

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 837 Domestic Wastewater Collection System Assessment and Maintenance
SPONSOR(S): Government Accountability Committee; Natural Resources & Public Lands Subcommittee; Edwards-Walpole and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/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	12 Y, 0 N	White	Pigott
3) Government Accountability Committee	22 Y, 0 N, As CS	Moore	Williamson

SUMMARY ANALYSIS

Domestic wastewater is wastewater derived principally from dwellings, business buildings, and institutions. 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 blue star facility.

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 an indeterminate negative fiscal impact on revenues to DEP. The bill may have an insignificant 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. The bill may also have a positive fiscal impact on the private sector in being provided program eligibility for the Clean Water State Revolving Fund and the Small Community Sewer Construction Assistance Act. *See Fiscal Analysis & Impact Statement.*

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Domestic Wastewater

Present Situation

Domestic wastewater is principally derived from dwellings, business buildings, and institutions.¹ This wastewater leaves these structures through a domestic wastewater collection system² for treatment at a domestic wastewater treatment plant.³ There are approximately 1,900 domestic wastewater treatment facilities in the state serving roughly two-thirds of the state's population.⁴

Domestic wastewater treatment facilities are stationary installations that are reasonably expected to be sources of water pollution and must be operated, maintained, constructed, expanded, or modified with a permit issued by the Department of Environmental Protection (DEP).⁵ These facilities must be designed and operated to provide the level of disinfection⁶ necessary to protect public health such that the microbiological pollutants criteria are not exceeded for any receiving waters.⁷ Domestic wastewater treatment facilities that discharge to surface waters⁸ 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.⁹ NPDES permit requirements for most domestic wastewater facilities are incorporated into a DEP-issued permit.¹⁰

Each day over 1.5 billion gallons of treated wastewater effluent¹¹ and reclaimed water¹² from these facilities are disposed of through a variety of methods.¹³ Treatment requirements for disinfection are specific to the type of discharge from the facility for reuse and land application systems; ground water disposal by underground injection; ground water recharge using injection wells; surface water discharges, excluding coastal and open ocean waters; disposal to coastal and open ocean waters; or

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 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 permitted and regulated by the Department of Health.

⁵ Section 403.087(1), F.S.

⁶ Rule 62-600.200(18), F.A.C., defines "disinfection" to mean the selective destruction of pathogens in wastewater effluent, reclaimed water, and biosolids; r. 62-600.200(47), F.A.C., defines "pathogens" to mean disease-producing organisms.

⁷ Rule 62-600.440(1), F.A.C.; see ch. 62-302, F.A.C.

⁸ Section 373.019(21), F.S., defines "surface water" to mean water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs is classified as surface water when it exits from the spring onto the earth's surface. "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.

⁹ 33 U.S.C. §1342.

¹⁰ 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).

¹¹ 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.

¹² 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.

¹³ 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).

wetland discharges.¹⁴ Most domestic wastewater treatment facilities must meet either basic disinfection or high-level disinfection.¹⁵ Basic disinfection requires that the effluent contain less than 200 fecal coliforms per 100 microgram per milliliter.¹⁶ High-level disinfection essentially requires that fecal coliforms be reduced below detection.¹⁷

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).¹⁸ Factors contributing to SSOs may include:

- Build-up of solids and fats and 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 functioning properly (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.¹⁹

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.²⁰

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.²¹

After an SSO event, DEP reviews the data from the facility 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 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 facility is making and planning to implement to avoid further SSOs.²²

¹⁴ Rule 62-600.440(4), F.A.C.

¹⁵ DEP, *Ultraviolet Disinfection for Domestic Wastewater*, <https://floridadep.gov/water/domestic-wastewater/content/ultraviolet-uv-disinfection-domestic-wastewater> (last accessed Jan. 27, 2018).

¹⁶ Rules 62-600.510(1), and 62-600.440(5), F.A.C.

¹⁷ Rule 62-600.440(6), F.A.C.

¹⁸ DEP, *SSOs*, <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last accessed Jan. 26, 2018).

¹⁹ 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).

²⁰ DEP, *SSOs*, <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last accessed Jan. 26, 2018).

