

By Senator Brandes

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

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30 renewal; amending s. 403.1838, F.S.; allowing for
31 additional recipients and uses of Small Community
32 Sewer Construction grants; providing an effective
33 date.

34
35 Be It Enacted by the Legislature of the State of Florida:

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

39 403.1839 Blue star collection system assessment and
40 maintenance program.—

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

42 (a) "Commission" means the Environmental Regulation
43 Commission.

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

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

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59 geography, community, growth, and size and age of sewer
60 collection systems across the state require diverse responses,
61 using the best professional judgment of local utility operators,
62 to ensure that programs designed to limit sanitary sewer
63 overflows are effective.

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

70 (4) APPROVAL AND STANDARDS.—

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

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

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

81 2. A program of periodic collection system and pump station
82 structural condition assessments and the performance of as-
83 needed maintenance and replacements.

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

86 4. If the applicant is a public utility, a local law or
87 building code requiring the private pump stations and lateral

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88 lines connecting to the public system to be free of:

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

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

93
94 The department may waive one or more of these requirements for a
95 utility that regularly serves a population of 10,000 or less if
96 the utility adequately demonstrates to the department that its
97 assessment and maintenance activities achieve the goals of the
98 blue star collection system assessment and maintenance program.

99 The utility may cite assessment projects funded pursuant to a
100 grant under s. 403.1838 as evidence of such achievement.

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

105 (6) PUBLICATION.—The department shall annually publish on
106 its website a list of certified blue star utilities beginning on
107 January 1, 2019.

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

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117 construction activities associated with becoming certified or
118 maintaining status as a certified blue star utility in
119 accordance with this section.

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

131 Section 2. Paragraph (c) of subsection (7) of section
132 403.067, Florida Statutes, is amended to read:

133 403.067 Establishment and implementation of total maximum
134 daily loads.—

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

137 (c) *Best management practices.*—

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

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146 management districts and, where adopted by rule, shall be
147 implemented by those parties responsible for nonagricultural
148 nonpoint source pollution.

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

170 3. Where interim measures, best management practices, or
171 other measures are adopted by rule, the effectiveness of such
172 practices in achieving the levels of pollution reduction
173 established in allocations developed by the department pursuant
174 to subsection (6) and this subsection or in programs implemented

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175 pursuant to paragraph (12) (b) must be verified at representative
176 sites by the department. The department shall use best
177 professional judgment in making the initial verification that
178 the best management practices are reasonably expected to be
179 effective and, where applicable, must notify the appropriate
180 water management district or the Department of Agriculture and
181 Consumer Services of its initial verification before the
182 adoption of a rule proposed pursuant to this paragraph.
183 Implementation, in accordance with rules adopted under this
184 paragraph, of practices that have been initially verified to be
185 effective, or verified to be effective by monitoring at
186 representative sites, by the department, shall provide a
187 presumption of compliance with state water quality standards and
188 release from the provisions of s. 376.307(5) for those
189 pollutants addressed by the practices, and the department is not
190 authorized to institute proceedings against the owner of the
191 source of pollution to recover costs or damages associated with
192 the contamination of surface water or groundwater caused by
193 those pollutants. Research projects funded by the department, a
194 water management district, or the Department of Agriculture and
195 Consumer Services to develop or demonstrate interim measures or
196 best management practices shall be granted a presumption of
197 compliance with state water quality standards and a release from
198 the provisions of s. 376.307(5). The presumption of compliance
199 and release is limited to the research site and only for those
200 pollutants addressed by the interim measures or best management
201 practices. Eligibility for the presumption of compliance and
202 release is limited to research projects on sites where the owner
203 or operator of the research site and the department, a water

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204 management district, or the Department of Agriculture and
205 Consumer Services have entered into a contract or other
206 agreement that, at a minimum, specifies the research objectives,
207 the cost-share responsibilities of the parties, and a schedule
208 that details the beginning and ending dates of the project.

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

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

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

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

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

251 403.087 Permits; general issuance; denial; revocation;
252 prohibition; penalty.—

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

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

259 403.1838 Small Community Sewer Construction Assistance
260 Act.—

261 (3) (a) In accordance with rules adopted by the

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

277 (b) The rules of the Environmental Regulation Commission
278 must:

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

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

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

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291 4. Establish a system to determine eligibility of grant
292 applications.

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

296 6. Establish requirements for competitive procurement of
297 engineering and construction services, materials, and equipment.

298 7. Provide for termination of grants when program
299 requirements are not met.

300 Section 5. This act shall take effect July 1, 2018.