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 Appropriations

BILL:	CS/CS/CS/SB 1308
INTRODUCER:	Appropriations Committee; Community Affairs Committee; Environmental Preservation and Conservation Committee; and Senator Perry
SUBJECT:	Environmental Regulation
DATE:	February 26, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mitchell	Rogers	EP	**Fav/CS**
2.	Cochran	Yeatman	CA	**Fav/CS**
3.	Reagan	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1308 provides that when a water management district (WMD) evaluates a consumptive use permit (CUP), impact offsets may be created if the applicant proposes reclaimed water use in certain ways to increase the quantity of water available for water supply.

The bill requires the Department of Environmental Protection (DEP) to develop criteria for the application of an impact offset or a substitution credit to a CUP or to a minimum flows and levels recovery or prevention strategy and requires the DEP and the WMDs to enter into a memorandum of agreement providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a CUP.

The bill provides criteria by which counties and municipalities must address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material, including that residential recycling collectors and materials recovery facilities may not be required to collect, transport, or process contaminated recyclable material. The criteria apply to contracts between a municipality or county and a residential recycling collector or materials recovery facility executed or renewed after July 1, 2018.

The bill revises the exemption from the requirement to obtain an environmental resource permit (ERP) for the replacement or repair of an existing dock or pier and prevents a local government from requiring that an individual claiming an exemption from and ERP provide further

verification from the DEP for all of the activities and projects exempted from the ERP requirements.

The bill creates the blue star collection system assessment and maintenance program for domestic sewer systems. The DEP will administer the program and codify program certification standards. Certification requires a demonstration of:

- An adequate rate of reinvestment;
- Periodic structural condition assessments, and as-needed maintenance and replacements;
- A program designed to limit fats, roots, oils, and grease in its collection system;
- For public utilities, a local requirement that the private pump stations and lateral lines connecting to the public system be free of defects and direct stormwater connections; and
- A power outage contingency plan.

Public and private utilities certified under the program could receive the following incentives:

- Publication on the DEP's website;
- Participation in the Clean Water State Revolving Loan Fund Program;
- Reduced penalties for a sanitary sewer overflow;
- Ten-year operating permits; and
- A presumption of compliance with state water quality standards for pathogens.

The bill expands the Small Community Sewer Construction Assistance Grant Program to include private utilities and expands the uses of the grants.

The DEP may incur indeterminate costs as a result of rulemaking to develop criteria for use of impact offsets or substitution credits. In addition, the DEP and the WMDs may incur indeterminate costs for developing a memorandum of agreement for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit. These costs can be absorbed within existing resources.

II. Present Situation:

Water Supply and Constraints

By 2030, Florida's population is estimated to reach 23,609,000 – almost a 26 percent increase over 2010.[1] Fresh water demand is projected to reach 7.7 billion gallons per day by 2030, an additional 1.3 billion gallons more than the water use for the state in 2010.[2] In Florida, groundwater accounts for about 90 percent of public and domestic water supply.[3] The major source of groundwater supply in Florida is the Floridan Aquifer System, which underlies the entire state.[4]

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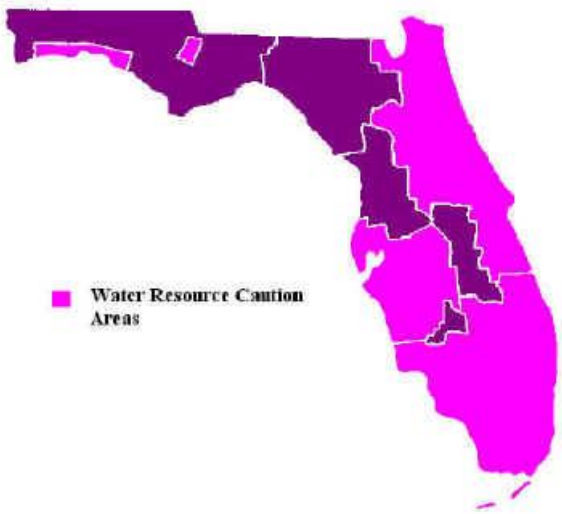
[1] Department of Environmental Protection (DEP), *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater and Excess Surface Water*, 11 (December 1, 2015) *available at* https://floridadep.gov/sites/default/files/SB536%20Final%20Report.pdf.
[2] *Id.*
[3] *Id*. at 14.
[4] DEP, *Aquifers*, *available at* https://fldep.dep.state.fl.us/swapp/Aquifer.asp# (last visited Feb. 1, 2018).



The Water Management Districts (WMDs) are required to ensure an adequate supply of water and water resources for all citizens and natural features, provide protection and improvement of natural systems and water quality, minimize harm to water resources, and promote the reuse of reclaimed water.[5] The WMDs set minimum flows and minimum levels (MFLs) for surface waters and groundwater, respectively. The purpose of setting MFLs is to prevent significant harm to the water resources or ecology of an area as a result of water withdrawals.[6] The WMDs regulate consumptive use of water through a permitting process.[7] The WMD governing boards are required to conduct regional water supply planning for areas where existing water sources are insufficient to meet projected 20-year demands while sustaining water resources and related natural systems. Those areas are also to be designated as Water Resource Caution Areas. Chapter 62-40 of the Florida Administrative Code requires the reuse of reclaimed water in these areas.[8]

Consumptive Use Permits (CUPs)

A consumptive use permit (CUP) establishes the duration and type of water use as well as the maximum amount of water that may be withdrawn daily. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the issuing WMD or the Department of Environmental Protection (DEP) and may not be harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as "the three-prong test." Specifically, the proposed water use must:

- Be a "reasonable-beneficial use;"[9]
- Not interfere with any presently existing legal use of water; and
- Be consistent with the public interest.[10]

If two or more competing applications qualify equally, the applicable WMD or the DEP must give preference to a renewal application over an initial application.[11] If neither application is a renewal, preference is given to the applicant nearest the source.[12]

[5] Section 373.036, F.S.
[6] Section 373.042, F.S.
[7] Section 373.219, F.S. Note that a water management district may not require a permit for the use of reclaimed water. Section 373.250 (3)(b), F.S.
[8] *See also* s. 403.064(2), F.S.
[9] Section 373.019(16), F.S., defines reasonable-beneficial use as, "the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest." *See also* Fla. Admin. Code R. 62-40.410(2) for additional factors to help determine if a water use is a reasonable-beneficial use.
[10] Fla. Admin. Code R. 62-40.410(1).
[11] Section 373.233(2), F.S.
[12] *Id.*

Reclaimed Water

Section 373.019(17), F.S., defines the term "reclaimed water" as "water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility." Water conservation and the promotion of reuse of reclaimed water have been established as formal state objectives in ss. 403.064 and 373.250, F.S. Florida tracks its reuse inventory in an annual report compiled by the DEP.[13] In 2016, 478 domestic wastewater treatment facilities reported making reclaimed water available for reuse.[14] The 760 million gallons per day (mgd) of reclaimed water use represents approximately 44 percent of the total domestic wastewater flow in the state.[15] The 1,645 mgd of reuse capacity represents approximately 64 percent of the total domestic wastewater treatment capacity in the state.[16] Reclaimed water from these systems was used to irrigate 397,750 residences, 574 golf courses, 1,053 parks, and 381 schools.[17] Over 12,739 acres of edible crops on 65 farms were reported to be irrigated with reclaimed water.[18] Approximately 43 wastewater treatment facilities do not provide reuse of any kind.[19] Reclaimed water is a type of alternative water supply as defined in s. 373.019(1), F.S., and is eligible for alternative water supply funding.

