

**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 Environmental Preservation and Conservation

BILL: SB 244

INTRODUCER: Senator Brandes

SUBJECT: Domestic Wastewater Collection System Assessment and Maintenance

DATE: January 31, 2018      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rogers	Rogers	EP	<b>Pre-meeting</b>
2.			CU	
3.			AP	
4.			RC	

**I. Summary:**

SB 244 creates the blue star collection system assessment and maintenance program. Under the program, the Department of Environmental Protection (DEP) will review and approve public and private sewer utilities applying for certification based upon certification standards adopted by the Environmental Regulation Commission. A utility must document all of the following to be certified under the program:

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

DEP may waive one or more of the criteria for a utility that serves a population of 10,000 or less if it demonstrates that it meets the goals of the program. The utility may cite the award of a Small Community Sewer Construction Grant as evidence that it achieves these goals.

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

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

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

## II. Present Situation:

Domestic wastewater is wastewater derived principally from dwellings, business buildings, and institutions, commonly referred to as sanitary wastewater or sewage.<sup>1</sup> Domestic wastewater leaves these structures through a domestic wastewater collection system<sup>2</sup> for treatment at a domestic wastewater treatment facility.<sup>3</sup> There are approximately 1,900 domestic wastewater treatment facilities in the state serving roughly two-thirds of the state's population.<sup>4</sup> Treated effluent<sup>5</sup> and reclaimed water<sup>6</sup> 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.<sup>7</sup>

### Wastewater Treatment Facility Permits

Domestic wastewater facilities that discharge to surface waters<sup>8</sup> 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.<sup>9</sup> NPDES permit requirements for most domestic wastewater facilities are incorporated into a state-issued permit, giving the permittee one set of permitting requirements rather than separate requirements for each the state and federal permit.<sup>10</sup>

A domestic wastewater system is a stationary installation that is reasonably expected to be a source of water pollution<sup>11</sup> and must not be operated, maintained, constructed, expanded or modified without an appropriate and currently valid permit issued by the Department of Environmental Protection (DEP), unless otherwise exempted by law.<sup>12</sup> A domestic wastewater treatment plant operating permit is issued for a term of five years.<sup>13</sup> As an incentive, certain

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<sup>1</sup> Fla. Admin. Code R. 62-600.200(21).

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 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).

<sup>8</sup> 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).

<sup>9</sup> 33 U.S.C. §1342.

<sup>10</sup> 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).

<sup>11</sup> Section 403.031(7), F.S., defines "pollution."

<sup>12</sup> Section 403.087(1), F.S.

<sup>13</sup> Section 430.087(1), F.S.; Fla. Admin. Code R. 62-620.320(8).

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 EPA, 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;
- DEP has reviewed the discharge monitoring reports required by DEP 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
- 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.<sup>14</sup>

### *Disinfection*

Disinfection is the selective destruction of disease-producing organisms (pathogens)<sup>15</sup> in wastewater effluent, reclaimed water, and biosolids.<sup>16</sup> Most domestic wastewater treatment facilities must meet either basic disinfection for discharges to surface water or high-level disinfection for reuse systems.<sup>17</sup>

Basic disinfection essentially requires that the effluent after disinfection contain less than 200 fecal coliform values per 100 microgram per milliliter.<sup>18</sup> 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.<sup>19</sup> Filtration is required ahead of the disinfection process and serves as an important and integral part of the overall high-level disinfection process. Florida's high-level disinfection criteria were designed to ensure that the reclaimed water would be essentially virus free.<sup>20</sup> In 1999, Florida added protozoan pathogen monitoring requirements for *Cryptosporidium* and *Giardia* to reuse systems.<sup>21</sup>

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<sup>14</sup> Section 403.087(3), F.S.

<sup>15</sup> Fla. Admin. Code R. 62-600.200(47).

<sup>16</sup> Fla. Admin. Code R. 62-600.200(18).

<sup>17</sup> DEP, *Ultraviolet Disinfection for Domestic Wastewater*, <https://floridadep.gov/water/domestic-wastewater/content/ultraviolet-uv-disinfection-domestic-wastewater> (last accessed Jan. 27, 2018).

<sup>18</sup> Fla. Admin. Code R. 62-600.440(5).

<sup>19</sup> Fla. Admin. Code R. 62-600.440(6).

