

By Senator Brandes

24-01133A-17

20171476__

1 A bill to be entitled
2 An act relating to domestic wastewater collection
3 system assessment and maintenance; creating s.
4 403.1839, F.S.; defining the terms "commission" and
5 "program"; providing legislative findings;
6 establishing the blue star collection system
7 assessment and maintenance program and providing its
8 purpose; requiring the Department of Environmental
9 Protection to review and approve program applications
10 for certification; requiring the Environmental
11 Regulation Commission to adopt certification standards
12 for the program; specifying the documentation a
13 utility must submit to qualify; authorizing the
14 department to waive certain requirements for utilities
15 for certain smaller populations; providing for
16 certification expiration and renewal; requiring the
17 department to publish an annual list of certified blue
18 star utilities; requiring the department to allow
19 public and not-for-profit utilities to participate in
20 the Clean Water State Revolving Fund Program; allowing
21 for the reduction of penalties and reinvestment of
22 penalties for sewer overflow for certified utilities;
23 amending section s. 403.067, F.S.; creating a
24 presumption of compliance for certain total maximum
25 daily load requirements for certified utilities;
26 amending section s. 403.087, F.S.; requiring the
27 department to provide extended operating permits when
28 a certified utility applies for permit renewal;
29 amending s. 403.1838, F.S.; allowing for additional

24-01133A-17

20171476__

30 recipients and uses of Small Community Sewer
31 Construction grants; providing an effective date.

32
33 Be It Enacted by the Legislature of the State of Florida:

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35 Section 1. Section 403.1839, Florida Statutes, is created
36 to read:

37 403.1839 Blue star collection system assessment and
38 maintenance program.-

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

40 (a) "Commission" means the Environmental Regulation
41 Commission.

42 (b) "Program" means the blue star collection system
43 assessment and maintenance program.

44 (2) LEGISLATIVE FINDINGS.-The Legislature finds that the
45 implementation of sewer collection system assessment and
46 maintenance practices has been shown to effectively limit the
47 unauthorized releases or spills of treated or untreated domestic
48 wastewater, generally referred to as sanitary sewer overflows,
49 and the unauthorized discharge of pathogens. The disparate
50 nature of inputs into a collection system, third-party
51 activities, severe storm events, and other factors beyond the
52 reasonable control of the utility operator make it infeasible to
53 completely eliminate sewer overflows. However, the voluntary
54 implementation of advanced sewer collection system assessment
55 and maintenance practices beyond those required by law has the
56 potential to further limit sanitary sewer overflows. The unique
57 geography, community, growth, and size and age of sewer
58 collection systems across the state require diverse responses,

24-01133A-17

20171476__

59 using the best professional judgment of local utility operators,
60 to ensure that programs designed to limit sanitary sewer
61 overflows are effective.

62 (3) ESTABLISHMENT AND PURPOSE.—There is established in the
63 department a blue star collection system assessment and
64 maintenance program. The purpose of this voluntary incentive
65 program is to assist public and private utilities in limiting
66 sanitary sewer overflows and the unauthorized discharge of
67 pathogens.

68 (4) APPROVAL AND STANDARDS.—

69 (a) The department shall review and approve public and
70 private sewer utilities applying for certification under the
71 program based upon the certification standards adopted by the
72 commission.

73 (b) The commission shall adopt certification standards for
74 the program. A utility must provide reasonable documentation of
75 the following in order to be certified under the program:

76 1. The rate of reinvestment determined necessary by the
77 utility for its collection system and pump station structural
78 condition assessment and maintenance and replacement program.

79 2. A periodic collection system and pump station structural
80 condition assessment program and the performance of as-needed
81 maintenance and replacements.

82 3. A program designed to limit the presence of fats, roots,
83 oils, and grease in the collection system.

84 4. If the applicant is a public utility, a local law or
85 building code requiring the private pump stations and lateral
86 lines connecting to the public system to be free of:

87 a. Cracks, holes, missing parts, or similar defects; and

24-01133A-17

20171476__

88 b. Direct stormwater connections that allow the direct
89 inflow of stormwater into the private system and the public
90 domestic wastewater collection system.

91
92 The department may waive one or more of these requirements for a
93 utility that regularly serves a population of 10,000 or less if
94 the utility adequately demonstrates to the department that its
95 assessment and maintenance activities achieve the goals of the
96 blue star collection system assessment and maintenance program.
97 The utility may cite assessment projects funded pursuant to a
98 grant under s. 403.1838 as evidence of such achievement.

99 (5) EXPIRATION AND RENEWAL.—Program certifications shall
100 expire after 10 years. A utility applying for renewal must meet
101 all program criteria existing at the time of its application for
102 renewal in order to maintain its program certification.