Originally, water reuse was required only within water resource caution areas, unless such reuse was not economically, environmentally, or technically feasible as determined by a reuse feasibility study. Currently, chapter 62-40 of the Florida Administrative Code requires use of reclaimed water statewide. A domestic wastewater facility located within, discharging within, or serving a population within designated water resource caution areas is required to prepare a reuse feasibility study before receiving a domestic wastewater permit.[20] Section 403.064, F.S., provides that if the study shows that reuse is feasible, the permit applicant must give significant consideration to making reuse available.

Discharges of Reclaimed Water into Surface Waters
The DEP may issue permits for backup discharges. A "backup discharge" is a surface water discharge that occurs as part of a functioning reuse system which has been permitted under the DEP rules and which provides reclaimed water for irrigation of public access areas, residential properties, or edible food crops, or for industrial cooling or other acceptable reuse purposes. Backup discharges may occur during periods of reduced demand for reclaimed water in the reuse system. Backup discharges of reclaimed water meeting advanced water treatment standards are presumed to be allowable and are permitted in all waters in the state at a reasonably accessible point where such discharge results in minimal negative impact. Discharges of reclaimed water must meet applicable water quality standards.[21]

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[13] DEP, *2016 Reuse Inventory*, *available at* https://floridadep.gov/sites/default/files/2016_reuse-report_0.pdf (last visited Feb. 1, 2018); compiled from reports collected pursuant to Fla. Admin. Code R. Ch. 62-610 (note that this report tracks wastewater facilities with permitted capacities of 0.1 million gallons per day or greater).
[14] *Id.* at 2.
[15] *Id*. at 3.
[16] *Id*.
[17] *Id*. at 2.
[18] *Id*., noting that "[a]round 79 percent of the farmland was dedicated to the production of citrus (i.e., oranges, tangerines, grapefruit, etc.)."
[19] *Id*. at 3.
[20] *Id.* at 20
[21] Section 403.086, F.S.

Impact Offsets and Substitution Credits

The water resource implementation rule (Florida Administrative Code Chapter 62-40), formerly known as the state water policy rule, is part of the Florida water plan and sets forth the goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources, based on statutory policies and directives.[22] The DEP adopts changes or additions to the water resource implementation rule and has adopted a rule establishing criteria for the use of proposed impact offsets and substitution credits when a water management district evaluates applications for CUPs.[23] Substitution credits may be considered if a water management district has adopted rules establishing withdrawal limits from a specified water resource within a defined geographic area.

An impact offset is the use of reclaimed water to reduce or eliminate a harmful impact that has occurred or would otherwise occur as a result of other surface water or groundwater withdrawals. A substitution credit is the use of reclaimed water to replace all or a portion of an existing permitted use of resource-limited surface water or groundwater, which then allows a different user, or use to initiate a withdrawal or increase its withdrawal from the same resource-limited surface water or groundwater source.[24] The CUP permit applicants may propose impact offsets or substitution credits as part of a permit application. The portion of a surface water or groundwater allocation made available by an impact offset will be based on the beneficial water resource impact provided by the impact offset project. The proposed withdrawal, after application of a substitution credit, must result in no net adverse impact on the limited water resource or create a net positive impact if required by district rule as part of a strategy to protect or recover a water resource.[25]

Ground Water Regulations

The DEP regulates underground injection;[26] water well permitting;[27] water well construction;[28] source water and wellhead protection programs;[29] and ground water classes, standards, and monitoring.[30] The DEP's Aquifer Protection Program is responsible for regulatory programs affecting ground water.[31] The DEP exercises regulatory authority over ground water quality under Chapter 62-520 of the Florida Administrative Code. In Florida, ground waters of the state are delineated and assigned a class designation based on use and natural water quality. Appropriate water quality criteria and standards for those classes are established in rule and

[22] Section 373.036(1), F.S.
[23] Fla. Admin. Code R. 62-40.416.
[24] Section 373.250(5), F.S.
[25] Fla. Admin. Code R. 62-40.416.
[26] Fla. Admin. Code R. Ch. 62-528.
[27] Fla. Admin. Code R. Ch. 62-532.
[28] Fla. Admin. Code R. Chs. 62-531 (Water Well Contractors) and 62-532 (Water Well Permitting and Construction Requirements)
[29] Fla. Admin. Code R. Ch. 62-521.
[30] Fla. Admin. Code R. Ch. 62-520
[31] DEP, *Aquifer Protection Program- UIC, available at* https://floridadep.gov/water/aquifer-protection (last visited Feb. 1, 2018).

range from potable to non-potable use classes. By definition, a violation of any ground water standard or criterion constitutes pollution.[32]

The Safe Drinking Water Act

The Safe Drinking Water Act (SDWA) is the federal law that protects public drinking water supplies throughout the nation.[33] Under the SDWA, the U.S. Environmental Protection Agency (EPA) sets standards for drinking water quality and, with its partners, implements various technical and financial programs to ensure drinking water safety.[34] Florida has the primary authority to implement the SDWA, having adopted a Florida SDWA that has been demonstrated to be at least as stringent as the federal law.[35] These statutes direct the DEP to formulate and enforce rules pertaining to drinking water. The rules adopt the federal primary and secondary drinking water standards and create additional rules to fulfill state requirements. Drinking water standards are set out in chapter 62-550 of the Florida Administrative Code.

