

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Environment and Natural Resources

BILL: CS/SB 1382

INTRODUCER: Environment and Natural Resources Committee and Senator Albritton

SUBJECT: Environmental Resource Management

DATE: January 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rogers	Rogers	EN	Fav/CS
2.			AEG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1382 authorizes basin management action plans (plans that address water quality on a basin-wide level, BMAPs) to include cooperative agricultural regional water quality improvements (agricultural element) and cooperative urban, suburban, commercial, or regional water quality improvements (nonagricultural element), in addition to existing strategies such as best management practices and interim measures. These agricultural and nonagricultural elements shall be implemented through a cost-sharing program and may be included in a BMAP during the 5-year update.

The bill requires adoption of nonpoint source best management practices (BMPs), interim measures, or other measures adopted by rule within 5 years of adoption of the BMAP or BMAP amendment.

The bill directs the Department of Environmental Protection (DEP), the Department of Agriculture and Consumer Services (DACS), and the Institute of Food and Agricultural Sciences (IFAS) of the University of Florida to address certain issues related to enhancing BMPs and the agricultural element.

The bill creates a nutrient reduction cost-share program and requires DEP to prioritize certain projects. DEP must submit an annual report to the Governor and Legislature regarding the projects funded by this program.

The bill creates a definition of “rural homesteads,” which would be parcels of 50 acres or less that act as noncommercial homesites. These parcels would not be subject to the nonpoint source requirements in the BMAP unless they were classified as bona fide agricultural lands.

The bill prohibits local governments from providing legal rights to any plant, animal, body of water, or other part of the natural environment unless otherwise specifically authorized by state law or the State Constitution.

II. Present Situation:

Water Quality and Nutrients

Phosphorus and nitrogen are naturally present in water and are essential nutrients for the healthy growth of plant and animal life. The correct balance of both nutrients is necessary for a healthy ecosystem; however, excessive nitrogen and phosphorus can cause significant water quality problems.

Phosphorus and nitrogen are derived from natural and human-made sources. Natural inputs include the atmosphere, soils, and the decay of plants and animals. Human-made sources include sewage disposal systems (wastewater treatment facilities and septic systems), overflows of storm and sanitary sewers (untreated sewage), agricultural production and irrigation practices, and stormwater runoff.¹

Excessive nutrient loads may result in harmful algal blooms, nuisance aquatic weeds, and the alteration of the natural community of plants and animals. Dense, harmful algal blooms can also cause human health problems, fish kills, problems for water treatment plants, and impairment of the aesthetics and taste of waters. Growth of nuisance aquatic weeds tends to increase in nutrient-enriched waters, which can impact recreational activities.²

Total Maximum Daily Loads

A total maximum daily load (TMDL), which must be adopted by rule, is a scientific determination of the maximum amount of a given pollutant that can be absorbed by a waterbody and still meet water quality standards.³ Waterbodies or sections of waterbodies that do not meet the established water quality standards are deemed impaired. Pursuant to the federal Clean Water Act, DEP is required to establish a TMDL for impaired waterbodies.⁴ A TMDL for an impaired waterbody is defined as the sum of the individual waste load allocations for point sources and the load allocations for nonpoint sources and natural background.⁵ Point sources are discernible,

¹ U.S. Environmental Protection Agency (EPA), *Sources and Solutions*, <https://www.epa.gov/nutrientpollution/sources-and-solutions> (last visited Dec. 2, 2019).

² EPA, *The Problem*, <https://www.epa.gov/nutrientpollution/problem> (last visited Dec. 2, 2019).

³ DEP, *Total Maximum Daily Loads Program*, <https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program> (last visited Dec. 2, 2019).

⁴ Section 403.067(1), F.S.

⁵ Section 403.031(21), F.S.

confined, and discrete conveyances including pipes, ditches, and tunnels. Nonpoint sources are unconfined sources that include runoff from agricultural lands or residential areas.⁶

Basin Management Action Plans and Best Management Practices

DEP is the lead agency in coordinating the development and implementation of TMDLs.⁷ Basin management action plans (BMAPs) are one of the primary mechanisms DEP uses to achieve TMDLs. BMAPs are plans that address the entire pollution load, including point and nonpoint discharges, for a watershed. BMAPs generally include:

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Best management practices (BMPs) and non-regulatory and incentive-based programs, including: cost sharing, waste minimization, pollution prevention, agreements, and public education;
- Public works projects, including capital facilities; and
- Land acquisition.⁸

DEP may establish a BMAP as part of the development and implementation of a TMDL for a specific waterbody. First, the BMAP equitably allocates pollutant reductions to individual basins, to all basins as a whole, or to each identified point source or category of nonpoint sources.⁹ Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations. The BMAP development process provides an opportunity for local stakeholders, local government and community leaders, and the public to collectively determine and share water quality cleanup responsibilities.¹⁰ BMAPs are adopted by secretarial order.¹¹

BMAPs must include milestones for implementation and water quality improvement. They must also include an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones must be conducted every five years and revisions to the BMAP must be made as appropriate.¹²

Producers of nonpoint source pollution included in a BMAP must comply with the established pollutant reductions by either implementing the appropriate BMPs or by conducting water

⁶ Fla. Admin. Code R. 62-620.200(37). “Point source” is defined as “any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.” Nonpoint sources of pollution are sources of pollution that are not point sources. Nonpoint sources can include runoff from agricultural lands or residential areas; oil, grease and toxic materials from urban runoff; and sediment from improperly managed construction sites.

⁷ Section 403.061, F.S. DEP has the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. Furthermore, s. 403.061(21), F.S., allows DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.

⁸ Section 403.067(7), F.S.

