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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2018	.	
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The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 646 - 650

and insert:

Section 1. Effective January 1, 2019, section 403.1839, Florida Statutes, is created to read:

403.1839 Blue star collection system assessment and maintenance program.-

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

(a) "Domestic wastewater" has the same meaning as in s.



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11 367.021.

12 (b) "Domestic wastewater collection system" has the same
13 meaning as in s. 403.866.

14 (c) "Program" means the blue star collection system
15 assessment and maintenance program created pursuant to this
16 section.

17 (d) "Sanitary sewer overflow" means the unauthorized
18 overflow, spill, release, discharge, or diversion of untreated
19 or partially treated domestic wastewater.

20 (2) LEGISLATIVE FINDINGS.—The Legislature finds that:

21 (a) The implementation of domestic wastewater collection
22 system assessment and maintenance practices has been shown to
23 effectively limit sanitary sewer overflows and the unauthorized
24 discharge of pathogens.

25 (b) The voluntary implementation of domestic wastewater
26 collection system assessment and maintenance practices beyond
27 those required by law has the potential to further limit
28 sanitary sewer overflows.

29 (c) The unique geography, community, growth, size, and age
30 of domestic wastewater collection systems across the state
31 require diverse responses, using the best professional judgment
32 of local utility operators, to ensure that programs designed to
33 limit sanitary sewer overflows are effective.

34 (3) ESTABLISHMENT AND PURPOSE.—There is established in the
35 department a blue star collection system assessment and
36 maintenance program. The purpose of this voluntary incentive
37 program is to assist public and private utilities in limiting
38 sanitary sewer overflows and the unauthorized discharge of
39 pathogens.



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40 (4) APPROVAL AND STANDARDS.-

41 (a) The department shall adopt rules to administer the
42 program, including program certification standards, and shall
43 review and, if appropriate, approve public and private domestic
44 wastewater utilities that apply for certification under the
45 program or that demonstrate continued compliance with program
46 certification requirements pursuant to paragraph (c).

47 (b) In order to be certified under the program, a utility
48 must provide reasonable documentation that demonstrates that it
49 meets the following certification standards:

50 1. Implementation of periodic collection system and pump
51 station structural condition assessments and the performance of
52 as-needed maintenance and replacement.

53 2. Adequate reinvestment by the utility in its collection
54 system and pump station structural condition assessment and
55 maintenance and replacement program to reasonably maintain the
56 working integrity of the system and station.

57 3. Implementation of a program designed to limit the
58 presence of fats, roots, oils, and grease in the collection
59 system.

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

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

64 b. Direct stormwater connections that allow the direct
65 inflow of stormwater into the private system and the public
66 domestic wastewater collection system.

67 5. Adoption of a power outage contingency plan that
68 addresses mitigation of the impacts of power outages on the



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69 utility's collection system and pump stations.

70 (c) Program certifications expire after 5 years. During the
71 5-year certification period, a utility must annually provide
72 documentation to the department on the status of its
73 implementation of the program and must demonstrate that it meets
74 all program criteria in order to maintain its program
75 certification.

76 (5) PUBLICATION.—Beginning on January 1, 2020, the
77 department shall annually publish on its website a list of
78 certified blue star utilities.

79 (6) FEDERAL PROGRAM PARTICIPATION.—The department shall
80 allow public and private, nonprofit utilities to participate in
81 the Clean Water State Revolving Fund Program for any purpose of
82 the program which is consistent with federal requirements for
83 participating in the Clean Water State Revolving Fund Program.

84 (7) REDUCED PENALTIES.—In the calculation of penalties for
85 a sanitary sewer overflow pursuant to s. 403.161, the department
86 may reduce the penalty based on a utility's status as a
87 certified blue star utility in accordance with this section. The
88 department may also reduce a penalty based on a certified blue
89 star utility's investment in assessment and maintenance
90 activities to identify and address conditions that may cause
91 sanitary sewer overflows or interruption of service to customers
92 due to a physical condition or defect in the system.

93 Section 2. Effective January 1, 2019, paragraph (c) of
94 subsection (7) of section 403.067, Florida Statutes, is amended
95 to read:

96 403.067 Establishment and implementation of total maximum
97 daily loads.—



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

100 (c) *Best management practices.*—

101 1. The department, in cooperation with the water management
102 districts and other interested parties, as appropriate, may
103 develop suitable interim measures, best management practices, or
104 other measures necessary to achieve the level of pollution
105 reduction established by the department for nonagricultural
106 nonpoint pollutant sources in allocations developed pursuant to
107 subsection (6) and this subsection. These practices and measures
108 may be adopted by rule by the department and the water
109 management districts and, where adopted by rule, must ~~shall~~ be
110 implemented by those parties responsible for nonagricultural
111 nonpoint source pollution.