Local Government Solid Waste Responsibilities

The governing body of a county has the responsibility and power to provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas of the county.[36] Municipalities are responsible for collecting and transporting solid waste from their jurisdictions to a solid waste disposal facility operated by a county or operated under a contract with a county. Counties may charge reasonable fees for the handling and disposal of solid waste at their facilities. Each county must have a recyclable materials recycling program that has a goal of recycling 40 percent of recyclable solid waste by December 31, 2012; 50 percent by December 31, 2014; 60 percent by December 31, 2016; 70 percent by December 31, 2018; and 75 percent by December 31, 2020.[37]

Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs. Each county must implement a program for recycling construction and demolition debris. If the state's recycling rate is below 60 percent by January 1, 2017; below 70 percent by January 1, 2019; or below 75 percent by January 1, 2021, the DEP must provide a report to the President of the Senate and the Speaker of the House of Representatives. The report must identify those additional programs or statutory changes needed to achieve the state's recycling goals. The programs must be designed to recover a significant portion of at least four of the following materials from the solid waste stream prior to final disposal at a solid waste disposal facility and to offer these materials for recycling:

- Newspapers;
- Aluminum cans;
- Steel cans;
- Glass;

[32] Florida Admin. Code s. 62-520.310.
[33] The Public Health Service Act, 42 U.S. ss. 300f to 300j-26 (2016).
[34] U.S. Environmental Protection Agency, *Summary of the Safe Water Drinking Act, available at* https://www.epa.gov/laws-regulations/summary-safe-drinking-water-act (last visited Feb. 1, 2018).
[35] Sections 403.850-403.864, F.S.
[36] Section 403.706(1), F.S.
[37] Section 403.706(2), F.S.

- Plastic bottles;
- Cardboard;
- Office paper; and
- Yard trash.[38]

Each county must ensure, to the maximum extent possible, that municipalities within its boundaries participate in the preparation and implementation of recycling and solid waste management programs through interlocal agreements or other means provided by law.[39]

"Municipal solid waste" includes any solid waste, except for sludge, resulting from the operation of residential, commercial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. The term includes yard trash but does not include solid waste from industrial, mining, or agricultural operations.[40] The DEP may reduce or modify the municipal solid waste recycling goal that a county is required to achieve if the county demonstrates to the DEP that:

- The achievement of the goal would have an adverse effect on the financial obligations of the county that are directly related to the county's waste-to-energy facility; and
- The county cannot remove normally combustible materials from solid waste that is to be processed at a waste-to-energy facility because of the need to maintain a sufficient amount of solid waste to ensure the financial viability of the facility.

The goal may only be reduced or modified to the extent necessary to alleviate the adverse effects on the financial viability of a county's waste-to-energy facility.[41]

In the development and implementation of a curbside recyclable materials collection program, a county or municipality must enter into negotiations with a franchisee who is operating exclusively to collect solid waste within a service area of a county or municipality to undertake curbside recyclable materials collection responsibilities for a county or municipality. Local governments are authorized to enact ordinances that require and direct all residential properties, multifamily dwellings, and apartment complexes and industrial, commercial, and institutional establishments as defined by the local government to establish programs for the separation of recyclable materials designated by the local government. A market must exist for the recyclable materials and the local government must specifically intend for them to be recycled. Local governments are authorized to provide for the collection of the recyclable materials. Such ordinances may include, but are not limited to; provisions that prohibit any person from knowingly disposing of recyclable materials designated by the local government and that ensure the collection of recovered materials as necessary to protect public health and safety.[42]

A local government may not:

[38] Section 403.706(2)(f), F.S.
[39] Section 403.706(3), F.S.
[40] Section 403.706(5), F.S.
[41] Section 403.706(6), F.S.
[42] Section 403.706(21), F.S.

- Require a commercial establishment that generates source-separated recovered materials to sell or otherwise convey its recovered materials to the local government or to a facility designated by the local government;
- Restrict such a generator's right to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer who has registered with the DEP; and
- Enact any ordinance that prevents such a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.[43]

Local governments may require a commercial establishment to source separate the recovered materials generated on the premises.[44]

Florida's Recycling Goal

In recognition of the volume of waste generated by Floridians and visitors every year and the value of some of these discarded commodities, the Legislature set a goal to recycle at least 75 percent of the municipal solid waste that would otherwise be disposed of in waste management facilities, landfills, or incineration facilities by 2020.[45] The DEP established several programs and initiatives to reach that goal. In 2015, Florida's recycling rate was 54 percent, meeting the 50 percent target rate specified in statute.[46]

Florida achieved the interim recycling goals established for 2012 and 2014, but Florida's recycling rate for 2016 was 56 percent, falling short of the 2016 interim recycling goal of 60 percent. The current practices in Florida are not expected to increase significantly the recycling rate beyond the 56 percent rate. Without significant changes to Florida's current approach, the state's recycling rate will likely fall short of the 2020 goal of 75 percent.[47]

The DEP, in partnership with material recycling facilities (MRFs) across the state, has developed a statewide public education campaign, entitled "Rethink. Reset. Recycle." The campaign addresses the need to educate Florida residents on how to reduce single stream curbside recycling contamination. Plastic bags, cords, clothing and packaging are causing contamination problems that can shut down MRF operations and cause good loads of recyclables to become trash. The campaign also serves to remind Florida residents of the basics of curbside recycling: clean and dry aluminum and steel cans, plastic bottles and jugs, and paper and cardboard. The DEP is also working on the following recycling options:

- Evaluating the implications of shifting from a weight-based recycling goal to sustainable materials management processes;
- Researching the concept of moving from a weight-based recycling goal of 75 percent by 2020, to market specific goals such as a food diversion goal or an organics recycling goal;

[43] Section 403.7046(3), F.S.
[44] Section 403.7046(3)(a), F.S.
[45] Section 403.7032, F.S.; DEP, *Florida and the 2020 75% Recycling Goal* (2017) 5 https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf (last visited Feb. 1, 2018).
[46] DEP, *Recycling*, http://www.dep.state.fl.us/waste/categories/recycling/default.htm (last visited Feb. 1, 2018).
[47] DEP, *Florida and the 2020 75% Recycling Goal* (2017) 5 https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf (last visited Feb. 1, 2018).

- Engaging Florida's state universities and the Florida Department of Education to review potential K-12 curriculum programs emphasizing waste reduction and recycling practices;
- Continuing to work with state agencies to identify recycling/cost saving measures specific to their operations; and
- Providing counties not achieving the 2016 interim recycling goal with assistance in analyzing, planning and executing opportunities to increase recycling.[48]

A number of counties and municipalities have instituted single stream recycling programs. Single stream recycling programs allow all accepted recyclables to be placed in a single, curbside recycling cart, comingling materials from paper and plastic bottles to metal cans and glass containers. Single stream recycling programs have been marginally successful in providing curbside collection efficiency by increasing the amount of recyclables collected and residential participation. While there are many advantages to single stream recycling, it has not consistently yielded positive results for the recycling industry. The unexpected consequence of single stream recycling has been the collection of unwanted materials and poorly sorted recyclables, resulting in increased contamination originating in the curbside recycling cart.[49]

Contamination hinders processing at MRFs when unwanted items are placed into recycling carts. Those items are often harmful to the automated equipment typically used to process and separate recyclable materials from single stream collections. While MRFs are equipped to handle some non-recyclable materials, excessive contamination can undermine the recycling process resulting in additional sorting, processing, energy consumption, and other increased costs due to equipment downtime, repair or replacement costs and delays. In addition to increased recycling processing costs, contamination also results in poorer quality recyclables, and increased rejection and landfilling on unusable materials. Although some local governments have implemented successful single stream recycling programs with low contamination rates, contamination rates for other programs have continued to rise, in some case reaching contamination rates of more than 30-40 percent by weight.[50]

