 and 57.071. The costs must be included in
1454 the final order. The respondent is the prevailing party when an
1455 order is entered awarding no penalties to the department and
1456 such order has not been reversed on appeal or the time for
1457 seeking judicial review has expired. The respondent is entitled
1458 to an award of attorney fees if the administrative law judge
1459 determines that the notice of violation issued by the department
1460 seeking the imposition of administrative penalties was not
1461 substantially justified as defined in s. 57.111(3)(e). An award
1462 of attorney fees as provided by this subsection may not exceed
1463 \$15,000.

1464 (g) This section does not prevent any other legal or
1465 administrative action in accordance with law and does not limit
1466 the department's authority provided in ss. 403.131, 403.141, and
1467 this section to judicially pursue injunctive relief. When the
1468 department exercises its authority to judicially pursue
1469 injunctive relief, penalties in any amount up to the statutory
1470 maximum sought by the department must be pursued as part of the

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state court action and not by initiating a separate administrative proceeding. The department retains the authority to judicially pursue penalties in excess of \$50,000 for violations not specifically included in the administrative penalty schedule, or for multiple or multiday violations alleged to exceed a total of \$50,000. The department also retains the authority provided in ss. 403.131, 403.141, and this section to judicially pursue injunctive relief and damages, if a notice of violation seeking the imposition of administrative penalties has not been issued. The department has the authority to enter into a settlement, before or after initiating a notice of violation, and the settlement may include a penalty amount different from the administrative penalty schedule. Any case filed in state court because it is alleged to exceed a total of \$50,000 in penalties may be settled in the court action for less than \$50,000.

(h) Chapter 120 applies to any administrative action taken by the department or any delegated program pursuing administrative penalties in accordance with this section.

(3) Except for violations involving hazardous wastes, asbestos, or underground injection, administrative penalties must be calculated according to the following schedule:

(a) For a drinking water contamination violation, the department shall assess a penalty of \$3,000 for a Maximum Containment Level (MCL) violation; plus \$1,500 if the violation is for a primary inorganic, organic, or radiological Maximum Contaminant Level or it is a fecal coliform bacteria violation; plus \$1,500 if the violation occurs at a community water system; and plus \$1,500 if any Maximum Contaminant Level is exceeded by

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more than 100 percent. For failure to obtain a clearance letter before placing a drinking water system into service when the system would not have been eligible for clearance, the department shall assess a penalty of \$4,500.

(b) For failure to obtain a required wastewater permit, other than a permit required for surface water discharge, or obtain an onsite sewage treatment and disposal system permit, or for a violation of s. 381.0065, or the creation of or maintenance of a nuisance related to an onsite sewage treatment and disposal system under part I of chapter 386, or for a violation of part III of chapter 489, or any rule properly promulgated thereunder, the department shall assess a penalty of \$2,000. For a domestic or industrial wastewater violation, not involving a surface water or groundwater quality violation, the department shall assess a penalty of \$4,000 for an unpermitted or unauthorized discharge or effluent-limitation exceedance or for failure to comply with s. 403.061(14) or s. 403.086(7) or rules adopted thereunder. For an unpermitted or unauthorized discharge or effluent-limitation exceedance that resulted in a surface water or groundwater quality violation, the department shall assess a penalty of \$10,000. Each day the cause of an unauthorized discharge of domestic wastewater or sanitary nuisance is not addressed constitutes a separate offense.

(c) For a dredge and fill or stormwater violation, the department shall assess a penalty of \$1,500 for unpermitted or unauthorized dredging or filling or unauthorized construction of a stormwater management system against the person or persons responsible for the illegal dredging or filling, or unauthorized construction of a stormwater management system plus \$3,000 if

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the dredging or filling occurs in an aquatic preserve, an Outstanding Florida Water, a conservation easement, or a Class I or Class II surface water, plus \$1,500 if the area dredged or filled is greater than one-quarter acre but less than or equal to one-half acre, and plus \$1,500 if the area dredged or filled is greater than one-half acre but less than or equal to one acre. The administrative penalty schedule does not apply to a dredge and fill violation if the area dredged or filled exceeds one acre. The department retains the authority to seek the judicial imposition of civil penalties for all dredge and fill violations involving more than one acre. The department shall assess a penalty of \$4,500 for the failure to complete required mitigation, failure to record a required conservation easement, or for a water quality violation resulting from dredging or filling activities, stormwater construction activities or failure of a stormwater treatment facility. For stormwater management systems serving less than 5 acres, the department shall assess a penalty of \$3,000 for the failure to properly or timely construct a stormwater management system. In addition to the penalties authorized in this subsection, the department shall assess a penalty of \$7,500 per violation against the contractor or agent of the owner or tenant that conducts unpermitted or unauthorized dredging or filling. For purposes of this paragraph, the preparation or signing of a permit application by a person currently licensed under chapter 471 to practice as a professional engineer does not make that person an agent of the owner or tenant.

(d) For mangrove trimming or alteration violations, the department shall assess a penalty of \$7,500 per violation

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1558 against the contractor or agent of the owner or tenant that
1559 conducts mangrove trimming or alteration without a permit as
1560 required by s. 403.9328. For purposes of this paragraph, the
1561 preparation or signing of a permit application by a person
1562 currently licensed under chapter 471 to practice as a
1563 professional engineer does not make that person an agent of the
1564 owner or tenant.

1565 (e) For solid waste violations, the department shall assess
1566 a penalty of \$3,000 for the unpermitted or unauthorized disposal
1567 or storage of solid waste; plus \$1,000 if the solid waste is
1568 Class I or Class III (excluding yard trash) or if the solid
1569 waste is construction and demolition debris in excess of 20
1570 cubic yards, plus \$1,500 if the waste is disposed of or stored
1571 in any natural or artificial body of water or within 500 feet of
1572 a potable water well, plus \$1,500 if the waste contains PCB at a
1573 concentration of 50 parts per million or greater; untreated
1574 biomedical waste; friable asbestos greater than 1 cubic meter
1575 which is not wetted, bagged, and covered; used oil greater than
1576 25 gallons; or 10 or more lead acid batteries. The department
1577 shall assess a penalty of \$4,500 for failure to properly
1578 maintain leachate control; unauthorized burning; failure to have
1579 a trained spotter on duty at the working face when accepting
1580 waste; or failure to provide access control for three
1581 consecutive inspections. The department shall assess a penalty
1582 of \$3,000 for failure to construct or maintain a required
1583 stormwater management system.

1584 (f) For an air emission violation, the department shall
1585 assess a penalty of \$1,500 for an unpermitted or unauthorized
1586 air emission or an air-emission-permit exceedance, plus \$4,500

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1587 if the emission was from a major source and the source was major
1588 for the pollutant in violation; plus \$1,500 if the emission was
1589 more than 150 percent of the allowable level.

1590 (g) For storage tank system and petroleum contamination
1591 violations, the department shall assess a penalty of \$7,500 for
1592 failure to empty a damaged storage system as necessary to ensure
1593 that a release does not occur until repairs to the storage
1594 system are completed; when a release has occurred from that
1595 storage tank system; for failure to timely recover free product;
1596 or for failure to conduct remediation or monitoring activities
1597 until a no-further-action or site-rehabilitation completion
1598 order has been issued. The department shall assess a penalty of
1599 \$4,500 for failure to timely upgrade a storage tank system. The
1600 department shall assess a penalty of \$3,000 for failure to
1601 conduct or maintain required release detection; failure to
1602 timely investigate a suspected release from a storage system;
1603 depositing motor fuel into an unregistered storage tank system;
1604 failure to timely assess or remediate petroleum contamination;
1605 or failure to properly install a storage tank system. The
1606 department shall assess a penalty of \$1,500 for failure to
1607 properly operate, maintain, or close a storage tank system.

1608 (4) In an administrative proceeding, in addition to the
1609 penalties that may be assessed under subsection (3), the
1610 department shall assess administrative penalties according to
1611 the following schedule:

1612 (a) For failure to satisfy financial responsibility
1613 requirements or for violation of s. 377.371(1), \$7,500.

1614 (b) For failure to install, maintain, or use a required
1615 pollution control system or device, \$6,000.

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(c) For failure to obtain a required permit before construction or modification, \$4,500.

(d) For failure to conduct required monitoring or testing; failure to conduct required release detection; or failure to construct in compliance with a permit, \$3,000.

(e) For failure to maintain required staff to respond to emergencies; failure to conduct required training; failure to prepare, maintain, or update required contingency plans; failure to adequately respond to emergencies to bring an emergency situation under control; or failure to submit required notification to the department, \$1,500.

(f) Except as provided in subsection (2) with respect to public water systems serving a population of more than 10,000, for failure to prepare, submit, maintain, or use required reports or other required documentation, \$750.

(5) Except as provided in subsection (2) with respect to public water systems serving a population of more than 10,000, for failure to comply with any other departmental regulatory statute or rule requirement not otherwise identified in this section, the department may assess a penalty of \$1,000.

(6) For each additional day during which a violation occurs, the administrative penalties in subsections (3)-(5) may be assessed per day per violation.

(7) The history of noncompliance of the violator for any previous violation resulting in an executed consent order, but not including a consent order entered into without a finding of violation, or resulting in a final order or judgment after the effective date of this law involving the imposition of \$3,000 or more in penalties shall be taken into consideration in the

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following manner:

(a) One previous such violation within 5 years before the filing of the notice of violation will result in a 25-percent per day increase in the scheduled administrative penalty.

(b) Two previous such violations within 5 years before the filing of the notice of violation will result in a 50-percent per day increase in the scheduled administrative penalty.

(c) Three or more previous such violations within 5 years before the filing of the notice of violation will result in a 100-percent per day increase in the scheduled administrative penalty.

(8) The direct economic benefit gained by the violator from the violation, where consideration of economic benefit is provided by Florida law or required by federal law as part of a federally delegated or approved program, must be added to the scheduled administrative penalty. The total administrative penalty, including any economic benefit added to the scheduled administrative penalty, may not exceed \$15,000.

(9) The administrative penalties assessed for any particular violation may not exceed \$10,000 against any one violator, unless the violator has a history of noncompliance, the economic benefit of the violation as described in subsection (8) exceeds \$10,000, or there are multiday violations. The total administrative penalties may not exceed \$50,000 per assessment for all violations attributable to a specific person in the notice of violation.

(10) The administrative law judge may receive evidence in mitigation. The penalties identified in subsections (3)-(5) may be reduced up to 50 percent by the administrative law judge for

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mitigating circumstances, including good faith efforts to comply before or after discovery of the violations by the department. Upon an affirmative finding that the violation was caused by circumstances beyond the reasonable control of the respondent and could not have been prevented by respondent's due diligence, the administrative law judge may further reduce the penalty.

(11) Penalties collected pursuant to this section must ~~shall~~ be deposited into the Water Quality Assurance Trust Fund or other trust fund designated by statute and shall be used to fund the restoration of ecosystems, or polluted areas of the state, as defined by the department, to their condition before pollution occurred. The Florida Conflict Resolution Consortium may use a portion of the fund to administer the mediation process provided in paragraph (2)(e) and to contract with private mediators for administrative penalty cases.

(12) The purpose of the administrative penalty schedule and process is to provide a more predictable and efficient manner for individuals and businesses to resolve relatively minor environmental disputes. Subsections (3)-(7) may not be construed as limiting a state court in the assessment of damages. The administrative penalty schedule does not apply to the judicial imposition of civil penalties in state court as provided in this section.

Section 15. Subsection (1) of section 403.0671, Florida Statutes, is amended to read:

403.0671 Basin management action plan wastewater reports.—

(1) By July 1, 2021, the department, in coordination with the county health departments, wastewater treatment facilities, and other governmental entities, shall submit a report to the

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Governor, the President of the Senate, and the Speaker of the House of Representatives evaluating the costs of wastewater projects identified in the basin management action plans developed pursuant to ss. 373.807 and 403.067(7) and the onsite sewage treatment and disposal system remediation plans and other restoration plans developed to meet the total maximum daily loads required under s. 403.067. The report must include all of the following:

(a) Projects to:

1. Replace onsite sewage treatment and disposal systems with enhanced nutrient-reducing onsite sewage treatment and disposal systems.

2. Install or retrofit onsite sewage treatment and disposal systems with enhanced nutrient-reducing technologies.

3. Construct, upgrade, or expand domestic wastewater treatment facilities to meet the domestic wastewater treatment plan required under s. 403.067(7)(a)9.

4. Connect onsite sewage treatment and disposal systems to domestic wastewater treatment facilities.†

(b) The estimated costs, nutrient load reduction estimates, and other benefits of each project.†

(c) The estimated implementation timeline for each project.†

(d) A proposed 5-year funding plan for each project and the source and amount of financial assistance the department, a water management district, or other project partner will make available to fund the project.†~~and~~

(e) The projected costs of installing enhanced nutrient-reducing onsite sewage treatment and disposal systems on

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buildable lots in priority focus areas to comply with s.
373.811.

Section 16. Paragraph (f) of subsection (2) of section
403.0673, Florida Statutes, is amended to read:

403.0673 Water quality improvement grant program.—A grant
program is established within the Department of Environmental
Protection to address wastewater, stormwater, and agricultural
sources of nutrient loading to surface water or groundwater.

(2) The department may provide grants for all of the
following types of projects that reduce the amount of nutrients
entering those waterbodies identified in subsection (1):

(f) Projects identified in a domestic wastewater treatment
plan or an onsite sewage treatment and disposal system
remediation plan developed pursuant to s. 403.067(7)(a)9.a. and
b.

Section 17. For the purpose of incorporating the amendment
made by this act to section 253.04, Florida Statutes, in a
reference thereto, paragraph (x) of subsection (1) of section
327.73, Florida Statutes, is reenacted to read:

327.73 Noncriminal infractions.—

(1) Violations of the following provisions of the vessel
laws of this state are noncriminal infractions:

(x) Section 253.04(3)(a), relating to carelessly causing
seagrass scarring, for which the civil penalty upon conviction
is:

1. For a first offense, \$100.

2. For a second offense occurring within 12 months after a
prior conviction, \$250.

3. For a third offense occurring within 36 months after a

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prior conviction, \$500.

4. For a fourth or subsequent offense occurring within 72 months after a prior conviction, \$1,000.

Any person cited for a violation of this subsection shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is \$100, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation, in addition to the charge relating to the violation of the boating laws of this state, must be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

Section 18. For the purpose of incorporating the amendment made by this act to section 381.0061, Florida Statutes, in references thereto, paragraph (a) of subsection (4) and paragraph (a) of subsection (6) of section 381.0072, Florida Statutes, are reenacted to read:

381.0072 Food service protection.—

(4) LICENSES REQUIRED.—

(a) *Licenses; annual renewals.*—Each food service establishment regulated under this section shall obtain a license from the department annually. Food service establishment licenses shall expire annually and are not transferable from one place or individual to another. However, those facilities

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licensed by the department's Office of Licensure and Certification, the Child Care Services Program Office, or the Agency for Persons with Disabilities are exempt from this subsection. It shall be a misdemeanor of the second degree, punishable as provided in s. 381.0061, s. 775.082, or s. 775.083, for such an establishment to operate without this license. The department may refuse a license, or a renewal thereof, to any establishment that is not constructed or maintained in accordance with law and with the rules of the department. Annual application for renewal is not required.

(6) FINES; SUSPENSION OR REVOCATION OF LICENSES;
PROCEDURE.—

(a) The department may impose fines against the establishment or operator regulated under this section for violations of sanitary standards, in accordance with s. 381.0061. All amounts collected shall be deposited to the credit of the County Health Department Trust Fund administered by the department.

Section 19. For the purpose of incorporating the amendment made by this act to section 381.0061, Florida Statutes, in a reference thereto, subsection (4) of section 381.0086, Florida Statutes, is reenacted to read:

381.0086 Rules; variances; penalties.—

(4) A person who violates any provision of ss. 381.008-381.00895 or rules adopted under such sections is subject either to the penalties provided in ss. 381.0012 and 381.0061 or to the penalties provided in s. 381.0087.

Section 20. For the purpose of incorporating the amendment made by this act to section 381.0061, Florida Statutes, in a

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reference thereto, subsection (7) of section 381.0098, Florida Statutes, is reenacted to read:

381.0098 Biomedical waste.—

(7) ENFORCEMENT AND PENALTIES.—Any person or public body in violation of this section or rules adopted under this section is subject to penalties provided in ss. 381.0012 and 381.0061. However, an administrative fine not to exceed \$2,500 may be imposed for each day such person or public body is in violation of this section. The department may deny, suspend, or revoke any biomedical waste permit or registration if the permittee violates this section, any rule adopted under this section, or any lawful order of the department.

Section 21. For the purpose of incorporating the amendment made by this act to section 381.0061, Florida Statutes, in a reference thereto, subsection (2) of section 513.10, Florida Statutes, is reenacted to read:

513.10 Operating without permit; enforcement of chapter; penalties.—

(2) This chapter or rules adopted under this chapter may be enforced in the manner provided in s. 381.0012 and as provided in this chapter. Violations of this chapter and the rules adopted under this chapter are subject to the penalties provided in this chapter and in s. 381.0061.

Section 22. This act shall take effect July 1, 2024.



RULEMAKING UPDATE

STORMWATER | CHAPTER 62-330, F.A.C. ENVIRONMENTAL RESOURCE PERMITTING

Stormwater is a major contributor of nutrient pollution to waterbodies throughout the state.

In Florida, stormwater management systems were historically believed to achieve at least an 80% reduction of stormwater-associated pollutants, chiefly those associated with particulates and suspended solids. However, technical evaluations and water quality monitoring data indicate that many rule-adopted best management practices (BMPs) are not as effective at achieving the intended stormwater treatment performance standards for some critical stormwater pollutants, including nutrients such as nitrogen and phosphorus. Further, a study funded by the Florida Department of Environmental Protection (DEP) found the current presumptive minimum design criteria relied upon in environmental resource permitting does not achieve the targeted 80% reduction of the average annual load of pollutants that cause or contribute to violations of State Water Quality Standards, particularly for nitrogen and phosphorus.

In July 2020, the Florida Legislature passed the Clean Waterways Act, which carries a wide range of water quality protection provisions aimed at minimizing the impact of known sources of nutrient pollution; realigning the state's resources to enhance the protection of Florida's environment; and strengthening regulatory requirements, including those for stormwater.

For nearly three years, DEP has been diligently engaged in rulemaking activities to update Florida's existing stormwater management system design and operational requirements, and to increase the removal of nutrients in accordance with the most recent scientific data to protect our state's waterways. DEP will seek ratification of rule revisions for stormwater during the 2024 legislative session.

RULE OVERVIEW:

Chapter 62-330, F.A.C., Environmental Resource Permitting, updates stormwater rules and design criteria. The rule outlines new minimum performance standards for all environmental resource permitting stormwater systems, as well as new requirements for their maintenance and operation.

Under the new rules, applicants for stormwater management systems will continue to have flexibility to choose from a range of design options, including a variety of BMPs, when designing systems to meet the performance-based design criteria. This rule will ensure stormwater discharges from new development are effectively treated for nutrients and will not continue to contribute to environmental concerns such as harmful algal blooms.

Amendments to this rule will also ensure that future permitted systems will be better maintained. Operation and maintenance entities will be required to have estimates for the expected routine maintenance costs and to certify that they have the financial capability to maintain the stormwater system over time. The rule will also provide for more consistent oversight through a required periodic inspection routine and reporting on the inspection results to the permitting agency.

Upon the rule becoming effective, project applications deemed complete within 12 months following the effective date will have the option to comply with the existing rule.

- 35% Waterbodies that are impaired for nutrients.
- 82% Adopted BMAPs are for nutrient-impaired waters.
- 87% Counties have nutrient impaired waters within their boundaries.

All Sites Not Impaired	OFWs	Impaired Waters	Impaired OFWs	Redevelopment (Limited Sites)
Post ≤ Pre, or TP: 80% & TN 55%	Post ≤ Pre, or TP: 90% & TN 80%	Post ≤ Pre, or TP: 80% & TN 80% and Post < Pre for Impaired Parameters	Post ≤ Pre, or TP: 95% & TN 95% and Post < Pre for Impaired Parameters	TP: 80% & TN 45% and TP: 90% & TN 60% for OFWs
Total Suspended Solids (TSS): 80%	TSS: 95%	TSS: 80%	TSS: 95%	TSS: 80% or 95% (OFW)

Traditional BMPs that can be used to satisfy the new rule:

- Dry retention ponds with more volume than currently used.
- Wet detention ponds with longer retention time than used today.

Additional BMPs can also be implemented in combination or in conjunction with one another in a series as a treatment train:

- Green infrastructure practices.
 - Reduce pollution and treat stormwater by detaining or retaining rainfall near its source and providing treatment.
- Rain garden/bioretention cell.
- Bio swale.
- Tree well.
- Pervious pavement
- Littoral zone and floating wetlands to increase treatment of wet detention ponds.
- Harvesting systems.
 - Use extra water in ponds for irrigation and treatments.
- Engineered media and filtration.