²¹ *Id.*

²² *Id.*

Clean Water State Revolving Fund

The Clean Water State Revolving Fund (CWSRF) program 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.²³ The United States Environmental Protection Agency (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;
- A public, private, or nonprofit entity to implement a state nonpoint source pollution management program established under section 319 of the CWA;
- A public, private, or nonprofit entity to develop and implement a conservation and management plan under section 320 of the CWA;
- A public, private, or nonprofit entity to construct, repair, or replace decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage;
- A public, private, or nonprofit entity to manage, reduce, treat, or recapture stormwater or subsurface drainage water;
- 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;
- A public, private, or nonprofit entity to develop and implement watershed projects meeting the criteria in section 122 of the CWA;
- A municipality or inter-municipal, interstate, or state agency to reduce the energy consumption needs for publicly owned treatment works;
- A public, private, or nonprofit entity for projects for reusing or recycling wastewater, stormwater, or subsurface drainage water;
- A public, private, or nonprofit entity to increase the security of publicly owned treatment works; and
- 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.²⁴

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.²⁵ The CWSRF then revolves through the repayment of principal and earned interest on outstanding loans.²⁶

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 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. In 2009,

²³ 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).

²⁴ EPA, *Learn about the CWSRF*, <https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf> (last visited Jan. 26, 2018).

²⁵ *Id.*

²⁶ EPA, *Fed Funds for Water and Wastewater Utilities*, <https://www.epa.gov/fedfunds/epa-state-revolving-funds> (last visited Jan. 16, 2018); DEP, *SRF*, <https://floridadep.gov/wra/srf> (last visited Jan. 16, 2018).

Congress authorized the CWSRF to provide further financial assistance through additional subsidization, such as grants, principal forgiveness, and negative interest rate loans.²⁷

Florida's CWSRF Implementation

Florida implements the CWSRF pursuant to s. 403.1835, F.S., and the rules promulgated in ch. 62-503, F.A.C. DEP is authorized to make loans to local government agencies,²⁸ which may pledge any revenue available to them to repay any funds borrowed.²⁹ 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.³⁰

Effect of Proposed Changes

The bill creates s. 403.1839, F.S., creating the blue star collection system assessment and maintenance program (program). 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 the term:

- “Domestic wastewater” as having the same meaning as provided in s. 367.021, F.S.;
- “Domestic wastewater collection system” as having the same meaning as provided in s. 403.866, F.S.;
- “Program” to mean the blue star collection and maintenance program; and
- “SSO” to mean the unauthorized overflow, spill, release, discharge, or diversion of untreated or partially treated domestic wastewater.

The bill provides the following legislative findings:

- Implementation of domestic wastewater collection system assessment and maintenance practices has been shown to effectively limit SSOs and the unauthorized discharge of pathogens;
- Voluntary implementation of domestic wastewater collection system assessment and maintenance practices beyond those required by law has the potential to further limit SSOs; and
- 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 or renewal certification and for demonstrating maintenance of program certification based upon the certification standards. The bill requires a utility to provide reasonable documentation of the following certification standards for program certification:

- Implementation of periodic collection system and pump station structural condition assessments and the performance of as-needed maintenance and replacements;
- Rate of reinvestment determined necessary by the utility for its collection system and pump station structural condition assessment and maintenance and replacement program;

²⁷ EPA, *Learn about the CWSRF*, <https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf> (last visited Jan. 26, 2018).

²⁸ 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.

²⁹ Section 403.1835(3)(a), F.S.

³⁰ Section 403.1835(3)(b), F.S.

- 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 provides that a program certification expires after five years. The bill requires a utility to document its implementation of the program on an annual basis with DEP and demonstrate it meets all program criteria to maintain program certification. For certification renewal, the bill requires a utility to demonstrate maintenance of program standards and progress in implementing the program.

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

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.³¹ 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.³²

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 treatment 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.³³ 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.³⁴

Basin Management Action Plans

Once a TMDL is adopted,³⁵ 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.³⁶ A BMAP must integrate appropriate management strategies available to the state through existing water quality protection programs to achieve the TMDL.³⁷ The BMAP must also include milestones for implementation and water quality improvement, and an associated water quality monitoring component

³¹ 33 U.S.C. § 1313.

³² 33 U.S.C. § 1313; *see s.* 403.067, F.S.

³³ Section 403.067(6)(b), F.S.

³⁴ Section 403.067(1), F.S.

³⁵ Section 403.067(6)(c), F.S.

³⁶ Section 403.067(7)(a)1., F.S.

³⁷ Section 403.067(7)(a)1., F.S.