Exceptions to Requirements for Environmental Permits

An environmental resource permit (ERP) is required, if a project exceeds certain thresholds, for surface water management systems and, more specifically, for the construction, alteration, operation, maintenance, repair, abandonment, and removal of stormwater management systems, dams, impoundments, reservoirs, appurtenant works, and works (including docks, piers, structures, dredging, and filling located in, on or over wetlands or other surface waters).[51] However, for a number of low impact activities and projects that are narrow in scope, an environmental permit under state law is not required.[52] Engaging in these activities and projects requires compliance with applicable local requirements, but generally requires no notice to an agency.[53] Activities exempted from an ERP are varied and include the installation of overhead transmission lines, installation and maintenance of boat ramps, work on sea walls and mooring

[48] *Id.* at 11.
[49] *Id.* at 13.
[50] *Id.*
[51] Fla. Admin. Code R. 62-330.010.
[52] Section 403.813, F.S.
[53] Fla. Admin. Code R. 62-330.50.

pilings, swales, and foot bridges, the removal of aquatic plants, construction of floating vessel platforms, and work on county roads and bridges, among many others.[54] Included among activities exempt from the requirement to obtain a permit is the replacement or repair of existing docks and piers, if fill material is not used and the replacement or repaired dock or pier is in the same location and of the same configuration and dimensions as the dock or pier being replaced or repaired.[55] Although permitting is not required for these activities, there may be a requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a water management district in its governmental or proprietary capacity.[56]

Wastewater Treatment Facility Permits

Domestic wastewater is wastewater derived principally from dwellings, business buildings, and institutions, commonly referred to as sanitary wastewater or sewage.[57] Domestic wastewater leaves these structures through a domestic wastewater collection system[58] for treatment at a domestic wastewater treatment facility.[59] There are approximately 1,900 domestic wastewater treatment facilities in the state serving roughly two-thirds of the state's population.[60] Treated effluent[61] and reclaimed water[62] from these facilities is over 1.5 billion gallons per day and includes disposal of through surface water outfalls, deep aquifer injection wells, and other groundwater disposal such as percolation ponds and spray fields.[63]

Domestic wastewater facilities that discharge to surface waters[64] must obtain a National Pollutant Discharge Elimination System (NPDES) permit. The NPDES program is a federal program established by the Clean Water Act (CWA) to control point source discharges.[65] The NPDES permit requirements for most domestic wastewater facilities are incorporated into a state-issued

[54] Section 403.813, F.S., Fla. Admin. Code R. 62-330.051.
[55] Section 403.813(1)(d), F.S.
[56] Section 403.813(1), F.S.
[57] Fla. Admin. Code R. 62-600.200(21).
[58] Section 403.866(1), F.S., defines "domestic wastewater collection system" to mean pipelines or conduits, pumping stations, and force mains and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.
[59] Section 403.866(2), F.S., defines a "domestic wastewater treatment plant" to mean any plant or other works used for the purpose of treating, stabilizing, or holding domestic wastes.
[60] 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. 27, 2018); The remainder of the state is served by on-site treatment and disposal systems regulated by the Department of Health.
[61] Fla. Admin. Code R. 62-600.200(22), defines "effluent" to mean, unless specifically stated otherwise, water that is not reused after flowing out of any plant or other works used for the purpose of treating, stabilizing, or holding wastes.
[62] Fla. Admin. Code R. 62-600.200(54), Reclaimed water means water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.
[63] 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. 27, 2018).
[64] Section 403.031(13), F.S., defines "waters" to mean rivers, lakes, streams, springs, impoundments, wetlands, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface, or underground waters; Fla. Admin. Code R. 62-620.200(56).
[65] 33 U.S.C. §1342.

permit, giving the permittee one set of permitting requirements rather than separate requirements for each the state and federal permit.[66]

A domestic wastewater system is a stationary installation that is reasonably expected to be a source of water pollution[67] and must not be operated, maintained, constructed, expanded or modified without an appropriate and valid permit issued by the DEP, unless otherwise exempted by law.[68] A domestic wastewater treatment plant operating permit is issued for a term of five years.[69] As an incentive, certain wastewater treatment facilities that are not required to have a NPDES permit may request renewal of an operation permit for a term of up to 10 years for the same fee and under the same conditions as a five-year permit. These facilities must meet the following criteria:

- The waters from the treatment facility are not discharged to Class I municipal injection wells or the treatment facility is not required to comply with the federal standards under the Underground Injection Control Program;
- The treatment facility is not operating under a temporary operating permit or a permit with an accompanying administrative order and does not have any enforcement action pending against it by the United States Environmental Protection Agency (EPA), the DEP, or an approved local program;
- The treatment facility has operated under an operation permit for five years and, for at least the preceding two years, has generally operated in conformance with the limits of permitted flows and other conditions specified in the permit;
- The DEP has reviewed the discharge monitoring reports required by rule and is satisfied that the reports are accurate;
- The treatment facility has generally met water quality standards in the preceding two years, except for violations attributable to events beyond the control of the treatment plant or its operator (e.g., destruction of equipment by fire, wind, or other abnormal events that could not reasonably be expected to occur); and
- The DEP or an approved local program has conducted, in the preceding 12 months, an inspection of the facility and has verified in writing to the operator of the facility that it is not exceeding the permitted capacity and is in substantial compliance.[70]

Disinfection

Disinfection is the selective destruction of disease-producing organisms (pathogens)[71] in wastewater effluent, reclaimed water, and biosolids.[72] Most domestic wastewater treatment facilities must meet either basic disinfection for discharges to surface water or high-level disinfection for reuse systems.[73]

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[66] Section 403.0885, F.S.; Fla. Admin. Code R. Ch. 62-620; DEP, *Wastewater Permitting*, https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting (last accessed Jan. 28, 2018); DEP, *Types of Permits*, http://flwaterpermits.com/typesofpermits.html (last assessed Jan. 28, 2018).
[67] Section 403.031(7), F.S., defines "pollution."
[68] Section 403.087(1), F.S.
[69] Section 430.087(1), F.S.; Fla. Admin. Code R. 62-620.320(8).
[70] Section 403.087(3), F.S.
[71] Fla. Admin. Code R. 62-600.200(47).
[72] Fla. Admin. Code R. 62-600.200(18).
[73] DEP, *Ultraviolet Disinfection for Domestic Wastewater*, https://floridadep.gov/water/domestic-wastewater/content/ultraviolet-uv-disinfection-domestic-wastewater (last accessed Jan. 27, 2018).

