HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 837 Domestic Wastewater Collection System Assessment and Maintenance
SPONSOR(S): Natural Resources & Public Lands Subcommittee; Edwards-Walpole and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 244

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Natural Resources & Public Lands Subcommittee	11 Y, 0 N, As CS	Moore	Shugar
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

Domestic wastewater is wastewater derived principally from dwellings, business buildings, and institutions. Domestic wastewater leaves these structures through a domestic wastewater collection system for treatment at a domestic wastewater treatment facility. A domestic wastewater system is a stationary installation that is reasonably expected to be a source of water pollution 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).

To protect public health, domestic wastewater receives a level of disinfection during the treatment process. Disinfection is the selective destruction of disease-producing organisms (pathogens) in wastewater effluent, reclaimed water and biosolids. Most domestic wastewater treatment facilities must meet either basic disinfection or high-level disinfection.

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 an overflow, spill, release, discharge or diversion of untreated or partially treated wastewater, referred to as a sanitary sewer overflow (SSO). Reduction of SSOs can occur through cleaning and maintaining the domestic wastewater system; reducing infiltration and inflow through rehabilitation and repairing broken or leaking lines; and enlarging or upgrading pump station or treatment plant capacity and/or reliability.

The bill creates the blue star collection system assessment and maintenance program, which is a voluntary incentive based program to assist public and private utilities in limiting SSOs and the unauthorized discharge of pathogens. The bill provides several incentives for becoming a certified facility, which include:

- Participation of public and private nonprofit utilities in the Clean Water State Revolving Fund (CWSRF);
- Grant eligibility for system assessment under the Small Community Sewer Construction Assistance Act;
- Reduced penalties for SSOs and the opportunity for further reductions based on certain criteria;
- A presumption of compliance for water quality standards for pathogens; and
- A 10-year permit renewal.

The bill also provides an opportunity for reduced penalties based on a person's investment in assessment, maintenance, rehabilitation, or expansion of a permitted facility.

The bill may have a negative fiscal impact on DEP associated with the rulemaking requirements of the bill. The bill may have an indeterminate fiscal impact on local governments and the private sector who elect for their domestic wastewater treatment facilities to become a certified blue star system. Establishing the requirements to become a blue star system may be costly on the front end, but the benefits of being certified may outweigh these costs. The bill may also have a positive fiscal impact on the private sector in being provided program eligibility for the CWSRF and the Small Community Sewer Construction Assistance Act.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Domestic Wastewater

Present Situation

Domestic wastewater is wastewater principally derived from dwellings, business buildings, and institutions.[1] Domestic wastewater leaves these structures through a domestic wastewater collection system[2] for treatment at a domestic wastewater treatment plant.[3] A domestic wastewater facility is a stationary installation that is reasonably expected to be a source of water pollution[4] and must not be operated, maintained, constructed, expanded or modified without an appropriate and currently valid permit issued by DEP, unless otherwise exempted by law.[5]

There are approximately 1,900 domestic wastewater treatment facilities in the state serving roughly two-thirds of the state's population.[6] Each day over 1.5 billion gallons of treated wastewater effluent[7] and reclaimed water[8] from these facilities is disposed of through surface water outfalls, deep aquifer injection wells, and other groundwater disposal (e.g., percolation ponds and spray fields).[9]

Domestic wastewater facilities that discharge to surface waters[10] must also 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.[11] NPDES permit requirements for most domestic wastewater facilities are incorporated into a state-issued permit.[12]

Disinfection

Disinfection is the selective destruction of disease-producing organisms (pathogens)[13] in wastewater effluent, reclaimed water, and biosolids.[14] All domestic wastewater treatment facilities must be

