

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 105 Domestic Wastewater Collection System Assessment and Maintenance  
**SPONSOR(S):** Agriculture & Natural Resources Subcommittee, Jacobs and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 286

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Melkun	Shugar
2) Agriculture & Natural Resources Appropriations Subcommittee	7 Y, 0 N	White	Pigott
3) State Affairs Committee			

### SUMMARY ANALYSIS

Domestic wastewater is wastewater derived from dwellings, business buildings, and institutions. Wastewater is transported from these structures to a domestic wastewater treatment plant for processing through a domestic wastewater collection system. 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 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 unauthorized discharges 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 by providing program eligibility for the Clean Water State Revolving Fund 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 derived from dwellings, business buildings, and institutions.<sup>1</sup> Wastewater is transported from these structures to a domestic wastewater treatment plant for processing through a domestic wastewater collection system.<sup>2</sup> There are approximately 2,000 domestic wastewater treatment facilities in the state serving roughly two-thirds of the state's population.<sup>3</sup>

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).<sup>4</sup> These facilities must be designed and operated to provide the disinfection<sup>5</sup> necessary to protect public health.<sup>6</sup> Domestic wastewater treatment facilities that discharge to surface waters<sup>7</sup> 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.<sup>8</sup> NPDES permit requirements for most domestic wastewater facilities are incorporated into a DEP-issued permit.<sup>9</sup>

Each day over 1.5 billion gallons of treated wastewater effluent<sup>10</sup> and reclaimed water<sup>11</sup> are disposed of from these facilities.<sup>12</sup> Methods of disposal include reuse and land application systems, groundwater disposal by underground injection, groundwater recharge using injection wells, surface water discharges, disposal to coastal and open ocean waters, or wetland discharges.<sup>13</sup> Most domestic

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<sup>1</sup> Section 367.021(5), F.S.; r. 62-600.200(21), F.A.C.

<sup>2</sup> 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; s. 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.

<sup>3</sup> DEP, *General Facts and Statistics about Wastewater in Florida*, available at <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Jan. 16, 2019); the remainder of the state is served by on-site sewage and disposal systems permitted and regulated by the Department of Health.

<sup>4</sup> Section 403.087(1), F.S.

<sup>5</sup> 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.

<sup>6</sup> Rule 62-600.200(18), F.A.C.; see ch. 62-302, F.A.C.

<sup>7</sup> 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; s. 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.

<sup>8</sup> 33 U.S.C. §1342.

<sup>9</sup> Section 403.0885, F.S.; ch. 62-620, F.A.C.; DEP, *Wastewater Permitting*, available at <https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting> (last visited Jan. 16, 2019); DEP, *Types of Permits*, available at <http://flwaterpermits.com/typesofpermits.html> (last visited Jan. 16, 2019).

<sup>10</sup> 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.

<sup>11</sup> 62-600.200(54), F.A.C. Reclaimed water means water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.

<sup>12</sup> DEP, *General Facts and Statistics about Wastewater in Florida*, available at <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Jan. 16, 2019).

<sup>13</sup> Rule 62-600.440(4), F.A.C.

wastewater treatment facilities must meet either basic disinfection or high-level disinfection requirements, dependent upon the type of discharge.<sup>14</sup> Basic disinfection requires the effluent to contain less than 200 fecal coliforms per 100 microgram per milliliter,<sup>15</sup> while high-level disinfection requires fecal coliforms to be reduced below detection.<sup>16</sup>

### *Sanitary Sewer Overflows*

Domestic wastewater treatment facilities are designed to safely and properly collect and manage a specified wastewater capacity; however, 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).<sup>17</sup> Factors contributing to SSOs may include:

- Build-up of solids, fats, oils and greases in the wastewater collection system which impedes flow;
- Too much rainfall infiltrating the system through leaky infrastructure, roof drains, or poorly connected wastewater lines;
- 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 pipe joints no longer match, buildup of sediment and other material causing pipes to break or collapse); and
- A deteriorating or aging system.<sup>18</sup>

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 water areas where there is the risk of human exposure.<sup>19</sup>

SSOs can be reduced by:

