

26 403.161, F.S.; authorizing the department to reduce
 27 penalties based on certain system investments for
 28 permitted facilities; amending s. 403.1838, F.S.;
 29 allowing for additional recipients and uses of Small
 30 Community Sewer Construction grants; providing an
 31 effective date.

32
 33 Be It Enacted by the Legislature of the State of Florida:

34
 35 Section 1. Section 403.1839, Florida Statutes, is created
 36 to read:

37 403.1839 Blue star collection system assessment and
 38 maintenance program.-

39 (1) DEFINITIONS.-As used in this section, the term:

40 (a) "Domestic wastewater" has the same meaning as provided
 41 in s. 367.021.

42 (b) "Domestic wastewater collection system" has the same
 43 meaning as provided in s. 403.866.

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

46 (d) "Sanitary sewer overflow" means the unauthorized
 47 overflow, spill, release, discharge or diversion of untreated or
 48 partially treated domestic wastewater.

49 (2) LEGISLATIVE FINDINGS.-The Legislature finds that:

50 (a) The implementation of domestic wastewater collection

51 system assessment and maintenance practices has been shown to
52 effectively limit sanitary sewer overflows and the unauthorized
53 discharge of pathogens.

54 (b) The voluntary implementation of domestic wastewater
55 collection system assessment and maintenance practices beyond
56 those required by law has the potential to further limit
57 sanitary sewer overflows.

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

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

69 (4) APPROVAL AND STANDARDS.—

70 (a) The department shall adopt rules to administer the
71 program, including certification standards for the program, and
72 shall review and approve public and private domestic wastewater
73 utilities applying for certification under the program or
74 demonstrating maintenance of program certification pursuant to
75 paragraph (c) based upon the certification standards.

76 (b) A utility must provide reasonable documentation of the
77 following certification standards in order to be certified under
78 the program:

79 1. The implementation of periodic collection system and
80 pump station structural condition assessments and the
81 performance of as-needed maintenance and replacements.

82 2. The rate of reinvestment determined necessary by the
83 utility for its collection system and pump station structural
84 condition assessment and maintenance and replacement program.

85 3. The implementation of a program designed to limit the
86 presence of fats, roots, oils, and grease in the collection
87 system.

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

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

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

95 5. A power outage contingency plan that addresses
96 mitigation of the impacts of power outages on the utility's
97 collection system and pump stations.

98 (c) Program certifications shall expire after 5 years. A
99 utility shall document its implementation of the program on an
100 annual basis with the department and must demonstrate that the

101 utility meets all program criteria in order to maintain its
 102 program certification.

103 (5) PUBLICATION.—The department shall annually publish on
 104 its website a list of certified blue star utilities beginning on
 105 January 1, 2020.

106 (6) FEDERAL PROGRAM PARTICIPATION.—The department shall
 107 allow public and private, nonprofit utilities to participate in
 108 the Clean Water State Revolving Fund Program for any purpose of
 109 the program that is consistent with federal requirements for
 110 participating in the Clean Water State Revolving Fund Program.

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

120 Section 2. Paragraph (c) of subsection (7) of section
 121 403.067, Florida Statutes, is amended to read:

122 403.067 Establishment and implementation of total maximum
 123 daily loads.—

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

126 (c) *Best management practices.*—

127 1. The department, in cooperation with the water
128 management districts and other interested parties, as
129 appropriate, may develop suitable interim measures, best
130 management practices, or other measures necessary to achieve the
131 level of pollution reduction established by the department for
132 nonagricultural nonpoint pollutant sources in allocations
133 developed pursuant to subsection (6) and this subsection. These
134 practices and measures may be adopted by rule by the department
135 and the water management districts and, where adopted by rule,
136 shall be implemented by those parties responsible for
137 nonagricultural nonpoint source pollution.

138 2. The Department of Agriculture and Consumer Services may
139 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54
140 suitable interim measures, best management practices, or other
141 measures necessary to achieve the level of pollution reduction
142 established by the department for agricultural pollutant sources
143 in allocations developed pursuant to subsection (6) and this
144 subsection or for programs implemented pursuant to paragraph
145 (12)(b). These practices and measures may be implemented by
146 those parties responsible for agricultural pollutant sources and
147 the department, the water management districts, and the
148 Department of Agriculture and Consumer Services shall assist
149 with implementation. In the process of developing and adopting
150 rules for interim measures, best management practices, or other

151 | measures, the Department of Agriculture and Consumer Services
152 | shall consult with the department, the Department of Health, the
153 | water management districts, representatives from affected
154 | farming groups, and environmental group representatives. Such
155 | rules must also incorporate provisions for a notice of intent to
156 | implement the practices and a system to assure the
157 | implementation of the practices, including site inspection and
158 | recordkeeping requirements.