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.³⁸

For point source discharges, 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. 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.³⁹

Where there is an adopted best management practice⁴⁰ (BMP) for a nonpoint source, the BMAP must require the nonpoint source to implement the BMP. The nonpoint source discharger must demonstrate compliance with the BMP or conduct water quality monitoring prescribed by DEP or water management districts (WMD) and may be subject to enforcement action for failure to implement these pollutant load reducing requirements.⁴¹

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.⁴²

The effectiveness of adopted interim measures, BMPs, or other measures, including voluntary BMPs, in achieving pollution reduction must be verified at representative sites by DEP.⁴³ Implementation of practices that are initially verified to be effective, or verified as effective by monitoring at representative sites by DEP, must be granted 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.⁴⁴

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 the utility implements and maintains a program as a certified blue star utility.

³⁸ Section 403.067(7)(a)6., F.S.

³⁹ Section 403.067(7)(b)2., F.S.

⁴⁰ Under the water quality credit trading rule, r. 62-306.200(2), F.A.C., "best management practice" is defined to mean a practice or combination of practices adopted by rule by the Department of Agriculture and Consumer Services, DEP, or applicable WMD as an effective and practicable means for reducing nutrient inputs and improving water quality, taking into account economic and technological considerations; Under the CWSRF rule, r. 62-503.200(4), F.A.C., defines "best management practice" to mean a control technique that is used for a given set of conditions to achieve water quality and water quantity enhancement at a feasible cost.

⁴¹ Sections 403.067(7)(b)g.-h., F.S.

⁴² Section 403.067(7)(c)1., F.A.C.; DEP, *BMPs*, <https://floridadep.gov/taxonomy/term/387?page=1> (last visited Jan. 31, 2018).

⁴³ Sections 403.067(7)(c)3., and (12)(b), F.S.

⁴⁴ Section 403.067(7)(c)3., F.S.

Domestic Wastewater Treatment Facility Renewal Operating Permit

Present Situation

A domestic wastewater treatment plant operating permit is issued for a term of five years.⁴⁵ An applicant may request renewal of an operating 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.⁴⁶

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 certified blue star utility 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 the annual program implementation reports demonstrating progress in the implementation of the program.

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.⁴⁷ Whoever commits such a violation is liable to the state for any damage caused and for civil penalties.⁴⁸ 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.⁴⁹ It is the Legislature's intent that the civil

⁴⁵ Section 430.087(1), F.S.; r. 62-620.320(8), F.A.C.

⁴⁶ Section 403.087(3), F.S.

⁴⁷ Section 403.161(1)(a), F.S.

⁴⁸ Section 403.161(2), F.S.; *see* s. 403.141, F.S., for civil penalties.

⁴⁹ Section 403.161(3), F.S.; ss. 775.082(3)(e) and 775.083(1)(g), F.S.

penalties and criminal fines imposed by the court be of such amount as to ensure immediate and continued compliance.⁵⁰

Effect of Proposed Changes

The bill amends s. 403.161, F.S., relating to 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 authorizes 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.

Small Community Sewer Construction Assistance Act

Present Situation

The Small Community Sewer Construction Assistance Act is a grant program established as part of the CWSRF program to assist financially disadvantaged small communities with their needs for adequate domestic wastewater facilities.⁵¹ Under the program, a financially disadvantaged small community is defined as a county, municipality, county or special district⁵² with a total population of 10,000 or less, and a per capita income (PCI) less than the state average PCI.⁵³ In 2016, the Legislature included counties and special districts as eligible entities for grants under the program if they otherwise met the definition of a financially disadvantaged small community.⁵⁴

DEP administers the grant program pursuant to rules adopted by the Environmental Regulation Commission (ERC). The ERC's rules must require that projects plan, design, construct, upgrade, or replace wastewater collection, transmission, treatment, disposal, and reuse facilities be cost-effective, environmentally sound, permissible, and implementable.⁵⁵

Projects must compete separately for planning, design and construction grants. The highest priority is given to projects that address a public health risk and projects that are included in a BMAP. The grant percentage is determined by the sponsor's affordability index and is 70, 80, or 90 percent of the loan amount up to 25 percent of the funds available during the fiscal year. All projects must receive a CWSRF loan to receive these grant funds.⁵⁶

ERC

The ERC is charged with exercising the standard-setting authority of DEP in certain circumstances.⁵⁷ 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,

⁵⁰ Section 403.161(6), F.S.