Basic disinfection essentially requires that the effluent after disinfection contain less than 200 fecal coliform values per 100 milliliter of sample.[74] High-level disinfection, which is used in conjunction with some types of reuse projects, including use to irrigate residential lawns, areas accessible to the public, and edible food crops, essentially requires that fecal coliforms be reduced below detection.[75] Filtration is required ahead of the disinfection process and serves as an important and integral part of the overall high-level disinfection process.[76]

Total Maximum Daily Loads

A total maximum daily load (TMDL), which must be adopted by rule, is a scientific determination of the maximum amount of a given pollutant that can be absorbed by a waterbody and still meet water quality standards.[77] Waterbodies or sections of waterbodies that do not meet the established water quality standards are deemed impaired. Pursuant to the federal Clean Water Act, the DEP is required to establish a TMDL for impaired waterbodies.[78] A TMDL for an impaired waterbody is defined as the sum of the individual waste load allocations for point sources and the load allocations for nonpoint sources and natural background.[79] Waste load allocations are pollutant loads attributable to existing and future point sources. Load allocations are pollutant loads attributable to existing and future nonpoint sources. Point sources are discernible, confined, and discrete conveyances including pipes, ditches, and tunnels. Nonpoint sources are unconfined sources that include runoff from agricultural lands or residential areas.[80]

Basin Management Action Plans and Best Management Practices

The DEP is the lead agency in coordinating the development and implementation of TMDLs. Basin management action plans (BMAPs) are one of the primary mechanisms the DEP uses to achieve TMDLs. The BMAPs use existing planning tools to address the entire pollution load, including point and nonpoint discharges, for a watershed. The BMAPs generally include:

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Non-regulatory and incentive-based programs, including best management practices (BMPs), cost sharing, waste minimization, pollution prevention, agreements, and public education;[81]

[74] Fla. Admin. Code R. 62-600.440(5).
[75] Fla. Admin. Code R. 62-600.440(6).
[76] DEP, *Ultraviolet Disinfection for Domestic Wastewater*, https://floridadep.gov/water/domestic-wastewater/content/ultraviolet-uv-disinfection-domestic-wastewater (last accessed Jan. 27, 2018).
[77] Section 403.067, F.S.
[78] *Id*.
[79] Section 403.031(21), F.S.
[80] Fla. Admin. Code R. 62-620.200(37). Point source means 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 essentially sources of pollution that are not point sources. They can include runoff from agricultural lands or residential areas; oil, grease and toxic materials from urban runoff; and sediment from improperly managed construction sites.
[81] Section 403.061, F.S., grants the Department of Environmental Protection (DEP) the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. Furthermore, s. 403.061(21), F.S., allows DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.

- Public works projects, including capital facilities; and
- Land acquisition.[82]

The 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.[83] Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations. The BMAP development process provides an opportunity for local stakeholders, local government and community leaders, and the public to collectively determine and share water quality clean-up responsibilities.[84]

The BMAPs must include milestones for implementation and water quality improvement. They must also include an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones must be conducted every five years and revisions to the BMAP must be made as appropriate.[85]

Producers of nonpoint source pollution included in a BMAP must comply with the established pollutant reductions by either implementing the appropriate BMPs or by conducting water quality monitoring.[86] A nonpoint source discharger may be subject to enforcement action by the DEP or a WMD based on a failure to implement these requirements.[87] The BMPs are designed to reduce the amount of nutrients, sediments, and pesticides that enter the water system and help reduce water use. The BMPs are developed for agricultural operations as well as for other activities, such as nutrient management on golf courses, silviculture (forestry) operations, and stormwater management.[88]

Presumption of Compliance

Where interim measures, BMPs, or other measures are adopted by rule, the effectiveness of such practices in achieving the levels of pollution reduction or in voluntary BMP programs implemented must be verified at representative sites by the DEP.[89] Implementation of practices that have been initially verified to be effective, or verified to be effective by monitoring at representative sites by the DEP, provide a presumption of compliance with water quality standards (WQS) and the DEP is not authorized to institute proceedings against the owner of the source of pollution to recover costs or damages associated with the contamination of surface water or groundwater caused by those pollutants.[90]

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[82] Section 403.067(7), F.S.
[83] *Id*.
[84] DEP, *Basin Management Action Plans (BMAPs), available at* https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps (last visited Jan. 31, 2018).
[85] Section 403.067(7)(a)5., F.S.
[86] Section 403.067(7)(b)2.g., F.S. BMPs for agriculture, for example, include activities such as managing irrigation water to minimize losses, limiting the use of fertilizers, and waste management.
[87] Section 403.067(7)(b)2.h., F.S.
[88] DEP, *NPDES Stormwater Program*, https://floridadep.gov/Water/Stormwater (last visited Jan. 31, 2018).
[89] Sections 403.067(7)(c)3., and (12)(b), F.S.
[90] Section 403.067(7)(c)3., F.S.

Penalties

It is a violation of state law for any person to cause pollution that harms or injures human health or welfare, animal, plant, or aquatic life or property.[91] Whoever commits such a violation is liable to the state for any damage caused and for civil penalties.[92] Any person who willfully commits such violation is guilty of a felony of the third degree, punishable by a fine of not more than $50,000 or by imprisonment for five years, or by both, for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.[93] It is the Legislature's intent that the civil penalties and criminal fines imposed by the court be of such amount as to ensure immediate and continued compliance.[94]

Sanitary Sewer Overflows

Although domestic wastewater treatment facilities are permitted and designed to safely and properly collect and manage a specified wastewater capacity, obstructions or extreme conditions can cause a sanitary sewer overflow (SSO). Any overflow, spill, release, discharge or diversion of untreated or partially treated wastewater from a sanitary sewer system is a SSO.[95]

Contributing factors may include:

- Build-up of solids and fats, oils and greases, in the wastewater collection system impeding flow;
- Too much rainfall infiltrating through the ground into leaky sanitary sewers, which are not intended to hold rainfall. Excess water also can flow through roof drains connected to sewers or poorly connected sewer lines;
- Blocked, broken, or cracked pipes and other equipment or power failures that keep the system from properly functioning. Tree roots can grow into the sewer. Sections of pipe can settle or shift so that pipe joints no longer match. Sediment and other material can build up and cause pipes to break or collapse; and
- A deteriorating or aging sewer system that can be expensive to repair. Some municipalities have found severe problems, necessitating costly correction programs.[96]

A key concern with SSOs entering rivers, lakes or streams is their negative effect on water quality. In addition, because SSOs contain partially treated or potentially untreated domestic wastewater, ingestion or similar contact may cause illness. People can be exposed through direct contact in areas of high public access; food that has been contaminated; and inhalation and skin absorption. The Department of Health issues health advisories when bacteria levels present a risk