COST OF NEW RULE:

Current costs for developing stormwater infrastructure and providing the current required levels of stormwater treatment are estimated to be about \$12.6 billion in the aggregate or approximately \$31,600 per acre developed over a five-year period.

The new rule revisions, as adopted in early 2023, are expected to increase current stormwater treatment costs by approximately \$1.21 billion for all the expected development projects within a five-year period from implementation, or \$2,600 per acre developed.

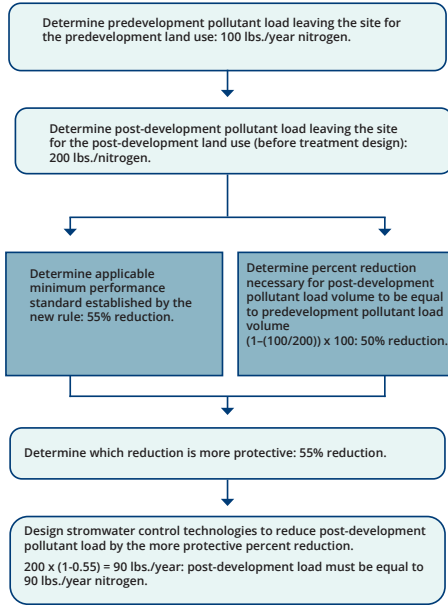
There are also expected additional costs in the rule related to new permitting requirements for new or modified dam systems, new stormwater operation and maintenance requirements, and increased requirements for stormwater inspections and reporting.

HOW THE RULE WORKS:

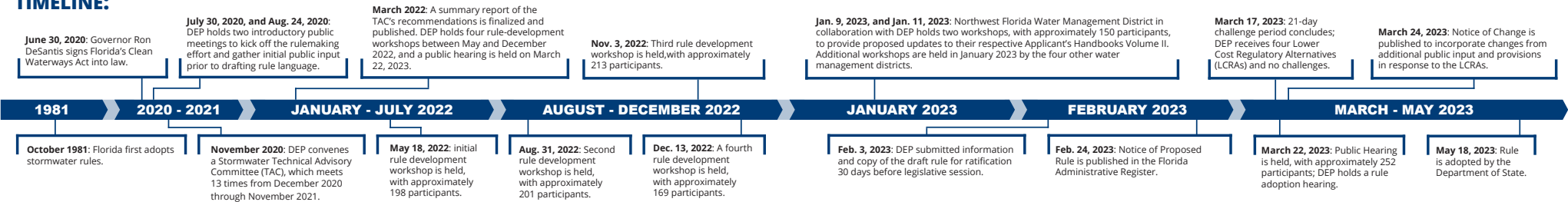
The new rule would require the developer to establish stormwater treatment that provides a level of treatment, or reduction of pollutant load, to achieve the more protective loading from either: (a) the minimum performance standard established in the new rule; or (b) a reduction of the post-development pollutant load to ensure that load is less than or equal to the predevelopment pollutant load.

Pollutant loads are based on modeling and the latest scientific information on the effectiveness of stormwater control technologies.

In this flow chart example, the pollutant is nitrogen. The predevelopment nitrogen load is 100 lbs./year with a post-development nitrogen load of 200 lbs./year. The project site is not impaired nor in an Outstanding Florida Water. Therefore, this scenario requires a minimum performance standard of at least 55% reduction of nitrogen.



TIMELINE:



WATER QUALITY INVESTMENTS:

2019 - 2023

Under the leadership of Governor Desantis and with the support of the Florida Legislature, nearly \$5 billion in state funding has been committed to Everglades Restoration and protection of water resources.

\$2.4B

EVERGLADES RESTORATION

\$2.4B

**TARGETED WATER
QUALITY IMPROVEMENTS**

Florida is making significant investments to prevent nutrients from ever even entering our waterways.

- Nearly \$2.4 billion in state funds have been appropriated for targeted water quality improvements since 2019, including:

Springs Restoration

Septic-to-Sewer Conversions

Water Quality Improvement Grant Program

Combating Harmful Algal Blooms

Stormwater Management

Wastewater Treatment Upgrades

- \$8.6 billion in costs have been expended for completed and ongoing restoration projects in nutrient basin management action plans as of Dec. 31, 2021. This total rises to \$17.5 billion when including planned projects.

Water Quality Monitoring and Innovative Technologies

62%

INCREASED
SAMPLING

280+

MONITORING
STATIONS

43

INNOVATIVE TECH
PROJECTS

- Dedicated funding for better detection and remediation of harmful algal blooms.
- Increased red tide sampling by 62% and doubled offshore sampling trips, where red tide originates.
- More than 280 new and enhanced water quality monitoring stations with a focus on Lake Okeechobee, surrounding estuaries and the Indian River Lagoon.
- Invested in 43 innovative technology projects focused on harmful algal bloom prediction and mitigation.

Learn more about Stormwater
Rulemaking Efforts:



The Florida Senate

APPEARANCE RECORD

SB1386

Bill Number or Topic

1/17/24

Meeting Date

Deliver both copies of this form to
Senate professional staff conducting the meeting

S. Environment and Natural Resources

Committee

Amendment Barcode (if applicable)

Name Brett Tubbs

Phone 850-245-2137

Address 3900 Commonwealth Blvd

Street

Email Brett.Tubbs@FloridaDEP.gov

Tallahassee

City

FL

State

32399

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)

1/17/24
Meeting Date

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1386
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

ROXANNE GROOVER

Phone

813 504-8340

Address

5115 STATE RD 557

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rgroover@myfowa.com

Street

LAKE ALFRED FL 33850

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:

☐

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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)

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 Committee Code Not Found

BILL: CS/SB 1532

INTRODUCER: Environment and Natural Resources Committee and Senator Brodeur

SUBJECT: Mitigation

DATE: January 17, 2024

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1532 expands the water quality enhancement credit program to allow private entities to purchase credits. Currently, only governmental entities may purchase water quality enhancement credits under the program. Specifically, the bill provides that water quality enhancement credits may be sold to private and governmental entities seeking to meet an assigned basin management action plan allocation or reasonable assurance plan or for the purpose of achieving net improvement performance standards after reasonable assurances have been provided for the design and construction of all onsite stormwater management required by law.

Regarding mitigation banking, the bill provides that a governmental entity may, through a public procurement process, solicit proposals from private-sector sponsors for a mitigation bank project on public lands purchased for conservation. The bill provides that, if such a mitigation bank is to be established and operated on public land, the governmental entity and private-sector sponsor must enter into an agreement requiring the private sector sponsor to serve as the sponsor of the project. The bill also requires the private-sector sponsor to pay a usage fee to the governmental entity which reflects the market value of the public land, as determined by a competitive process in accordance with state law or such other method of assuring that the cost of the use of the public land is fully accounted for in the pricing of mitigation credits.

The bill provides that, in determining the number of mitigation bank credits assigned to a mitigation bank, the Department of Environmental Protection (DEP) or water management districts (WMDs) must reflect the conservation status of the land in the location factor set forth

in the uniform mitigation assessment method. The bill provides that these requirements apply to drainage basins or corresponding hydrologic units if the private-sector sponsor demonstrates to DEP or WMDs that in-kind credits are not available.

II. Present Situation:

Mitigation Banking

Mitigation may be required to offset the adverse impacts caused by regulated activities.¹ Mitigation usually consists of restoration, enhancement, creation, or preservation of wetlands, other surface waters, or uplands.² Mitigation can be conducted on-site, off-site, through the purchase of credits from a mitigation bank, or through a combination of approaches, as long as it offsets anticipated adverse impacts to wetlands and other surface waters.³ Offsite regional mitigation is mitigation on an area of land off the site of a permitted activity, where an applicant proposes to mitigate the adverse impacts of only the applicant's specific activity as a requirement of the permit, which provides regional ecological value and which is not a mitigation bank.⁴

Mitigation banking is a practice in which an environmental enhancement and preservation project is conducted by a public agency or private entity to provide mitigation for unavoidable wetland impacts within a defined mitigation service area.⁵ Mitigation banks are alternative to permittee-responsible mitigation.⁶ Permittee-responsible mitigation refers to mitigation undertaken by the permittee to provide compensatory mitigation for which the permittee retains full responsibility.⁷ If mitigation credits are not available, state law allows permittee-responsible mitigation consisting of the restoration and enhancement of lands conservation lands owned by a local government.⁸

In mitigation banking, the bank is the site itself, and the currency sold by the banker to the impact permittee is a credit, representing the wetland ecological value equivalent to the complete restoration of one acre.⁹ The permitting agencies determine the number of potential credits permitted for the bank and the credit debits required for impact permits.¹⁰

The Uniform Mitigation Assessment Method (UMAM) was established to fulfill the mandate of s. 373.414(18), F.S., which requires the establishment of a uniform mitigation assessment method to determine the amount of mitigation needed to offset adverse impacts to wetlands and

¹ DEP, *ERP Applicant's Handbook*, Vol. I, s. 10.3 (2020), available at <https://www.flrules.org/gateway/reference.asp?No=Ref-12078>.

² *Id.* at s. 10.3.1.

³ *Id.* at s. 10.3.1.2.

⁴ Section 373.403(22), F.S.

⁵ DEP, *Mitigation and Mitigation Banking*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-and-mitigation-banking> (last visited Jan. 11, 2024). "Mitigation service area" means the geographic area within which mitigation credits from a mitigation bank may be used to offset adverse impacts of activities regulated under this part. Section 373.403(21), F.S.

⁶ Section 373.4135(1)(b), F.S.

⁷ EPA, *Mechanisms for Providing Compensatory Mitigation under CWA Section 404*, <https://www.epa.gov/cwa-404/mechanisms-providing-compensatory-mitigation-under-cwa-section-404> (last visited Jan. 11, 2024).

⁸ Section 373.4135(1)(b), F.S.

⁹ DEP, *Mitigation and Mitigation Banking*.

¹⁰ *Id.*

other surface waters and to award and deduct mitigation bank credits. UMAM provides a standardized procedure for assessing the ecological functions provided by wetlands and other surface waters, the amount that those functions are reduced by a proposed impact, and the amount of mitigation necessary to offset that loss.¹¹ UMAM evaluates functions through consideration of an ecological community's current condition, hydrologic connection, uniqueness, location, fish and wildlife utilization, and mitigation risk.¹² This standardized methodology is also used to determine the degree of improvement in ecological value of proposed mitigation bank activities.¹³

Creation of a mitigation bank in Florida requires both a permit from DEP or a WMD and federal approval of a mitigation bank instrument from several agencies led by the U.S. Army Corps of Engineers (USACE), in a joint state/federal interagency review team.¹⁴ Requirements for mitigation bank permits differ between mitigation bank instruments issued by the USACE and state permits issued by DEP or WMDs. Under the federal process, a mitigation banking instrument serves as the legal document for the establishment, operation, and use of a mitigation bank.¹⁵ They are approved by an interagency review team, through procedures involving public notice and comment.¹⁶ Mitigation banking instruments must include certain detailed elements, such as a comprehensive mitigation plan including financial assurances, and a credit release schedule that is tied to the achievement of specific milestones.¹⁷

Under state law, to obtain a mitigation bank permit, the applicant must provide reasonable assurance that the mitigation bank will:

- Improve ecological conditions of the regional watershed;
- Provide viable and sustainable ecological and hydrological functions for the proposed mitigation service area;
- Be effectively managed in perpetuity;
- Not destroy areas with high ecological value;
- Achieve mitigation success; and
- Be adjacent to lands that will not adversely affect the long-term viability of the mitigation bank due to unsuitable land uses or conditions.¹⁸

The applicant must also provide reasonable assurances that:

- Any surface water management system that will be constructed, altered, operated, maintained, abandoned, or removed within a mitigation bank will meet the requirements of Part IV of Chapter 373, F.S., which regulates management and storage of surface waters, and rules adopted thereunder;

¹¹ DEP, *The Uniform Mitigation Assessment Method (UMAM)*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/uniform-mitigation-assessment> (last visited Jan. 12, 2024).

¹² *Id.*

¹³ *Id.*

¹⁴ DEP, *Mitigation Banking Rule and Procedure Synopsis*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-banking-rule-and> (last visited Jan. 11, 2024).

¹⁵ 33 C.F.R. s. 332.2.

¹⁶ 33 C.F.R. s. 332.8; 40 C.F.R. s. 230.98.

¹⁷ See generally 33 C.F.R. s. 332.8(d)(6); see also 40 C.F.R. s. 230.98(d)(6).

¹⁸ Section 373.4136(1), F.S.

- The applicant has sufficient legal or equitable interest in the property to ensure perpetual protection and management of the land within a mitigation bank; and
- The applicant can meet the financial responsibility requirements prescribed for mitigation banks.¹⁹

Water Quality Credit Trading

Water quality credit trading is a market-based approach to attaining water quality improvements and is used to control and mitigate pollutants from multiple sources that collectively impact water quality conditions.²⁰ When more stringent regulatory standards are put in place, water quality trading allows one source of pollution to control a pollutant at levels greater than required and sell “credits” to another source, which uses the credits to supplement their level of treatment in order to comply with regulatory requirements. Pollutant reductions achieved through water quality trading should result in water quality that is as good as—or better than—what would be achieved through treatment and must not create pollutant hot spots.²¹

Water quality trading can encourage private investment capital, provide additional resources for conservation, and serve as a catalyst for developing innovative, practical solutions for improving water quality at a lower cost.²² Water quality trading has played a critical role in implementing TMDLs and other water quality-based permit requirements.²³

The Florida Statutes provide a framework for water quality credit trading in the state. DEP is the agency responsible for authorizing water quality credit trading in adopted BMAPs and for establishing the pollutant load reduction value of water quality credits.²⁴ However, DEP cannot participate in the establishment of credit prices.²⁵ Sellers of credits are responsible for achieving the load reductions on which the credits are based and complying with the terms of DEP’s authorization and any trading agreements into which they have entered; buyers are responsible for complying with the terms of the water discharge permit.²⁶ Land set-asides and land use modification not otherwise required by state law or a permit that reduce nutrient loads into impaired surface waters may be used for water quality credit trading.²⁷

¹⁹ *Id.*; Fla. Admin. Code R. 62-342.400.

²⁰ EPA, *Water Quality Trading*, <https://www.epa.gov/npdes/water-quality-trading> (last visited Jan. 10, 2024).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Section 403.067(8), F.S.

²⁵ Section 403.067(8)(h), F.S.

²⁶ Section 403.067(8), F.S. Water quality credit trading must be implemented through permits, including water quality credit trading permits, other authorizations, or other legally binding agreements as establish by DEP rule. *Id.*

²⁷ *Id.*

Water Quality Enhancement Areas (WQEAs)

Section 373.4134, F.S., regulates water quality enhancement areas.²⁸ A WQEA is a natural system²⁹ designed to provide offsite, compensatory, regional treatment within an identified enhancement service area, for which enhancement credits may be provided.³⁰ A WQEA must use, create, or improve natural systems to improve water quality and must address contributions of pollutants or other constituents in the watershed, basin, sub-basin, targeted restoration area, waterbody, or section of waterbody in which the WQEA is located that do not meet applicable state water quality criteria.³¹

The construction, operation, management, and maintenance of a WQEA must be approved through the state's environmental resource permitting (ERP) process.³² Part IV of Chapter 373, F.S., and Chapter 62-330 of the Florida Administrative Code regulate the statewide ERP program, which is the primary tool used by DEP and water management districts (WMDs) for preserving natural resources and fish and wildlife, minimizing degradation of water resources caused by stormwater discharges, and providing for the management of water and related land resources. The program governs the construction, alteration, operation, maintenance, repair, abandonment, and removal of stormwater management systems, dams, impoundments, reservoirs, appurtenant works, and other works such as docks, piers, structures, dredging, and filling located in, on, or over wetlands or other surface waters.³³

To obtain a WQEA permit, an applicant must provide reasonable assurances that the proposed WQEA will:

- Meet the requirements for issuance of an ERP;
- Benefit water quality in the enhancement service area;
- Achieve defined performance or success criteria for the reduction of pollutants or other constituents that prevent receiving waters from meeting state water quality criteria;
- Ensure long-term pollutant reduction through effective operation and maintenance in perpetuity by designation of a responsible long-term maintenance entity supported by an endowment or other long-term financial assurance sufficient to assure perpetual operation and maintenance;
- Demonstrate sufficient legal or equitable interest in the property to ensure access and perpetual protection and management of land within the WQEA; and
- Provide for permanent preservation of the site through a conservation easement.³⁴

²⁸ This section of law may only be implemented after DEP has adopted applicable rules. Section 373.4134(9), F.S. DEP initiated WQEA rulemaking in November 2023. DEP, *WQEA Rulemaking*, <https://floridadep.gov/water/engineering-hydrology-geology/content/water-quality-enhancement-area-rulemaking> (last visited Jan. 11, 2024).

²⁹ "Natural system" means an ecological system supporting aquatic and wetland-dependent natural resources, including fish and aquatic and wetland-dependent wildlife habitats. Section 373.4134(2)(c), F.S.

³⁰ Section 373.4134(2)(d), F.S.

³¹ Section 373.4134(3)(c) and (d), F.S.

³² Section 373.4134(3)(a), F.S.

³³ Fla. Admin. Code R. 62-330.010(2).

³⁴ Section 373.4134(4)(a), F.S.

WQEA permits must provide for the assessment, valuation, and award of credits based on units of pollutant removed.³⁵ DEP determines the award of enhancement credits based on standard numerical models or analytical tools that establish the WQEA's ability to remove pollutants or constituents.³⁶ WQEA applications must include the following information to assist DEP in determining credits:

- Rainfall data over the longest period of record available collected from the closest site to the proposed WQEA;
- Anticipated average annual water quality and quantity inflows to the proposed WQEA;
- Site-specific conditions affecting the anticipated performance of the proposed WQEA; and
- Data from collection stations approved by DEP in sites that DEP deems sufficient to determine flows and local water quality conditions.³⁷

WQEA enhancement credits³⁸ may only be sold to governmental entities³⁹ seeking to meet an assigned basin management action plan allocation or reasonable assurance plan,⁴⁰ or for the purpose of achieving net water quality improvement under s. 373.414(1)(b)3., F.S.,⁴¹ after the governmental entity has provided reasonable assurance of meeting DEP rules for the design and construction of all onsite stormwater management.⁴²

An applicant seeking a WQEA permit is required to submit a plan detailing the monitoring and verification of performance and success criteria, with protocols to be implemented once the WQEA is operational.⁴³ The protocols must be appropriate for the WQEA and sufficient to demonstrate that the area is meeting defined performance or success criteria for the reduction of pollutants or contaminants for which credits are awarded by DEP.⁴⁴

An applicant may use water quality improvement projects that use natural systems or land use modifications, including constructed wetlands or minor impoundments that reduce pollutants to a receiving water body, to generate credits if approved by DEP.⁴⁵ A WQEA may not be located on

³⁵ Section 373.4134(4)(b), F.S.

³⁶ Section 373.4134(4)(c), F.S.

³⁷ Section 373.4134(4)(c)4., F.S.

³⁸ "Enhancement credit" means a standard unit of measure that represents a quantity of pollutant removed. Section 373.4134(2)(a), F.S.

³⁹ "Governmental entity" means any political subdivision of the state, including any state agency, department, county, municipality, special district, school district, utility authority, or other authority or instrumentality, agency, unit, or department thereof. Section 373.4134(2)(b), F.S.

⁴⁰ Basin management action plans and reasonable assurance plans are water quality improvement plans designed to reduce or eliminate pollutant loadings and restore specific water bodies to meet state water quality standards. *See generally* DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Jan. 12, 2024); DEP, *Alternative Restoration Plans*, <https://floridadep.gov/DEAR/Alternative-Restoration-Plans> (last visited Jan. 12, 2024).

⁴¹ Section 373.4134(1)(d)3., F.S., provides that if an applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the governing board or DEP must consider mitigation measures proposed by or acceptable to the applicant that cause net improvement of the water quality in the receiving body of water for those parameters which do not meet standards.

⁴² Section 373.4134(3)(b), F.S.

⁴³ Section 373.4134(6)(a), F.S.