112 2. The Department of Agriculture and Consumer Services may
113 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54
114 suitable interim measures, best management practices, or other
115 measures necessary to achieve the level of pollution reduction
116 established by the department for agricultural pollutant sources
117 in allocations developed pursuant to subsection (6) and this
118 subsection or for programs implemented pursuant to paragraph
119 (12)(b). These practices and measures may be implemented by
120 those parties responsible for agricultural pollutant sources and
121 the department, the water management districts, and the
122 Department of Agriculture and Consumer Services shall assist
123 with implementation. In the process of developing and adopting
124 rules for interim measures, best management practices, or other
125 measures, the Department of Agriculture and Consumer Services
126 must ~~shall~~ consult with the department, the Department of



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127 Health, the water management districts, representatives from
128 affected farming groups, and environmental group
129 representatives. Such rules must also incorporate provisions for
130 a notice of intent to implement the practices and a system to
131 assure the implementation of the practices, including site
132 inspection and recordkeeping requirements.

133 3. Where interim measures, best management practices, or
134 other measures are adopted by rule, the effectiveness of such
135 practices in achieving the levels of pollution reduction
136 established in allocations developed by the department pursuant
137 to subsection (6) and this subsection or in programs implemented
138 pursuant to paragraph (12)(b) must be verified at representative
139 sites by the department. The department shall use best
140 professional judgment in making the initial verification that
141 the best management practices are reasonably expected to be
142 effective and, where applicable, must notify the appropriate
143 water management district or the Department of Agriculture and
144 Consumer Services of its initial verification before the
145 adoption of a rule proposed pursuant to this paragraph.
146 Implementation, in accordance with rules adopted under this
147 paragraph, of practices that have been initially verified to be
148 effective, or verified to be effective by monitoring at
149 representative sites, by the department, shall provide a
150 presumption of compliance with state water quality standards and
151 release from the provisions of s. 376.307(5) for those
152 pollutants addressed by the practices, and the department is not
153 authorized to institute proceedings against the owner of the
154 source of pollution to recover costs or damages associated with
155 the contamination of surface water or groundwater caused by



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156 those pollutants. Research projects funded by the department, a
157 water management district, or the Department of Agriculture and
158 Consumer Services to develop or demonstrate interim measures or
159 best management practices shall be granted a presumption of
160 compliance with state water quality standards and a release from
161 the provisions of s. 376.307(5). The presumption of compliance
162 and release is limited to the research site and only for those
163 pollutants addressed by the interim measures or best management
164 practices. Eligibility for the presumption of compliance and
165 release is limited to research projects on sites where the owner
166 or operator of the research site and the department, a water
167 management district, or the Department of Agriculture and
168 Consumer Services have entered into a contract or other
169 agreement that, at a minimum, specifies the research objectives,
170 the cost-share responsibilities of the parties, and a schedule
171 that details the beginning and ending dates of the project.

172 4. Where water quality problems are demonstrated, despite
173 the appropriate implementation, operation, and maintenance of
174 best management practices and other measures required by rules
175 adopted under this paragraph, the department, a water management
176 district, or the Department of Agriculture and Consumer
177 Services, in consultation with the department, shall institute a
178 reevaluation of the best management practice or other measure.
179 Should the reevaluation determine that the best management
180 practice or other measure requires modification, the department,
181 a water management district, or the Department of Agriculture
182 and Consumer Services, as appropriate, must ~~shall~~ revise the
183 rule to require implementation of the modified practice within a
184 reasonable time period as specified in the rule.



185 5. Agricultural records relating to processes or methods of
186 production, costs of production, profits, or other financial
187 information held by the Department of Agriculture and Consumer
188 Services pursuant to subparagraphs 3. and 4. or pursuant to any
189 rule adopted pursuant to subparagraph 2. are confidential and
190 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
191 Constitution. Upon request, records made confidential and exempt
192 pursuant to this subparagraph shall be released to the
193 department or any water management district provided that the
194 confidentiality specified by this subparagraph for such records
195 is maintained.

196 6. The provisions of subparagraphs 1. and 2. do not
197 preclude the department or water management district from
198 requiring compliance with water quality standards or with
199 current best management practice requirements set forth in any
200 applicable regulatory program authorized by law for the purpose
201 of protecting water quality. Additionally, subparagraphs 1. and
202 2. are applicable only to the extent that they do not conflict
203 with any rules adopted by the department that are necessary to
204 maintain a federally delegated or approved program.

205 7. The department must provide a domestic wastewater
206 utility that implements and maintains a program as a certified
207 blue star utility in accordance with s. 403.1839 with a
208 presumption of compliance with state water quality standards for
209 pathogens when the utility demonstrates a history of compliance
210 with wastewater disinfection requirements incorporated in the
211 utility's operating permit for any discharge into the impaired
212 surface water.