⁹ *Id.*

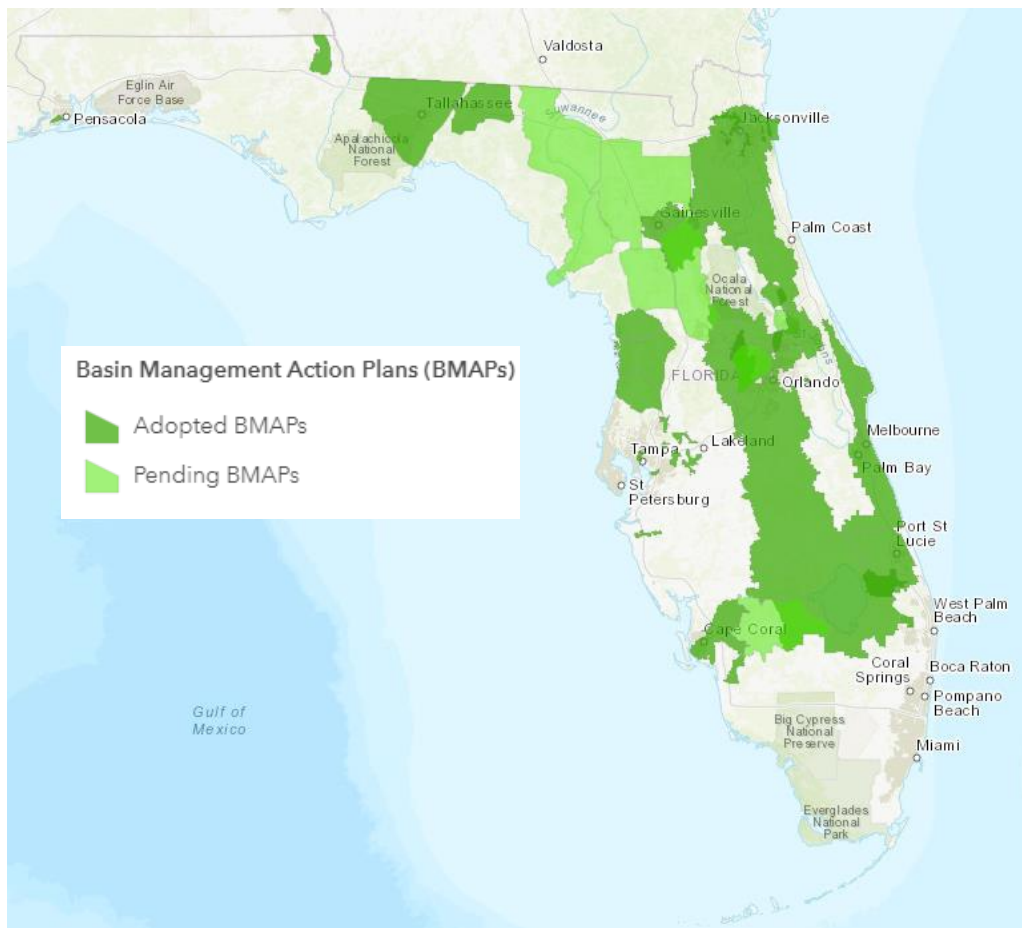
¹⁰ DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Dec. 4, 2019).

¹¹ Section 403.067(7)(a)5., F.S.

¹² Section 403.067(7)(a)6., F.S.

quality monitoring.¹³ A nonpoint source discharger may be subject to enforcement action by DEP or a water management district (WMD) based on a failure to implement these requirements.¹⁴ BMPs are designed to reduce the amount of nutrients, sediments, and pesticides that enter the water system and to help reduce water use. BMPs are developed for agricultural operations as well as for other activities, such as nutrient management on golf courses, forestry operations, and stormwater management.¹⁵ Where there is an adopted BMP for a nonpoint source, the BMAP must require the nonpoint source to implement the applicable BMPs. The nonpoint source discharger must demonstrate compliance with BMP implementation or conduct water quality monitoring prescribed by DEP or the WMD, and may be subject to enforcement for failure to implement the BMPs.¹⁶

Currently, BMAPs are adopted or pending for a significant portion of the state and will continue to be developed as necessary to address water quality impairments. The graphic below shows the state’s adopted and pending BMAPs.¹⁷



¹³ Section 403.067(7)(b)2.g., F.S. For example, BMPs for agriculture include activities such as managing irrigation water to minimize losses, limiting the use of fertilizers, and waste management.

¹⁴ Section 403.067(7)(b)2.h., F.S.

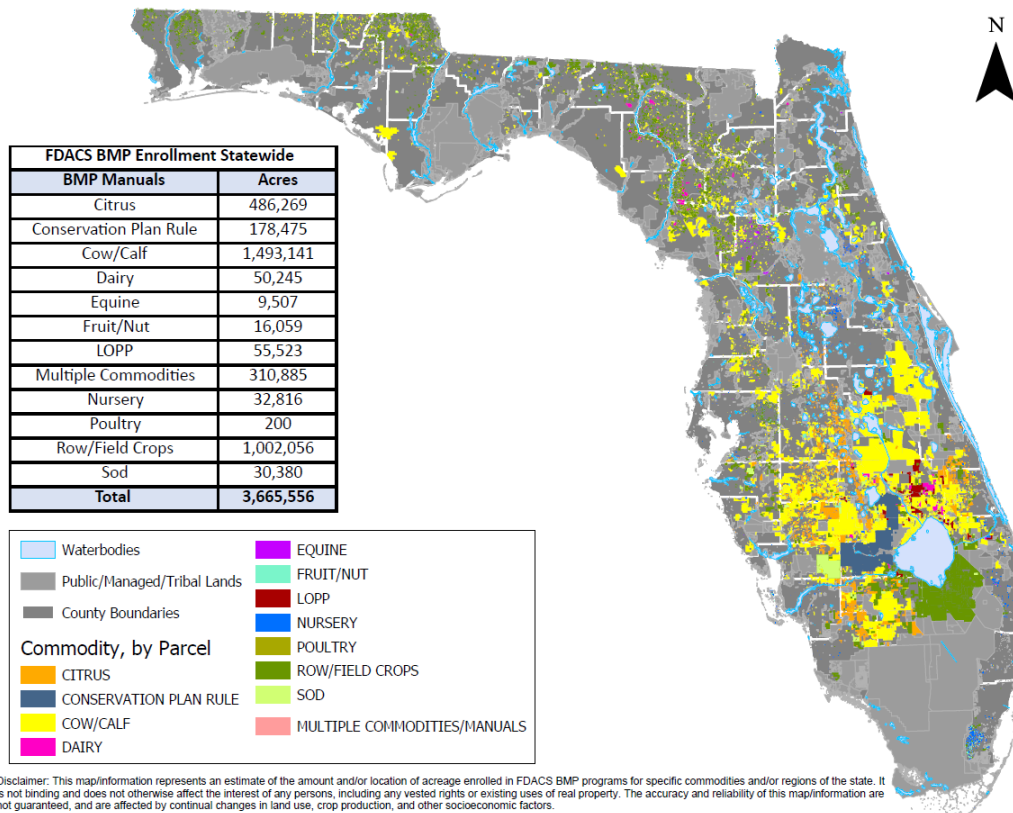
¹⁵ DEP, *NPDES Stormwater Program*, <https://floridadep.gov/Water/Stormwater> (last visited Dec. 2, 2019).