⁴⁴ *Id.*

⁴⁵ Section 373.4134(7)(c), F.S.

lands purchased for conservation through the Florida Forever Act or Florida Preservation 2000 Act.⁴⁶

DEP must establish a service area for each WQEA.⁴⁷ Enhancement credits may only be used to address adverse impacts within the service area. The boundaries of the service area depend upon the geographic areas where it could reasonably be expected to address adverse impacts. Service areas may overlap, and service areas for two or more WQEAs may be approved for a regional watershed.⁴⁸

Reductions in pollutant loading required under state regulatory programs are not eligible to be considered as credits, and credits may not be used by point source dischargers to satisfy regulatory requirements other than those necessary to obtain an ERP for construction and operation of the surface water management system of the site.⁴⁹

III. Effect of Proposed Changes:

Section 1 amends s. 373.403, F.S., which provides definitions for Part IV of Chapter 373, F.S., regarding management and storage of surface waters. The bill defines “private-sector sponsor” as an individual or entity that establishes and operates a wetland mitigation bank project and is responsible for compliance with any permit or authorization, including, but not limited to, funding and undertaking wetland enhancement, restoration or creation activities, and the provision of financial assurances, as well as any required monitoring, reporting, and maintenance of the mitigation bank.

Section 2 amends s. 373.4134, F.S., regarding water quality enhancement areas (WQEAs). Currently, water quality enhancement credits may *only* be sold to governmental entities seeking to meet an assigned basin management action plan (BMAP) allocation or reasonable assurance plan (RAP) or for the purpose of achieving net improvement under s. 373.414(1)(b)3., F.S., after the governmental entity has provided reasonable assurance of meeting the Department of Environmental Protection (DEP) rules for design and construction of all onsite stormwater management.⁵⁰ The bill removes the word “only” and provides that water quality enhancement credits may be sold to governmental entities *or applicants* seeking to meet an assigned BMAP allocation or RAP or for the purpose of achieving net improvement performance standards after reasonable assurances have been provided for the design and construction of all onsite stormwater management required by law. The bill defines “applicants” as a governmental entity or private sector entity that wishes to purchase water quality enhancement credits to meet an assigned basin management action plan allocation or reasonable assurance plan or for the purpose of achieving the net improvement performance standard under s. 373.414(1)(b)3., F.S.

The bill makes other conforming changes to reflect these principles.

Section 3 amends s. 373.4135, F.S., regarding mitigation banks and offsite regional mitigation. The bill directs DEP and water management districts (WMDs) to encourage the establishment of

⁴⁶ *Id.*

⁴⁷ Section 373.4134(5), F.S.

⁴⁸ *Id.*

⁴⁹ Section 373.4134(7)(e) and (f), F.S.

⁵⁰ Section 373.4134(3)(b), F.S.

private mitigation banks and offsite regional mitigation on private and public lands owned by a local government. Currently, this statute directs DEP and WMDs to *participate in* and encourage the establishment of private and *public* mitigation banks and offsite regional mitigation.

Currently, this statute provides that, in general, a governmental entity may not create or provide mitigation for a project other than its own except when a local government has allowed a public or private mitigation project to be created on land it has purchased for conservation purposes (other exemptions and criteria apply).⁵¹ The bill clarifies that the exception applies to instances when a local government has allowed a public or private mitigation project, *including permittee-responsible mitigation*,⁵² to be created on land it has purchased for conservation purposes.

The bill provides that a governmental entity may, through a public procurement process, solicit proposals from private-sector sponsors⁵³ for a mitigation bank on public lands purchased for conservation purposes. If such a mitigation bank is to be established and operated on public land, the local government and private-sector sponsor must enter into an agreement requiring the private-sector sponsor to establish and operate the mitigation bank to conform to the permitting requirements of s. 373.4136, F.S., regarding the establishment and operation of mitigation banks. The bill provides that the agreement must require the private-sector sponsor to pay a usage fee to the local government which reflects the market value of the public land, as determined by a competitive process in accordance with state law or such other method of assuring that the cost of the use of the public land is fully accounted for in the pricing of mitigation credits.

The bill provides that, in determining the number of mitigation bank credits assigned to the mitigation bank, DEP or WMDs must reflect the conservation status of the land in the location factor set forth in the uniform mitigation assessment method.

The bill provides that the requirements within this subsection apply to drainage basins or corresponding hydrologic units⁵⁴ if the private-sector sponsor demonstrates to DEP or WMDs that in-kind credits are not available. The bill specifies that rulemaking is not required to implement this subsection.

Sections 4 through 6 make conforming changes.

Section 7 reenacts s. 403.9332(1)(a) and (c), F.S., regarding mitigation and enforcement, for the purpose of incorporating the amendment the bill makes to s. 373.4135, F.S.

⁵¹ Section 373.4135(1)(b), F.S.

⁵² Permittee-responsible mitigation refers to mitigation undertaken by the permittee to provide compensatory mitigation for which the permittee retains full responsibility. EPA, *Mechanisms for Providing Compensatory Mitigation under CWA Section 404*, <https://www.epa.gov/cwa-404/mechanisms-providing-compensatory-mitigation-under-cwa-section-404> (last visited Jan. 11, 2024).

⁵³ As previously discussed, the bill defines “private-sector sponsor” as an individual or entity that establishes and operates a wetland mitigation bank project and is responsible for compliance with any permit or authorization, including, but not limited to, funding and undertaking wetland enhancement, restoration or creation activities, and the provision of financial assurances, as well as any required monitoring, reporting, and maintenance of the mitigation bank.

⁵⁴ A hydrologic unit is a geographic area defined by an area’s natural hydrological properties, primarily its drainage patterns. See generally U.S. Geological Survey (USGS), *Hydrologic Unit Maps*, <https://water.usgs.gov/GIS/huc.html> (last visited Jan. 11, 2024). The U.S. is divided and sub-divided into successively smaller hydrologic units, which are classified into four levels: regions, subregions, accounting units, and cataloging units. *Id.*

Section 8 provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be a positive fiscal impact to private entities creating and maintaining mitigation banks on public lands and applicants participating in the expanded water quality enhancement area (WQEA) credit program.

C. Government Sector Impact:

There may be a positive fiscal impact to the state from additional WQEA permit application fees. However, the Department of Environmental Protection may incur costs to implement the expanded the WQEA program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 373.403, 373.4134, 373.4135, 330.41, 373.414, 373.461, and 403.9332.

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

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

CS by Environment and Natural Resources on January 17, 2024:

The amendment changes the bill in several ways:

- Changes the term “sponsor” to “private-sector sponsor”;
- Defines the term “applicant” and provides it includes governmental and private entities;
- Provides that applicants can purchase water quality enhancement credits to meet an allocation pursuant to a basin management action plan or reasonable assurance plan, as well as to achieve net improvement performance standards as the bill currently provides;
- Changes the phrase “as required by rule 62-330, Florida Administrative Code” to “as required by law”;
- Clarifies that the Department of Environmental Protection and water management districts must encourage the establishment of private mitigation banks on private and public lands owned by a local government;
- Removes requirement that governmental entities must consider unsolicited proposals for a mitigation bank and clarifies that a local government may solicit such proposals for public lands purchased for conservation purposes; and
- Clarifies that a governmental entity may create or provide for mitigation for projects other than its own when a local government has allowed a mitigation project, including permittee-responsible mitigation, on conservation lands.

B. Amendments:

None.



750012

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/17/2024	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 373.403, Florida Statutes, is reordered
and amended to read:

373.403 Definitions.—When appearing in this part or in any
rule, regulation, or order adopted pursuant thereto, the
following terms mean:

(4)~~(1)~~ "Dam" means any artificial or natural barrier, with



750012

11 appurtenant works, raised to obstruct or impound, or which does
12 obstruct or impound, any of the surface waters of the state.

13 (2) "Appurtenant works" means any artificial improvements
14 to a dam which might affect the safety of such dam or, when
15 employed, might affect the holding capacity of such dam or of
16 the reservoir or impoundment created by such dam.

17 ~~(10)~~~~(3)~~ "Impoundment" means any lake, reservoir, pond, or
18 other containment of surface water occupying a bed or depression
19 in the earth's surface and having a discernible shoreline.

20 ~~(18)~~~~(4)~~ "Reservoir" means any artificial or natural holding
21 area which contains or will contain the water impounded by a
22 dam.

23 ~~(23)~~~~(5)~~ "Works" means all artificial structures, including,
24 but not limited to, ditches, canals, conduits, channels,
25 culverts, pipes, and other construction that connects to, draws
26 water from, drains water into, or is placed in or across the
27 waters in the state.

28 ~~(3)~~~~(6)~~ "Closed system" means any reservoir or works located
29 entirely within agricultural lands owned or controlled by the
30 user and which requires water only for the filling,
31 replenishing, and maintaining the water level thereof.

32 ~~(1)~~~~(7)~~ "Alter" means to extend a dam or works beyond
33 maintenance in its original condition, including changes which
34 may increase or diminish the flow or storage of surface water
35 which may affect the safety of such dam or works.

36 ~~(12)~~~~(8)~~ "Maintenance" or "repairs" means remedial work of a
37 nature as may affect the safety of any dam, impoundment,
38 reservoir, or appurtenant work or works, but excludes routine
39 custodial maintenance.



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(5)~~(9)~~ "Drainage basin" means a subdivision of a watershed.

(21)~~(10)~~ "Stormwater management system" means a system
which is designed and constructed or implemented to control
discharges which are necessitated by rainfall events,
incorporating methods to collect, convey, store, absorb,
inhibit, treat, use, or reuse water to prevent or reduce
flooding, overdrainage, environmental degradation, and water
pollution or otherwise affect the quantity and quality of
discharges from the system.

(20)~~(11)~~ "State water quality standards" means water
quality standards adopted pursuant to chapter 403.

(22)~~(12)~~ "Watershed" means the land area that ~~which~~
contributes to the flow of water into a receiving body of water.

(6)~~(13)~~ "Dredging" means excavation, by any means, in
surface waters or wetlands, as delineated in s. 373.421(1). The
term ~~It~~ also means the excavation, or creation, of a water body
which is, or is to be, connected to surface waters or wetlands,
as delineated in s. 373.421(1), directly or via an excavated
water body or series of water bodies.

(9)~~(14)~~ "Filling" means the deposition, by any means, of
materials in surface waters or wetlands, as delineated in s.
373.421(1).

(8)~~(15)~~ "Estuary" means a semienclosed, naturally existing
coastal body of water that ~~which~~ has a free connection with the
open sea and within which seawater is measurably diluted with
fresh water derived from riverine systems.

(11)~~(16)~~ "Lagoon" means a naturally existing coastal zone
depression that ~~which~~ is below mean high water and that ~~which~~
has permanent or ephemeral communications with the sea, but



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which is protected from the sea by some type of naturally existing barrier.

(19)~~(17)~~ "Seawall" means a manmade wall or an encroachment, except riprap, which is made to break the force of waves and to protect the shore from erosion.

(7)~~(18)~~ "Ecological value" means the value of functions performed by uplands, wetlands, and other surface waters to the abundance, diversity, and habitats of fish, wildlife, and listed species. These functions include, but are not limited to, providing cover and refuge; breeding, nesting, denning, and nursery areas; corridors for wildlife movement; food chain support; and natural water storage, natural flow attenuation, and water quality improvement, which enhances fish, wildlife, and listed species utilization.

(13)~~(19)~~ "Mitigation bank" means a project permitted under s. 373.4136 undertaken to provide for the withdrawal of mitigation credits to offset adverse impacts authorized by a permit under this part.

(14)~~(20)~~ "Mitigation credit" means a standard unit of measure which represents the increase in ecological value resulting from restoration, enhancement, preservation, or creation activities.

(15)~~(21)~~ "Mitigation service area" means the geographic area within which mitigation credits from a mitigation bank may be used to offset adverse impacts of activities regulated under this part.

(16)~~(22)~~ "Offsite regional mitigation" means mitigation on an area of land off the site of an activity permitted under this part, where an applicant proposes to mitigate the adverse



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impacts of only the applicant's specific activity as a requirement of the permit, which provides regional ecological value, and which is not a mitigation bank permitted under s. 373.4136.

(17) "Private-sector sponsor" means an individual or entity that establishes and operates a wetland mitigation bank project and is responsible for compliance with any permit or authorization, including, but not limited to, funding and undertaking wetland enhancement, restoration or creation activities, and the provision of financial assurances, as well as any required monitoring, reporting, and maintenance of the mitigation bank.

Section 2. Present paragraphs (a) through (e) of subsection (2) of section 373.4134, Florida Statutes, are redesignated as paragraphs (b) through (f), respectively, a new paragraph (a) is added to that subsection, and paragraphs (b), (d), and (e) of subsection (1), paragraph (b) of subsection (3), and paragraphs (a) and (j) of subsection (7) of that section are amended, to read:

373.4134 Water quality enhancement areas.—

(1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that:

(b) An expansion of existing authority for regional treatment to include offsite compensatory treatment in water quality enhancement areas to make enhancement credits available for purchase by an applicant or a governmental entity ~~entities~~ to address impacts regulated under this part is needed.

(d) Water quality enhancement areas are a valuable tool to assist an applicant ~~governmental entities~~ in satisfying the net



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improvement performance standard under s. 373.414(1)(b)3. to ensure significant reductions of pollutant loadings.

(e) Water quality enhancement areas that provide water quality enhancement credits to applicants ~~governmental entities~~ seeking permits under this part and to governmental entities seeking to meet an assigned basin management action plan allocation or reasonable assurance plan under s. 403.067 are considered an appropriate and permissible option.

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

(a) "Applicant" means a governmental entity or private sector entity that wishes to purchase water quality enhancement credits to meet an assigned basin management action plan allocation or reasonable assurance plan or for the purpose of achieving the net improvement performance standard under s. 373.414(1)(b)3.

(3) WATER QUALITY ENHANCEMENT AREAS.—

(b) Water quality enhancement credits may be sold ~~only~~ to governmental entities or applicants seeking to meet an assigned basin management action plan allocation or reasonable assurance plan or for the purpose of achieving net improvement performance standards under s. 373.414(1)(b)3. ~~after the governmental entity has provided~~ reasonable assurances have been provided for the assurance of meeting department rules for design and construction of all onsite stormwater management, as required by law.

(7) ENHANCEMENT CREDITS.—

(a) The department or water management district shall authorize the sale and use of enhancement credits to applicants ~~governmental entities~~ to address adverse water quality impacts



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of activities regulated under this part or to assist governmental entities seeking to meet required nonpoint source contribution reductions assigned in a basin management action plan or reasonable assurance plan under s. 403.067.

(j) Notwithstanding any other law, this section does not limit or restrict the authority of the department to deny the use of enhancement credits when the department is not reasonably assured that the use of the credits will not cause or contribute to a violation of water quality standards, even if the project being implemented by the applicant ~~governmental entity~~ is within the enhancement service area. The department may allow the use of enhancement credits if the department receives a request for the use of enhancement credits and determines that such use will not cause or contribute to a violation of water quality standards.

Section 3. Subsection (1) of section 373.4135, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

373.4135 Mitigation banks and offsite regional mitigation.—

(1) The Legislature finds that the adverse impacts of activities regulated under this part may be offset by the creation, maintenance, and use of mitigation banks and offsite regional mitigation. Mitigation banks and offsite regional mitigation can enhance the certainty of mitigation and provide ecological value due to the improved likelihood of environmental success associated with their proper construction, maintenance, and management. Therefore, the department and the water management districts are directed to ~~participate in and~~ encourage the establishment of private ~~and public~~ mitigation



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banks and offsite regional mitigation on private and public lands owned by a local government. Mitigation banks and offsite regional mitigation should emphasize the restoration and enhancement of degraded ecosystems and the preservation of uplands and wetlands as intact ecosystems rather than alteration of landscapes to create wetlands. This is best accomplished through restoration of ecological communities that were historically present.

(a) The Legislature intends that the provisions for establishing mitigation banks apply equally to both public and private entities, except that the rules of the department and water management districts may set forth different measures governing financial responsibility, and different measures governing legal interest, needed to ensure the construction and perpetual protection of a mitigation bank.

(b) The Legislature recognizes the importance of mitigation banks as an appropriate and allowable mitigation alternative to permittee-responsible mitigation. However, the Legislature also recognizes that certain timing and geographical constraints could result in the unavailability of mitigation bank credits for a certain project upon completion of the project's application. If state and federal mitigation credits are not available to offset the adverse impacts of a project, a local government may allow permittee-responsible mitigation consisting of the restoration or enhancement of lands purchased and owned by a local government for conservation purposes, and such mitigation must conform to the permitting requirements of s. 373.4136. Except when a local government has allowed a public or private mitigation project, including permittee-responsible



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mitigation, to be created on land it has purchased for conservation purposes pursuant to this paragraph, a governmental entity may not create or provide mitigation for a project other than its own unless the governmental entity uses land that was not previously purchased for conservation and unless the governmental entity provides the same financial assurances as required for mitigation banks permitted under s. 373.4136. This paragraph does not apply to:

1. Mitigation banks permitted before December 31, 2011, under s. 373.4136;

2. Offsite regional mitigation areas established before December 31, 2011, under subsection (6) or, when credits are not available at a mitigation bank permitted under s. 373.4136, mitigation areas created by a local government which were awarded mitigation credits pursuant to the uniform mitigation assessment method as provided in chapter 62-345, Florida Administrative Code, under a permit issued before December 31, 2011;

3. Mitigation for transportation projects under ss. 373.4137 and 373.4139;

4. Mitigation for impacts from mining activities under s. 373.41492;

5. Mitigation provided for single-family lots or homeowners under subsection (7);

6. Entities authorized in chapter 98-492, Laws of Florida;

7. Mitigation provided for electric utility impacts certified under part II of chapter 403; or

8. Mitigation provided on sovereign submerged lands under subsection (6).



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(c) It is the further intent of the Legislature that mitigation banks and offsite regional mitigation be considered appropriate and a permittable mitigation option under the conditions specified by the rules of the department and water management districts.

(d) Offsite mitigation, including offsite regional mitigation, may be located outside the regional watershed in which the adverse impacts of an activity regulated under this part are located, if such adverse impacts are offset by the offsite mitigation.

(e) The department or water management district may allow the use of a mitigation bank or offsite regional mitigation alone or in combination with other forms of mitigation to offset adverse impacts of activities regulated under this part.

(f) When an applicant seeking ~~for~~ a permit under ~~the provisions of~~ this part other than this section and s. 373.4136 submits more than one mitigation proposal to the department or a water management district, the department or water management district shall, in evaluating each proposal, ensure that such proposal adequately offsets the adverse impacts.

(8) A local government may, through a public procurement process, solicit proposals from private-sector sponsors for a mitigation bank on public lands purchased for conservation purposes. If such a mitigation bank is to be established and operated on public land, the local government and private-sector sponsor must enter into an agreement requiring the private-sector sponsor to establish and operate the mitigation bank to conform to the permitting requirements of s. 373.4136.

(a) The agreement must require the private-sector sponsor



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to pay a usage fee to the local government which reflects the market value of the public land, as determined by a competitive process in accordance with state law or such other method of assuring that the cost of the use of the public land is fully accounted for in the pricing of mitigation credits.

(b) In determining the number of mitigation bank credits assigned to the mitigation bank, the department or water management district shall reflect the conservation status of the land in the location factor set forth in the uniform mitigation assessment method.

(c) This subsection applies to drainage basins or corresponding hydrologic units if the private-sector sponsor demonstrates to the department or water management district that in-kind credits are not available.

(d) Rulemaking is not required to implement this subsection.

Section 4. Paragraph (a) of subsection (2) of section 330.41, Florida Statutes, is amended to read:

330.41 Unmanned Aircraft Systems Act.—

(2) DEFINITIONS.—As used in this act, the term:

(a) "Critical infrastructure facility" means any of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs which indicate that entry is forbidden and which are posted on the property in a manner reasonably likely to come to the attention of intruders:

1. A power generation or transmission facility, substation, switching station, or electrical control center.

2. A chemical or rubber manufacturing or storage facility.



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301 3. A water intake structure, water treatment facility,
302 wastewater treatment plant, or pump station.

303 4. A mining facility.

304 5. A natural gas or compressed gas compressor station,
305 storage facility, or natural gas or compressed gas pipeline.

306 6. A liquid natural gas or propane gas terminal or storage
307 facility.

308 7. Any portion of an aboveground oil or gas pipeline.

309 8. A refinery.

310 9. A gas processing plant, including a plant used in the
311 processing, treatment, or fractionation of natural gas.

312 10. A wireless communications facility, including the
313 tower, antennae, support structures, and all associated ground-
314 based equipment.

315 11. A seaport as listed in s. 311.09(1), which need not be
316 completely enclosed by a fence or other physical barrier and
317 need not be marked with a sign or signs indicating that entry is
318 forbidden.

319 12. An inland port or other facility or group of facilities
320 serving as a point of intermodal transfer of freight in a
321 specific area physically separated from a seaport.

322 13. An airport as defined in s. 330.27.

323 14. A spaceport territory as defined in s. 331.303(18).

324 15. A military installation as defined in 10 U.S.C. s.
325 2801(c)(4) and an armory as defined in s. 250.01.

326 16. A dam as defined in s. 373.403 ~~s. 373.403(1)~~ or other
327 structures, such as locks, floodgates, or dikes, which are
328 designed to maintain or control the level of navigable
329 waterways.