- 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.<sup>20</sup>

After an SSO event, DEP reviews the data from the facility to assess the overall impact to the environment. To determine the impact, DEP looks at how serious the violation was, whether this was a first-time or 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 considers the severity of the rain event (e.g., a hurricane or 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, then DEP may consider additional training to prevent similar errors from occurring in the future. In some circumstances, DEP will meet with utilities to discuss infrastructure repairs and process improvements needed to avoid further SSOs.<sup>21</sup>

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<sup>14</sup> DEP, *Ultraviolet Disinfection for Domestic Wastewater*, available at <https://floridadep.gov/water/domestic-wastewater/content/ultraviolet-uv-disinfection-domestic-wastewater> (last visited Jan. 16, 2019).

<sup>15</sup> Rules 62-600.510(1), and 62-600.440(5), F.A.C.

<sup>16</sup> Rule 62-600.440(6), F.A.C.

<sup>17</sup> DEP, *Sanitary Sewer Overflows*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last visited Jan. 16, 2019).

<sup>18</sup> DEP, *Preventing SSOs*, available at <https://floridadep.gov/sites/default/files/preventing-sanitary-sewer-overflows.pdf> (last visited Jan. 16, 2019); DEP, *SSOs*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last visited Jan. 16, 2019).

<sup>19</sup> DEP, *SSOs*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last visited Jan. 16, 2019).

<sup>20</sup> *Id.*

<sup>21</sup> *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.<sup>22</sup> The United States Environmental Protection Agency (EPA) classifies 11 types of projects which 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;
- A public, private, or nonprofit entity to implement a state nonpoint source pollution management program;
- A public, private, or nonprofit entity to develop and implement a conservation and management plan;
- 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;
- 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.<sup>23</sup>

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. The United States EPA provides grants to the state to capitalize on state CWSRF loan programs. The states then contribute an additional 20 percent to match the federal grants.<sup>24</sup> The CWSRF then revolves through the repayment of principal and earned interest on outstanding loans.<sup>25</sup>

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,

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<sup>22</sup> 33 USC §1383; United States EPA, *CWSRF*, available at <https://www.epa.gov/cwsrf> (last visited Jan. 16, 2019); United States EPA, *Learn about the CWSRF*, available at <https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf> (last visited Jan. 16, 2019).

<sup>23</sup> United States EPA, *Learn about the CWSRF*, available at <https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf> (last visited Jan. 16, 2019).

<sup>24</sup> *Id.*

<sup>25</sup> DEP, *SRF*, available at <https://floridadep.gov/wra/srf> (last visited Jan. 16, 2019).

Congress authorized the CWSRF to provide further financial assistance through additional subsidization, such as grants, principal forgiveness, and negative interest rate loans.<sup>26</sup>

### *Florida's CWSRF Implementation*

Florida implements the CWSRF pursuant to s. 403.1835, F.S., and ch. 62-503, F.A.C. DEP is authorized to make loans to local government agencies,<sup>27</sup> which may pledge any revenue available to them to repay any funds borrowed.<sup>28</sup> 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.<sup>29</sup>

### 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 discharges 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 system assessment and maintenance program; and
- “SSO” to mean the unauthorized overflow, spill, release, discharge, or diversion of untreated or partially treated domestic wastewater.

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

- 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 the collection system and pump station structural condition assessment and maintenance and replacement program;
- 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 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 specifies that a program certification expires after five years. The bill requires a utility to document the implementation of the program on an annual basis with DEP and demonstrate it meets all

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<sup>26</sup> United States EPA, *Learn about the CWSRF*, available at <https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf> (last visited Jan. 16, 2019).

<sup>27</sup> 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.

<sup>28</sup> Section 403.1835(3)(a), F.S.

<sup>29</sup> Section 403.1835(3)(b), F.S.

program criteria to maintain certification. For certification renewal, the bill requires a utility to demonstrate they maintained program standards and made progress in implementing the program.