¹⁶ Sections 403.067(7)(b)g. and 403.067(7)(b)h., F.S.

¹⁷ DEP, *Impaired Waters, TMDLs, and Basin Management Action Plans Interactive Map*, <https://floridadep.gov/dear/water-quality-restoration/content/impaired-waters-tmdls-and-basin-management-action-plans> (last visited Dec. 5, 2019).

Agricultural BMPs

Agricultural best management practices (BMPs) are practical measures that agricultural producers undertake to reduce the impacts of fertilizer and water use and otherwise manage the landscape to further protect water resources. BMPs are developed using the best available science with economic and technical consideration and, in certain circumstances, can maintain or enhance agricultural productivity.¹⁸ Agricultural BMPs are implemented by the Department of Agriculture and Consumer Services (DACS). Since the BMP program was implemented in 1999, DACS has adopted nine BMP manuals and is currently developing two more that cover nearly all major agricultural commodities in Florida.¹⁹ According to the annual report on BMPs prepared by DACS, approximately 54 percent of agricultural acreage is enrolled in the DACS BMP program statewide (see map below).²⁰ BMP enrollment data is based on parcels designated as agricultural by the county property appraiser (see discussion below regarding bona fide agricultural purposes).²¹



¹⁸ Florida Department of Agriculture and Consumer Services Office of Agricultural Water Policy, *Status of Implementation of Agricultural Nonpoint Source Best Management Practices*, 3, (Jul. 1, 2019), [hereinafter FDACS OAWP, *BMP Status Report*] available at <https://www.fdacs.gov/ezs3download/download/84080/2481615/Media/Files/Agricultural-Water-Policy-Files/Status-of-Implementation-of-BMPs-Report-2019.pdf> (last visited Jan. 25, 2020).

¹⁹ FDACS, *Agricultural Best Management Practices*, <https://www.fdacs.gov/Agriculture-Industry/Water/Agricultural-Best-Management-Practices> (last visited Jan. 22, 2020).

²⁰ FDACS OAWP, *BMP Status Report*, 2; DACS, *Enrollment Map*, available at <https://www.fdacs.gov/ezs3download/download/78962/2320452/Media/Files/Agricultural-Water-Policy-Files/Maps/Statewide-Enrollment-Map/BMP-Enrollment-Statewide-%28online-map%29.pdf>.

²¹ FDACS OAWP, *BMP Status Report*, 5.

Producers implementing BMPs receive a presumption of compliance with state water quality standards for the pollutants addressed by the BMPs,²² and those who enroll in the BMP program become eligible for technical assistance and cost-share funding for BMP implementation. To enroll in the BMP program, producers must meet with the Office of Agricultural Water Policy (OAWP) to determine the BMPs that are applicable to their operation and submit a Notice of Intent to Implement the BMPs, along with the BMP checklist from the applicable BMP manual.²³ Where DEP adopts a BMAP that includes agriculture, producers must either implement DACS-adopted BMPs or conduct water quality monitoring (prescribed by DEP or the WMD and paid for by the producer) to show they are not violating water quality standards.²⁴

The University of Florida's Institute of Food and Agricultural Sciences (IFAS) is heavily involved in the adoption and implementation of BMPs. IFAS provides expertise to both DACS and agriculture producers and has extension offices throughout Florida. IFAS puts on summits and workshops on BMPs,²⁵ conducts research to issue recommendations for improving BMPs,²⁶ and issues training certificates for BMPs that require licenses such as Green Industry BMPs.²⁷

The Blue-Green Algae Task Force, a state task force addressing water pollution in Florida, recently recommended the following with respect to agricultural nutrient reduction:

- Increasing BMP enrollment;
- Improving records and additional data collection; and
- Accelerating updates to BMP manuals.²⁸

Progress Reports

Current law requires DEP, in conjunction with the WMDs, to submit an annual progress report (STAR report) to the Governor and the Legislature on the status of each TMDL, BMAP, minimum flow or minimum water level, and recovery or prevention strategy.²⁹ The report must include the status of each project identified to achieve a TMDL or an adopted minimum flow or minimum water level, as applicable.³⁰

DACS is required to submit an annual progress report (BMP report) to the Governor and the Legislature on the status of the implementation of the agricultural nonpoint source BMPs, including an implementation assurance report summarizing survey responses and response rates,

²² Section 403.067(7), F.S.

²³ FDACS OAWP, *BMP Status Report*, 3.

²⁴ DACS, *Agricultural Best Management Practices*, <https://www.fdacs.gov/Agriculture-Industry/Water/Agricultural-Best-Management-Practices> (last visited Jan. 21, 2020).

²⁵ UF/IFAS, *BMP Resource*, <https://bmp.ifas.ufl.edu/> (last visited Jan. 26, 2020).

²⁶ UF/IFAS Everglades Research & Education Center, *Best Management Practices & Water Resources*, available at <https://erec.ifas.ufl.edu/featured-3-menus/research-best-management-practices--water-resources/> (last visited Dec. 5, 2019).