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17. A state correctional institution as defined in s. 944.02 or a private correctional facility authorized under chapter 957.

18. A secure detention center or facility as defined in s. 985.03, or a nonsecure residential facility, a high-risk residential facility, or a maximum-risk residential facility as those terms are described in s. 985.03(44).

19. A county detention facility as defined in s. 951.23.

20. A critical infrastructure facility as defined in s. 692.201.

Section 5. Paragraph (a) of subsection (8) of section 373.414, Florida Statutes, is amended to read:

373.414 Additional criteria for activities in surface waters and wetlands.—

(8) (a) The governing board or the department, in deciding whether to grant or deny a permit for an activity regulated under this part shall consider the cumulative impacts upon surface water and wetlands, as delineated in s. 373.421(1), within the same drainage basin as defined in s. 373.403 ~~s. 373.403(9)~~, of:

1. The activity for which the permit is sought.

2. Projects which are existing or activities regulated under this part which are under construction or projects for which permits or determinations pursuant to s. 373.421 ~~or s. 403.914~~ have been sought.

3. Activities which are under review, approved, or vested pursuant to s. 380.06, or other activities regulated under this part which may reasonably be expected to be located within surface waters or wetlands, as delineated in s. 373.421(1), in



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the same drainage basin as defined in s. 373.403 ~~s. 373.403(9)~~, based upon the comprehensive plans, adopted pursuant to chapter 163, of the local governments having jurisdiction over the activities, or applicable land use restrictions and regulations.

Section 6. Paragraph (c) of subsection (2) of section 373.461, Florida Statutes, is amended to read:

373.461 Lake Apopka improvement and management.—

(2) DEFINITIONS.—As used in this section:

(c) "Stormwater management system" has the meaning set forth in s. 373.403 ~~s. 373.403(10)~~.

Section 7. For the purpose of incorporating the amendment made by this act to section 373.4135, Florida Statutes, in references thereto, paragraphs (a) and (c) of subsection (1) of section 403.9332, Florida Statutes, are reenacted to read:

403.9332 Mitigation and enforcement.—

(1)(a) Any area in which 5 percent or more of the trimmed mangrove trees have been trimmed below 6 feet in height, except as provided in s. 403.9326(1)(c), (d), (f), (g), and (h), destroyed, defoliated, or removed as a result of trimming conducted under s. 403.9326 or s. 403.9327 must be restored or mitigated. Restoration must be accomplished by replanting mangroves, in the same location and of the same species as each mangrove destroyed, defoliated, removed, or trimmed, to achieve within 5 years a canopy area equivalent to the area destroyed, removed, defoliated, or trimmed; or mitigation must be accomplished by replanting offsite, in areas suitable for mangrove growth, mangroves to achieve within 5 years a canopy area equivalent to the area destroyed, removed, defoliated, or trimmed. Where all or a portion of the restoration or mitigation



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is not practicable, as determined by the department or delegated local government, the impacts resulting from the destruction, defoliation, removal, or trimming of the mangroves must be offset by donating a sufficient amount of money to offset the impacts, which must be used for the restoration, enhancement, creation, or preservation of mangrove wetlands within a restoration, enhancement, creation, or preservation project approved by the department or delegated local government; or by purchasing credits from a mitigation bank created under s. 373.4135 at a mitigation ratio of 2-to-1 credits to affected area. The donation must be equivalent to the cost, as verified by the department or delegated local government, of creating mangrove wetlands at a 2-to-1, created versus affected ratio, based on canopy area. The donation may not be less than \$4 per square foot of created wetland area.

(c) If mangroves are to be trimmed or altered under a permit issued under s. 403.9328, the department or delegated local government may require mitigation. The department or delegated local government shall establish reasonable mitigation requirements that must include, as an option, the use of mitigation banks created under s. 373.4135, where appropriate. The department's mitigation requirements must ensure that payments received as mitigation are sufficient to offset impacts and are used for mangrove creation, preservation, protection, or enhancement.

Section 8. This act shall take effect July 1, 2024.

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



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Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to mitigation; reordering and amending
s. 373.403, F.S.; defining the term "private-sector
sponsor"; making technical changes; s. 373.4134, F.S.;
revising legislative findings; defining the term
"applicant"; revising the entities to and purposes for
which water quality enhancement credits may be sold;
requiring the Department of Environmental Protection
or water management districts to authorize the sale
and use of such credits to applicants, rather than to
governmental entities, to address adverse water
quality impacts of certain activities; revising
construction; amending s. 373.4135, F.S.; revising
legislative findings; authorizing governmental
entities to solicit certain proposals for mitigation
bank projects on public land; providing requirements
for the proposals and for agreements between local
governmental and private entities; providing
requirements for the agreements; providing
requirements for the department and water management
districts in assigning mitigation bank credits to the
bank; providing applicability; providing construction;
amending ss. 330.41, 373.414, and 373.461, F.S.;
conforming cross-references; reenacting s.
403.9332(1)(a) and (c), F.S., relating to mitigation
and enforcement, to incorporate the amendments made to
s. 373.4135, F.S., in references thereto; providing an



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effective date.

By Senator Brodeur

10-01364-24

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A bill to be entitled

An act relating to mitigation; reordering and amending s. 373.403, F.S.; defining the term "sponsor"; making technical changes; s. 373.4134, F.S.; revising legislative findings; revising the entities to and purposes for which water quality enhancement credits may be sold; requiring the Department of Environmental Protection or water management districts to authorize the sale and use of such credits to applicants, rather than to governmental entities, to address adverse water quality impacts of certain activities; revising construction; amending s. 373.4135, F.S.; revising legislative findings; requiring governmental entities to consider certain proposals; authorizing governmental entities to solicit proposals for mitigation bank projects on public land; providing requirements for the proposals and for agreements between local governmental and private entities; requiring the department and water management districts to consider certain factors in assigning mitigation bank credits to the bank; providing applicability; providing construction; amending ss. 330.41, 373.414, and 373.461, F.S.; conforming cross-references; reenacting s. 403.9332(1)(a) and (c), F.S., relating to mitigation and enforcement, to incorporate the amendments made to s. 373.4135, F.S., in references thereto; providing an effective date.

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

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Section 1. Section 373.403, Florida Statutes, is reordered and amended to read:

373.403 Definitions.—When appearing in this part or in any rule, regulation, or order adopted pursuant thereto, the following terms mean:

(4)~~(1)~~ "Dam" means any artificial or natural barrier, with appurtenant works, raised to obstruct or impound, or which does obstruct or impound, any of the surface waters of the state.

(2) "Appurtenant works" means any artificial improvements to a dam which might affect the safety of such dam or, when employed, might affect the holding capacity of such dam or of the reservoir or impoundment created by such dam.

(10)~~(3)~~ "Impoundment" means any lake, reservoir, pond, or other containment of surface water occupying a bed or depression in the earth's surface and having a discernible shoreline.

(17)~~(4)~~ "Reservoir" means any artificial or natural holding area which contains or will contain the water impounded by a dam.

(23)~~(5)~~ "Works" means all artificial structures, including, but not limited to, ditches, canals, conduits, channels, culverts, pipes, and other construction that connects to, draws water from, drains water into, or is placed in or across the waters in the state.

(3)~~(6)~~ "Closed system" means any reservoir or works located entirely within agricultural lands owned or controlled by the user and which requires water only for the filling, replenishing, and maintaining the water level thereof.

(1)~~(7)~~ "Alter" means to extend a dam or works beyond

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59 maintenance in its original condition, including changes which
60 may increase or diminish the flow or storage of surface water
61 which may affect the safety of such dam or works.

62 (12)~~(8)~~ "Maintenance" or "repairs" means remedial work of a
63 nature as may affect the safety of any dam, impoundment,
64 reservoir, or appurtenant work or works, but excludes routine
65 custodial maintenance.

66 (5)~~(9)~~ "Drainage basin" means a subdivision of a watershed.

67 (21)~~(10)~~ "Stormwater management system" means a system
68 ~~which is~~ designed and constructed or implemented to control
69 discharges ~~which are~~ necessitated by rainfall events,
70 incorporating methods to collect, convey, store, absorb,
71 inhibit, treat, use, or reuse water to prevent or reduce
72 flooding, overdrainage, environmental degradation, and water
73 pollution or otherwise affect the quantity and quality of
74 discharges from the system.

75 (20)~~(11)~~ "State water quality standards" means water
76 quality standards adopted pursuant to chapter 403.

77 (22)~~(12)~~ "Watershed" means the land area that ~~which~~
78 contributes to the flow of water into a receiving body of water.

79 (6)~~(13)~~ "Dredging" means excavation, by any means, in
80 surface waters or wetlands, as delineated in s. 373.421(1). The
81 term ~~It~~ also means the excavation, or creation, of a water body
82 which is, or is to be, connected to surface waters or wetlands,
83 as delineated in s. 373.421(1), directly or via an excavated
84 water body or series of water bodies.

85 (9)~~(14)~~ "Filling" means the deposition, by any means, of
86 materials in surface waters or wetlands, as delineated in s.
87 373.421(1).

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88 (8)~~(15)~~ "Estuary" means a semienclosed, naturally existing
89 coastal body of water that ~~which~~ has a free connection with the
90 open sea and within which seawater is measurably diluted with
91 fresh water derived from riverine systems.

92 (11)~~(16)~~ "Lagoon" means a naturally existing coastal zone
93 depression that ~~which~~ is below mean high water and that ~~which~~
94 has permanent or ephemeral communications with the sea, but
95 ~~which~~ is protected from the sea by some type of naturally
96 existing barrier.

97 (18)~~(17)~~ "Seawall" means a manmade wall or encroachment,
98 except riprap, which is made to break the force of waves and to
99 protect the shore from erosion.

100 (19) "Sponsor" means an individual or entity that
101 establishes and operates a wetland mitigation bank project and
102 is responsible for compliance with any permits or
103 authorizations, including, but not limited to, funding and
104 undertaking wetland enhancement, restoration or creation
105 activities, and the provision of financial assurances, as well
106 as any required monitoring, reporting, and maintenance of the
107 mitigation bank.

108 (7)~~(18)~~ "Ecological value" means the value of functions
109 performed by uplands, wetlands, and other surface waters to the
110 abundance, diversity, and habitats of fish, wildlife, and listed
111 species. These functions include, but are not limited to,
112 providing cover and refuge; breeding, nesting, denning, and
113 nursery areas; corridors for wildlife movement; food chain
114 support; and natural water storage, natural flow attenuation,
115 and water quality improvement, which enhances fish, wildlife,
116 and listed species utilization.

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117 (13)~~(19)~~ "Mitigation bank" means a project permitted under
118 s. 373.4136 undertaken to provide for the withdrawal of
119 mitigation credits to offset adverse impacts authorized by a
120 permit under this part.

121 (14)~~(20)~~ "Mitigation credit" means a standard unit of
122 measure which represents the increase in ecological value
123 resulting from restoration, enhancement, preservation, or
124 creation activities.

125 (15)~~(21)~~ "Mitigation service area" means the geographic
126 area within which mitigation credits from a mitigation bank may
127 be used to offset adverse impacts of activities regulated under
128 this part.

129 (16)~~(22)~~ "Offsite regional mitigation" means mitigation on
130 an area of land off the site of an activity permitted under this
131 part, where an applicant proposes to mitigate the adverse
132 impacts of only the applicant's specific activity as a
133 requirement of the permit, which provides regional ecological
134 value, and which is not a mitigation bank permitted under s.
135 373.4136.

136 Section 2. Paragraphs (b), (d), and (e) of subsection (1),
137 paragraph (b) of subsection (3), and paragraphs (a) and (j) of
138 subsection (7) of section 373.4134, Florida Statutes, are
139 amended to read:

140 373.4134 Water quality enhancement areas.—

141 (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
142 that:

143 (b) An expansion of existing authority for regional
144 treatment to include offsite compensatory treatment in water
145 quality enhancement areas to make enhancement credits available

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for purchase by an applicant or a governmental entity ~~entities~~ to address impacts regulated under this part is needed.

(d) Water quality enhancement areas are a valuable tool to assist an applicant ~~governmental entities~~ in satisfying the net improvement performance standard under s. 373.414(1)(b)3. to ensure significant reductions of pollutant loadings.

(e) Water quality enhancement areas that provide water quality enhancement credits to applicants ~~governmental entities~~ seeking permits under this part and to governmental entities seeking to meet an assigned basin management action plan allocation or reasonable assurance plan under s. 403.067 are considered an appropriate and permissible option.

(3) WATER QUALITY ENHANCEMENT AREAS.—

(b) Water quality enhancement credits may be sold ~~only~~ to governmental entities seeking to meet an assigned basin management action plan allocation or reasonable assurance plan or to applicants for the purpose of achieving the net improvement performance standard under s. 373.414(1)(b)3. after ~~the governmental entity has provided reasonable assurances have been provided for the assurance of meeting department rules for~~ design and construction of all onsite stormwater management required by rule 62-330, Florida Administrative Code.

(7) ENHANCEMENT CREDITS.—

(a) The department or water management district shall authorize the sale and use of enhancement credits to applicants ~~governmental entities~~ to address adverse water quality impacts of activities regulated under this part or to assist governmental entities seeking to meet required nonpoint source contribution reductions assigned in a basin management action

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plan or reasonable assurance plan under s. 403.067.

(j) Notwithstanding any other law, this section does not limit or restrict the authority of the department to deny the use of enhancement credits when the department is not reasonably assured that the use of the credits will not cause or contribute to a violation of water quality standards, even if the project being implemented by the applicant or governmental entity is within the enhancement service area. The department may allow the use of enhancement credits if the department receives a request for the use of enhancement credits and determines that such use will not cause or contribute to a violation of water quality standards.

Section 3. Subsection (1) of section 373.4135, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

373.4135 Mitigation banks and offsite regional mitigation.—

(1) The Legislature finds that the adverse impacts of activities regulated under this part may be offset by the creation, maintenance, and use of mitigation banks and offsite regional mitigation. Mitigation banks and offsite regional mitigation can enhance the certainty of mitigation and provide ecological value due to the improved likelihood of environmental success associated with their proper construction, maintenance, and management. Therefore, the department and the water management districts are directed to ~~participate in and~~ encourage the establishment of private ~~and public~~ mitigation banks and offsite regional mitigation on private and public lands. Mitigation banks and offsite regional mitigation should emphasize the restoration and enhancement of degraded ecosystems

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and the preservation of uplands and wetlands as intact ecosystems rather than alteration of landscapes to create wetlands. This is best accomplished through restoration of ecological communities that were historically present.

(a) The Legislature intends that the provisions for establishing mitigation banks apply equally to both public and private entities, except that the rules of the department and water management districts may set forth different measures governing financial responsibility, and different measures governing legal interest, needed to ensure the construction and perpetual protection of a mitigation bank.

(b) The Legislature recognizes the importance of mitigation banks as an appropriate and allowable mitigation alternative to permittee-responsible mitigation. However, the Legislature also recognizes that certain timing and geographical constraints could result in the unavailability of mitigation bank credits for a certain project upon completion of the project's application. If state and federal mitigation credits are not available to offset the adverse impacts of a project, a local government may allow permittee-responsible mitigation consisting of the restoration or enhancement of lands purchased and owned by a local government for conservation purposes, and such mitigation must conform to the permitting requirements of s. 373.4136. Except when a local government has allowed a public or private permittee-responsible mitigation project to be created on land it has purchased for conservation purposes pursuant to this paragraph, a governmental entity may not create or provide mitigation for a project other than its own unless the governmental entity uses land that was not previously purchased

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for conservation and unless the governmental entity provides the same financial assurances as required for mitigation banks permitted under s. 373.4136. This paragraph does not apply to:

1. Mitigation banks permitted before December 31, 2011, under s. 373.4136;

2. Offsite regional mitigation areas established before December 31, 2011, under subsection (6) or, when credits are not available at a mitigation bank permitted under s. 373.4136, mitigation areas created by a local government which were awarded mitigation credits pursuant to the uniform mitigation assessment method as provided in chapter 62-345, Florida Administrative Code, under a permit issued before December 31, 2011;

3. Mitigation for transportation projects under ss. 373.4137 and 373.4139;

4. Mitigation for impacts from mining activities under s. 373.41492;

5. Mitigation provided for single-family lots or homeowners under subsection (7);

6. Entities authorized in chapter 98-492, Laws of Florida;

7. Mitigation provided for electric utility impacts certified under part II of chapter 403; or

8. Mitigation provided on sovereign submerged lands under subsection (6).

(c) It is the further intent of the Legislature that mitigation banks and offsite regional mitigation be considered appropriate and a permittable mitigation option under the conditions specified by the rules of the department and water management districts.

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(d) Offsite mitigation, including offsite regional mitigation, may be located outside the regional watershed in which the adverse impacts of an activity regulated under this part are located, if such adverse impacts are offset by the offsite mitigation.

(e) The department or water management district may allow the use of a mitigation bank or offsite regional mitigation alone or in combination with other forms of mitigation to offset adverse impacts of activities regulated under this part.

(f) When an applicant seeking ~~for~~ a permit under ~~the provisions of~~ this part other than this section and s. 373.4136 submits more than one mitigation proposal to the department or a water management district, the department or water management district shall, in evaluating each proposal, ensure that such proposal adequately offsets the adverse impacts.

(8) A governmental entity shall consider unsolicited proposals for or may solicit proposals, in accordance with s. 255.065(3) or other established public procurement process, for a mitigation bank project on public land. If a mitigation bank is to be established and operated by a private entity on public land, the governmental entity and private entity must enter into an agreement requiring the private entity to serve as the sponsor of the project and the agreement must require the mitigation bank to conform to the permitting requirements of s. 373.4136.

(a) The agreement must require the private entity to pay a usage fee to the governmental entity which reflects the market value of the public land, as determined by a competitive process in accordance with state law or such other method of assuring

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that the cost of the use of the public land is fully accounted
for in the pricing of mitigation credits.

(b) In determining the number of mitigation bank credits
assigned to the mitigation bank, the department or water
management district shall reflect the conservation status of the
land in the location factor set forth in the uniform mitigation
assessment method.

(c) This subsection applies to drainage basins or
corresponding hydrologic units if the applicant demonstrates to
the department or water management district that in-kind credits
are not available.

(d) Rulemaking is not required to implement this
subsection.

Section 4. Paragraph (a) of subsection (2) of section
330.41, Florida Statutes, is amended to read:

330.41 Unmanned Aircraft Systems Act.—

(2) DEFINITIONS.—As used in this act, the term:

(a) "Critical infrastructure facility" means any of the
following, if completely enclosed by a fence or other physical
barrier that is obviously designed to exclude intruders, or if
clearly marked with a sign or signs which indicate that entry is
forbidden and which are posted on the property in a manner
reasonably likely to come to the attention of intruders:

1. A power generation or transmission facility, substation,
switching station, or electrical control center.

2. A chemical or rubber manufacturing or storage facility.

3. A water intake structure, water treatment facility,
wastewater treatment plant, or pump station.

4. A mining facility.

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320 5. A natural gas or compressed gas compressor station,
321 storage facility, or natural gas or compressed gas pipeline.

322 6. A liquid natural gas or propane gas terminal or storage
323 facility.

324 7. Any portion of an aboveground oil or gas pipeline.

325 8. A refinery.

326 9. A gas processing plant, including a plant used in the
327 processing, treatment, or fractionation of natural gas.

328 10. A wireless communications facility, including the
329 tower, antennae, support structures, and all associated ground-
330 based equipment.

331 11. A seaport as listed in s. 311.09(1), which need not be
332 completely enclosed by a fence or other physical barrier and
333 need not be marked with a sign or signs indicating that entry is
334 forbidden.

335 12. An inland port or other facility or group of facilities
336 serving as a point of intermodal transfer of freight in a
337 specific area physically separated from a seaport.

338 13. An airport as defined in s. 330.27.

339 14. A spaceport territory as defined in s. 331.303(18).

340 15. A military installation as defined in 10 U.S.C. s.
341 2801(c)(4) and an armory as defined in s. 250.01.

342 16. A dam as defined in s. 373.403 ~~s. 373.403(1)~~ or other
343 structures, such as locks, floodgates, or dikes, which are
344 designed to maintain or control the level of navigable
345 waterways.

346 17. A state correctional institution as defined in s.
347 944.02 or a private correctional facility authorized under
348 chapter 957.

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18. A secure detention center or facility as defined in s. 985.03, or a nonsecure residential facility, a high-risk residential facility, or a maximum-risk residential facility as those terms are described in s. 985.03(44).