103 (6) PUBLICATION.—The department shall annually publish on
104 its website a list of certified blue star utilities beginning on
105 January 1, 2018.

106 (7) FEDERAL PROGRAM PARTICIPATION.—The department shall
107 allow public and not-for-profit private utilities to participate
108 in the Clean Water State Revolving Fund Program for any purpose
109 consistent with federal law, including to plan and implement
110 sanitary sewer assessment programs to identify conditions that
111 may cause unauthorized releases or spills of treated or
112 untreated domestic wastewater, pipe leakage, or interruption of
113 service to customers due to a physical condition or defect in
114 the system, as well as any assessment, maintenance, or
115 construction activities associated with becoming certified or
116 maintaining status as a certified blue star utility in

24-01133A-17

20171476__

117 accordance with this section.

118 (8) REDUCED PENALTIES.—In the calculation of penalties
119 pursuant to s. 403.161 for a sanitary sewer overflow, the
120 department is authorized to reduce the penalty based on a
121 utility's status as a certified blue star utility in accordance
122 with this section. The department is authorized to allow any
123 certified blue star utility to apply the amount of a penalty
124 toward investment in assessment and maintenance activities to
125 identify and address conditions that may cause unauthorized
126 releases or spills of treated or untreated domestic wastewater,
127 pipe leakage, or interruption of service to customers due to a
128 physical condition defect in the system.

129 Section 2. Paragraph (c) of subsection (7) of section
130 403.067, Florida Statutes, is amended to read:

131 403.067 Establishment and implementation of total maximum
132 daily loads.—

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

135 (c) *Best management practices.*—

136 1. The department, in cooperation with the water management
137 districts and other interested parties, as appropriate, may
138 develop suitable interim measures, best management practices, or
139 other measures necessary to achieve the level of pollution
140 reduction established by the department for nonagricultural
141 nonpoint pollutant sources in allocations developed pursuant to
142 subsection (6) and this subsection. These practices and measures
143 may be adopted by rule by the department and the water
144 management districts and, where adopted by rule, shall be
145 implemented by those parties responsible for nonagricultural

24-01133A-17

20171476__

146 nonpoint source pollution.

147 2. The Department of Agriculture and Consumer Services may
148 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54
149 suitable interim measures, best management practices, or other
150 measures necessary to achieve the level of pollution reduction
151 established by the department for agricultural pollutant sources
152 in allocations developed pursuant to subsection (6) and this
153 subsection or for programs implemented pursuant to paragraph
154 (12) (b). These practices and measures may be implemented by
155 those parties responsible for agricultural pollutant sources and
156 the department, the water management districts, and the
157 Department of Agriculture and Consumer Services shall assist
158 with implementation. In the process of developing and adopting
159 rules for interim measures, best management practices, or other
160 measures, the Department of Agriculture and Consumer Services
161 shall consult with the department, the Department of Health, the
162 water management districts, representatives from affected
163 farming groups, and environmental group representatives. Such
164 rules must also incorporate provisions for a notice of intent to
165 implement the practices and a system to assure the
166 implementation of the practices, including site inspection and
167 recordkeeping requirements.

168 3. Where interim measures, best management practices, or
169 other measures are adopted by rule, the effectiveness of such
170 practices in achieving the levels of pollution reduction
171 established in allocations developed by the department pursuant
172 to subsection (6) and this subsection or in programs implemented
173 pursuant to paragraph (12) (b) must be verified at representative
174 sites by the department. The department shall use best

24-01133A-17

20171476__

175 professional judgment in making the initial verification that
176 the best management practices are reasonably expected to be
177 effective and, where applicable, must notify the appropriate
178 water management district or the Department of Agriculture and
179 Consumer Services of its initial verification before the
180 adoption of a rule proposed pursuant to this paragraph.
181 Implementation, in accordance with rules adopted under this
182 paragraph, of practices that have been initially verified to be
183 effective, or verified to be effective by monitoring at
184 representative sites, by the department, shall provide a
185 presumption of compliance with state water quality standards and
186 release from the provisions of s. 376.307(5) for those
187 pollutants addressed by the practices, and the department is not
188 authorized to institute proceedings against the owner of the
189 source of pollution to recover costs or damages associated with
190 the contamination of surface water or groundwater caused by
191 those pollutants. Research projects funded by the department, a
192 water management district, or the Department of Agriculture and
193 Consumer Services to develop or demonstrate interim measures or
194 best management practices shall be granted a presumption of
195 compliance with state water quality standards and a release from
196 the provisions of s. 376.307(5). The presumption of compliance
197 and release is limited to the research site and only for those
198 pollutants addressed by the interim measures or best management
199 practices. Eligibility for the presumption of compliance and
200 release is limited to research projects on sites where the owner
201 or operator of the research site and the department, a water
202 management district, or the Department of Agriculture and
203 Consumer Services have entered into a contract or other

24-01133A-17

20171476__

204 agreement that, at a minimum, specifies the research objectives,
205 the cost-share responsibilities of the parties, and a schedule
206 that details the beginning and ending dates of the project.