²⁷ UF/IFAS Florida-Friendly Landscaping, *GI-BMP Training Program Overview*, available at https://ffl.ifas.ufl.edu/professionals/BMP_overview.htm (last visited Dec. 5, 2019).

²⁸ DEP, *Blue-Green Algae Task Force Consensus Document #1* (Dec. 2, 2019), available at https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf.

²⁹ Section 403.0675(1), F.S. See DEP, *2018 Statewide Annual Report on Total Maximum Daily Loads, Basin Management Action Plans, Minimum Flows or Minimum Water Levels, and Recovery or Prevention Strategies*, <https://floridadep.gov/dear/water-quality-restoration/content/statewide-annual-report> (last visited Jan. 25, 2020).

³⁰ *Id.*

site inspections, and other methods used to verify implementation of and compliance with BMPs pursuant to BMAPs.³¹

Restoration Plans as Alternatives to TMDLS

Under the Florida Watershed Restoration Act,³² DEP can forgo establishing a TMDL for a waterbody if DEP can document that there is reasonable assurance existing or proposed pollution control mechanisms or programs will effectively address the impairment.³³ These restoration plans depend on local stakeholders to gather necessary documentation to demonstrate reasonable assurance that the proposed control mechanisms will restore the particular waterbody.³⁴ Similar to the adoption of a BMAP, a finalized restoration plan is adopted by secretarial order.³⁵

The following information must be documented in a restoration plan:

- Description of the impaired waterbody;
- Description of water quality or aquatic ecological goals;
- Description of proposed management actions to be undertaken;
- Description of procedures for monitoring and reporting results; and
- Description of and commitment to proposed corrective actions.³⁶

Wastewater Treatment Facilities

The proper treatment and disposal or reuse of domestic wastewater is an important part of protecting Florida's water resources. The majority of Florida's domestic wastewater is controlled and treated by centralized treatment facilities regulated by DEP. Florida has approximately 2,000 permitted domestic wastewater treatment facilities.³⁷ Treated effluent and reclaimed water from these facilities amounts to over 1.5 billion gallons per day.³⁸ Any facility or activity which discharges wastes into waters of the state or which will reasonably be expected to be a source of water pollution must obtain a permit from DEP for operation and certain construction activities.³⁹

³¹ Section 403.0675(2), F.S. See FDACS OAWP, *BMP Status Report*, 3, (Jul. 1, 2019), available at <https://www.fdacs.gov/ezs3download/download/84080/2481615/Media/Files/Agricultural-Water-Policy-Files/Status-of-Implementation-of-BMPs-Report-2019.pdf> (last visited Jan. 25, 2020).

³² Chapter 99-223, Laws of Fla.

³³ DEP, *Guidance on Developing Restoration Plans as Alternatives to TMDLS – Assessment Category 4b and 4e Plans*, 2 (June 2015), available at <https://floridadep.gov/sites/default/files/4b4ePlansGuidance.pdf>.

³⁴ *Id.*

³⁵ DEP, *Reasonable Assurance Plans (RAPs) Category 4b Assessments and Documentation*, <https://floridadep.gov/dear/alternative-restoration-plans/content/reasonable-assurance-plans-raps-category-4b-assessments> (last visited Dec. 2, 2019).

³⁶ DEP, *Guidance on Developing Restoration Plans as Alternatives to TMDLS – Assessment Category 4b and 4e Plans*, 6-7 (June 2015), available at <https://floridadep.gov/sites/default/files/4b4ePlansGuidance.pdf>.

³⁷ DEP, *General Facts and Statistics About Wastewater in Florida*, <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Dec. 2, 2019).

³⁸ *Id.*

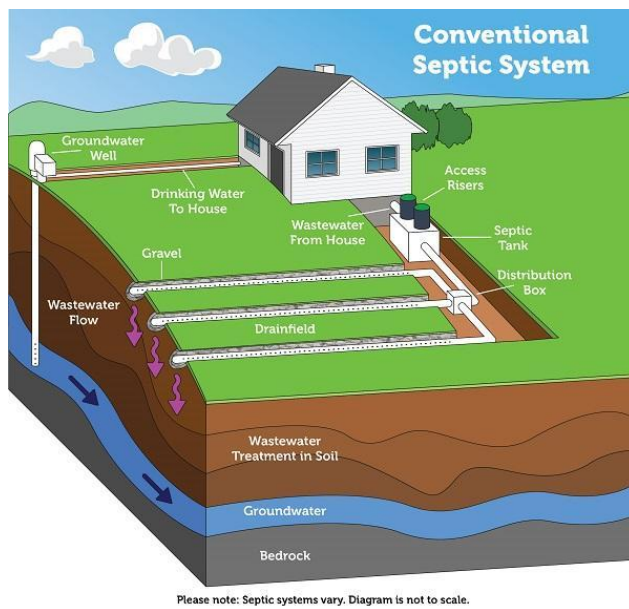
³⁹ Section 403.087, F.S.

Advanced Waste Treatment

Under Florida law, facilities for sanitary sewage disposal are required to provide for advanced waste treatment, as deemed necessary by DEP.⁴⁰ The standard for advanced waste treatment is defined in statute using the maximum concentrations of nutrients or contaminants that a reclaimed water product may contain.⁴¹ The standard also requires a high-level disinfection.⁴²

Nutrient or Contaminant	Maximum Concentration Annually
Biochemical Oxygen Demand	5 mg/L
Suspended Solids	5 mg/L
Total Nitrogen	3 mg/L
Total Phosphorus	1 mg/L

Onsite Sewage Treatment and Disposal Systems



Onsite sewage treatment and disposal systems (OSTDS), commonly referred to as “septic systems,” generally consist of two basic parts: the septic tank and the drainfield.⁴³ Waste from toilets, sinks, washing machines and showers flows through a pipe into the septic tank, where anaerobic bacteria break the solids into a liquid form. The liquid portion of the wastewater flows into the drainfield, which is generally a series of perforated pipes or panels surrounded by lightweight materials such as gravel or Styrofoam. The drainfield provides a secondary treatment where aerobic bacteria continue deactivating the germs. The drainfield also provides filtration of the wastewater, as gravity draws the water down through the soil layers.⁴⁴

There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state’s population.⁴⁵ Approximately 30-40 percent of the nitrogen levels are reduced in the drainfield of a system that is installed 24 inches or more from groundwater.⁴⁶ This

⁴⁰ Section 403.086(2), F.S.

