

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.

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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 to fully implement its collection system and pump
85 station structural condition assessment and maintenance and
86 replacement program.

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

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

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

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

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

100 (c) Program certifications shall expire after 5 years. A

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

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

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

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

126 Section 2. Paragraph (c) of subsection (7) of section
 127 403.067, Florida Statutes, is amended to read:

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

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

132 (c) *Best management practices.*—

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

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

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

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

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

201 agreement that, at a minimum, specifies the research objectives,
202 the cost-share responsibilities of the parties, and a schedule
203 that details the beginning and ending dates of the project.

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

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

226 department or any water management district provided that the
227 confidentiality specified by this subparagraph for such records
228 is maintained.

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

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

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

250 403.087 Permits; general issuance; denial; revocation;

251 prohibition; penalty.—

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

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

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

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

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

269 403.161 Prohibitions, violation, penalty, intent.—

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

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

276 amended to read:

277 403.1838 Small Community Sewer Construction Assistance
278 Act.—

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

301 s. 403.067, and is wholly located within a rural area of
302 opportunity as defined in s. 288.0656.

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

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

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

325 2. Require appropriate user charges, connection fees, and

326 other charges sufficient to ensure the long-term operation,
327 maintenance, and replacement of the facilities constructed under
328 each grant.

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

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

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

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

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

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