[91] Section 403.161(1)(a), F.S.
[92] Section 403.161(2), F.S.; *see* s. 403.141, F.S., for civil penalties.
[93] Section 403.161(3), F.S.; ss. 775.082(3)(e) and 775.083(1)(g), F.S.
[94] Section 403.161(6), F.S.
[95] DEP, *Sanitary Sewer Overflows (SSOs), available at* https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf (last accessed Jan. 31, 2018).
[96] DEP, *Preventing SSOs, available at* https://floridadep.gov/sites/default/files/preventing-sanitary-sewer-overflows.pdf (last accessed Jan. 27, 2018); DEP, *SSOs, available at* https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf (last accessed Jan. 26, 2018).

to human health, and may post warning signs when bacteria affect public beaches or other areas where there is the risk of human exposure.[97]

Reduction of SSOs can occur through:

- Cleaning and maintaining the sewer system;
- Reducing infiltration and inflow through rehabilitation and repairing broken or leaking lines;
- Enlarging or upgrading sewer pump station or sewage treatment plant capacity and/or reliability; and
- Constructing wet weather storage and treatment facilities to treat excess flows.[98]

After an SSO event, the DEP reviews the data from the utilities to assess the overall impact to the environment in deciding whether to take additional action. The DEP looks at how serious the violation was; whether this was a first-time violation or a repeated violation; whether the violation was inadvertent or beyond reasonable control; and whether the damage to the environment can be undone or remediated quickly.[99] The DEP also takes into account the severity of the rain event (e.g., was it a hurricane or a storm, or if the area had received an unusually large amount of rainfall beyond historical averages). If the discharge was caused by an operator error or lack of a certified operator on-site at the time, then the DEP may consider additional training for operators to prevent similar errors from occurring in the future. In some circumstances, the DEP will meet with utilities to discuss infrastructure repairs and process improvements the utility is making and planning to implement in order to avoid further SSOs.[100]

Financing Wastewater Treatment Facilities

Asset Management

Renewing and replacing domestic wastewater treatment infrastructure is an ongoing task. Asset management can help a utility maximize the value of its capital as well as its operations and maintenance dollars. Asset management provides utility managers and decision makers with critical information on capital assets and timing of investments. Some key steps for asset management are making an inventory of critical assets, evaluating the condition and performance of such assets, and developing plans to maintain, repair, and replace assets and to fund these activities.[101] The EPA provides guidance and reference manuals for utilities to aid in developing asset management plans (AMPs).[102]

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[97] DEP, *SSOs*, *available at* https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf (last accessed Jan. 31, 2018).
[98] *Id*.
[99] *Id*.
[100] *Id*.
[101] EPA, *Sustainable Water Infrastructure - Asset Management for Water and Wastewater Utilities*, https://www.epa.gov/sustainable-water-infrastructure/asset-management-water-and-wastewater-utilities (last visited Jan. 31, 2018).
[102] EPA, *Asset Management: A Best Practices Guide*, https://nepis.epa.gov/Exe/ZyPDF.cgi/P1000LP0.PDF?Dockey=P1000LP0.PDF; EPA, *Reference Guide for Asset Management Tools/Asset Management Plan Components and Implementation Tools for Small and Medium Sized Drinking Water and Wastewater Systems*, (May 2014) https://www.epa.gov/sites/production/files/2016-04/documents/am_tools_guide_may_2014.pdf (last visited Jan. 31, 2018).

Many states, including Florida, provide financial incentives for the development and implementation of an AMP when requesting funding under a State Revolving Fund or other state funding mechanism.[103] Florida's incentives include priority scoring,[104] reduction of interest rates,[105] principal forgiveness for financially disadvantaged small communities,[106] and eligibility for small community wastewater facilities grants.[107]

Water and Wastewater Utility Reserve Fund

In 2016, the Legislature authorized the Public Service Commission (PSC) to allow a utility to create a utility reserve fund for repair and replacement of existing distribution and collection infrastructure that is nearing the end of its useful life or is detrimental to water quality or reliability of service. The utility reserve fund would be funded by a portion of the rates charged by the utility, by a secured escrow account or through a letter of credit.

The PSC, as required, adopted rules[108] governing the implementation, management, and use of the fund, including expenses for which the fund may be used, segregation of reserve account funds, requirements for a capital improvement plan, and requirements for a PSC authorization before fund disbursements.[109] The PSC requires an applicant to provide a capital improvement plan or an AMP in seeking authorization to create a utility reserve fund.[110]

The Clean Water State Revolving Fund (CWSRF) Program

Florida's CWSRF is funded through money received from federal grants as well as state contributions. These funds then "revolve" through the repayment of previous loans and interest earned. While these programs offer loans, grant-like funding is also available for qualified small, disadvantaged communities, which reduces the amount owed on loans by the percentage that the community qualifies. The CWSRF Program provides low-interest loans to local governments to plan, design, and build or upgrade wastewater, stormwater, and nonpoint source pollution prevention projects. Certain agricultural best management practices may also qualify for funding. Very low interest rate loans, grants and other discounted assistance for small communities is available. Interest rates on loans are below market rates and vary based on the economic wherewithal of the community. Generally, local governments and special districts are eligible loan sponsors.[111] The EPA classifies eleven types of projects that are eligible to receive CWSRF assistance. They include projects:

- For a municipality or inter-municipal, interstate, or state agency to construct a publicly owned treatment works;
- For a public, private, or nonprofit entity to implement a state nonpoint source pollution management program;

[103] EPA, *State Asset Management Initiatives*, (August 2012), https://www.epa.gov/sites/production/files/2016-04/documents/state_asset_management_initiatives_11-01-12.pdf (last visited Jan. 31, 2018).
[104] Fla. Admin. Code R. 62-503.300(e).
[105] Fla. Admin. Code R. 62-503.300(5)(b)1., 62-503.700(7).
[106] Fla. Admin. Code R. 62-503.500(4).
[107] Fla. Admin. Code R. 62-505.300(d), and 62-505.350(5)(c).
[108] Fla. Admin. Code R. 25-30.444.
[109] Section 367.081(2)(c), F.S.
[110] Fla. Admin. Code R. 25-30.444(2)(e) and (m).
[111] DEP, *State Revolving Fund, available at* https://floridadep.gov/wra/srf (last visited January 18, 2018).