⁴¹ Section 403.086(4), F.S.

⁴² Section 403.086(4)(b), F.S.; Fla. Admin. Code R. 62-600.440(6).

⁴³ DOH, *Septic System Information and Care*, <http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html> (last visited Dec. 2, 2019).

⁴⁴ *Id.*; Conventional Septic System graphic: see EPA, *Types of Septic Systems*, <https://www.epa.gov/septic/types-septic-systems> (last visited Dec. 2, 2019).

⁴⁵ DOH, *Onsite Sewage*, <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last visited Dec. 2, 2019).

⁴⁶ DOH, *Florida Onsite Sewage Nitrogen Reduction Strategies Study, Final Report 2008-2015*, 21 (Dec. 2015), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/research/finalnitrogenlegislativereportsmall.pdf>; see Fla. Admin. Code R. 64E-6.006(2).

still leaves a significant amount of nitrogen to percolate into the groundwater, which makes nitrogen from OSTDSs a potential contaminant in groundwater.⁴⁷

Different types of advanced OSTDSs exist that can remove greater amounts of nitrogen than a typical septic system (often referred to as “advanced” or “enhanced nutrient-reducing” septic systems).⁴⁸ DOH publishes on its website approved products and resources on advanced systems.⁴⁹ Determining which advanced system is the best option can depend on site-specific conditions.

Stormwater Management

Stormwater is the flow of water resulting from, and immediately following, a rainfall event.⁵⁰ When stormwater falls on pavement, buildings, and other impermeable surfaces the runoff flows quickly and can pick up sediment, nutrients (such as nitrogen and phosphorous), chemicals, and other pollutants.⁵¹ Stormwater pollution is a major source of water pollution in Florida.⁵² Under the law, stormwater may be either a point source of pollution or a nonpoint source and is regulated by federal, state, and local governments.⁵³

Bona Fide Agricultural Purposes

Designation of a parcel as agricultural confers property tax benefits.⁵⁴ The property appraiser may require an owner to provide proof that the lands are actually used for a bona fide agricultural purpose.⁵⁵ For the purposes of property tax law, a bona fide agricultural purpose means the good faith commercial agricultural use of the land.⁵⁶ In determining whether the use of the land for agricultural purposes is bona fide, the following factors may be taken into consideration:

- The length of time the land has been used for agriculture.
- Whether the use has been continuous.

⁴⁷ University of Florida Institute of Food and Agricultural Sciences (IFAS), *Onsite Sewage Treatment and Disposal Systems: Nitrogen*, 3 (Feb. 2014), available at <http://edis.ifas.ufl.edu/pdf/files/SS/SS55000.pdf>.

⁴⁸ DOH, *Nitrogen-Reducing Systems for Areas Affected by the Florida Springs and Aquifer Protection Act* (2019), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/products/documents/bmap-n-reducing-tech-18-10-29.pdf>.

⁴⁹ DOH, *Onsite Sewage Programs, Product Listings and Approval Requirements*, <http://www.floridahealth.gov/environmental-health/onsite-sewage/products/index.html> (last visited Dec. 2, 2019).

⁵⁰ DEP and Water Management Districts, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)*, 2-10 (June 1, 2018), available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Applicant_Hanbook_I_-_Combined.pdf.

⁵¹ DEP, *Stormwater Management*, 1 (2016), available at https://floridadep.gov/sites/default/files/stormwater-management_0.pdf. When rain falls on fields, forests, and other areas with naturally permeable surfaces the water not absorbed by plants filters through the soil and replenishes Florida's groundwater supply.

⁵² DEP, *Stormwater Support*, <https://floridadep.gov/water/engineering-hydrology-geology/content/stormwater-support> (last visited Dec. 2, 2019); DEP, *Nonpoint Source Program Update*, 10 (2015), available at <https://floridadep.gov/sites/default/files/NPS-ManagementPlan2015.pdf>.

⁵³ National Pollutant Discharge Elimination System (NPDES), 33 U.S.C. s. 1342(p) (2019) 40 C.F.R. pt. 122; Chapter 373, pt. IV, F.S.; Fla. Admin. Code Ch. 62-330.

⁵⁴ Rather than being assessed at its highest and best use (see 193.011), the agricultural property is assessed based on its actual use. FLA. CONST. art. VII s. 4(a).

⁵⁵ Section 193.461(3)(a), F.S.

⁵⁶ Section 193.461(b), F.S.

- The purchase price paid.
- Size, as it relates to specific agricultural use, but a minimum acreage may not be required for agricultural assessment.⁵⁷
- Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforestation, and other accepted agricultural practices.
- Whether the land is under lease and, if so, the effective length, terms, and conditions of the lease.
- Such other factors as may become applicable.⁵⁸

The maintenance of a dwelling on part of the lands used for agricultural purposes does not in itself preclude an agricultural classification.⁵⁹ When property receiving an agricultural classification contains a residence under the same ownership, the portion of the property consisting of the residence and curtilage⁶⁰ must be assessed separately.⁶¹ In addition to statutory criteria, case law and rules by the Florida Department of Revenue give additional lists of criteria and general guidance on what bona fide agricultural operations include.⁶²

Good faith commercial agricultural use, for the purposes of qualifying for agricultural tax classification, does not necessitate a profit by the landowner.⁶³ The Second District Court of Appeals in *Straughn v. K. & K. Land Management, Inc.*, found that if the profits are only enough to sustain the agricultural use itself, pay for the upkeep of the lands, or reduce the investment until the property is sold, it may still qualify as an agricultural use.⁶⁴

Rural Areas of Opportunity

A rural area of opportunity (RAO) is a rural community, or region of rural communities, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.⁶⁵ By executive order, the Governor may designate up to three RAOs, establishing each region as a priority assignment for Rural Economic Development Initiative (REDI) agencies. The Governor can waive the criteria, requirements, or any similar provisions of any state economic development incentive for projects in a RAO.⁶⁶

⁵⁷ See also Fla. Admin. Code R. 12D-5.004(3); *Czagas v. Maxwell*, 393 So. 2d 645 (Fla. 5th DCA 1981).