19. A county detention facility as defined in s. 951.23.

20. A critical infrastructure facility as defined in s. 692.201.

Section 5. Paragraph (a) of subsection (8) of section 373.414, Florida Statutes, is amended to read:

373.414 Additional criteria for activities in surface waters and wetlands.—

(8)(a) The governing board or the department, in deciding whether to grant or deny a permit for an activity regulated under this part shall consider the cumulative impacts upon surface water and wetlands, as delineated in s. 373.421(1), within the same drainage basin as defined in s. 373.403 ~~s. 373.403(9)~~, of:

1. The activity for which the permit is sought.

2. Projects which are existing or activities regulated under this part which are under construction or projects for which permits or determinations pursuant to s. 373.421 ~~or s. 403.914~~ have been sought.

3. Activities which are under review, approved, or vested pursuant to s. 380.06, or other activities regulated under this part which may reasonably be expected to be located within surface waters or wetlands, as delineated in s. 373.421(1), in the same drainage basin as defined in s. 373.403 ~~s. 373.403(9)~~, based upon the comprehensive plans, adopted pursuant to chapter 163, of the local governments having jurisdiction over the

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activities, or applicable land use restrictions and regulations.

Section 6. Paragraph (c) of subsection (2) of section 373.461, Florida Statutes, is amended to read:

373.461 Lake Apopka improvement and management.—

(2) DEFINITIONS.—As used in this section:

(c) "Stormwater management system" has the meaning set forth in s. 373.403 ~~s. 373.403(10)~~.

Section 7. For the purpose of incorporating the amendment made by this act to section 373.4135, Florida Statutes, in references thereto, paragraphs (a) and (c) of subsection (1) of section 403.9332, Florida Statutes, are reenacted to read:

403.9332 Mitigation and enforcement.—

(1)(a) Any area in which 5 percent or more of the trimmed mangrove trees have been trimmed below 6 feet in height, except as provided in s. 403.9326(1)(c), (d), (f), (g), and (h), destroyed, defoliated, or removed as a result of trimming conducted under s. 403.9326 or s. 403.9327 must be restored or mitigated. Restoration must be accomplished by replanting mangroves, in the same location and of the same species as each mangrove destroyed, defoliated, removed, or trimmed, to achieve within 5 years a canopy area equivalent to the area destroyed, removed, defoliated, or trimmed; or mitigation must be accomplished by replanting offsite, in areas suitable for mangrove growth, mangroves to achieve within 5 years a canopy area equivalent to the area destroyed, removed, defoliated, or trimmed. Where all or a portion of the restoration or mitigation is not practicable, as determined by the department or delegated local government, the impacts resulting from the destruction, defoliation, removal, or trimming of the mangroves must be

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offset by donating a sufficient amount of money to offset the impacts, which must be used for the restoration, enhancement, creation, or preservation of mangrove wetlands within a restoration, enhancement, creation, or preservation project approved by the department or delegated local government; or by purchasing credits from a mitigation bank created under s. 373.4135 at a mitigation ratio of 2-to-1 credits to affected area. The donation must be equivalent to the cost, as verified by the department or delegated local government, of creating mangrove wetlands at a 2-to-1, created versus affected ratio, based on canopy area. The donation may not be less than \$4 per square foot of created wetland area.

(c) If mangroves are to be trimmed or altered under a permit issued under s. 403.9328, the department or delegated local government may require mitigation. The department or delegated local government shall establish reasonable mitigation requirements that must include, as an option, the use of mitigation banks created under s. 373.4135, where appropriate. The department's mitigation requirements must ensure that payments received as mitigation are sufficient to offset impacts and are used for mangrove creation, preservation, protection, or enhancement.

Section 8. This act shall take effect July 1, 2024.

01/17/2024

Meeting Date

ENR

Committee

The Florida Senate
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1532

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Lauren Jackson**

Phone **931-265-8999**

Address **205 S. Adams St.**

Email **lauren@ericksconsultants.com**

Street

Tallahassee

FL

32302

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:

TOWN OF DAVIE

☐ 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
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1/17/24
Meeting Date
Env. & Natural Resources
Committee

1532
Bill Number or Topic

Name Lance Pierce Phone 850-228-4088
Amendment Barcode (if applicable)

Address 310 W College Ave Email Lance@afcd.com
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:

Association of Florida
Community Developers

☐ 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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1/17/24
Meeting Date

ENR
Committee

1532

Bill Number or Topic

Name

Ryan Matthews

Phone

850 294 8591

Amendment Barcode (if applicable)

Address

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Ryan.Matthews@gray-robinson.com

City

Tallahassee 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:

The Wetlands Bank Co.

☐

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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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 1210

INTRODUCER: Senator Martin

SUBJECT: Estero Bay Aquatic Preserve

DATE: January 16, 2024

REVISED: _____

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

I. Summary:

SB 1210 revises the boundaries of the Estero Bay Aquatic Preserve.

II. Present Situation:

Aquatic Preserves

The State of Florida passed the Aquatic Preserve Act in 1975 to ensure that the state-owned submerged lands in areas with exceptional biological, aesthetic, and scientific value were set aside forever as aquatic preserves or sanctuaries for the benefit of future generations.¹ There are currently 42 aquatic preserves encompassing about 2.2 million acres.² All but four are located along Florida's 8,400 miles of coastline.³

Aquatic preserves only include lands or water bottoms owned by the state. The Aquatic Preserve Act excludes any privately owned lands or water bottoms, or any publicly owned and maintained navigation channel or other public works project authorized by the U.S. Congress designed to improve or maintain commerce and navigation.⁴ Further, the Aquatic Preserve Act excludes all lands lost by avulsion or artificially induced erosion.⁵

¹ Section 258.36, F.S.; DEP, *Aquatic Preserve Program*, <https://floridadep.gov/rcp/aquatic-preserve> (last visited Jan. 9, 2024).

² DEP, *Aquatic Preserve Program*; DEP, Geospatial Open Data, *Florida Aquatic Preserves*, <https://geodata.dep.state.fl.us/datasets/FDEP::florida-aquatic-preserves/explore?location=27.492338%2C-83.860873%2C5.95> (last visited Jan. 9, 2024); DEP, Office of Resilience and Coastal Protection, *Aquatic Preserve Program*, https://floridaapdata.org/about_FCO.php (last visited Jan. 9, 2024).

³ DEP ORCP, *Aquatic Preserve Program*.

⁴ Section 258.40, F.S.

⁵ *Id.*

The Board of Trustees of the Internal Improvement Trust Fund (Board) may establish additional aquatic preserves, subject to confirmation by the Legislature.⁶ Following public notice and public hearing in the county or counties in which the proposed preserve is to be located, the Board may adopt a resolution formally setting aside such areas. The resolution must include:

- A legal description of the area to be included;
- The designation of the type of aquatic preserve being set aside;
- A general statement of what is sought to be preserved; and
- A clear statement of the management responsibilities for the area.⁷

Except for the termination of a lease, no aquatic preserve or any part thereof shall be withdrawn from the state aquatic preserve system except by an act of the Legislature. Notice of such proposed legislation shall be published in each county in which the affected area is located, in the manner prescribed by law relating to local legislation.⁸ The Board published a notice of legislation regarding the Estero Bay Aquatic Preserve boundary change in the News-Press on November 9, 2023.⁹

Current law restricts certain activities in aquatic preserves, including the construction of utility cables and pipes and spoil disposal.¹⁰ Further, the Board may not:

- Sell, lease, or transfer sovereign submerged lands¹¹ unless it is in the public interest.
- Approve the waterward relocation or setting of bulkhead lines waterward of the line of mean high water within the preserve, except when public road and bridge construction projects have no reasonable alternative and it is not contrary to the public interest.
- Approve further dredging or filling of submerged lands, except for certain activities that must be authorized pursuant to a permit.¹²

Only minimal or maintenance dredging is permitted in an aquatic preserve, and any alteration of the preserves' physical conditions is restricted unless the alteration enhances the quality or utility of the preserve or the public health generally.¹³ Oil and gas well drilling is prohibited, however, the state is not prohibited from leasing the oil and gas rights and permitting drilling from outside the preserve to explore for oil and gas if approved by the Board. Docking facilities and structures for shore protection are restricted as to size and location.¹⁴

⁶ Section 258.41, F.S.

⁷ *Id.*

⁸ *Id.*

⁹ Board of Trustees of the Internal Improvement Trust Fund, News-Press, *Notice of Legislation* (Nov. 9, 2023), available at <https://www.news-press.com/public-notice>.

¹⁰ Section 258.42, F.S.

¹¹ Sovereign submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally influenced waters. The Board holds title to sovereign submerged lands. DEP, *Submerged Lands Management*, <https://floridadep.gov/lands/bureau-public-land-administration/content/submerged-lands-management> (last visited Jan 10, 2024).

¹² Section 258.42, F.S.

¹³ Fla. Admin. Code R. 18-20.004. Note that every aquatic preserve in the state has specific restrictions and policies that are set out in the Florida Administrative Code and/or ch. 258, F.S.

¹⁴ Section 258.42, F.S. Administrative rules applicable to aquatic preserves generally may be found in Chapters 18-20, F.A.C., Management Policies, Standards and Criteria.

No wastes or effluents may be discharged into an aquatic preserve if they substantially inhibit the accomplishment of the purposes of the Aquatic Preserve Act. Riparian owners may selectively trim or alter mangroves on adjacent publicly owned submerged lands, provided that the selective trimming or alteration is in compliance with the requirements of state law including permit requirements for mangrove trimming.¹⁵

Leases of sovereign submerged lands are significantly higher within aquatic preserves. A rate of two times the existing rate is applied to aquatic preserve leases if 75 percent or more of the lease shoreline and the adjacent 1000 feet on either side of the leased area is in a natural, unbulkheaded, non-seawalled or non-riprapped condition.¹⁶

The Board has a duty to conserve and improve state-owned lands and the products thereof, which includes the preservation and regeneration of seagrass.¹⁷ A person operating a vessel outside a lawfully marked channel in a careless manner that causes seagrass scarring within an aquatic preserve, with the exception of the Lake Jackson, Oklawaha River, Wekiva River, and Rainbow Springs aquatic preserves, commits a noncriminal infraction. The Nature Coast Aquatic Preserve is also not included. The penalties are as follows:

- \$100 for a first offense;
- \$250 for a second offense occurring within 12 months of a prior conviction;
- \$500 for a third offense occurring within 36 months of a prior conviction; and
- \$1,000 for a fourth or subsequent offense occurring within 72 months of a prior conviction.¹⁸

Estero Bay Aquatic Preserve

The Estero Bay Aquatic Preserve was Florida's first aquatic preserve and was dedicated in December 1966.¹⁹ At that time, the preserve encompassed only the northern half of Estero Bay. In 1983, the Legislature added the southern half of Estero Bay down to the Lee County line.²⁰ Today the preserve covers a total of 13,829 acres and nearly 11,000 acres of state-owned sovereign submerged lands occurring below the mean high water line to which the state holds title.²¹

The area around the preserve has experienced heavy development, however the preserve is surrounded by state parks and other recreational sites, which offer access to the bay for boating, kayaking, fishing, and more. These include Estero Bay Preserve State Park, Koreshan State Park, Lovers Key State Park, Matanzas Pass Preserve, Mound Key Archaeological State Park, and the Mound House.²²

¹⁵ Section 258.42, F.S.

¹⁶ Fla. Admin. Code Rule 18-21.011(1)(b)5.

¹⁷ Section 253.04(3), F.S.

¹⁸ Section 327.73(x), F.S.

¹⁹ DEP, *Estero Bay Aquatic Preserve*, <https://floridadep.gov/rcp/aquatic-preserve/locations/estero-bay-aquatic-preserve> (last visited Jan. 11, 2024).

²⁰ *Id.*

²¹ DEP, *Estero Bay Aquatic Preserve Management Plan* (2015), 15, available at <https://publicfiles.dep.state.fl.us/cama/plans/aquatic/Estero-Bay-AP-Management-Plan.pdf>.

²² DEP, *Estero Bay Aquatic Preserve*.



The waters of Estero Bay were found to be worthy of special protection, in part because of their exceptional ecological significance.²³ The bay contains several distinct natural community types. The dominant community is mangrove forest, but seagrass beds, salt marshes, tidal flats, oyster bars, and others are also present. The combination of subtropical climate, the lagoon configuration, and vegetation make the Estero Bay estuarine complex one of the most productive in the state.²⁴ The bay is home to approximately 40 percent of the state's endangered and

²³ DEP, *Estero Bay Aquatic Preserve Management Plan* at 13. The image of Estero Bay can be found in the Estero Bay Aquatic Preserve Management Plan. DEP, *Estero Bay Aquatic Preserve Management Plan* at 14.

²⁴ DEP, *Estero Bay Aquatic Preserve*.

threatened species, and is an important home for bird nesting colonies and provides a valuable resting area for migrating birds. The bay also supports a variety of commercial and sport fisheries by providing nursery area, which supports the local economy.²⁵

Shrimping Industry

Southwest Florida's commercial seafood has been vitally important to its economic based for decades.²⁶ The waters off the coast of Lee County provide the necessary conditions for shrimp to thrive because shrimp rely on nearshore waters and use estuaries like Estero Bay for their nursery grounds. There are three commercially important shrimp species caught along Florida's coastlines and off Lee County: brown shrimp (*Farfantepenaeus aztecus*), white shrimp, (*Litopenaeus setiferus*), and pink shrimp (*Farfantepenaeus duorarum*).²⁷

San Carlos Island, which is located on the northern side of Matanzas Pass and can be seen in the map on the previous page, is home to a large fleet of shrimping vessels that operate in the Gulf of Mexico.²⁸ The island is one of the most important off-loading sites for shrimp trawlers because of its proximity to fishing grounds, the presence of several processing and packing firms, the availability of a wide range of repair and maintenance services, the availability of fuel and ice, and room for off-loading and mooring.²⁹ Because Hurricane Bay and Matanzas Pass are heavily used by shrimp trawlers and other commercial and recreational vessels and are adjacent to commercial and residential locations, this section of the aquatic preserve is heavily disturbed.³⁰ This area is referred to as "ruderal"³¹ because it is an anthropogenic "altered" community.³² Most ruderal locations contain seawalls or docks.³³

Boundaries of Estero Bay Aquatic Preserve

The Estero Bay Aquatic Preserve is in Lee County and includes all of those sovereign submerged lands located bayward of the mean high-water line in:

- Sections 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 35, and 36, Township 46 South, Range 24 East;
- Sections 19, 20, 28, 29, and 34, Township 46 South, Range 24 East, lying north and east of Matanzas Pass Channel;
- Sections 19, 30, and 31, Township 46 South, Range 25 East;
- Sections 6, 7, 17, 18, 19, 20, 29, 30, 31, and 32, Township 47 South, Range 25 East;
- Sections 1, 2, 3, 11, 12, 13, 14, 24, and 25, Township 47 South, Range 24 East.³⁴

²⁵ *Id.*

²⁶ *Id.* at 41.

²⁷ *Id.*

²⁸ *Id.* at 14.

²⁹ *Id.* at 41.

³⁰ *Id.* at 32.

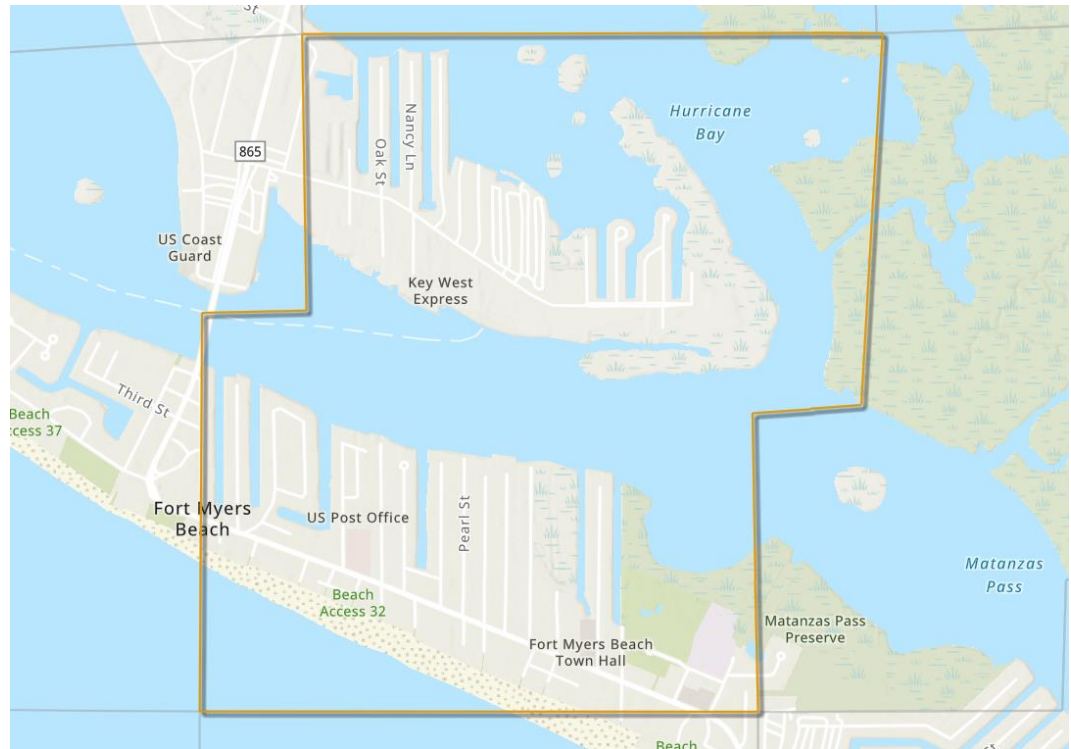
³¹ The term "ruderal" means pertaining to or living amongst rubbish or debris, or inhabiting disturbed sites. The Florida Natural Areas Inventory describes ruderal as areas impacted by development measures such as roadways, drainage ditches, navigation channels. *Id.* at 148.

³² *Id.* at 29.

³³ *Id.* at 32.

³⁴ Section 258.39(28), F.S.

The map on the right shows Section 19, Township 46 South, Range 24 East.³⁵



The map to the right shows where the boundary of the Estero Bay Aquatic Preserve currently lies in the area affected by the bill.³⁶



³⁵ Lee County Maps and Apps, ArcGIS Map Viewer, *Section-Township-Range Untitled Map*, <https://www.arcgis.com/apps/mapviewer/index.html?panel=gallery&layers=ade8d7ba1a7345808b44df1b90e0681c> (last visited Jan. 11, 2024).

³⁶ DEP, *Estero Bay Aquatic Preserve Management Plan* at 20.

III. Effect of Proposed Changes:

Section 1 amends s. 258.39, F.S., to revise the boundaries of the Estero Bay Aquatic Preserve. Specifically, the bill removes from the preserve all sovereign submerged lands located bayward of the mean high-water line in Section 19, Township 46 South, Range 24 East, lying north and east of Matanzas Pass Channel.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article III, section 10 of the Florida Constitution prohibits the Legislature from enacting any special act or local bill unless notice is first published or a referendum is conducted in the area effected or if the purpose of the bill is one of statewide importance and impact.³⁷ A special or local law does not apply with geographic uniformity across the state; it operates only upon designated persons or discrete regions; and it bears no reasonable relationship to differences in population or other legitimate criteria.³⁸ This legislation seems to have complied with the noticing requirements and is of statewide importance.³⁹

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³⁷ FLA. CONST. art. III, s. 10; *see Schrader v. Fla. Keys Aqueduct Auth.*, 840 So. 2d 1050 (Fla. 2003).

³⁸ *See State ex rel. City of Pompano Beach v. Lewis*, 368 So. 2d 1298 (Fla. 1979) (statute relating to particular persons or things or other particular subjects of a class is a special law); *Hous. Auth. v. City of St. Petersburg*, 287 So. 2d 307 (Fla. 1973) (defining a special law).

³⁹ Board of Trustees of the Internal Improvement Trust Fund, News-Press, *Notice of Legislation* (Nov. 9, 2023), available at <https://www.news-press.com/public-notice>.

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 258.39 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 Martin

33-01374-24

20241210__

A bill to be entitled
An act relating to the Estero Bay Aquatic Preserve;
amending s. 258.39, F.S.; revising the boundaries of
the Estero Bay Aquatic Preserve; providing an
effective date.

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

Section 1. Subsection (28) of section 258.39, Florida
Statutes, is amended to read:

258.39 Boundaries of preserves.—The submerged lands
included within the boundaries of Nassau, Duval, St. Johns,
Flagler, Volusia, Brevard, Indian River, St. Lucie, Charlotte,
Pinellas, Martin, Palm Beach, Miami-Dade, Monroe, Collier, Lee,
Citrus, Franklin, Gulf, Bay, Okaloosa, Marion, Santa Rosa,
Hernando, and Escambia Counties, as hereinafter described, with
the exception of privately held submerged lands lying landward
of established bulkheads and of privately held submerged lands
within Monroe County where the establishment of bulkhead lines
is not required, are hereby declared to be aquatic preserves.
Such aquatic preserve areas include:

(28) Estero Bay Aquatic Preserve, the boundaries of which
are generally: All of those sovereignty submerged lands located
bayward of the mean high-water line being in Sections 13, 14,
15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 35, and 36, Township
46 South, Range 24 East; and in Sections ~~19~~, 20, 28, 29, and 34,
Township 46 South, Range 24 East, lying north and east of
Matanzas Pass Channel; and in Sections 19, 30, and 31, Township
46 South, Range 25 East; and in Sections 6, 7, 17, 18, 19, 20,

33-01374-24

20241210__

29, 30, 31, and 32, Township 47 South, Range 25 East; and in
Sections 1, 2, 3, 11, 12, 13, 14, 24, and 25, Township 47 South,
Range 24 East, in Lee County, Florida. Any and all submerged
lands conveyed by the Trustees of the Internal Improvement Trust
Fund prior to October 12, 1966, and any and all uplands now in
private ownership are specifically exempted from this preserve.