Beginning January 1, 2021, the bill requires DEP to publish annually on a website the list of certified blue star utilities. In addition, 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.<sup>30</sup> The CWA requires states to develop lists of water bodies that do not meet WQS (called 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, which serves as the maximum allowable amount of the pollutants the water body can receive while maintaining the WQS.<sup>31</sup>

#### *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, reduce pollutants and achieve WQS.<sup>32</sup> The allocation must consider a cost-effective approach coordinated between contributing point and nonpoint sources of pollution for impaired water bodies and may include the opportunity to implement through nonregulatory and incentive-based programs.<sup>33</sup>

#### *Basin Management Action Plans*

Once a TMDL is adopted,<sup>34</sup> DEP may develop and implement a basin management action plan (BMAP), which is the restoration plan for the watersheds and basins connected to the impaired water body.<sup>35</sup> A BMAP must integrate appropriate management strategies available to the state through existing water quality protection programs to achieve the TMDL.<sup>36</sup> The BMAP must also include milestones for implementation and water quality improvement, and an associated water quality monitoring component which determines whether there has been reasonable progress in pollutant load reductions. An assessment of progress must be conducted every five years, and revisions to the plan must be made as appropriate.<sup>37</sup>

For point source discharges, any management strategies and pollutant reduction requirements associated with a TMDL must be incorporated into 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.<sup>38</sup>

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<sup>30</sup> 33 U.S.C. § 1313.

<sup>31</sup> 33 U.S.C. § 1313; *see s.* 403.067, F.S.

<sup>32</sup> Section 403.067(6)(b), F.S.

<sup>33</sup> Section 403.067(1), F.S.

<sup>34</sup> Section 403.067(6)(c), F.S.

<sup>35</sup> Section 403.067(7)(a)1., F.S.

<sup>36</sup> *Id.*

<sup>37</sup> Section 403.067(7)(a)6., F.S.

<sup>38</sup> Section 403.067(7)(b)2., F.S.

Where there is an adopted best management practice<sup>39</sup> (BMP) for a nonpoint source, the BMAP must require the nonpoint source to implement the BMP. The nonpoint source discharger must either 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 reduction requirements.<sup>40</sup>

### *BMPs 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.<sup>41</sup>

The effectiveness of adopted interim measures, BMPs, or other measures, in achieving pollution reduction must be verified at representative sites by DEP.<sup>42</sup> 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. 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.<sup>43</sup>

### 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 defensible expectation 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.

## **Domestic Wastewater Treatment Facility Renewal Operating Permit**

### Present Situation

A domestic wastewater treatment plant operating permit is issued for a term of five years.<sup>44</sup> An applicant may request renewal of an operating permit for a term of up to ten 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 into 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 the United States EPA, DEP, or an approved local program;

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<sup>39</sup> Rule 62-306.200(2), F.A.C., "best management practices (BMPs)" 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; r. 62-503.200(4), F.A.C., defines "best management practice" to mean a control technique used for a given set of conditions to achieve water quality and water quantity enhancement at a feasible cost.

<sup>40</sup> Sections 403.067(7)(b)g., and 403.067(7)(b)h., F.S.

<sup>41</sup> Section 403.067(7)(c)1., F.S.; DEP, *BMPs*, available at <https://floridadep.gov/taxonomy/term/387?page=1> (last visited Jan. 16, 2019).

<sup>42</sup> Sections 403.067(7)(c)3., and 403.067(12)(b), F.S.

<sup>43</sup> Section 403.067(7)(c)3., F.S.

<sup>44</sup> Section 403.087(1), F.S.; r. 62-620.320(8), F.A.C.

- 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 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 the 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 it is not exceeding the permitted capacity and is in substantial compliance.<sup>45</sup>

### 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 ten-year operating permit. The bill requires a certified blue star utility pursuant to s. 403.1839, F.S., to be issued a ten-year permit for the same fee and under the same conditions as a five-year permit upon approval of the application for permit renewal by DEP, if the certified blue star utility demonstrates it:

- Is in compliance with any consent order or an accompanying administrative order to the permit;
- Does not have any pending enforcement action against it by the United States 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 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.<sup>46</sup> Whoever commits such a violation is liable to the state for any damage caused and for civil penalties.<sup>47</sup> 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.<sup>48</sup> It is the Legislature's intent the civil penalties and criminal fines imposed by the court be of such amount as to ensure immediate and continued compliance.<sup>49</sup>

#### Effect of Proposed Changes

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

The bill also creates s. 403.1839(7), F.S., providing that when 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.