⁵⁸ *Id.*

⁵⁹ Section 193.461(3)(c), F.S.

⁶⁰ BLACK'S LAW DICTIONARY, 329 (8th ed. 2005). "Curtilage" means the land or yard adjoining a house, usually within an enclosure.

⁶¹ Section 193.461(3)(d), F.S.

⁶² See Fla. Admin. Code R. 12D-5.004; *Greenwood v. Oates*, 251 So. 2d 665 (Fla. 1971).

⁶³ *Wilkinson v. Kirby*, 654 So. 2d 194 (Fla. 2d DCA 1995); *Fisher v. Schooley*, 371 So. 2d 496 (Fla. 2d DCA 1979).

⁶⁴ 347 So. 2d 724 (Fla. 2d DCA 1977), *judgment aff'd*, 368 So. 2d 588 (Fla. 1978).

⁶⁵ Section 288.0656(2)(d), F.S.

⁶⁶ Section 288.0656(7), F.S.

The Rights of Nature Movement

The Rights of Nature Movement is the concept of recognizing that nature has legal rights and legal standing in a court of law.⁶⁷ “It is the recognition that our ecosystems – including trees, oceans, animals, mountains – have rights just as human beings have rights.”⁶⁸

Standing is a party’s right to make a legal claim or seek judicial enforcement of a duty or right.⁶⁹ To have standing in federal court, a plaintiff must show that the challenged conduct has caused the plaintiff actual injury and that the interest sought to be protected is within the zone of interests meant to be regulated by the statutory or constitutional guarantee.⁷⁰ Under the Rights of Nature concept, an ecosystem could be named as an injured party in a court of law, with its own legal standing rights. Proponents of the Rights of Nature see legal personhood as a promising tool for protecting nature and analogous to corporate personhood and the protection of corporate rights.⁷¹

Ecuador includes a Rights of Nature provision in its constitution.⁷² Under the Ecuadorian constitution, nature has rights “to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.”⁷³ Bolivia, New Zealand, India,⁷⁴ and Colombia⁷⁵ have also taken steps toward recognizing rights of nature.

The Pennsylvania Constitution contains a provision stating “the people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.”⁷⁶ Based on this constitutional provision, a court overturned a Pennsylvania law protecting extractive interests from local ordinances undertaking to limit environmentally harmful activities.⁷⁷ Local governments in

⁶⁷ Global Alliance for the Rights of Nature, *What is Rights of Nature?*, <https://therightsofnature.org/what-is-rights-of-nature/> (last visited Jan. 18, 2020); Community Environmental Defense Fund, *Champion the Rights of Nature*, <https://celdf.org/advancing-community-rights/rights-of-nature/> (last visited Jan. 18, 2020).

⁶⁸ *Id.*

⁶⁹ BLACK’S LAW DICTIONARY, 1536 (9th ed. 2009).

⁷⁰ *Id.*

⁷¹ Gwendolyn J. Gordon, *Environmental Personhood*, 50, 43 COLUM. J. ENVTL. L. 49 (Jan. 11, 2019) (citing *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751 (2014); *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010)).

⁷² Constitución Política de la República del Ecuador, art. 10, 71-74 (Ecuador), English translation available at <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>.

⁷³ *Id.*

⁷⁴ See generally, Gwendolyn J. Gordon, *Environmental Personhood*, 50, 43 COLUM. J. ENVTL. L. 49 (Jan. 11, 2019).

⁷⁵ See, Patrick Parenteau, *Green Justice Revisited: Dick Brooks on the Laws of Nature and the Nature of Law*, 20 VT. J. ENVTL. L. 183, 186 (2019); Global Alliance for the Rights of Nature, *Columbia Constitutional Court Finds Atrato River Possesses Rights*, <https://therightsofnature.org/colombia-constitutional-court-finds-atrato-river-possesses-rights/> (last visited Jan. 19, 2020).

⁷⁶ PA. CONST. art. 1, § 27

⁷⁷ *Robinson v. Commonwealth*, 83 A.3d 901 (2013).

Pennsylvania,⁷⁸ Maine,⁷⁹ New Hampshire,⁸⁰ and California,⁸¹ among others, have enacted rights of nature provisions in their local ordinances. The idea is being discussed in various Florida communities, but no local ordinances have been adopted at this time.⁸²

The Florida Environmental Protection Act

The Environmental Protection Act of 1971 authorizes the bringing of an action for injunctive relief to compel a governmental authority to enforce laws, rules, and regulations for the protection of the air, water, and other natural resources of the state of Florida or to enjoin a person or governmental agency or authority from violating any laws, rules, or regulations for the protection of the air, water, and other natural resources of the state.⁸³ In any administrative, licensing, or other proceedings authorized by law for the protection of the air, water, or other natural resources of the state from pollution, impairment, or destruction, the government or a citizen of the state has standing to intervene as a party on the filing of a pleading asserting that the activity to be licensed or permitted has or will have the effect of impairing, polluting, or otherwise injuring the air, water, or other natural resources of the state.⁸⁴ A citizen's substantial interests are considered to be affected if the party demonstrates it may suffer an injury in fact which is of sufficient immediacy and is of the type and nature intended to be protected by law. No demonstration of special injury different in kind from the general public at large is required. A sufficient demonstration of a substantial interest may be made by a petitioner who establishes that the proposed activity, conduct, or product to be licensed or permitted affects the petitioner's use or enjoyment of air, water, or natural resources protected by law.⁸⁵

In *Florida Wildlife Federation v. State Dept. of Environmental Regulation*, the Florida Supreme Court held that the Environmental Protection Act sets out substantive rights not previously possessed.⁸⁶ Private citizens of Florida may institute a suit under the Environmental Protection Act without showing of special injury required by traditional rules of standing.⁸⁷ The Act does not constitute an impermissible intrusion by the legislature into the Supreme Court's power over practice and procedure in state courts, but rather creates a new cause of action setting out substantive rights not previously possessed and enabling the citizens of Florida to institute suit for the protection of their environment without a showing of "special injury" as previously required.⁸⁸

⁷⁸ See City of Pittsburgh Code of Ordinances, § 618.03.