⁵¹ Section 403.1835(3)(d), and 403.1838, F.S.

⁵² Section 189.012(6), F.S., defines special district; ss. 189.012(2) and (3), F.S., define dependent special district and independent special district, respectively.

⁵³ Section 403.1838(2), F.S.

⁵⁴ Chapter 2016-55, Laws of Fla.

⁵⁵ Section 403.1838(3)(b), F.S.; *see* ch. 62-505, F.A.C.

⁵⁶ DEP, *CWSRF Program*, <https://floridadep.gov/wra/srf/content/cwsrf-program> (last visited Feb. 16, 2018).

⁵⁷ Sections 403.804, and 403.805(1), F.S.

epidemiology, geology, biology, environmental sciences, or engineering. Appointments are for four-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.⁵⁸

Rural Area of Opportunity

A rural area of opportunity (RAO) is a rural community, or a region composed of rural communities, designated by the Governor, affected adversely by an extraordinary economic event, severe or chronic distress, or a natural disaster that presents a unique economic development opportunity of regional impact.⁵⁹ The three designated RAOs are the:

- Northwest RAO, which includes Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and the City of Freeport;
- South Central RAO, which includes DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the cities of Pahokee, Belle Glade, and South Bay, and Immokalee; and
- North Central RAO, which includes Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.⁶⁰

Effect of Proposed Changes

The bill amends s. 403.1838, F.S., relating to the Small Community Sewer Construction Assistance Act, to provide grant eligibility for private, nonprofit utilities serving financially disadvantaged small communities. The bill also allows DEP to waive the population requirement for an independent special district that serves fewer than 10,000 wastewater customers, is located within a watershed with an adopted TMDL or BMAP for pollutants associated with domestic wastewater, and is wholly located within a RAO.

The bill also expands the grant program by allowing grants to be issued 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 that projects to assess wastewater collection, transmission, treatment, disposal, and reuse facilities be cost-effective, environmentally sound, permissible, and implementable.

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.

⁵⁸ Section 20.255(6), F.S.

⁵⁹ Section 288.0656(2)(d), F.S.

⁶⁰ DEO, *RAO*, <http://www.floridajobs.org/business-growth-and-partnerships/rural-and-economic-development-initiative/rural-areas-of-opportunity> (last visited Feb. 22, 2018).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

The bill may also have an indeterminate negative fiscal impact to state revenues associated with the issuances of 10-year operating permits for certified blue star facilities, because it is unknown how many facilities will qualify and apply to become a certified blue star facility. The revenue impact would be to the Permit Fee Trust Fund in DEP. This trust fund currently has recurring expenditures that are greater than revenues, and DEP has been spending down the cash balance in the fund. Any negative impact on revenues will increase the recurring deficit in the fund and will spend the cash balance more quickly.

2. Expenditures:

The bill may have an insignificant 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 the annual posting of certified blue star facilities on its website. The bill may also have a negative fiscal impact on DEP through the ERC rulemaking requirements in the bill. The fiscal impact can be absorbed within existing DEP resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have a positive fiscal impact on local governments afforded an opportunity to have penalties reduced based on the investment, maintenance, rehabilitation, or expansion of a permitted facility. Additionally, the bill may have a positive fiscal impact on certain independent special districts who are awarded grant eligibility under the Small Community Sewer Construction Assistance Act.

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 awarded 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:

None.

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, permissible, and implementable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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:

- Defined the terms domestic wastewater, domestic wastewater collection system, and SSO;
- Required DEP to adopt rules to administer the program, including certification standards for demonstrating maintenance of program certification;
- Required a utility to demonstrate that it meets all program criteria in order to maintain program certification;
- Required DEP to allow public and private, nonprofit utilities to participate in the CWSRF for any purpose of the program consistent with federal requirements;
- Provided that to have a presumption of compliance with WQS a certified blue star utility must also maintain its program certification;
- Allowed 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;
- Allowed 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;
- Allowed DEP to reduce a penalty based on the person's investment in the assessment, maintenance, rehabilitation, or expansion of the permitted facility; and

- Allowed 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.

On February 22, 2018, the Government Accountability Committee adopted two amendments and reported the bill favorable with committee substitute. The amendments:

- Provided renewal requirements for the program; and
- Allowed certain independent special districts grant eligibility under the Small Community Sewer Construction Assistance Act.

This analysis is drafted to the committee substitute passed by the Government Accountability Committee.