159 | 3. Where interim measures, best management practices, or
160 | other measures are adopted by rule, the effectiveness of such
161 | practices in achieving the levels of pollution reduction
162 | established in allocations developed by the department pursuant
163 | to subsection (6) and this subsection or in programs implemented
164 | pursuant to paragraph (12) (b) must be verified at representative
165 | sites by the department. The department shall use best
166 | professional judgment in making the initial verification that
167 | the best management practices are reasonably expected to be
168 | effective and, where applicable, must notify the appropriate
169 | water management district or the Department of Agriculture and
170 | Consumer Services of its initial verification before the
171 | adoption of a rule proposed pursuant to this paragraph.
172 | Implementation, in accordance with rules adopted under this
173 | paragraph, of practices that have been initially verified to be
174 | effective, or verified to be effective by monitoring at
175 | representative sites, by the department, shall provide a

176 | presumption of compliance with state water quality standards and
177 | release from the provisions of s. 376.307(5) for those
178 | pollutants addressed by the practices, and the department is not
179 | authorized to institute proceedings against the owner of the
180 | source of pollution to recover costs or damages associated with
181 | the contamination of surface water or groundwater caused by
182 | those pollutants. Research projects funded by the department, a
183 | water management district, or the Department of Agriculture and
184 | Consumer Services to develop or demonstrate interim measures or
185 | best management practices shall be granted a presumption of
186 | compliance with state water quality standards and a release from
187 | the provisions of s. 376.307(5). The presumption of compliance
188 | and release is limited to the research site and only for those
189 | pollutants addressed by the interim measures or best management
190 | practices. Eligibility for the presumption of compliance and
191 | release is limited to research projects on sites where the owner
192 | or operator of the research site and the department, a water
193 | management district, or the Department of Agriculture and
194 | Consumer Services have entered into a contract or other
195 | agreement that, at a minimum, specifies the research objectives,
196 | the cost-share responsibilities of the parties, and a schedule
197 | that details the beginning and ending dates of the project.

198 | 4. Where water quality problems are demonstrated, despite
199 | the appropriate implementation, operation, and maintenance of
200 | best management practices and other measures required by rules

201 adopted under this paragraph, the department, a water management
202 district, or the Department of Agriculture and Consumer
203 Services, in consultation with the department, shall institute a
204 reevaluation of the best management practice or other measure.
205 Should the reevaluation determine that the best management
206 practice or other measure requires modification, the department,
207 a water management district, or the Department of Agriculture
208 and Consumer Services, as appropriate, shall revise the rule to
209 require implementation of the modified practice within a
210 reasonable time period as specified in the rule.

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

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

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

231 7. The department must provide a domestic wastewater
232 utility with a presumption of compliance with state water
233 quality standards for pathogens when the utility demonstrates a
234 history of compliance with wastewater disinfection requirements
235 incorporated in the utility's operating permit for any discharge
236 into the impaired surface water, and the utility implements and
237 maintains a program as a certified blue star utility in
238 accordance with s. 403.1839.

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

241 403.087 Permits; general issuance; denial; revocation;
242 prohibition; penalty.—

243 (11) Subject to the permit duration limits for a utility
244 permitted pursuant to s. 403.0885, a blue star utility certified
245 pursuant to s. 403.1839 shall be issued a 10-year permit for the
246 same fee and under the same conditions as a 5-year permit upon
247 approval of its application for permit renewal by the department
248 if the certified blue star utility demonstrates that it:

249 (a) Is in compliance with any consent order or an
250 accompanying administrative order to its permit;

251 (b) Does not have any pending enforcement action against
 252 it by the United States Environmental Protection Agency, the
 253 department, or a local program; and

254 (c) If applicable, has submitted annual program
 255 implementation reports demonstrating progress in the
 256 implementation of the program.

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

260 403.161 Prohibitions, violation, penalty, intent.—

261 (6) Notwithstanding any other law, the department may
 262 reduce the amount of a penalty based on the person's investment
 263 in the assessment, maintenance, rehabilitation, or expansion of
 264 the permitted facility.

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

267 403.1838 Small Community Sewer Construction Assistance
 268 Act.—

269 (3) (a) In accordance with rules adopted by the
 270 Environmental Regulation Commission under this section, the
 271 department may provide grants, from funds specifically
 272 appropriated for this purpose, to financially disadvantaged
 273 small communities and to private, nonprofit utilities serving
 274 financially disadvantaged small communities for up to 100
 275 percent of the costs of planning, assessing, designing,

276 constructing, upgrading, or replacing wastewater collection,
277 transmission, treatment, disposal, and reuse facilities,
278 including necessary legal and administrative expenses. Grants
279 issued pursuant to this section may also be used for planning
280 and implementing domestic wastewater collection system
281 assessment programs to identify conditions that may cause
282 sanitary sewer overflows or interruption of service to customers
283 due to a physical condition or defect in the system.

284 (b) The rules of the Environmental Regulation Commission
285 must:

286 1. Require that projects to plan, assess, design,
287 construct, upgrade, or replace wastewater collection,
288 transmission, treatment, disposal, and reuse facilities be cost-
289 effective, environmentally sound, permittable, and
290 implementable.

291 2. Require appropriate user charges, connection fees, and
292 other charges sufficient to ensure the long-term operation,
293 maintenance, and replacement of the facilities constructed under
294 each grant.

295 3. Require grant applications to be submitted on
296 appropriate forms with appropriate supporting documentation, and
297 require records to be maintained.

298 4. Establish a system to determine eligibility of grant
299 applications.

300 5. Establish a system to determine the relative priority

301 of grant applications. The system must consider public health
302 protection and water pollution abatement.

303 6. Establish requirements for competitive procurement of
304 engineering and construction services, materials, and equipment.

305 7. Provide for termination of grants when program
306 requirements are not met.

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