Any and all submerged lands theretofore conveyed by the Trustees
of the Internal Improvement Trust Fund and any and all uplands
now in private ownership are specifically exempted from this
dedication.

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

The Florida Senate
APPEARANCE RECORD

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Meeting Date

Committee

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Phone

Address

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City

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Email

Speaking:

☐

For

☐

Against

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Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

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

San Carlos Island Redevelopment Corp.

☐

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)

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: SM 800

INTRODUCER: Senator Rodriguez

SUBJECT: Foreign Polluters

DATE: January 16, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barriero	Rogers	EN	Favorable
2.			RC	

I. Summary:

SM 800 is a memorial to Congress urging its members to support solutions that examine the pollution differential between United States production and that of other countries and that hold foreign polluters accountable for their pollution.

The memorial requires the Florida Secretary of State to dispatch copies to the President of the United States, President of the United States Senate, Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

II. Present Situation:

Florida's Environmental Investments

Florida has recently made significant investments to protect the state's environment and natural, including:

- \$3.3 billion for Everglades restoration and protection of the state's water resources;
- \$1.6 billion in water quality improvements and creation of the Water Quality Improvement Grant Program and dedicated historic funding to increase alternative water supply and restore and protect Florida's springs;
- \$1.1 billion in resilience projects;
- Dedicated funding to enhance the state's water quality monitoring and identify new and innovative ways to treat, predict, and respond to blue-green algal blooms, including more than \$45 million to the Innovative Technology Grant Program;
- Establishing the Florida Wildlife Corridor, committing more than \$600 million to the Florida Forever Program, and acquiring more than 170,000 acres for conservation; and
- \$100 million annually for projects to improve water quality in the Indian River Lagoon.¹

¹ Office of the Governor, *Executive Order 23-06*, 1-2 (2023), available at <https://www.flgov.com/wp-content/uploads/2023/01/EO-23-06.pdf>.

Greenhouse Gases (GHGs)

GHGs trap heat in the atmosphere and warm the surface of the earth. A warmer climate could worsen a variety of natural disasters and lead to reduced access to clean drinking water, more acidic oceans, droughts, floods, heat waves, storms, and dust storms, among other things.² More intense rain events could lead to the contamination of drinking water and increase in mold infestation, which in turn may lead to a variety of related diseases. Moreover, GHGs may directly contribute to respiratory diseases due to air pollution.³

The primary GHGs include:

- Carbon dioxide: Fossil fuel use is the primary source of carbon dioxide but is also emitted through land use practices, such as deforestation, land clearing for agriculture, and degradation of soils. Carbon dioxide is removed from the atmosphere when it is absorbed by plants as part of the biological carbon cycle.
- Methane: Methane is emitted during the production and transport of coal, natural gas, and oil. Methane emissions also result from livestock and other agricultural practices, land use, and by the decay of organic waste in municipal solid waste landfills.
- Nitrous oxide: Nitrous oxide is emitted during agricultural, land use, and industrial activities; combustion of fossil fuels and solid waste; as well as during treatment of wastewater.
- Fluorinated gases: Industrial processes, refrigeration, and the use of a variety of consumer products contribute to emissions of fluorinated gases, which include hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.⁴

GHGs remain in the atmosphere for different periods of time, ranging from a few years to thousands of years.⁵

GHG Emissions

GHG from human activities are the most significant driver of observed climate change since the mid-20th century.⁶ Worldwide, net emissions of GHGs from human activities increased by 43 percent from 1990 to 2015.⁷ Carbon dioxide emissions, which account for about three-fourths of total GHG emissions, increased by 51 percent over this period.⁸ The majority of the world's emissions result from transportation, electricity generation, and other forms of energy production and use.⁹

² Levent Kutlu, *Greenhouse Gas Emission Efficiencies of World Countries*, 1 (2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7728308/pdf/ijerph-17-08771.pdf>.

³ *Id.*

⁴ U.S. Environmental Protection Agency (EPA), *Global Greenhouse Gas Emissions Data*, <https://www.epa.gov/ghgemissions/global-greenhouse-gas-emissions-data> (last visited Jan. 13, 2024).

⁵ EPA, *Overview of Greenhouse Gases*, <https://www.epa.gov/ghgemissions/overview-greenhouse-gases> (last visited Jan. 13, 2024).

⁶ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis*, 5 (2021), available at <https://www.ipcc.ch/report/ar6/wg1/>.

⁷ EPA, *Climate Change Indicators: Greenhouse Gases*, <https://www.epa.gov/climate-indicators/greenhouse-gases> (last visited Jan. 13, 2024).

⁸ *Id.*

⁹ *Id.*

GHG emission levels are closely related to the production of countries, which may be measured by their gross domestic products.¹⁰ In 2022, the largest contributions to global carbon dioxide emissions were from China (31 percent), the U.S. (14 percent), India (8 percent), and Europe (7 percent).¹¹ However, in areas such as the U.S. and Europe, forestry and land management practices have the net effect of absorbing carbon dioxide, partially offsetting the emissions from deforestation in other regions.¹² Carbon dioxide emissions in the U.S. decreased by 2 percent between 1990 and 2021.¹³ Projections for 2023 show a decrease of 3 percent in the U.S. from 2022 levels.¹⁴ Emissions are also expected to decrease in Europe by 7.4 percent but increase by 4 percent in China and 8.2 percent in India.¹⁵

The U.S. is also above the world average for GHG emission efficiency.¹⁶ GHG emission efficiency is a measure of how successful countries are in terms of keeping their GHG emission levels low relative to their production levels.¹⁷

U.S. Policy on GHGs

The U.S. has made the reduction of GHG emissions a priority. In 2021, the U.S. government announced its plan to transition to a clean energy economy with net-zero emissions by 2050, including a goal to produce at least 80 percent of the U.S.'s electricity from emissions-free sources by 2030.¹⁸ However, achieving the goals under the climate agenda will require cooperation from U.S. states and cities, Congress, the judicial branch, other countries—particularly the European Union and China—as well as the private sector.¹⁹

Historically, the U.S. has favored incentivizing emission reductions rather than imposing compulsory measures.²⁰ One of the major concerns regarding the implementation of mandatory limits on GHG emissions in the U.S. is the impact such limits would have on the international

¹⁰ Levent Kutlu, *Greenhouse Gas Emission Efficiencies of World Countries*, 2 (2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7728308/pdf/ijerph-17-08771.pdf>.

¹¹ Pierre Friedlingstein et al., *Global Carbon Budget 2023*, 20 (2023), available at <https://essd.copernicus.org/articles/15/5301/2023/essd-15-5301-2023.pdf>.

¹² EPA, *Global Greenhouse Gas Emissions Data*, <https://www.epa.gov/ghgemissions/global-greenhouse-gas-emissions-data> (last visited Jan. 13, 2024).

¹³ EPA, *Overview of Greenhouse Gases*, <https://www.epa.gov/ghgemissions/overview-greenhouse-gases> (last visited Jan. 13, 2024).

¹⁴ Pierre Friedlingstein et al., *Global Carbon Budget 2023*, 4 (2023), available at <https://essd.copernicus.org/articles/15/5301/2023/essd-15-5301-2023.pdf>.

¹⁵ *Id.*

¹⁶ Levent Kutlu, *Greenhouse Gas Emission Efficiencies of World Countries*, 2, 7 (2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7728308/pdf/ijerph-17-08771.pdf>.

¹⁷ *Id.* at 2.

¹⁸ Office of the White House, *Executive Order on Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability* (2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/08/executive-order-on-catalyzing-clean-energy-industries-and-jobs-through-federal-sustainability/>.

¹⁹ William Reinsch and Emily Benson, *U.S. Views on the Trade and Climate Policy Nexus*, 17 (2021), available at https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/210729_Reinsch_Trade_Climate.pdf?VersionId=ed3gBvB18Jvmtf51lkoDsYiWHCFHPJ1y.

²⁰ *See id.* at 1.

competitiveness of U.S. firms.²¹ Limits on GHG emissions may lead to extra costs on U.S. industries. Where foreign firms do not bear similar costs, U.S. firms may lose their competitive edge because goods from countries without mandatory carbon restrictions may gain a price advantage over domestic goods.²²

However, incentive-based policies also pose challenges, as they often encounter budget and spending challenges, which can hinder their progress and acceptance in Congress.²³ Moreover, trade incentives largely entail subsidies, both removing harmful ones and implementing good ones, both of which could raise legal issues within the World Trade Organization.²⁴

Differences in countries' short-term climate commitments could significantly harm U.S. producers of carbon-intensive goods over the next decade and facilitate a race to the bottom in international trade.²⁵ Two of the U.S.'s top five import sources—Mexico and China—have not announced strict short-term emissions reductions targets.²⁶ The potential asymmetry between these major trading partners' regulatory regimes for carbon emissions could not only disadvantage U.S. producers, but also lead to carbon leakage, in which businesses facing strict emissions regulations move their carbon-intensive production processes to countries with less strict rules, causing emissions to “leak” across borders.²⁷ Carbon leakage could have significant economic and political consequences, particularly the loss of U.S. manufacturing jobs, if U.S. firms move their carbon-intensive manufacturing processes abroad.²⁸ Additionally, less carbon-intensive U.S. products would be relatively more expensive than imports from countries with less strict regulatory regimes.²⁹

Senate Memorial

Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject. A memorial is an official legislative document addressed to Congress, the President of the United States, or some other governmental entity that

²¹ Joost Pauwelyn, Duke University, *U.S. Federal Climate Policy and Competitiveness Concerns: The Limits and Options of International Trade Law*, 2 (2007), available at <https://nicholasinstitute.duke.edu/sites/default/files/publications/u.s.-federal-climate-policy-and-competitiveness-concerns-the-limits-and-options-of-international-trade-law-paper.pdf>.

²² *Id.*

²³ William Reinsch and Emily Benson, *U.S. Views on the Trade and Climate Policy Nexus*, 2 (2021), available at https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/210729_Reinsch_Trade_Climate.pdf?VersionId=ed3gBvB18Jvmtf51lkoDsYiWHCFHPJ1y.

²⁴ *Id.* As a member of the World Trade Organization (WTO), the U.S. may be prohibited from implementing certain subsidies. There are two categories of prohibited subsidies: The first category consists of subsidies contingent, in law or in fact, whether wholly or as one of several conditions, on export performance (export subsidies). The second category consists of subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods (local content subsidies). These types of subsidies are prohibited because they are designed to directly affect trade and thus are most likely to have adverse effects on the interests of other WTO members. WTO, *Agreement on Subsidies and Countervailing Measures* (“SCM Agreement”), https://www.wto.org/english/tratop_e/scm_e/subs_e.htm (last visited Jan. 15, 2024).

²⁵ William Reinsch and Emily Benson, *U.S. Views on the Trade and Climate Policy Nexus*, 9 (2021), available at https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/210729_Reinsch_Trade_Climate.pdf?VersionId=ed3gBvB18Jvmtf51lkoDsYiWHCFHPJ1y.

²⁶ *Id.* at 8.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

expresses the will of the Legislature on a matter within the jurisdiction of the recipient. A memorial requires passage by both legislative houses, but does not require the governor's approval, nor is it subject to a veto.

III. Effect of Proposed Changes:

The memorial contains 10 whereas clauses discussing Florida's recent investments to protect the state's natural resources and environment. The memorial also discusses China's role as a major polluter and emitter of greenhouse gas emissions and the U.S.'s efforts to reduce emissions and increase carbon efficiency. The memorial advocates for trade policies that reward U.S. firms for their strong environmental performance to bolster domestic manufacturing and reduce dependence on imports from high-emitting producers like China and Russia.

The memorial urges Congress to support solutions that examine the pollution differential between U.S. production and that of other countries and that hold foreign polluters accountable for their pollution.

The memorial requires Florida's Secretary of State to dispatch copies of the memorial to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

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:

None.

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 Rodriguez

40-00962-24

2024800__

Senate Memorial

A memorial to the Congress of the United States,
urging Congress to support solutions that examine the
pollution differential between United States
production and that of other countries and that hold
foreign polluters accountable for their pollution.

WHEREAS, Florida's natural resources and environment are
essential to the state's character, economy, and way of life,
and

WHEREAS, Florida, under Governor Ron DeSantis' leadership,
has recently delivered investments to protect the state's
natural resources and environment, including Everglades
restoration, waterway rehabilitation, and water quality
infrastructure, and

WHEREAS, China, by far the world's largest polluter,
accounts for over 30 percent of global carbon dioxide emissions
and subsidizes its exports by not imposing or enforcing
reasonable environmental and labor standards, and

WHEREAS, Chinese government-owned industry is an arm of the
Chinese Communist Party and strives to increase its influence
over the global economy by pursuing predatory trade practices
such as stealing intellectual property from the United States,
and

WHEREAS, the United States has reduced more carbon
emissions than any other country in the last 15 years and has an
economy that is 44 percent more carbon efficient than the world
average, and

WHEREAS, manufacturers in the United States are more

40-00962-24

2024800__

efficient in nearly every industry and yet are forced to compete with companies in China and other countries that face few limits on how much they pollute, and

WHEREAS, goods produced in China and Russia generate 300 percent and 400 percent on average, respectively, more in carbon emissions compared to equivalent goods produced in the United States, and

WHEREAS, United States trade policy has not taken into account carbon emissions, and as a result, afforded foreign polluters with loose carbon standards an advantage over the United States for the past several decades, and

WHEREAS, China benefits from the current federal trade policy, and

WHEREAS, rewarding United States firms for their environmental performance would bolster domestic manufacturing, generate good-paying jobs, and reduce dependence on imports from high-emitting producers like China and Russia, NOW, THEREFORE,

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

That the Congress of the United States is urged to support solutions that examine the pollution differential between United States production and that of other countries and that hold foreign polluters accountable for their pollution.

BE IT FURTHER RESOLVED that the Secretary of State dispatch copies of this memorial to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

The Florida Senate

APPEARANCE RECORD

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1/17/24

Meeting Date

800

Bill Number or Topic

Env & Nat Resources

Committee

Amendment Barcode (if applicable)

Name

Greg Black

Phone

850 509 8022

Address

1727 Highland Place

Email

greg@blackconsultingllc.com

Street

TLH

City

FL

State

32308

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

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compensation or sponsorship.

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I am a registered lobbyist,
representing:

Deploy/US

☐

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 \(flsenate.gov\)](#)

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1/17/24

The Florida Senate
APPEARANCE RECORD

SM 800

Meeting Date

Environment & Natural Resources

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Bill Number or Topic

Committee

John Psareas

Amendment Barcode (if applicable)

SB1-~~866~~ 886-7924

Name

Phone

Address

21946 Pine Trce

Email

Street

Boca Raton

FL

33424

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:

Young Conservatives
for Carbon
Dividends



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: SB 1258

INTRODUCER: Senator Rodriguez

SUBJECT: Carbon Sequestration

DATE: January 16, 2024

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Barriero</u>	<u>Rogers</u>	<u>EN</u>	Favorable
2. _____	_____	<u>AEG</u>	_____
3. _____	_____	<u>FP</u>	_____

I. Summary:

SB 1258 creates the Carbon Sequestration Task Force as an adjunct to the Department of Environmental Protection (DEP) to provide recommendations for the development of a statewide carbon sequestration program. The bill specifies who must be included as a member of the task force and requires the task force to convene no later than September 1, 2024.

The bill requires the task force to:

- Identify and inventory terrestrial and aquatic environments suitable for carbon sequestration in this state.
- Consider possible methods of increasing carbon sequestration within the natural environment through state land and marine resource use policies; agricultural, aquacultural, and silvicultural practices; and other practices to achieve restoration of natural resources and long-term conservation.
- Develop a standardized methodology to establish baseline carbon levels and account for increases in carbon sequestration over time.
- Evaluate additional ecosystem services and benefits of terrestrial and aquatic environments that may promote conservation and ecosystem restoration success.
- Recommend short- and long-term benchmarks for increasing carbon sequestration in terrestrial and aquatic ecosystems.
- Identify existing carbon markets and other considerations relevant to participation by the state in such markets.
- Identify potential funding mechanisms to encourage carbon sequestration practices and activities in this state.

The bill provides that, by October 1, 2026, the task force must submit to the Governor and Legislature a report that compiles the findings and recommendations of the task force. The bill also requires the task force to terminate on April 30, 2027.

In addition, the bill appropriates, for the 2024-2025 fiscal year, the sum of \$350,000 in nonrecurring funds from the Operating Trust Fund to DEP for the purpose of providing administrative and support services to the task force.

II. Present Situation:

Carbon

Carbon is the foundation of all life and helps regulate the Earth's temperature. It is found in our atmosphere in the form of carbon dioxide. Carbon dioxide is produced both in nature and by human activities.¹ Human-made sources include the burning of fossil fuels such as coal, natural gas, and oil for uses in power generation and transportation. Carbon dioxide is also released through land use changes, biologically through the oceans, the decomposition of organic matter, and forest fires. The build-up of carbon dioxide and other greenhouse gases in the atmosphere can trap heat and contribute to climate change.²

Capturing and sequestering carbon dioxide is one way to defer the effects of atmospheric warming.³ The scientific community views this practice as an essential part of solving climate change.⁴

Carbon Sequestration

Carbon sequestration is the storage of carbon dioxide after it is captured from industrial facilities and power plants or removed directly from the atmosphere.⁵ There are two types of carbon sequestration: biologic and geologic.⁶

Biologic Carbon Sequestration

Biologic carbon sequestration involves storing carbon dioxide in places where it is stored naturally as part of the carbon cycle,⁷ such as in oceans, soil, forests, and grasslands.⁸ In the oceans, carbon dioxide is stored as dissolved gas in the water and carbonate sediments on the seafloor.⁹ Oceans absorb roughly 25 percent of carbon dioxide emitted from human activities annually.¹⁰ Colder and nutrient rich parts of the ocean absorb more carbon dioxide than warmer parts.¹¹ It has been estimated that by the end of the century, much of the global ocean will be a

¹ University of California, Davis (UC Davis), *What is Carbon Sequestration and How Does it Work?*, <https://clear.ucdavis.edu/explainers/what-carbon-sequestration> (last visited Jan. 10, 2024).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ U.S. Dep't of Energy (DOE), *DOE Explains Carbon Sequestration*, <https://www.energy.gov/science/doe-explainscarbon-sequestration> (last visited Jan. 10, 2024).

⁶ *Id.*

⁷ *Id.*

⁸ UC Davis, *What is Carbon Sequestration and How Does it Work?*

⁹ DOE, *DOE Explains Carbon Sequestration*.

¹⁰ UC Davis, *What is Carbon Sequestration and How Does it Work?*

¹¹ *Id.*

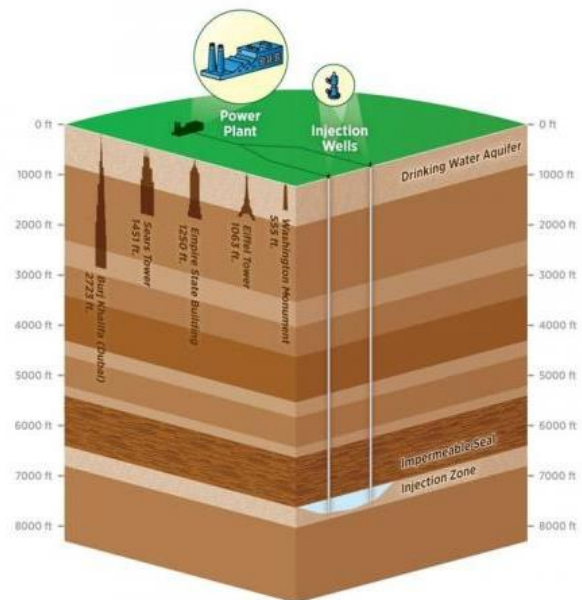
large sink of carbon dioxide, potentially altering the ocean chemistry and making the water more acidic.¹²

Through photosynthesis, plants capture carbon and store it in the form of matter called soil organic carbon.¹³ Soil contains large amounts of soil organic carbon, where a portion is naturally decomposed and released back into the atmosphere as carbon dioxide; however, some of this carbon becomes stabilized and can remain sequestered in the soil for extended durations.¹⁴ Soil can also store carbon as carbonates.¹⁵ Carbonates are inorganic and can store carbon for more than 70,000 years, while soil organic matter typically stores carbon for several decades.¹⁶

About 25 percent of global carbon emissions are captured by plant-rich landscapes such as forests, grasslands, and rangelands.¹⁷ By encouraging the growth of plants, particularly trees, advocates hope to help reduce the amount of carbon dioxide in the atmosphere.¹⁸

Geologic Carbon Sequestration

Geologic carbon sequestration involves storing carbon dioxide deep underground in porous rock formations.¹⁹ In this approach, the carbon dioxide is compressed to the supercritical phase, where it behaves like a liquid. It is then injected into porous rock formations deep under the ground, where it becomes physically trapped in the pore spaces, dissolves in the fluid within the formations, and eventually reacts to form stable minerals. In another approach, carbon dioxide is dissolved into water before being injected into basaltic rock formations to mineralize. In some cases, this carbon dioxide is injected into oil-bearing rock formations, offsetting the costs of carbon capture, storing carbon dioxide, and helping to extract oil.²⁰



¹² U.S. National Oceanic and Atmospheric Administration (NOAA), *Ocean-Atmosphere CO₂ Exchange*, <https://sos.noaa.gov/catalog/datasets/ocean-atmosphere-co2-exchange/#:~:text=By%202100%2C%20much%20of%20the,the%20pH%20of%20the%20water> (last visited Jan. 10, 2024).