- For a public, private, or nonprofit entity to develop and implement a conservation and management plan;
- For a public, private, or nonprofit entity to construct, repair, or replace decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage;
- For a public, private, or nonprofit entity to manage, reduce, treat, or recapture stormwater or subsurface drainage water;
- For a municipality or inter-municipal, interstate, or state agency to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse;
- For a public, private, or nonprofit entity to develop and implement watershed projects;
- For a municipality or inter-municipal, interstate, or state agency to reduce the energy consumption needs for publicly owned treatment works;
- For a public, private, or nonprofit entity for projects for reusing or recycling wastewater, stormwater, or subsurface drainage water;
- For a public, private, or nonprofit entity to increase the security of publicly owned treatment works; and
- For any qualified nonprofit entity, to provide technical assistance to owners and operators of small and medium sized publicly owned treatment works to plan, develop, and obtain financing for CWSRF eligible projects and to assist each treatment works in achieving compliance with the CWA.[112]

Small Community Sewer Construction

The Small Community Sewer Construction Assistance Act requires the DEP to award grants to assist financially disadvantaged small communities with their needs for adequate sewer facilities.[113] In accordance with rules adopted by the Environmental Regulation Commission (ERC), the DEP may provide grants, for up to 100 percent of the costs of planning, designing, constructing, upgrading, or replacing wastewater collection, transmission, treatment, disposal, and reuse facilities, including necessary legal and administrative expenses.[114] The rules of the ERC must also:

- Require that projects to plan, design, construct, upgrade, or replace wastewater collection, transmission, treatment, disposal, and reuse facilities be cost-effective, environmentally sound, permittable, and implementable;
- Require appropriate user charges, connection fees, and other charges to ensure the long-term operation, maintenance and replacement of the facilities constructed under each grant;
- Require grant applications to be submitted on appropriate forms with appropriate supporting documentation, and require records to be maintained;
- Establish a system to determine eligibility of grant applications;
- Establish a system to determine the relative priority of grant applications. The system must consider public health protection and water pollution abatement;
- Establish requirements for competitive procurement of engineering and construction services, materials and equipment; and

[112] EPA, *Learn about the CWSRF*, https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf (last visited Jan. 26, 2018).
[113] Section 403.1838(2), F.S.
[114] Section 403.1838(3)(a), F.S.

- Provide for termination of grants when program requirements are not met.[115]

Plant Operations Excellence Awards

Each year, the DEP presents awards to domestic wastewater and drinking water facilities around the state that demonstrate excellence in operation, maintenance, innovative treatment, waste reduction, pollution prevention, recycling or other achievements. These awards recognize facilities that demonstrate a special commitment to excellence in management through dedicated professionalism and that have an impeccable history of record-keeping compliance.[116]

III. Effect of Proposed Changes:

Impact Offsets and Substitution Credits

Section 1 provides that when a water management district (WMD) evaluates a consumptive use permit (CUP), impact offsets may be created if the applicant proposes reclaimed water use to:

- Prevent or stop further saltwater intrusion;
- Raise aquifer levels;
- Improve the water quality of an aquifer; or
- Augment surface water to increase the quantity of water available for water supply.

The bill requires the water resource implementation rule to include criteria for the application of an impact offset or a substitution credit to a consumptive use permit or to a minimum flows and levels recovery or prevention strategy.

Memorandum of Agreement

Section 2 provides that the Legislature encourages the development of aquifer recharge for water reuse implementation. The bill requires the Department of Environmental Protection (DEP) and the WMDs to develop and enter into a memorandum of agreement (MOA) no later than December 1, 2018, providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit. The MOA must provide that the coordinated review is performed only if the applicant for such permits requests a coordinated review. The goal of the coordinated review is to share information, avoid the need for an applicant to submit redundant information, and ensure, to the extent feasible, a harmonized review of the reclaimed water project under these various permitting programs, including the use of a proposed impact offset or substitution credit.

Contaminated Recyclable Material

Section 3 provides the following criteria by which counties and municipalities must address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material:

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[115] Section 403.1838(3)(b), F.S.; Fla. Admin. Code R. Ch. 62-505.

[116] DEP, *DEP Presents 2017 Plant Excellence Award to Three South Florida Water Facilities* (Jan. 25, 2018) available at https://content.govdelivery.com/accounts/FLDEP/bulletins/1d59e36 (last visited Feb. 1, 2018).

- A residential recycling collector may not be required to collect or transport contaminated recyclable material, unless specified by contract.
- A materials recovery facility may not be required to process contaminated recyclable material, unless specified by contract.
- Contracts between a residential recycling collector and a county or municipality, each request for proposal for residential recyclable material, and contracts between a materials recovery facility and a county or municipality must include:
  - A definition of the term "contaminated recyclable material" that is appropriate for the local community, based on the available markets for recyclable material, available waste composition studies, and other relevant factors;
  - The respective strategies and obligations of the parties to reduce the amount of contaminated recyclable material being collected or processed;
  - The procedures for identifying, documenting, managing, and rejecting residential recycling containers, carts, bins, or loads that contain contaminated recyclable material; and
  - The remedies that will be used if a container, cart, bin, or load contains contaminated recyclable material.
- Contracts between a collector and a county or municipality and each request for proposal for residential recyclable material must include the education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.
- Provides that the above criteria apply to contracts between a municipality or county and a residential recycling collector or materials recovery facility executed or renewed after July 1, 2018.

The bill provides that "residential recycling collector" means a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality.

Environmental Resource Permit (ERP) Exemptions for Repair or Replacement of Existing Docks or Piers/Verification from the DEP

Section 4 revises the ERP exemption for the repair or replacement of existing docks and piers. The bill prohibits a local government from requiring an individual claiming certain permit exemptions to provide further department verification. Existing law requires the replaced or repaired dock or pier to be in the same location and of the same configuration and dimensions as the deck or pier being replaced or repaired. The bill provides that, in order to be exempt from permitting, the replaced or repaired dock or pier must be within five feet of the same location and no larger in size than the existing dock or pier. It also requires that no additional aquatic resources be adversely and permanently impacted by the replacement or repair. The bill provides that for all of the activities and projects excluded from the requirement to obtain a permit, a local government may not require an individual claiming an exemption to provide further verification from the DEP.

Section 5 creates s. 403.1839, F.S., to create the blue star collection system assessment and maintenance program.

The bill defines terms and provides the following legislative findings:

- The implementation of domestic wastewater collection system assessment and maintenance practices has been shown to limit effectively sanitary sewer overflows and the unauthorized discharge of pathogens.
- The voluntary implementation of domestic wastewater collection system assessment and maintenance practices beyond those required by law has the potential to limit sanitary sewer overflows.
- The unique geography, community, growth, size, and age of domestic wastewater collection systems across the state require diverse responses, using the best professional judgment of local utility operators, to ensure that programs designed to limit sanitary sewer overflows are effective.

The bill establishes in the DEP a blue star collection system assessment and maintenance program and states that the purpose of this voluntary incentive program is to assist public and private utilities in limiting sanitary sewer overflows and the unauthorized discharge of pathogens.

The DEP must adopt rules to administer the program, including program certification standards, and must review and, if appropriate, approve public and private domestic wastewater utilities that apply for certification under the program or that demonstrate continued compliance with program certification requirements. A utility must provide reasonable documentation that it meets the following certification standards:

- Implementation of periodic collection system and pump station structural condition assessments and the performance of as-needed maintenance and replacement.
- Adequate reinvestment by the utility in its collection system and pump station structural condition assessment and maintenance and replacement program to reasonably maintain the working integrity of the system and station.
- Implementation of a program designed to limit the presence of fats, roots, oils, and grease in the collection system.
- If the applicant is a public utility, the existence of a local law or building code requiring the private pump stations and lateral lines connecting to the public system to be free of:
  - Cracks, holes, missing parts, or similar defects; and
  - Direct stormwater connections that allow the direct inflow of stormwater into the private system and the public domestic wastewater collection system.
- Adoption of a power outage contingency plan that addresses mitigation of the impacts of power outages on the utility's collection system and pump stations.

