

1 A bill to be entitled
2 An act relating to domestic wastewater collection
3 system assessment and maintenance; creating s.
4 403.1839, F.S.; providing definitions; providing
5 legislative findings; establishing the Blue Star
6 Collection System Assessment and Maintenance Program
7 and providing its purpose; requiring the Department of
8 Environmental Protection to adopt rules and review and
9 approve program applications for certification;
10 specifying the documentation utilities must submit to
11 qualify for certification; providing for certification
12 expiration and renewal; requiring the department to
13 publish an annual list of certified blue star
14 utilities; requiring the department to allow public
15 and nonprofit utilities to participate in the Clean
16 Water State Revolving Fund Program under certain
17 conditions; authorizing the department to reduce
18 penalties for sanitary sewer overflows at certified
19 utilities and for investments in certain assessment
20 and maintenance activities; amending s. 403.067, F.S.;
21 creating a defensible expectation of compliance with
22 certain water quality standards for certified
23 utilities; amending s. 403.087, F.S.; requiring the
24 department to issue extended operating permits to
25 certified utilities under certain conditions; amending

26 s. 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 authorizing additional recipients and uses of Small
 30 Community Sewer Construction Assistance Act grants;
 31 providing an effective date.

32

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

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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 in s.
 41 367.021.

42 (b) "Domestic wastewater collection system" has the same
 43 meaning as 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
 48 or 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 the certification standards for the program
72 in paragraph (b), and shall review and approve public and
73 private domestic wastewater utilities that apply for
74 certification or renewal under the program and that demonstrate
75 maintenance of program certification pursuant to paragraph (c)

76 based upon the certification standards.

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

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

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

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

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

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

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

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

99 (c) Program certifications shall expire after 5 years. A
100 utility shall document its implementation of the program on an

101 annual basis with the department and must demonstrate that the
102 utility meets all program standards in order to maintain its
103 program certification. The approval of an application for
104 renewal certification must be based on the utility demonstrating
105 maintenance of program standards. A utility applying for renewal
106 certification must demonstrate maintenance of program standards
107 and progress in implementing the program.

108 (5) PUBLICATION.—The department shall annually publish on
109 its website a list of certified blue star utilities beginning on
110 January 1, 2021.

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

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

125 Section 2. Paragraph (c) of subsection (7) of section

126 | 403.067, Florida Statutes, is amended to read:

127 | 403.067 Establishment and implementation of total maximum
128 | daily loads.—

129 | (7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND
130 | IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

131 | (c) *Best management practices*.—

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

143 | 2. The Department of Agriculture and Consumer Services may
144 | develop and adopt by rule pursuant to ss. 120.536(1) and 120.54
145 | suitable interim measures, best management practices, or other
146 | measures necessary to achieve the level of pollution reduction
147 | established by the department for agricultural pollutant sources
148 | in allocations developed pursuant to subsection (6) and this
149 | subsection or for programs implemented pursuant to paragraph
150 | (12) (b). These practices and measures may be implemented by

151 those parties responsible for agricultural pollutant sources and
152 the department, the water management districts, and the
153 Department of Agriculture and Consumer Services shall assist
154 with implementation. In the process of developing and adopting
155 rules for interim measures, best management practices, or other
156 measures, the Department of Agriculture and Consumer Services
157 shall consult with the department, the Department of Health, the
158 water management districts, representatives from affected
159 farming groups, and environmental group representatives. Such
160 rules must also incorporate provisions for a notice of intent to
161 implement the practices and a system to assure the
162 implementation of the practices, including site inspection and
163 recordkeeping requirements.

164 3. When ~~where~~ interim measures, best management practices,
165 or other measures are adopted by rule, the effectiveness of such
166 practices in achieving the levels of pollution reduction
167 established in allocations developed by the department pursuant
168 to subsection (6) and this subsection or in programs implemented
169 pursuant to paragraph (12)(b) must be verified at representative
170 sites by the department. The department shall use best
171 professional judgment in making the initial verification that
172 the best management practices are reasonably expected to be
173 effective and, where applicable, must notify the appropriate
174 water management district or the Department of Agriculture and
175 Consumer Services of its initial verification before the

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

201 the cost-share responsibilities of the parties, and a schedule
202 that details the beginning and ending dates of the project.

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

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

226 confidentiality specified by this subparagraph for such records
227 is maintained.