<sup>20</sup> DEP, *Ultraviolet Disinfection for Domestic Wastewater*, <https://floridadep.gov/water/domestic-wastewater/content/ultraviolet-uv-disinfection-domestic-wastewater> (last accessed Jan. 27, 2018).

<sup>21</sup> Fla. Admin. Code R. Ch. 62-610.

### **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.<sup>22</sup> Waterbodies or sections of waterbodies that do not meet the established water quality standards are deemed impaired. Pursuant to the federal Clean Water Act, DEP is required to establish a TMDL for impaired waterbodies.<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup>

### ***Basin Management Action Plans and Best Management Practices***

DEP is the lead agency in coordinating the development and implementation of TMDLs. Basin management action plans (BMAPs) are one of the primary mechanisms DEP uses to achieve TMDLs. BMAPs are plans that use existing planning tools to address the entire pollution load, including point and nonpoint discharges, for a watershed. 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;<sup>26</sup>
- Public works projects, including capital facilities; and
- Land acquisition.<sup>27</sup>

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.<sup>28</sup> 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

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<sup>22</sup> Section 403.067, F.S.

<sup>23</sup> *Id.*

<sup>24</sup> Section 403.031(21), F.S.

<sup>25</sup> 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.

<sup>26</sup> 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.

<sup>27</sup> Section 403.067(7), F.S.

<sup>28</sup> *Id.*

local stakeholders, local government and community leaders, and the public to collectively determine and share water quality clean-up responsibilities.<sup>29</sup>

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 5 years and revisions to the BMAP must be made as appropriate.<sup>30</sup>

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.<sup>31</sup> A nonpoint source discharger may be subject to enforcement action by DEP or a water management district (WMD) based on a failure to implement these requirements.<sup>32</sup> BMPs are designed to reduce the amount of nutrients, sediments, and pesticides that enter the water system and help reduce water use. 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.<sup>33</sup>

### ***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 DEP.<sup>34</sup> Implementation of practices that have been initially verified to be effective, or verified to be effective by monitoring at representative sites by DEP, provide a presumption of compliance with water quality standards (WQS) and 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.<sup>35</sup>

### **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.<sup>36</sup> Whoever commits such a violation is liable to the state for any damage caused and for civil penalties.<sup>37</sup> 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.<sup>38</sup> It is the Legislature's

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<sup>29</sup> 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).

<sup>30</sup> Section 403.067(7)(a)5., F.S.

<sup>31</sup> 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.

<sup>32</sup> Section 403.067(7)(b)2.h., F.S.

<sup>33</sup> DEP, *NPDES Stormwater Program*, <https://floridadep.gov/Water/Stormwater> (last visited Jan. 31, 2018).

<sup>34</sup> Sections 403.067(7)(c)3., and (12)(b), F.S.

<sup>35</sup> Section 403.067(7)(c)3., F.S.

<sup>36</sup> Section 403.161(1)(a), F.S.

<sup>37</sup> Section 403.161(2), F.S.; see s. 403.141, F.S., for civil penalties.

<sup>38</sup> Section 403.161(3), F.S.; ss. 775.082(3)(e) and 775.083(1)(g), F.S.

intent that the civil penalties and criminal fines imposed by the court be of such amount as to ensure immediate and continued compliance.<sup>39</sup>

### 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.<sup>40</sup>

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.<sup>41</sup>

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 to human health, and may post warning signs when bacteria affect public beaches or other areas where there is the risk of human exposure.<sup>42</sup>

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.<sup>43</sup>

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<sup>39</sup> Section 403.161(6), F.S.

<sup>40</sup> DEP, *Sanitary Sewer Overflows (SSOs)*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last accessed Jan. 31, 2018).

<sup>41</sup> 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).

<sup>42</sup> DEP, *SSOs*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last accessed Jan. 31, 2018).

<sup>43</sup> *Id.*

After an SSO event, DEP reviews the data from the utilities to assess the overall impact to the environment in deciding whether to take additional action. 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.<sup>44</sup> 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 DEP may consider additional training for operators to prevent similar errors from occurring in the future. In some circumstances, 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.<sup>45</sup>

## **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.<sup>46</sup> The United States Environmental Protection Agency (EPA) provides guidance and reference manuals for utilities to aid in developing asset management plans (AMPs).<sup>47</sup>

Many states, including Florida, provide financial incentives for the development and implementation of an AMP when requesting funding under a State Revolving Fund (SRF) or other state funding mechanism.<sup>48</sup> Florida's incentives include priority scoring,<sup>49</sup> reduction of interest rates,<sup>50</sup> principal forgiveness for financially disadvantaged small communities,<sup>51</sup> and eligibility for small community wastewater facilities grants.<sup>52</sup>

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> 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).

