

By the Committee on Environmental Preservation and Conservation;
and 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 terms; providing legislative
5 findings; establishing the blue star collection system
6 assessment and maintenance program; specifying the
7 purpose of the program; requiring the Department of
8 Environmental Protection to adopt rules and review
9 and, if appropriate, approve applications for
10 certification under the program; requiring utilities
11 applying for certification to provide reasonable
12 documentation demonstrating that it meets specified
13 certification standards; providing that certifications
14 expire after a specified period of time; specifying
15 requirements to maintain program certification;
16 requiring the department to annually publish a list of
17 certified blue star utilities, beginning on a
18 specified date; requiring the department to allow
19 public and private, nonprofit utilities to participate
20 in the Clean Water State Revolving Fund Program for
21 certain purposes; authorizing the department to reduce
22 certain penalties for a certified utility under
23 specified conditions; amending s. 403.067, F.S.;
24 creating a presumption of compliance with certain
25 total maximum daily load requirements for certified
26 blue star utilities; amending s. 403.087, F.S.;
27 requiring the department to provide extended operating
28 permits when a certified blue star utility applies for
29 permit renewal under certain conditions; amending s.

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30 403.161, F.S.; authorizing the department to reduce a
31 penalty based on certain system investments for
32 permitted facilities; amending s. 403.1838, F.S.;
33 allowing for additional recipients and uses of Small
34 Community Sewer Construction grants; providing an
35 effective date.

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37 Be It Enacted by the Legislature of the State of Florida:

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39 Section 1. Section 403.1839, Florida Statutes, is created
40 to read:

41 403.1839 Blue star collection system assessment and
42 maintenance program.—

43 (1) DEFINITIONS.—As used in this section, the terms:

44 (a) "Domestic wastewater" has the same meaning as in s.
45 367.021.

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

48 (c) "Program" means the blue star collection system
49 assessment and maintenance program created pursuant to this
50 section.

51 (d) "Sanitary sewer overflow" means the unauthorized
52 overflow, spill, release, discharge or diversion of untreated or
53 partially treated domestic wastewater.

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

55 (a) The implementation of domestic wastewater collection
56 system assessment and maintenance practices has been shown to
57 effectively limit sanitary sewer overflows and the unauthorized
58 discharge of pathogens.

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59 (b) The voluntary implementation of domestic wastewater
60 collection system assessment and maintenance practices beyond
61 those required by law has the potential to further limit
62 sanitary sewer overflows.

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

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

74 (4) APPROVAL AND STANDARDS.—

75 (a) The department shall adopt rules to administer the
76 program, including program certification standards, and shall
77 review and, if appropriate, approve public and private domestic
78 wastewater utilities that apply for certification under the
79 program or that demonstrate continued compliance with program
80 certification requirements pursuant to subsection (4) (c).

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

84 1. Implementation of periodic collection system and pump
85 station structural condition assessments and the performance of
86 as-needed maintenance and replacement.

87 2. Adequate reinvestment by the utility in its collection

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88 system and pump station structural condition assessment and
89 maintenance and replacement program to reasonably maintain the
90 working integrity of the system and station.

91 3. Implementation of a program designed to limit the
92 presence of fats, roots, oils, and grease in the collection
93 system.

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

97 a. Cracks, holes, missing parts, or similar defects; and
98 b. Direct stormwater connections that allow the direct
99 inflow of stormwater into the private system and the public
100 domestic wastewater collection system.

101 5. Adoption of a power outage contingency plan that
102 addresses mitigation of the impacts of power outages on the
103 utility's collection system and pump stations.

104 (c) Program certifications expire after 5 years. During the
105 5-year certification period, a utility must annually provide
106 documentation to the department on the status of its
107 implementation of the program and must demonstrate that it meets
108 all program criteria in order to maintain its program
109 certification.

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

113 (6) FEDERAL PROGRAM PARTICIPATION.—The department shall
114 allow public and private, nonprofit utilities to participate in
115 the Clean Water State Revolving Fund Program for any purpose of
116 the program which is consistent with federal requirements for

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117 participating in the Clean Water State Revolving Fund Program.