[1] Section 367.021(5), F.S.; r. 62-600.200(21), F.A.C.
[2] 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.
[3] 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.
[4] Section 403.031(7), F.S., defines "pollution."
[5] Section 403.087(1), F.S.
[6] 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.
[7] Rule 62-600.200(22), F.A.C., 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.
[8] Rule 62-600.200(54), F.A.C., defines "reclaimed water" to mean water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility, except as provided in ch. 62-610, F.A.C.
[9] 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).
[10] 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; r. 62-620.200(56), F.A.C.
[11] 33 U.S.C. §1342.
[12] Section 403.0885, F.S.; ch. 62-620, F.A.C.; 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).
[13] Rule 62-600.200(47), F.A.C.
[14] Rule 62-600.200(18), F.A.C.

designed and operated to provide the level of disinfection necessary to protect public health such that the microbiological pollutants criteria are not exceeded for any receiving waters.[15] Treatment requirements for disinfection are specified to the discharge from the facility whether the discharge is for reuse and land application systems; for ground water disposal by underground injection; for ground water recharge using injection wells; for surface water discharges, excluding coastal and open ocean waters; for disposal to coastal and open ocean waters; or for wetland discharges.[16]

Most domestic wastewater treatment facilities must meet either basic disinfection or high-level disinfection.[17] Basic disinfection requires that the effluent contain less than 200 fecal coliforms per 100 microgram per milliliter.[18] High-level disinfection essentially requires that fecal coliforms be reduced below detection.[19] Florida's reuse systems also monitor for the protozoan pathogens Cryptosporidium and Giardia.[20]

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 an overflow, spill, release, discharge or diversion of untreated or partially treated wastewater, referred to as a sanitary sewer overflow (SSO).[21] Factors contributing to SSOs may include:

- Build-up of solids and fats, oils and greases, in the wastewater collection system impeding flow;
- Too much rainfall infiltrating the system through leaky infrastructure, roof drains connected to the system or poorly connected wastewater lines, which are not intended to hold rainfall;
- Blocked, broken or cracked pipes and other equipment or power failures that keep the system from properly functioning (e.g., tree roots growing into the system, pipe settling or shifting so that pipe joints no longer match, buildup of sediment and other material causing pipes to break or collapse); and
- A deteriorating or aging system.[22]

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. SSOs also have a negative effect on other surface waters.[23]

Reduction of SSOs can occur through:

- Cleaning and maintaining the domestic wastewater system;
- Reducing infiltration and inflow through rehabilitation and repairing broken or leaking lines;
- Enlarging or upgrading pump stations or treatment plant capacity and/or reliability; and
- Constructing wet weather storage and treatment facilities to treat excess flows.[24]

After an SSO event, DEP reviews the data from the utilities to assess the overall impact to the environment. DEP looks at how serious the violation was; whether this was a first-time violation or a

[15] Rule 62-600.440(1), F.A.C.; *see* ch. 62-302, F.A.C.
[16] Rule 62-600.440(4), F.A.C.
[17] DEP, *Ultraviolet Disinfection for Domestic Wastewater*, https://floridadep.gov/water/domestic-wastewater/content/ultraviolet-uv-disinfection-domestic-wastewater (last accessed Jan. 27, 2018).
[18] Rule 62-600.510(1), F.A.C.; Rule 62-600.440(5), F.A.C.
[19] Rule 62-600.440(6), F.A.C.
[20] Chapter 62-610, F.A.C.
[21] DEP, *SSOs*, https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf (last accessed Jan. 26, 2018).
[22] DEP, *Preventing SSOs*, https://floridadep.gov/sites/default/files/preventing-sanitary-sewer-overflows.pdf (last accessed Jan. 27, 2018); DEP, *SSOs*, https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf (last accessed Jan. 26, 2018).
[23] DEP, *SSOs*, https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf (last accessed Jan. 26, 2018).
[24] *Id*.

repeated violation; whether the violation was inadvertent or beyond reasonable control; and whether the damage to the environment can be undone or remediated quickly. 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.[25]

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.[26] The United States Environmental Protection Agency (EPA) provides guidance and reference manuals for utilities to aid in developing asset management plans (AMPs).[27]