⁷⁹ Town of Shapleigh Code, §99-16.

⁸⁰ Barrington, NH, Community Bill of Rights §2(e), available at https://www.barrington.nh.gov/sites/barringtonnh/files/uploads/bill_of_rights.pdf.

⁸¹ Santa Monica Municipal Code, Ch. 12.02.030.

⁸² SAFEBOR, *Welcome to the Santa Fe River Bill of Rights Campaign*, <https://safebor.org/> (last visited Jan. 23, 2020); Global Alliance for the Rights of Nature, *The Rights of Nature Movement has Arrived to Florida*, <https://therightsofnature.org/the-rights-of-nature-movement-has-arrived-to-florida/> (last visited Jan. 23, 2020).

⁸³ Section 403.412(2)(a), F.S.

⁸⁴ Section 403.412(5), F.S.

⁸⁵ *Id.*

⁸⁶ 390 So.2d 64 (Fla. 1980).

⁸⁷ *Id.*

⁸⁸ *Id.*

III. Effect of Proposed Changes:

Basin Management Action Plans: Compliance and Verification (Section 1 and Section 2)

The bill specifies that a nonagricultural and agricultural nonpoint source owner or operator who discharges into a basin included in an adopted basin management action plan (BMAP) must comply with the following, as applicable, within 5 years after the date of the adoption of the BMAP or an amendment thereto that imposes new requirements to implement:

- For a nonagricultural nonpoint source discharger, nonagricultural:
 - Interim measures,
 - Best management practices (BMPs),
 - Management measures, or
 - Other measures.
- For an agricultural nonpoint source discharger, agricultural:
 - Interim measures,
 - BMPs, or
 - Other measures adopted by rule and implemented according to a notice of intent filed by the agricultural nonpoint source discharger.
- Water quality monitoring for any nonpoint source discharger who opts to implement water quality monitoring in BMPs.

Implementation of these actions must be verified by a site visit at least once every 2 years by the responsible agency as follows:

- For nonagricultural interim measures, nonagricultural BMPs, or other measures, DEP or water management district, as appropriate.
- For agricultural interim measures, agricultural BMPs, or other measures, verification by the Department of Agriculture and Consumer Services (DACS).
- For management measures adopted in a basin management action plan (BMAP), verification by DEP.

If DEP or DACS cannot verify site implementation every 2 years, DEP or DACS must include recommendations for meeting the intent of the verification along with a budget request as part of its STAR report or its BMP progress report (currently required in s. 403.0675, F.S.), respectively.

Beginning in 2021, DEP must include in its annual STAR report:

- The status of the results of verification of the stormwater systems and nonagricultural BMPs.
- The number of landowners, dischargers, or other responsible persons required to implement applicable management strategies, including BMPs or water quality monitoring, who did not comply with such requirements.

Beginning July 1, 2021, DACS must include in its annual BMP progress report the results of implementation of agricultural nonpoint source BMPs in the following categories:

- Irrigated and nonirrigated agricultural acres.
- Fallow agricultural acres.

- Agricultural parcels of fewer than 50 acres, excluding rural homesteads (see discussion below).

For the progress reports submitted on July 1, 2021, and July 1, 2022, DEP and DACS will address the priority focus areas identified in the BMAPs.

Basin Management Action Plan Elements (Section 1)

The bill adds the requirement that BMAP strategies involve technically and financially practical actions. The bill adds the following as examples of strategies that BMAPs can include:

- Interim measures, BMPs, or other measures;
- Implementation of cooperative agricultural regional water quality improvement projects or practices (see below for a description of the agricultural element); and
- Cooperative urban, suburban, commercial, or institutional regional water quality improvement projects or practices (see below for a description of the nonagricultural element).

The bill requires DEP, DACS, and owners of agricultural operations in the basin to develop a cooperative agricultural regional water quality improvement element (agricultural element) in the BMAP, but only if:

- DACS's agricultural measures have been adopted and implemented but the waterbody remains impaired;
- Agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges; and
- DEP determines that additional measures, in combination with state-sponsored regional projects and other management strategies included in the BMAP, are necessary to achieve the total maximum daily load (TMDL).

The agricultural element will be implemented through a cost-sharing program (see below). The agricultural element must include cost-effective and technically and financially practical cooperative regional agricultural nutrient reduction projects that can be implemented on private properties on a site-specific, cooperative basis if funding is made available. Such projects may include land acquisition in fee or conservation easements on the lands of willing sellers and site-specific water quality improvement or dispersed water management projects on the lands of program participants.

To qualify for participation in the agricultural element, the participant must have already implemented the interim measures, BMPs, or other measures adopted by DACS. The agricultural element may be included in the BMAP as a part of its next 5-year assessment.

The bill requires DEP, the Department of Health, local governments, and water management districts with jurisdiction in the basin to develop a cooperative urban, suburban, commercial, or institutional regional water quality improvement element (nonagricultural element) as part of a BMAP in which:

- Nonagricultural interim measures and nonagricultural BMPs have been implemented but the waterbody remains impaired;

- Nonagricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges; and
- DEP determines that additional measures, in combination with state-sponsored regional projects and other management strategies included in the BMAP, are necessary to achieve the TMDL.