<sup>47</sup> 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](https://www.epa.gov/sites/production/files/2016-04/documents/am_tools_guide_may_2014.pdf) (last visited Jan. 31, 2018).

<sup>48</sup> 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](https://www.epa.gov/sites/production/files/2016-04/documents/state_asset_management_initiatives_11-01-12.pdf) (last visited Jan. 31, 2018).

<sup>49</sup> Fla. Admin. Code R. 62-503.300(e).

<sup>50</sup> Fla. Admin. Code R. 62-503.300(5)(b)1., 62-503.700(7).

<sup>51</sup> Fla. Admin. Code R. 62-503.500(4).

<sup>52</sup> Fla. Admin. Code R. 62-505.300(d), and 62-505.350(5)(c).

### ***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<sup>53</sup> 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 PSC authorization before fund disbursements.<sup>54</sup> The PSC requires an applicant to provide a capital improvement plan or an AMP in seeking authorization to create a utility reserve fund.<sup>55</sup>

### ***The Clean Water State Revolving Fund (CWSRF) Program***

Florida's Clean Water State Revolving Fund 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 Clean Water State Revolving Fund 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.<sup>56</sup> 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;
- 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;

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<sup>53</sup> Fla. Admin. Code R. 25-30.444.

<sup>54</sup> Section 367.081(2)(c), F.S.

<sup>55</sup> Fla. Admin. Code R. 25-30.444(2)(e) and (m).

<sup>56</sup> DEP, *State Revolving Fund*, available at <https://floridadep.gov/wra/srf> (last visited January 18, 2018).

- 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.<sup>57</sup>

### ***Small Community Sewer Construction***

The Small Community Sewer Construction Assistance Act requires DEP to award grants to assist financially disadvantaged small communities with their needs for adequate sewer facilities.<sup>58</sup> In accordance with rules adopted by the Environmental Regulation Commission (ERC), 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.<sup>59</sup> 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, permissible, 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
- Provide for termination of grants when program requirements are not met.<sup>60</sup>

### **Plant Operations Excellence Awards**

Each year, 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.<sup>61</sup>

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<sup>57</sup> EPA, *Learn about the CWSRF*, <https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf> (last visited Jan. 26, 2018).

<sup>58</sup> Section 403.1838(2), F.S.

<sup>59</sup> Section 403.1838(3)(a), F.S.

<sup>60</sup> Section 403.1838(3)(b), F.S.; Fla. Admin. Code R. Ch. 62-505.

<sup>61</sup> 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).

### **Environmental Regulation Commission (ERC)**

The ERC must exercise the standard-setting authority of DEP in certain circumstances.<sup>62</sup> The ERC is composed of seven residents of the state appointed by the Governor, subject to Senate confirmation. Membership must be representative of agriculture, the development industry, local government, the environmental community, lay citizens, and members of the scientific and technical community who have substantial expertise in the areas of the fate and transport of water pollutants, toxicology, epidemiology, geology, biology, environmental sciences, or engineering. All appointments are for 4-year terms. DEP provides administrative, personnel, and other support services necessary for the ERC. The ERC may employ independent counsel and contract for the services of outside technical consultants.<sup>63</sup>

### **III. Effect of Proposed Changes:**

**Section 1** creates s. 403.1839, F.S., creating the blue star collection system assessment and maintenance program.

The bill defines terms and provides the following legislative findings:

- The implementation of sewer collection system assessment and maintenance practices has been shown to effectively limit the unauthorized releases or spills of treated or untreated domestic wastewater, generally referred to as sanitary sewer overflows, and the unauthorized discharge of pathogens.
- The disparate nature of inputs into a collection system, third-party activities, severe storm events, and other factors beyond the reasonable control of the utility operator make it infeasible to completely eliminate sewer overflows. However, the voluntary implementation of advanced sewer collection system assessment and maintenance practices beyond those required by law has the potential to further limit sanitary sewer overflows.
- The unique geography, community, growth, and size and age of sewer 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 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.