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[28] 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.[29] The PSC requires an applicant to provide a capital improvement plan or an AMP in seeking authorization to create a utility reserve fund.[30]

Clean Water State Revolving Fund

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.[31] Florida's incentives include priority scoring,[32] reduction of interest rates,[33] principal

[25] *Id*.
[26] 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. 16, 2018).
[27] 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. 16, 2018).
[28] Rule 25-30.444, F.A.C.
[29] Section 367.081(2)(c), F.S.
[30] Rules 25-30.444(2)(e) and (m), F.A.C.
[31] 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. 16, 2018).
[32] Rule 62-503.300(e), F.A.C.
[33] Rules 62-503.300(5)(b)1., 62-503.700(7), F.A.C.

forgiveness for financially disadvantaged small communities,[34] and eligibility for small community wastewater facilities grants.[35]

The Clean Water State Revolving Fund (CWSRF) program, established by the 1987 amendments to the CWA, is a federal-state partnership that provides communities a permanent, independent source of low-cost financing for a wide range of water quality infrastructure projects.[36] EPA classifies 11 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, as defined in section 212 of the CWA;
- For a public, private, or nonprofit entity to implement a state nonpoint source pollution management program established under section 319 of the CWA;
- For a public, private, or nonprofit entity to develop and implement a conservation and management plan under section 320 of the CWA;
- 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 meeting the criteria in section 122 of the CWA;
- 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.[37]

Using a combination of federal and state funds, state CWSRF programs provide loans to eligible recipients to construct municipal wastewater facilities; control nonpoint sources of pollution; build decentralized wastewater treatment systems; create green infrastructure projects; protect estuaries; and fund other water quality projects. EPA provides grants to the state to capitalize state CWSRF loan programs. The states then contribute an additional 20 percent to match the federal grants.[38] The CWSRF then revolves through the repayment of principal and earned interest on outstanding loans.[39]

States are responsible for the operation of their CWSRF program and may provide various types of assistance, including loans, refinancing, purchasing, or guaranteeing local debt and purchasing bond insurance. States may also set specific loan terms, including interest rates from zero percent to market rate and repayment periods of up to 30 years. States may also customize loan terms to meet the needs of small and disadvantaged communities, or to provide incentives for certain types of projects.

[34] Rules 62-503.500(4), F.A.C.
[35] Rules 62-505.300(d), and 62-505.350(5)(c), F.A.C.
[36] 33 USC §1383; EPA, *CWSRF*, https://www.epa.gov/cwsrf (last visited Jan. 26, 2018); EPA, *Learn about the CWSRF*, https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf (last visited Jan. 26, 2018).
[37] EPA, *Learn about the CWSRF*, https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf (last visited Jan. 26, 2018).
[38] *Id*.
[39] EPA, *Fed Funds for Water and Wastewater Utilities*, https://www.epa.gov/fedfunds/epa-state-revolving-funds (last visited Jan. 16, 2018); DEP. *State Revolving Fund*, https://floridadep.gov/wra/srf (last visited January 16, 2018).

Beginning in 2009, Congress authorized the CWSRFs to provide further financial assistance through additional subsidization, such as grants, principal forgiveness, and negative interest rate loans.[40]

Florida's CWSRF Implementation

Florida implements the CWSRF under s. 403.1835, F.S. The law provides that DEP may make loans to local government agencies,[41] which may pledge any revenue available to them to repay any funds borrowed.[42] DEP may also make loans, grants, and deposits to other entities eligible to participate as authorized by federal law, which may pledge any revenue available to them to repay any funds borrowed.[43]

DEP must administer the CWSRF so that at least 15 percent of the funding made available each year is reserved for use by small communities during the year it is reserved.[44] DEP may make grants to financially disadvantaged small communities,[45] which must be administered in accordance with the Small Community Sewer Construction Assistance Act.[46]

Small Community Sewer Construction Assistance Act

The Small Community Sewer Construction Assistance Act requires DEP to award grants to assist financially disadvantaged small communities with their needs for adequate domestic wastewater facilities.[47] 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.[48] Among other requirements, the ERC's rules must 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.[49]