¹³ UC Davis, *What is Carbon Sequestration and How Does it Work?*, <https://clear.ucdavis.edu/explainers/what-carbon-sequestration> (last visited Jan. 10, 2024).

¹⁴ DOE, *DOE Explains Carbon Sequestration*, <https://www.energy.gov/science/doe-explainscarbon-sequestration> (last visited Jan. 10, 2024).

¹⁵ UC Davis, *What is Carbon Sequestration and How Does it Work?*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ U.S. Geological Survey, *What's the difference between geologic and biologic carbon sequestration?*, <https://www.usgs.gov/faqs/whats-difference-between-geologic-and-biologic-carbon-sequestration> (last visited Jan. 10, 2023).

¹⁹ DOE, *DOE Explains Carbon Sequestration*.

²⁰ *Id.*

Geologic sequestration of carbon dioxide could play an important role in reducing greenhouse gas (GHG) emissions, while enabling low-carbon electricity generation from power plants.²¹ More than 40 percent of carbon dioxide emissions in the United States are from electric power generation. Geologic sequestration technologies are currently available and can dramatically reduce (by 80-90 percent) carbon dioxide emissions from power plants that burn fossil fuels. Applied to a 500 megawatt coal-fired power plant, the amount of GHG emissions avoided through geologic sequestration (with a 90 percent reduction efficiency) would be equivalent to:

- Planting more than 62 million trees, and waiting at least 10 years for them to grow.
- Avoiding annual electricity-related emissions from more than 300,000 homes.²²

Carbon Markets

Carbon markets offer a promising tool to achieve net-zero emissions.²³ Farmers, ranchers, and forest landowners can generate carbon credits by adopting practices to reduce emissions or sequester carbon on their land, and carbon markets may provide them new income opportunities through carbon credit sales. Purchasing these carbon credits may also help companies achieve voluntary greenhouse gas reduction goals. The future of voluntary carbon markets will be influenced, in part, by the supply of credits which has varied significantly over time.²⁴

Sequestering Carbon and Protecting Florida Land Program

In 2021, the Sequestering Carbon and Protecting Florida Land Program was established to invest in carbon sequestration by offering qualified applicants incentive payments for conducting certain approved forest management practices that establish new forest stands, increasing the state's forest acreage and thereby increasing the amount of offset carbon dioxide emissions.²⁵ The program will seek to increase carbon dioxide storage by an estimated 69,000 tons of carbon dioxide over the current anticipated five-year life of the program, the equivalent of removing approximately 3,000 passenger vehicles from the road every year. The program also seeks to maximize climate change mitigation and carbon sequestration while providing intangible social, cultural, civic, and workforce benefits.²⁶

The program is administered by the Florida Forest Service within the Department of Agriculture and Consumer Services (DACS). Applicants are limited to non-industrial private landowners,

²¹ U.S. Environmental Protection Agency (EPA), *Carbon Dioxide Capture and Sequestration: Overview*, [https://19january2017snapshot.epa.gov/climatechange/carbon-dioxide-capture-and-sequestration-overview.html#:~:text=After%20capture%2C%20carbon%20dioxide%20\(CO,train%2C%20truck%2C%20or%20ship](https://19january2017snapshot.epa.gov/climatechange/carbon-dioxide-capture-and-sequestration-overview.html#:~:text=After%20capture%2C%20carbon%20dioxide%20(CO,train%2C%20truck%2C%20or%20ship) (last visited Jan. 10, 2024) (graphic of geologic sequestration).

²² *Id.*

²³ U.S. Department of Agriculture (USDA), *USDA Releases Assessment on Agriculture and Forestry in Carbon Markets*, <https://www.usda.gov/media/press-releases/2023/10/23/usda-releases-assessment-agriculture-and-forestry-carbon-markets> (last visited Jan. 12, 2024).

²⁴ USDA, *Report to Congress: A General Assessment of the Role of Agriculture and Forestry in U.S. Carbon Markets*, 2 (2023), available at <https://www.usda.gov/sites/default/files/documents/USDA-General-Assessment-of-the-Role-of-Agriculture-and-Forestry-in-US-Carbon-Markets.pdf> (last visited Jan. 12, 2024).

²⁵ Department of Agriculture and Consumer Services (DACS), *Sequestering Carbon and Protecting Florida Land Program*, <https://grants.fdacs.gov/viewgrant/?id=4a8ed930-529b-ed11-aacf-001dd8098526#:~:text=The%20primary%20objective%20of%20the%20Sequestering%20Carbon%20and,thus%20increasing%20the%20amount%20of%20offset%20CO2%20emissions> (last visited Jan. 10, 2024).

²⁶ *Id.*

county or local governments, or legally organized and registered nonprofit organizations, entities, or institutions owning their own lands. Landowners with a minimum of 20 acres (up to a maximum of 500 acres) may apply.²⁷

State Advisory Bodies

A task force is an advisory body created without specific statutory enactment for a time not to exceed one year or created by specific statutory enactment for a time not to exceed three years and appointed to study a specific problem and recommend a solution or policy alternative with respect to that problem.²⁸ A task force terminates upon the completion of its assignment.²⁹

Advisory bodies and other collegial bodies created as an adjunct to an executive agency must be established, evaluated, or maintained in accordance with the following provisions:³⁰

- They may be created only when it is found to be necessary and beneficial to the furtherance of a public purpose.
- They must be terminated by the Legislature when it is no longer necessary and beneficial to the furtherance of a public purpose. The executive agency to which the advisory body is made an adjunct must advise the Legislature at the time the advisory body is no longer essential to the furtherance of a public purpose.
- The Legislature and the public must be kept informed of the numbers, purposes, memberships, activities, and expenses of advisory bodies.

An advisory body may not be created or reestablished unless:

- It meets a statutorily defined purpose;
- Its powers and responsibilities conform with the statutory definitions for governmental units;³¹
- Its members, unless expressly provided otherwise in the State Constitution, are appointed for four-year staggered terms; and
- Its members, unless expressly provided otherwise by specific statutory enactment, serve without additional compensation or honorarium, and are authorized to receive only per diem and reimbursement for travel expenses.³²

The private citizen members of an advisory body that is adjunct to an executive agency must be appointed by the Governor, the head of the department,³³ the executive director of the department, or a Cabinet officer.³⁴

²⁷ DACS, *Florida Sequestering Carbon and Protecting Florida Land Program: Spring Site Preparation 2023*, 5 (2023), available at <https://grants.fdacs.gov/entity/sharepointdocumentlocation/4c8ed930-529b-ed11-aacf-001dd8098526/d3aacca8-314a-ed11-bba0-001dd804db73?file=Spring%202023%20Site%20Prep%20Program%20Final.pdf>.

²⁸ Section 20.03(5), F.S.

²⁹ *Id.*

³⁰ Section 20.052, F.S.

³¹ See section 20.03, F.S., for definitions of governmental units.

³² Section 20.052(4), F.S.

³³ “Department” means the principal administrative unit within the executive branch of state government. Section 20.03(8), F.S.

³⁴ Section 20.052(5)(a), F.S.

Unless an exemption is otherwise specifically provided by law, all meetings of an advisory body, must be public.³⁵ Minutes, including a record of all votes cast, must be maintained for all meetings.³⁶

III. Effect of Proposed Changes:

Section 1 creates s. 403.945, F.S., regarding the Carbon Sequestration Task Force. The bill contains the following legislative findings:

- Maintaining coastal and freshwater wetlands, nearshore and offshore aquatic ecosystems, conservation lands, healthy and sustainable agriculture, shellfish aquaculture, and timber and silvicultural industries is vital to the state's economy, environment, and natural resources, including significant environmental contributions to water quality and quantity, air purification, carbon sequestration, blue carbon,³⁷ coastal resilience, and habitat for threatened and endangered wildlife.
- The continued expansion of urban sprawl and the development of coastal areas have led to losses of the state's natural and agricultural lands and decreases in water quality and quantity that have harmed coastal ecosystems and industries, including imperiled wetlands, coral reefs, seagrasses, and shellfish aquaculture.
- To ensure healthy and sustainable agriculture, shellfish aquaculture and silvicultural industries, and natural and working lands and waters, a statewide program is necessary to provide incentives for landowners and managers to continue activities and land uses that sequester carbon.

The bill defines "carbon sequestration" as the long-term storage of carbon in plants, soils, geologic formations, and the ocean through land and aquatic habitat management.

The bill creates the Carbon Sequestration Task Force³⁸ as an adjunct to DEP to provide recommendations for the development of a statewide carbon sequestration program. The task force must operate in a manner consistent with the requirements of s. 20.052, F.S., regarding advisory bodies, commissions, and boards. The task force must be composed of the following members:

- The Secretary of Environmental Protection, or his or her designee.
- The Commissioner of Agriculture, or his or her designee.
- The executive director of the Fish and Wildlife Conservation Commission, or his or her designee.
- The Chief Resilience Officer, or his or her designee.

³⁵ Section 20.052(5)(c), F.S.

³⁶ *Id.*

³⁷ The bill defines "blue carbon" as carbon sequestered by marine and coastal ecosystems.

³⁸ The bill provides that "task force" has the same meaning as in s. 20.03(5), F.S., namely, an advisory body created without specific statutory enactment for a time not to exceed one year or created by specific statutory enactment for a time not to exceed three years and appointed to study a specific problem and recommend a solution or policy alternative with respect to that problem. Its existence terminates upon the completion of its assignment. Section 20.03(5), F.S.

- A representative from the National Estuary Program,³⁹ appointed by the Secretary of Environmental Protection.
- A member of an environmental not-for-profit, appointed by the Secretary of Environmental Protection.
- A landowner of working agricultural lands, appointed by the Commissioner of Agriculture.
- A representative from a state university with expertise in energy or sustainability, appointed by the Secretary of Environmental Protection.
- A representative from the University of Florida Institute of Food and Agricultural Sciences,⁴⁰ appointed by the Commissioner of Agriculture.
- A representative from the Florida Sea Grant Program,⁴¹ appointed by the Commissioner of Agriculture.

The bill requires appointments to the task force be made by August 1, 2024. The bill provides that each appointed member serves at the pleasure of the appointing official. A vacancy on the task force must be filled in the same manner as the original appointment. The task force must elect a chair from among the members.

The bill provides that the task force must convene no later than September 1, 2024, and meet quarterly or upon the call of the chair. The bill also requires the task force to hold its meetings in person or through teleconference or other electronic means.

In addition, the bill provides that the duties of the task force must include all of the following:

- Identify and inventory terrestrial and aquatic environments suitable for carbon sequestration in this state.
- Consider possible methods of increasing carbon sequestration within the natural environment through state land and marine resource use policies; agricultural, aquacultural, and silvicultural practices; and other practices to achieve restoration of natural resources and long-term conservation.
- Develop a standardized methodology, including appropriate technology and existing research, to establish baseline carbon levels and account for increases in carbon sequestration over time.
- Evaluate additional ecosystem services and benefits of terrestrial and aquatic environments that may promote conservation and ecosystem restoration success, including water recharge, stormwater filtration, threatened or endangered wildlife habitat, nutrient reduction, flood mitigation and protection, coastal resilience, air quality, soil health, and food security.
- Recommend short-term and long-term benchmarks for increasing carbon sequestration in terrestrial and aquatic ecosystems.

³⁹ The National Estuary Program is a non-regulatory program established by Congress under the Clean Water Act to pioneer a broad and innovative approach to respond to threats to the nation's 28 estuaries. EPA, *Overview of the National Estuary Program*, <https://www.epa.gov/nep/overview-national-estuary-program> (last visited Jan. 10, 2024).

⁴⁰ The University of Florida's Institute of Food and Agricultural Sciences (UF/IFAS) is a federal-state-county partnership dedicated to developing knowledge in agriculture, human and natural resources, and the life sciences. UF/IFAS, *About UF/IFAS*, <https://ifas.ufl.edu/about-us/> (last visited Jan. 10, 2024).

⁴¹ Florida Sea Grant is a university-based program that supports research, education, and outreach to conserve coastal resources and enhance economic opportunities for the people of Florida. It is a partnership between the state, the state's university system, and the National Oceanic and Atmospheric Administration. Sea Grant Florida, *About Us*, <https://www.flseagrant.org/about-us/> (last visited Jan. 10, 2024).

- Identify existing carbon markets and other considerations relevant to participation by the state in such markets.
- Identify potential funding mechanisms to encourage carbon sequestration practices and activities in this state.

The bill provides that, by October 1, 2026, the task force must submit to the Governor and Legislature a report that compiles the findings and recommendations of the task force. The bill also provides that the task force must terminate on April 30, 2027.

Section 2 creates an undesignated section of law providing that, for the 2024-2025 fiscal year, the sum of \$350,000 in nonrecurring funds is appropriated from the Operating Trust Fund to DEP for the purpose of providing administrative and support services to the Carbon Sequestration Task Force.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Environmental Protection (DEP), the University of Florida Institute of Food and Agricultural Services, the Department of Agriculture and Consumer Services, the Fish and Wildlife Conservation Commission, and other members of the task force

may incur costs related to participating in the task force, conducting research, and preparing the report required under this bill. Such costs may be offset by appropriations provided in this bill. The bill appropriates, for the 2024-2025 fiscal year, the sum of \$350,000 in nonrecurring funds from the Operating Trust Fund to DEP to provide administrative and support services to the task force.

VI. Technical Deficiencies:

The Department of Environmental Protection does not have an Operating Trust Fund.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 403.945 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 Rodriguez

40-01041B-24

20241258__

A bill to be entitled
An act relating to carbon sequestration; creating s.
403.945, F.S.; providing definitions; providing
legislative findings; creating the Carbon
Sequestration Task Force adjunct to the Department of
Environmental Protection; providing for task force
membership and duties; requiring the task force to
submit specified reports to the Secretary of
Environmental Protection and to the Governor and
Legislature by specified dates; providing for
expiration of the task force; providing an
appropriation; providing an effective date.

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

Section 1. Section 403.945, Florida Statutes, is created to
read:

403.945 Carbon Sequestration Task Force.—

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

(a) "Blue carbon" means carbon sequestered by marine and
coastal ecosystems.

(b) "Carbon sequestration" means the long-term storage of
carbon in plants, soils, geologic formations, and the ocean
through land and aquatic habitat management.

(2) The Legislature finds that:

(a) Maintaining coastal and freshwater wetlands, nearshore
and offshore aquatic ecosystems, conservation lands, healthy and
sustainable agriculture, shellfish aquaculture, and timber and
silvicultural industries is vital to the state's economy,

40-01041B-24

20241258__

environment, and natural resources, including significant environmental contributions to water quality and quantity, air purification, carbon sequestration, blue carbon, coastal resilience, and habitat for threatened and endangered wildlife.

(b) The continued expansion of urban sprawl and the development of coastal areas have led to losses of the state's natural and agricultural lands and decreases in water quality and quantity that have harmed coastal ecosystems and industries, including imperiled wetlands, coral reefs, seagrasses, and shellfish aquaculture.

(c) To ensure healthy and sustainable agriculture, shellfish aquaculture and silvicultural industries, and natural and working lands and waters, a statewide program is necessary to provide incentives for landowners and managers to continue activities and land uses that sequester carbon.

(3) The Carbon Sequestration Task Force, a task force as defined in s. 20.03, is created adjunct to the department to provide recommendations for the development of a statewide carbon sequestration program. The task force shall operate in a manner consistent with the requirements of s. 20.052.

(4) (a) The task force shall be composed of the following members:

1. The Secretary of Environmental Protection, or his or her designee.

2. The Commissioner of Agriculture, or his or her designee.

3. The executive director of the Fish and Wildlife Conservation Commission, or his or her designee.

4. The Chief Resilience Officer, or his or her designee.

5. A representative from the National Estuary Program,

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20241258__

59 appointed by the Secretary of Environmental Protection.

60 6. A member of an environmental not-for-profit, appointed
61 by the Secretary of Environmental Protection.

62 7. A landowner of working agricultural lands, appointed by
63 the Commissioner of Agriculture.

64 8. A representative from a state university with expertise
65 in energy or sustainability, appointed by the Secretary of
66 Environmental Protection.

67 9. A representative from the University of Florida
68 Institute of Food and Agricultural Sciences, appointed by the
69 Commissioner of Agriculture.

70 10. A representative from the Florida Sea Grant Program,
71 appointed by the Commissioner of Agriculture.

72 (b) Appointments to the task force must be made by August
73 1, 2024.

74 (c) Each appointed member serves at the pleasure of the
75 appointing official.

76 (d) A vacancy on the task force must be filled in the same
77 manner as the original appointment.

78 (e) The task force shall elect a chair from among the
79 members.

80 (f) The task force shall convene no later than September 1,
81 2024. The task force shall meet quarterly or upon the call of
82 the chair. The task force shall hold its meetings in person or
83 through teleconference or other electronic means.

84 (5) The duties of the task force shall include all of the
85 following:

86 (a) Identify and inventory terrestrial and aquatic
87 environments suitable for carbon sequestration in this state.

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20241258__

88 (b) Consider possible methods of increasing carbon
89 sequestration within the natural environment through state land
90 and marine resource use policies; agricultural, aquacultural,
91 and silvicultural practices; and other practices to achieve
92 restoration of natural resources and long-term conservation.

93 (c) Develop a standardized methodology, including
94 appropriate technology and existing research, to establish
95 baseline carbon levels and account for increases in carbon
96 sequestration over time.

97 (d) Evaluate additional ecosystem services and benefits of
98 terrestrial and aquatic environments that may promote
99 conservation and ecosystem restoration success, including water
100 recharge, stormwater filtration, threatened or endangered
101 wildlife habitat, nutrient reduction, flood mitigation and
102 protection, coastal resilience, air quality, soil health, and
103 food security.

104 (e) Recommend short-term and long-term benchmarks for
105 increasing carbon sequestration in terrestrial and aquatic
106 ecosystems.

107 (f) Identify existing carbon markets and other
108 considerations relevant to participation by the state in such
109 markets.

110 (g) Identify potential funding mechanisms to encourage
111 carbon sequestration practices and activities in this state.

112 (6) By October 1, 2025, the task force shall submit to the
113 Secretary of Environmental Protection a report summarizing the
114 task force activities and findings in its first year, including
115 a nonrecurring budget request for the 2025-2026 fiscal year.

116 (7) By October 1, 2026, the task force shall submit to the

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Governor, the President of the Senate, and the Speaker of the
House of Representatives a report that compiles the findings and
recommendations of the task force. The task force shall
terminate on April 30, 2027.

Section 2. For the 2024-2025 fiscal year, the sum of
\$350,000 in nonrecurring funds is appropriated from the
Operating Trust Fund to the Department of Environmental
Protection for the purpose of providing administrative and
support services to the Carbon Sequestration Task Force pursuant
to s. 403.945, Florida Statutes.

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

1/17/2024

APPEARANCE RECORD

SB 1258

Meeting Date

Environment and Natural Resources

Deliver both copies of this form to
Senate professional staff conducting the meeting

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name **Garrett Wallace**Phone **850 6293076**Address **115 East Park Ave**Email **garrett.wallace@TNC.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:**The Nature Conservancy**☐ 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)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1/17/2024

Meeting Date

ENR

Committee

PS 1258

Bill Number or Topic

Amendment Barcode (if applicable)

Name

ELIZABETH ALVI (AUDUBON)

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850-222-1098

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Street

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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: SB 1576

INTRODUCER: Senator Rodriguez

SUBJECT: Prohibition of Smoking and Vaping in State Parks

DATE: January 16, 2024

REVISED: _____

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

I. Summary:

SB 1576 prohibits smoking and vaping in state parks.