207 4. Where water quality problems are demonstrated, despite
208 the appropriate implementation, operation, and maintenance of
209 best management practices and other measures required by rules
210 adopted under this paragraph, the department, a water management
211 district, or the Department of Agriculture and Consumer
212 Services, in consultation with the department, shall institute a
213 reevaluation of the best management practice or other measure.
214 Should the reevaluation determine that the best management
215 practice or other measure requires modification, the department,
216 a water management district, or the Department of Agriculture
217 and Consumer Services, as appropriate, shall revise the rule to
218 require implementation of the modified practice within a
219 reasonable time period as specified in the rule.

220 5. Agricultural records relating to processes or methods of
221 production, costs of production, profits, or other financial
222 information held by the Department of Agriculture and Consumer
223 Services pursuant to subparagraphs 3. and 4. or pursuant to any
224 rule adopted pursuant to subparagraph 2. are confidential and
225 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
226 Constitution. Upon request, records made confidential and exempt
227 pursuant to this subparagraph shall be released to the
228 department or any water management district provided that the
229 confidentiality specified by this subparagraph for such records
230 is maintained.

231 6. The provisions of subparagraphs 1. and 2. do not
232 preclude the department or water management district from

24-01133A-17

20171476__

233 requiring compliance with water quality standards or with
234 current best management practice requirements set forth in any
235 applicable regulatory program authorized by law for the purpose
236 of protecting water quality. Additionally, subparagraphs 1. and
237 2. are applicable only to the extent that they do not conflict
238 with any rules adopted by the department that are necessary to
239 maintain a federally delegated or approved program.

240 7. The department must provide a domestic wastewater
241 utility with a presumption of compliance with state water
242 quality standards for pathogens when the utility demonstrates a
243 history of compliance with wastewater disinfection requirements
244 incorporated in the utility's operating permit for any discharge
245 into the impaired surface water and is a certified blue star
246 utility in accordance with s. 403.1839.

247 Section 3. Subsection (11) is added to section 403.087,
248 Florida Statutes, to read:

249 403.087 Permits; general issuance; denial; revocation;
250 prohibition; penalty.—

251 (4) A blue star utility certified pursuant to s. 403.1839
252 shall be issued a 10-year permit upon approval of its
253 application for renewal by the department in accordance with
254 this section.

255 Section 4. Subsection (3) of section 403.1838, Florida
256 Statutes, is amended to read:

257 403.1838 Small Community Sewer Construction Assistance
258 Act.—

259 (3) (a) In accordance with rules adopted by the
260 Environmental Regulation Commission under this section, the
261 department may provide grants, from funds specifically

24-01133A-17

20171476__

262 appropriated for this purpose, to financially disadvantaged
263 small communities and to private, not-for-profit utilities
264 serving financially disadvantaged small communities for up to
265 100 percent of the costs of planning, assessing, designing,
266 constructing, upgrading, or replacing wastewater collection,
267 transmission, treatment, disposal, and reuse facilities,
268 including necessary legal and administrative expenses. Grants
269 issued pursuant to this section may also be used for planning
270 and implementing sanitary sewer assessment programs to identify
271 conditions that may cause unauthorized releases or spills of
272 treated or untreated domestic wastewater, pipe leakage, or
273 interruption of service to customers due to a physical condition
274 or defect in the system.

275 (b) The rules of the Environmental Regulation Commission
276 must:

277 1. Require that projects to plan, assess, design,
278 construct, upgrade, or replace wastewater collection,
279 transmission, treatment, disposal, and reuse facilities be cost-
280 effective, environmentally sound, permittable, and
281 implementable.

282 2. Require appropriate user charges, connection fees, and
283 other charges sufficient to ensure the long-term operation,
284 maintenance, and replacement of the facilities constructed under
285 each grant.

286 3. Require grant applications to be submitted on
287 appropriate forms with appropriate supporting documentation, and
288 require records to be maintained.

289 4. Establish a system to determine eligibility of grant
290 applications.

24-01133A-17

20171476__

291 5. Establish a system to determine the relative priority of
292 grant applications. The system must consider public health
293 protection and water pollution abatement.

294 6. Establish requirements for competitive procurement of
295 engineering and construction services, materials, and equipment.

296 7. Provide for termination of grants when program
297 requirements are not met.

298 Section 5. This act shall take effect July 1, 2017.