ERC

The ERC is charged with exercising the standard-setting authority of DEP in certain circumstances.[50] It 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. 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.[51]

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

[41] Section 403.1835(2)(c), F.S., defines "local governmental agencies" to mean any municipality, county, district, or authority, or any agency thereof, or a combination of two or more of the foregoing, acting jointly in connection with a project having jurisdiction over collection, transmission, treatment, or disposal of sewage, industrial wastes, stormwater, or other wastes and includes a district or authority whose principal responsibility is to provide airport, industrial or research park, or port facilities to the public.

[42] Section 403.1835(3)(a), F.S.

[43] Section 403.1835(3)(b), F.S.

[44] Section 403.1835(3)(c), F.S.

[45] Section 403.1838(2), defines a "financially disadvantaged small community" to mean a county, municipality, or special district that has a population of 10,000 or fewer, according to the latest decennial census, and a per capita annual income less than the state per capita annual income as determined by the United States Department of Commerce.

[46] Sections 403.1835(3)(d), and (4), F.S.

[47] Section 403.1838(2), F.S.

[48] Section 403.1838(3)(a), F.S.

[49] Section 403.1838(3)(b), F.S.; *see* ch. 62-505, F.A.C.

[50] Sections 403.804, and 403.805(1), F.S.

[51] Section 20.255(6), F.S.

Effect of Proposed Changes

The bill creates s. 403.1839, F.S., creating the blue star collection system assessment and maintenance program or "program" (program) as defined in the bill. The bill establishes the program within DEP to serve as a voluntary incentive program to assist public and private utilities in limiting SSOs and the unauthorized discharge of pathogens.

The bill defines "domestic wastewater," "domestic wastewater collection system," and "SSO."

The bill provides the following legislative findings:

- The implementation of domestic wastewater collection system assessment and maintenance practices has been shown to effectively limit SSOs 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 further limit SSOs; and
- 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 SSOs are effective.

The bill requires DEP to adopt rules to administer the program, including certification standards for the program. The bill requires DEP to review and approve public and private domestic wastewater utilities applying for program certification based upon the certification standards. The bill also requires a utility to provide reasonable documentation of the following certification standards for program certification:

- The implementation of periodic collection system and pump station structural condition assessments and the performance of as-needed maintenance and replacements;
- The rate of reinvestment determined necessary by the utility for its collection system and pump station structural condition assessment and maintenance and replacement program;
- The 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, 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; and
- A power outage contingency plan that addresses mitigation of the impacts of power outages on the utility's collection system and pump stations.

The bill requires that a program certification expire after five years. A utility must document its implementation of the program on an annual basis with DEP and must demonstrate it meets all program criteria to maintain its program certification.

The bill requires DEP, beginning on January 1, 2020, to publish annually on its website a list of certified blue star utilities.

The bill requires DEP to allow public and private, nonprofit utilities to participate in the CWSRF for any purpose of the program that is consistent with federal requirements.

The bill amends s. 403.1838, F.S., relating to the Small Community Sewer Construction Assistance Act, and authorizes private, nonprofit utilities serving financially disadvantaged small communities grant eligibility. The bill authorizes grants for assessing wastewater collection, transmission, disposal, and reuse facilities. The bill also authorizes grants for planning and implementing domestic wastewater collection system assessment programs to identify conditions that may cause SSOs or interruption of service to customers due to a physical condition or defect in the system. The bill also requires the ERC to adopt rules to require projects to assess wastewater collection, transmission, treatment, disposal, and reuse facilities be cost-effective, environmentally sound, permittable, and implementable.