Under the bill, the Department of Health is required to conspicuously post at each entrance of each state park signs stating that smoking and vaping are prohibited within the boundaries of the state park.

Violating this prohibition would be a noncriminal violation punishable by a fine of not more than \$100 for the first violation and not more than \$500 for each subsequent violation.

II. Present Situation:

Florida Constitution

Tobacco Smoking and Vaping

Article X, section 20 of the Florida Constitution is a Florida health initiative to protect people from the health hazards of second-hand tobacco smoke and vapor. It which prohibits tobacco smoking and the use of vapor-generating electronic devices in enclosed indoor workplaces. The constitutional amendment directed the Legislature to implement the “amendment in a manner consistent with its broad purpose and stated terms.”¹ The amendment further provides that the Legislature may enact legislation more restrictive of tobacco smoking than that provided in the Florida Constitution.

The Florida Constitution contains several relevant definitions including:

- Smoking means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product.

¹ FLA. CONST. art. X, s. 20.

- Vapor-generating electronic device means any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance.

Florida's Clean Indoor Air Act

The Florida Clean Indoor Air Act (act) in part II of ch. 386, F.S., regulates vaping and tobacco smoking in Florida. The legislative purpose of the act is to protect the public from the health hazards of secondhand tobacco smoke and to implement the Florida health initiative in Article X, section 20 of the State Constitution.²

Section 386.204, F.S., prohibits smoking in an enclosed indoor workplace unless the act provides an exception. The exceptions include private residences whenever not being used for certain commercial purposes;³ stand-alone bars;⁴ designated smoking rooms in hotels and other public lodging establishments;⁵ retail vape shops; and retail tobacco shops.⁶

Section 386.207, F.S., provides for enforcement of the act by the Department of Health (DOH) and the Department of Business and Professional Regulation (DBPR) within each department's specific areas of regulatory authority. Sections 386.207(1) and 386.2125, F.S., grant rulemaking authority to DOH and DBPR and require that the departments consult with the State Fire Marshal during the rulemaking process.

Section 386.207(3), F.S., provides penalties for violations of the act by proprietors or persons in charge of an enclosed indoor workplace.⁷ The penalty for a first violation is a fine of not less than \$250 and not more than \$750. The act provides fines for subsequent violations in the amount of not less than \$500 and not more than \$2,000. Penalties for individuals who violate the act are provided in s. 386.208, F.S., which provides for a fine of not more than \$100 for a first violation and not more than \$500 for a subsequent violation.

Smoking Prohibited Near School Property

Section 386.212(1), F.S., prohibits smoking or vaping by any person under 21 years of age in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. The prohibition does not apply to any person occupying a moving vehicle or within a private residence.

Enforcement

Section 386.212(2), F.S., authorizes law enforcement officers to issue citations in the form as prescribed by a county or municipality to any person violating the provisions of ch. 386, F.S., and prescribes the information that must be included in the citation.

² Section 386.202, F.S.

³ Section 386.2045(1), F.S. See also definition of the term "private residence" in s. 386.203(1), F.S.

⁴ Section 386.2045(4), F.S. See also definition of the term "stand-alone bar" in s. 386.203(11), F.S.

⁵ Section 386.2045(3), F.S. See also definition of the term "designated guest smoking room" in s. 386.203(4), F.S.

⁶ Section 386.2045(2), F.S. See also definition of the term "retail tobacco shop" in s. 386.203(8), F.S.

⁷ The applicable penalties for violations by designated stand-alone bars are set forth in s. 561.695(8), F.S.

The issuance of a citation under s. 386.212(2), F.S., constitutes a civil infraction punishable by a maximum civil penalty not to exceed \$25 or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco “alternative to suspension” program.⁸ If a person fails to comply with the directions on the citation, the person will waive his or her right to contest the citation, and the court may issue an order to show cause.⁹

Regulation of Smoking Preempted to State

Section 386.209, F.S., expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject. However, counties and municipalities may further restrict smoking within the boundaries of any public beaches and public parks that they own, except that they may not further restrict the smoking of unfiltered cigars. A municipality may further restrict smoking within the boundaries of public beaches and public parks that are within its jurisdiction but are owned by the county, unless such restriction conflicts with a county ordinance, except that they may not further restrict the smoking of unfiltered cigars. School districts may further restrict smoking by persons on school district property. County or municipal ordinances may impose more restrictive regulations on the use of vapor-generating devices.¹⁰

Regarding the issue of preemption, a Florida Attorney General Opinion concluded that the St. Johns Water Management District could not adopt a regulation prohibiting smoking by all persons on district property.¹¹ The Attorney General reasoned that s. 386.209, F.S., represents a clear expression of the legislative intent that the act preempts the field of smoking regulation for indoor and outdoor smoking. The Attorney General noted that the 2011 amendment of s. 386.209, F.S.,¹² authorizes school districts to prohibit smoking on school district property and concluded that further legislative authorization would be required for the water management district to regulate smoking on its property.

Florida’s State Parks

Florida’s award-winning state park system contains 175 state parks, including nearly 800,000 acres of state lands and 100 miles of sandy beaches.¹³ Florida’s state parks include all real property in the state of Florida under the jurisdiction of the Department of Environmental Protection’s (DEP) Division of Recreation and Parks (division).¹⁴ There are numerous designations in Florida’s state park system, and examples include state park, state preserve, historic site, archaeological site, botanical site, museum, and culture center.¹⁵ The statutory law governing Florida’s state parks is primarily contained in ch. 258, F.S., State Parks and Preserves.

⁸ Section 386.212(3), F.S.

⁹ Section 386.212(4), F.S.

¹⁰ Section 386.209, F.S.

¹¹ Op. Att’y Gen. Fla. 2011-15 (July 21, 2011). *See also*, Op. Att’y Gen. Fla. 2005-63 (Nov. 21, 2005), which opined that a municipality is preempted from regulating smoking in a public park other than as prescribed by the Legislature.

¹² Chapter 2011-108, L.O.F.

¹³ DEP, *Division of Recreation and Parks*, <https://floridadep.gov/parks> (last visited Jan. 10, 2024).

¹⁴ Fla. Admin. Code R. 62D-2.013(1).

¹⁵ *Id.*

Requirements and prohibitions under ch. 258, F.S., are enforced by DEP and the Fish and Wildlife Conservation Commission's Division of Law Enforcement.¹⁶ DEP's park rules prohibit disposing of smoking materials within any park except in designated receptacles.¹⁷

Laws in Other States

In 2009, Maine passed a law prohibiting “[smoking] tobacco or any other substance in, on or within 20 feet of a beach, playground, snack bar, group picnic shelter, business facility, enclosed area, public place or restroom in a state park or state historic site.”¹⁸ In 2015, Hawaii passed a law prohibiting smoking within its state park system.¹⁹ New Jersey banned smoking at public parks and beaches.²⁰ New Jersey's legislature found that “[t]he prohibition of smoking at public parks and beaches would better preserve and maintain the natural assets of this State by reducing litter and increasing fire safety in those areas, while lessening exposure to secondhand tobacco smoke and providing for a more pleasant park or beach experience for the public[.]”²¹

Alaska law prohibits individuals from smoking outdoors “within 10 feet of playground equipment located at a public or private school or a state or municipal park while children are present.”²² Oklahoma law designates all buildings and other properties owned or operated by the state as nonsmoking, effectively prohibiting smoking at state parks in Oklahoma, except for at any designated outdoor smoking areas.²³

Oregon's Parks and Recreation Department prohibits smoking tobacco products at park properties but provides exceptions, including smoking in vehicles and at designated campsites.²⁴ Outside of Florida, many local governments in the United States have restricted or prohibited smoking in public parks.²⁵

¹⁶ Section 258.601, F.S.

¹⁷ Fla. Admin. Code R. 62D-2.013(3).

¹⁸ Me. Rev. Stat. tit. 22, ss. 1580-E(2) and 1541(6). Under Maine law, “‘Smoking’ includes carrying or having in one's possession a lighted or heated cigarette, cigar or pipe or a lighted or heated tobacco or plant product intended for human consumption through inhalation whether natural or synthetic in any manner or in any form. ‘Smoking’ includes the use of an electronic smoking device.”

¹⁹ Haw. Rev. Stat. Ann. § 184-4.5. “Smoking” is defined in the statute as “inhaling or exhaling upon, burning, or carrying any lit cigarette, cigar, or pipe or the use of an electronic smoking device.”

²⁰ NJ ST 26:3D-58; The law defines “smoking” as burning, inhaling, or exhaling smoke from, or possessing a lighted cigar, cigarette, pipe, or any other substance that contains tobacco or another matter that can be smoked. It also means inhaling or exhaling smoke or vapor from an electronic smoking device.

²¹ N.J. Stat. Ann. § 26:3D-56(e).

²² Alaska Stat. Ann. ss. 18.35.301(c)(1) and 18.35.399(12). Alaska law defines “smoking” as “using an e-cigarette or other oral smoking device or inhaling, exhaling, burning, or carrying a lighted or heated cigar, cigarette, pipe, or tobacco or plant product intended for inhalation.”

²³ Okla. Stat. Ann. tit. 21, § 1247(B).

²⁴ Or. Admin. R. 736-010-0040(8)(j).

²⁵ American Nonsmokers' Rights Foundation, *Municipalities with Smokefree Park Laws* (2017), <https://no-smoke.org/wp-content/uploads/pdf/SmokefreeParks.pdf> (last visited Jan. 11, 2024). This document lists local governments in the U.S. that have created laws that restrict or prohibit smoking in public parks within their jurisdiction.

Health and Environmental Concerns

An estimated 11.3 percent of the adults in Florida are tobacco smokers.²⁶ Tobacco smoke contains over 7,000 chemicals, including hundreds that are toxic and up to 69 that are known to cause cancer.²⁷ Exposure to secondhand smoke can cause numerous health problems and has been causally linked to cancer and other fatal diseases.²⁸ Secondhand smoke is generally defined as smoke from burning tobacco products or smoke that is exhaled by a tobacco smoker.²⁹ Studies suggest that secondhand smoke in crowded outdoor areas can cause concentrations of air contaminants comparable to those caused by indoor smoking.³⁰

Another significant issue with tobacco smoking in natural areas is litter consisting of used cigarette filters, commonly known as cigarette butts. Cigarette butts are typically comprised mainly of cellulose acetate, a plastic-like material that can take years to decompose.³¹ It is estimated that, of the roughly 6 trillion cigarettes smoked annually worldwide, up to two-thirds of the cigarette butts are discarded as litter.³²

Under Florida law, it is illegal to discard any tobacco product as litter.³³ Discarding a cigarette butt is a noncriminal infraction, punishable by a penalty of \$150 in addition to any court-ordered litter pickup or other commensurate labor.³⁴

Fires are another significant issue regarding smoking tobacco in public parks. The Legislature has found that cigarettes are the leading cause of fire deaths in Florida and the nation.³⁵ Florida law requires that cigarettes sold in the state meet standards for reduced ignition propensity.³⁶ In addition to the risk of fires in buildings, Florida generally has a year-round risk of wildfire.³⁷

²⁶ United Health Foundation, *America's Health Rankings, Annual Report*, <https://www.americashealthrankings.org/explore/annual/measure/Smoking/state/FL> (last visited Jan. 11, 2024).

²⁷ *Id.*; National Cancer Institute, *Harms of Cigarette Smoking and Health Benefits of Quitting* available at <https://www.cancer.gov/about-cancer/causes-prevention/risk/tobacco/cessation-fact-sheet> (last visited Jan. 11, 2024).

²⁸ Center for Disease Control and Prevention, *Secondhand Smoke (SHS) Facts*, https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm (last visited Jan. 11, 2024).

²⁹ *Id.*

³⁰ Nipapun Kungskulniti et al., *Secondhand Smoke Point-Source Exposures Assessed By Particulate Matter At Two Popular Public Beaches in Thailand*, 40 J. Public Health 3, 527–532 (2017), available at <https://academic.oup.com/jpubhealth/article/40/3/527/4110319?guestAccessKey=5947c328-fd75-4b6c-acfe-28f989c4c639> (last visited Jan. 11, 2024); Ario Ruprecht, et. al, *Outdoor second-hand cigarette smoke significantly affects air quality*, European Respiratory Journal, 48 (3) 918-920, (Sept. 2016) available at <https://erj.ersjournals.com/content/48/3/918> (last visited Jan. 11, 2024).

³¹ NOAA, National Ocean Service, *What Is the Most Common Form of Ocean Litter?*, <https://oceanservice.noaa.gov/facts/most-common-ocean-litter.html> (last visited Jan. 11, 2024).

³² World Health Organization, *Tobacco and Its Environmental Impact: An Overview*, 24 (2017) available at <https://apps.who.int/iris/bitstream/handle/10665/255574/9789241512497-eng.pdf;jsessionid=8E8DFDA81D9C76448B2C9EAD445BC784?sequence=1> (last visited Jan. 11, 2024).

³³ Section 403.413(2)(d) and (f), (4), F.S.

³⁴ Section 403.413(6)(a), F.S. Littering is a noncriminal infraction if the litter does not exceed 15 pounds in weight or 27 cubic feet in volume.

³⁵ Section 633.142(2)(a), F.S.

³⁶ Section 633.142, F.S.

³⁷ Florida Department of Agriculture and Consumer Services, *Wildland Fire, Prevention*, <https://www.fdacs.gov/Forest-Wildfire/Wildland-Fire> (last visited Jan. 11, 2024).

Cigarettes or other smoking materials can cause wildfires when discarded as litter. Data from the U.S. Forest Service shows that a significant number of wildfires were started by “smoking” between 1992 and 2018.³⁸

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 386.2095, F.S., to prohibit smoking and vaping in state parks.

The Department of Health must conspicuously post at each entrance of each state park signs stating that smoking and vaping are prohibited within the boundaries of the state park. The signs must be clearly legible in a font size of at least 1 inch in height and include the words “SMOKING OR VAPING WITHIN STATE PARK BOUNDARIES IS PROHIBITED BY LAW.”

Section 2 amends s. 386.208, F.S., to make it a noncriminal violation punishable by a fine of not more than \$100 for the first violation and not more than \$500 for each subsequent violation.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

³⁸ Karen C. Short, *Spatial wildfire occurrence data for the United States, 1992-2018*, (2021), available at <https://www.fs.usda.gov/rds/archive/Catalog/RDS-2013-0009.5> (last visited Jan. 11, 2024). The data can be viewed by clicking on the file labeled “RDS-2018-0009.5_ACCDB.zip,” and viewing the column labeled “STAT_CAUSE_DESCR.”

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 the section 386.208 of the Florida Statutes.

This bill creates section 386.2095 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 Rodriguez

40-00100A-24

20241576__

A bill to be entitled
An act relating to prohibition of smoking and vaping
in state parks; creating s. 386.2095, F.S.;
prohibiting smoking and vaping within the boundaries
of state parks; requiring the Department of Health to
post signs at specified locations; providing sign
requirements; providing penalties; amending s.
386.208, F.S.; conforming a provision to changes made
by the act; providing an effective date.

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

Section 1. Section 386.2095, Florida Statutes, is created
to read:

386.2095 Smoking and vaping prohibited in state parks.—

(1) A person may not smoke or vape within the boundaries of
a state park.

(2) The department shall conspicuously post at each
entrance of each state park signs stating that smoking and
vaping are prohibited within the boundaries of the state park.
The signs must be clearly legible in a font size of at least 1
inch in height and include the words "SMOKING OR VAPING WITHIN
STATE PARK BOUNDARIES IS PROHIBITED BY LAW."

(3) A person who violates subsection (1) is subject to
penalties as provided in s. 386.208.

Section 2. Section 386.208, Florida Statutes, is amended to
read:

386.208 Penalties.—Any person who violates s. 386.204 or s.
386.2095 commits a noncriminal violation as defined in s.

40-00100A-24

20241576__

775.08(3), punishable by a fine of not more than \$100 for the
first violation and not more than \$500 for each subsequent
violation. Jurisdiction shall be with the appropriate county
court.

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

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/17/24
Meeting Date

1576
Bill Number (if applicable)

Topic Prohibition of Smoking + Vaping

Amendment Barcode (if applicable)

Name Matt Herndon

Job Title Dir. Local Gov. Relations + Comm. Affairs

Address 113 E College Ave
Street

Phone 941-704-2793

Tallahassee FL 32301
City State Zip

Email matt@teamrtd.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing United Way of Broward County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1576

Bill Number or Topic

Amendment Barcode (if applicable)

1/17/24
Meeting Date
Env. & Nat. Resources
Committee

Name Susan Harbin

Phone 770-546-8845

Address
Street

Email susan.harbin@cancer.org

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:

American Cancer Society Cancer Action Network

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)

CourtSmart Tag Report

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

Case No.:

Type:
Judge:

Started: 1/17/2024 8:31:17 AM

Ends: 1/17/2024 8:57:51 AM

Length: 00:26:35

8:31:17 AM Meeting called to order by Chair Rodriguez
8:31:29 AM Roll Call
8:31:30 AM Quorum is present
8:31:54 AM Pledge of Allegiance
8:32:15 AM Tab 4 SB 1532 by Senator Brodeur
8:32:25 AM Senator Brodeur recognized to explain the bill
8:32:48 AM Take up the delete all amendment barcode: 750012
8:32:54 AM Senator Brodeur recognized to explain the strike all amendment
8:33:46 AM Senator Brodeur recognized to close on the amendment
8:33:55 AM Amendment adopted
8:33:58 AM Back on bill as amended
8:34:09 AM Public Testimony recognized
8:34:33 AM Senator Brodeur recognized to close on bill as amended
8:35:39 AM Roll Call for CS/SB 1532
8:35:48 AM Reported favorably
8:35:58 AM Tab 1 SB 1136 by Senator Trumbull
8:36:23 AM Senator Trumbull recognized to explain the bill
8:37:05 AM Public Testimony recognized
8:37:16 AM Public Testimony from Trint Clark, Clark's Well Drilling/FGWA
8:38:22 AM Senator Trumbull recognized to close on the bill
8:38:30 AM Roll Call
8:38:38 AM Reported Favorably
8:38:44 AM Tab 5 SB 1210 by Senator Martin
8:38:55 AM Senator Martin recognized to explain the bill
8:40:11 AM Public Testimony recognized
8:40:25 AM Senator Martin recognized to waive close
8:40:33 AM Roll Call
8:40:36 AM Reported Favorably
8:40:44 AM Chair Rodriguez passes gavel to Vice Chair Harrell
8:40:58 AM Tab 6 SM 800 by Senator Rodriguez
8:42:04 AM Public Testimony from John Psareas
8:42:59 AM Public Testimony recognized
8:43:13 AM Chair Rodriguez recognized to close on the memorial
8:43:21 AM Roll Call
8:43:32 AM Reported favorably
8:43:40 AM Tab 2 SB 1360 by Senator Gruters
8:43:54 AM Senator Gruters recognized to explain the bill
8:45:00 AM Public Testimony recognized
8:45:21 AM Comments from Chair Harrell
8:45:52 AM Comments from Senator Gruters
8:46:13 AM Roll Call
8:46:34 AM Reported favorably
8:46:39 AM Tab 7 SB 1258 by Senator Rodriguez
8:46:52 AM Senator Rodriguez recognized to explain bill
8:47:27 AM Public Testimony recognized
8:47:57 AM Senator Rodriguez recognized to waive close
8:48:09 AM Senator Rodriguez makes comments
8:48:28 AM Roll Call
8:48:34 AM Reported favorably
8:48:48 AM Tab 8 SB 1576 by Senator Rodriguez
8:48:58 AM Senator Rodriguez recognized to explain bill
8:49:57 AM Public Testimony recognized

8:50:21 AM	Senator Martin recognized for debate and comments
8:50:49 AM	Senator Rodriguez recognized to waive close on bill
8:51:06 AM	Roll Call
8:51:24 AM	Reported favorably
8:51:27 AM	Chair Harrell passes gavel back to Senator Rodriguez
8:51:37 AM	Tab 3 SB 1386 by Senator Calatayud, not here yet, recess
8:51:59 AM	Recording Paused
8:54:07 AM	Recording Resumed
8:54:11 AM	Recess over
8:54:18 AM	Senator Calatayud recognized to explain the bill
8:55:50 AM	Public Testimony recognized
8:55:58 AM	Public Testimony from Roxanne Groover
8:56:47 AM	Senator Calatayud recognized to waive close
8:56:53 AM	Roll call
8:57:02 AM	Reported favorably
8:57:12 AM	Senator Stewart votes yes on Tabs 1,4,5,6,2
8:57:33 AM	Senator Harrell moves to adjourn
8:57:41 AM	Meeting adjourned