Program certifications expire after five years. During the five-year certification period, a utility must annually provide documentation to the DEP on the status of its implementation of the program and must demonstrate that it meets all program criteria in order to maintain its program certification.

The DEP must annually publish on its website a list of certified blue star utilities beginning on January 1, 2020, and must allow public and private, non-profit utilities to participate in the Clean Water State Revolving Fund Program for any purpose of the blue star collection system assessment and maintenance program which is consistent with federal requirements for participating in the Clean Water State Revolving Fund Program.

In the calculation of penalties for a sanitary sewer overflow, the DEP may reduce the penalty based on a utility's status as a certified blue star utility. The DEP may also reduce a penalty based on a certified blue star utility's investment in assessment and maintenance activities to identify and address conditions that may cause sanitary sewer overflows or interruption of service to customers due to a physical condition or defect in the system.

Section 6 amends s. 403.067(7)(c), F.S., relating to best management practices. The bill requires the DEP to provide a domestic wastewater utility that implements and maintains a program as a certified blue star utility a presumption of compliance with state water quality standards for pathogens when the utility demonstrates a history of compliance with wastewater disinfection requirements incorporated in the utility's operating permit for any discharge into the impaired surface water.

Section 7 amends s. 403.087, F.S., to require, subject to National Pollutant Discharge Elimination System (NPDES) permit duration limits for a utility, the DEP to issue 10-year permits to blue star certified utilities for the same fee and under the same conditions that apply to a five-year permit, upon approval of its application for renewal, if the certified blue star utility demonstrates that it:

- Is in compliance with any consent order or an accompanying administrative order related to its permit;
- Does not have any pending enforcement action against it by the United States Environmental Protection Agency (EPA), the DEP, or a local program; and
- If applicable, has submitted annual program implementation reports demonstrating progress in the implementation of the program.

Section 8 amends s. 403.161, F.S., to authorize, notwithstanding any other law, the DEP to reduce a penalty based on the person's investment in the assessment, maintenance, rehabilitation, or expansion of the permitted facility.

Section 9 amends s. 403.1838, F.S., to expand the eligibility for and uses of the Small Community Sewer Construction Grants. Under the bill, private, non-profit utilities serving financially disadvantaged small communities may also receive grants for up to 100 percent of the costs of planning, assessing, designing, constructing, upgrading, or replacing wastewater facilities. The use of grant funds for assessments is added to the section. The bill also provides that Small Community Sewer Construction Grants may also be used for planning and implementing domestic wastewater collection system assessment programs to identify conditions that may cause sanitary sewer overflows or interruption of service to customers due to a physical condition or defect in the system.

Sections 1-4 of the bill take effect upon the bill becoming a law. **Sections 5-9** of the bill take effect January 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have a positive, indeterminate impact on private utilities that will now be eligible for Clean Water State Revolving Fund Program funds and Small Community Sewer Construction Assistance Grants.

C. Government Sector Impact:

The bill may have an indeterminate fiscal effect on local government recycling and waste removal services.

The bill may have an indeterminate, negative fiscal impact on the Department of Environmental Protection (DEP) as a result of the costs of rulemaking requirements of the bill. The bill may also have indeterminate negative fiscal impacts on the DEP and the water management districts as a result of the costs of developing an MOA for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit. The incentives associated with being blue star certified (e.g., reduced penalties, in-kind penalties, and 10-year operating permits) may reduce the amount of revenue generated from these activities. These costs can be absorbed within existing resources.

The bill may have a positive, indeterminate impact on local governments as it increases the eligible uses for Small Community Sewer Construction Assistance Grants.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 373.250, 403.064, 403.067, 403.087, 403.161, 403.1838, 403.706, and 403.813.

This bill creates section 403.1839 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Appropriations on February 22, 2018:
Provides that the Legislature encourage the development of aquifer recharge for water reuse implementation. The amendment also deletes a legislative finding that reuse through aquifer recharge is a critical component of meeting the state's existing and future water supply needs while sustaining natural systems.

Creates the blue star collection system assessment and maintenance program for domestic sewer systems. The Department of Environmental Protection (DEP) will administer the program and codify program certification standards. Certification requires a demonstration of:

- An adequate rate of reinvestment;
- Periodic structural condition assessments, and as-needed maintenance and replacements;
- A program designed to limit fats, roots, oils, and grease in its collection system;
- For public utilities, a local requirement that the private pump stations and lateral lines connecting to the public system be free of defects and direct stormwater connections; and
- A power outage contingency plan.

Public and private utilities certified under the program could receive the following incentives:

- Publication on the DEP's website;
- Participation in the Clean Water State Revolving Loan Fund Program;
- Reduced penalties for a sanitary sewer overflow;
- Ten-year operating permits; and
- A presumption of compliance with state water quality standards for pathogens.

The bill expands the Small Community Sewer Construction Assistance Grant Program to include private utilities and expands the uses of the grants.

CS/CS by Community Affairs on February 13, 2018:
Maintains the ability for a homeowner, business, or local government to rebuild a dock or pier without going through the permitting process, making clear that a rebuilt dock or pier does not need to be exactly the same so long as it is within 5 feet of the same location and is no larger in size than the existing dock.

- Provides that, for all of the activities and projects excluded from the requirement to obtain a permit, a local government may not require an individual claiming an exemption to provide further verification from the DEP. The amendment removed language that had prohibited a local government from requiring further verification from the DEP.

CS by Environmental Preservation and Conservation on January 22, 2018:
The amendment removes provisions in the bill related to contaminated recycling and adds the following criteria by which counties and municipalities must address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material:

- A residential recycling collector may not be required to collect or transport contaminated recyclable material.
- A materials recovery facility may not be required to process contaminated recyclable material.
- Each contract between a residential recycling collector and a county or municipality for the collection or transport of residential recyclable material, and each request for proposal for residential recyclable material, must define the term "contaminated recyclable material" in a manner that is appropriate for the local community, based on the available markets for recyclable material. The amendment specifies elements that the contract and request for proposal must include.
- Each contract between a materials recovery facility and a county or municipality for processing residential recyclable material must define the term "contaminated recyclable material" in a manner that is appropriate for the local community, based on the available markets for recyclable material. The amendment specifies elements that the contract must include.
- Provides that the above criteria apply to contracts between a municipality or county and a residential recycling collector or materials recovery facility executed or renewed after the effective date of the act.

The amendment provides that "residential recycling collector" means a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality.

B. Amendments:

None.