Water Quality Standards

Present Situation

The CWA requires states to adopt water quality standards (WQS) for navigable waters, and to review and update those standards at least triennially.[52] The CWA requires states to develop lists of water bodies that do not meet WQS (impaired waters). States are then required to develop a total maximum daily load (TMDL) for the particular pollutants and the concentration of those pollutants causing the impairment relative to the WQS, which serves as the maximum allowable amount of pollutants that the water body can receive while maintaining the WQS.[53]

Total Maximum Daily Loads

TMDLs must include reasonable and equitable pollutant load allocations between or among point sources (e.g., pipes, culverts discharging from a permitted facility, such as a domestic wastewater facility) and nonpoint sources (e.g., agriculture, septic tanks, golf courses) that will alone, or in conjunction with other management and restoration activities, provide for the attainment of the pollutant reductions to achieve WQS for the pollutant causing impairment.[54] Implementation of the allocation must include consideration of a cost-effective approach coordinated between contributing point and nonpoint sources of pollution for impaired water bodies and may include the opportunity to implement the allocation through nonregulatory and incentive-based programs.[55]

TMDLs are based on consideration of the following:

- Existing treatment levels and management practices;
- Established and implemented best management practices (BMPs);
- Enforceable treatment levels established under state or local law or permit;
- Differing impacts pollutant sources and forms of pollutant may have on water quality;
- Availability of treatment technologies, management practices, or pollutant reduction measures;
- Environmental, economic, and technological feasibility of achieving the allocation;
- Cost benefits associated with achieving the allocation;
- Reasonable timeframes for implementation;
- Potential applicability of moderating provisions (e.g., variances, exemptions, mixing zones); and
- The extent to which nonattainment of WQS is caused by pollution sources outside of Florida, discharges that have ceased, or alterations to water bodies prior to implementation of the TMDL program.[56]

Once a TMDL is adopted,[57] DEP may develop and implement a basin management action plan (BMAP) that addresses some or all of the watersheds and basins tributary to the water body.[58]

Basin Management Action Plans

A BMAP must integrate appropriate management strategies available to the state through existing water quality protection programs to achieve the TMDL.[59] Existing water quality protection programs include, but are not limited to:

- Permitting and other existing regulatory programs (e.g., water quality-based effluent limitations);

[52] 33 U.S.C. § 1313.
[53] 33 U.S.C. § 1313; *see* s. 403.067, F.S.
[54] Section 403.067(6)(b), F.S.
[55] Section 403.067(1), F.S.
[56] Section 403.067(6)(b), F.S.
[57] Section 403.067(6)(c), F.S.
[58] Section 403.067(7)(a)1., F.S.
[59] Section 403.067(7)(a)1., F.S.

- Nonregulatory and incentive-based programs (e.g., BMPs, cost sharing, waste minimization, pollution prevention, and public education);
- Other water quality management and restoration activities (e.g., WMD surface water improvement and management plans);
- Trading of water quality credits or other equitable economically based agreements;
- Public works including capital facilities; or
- Land acquisition.[60]

The BMAP must include milestones for implementation and water quality improvement, and an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved. An assessment of progress toward these milestones must be conducted every five years, and revisions to the plan must be made as appropriate.[61]

For nonpoint sources that have an adopted BMP, the initial requirement specified by the BMAP must be those practices. Where appropriate, the BMAP may take into account the benefits of pollutant load reduction achieved by point or nonpoint sources that have implemented management strategies to reduce pollutant loads, including BMPs, before the development of the BMAP. The BMAP must also identify the mechanisms that will address potential future increases in pollutant loading.[62] A nonpoint source discharger included in a BMAP must demonstrate compliance with the pollutant reductions by implementing appropriate BMPs or conducting water quality monitoring prescribed by DEP or WMD.[63] A nonpoint source discharger may be subject to enforcement action by DEP or WMD based upon a failure to implement these responsibilities.[64]

Any management strategies and pollutant reduction requirements associated with a TMDL, including effluent limits set forth for a discharger subject to NPDES permitting, must be included in a timely manner in subsequent NPDES permits or permit modifications for that discharger. DEP may not impose limits or conditions implementing an adopted TMDL in an NPDES permit until the permit expires, the discharge is modified, or the permit is reopened pursuant to an adopted BMAP.[65]