118 (7) REDUCED PENALTIES.—In the calculation of penalties for
119 a sanitary sewer overflow pursuant to s. 403.161, the department
120 may reduce the penalty based on a utility's status as a
121 certified blue star utility in accordance with this section. The
122 department may also reduce a penalty based on a certified blue
123 star utility's investment in assessment and maintenance
124 activities to identify and address conditions that may cause
125 sanitary sewer overflows or interruption of service to customers
126 due to a physical condition or defect in the system.

127 Section 2. Paragraph (c) of subsection (7) of section
128 403.067, Florida Statutes, is amended to read:

129 403.067 Establishment and implementation of total maximum
130 daily loads.—

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

133 (c) *Best management practices.*—

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

145 2. The Department of Agriculture and Consumer Services may

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

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

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

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204 that details the beginning and ending dates of the project.

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

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

229 6. The provisions of subparagraphs 1. and 2. do not
230 preclude the department or water management district from
231 requiring compliance with water quality standards or with
232 current best management practice requirements set forth in any

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233 applicable regulatory program authorized by law for the purpose
234 of protecting water quality. Additionally, subparagraphs 1. and
235 2. are applicable only to the extent that they do not conflict
236 with any rules adopted by the department that are necessary to
237 maintain a federally delegated or approved program.

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

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

248 403.087 Permits; general issuance; denial; revocation;
249 prohibition; penalty.-

250 (11) Subject to the permit duration limits for a utility
251 permitted pursuant to s. 403.0885, the department must issue a
252 blue star utility certified pursuant to s. 403.1839 a 10-year
253 permit, for the same fee and under the same conditions that
254 apply to a 5-year permit, upon approval of its application for
255 permit renewal, if the certified blue star utility demonstrates
256 that it:

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

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

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262 (c) If applicable, has submitted annual program
263 implementation reports demonstrating progress in the
264 implementation of the program.

265 Section 4. Subsection (6) of section 403.161, Florida
266 Statutes, is renumbered as subsection (7), and a new subsection
267 (6) is added to that section, to read:

268 403.161 Prohibitions, violation, penalty, intent.—

269 (6) Notwithstanding any other law, the department may
270 reduce a penalty based on the person's investment in the
271 assessment, maintenance, rehabilitation, or expansion of the
272 permitted facility.

273 Section 5. Paragraphs (a) and (b) of subsection (3) of
274 section 403.1838, Florida Statutes, are amended to read:

275 403.1838 Small Community Sewer Construction Assistance
276 Act.—

277 (3) (a) In accordance with rules adopted by the
278 Environmental Regulation Commission under this section, the
279 department may provide grants, from funds specifically
280 appropriated for this purpose, to financially disadvantaged
281 small communities and to private, nonprofit utilities serving
282 financially disadvantaged small communities for up to 100
283 percent of the costs of planning, assessing, designing,
284 constructing, upgrading, or replacing wastewater collection,
285 transmission, treatment, disposal, and reuse facilities,
286 including necessary legal and administrative expenses. Grants
287 issued pursuant to this section may also be used for planning
288 and implementing domestic wastewater collection system
289 assessment programs to identify conditions that may cause
290 sanitary sewer overflows or interruption of service to customers

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291 due to a physical condition or defect in the system.

292 (b) The rules of the Environmental Regulation Commission
293 must:

294 1. Require that projects to plan, assess, design,
295 construct, upgrade, or replace wastewater collection,
296 transmission, treatment, disposal, and reuse facilities be cost-
297 effective, environmentally sound, permittable, and
298 implementable.

299 2. Require appropriate user charges, connection fees, and
300 other charges sufficient to ensure the long-term operation,
301 maintenance, and replacement of the facilities constructed under
302 each grant.

303 3. Require grant applications to be submitted on
304 appropriate forms with appropriate supporting documentation, and
305 require records to be maintained.

306 4. Establish a system to determine eligibility of grant
307 applications.

308 5. Establish a system to determine the relative priority of
309 grant applications. The system must consider public health
310 protection and water pollution abatement.

311 6. Establish requirements for competitive procurement of
312 engineering and construction services, materials, and equipment.

313 7. Provide for termination of grants when program
314 requirements are not met.

315 Section 6. This act shall take effect July 1, 2018.