The nonagricultural element must be implemented through a cost-sharing program (see below). The nonagricultural element must include cost-effective and technically and financially practical cooperative regional nutrient reduction projects that can be implemented on urban, suburban, commercial, or institutional properties if funding is made available as provided by general law. The nonagricultural element must be included in the BMAP as a part of its next 5-year assessment.

Data Collection and Research (Section 1)

The bill directs DACS to work with DEP to improve the accuracy of data used to estimate agricultural land uses in BMAPs. The departments must work with producers to identify agricultural technologies that could be implemented, subject to available funding, on properties where the technologies are deemed technically and financially practical.

The Institute of Food and Agricultural Sciences (IFAS) of the University of Florida, in cooperation with the DACS, must develop a research plan and a legislative budget request to:

- Evaluate and suggest cost-effective enhancements to the adopted BMPs.
- Develop new, cost-effective BMPs that, when proven, may be considered by DACS for rule adoption.
- Develop cooperative agricultural nutrient reduction projects to be considered by water management districts for inclusion in the agricultural element of a BMAP.

All such proposals must be technically and financially practical.

DEP must work with IFAS and the regulated entities to consider the adoption by rule of BMPs for the management of nutrient impacts from golf courses.

Nutrient Reduction Cost-Share Program (Section 1)

The bill creates a nutrient reduction cost-share program within DEP. Subject to legislative appropriation, DEP may provide funding for projects that will individually or collectively reduce nutrient pollution under a BMAP or an alternative restoration plan for the following:

- The following wastewater projects (wastewater projects require a 50 percent local match of funds which can be waived for a rural area of opportunity):
 - Projects to retrofit onsite sewage treatment and disposal systems.
 - Projects to construct, upgrade, or expand facilities to provide advanced waste treatment.
 - Projects to connect onsite sewage treatment and disposal systems to central sewer facilities.
- Projects in the nonagricultural element of a BMAP (created in the bill and described above).
- Projects in the agricultural element of a BMAP (created in the bill and described above).
- The data collection and research activities created in the bill (See Technical Issues Section).

DEP is directed to prioritize projects in subbasins with the highest nutrient concentrations within a BMAP and wastewater projects, projects in the nonagricultural element, and projects in the agricultural element. For wastewater projects and projects in the nonagricultural element, projects that subsidize the connection of onsite sewage treatment and disposal systems to a wastewater treatment plant or that subsidize inspections and assessments of onsite sewage treatment and disposal systems will receive priority. DEP must consider: the estimated reduction in nutrient load per project, project readiness, the cost effectiveness of the project, the overall environmental benefit of a project, the location of a project within the plan area, the availability of local matching funds, and the projected water savings or quantity improvements associated with the project.

DEP must coordinate with DACS, IFAS, and each water management district, as necessary, in allocating funds for the cost-share program. Beginning January 1, 2021, DEP must submit an annual report regarding the projects funded pursuant to this program to the Governor and Legislature. The bill clarifies that the nutrient reduction cost-share program is in addition to, and does not replace, existing funding authorizations.

Rural Homesteads (Section 1)

The bill states that the Legislature recognizes that lands classified as agricultural by property appraisers may include rural homesteads in addition to producing agricultural lands. It is the intent of the Legislature to support those who seek to establish and maintain rural homesteads and focus on a sustainable, self-supporting lifestyle.

The bill defines “rural homesteads” to mean low-density rural residential properties up to 50 acres in size which are homesites and noncommercial in nature that include single-family homes and accessory structures together with the keeping of livestock, horses, traditional farm animals and poultry, and the planting and maintenance of groves and gardens for the primary purpose of serving the needs and interests of those living on the property.

Rural homesteads are not subject to the requirements of the nonpoint source requirements of the BMAP. However, if any activity on a rural homestead rises to the level of bona fide agricultural activity and is classified as agricultural by the property appraiser, then the land owner must comply with the nonpoint source requirements of the BMAP.

Rights of Nature (Section 3)

The bill amends the Florida Environmental Protection Act to prohibit local governments from recognizing, granting, conveying, or extending legal standing or legal rights to a plant, an animal, a body of water, or any other part of the natural environment unless otherwise specifically authorized by state law or the State Constitution.

The changes in the bill explicitly do not:

- Limit the ability of the Department of Legal Affairs, any political subdivision of the state, or a resident of the state to maintain an action for injunctive relief for pollution violations under existing law.

- Limit the ability of an aggrieved or adversely affected party to appeal and challenge the consistency of a development order with a comprehensive plan, or to file an action for injunctive relief to enforce the terms of a development agreement or to challenge compliance of the agreement with the Florida Local Government Development Agreement Act.

Effective Date (Section 4)

The bill provides an effective date of July 1, 2020.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The private sector could see a positive fiscal impact from the cost-share program.

C. Government Sector Impact:

There would be a negative fiscal impact to the state associated with funding the bill's research and cost-share programs, but there may be a long-term positive fiscal impact associated with pollution prevention.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 403.067, 403.0675, and 403.412 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environment and Natural Resources Committee on January 27, 2020:

- Requires BMPs or water quality monitoring to be adopted within 5 years of completion of a BMAP or amendment to a BMAP.
- Requires site visits at least every 2 years.
- If DEP or DACS cannot verify site implementation every 2 years, DEP or DACS must include recommendations for meeting the intent of the verification along with a budget request as part of its report to the Governor and Legislature.
- Adds other topics to be included in the reports by DEP and DACS to the Governor and Legislature under s. 403.0675, F.S.
- For the progress reports in 2021 and 2022, DEP and DACS will address the priority focus areas identified in the BMAPs.
- Revises the prioritization of the cost-share program direct DEP to prioritize projects in subbasins with the highest nutrient concentrations within a BMAP and wastewater projects, projects in the nonagricultural element, and projects in the agricultural element.
- Defines “rural homesteads.”
- Provides that rural homesteads are not subject to the nonpoint source requirements of the BMAP with certain exceptions.

B. Amendments:

None.