Best Management Practices and Presumption of Compliance with WQS

DEP, in cooperation with WMDs and other interested parties, may develop suitable interim measures, BMPs, or other measures necessary to achieve the level of pollution reduction for nonagricultural nonpoint pollutant sources (e.g., mobile vehicle washing, green lodging). These practices and measures may be adopted by DEP or WMD rule and, where adopted by rule, must be implemented by those parties responsible for nonagricultural nonpoint source pollution.[66]

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 voluntarily BMP programs must be verified at representative sites by DEP.[67] Implementation of practices that have been initially verified to be effective, or verified to be effective by monitoring at representative sites by DEP must provide a presumption of compliance with 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.[68]

[60] Section 403.067(7)(b)1., F.S.
[61] Section 403.067(7)(a)6., F.S.
[62] Section 403.067(7)(a)2., F.S.
[63] Section 403.067(7)(b)g., F.S.
[64] Section 403.067(7)(b)h., F.S.
[65] Section 403.067(7)(b)2., F.S.
[66] Section 403.067(7)(c)1., F.A.C.; DEP, *BMPs*, https://floridadep.gov/taxonomy/term/387?page=1 (last visited Jan. 31, 2018).
[67] Sections 403.067(7)(c)3., and (12)(b), F.S.
[68] Section 403.067(7)(c)3., F.S.

Effect of Proposed Changes

The bill amends s. 403.067(7), F.S., relating to BMPs. The bill requires DEP to provide a domestic wastewater utility with a presumption of compliance with WQS 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 implements and maintains a program as a certified blue star utility.

Domestic Wastewater Treatment Facility Renewal Operating Permit

Present Situation

A domestic wastewater treatment plant operating permit is issued for a term of five years.[69] An applicant 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 and must be issued the permit if:

- The treatment facility is not regulated under the NPDES program;
- 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.[70]

Effect of Proposed Changes

The bill amends s. 403.087, F.S, creating an additional opportunity by which domestic wastewater treatment facilities may qualify for issuance of a 10-year operating permit. The bill provides that a blue star utility certified pursuant to s. 403.1839, F.S., must be issued a 10-year permit for the same fee and under the same conditions as a five-year permit upon approval of its application for permit renewal by DEP, if the certified blue star utility demonstrates that it:

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

[69] Section 430.087(1), F.S.; r. 62-620.320(8), F.A.C.
[70] Section 403.087(3), F.S.

Penalties for Causing Pollution

Present Situation

It is a violation of state law and prohibited by state law for any person to cause pollution that harms or injures human health or welfare, animal, plant, or aquatic life or property.[71] Whoever commits such a violation is liable to the state for any damage caused and for civil penalties.[72] 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.[73] 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.[74]

Effect of Proposed Changes

The bill amends s. 403.161, F.S., regarding penalties, providing that, regardless of any other state law, DEP may reduce a penalty based on the person's investment in the assessment, maintenance, rehabilitation, or expansion of the permitted facility.

The bill also creates s. 403.1839(7), F.S., relating to penalties for a certified blue star facility. The bill provides that in calculating penalties pursuant to s. 403.161, F.S., for a SSO, DEP may reduce the penalty based on a utility's status as a certified blue star utility. The bill provides that 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 SSOs or interruption of service to customers due to a physical condition or defect in the system.

B. SECTION DIRECTORY:

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

Section 2. Amends s. 403.067, F.S., relating to BMPs.

Section 3. Amends s. 403.087, F.S., relating to permitting requirements.

Section 4. Amends s. 403.161, F.S., relating to penalties.

Section 5. Amends s. 403.1838, F.S., relating to the Small Community Sewer Construction Assistance Act.

Section 6. Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[71] Section 403.161(1)(a), F.S.
[72] Section 403.161(2), F.S.; *see* s. 403.141, F.S., for civil penalties.
[73] Section 403.161(3), F.S.; ss. 775.082(3)(e) and 775.083(1)(g), F.S.
[74] Section 403.161(6), F.S.