213 Section 3. Effective January 1, 2019, subsection (11) is



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214 added to section 403.087, Florida Statutes, to read:

215 403.087 Permits; general issuance; denial; revocation;
216 prohibition; penalty.—

217 (11) Subject to the permit duration limits for a utility
218 permitted pursuant to s. 403.0885, the department must issue a
219 blue star utility certified pursuant to s. 403.1839 a 10-year
220 permit, for the same fee and under the same conditions that
221 apply to a 5-year permit, upon approval of its application for
222 permit renewal, if the certified blue star utility demonstrates
223 that it:

224 (a) Is in compliance with any consent order or an
225 accompanying administrative order related to its permit;

226 (b) Does not have any pending enforcement action against it
227 by the Environmental Protection Agency, the department, or a
228 local program; and

229 (c) If applicable, has submitted annual program
230 implementation reports demonstrating progress in the
231 implementation of the program.

232 Section 4. Effective January 1, 2019, present subsection
233 (6) of section 403.161, Florida Statutes, is redesignated as
234 subsection (7), and a new subsection (6) is added to that
235 section, to read:

236 403.161 Prohibitions, violation, penalty, intent.—

237 (6) Notwithstanding any other law, the department may
238 reduce a penalty based on the person's investment in the
239 assessment, maintenance, rehabilitation, or expansion of the
240 permitted facility.

241 Section 5. Effective January 1, 2019, paragraphs (a) and
242 (b) of subsection (3) of section 403.1838, Florida Statutes, are



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243 amended to read:

244 403.1838 Small Community Sewer Construction Assistance
245 Act.—

246 (3) (a) In accordance with rules adopted by the
247 Environmental Regulation Commission under this section, the
248 department may provide grants, from funds specifically
249 appropriated for this purpose, to financially disadvantaged
250 small communities and to private, nonprofit utilities serving
251 financially disadvantaged small communities for up to 100
252 percent of the costs of planning, assessing, designing,
253 constructing, upgrading, or replacing wastewater collection,
254 transmission, treatment, disposal, and reuse facilities,
255 including necessary legal and administrative expenses. Grants
256 issued pursuant to this section may also be used for planning
257 and implementing domestic wastewater collection system
258 assessment programs to identify conditions that may cause
259 sanitary sewer overflows or interruption of service to customers
260 due to a physical condition or defect in the system.

261 (b) The rules of the Environmental Regulation Commission
262 must:

263 1. Require that projects to plan, assess, design,
264 construct, upgrade, or replace wastewater collection,
265 transmission, treatment, disposal, and reuse facilities be cost-
266 effective, environmentally sound, permissible, and
267 implementable.

268 2. Require appropriate user charges, connection fees, and
269 other charges sufficient to ensure the long-term operation,
270 maintenance, and replacement of the facilities constructed under
271 each grant.



272 3. Require grant applications to be submitted on
273 appropriate forms with appropriate supporting documentation, and
274 require records to be maintained.

275 4. Establish a system to determine eligibility of grant
276 applications.

277 5. Establish a system to determine the relative priority of
278 grant applications. The system must consider public health
279 protection and water pollution abatement.

280 6. Establish requirements for competitive procurement of
281 engineering and construction services, materials, and equipment.

282 7. Provide for termination of grants when program
283 requirements are not met.

284 Section 6. The Division of Law Revision and Information is
285 directed to replace the phrase "the effective date of this act"
286 wherever it occurs in this act with the date the act becomes a
287 law.

288 Section 7. Except as otherwise expressly provided in this
289 act, this act shall take effect upon becoming a law.

290
291 ===== T I T L E A M E N D M E N T =====

292 And the title is amended as follows:

293 Delete lines 37 - 38

294 and insert:

295 creating s. 403.1839, F.S.; defining terms; providing
296 legislative findings; establishing the blue star
297 collection system assessment and maintenance program;
298 specifying the purpose of the program; requiring the
299 department to adopt rules and review and, if
300 appropriate, approve applications for certification



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301 under the program; requiring a utility applying for
302 certification to provide reasonable documentation
303 demonstrating that it meets specified certification
304 standards; providing that certifications expire after
305 a specified period of time; specifying requirements to
306 maintain program certification; requiring the
307 department to annually publish a list of certified
308 blue star utilities, beginning on a specified date;
309 requiring the department to allow public and private,
310 nonprofit utilities to participate in the Clean Water
311 State Revolving Fund Program for certain purposes;
312 authorizing the department to reduce certain penalties
313 for a certified utility under specified conditions;
314 amending s. 403.067, F.S.; creating a presumption of
315 compliance with certain total maximum daily load
316 requirements for certified blue star utilities;
317 amending s. 403.087, F.S.; requiring the department to
318 provide extended operating permits when a certified
319 blue star utility applies for permit renewal under
320 certain conditions; amending s. 403.161, F.S.;

321 authorizing the department to reduce a penalty based
322 on certain system investments for permitted
323 facilities; amending s. 403.1838, F.S.; allowing for
324 additional recipients and uses of Small Community
325 Sewer Construction grants; providing a directive to
326 the Division of Law Revision and Information;
327 providing effective dates.