<sup>45</sup> Section 403.087(3), F.S.

<sup>46</sup> Section 403.161(1)(a), F.S.

<sup>47</sup> Section 403.161(2), F.S.; *see* s. 403.141, F.S., for civil penalties.

<sup>48</sup> Section 403.161(3), F.S.; ss. 775.082(3)(e) and 775.083(1)(g), F.S.

<sup>49</sup> Section 403.161(6), F.S.



## 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.<sup>50</sup> Under the program, a financially disadvantaged small community is defined as a county, municipality, or special district<sup>51</sup> with a total population of 10,000 or less, and a per capita income (PCI) less than the state average PCI.<sup>52</sup> In 2016, the Legislature included counties and special districts as eligible entities for grants under the program if they met the definition of a financially disadvantaged small community.<sup>53</sup>

DEP administers the grant program pursuant to rules adopted by the Environmental Regulation Commission (ERC). The ERC's rules require that projects to plan, design, construct, upgrade, or replace wastewater collection, transmission, treatment, disposal, and reuse facilities be cost-effective, environmentally sound, permissible, and implementable.<sup>54</sup>

Projects must compete separately for planning, design, and construction grants. The highest priority is given to projects that address a public health risk and 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, with a maximum of up to 25 percent of the funds available during the fiscal year. All projects must receive a CWSRF loan to receive these grant funds.<sup>55</sup>

### *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 and 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.<sup>56</sup> 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.<sup>57</sup>

### Effect of Proposed Changes

The bill amends s. 403.1838, F.S., to provide grant eligibility to 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

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<sup>50</sup> Sections 403.1835(3)(d), and 403.1838, F.S.

<sup>51</sup> Section 189.012(6), F.S., defines "special district"; ss. 189.012(2) and 189.012(3), F.S., define "dependent special district" and "independent special district", respectively.

<sup>52</sup> Section 403.1838(2), F.S.

<sup>53</sup> Chapter 2016-55, Laws of Fla.

<sup>54</sup> Section 403.1838(3)(b), F.S.; see ch. 62-505, F.A.C.

<sup>55</sup> DEP, *CWSRF Program*, available at <https://floridadep.gov/wra/srf/content/cwsrf-program> (last visited Jan. 16, 2019).

<sup>56</sup> Section 288.0656(2)(d), F.S.

<sup>57</sup> Florida Department of Economic Opportunity, *RAO*, available at <http://www.floridajobs.org/business-growth-and-partnerships/rural-and-economic-development-initiative/rural-areas-of-opportunity> (last visited Jan. 16, 2019).

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 to allow 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 requires DEP to adopt rules to administer the program, including the certification standards.

**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, 2019.

**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 because of the potential for reduced penalties related to SSOs at certified blue star facilities, as well as an opportunity for reduced penalties for any person who invests, maintains, rehabilitates, or expands a permitted facility.

The bill may also have an indeterminate negative fiscal impact to state revenues due to the issuances of ten-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 the website. The bill may also have a negative fiscal impact on DEP through 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. Implementing the requirements to become a blue star utility may be costly on the front end, but the benefits of certification (e.g., a stitch in time approach, ten-year permit renewal, the defensible expectation 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. Implementing the requirements to become a certified blue star utility may be costly on the front end, but the benefits of certification (e.g., a stitch in time approach, ten-year operating permit renewal, defensible expectation of compliance with WQS, reduced penalties) may eventually outweigh these costs. Additionally, the bill may have a positive fiscal impact on 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 due to the opportunity to have the 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 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. DEP possesses sufficient rulemaking authority to adopt rules to comply with these statutory changes.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 21, 2019, the Agriculture and Natural Resources Subcommittee adopted a strike-all amendment and reported the bill favorable with committee substitute. The amendment changed the rulemaking authority from the ERC to DEP. The amendment also clarifies that nonprofit utilities serving financially disadvantaged small communities are eligible for grants under the Small Community Sewer Construction Assistance Act.

This analysis is drafted to the committee substitute passed by the Agriculture and Natural Resources Subcommittee.