Department of Environmental Protection (DEP) shall review and approve public and private sewer utilities applying for certification under the program based upon the certification standards adopted by the Environmental Regulation Commission (ERC). The ERC shall adopt certification standards for the program. A utility must provide reasonable documentation of the following in order to be certified under the program:

- The rate of reinvestment determined necessary by the utility for its collection system and pump station structural condition assessment and maintenance and replacement program.
- A program of periodic collection system and pump station structural condition assessments and the performance of as-needed maintenance and replacements.

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<sup>62</sup> Sections 403.804 and 403.805(1), F.S.

<sup>63</sup> Section 20.255(6), F.S.

- A program designed to limit the presence of fats, roots, oils, and grease in the collection system.
- If the applicant is a public utility, 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.

DEP may waive one or more of these requirements for a utility that regularly serves a population of 10,000 or less if the utility adequately demonstrates to DEP that its assessment and maintenance activities achieve the goals of the blue star collection system assessment and maintenance program. The utility may cite assessment projects funded pursuant to a Small Community Sewer Construction Assistance Grant as evidence of such achievement.

Program certifications shall expire after 10 years. A utility applying for renewal must meet all program criteria existing at the time of its application for renewal in order to maintain its program certification.

DEP shall annually publish on its website a list of certified blue star utilities beginning on January 1, 2019.

DEP must allow public and not-for-profit private utilities to participate in the Clean Water State Revolving Fund Program for any purpose consistent with federal law, including to plan and implement sanitary sewer assessment programs to identify conditions that may cause unauthorized releases or spills of treated or untreated domestic wastewater, pipe leakage, or interruption of service to customers due to a physical condition or defect in the system, as well as any assessment, maintenance, or construction activities associated with becoming certified or maintaining status as a certified blue star utility in accordance with this section.

In the calculation of penalties for a sanitary sewer overflow, DEP may reduce the penalty based on a utility's status as a certified blue star utility. DEP may allow any certified blue star utility to apply the amount of a penalty toward investment in assessment and maintenance activities to identify and address conditions that may cause unauthorized releases or spills of treated or untreated domestic wastewater, pipe leakage, or interruption of service to customers due to a physical condition defect in the system.

**Section 2** amends s. 403.067(7)(c), F.S., relating to best management practices. The bill requires DEP to provide a domestic wastewater utility with 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, and the utility is a certified blue star utility.

**Section 3** amends s. 403.087, F.S., to require DEP to issue 10-year permits to blue star certified utilities upon approval of its application for renewal.

**Section 4** amends s. 403.1838, F.S., to expand the eligibility for and uses of the Small Community Sewer Construction Grants. Under the bill, private, not-for-profit utilities serving

financially disadvantaged small communities may also receive 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 sanitary sewer assessment programs to identify conditions that may cause unauthorized releases or spills of treated or untreated domestic wastewater, pipe leakage, or interruption of service to customers due to a physical condition or defect in the system.

**Section 5** provides an effective date of July 1, 2018.

#### **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 CWSRF funds and Small Community Sewer Construction Assistance Grants.

C. Government Sector Impact:

The bill may have a negative fiscal impact on DEP associated with the rulemaking requirements of the bill, and in the implementation of the blue star collection system assessment and maintenance program, including review of annual reports and annual posting of blue star certified facilities on its website. 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.

The bill may also have a negative fiscal impact on DEP through the ERC rulemaking requirements provided for by the bill.

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:**

The bill adds private utilities to the CWSRF Program for stated purposes such as “assessment, maintenance, or construction” of wastewater facilities. This appears to conflict the federal statute that limits these costs to public entities.

The provision authorizing 10-year permits appears to conflict with federal law requiring NPDES permits to be no more than 5 years.

#### **VII. Related Issues:**

The revisions to the Small Community Sewer Construction Assistance Act are not linked to the blue star program. It is unclear if this is the intent or not.

The bill does not provide clear guidance to DEP to develop rules for the program. Rather, it lists documentation that a utility must provide. The bill would benefit from guidelines directing DEP to consider certain criteria in development of its rules for the program.

Wastewater facilities are a traditional type of “point source” pollution and are subject to NPDES permits. Generally, BMPs are applicable to nonpoint sources. It is unclear how the presumption of compliance in the BMP paragraph will affect how these utilities are regulated.

#### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 403.067, 403.087, 403.1838.

This bill creates section 403.1839 of the Florida Statutes.

#### **IX. Additional Information:**

##### **A. Committee Substitute – Statement of Changes:**

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

None.

##### **B. Amendments:**

None.