228 6. ~~The provisions of~~ Subparagraphs 1. and 2. do not
229 preclude the department or water management district from
230 requiring compliance with water quality standards or with
231 current best management practice requirements set forth in any
232 applicable regulatory program authorized by law for the purpose
233 of protecting water quality. Additionally, subparagraphs 1. and
234 2. are applicable only to the extent that they do not conflict
235 with any rules adopted by the department that are necessary to
236 maintain a federally delegated or approved program.

237 7. For the sole purpose of establishing a total maximum
238 daily load for pathogens in a surface water, the department must
239 provide a domestic wastewater utility with a defensible
240 expectation of compliance with state water quality standards for
241 fecal indicator bacteria when the utility implements and
242 maintains a program as a certified blue star utility in
243 accordance with s. 403.1839 and demonstrates a history of
244 compliance with wastewater disinfection requirements
245 incorporated in the utility's operating permit for any discharge
246 into the impaired surface water.

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

249 403.087 Permits; general issuance; denial; revocation;
250 prohibition; penalty.—

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

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

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

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

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

268 403.161 Prohibitions, violation, penalty, intent.—

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

273 Section 5. Subsection (2) and paragraphs (a) and (b) of
 274 subsection (3) of section 403.1838, Florida Statutes, are
 275 amended to read:

276 403.1838 Small Community Sewer Construction Assistance
 277 Act.—
 278 (2) The department shall use funds specifically
 279 appropriated to award grants under this section to assist
 280 financially disadvantaged small communities with their needs for
 281 adequate sewer facilities. The department may use funds
 282 specifically appropriated to award grants under this section to
 283 assist nonprofit utilities providing wastewater services to
 284 financially disadvantaged small communities. For purposes of
 285 this section, the term "financially disadvantaged small
 286 community" means a county, municipality, or special district
 287 that has a population of 10,000 or fewer, according to the
 288 latest decennial census, and a per capita annual income less
 289 than the state per capita annual income as determined by the
 290 United States Department of Commerce. For purposes of this
 291 subsection, the term "special district" has the same meaning as
 292 provided in s. 189.012 and includes only those special districts
 293 whose public purpose includes water and sewer services, utility
 294 systems and services, or wastewater systems and services. The
 295 department may waive the population requirement for an
 296 independent special district that serves fewer than 10,000
 297 wastewater customers, is located within a watershed with an
 298 adopted total maximum daily load or basin management action plan
 299 for pollutants associated with domestic wastewater pursuant to
 300 s. 403.067, and is wholly located within a rural area of

301 opportunity as defined in s. 288.0656.

302 (3) (a) In accordance with rules adopted by the department
303 ~~Environmental Regulation Commission~~ under this section, the
304 department may provide grants, from funds specifically
305 appropriated for this purpose, to financially disadvantaged
306 small communities and to nonprofit utilities serving financially
307 disadvantaged small communities for up to 100 percent of the
308 costs of planning, assessing, designing, constructing,
309 upgrading, or replacing wastewater collection, transmission,
310 treatment, disposal, and reuse facilities, including necessary
311 legal and administrative expenses. Grants issued pursuant to
312 this section may also be used for planning and implementing
313 domestic wastewater collection system assessment and maintenance
314 programs to identify conditions that may cause sanitary sewer
315 overflows or interruption of service to customers due to a
316 physical condition or defect in the system.

317 (b) The rules of the department ~~Environmental Regulation~~
318 ~~Commission~~ must:

319 1. Require that projects to plan, assess, design,
320 construct, upgrade, or replace wastewater collection,
321 transmission, treatment, disposal, and reuse facilities be cost-
322 effective, environmentally sound, permittable, and
323 implementable.

324 2. Require appropriate user charges, connection fees, and
325 other charges sufficient to ensure the long-term operation,

326 maintenance, and replacement of the facilities constructed under
327 each grant.

328 3. Require grant applications to be submitted on
329 appropriate forms with appropriate supporting documentation, and
330 require records to be maintained.

331 4. Establish a system to determine eligibility of grant
332 applications.

333 5. Establish a system to determine the relative priority
334 of grant applications. The system must consider public health
335 protection and water pollution abatement.

336 6. Establish requirements for competitive procurement of
337 engineering and construction services, materials, and equipment.

338 7. Provide for termination of grants when program
339 requirements are not met.

340 Section 6. This act shall take effect July 1, 2019.