2. Expenditures:

The bill may have a negative fiscal impact on DEP associated with the rulemaking requirements of the bill, and in the implementation of the program, including review of annual reports and annual posting of blue star certified facilities on its website. The bill may also have a negative fiscal impact on DEP through the ERC rulemaking requirements provided for by the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have a positive fiscal impact on local governments in being afforded an opportunity to have its penalty reduced based on the investment, maintenance, rehabilitation, or expansion of a permitted facility.

2. Expenditures:

The bill may have an indeterminate fiscal impact on local governments who elect for their domestic wastewater treatment facilities to become a certified blue star utility. Establishing the requirements to become a blue star utility may be costly on the front end, but the benefits of being certified (e.g., a stitch in time approach; 10-year permit renewal; presumption of compliance for WQS; reduced penalties) may eventually outweigh these costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate fiscal impact on the private sector who elect for their domestic wastewater treatment facilities to become a certified blue star utility. Establishing the requirements to become a certified blue star utility may be costly on the front end, but the benefits of being certified (e.g., a stitch in time approach; 10-year operating permit renewal; presumption of compliance with WQS; reduced penalties) may eventually outweigh these costs. Additionally, the bill may have a positive fiscal impact on public and private, nonprofit utilities who elect to participate in the program who are afforded eligibility to the CWSRF and the Small Community Sewer Construction Assistance Act.

The bill may have a positive fiscal impact on the private sector in being afforded an opportunity to have its penalty reduced based on the investment, maintenance, rehabilitation, or expansion of a permitted facility.

D. FISCAL COMMENTS:

The bill may have a negative fiscal impact to state revenues associated with the opportunities for reduced penalties for certified blue star facilities and for issuances of 10-year operating permits, as well as an opportunity for any person to have an opportunity to reduce its penalty based on the investment, maintenance, rehabilitation, or expansion of a permitted facility.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds; reduce the authority that counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DEP to adopt rules to administer the program, including certification standards for the program. The bill also requires the ERC to adopt rules to require that projects to assess wastewater collection, transmission, treatment, disposal, and reuse facilities be cost-effective, environmentally sound, permittable, and implementable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1

Line 98 of the bill provides that a program certification expires after five years. The bill is unclear on the requirements for renewal certifications.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 30, 2018, the Natural Resources & Public Lands Subcommittee adopted a strike-all amendment and reported the bill favorable with committee substitute. The amendment:

- Defines the terms domestic wastewater, domestic wastewater collection system, and SSO;
- Requires DEP to adopt rules to administer the program, including certification standards for demonstrating maintenance of program certification;
- Requires a utility to demonstrate that it meets all program criteria in order to maintain program certification;
- Requires DEP to allow public and private, nonprofit utilities to participate in the CWSRF for any purpose of the program consistent with federal requirements;
- Provides that to have a presumption of compliance with WQS a certified blue star utility must also maintain its program certification;
- Allows a certified blue star utility issuance of a 10-year permit for the same fee and under the same conditions as a five-year permit upon approval of its application for permit renewal by DEP, if the utility demonstrates that it:
  - Is in compliance with any consent order or an accompanying administrative order to its permit;
  - Does not have any pending enforcement action against it by EPA, DEP, or a local program; and
  - If applicable, has submitted annual program implementation reports demonstrating progress in the implementation of the program;
- Allows DEP to 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 SSOs or interruption of service to customers due to a physical condition or defect in the system;
- Allows DEP to reduce a penalty based on the person's investment in the assessment, maintenance, rehabilitation, or expansion of the permitted facility; and
- Allows the issuance of grants under the Small Community Sewer Construction Assistance Act for planning and implementing domestic wastewater collection system assessment programs to identify conditions that may cause SSOs or interruption of service to customers due to a physical condition or defect in the system.

This analysis is drafted to the committee substitute as approved by the Natural Resources & Public Lands Subcommittee.