By Senator Albritton

26-01333B-20 20201656__

A bill to be entitled

An act relating to reclaimed water; creating s. 403.8531, F.S.; providing legislative intent; defining terms; providing that reclaimed water is a water source for public water supply systems; providing specified groundwater and surface water quality protections for potable reuse projects; providing that potable reuse is an alternative water supply and that projects relating to such reuse are eligible for alternative water supply funding; requiring the Department of Environmental Protection to adopt specified rules; requiring the department to review reclaimed water and potable reuse rules and revise them as necessary; requiring the department to review aquifer recharge rules and revise them as necessary; requiring the department to initiate rulemaking and to submit such rules to the Legislature for ratification by specified dates; requiring legislative ratification of the rules; requiring the department and the water management districts to develop and execute, by a specified date, a memorandum of agreement for the coordinated review of specified permits; providing that potable reuse projects by private entities are eligible for certain expedited permitting and tax credits; providing construction; amending s. 403.064, F.S.; prohibiting domestic wastewater treatment facilities from disposing of effluent, reclaimed water, or reuse water by surface water discharge; providing exceptions; requiring the department to

adopt rules for the implementation of potable reuse projects which meet certain requirements; requiring the department to convene at least one technical advisory committee for specified purposes; providing for the composition of the advisory committee; providing a directive to the Division of Law Revision; providing an effective date.

WHEREAS, sustainable water supplies are important to this state's economy, environment, and quality of life, and

WHEREAS, in 2019, Floridians used nearly 6.5 billion gallons of water per day and are projected to need an additional 1.1 billion gallons of water per day by 2035, and

WHEREAS, more than 75 percent of this state's water supply comes from groundwater, and the availability of additional fresh groundwater has become limited in many areas of this state, and

WHEREAS, this state's continued growth and economic success depend on the implementation of safe and sustainable alternative water supplies, and

WHEREAS, the use of reclaimed water is an important component of both wastewater management and water resource management in this state, and

WHEREAS, in 2018, approximately 48 percent of the total domestic wastewater flow in this state, 797 million gallons per day, was reused for beneficial purposes, and

WHEREAS, the reuse of water is a critical component of meeting this state's existing and future water supply needs, and

WHEREAS, potable reuse is the augmentation of a drinking water supply with reclaimed water from a municipal wastewater

source and is an alternative water supply source that can be harnessed to help meet the additional water needs of this state while protecting both the public health and the environment, and

WHEREAS, the Legislature finds that through the use of advanced treatment technology, potable reuse is a safe and sustainable alternative water supply source that can be used to support a diverse, resilient, and sustainable water supply portfolio, and is considered to be in the public interest, and

WHEREAS, potable reuse projects, when implemented in a properly planned way using current environmental and engineered treatment processes, have reduced, and will continue to reduce, this state's dependence on increased withdrawals from groundwater and surface water sources, pollutant loadings to waters of the state, and the nonbeneficial use of reclaimed water, thus improving water quality and benefitting the environment and local economies that depend on this state's natural resources, NOW, THEREFORE,

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

Section 1. Section 403.8531, Florida Statutes, is created to read:

403.8531 Potable reuse.—

(1) Recognizing that sufficient water supply is imperative to the future of this state and that potable reuse is one source of water that may assist in meeting future demands, the Legislature intends for the department to adopt rules for potable reuse which:

(a) Protect the public health and environment by ensuring

that the potable reuse rules meet federal and state drinking water and water quality standards, including, but not limited to, the Clean Water Act, the Safe Drinking Water Act, and water quality standards pursuant to chapter 403, and, when possible, implement such rules through existing regulatory programs.

(b) Support reclaimed water being used for potable reuse purposes.

(c) Implement the recommendations set forth in the Potable Reuse Commission's 2020 report "Advancing Potable Reuse in Florida: Framework for the Implementation of Potable Reuse in Florida."

(d) Require that the point of compliance with drinking water standards for potable reuse projects is the final discharge point for finished water from the water treatment facility.

(e) Protect the aquifer and Florida's springs and surface waters by ensuring that potable reuse projects do not cause or contribute to violations of water quality standards in surface waters, including groundwater discharges that flow by interflow and affect water quality in surface waters, and that potable reuse projects shall be designed and operated to ensure compliance with groundwater quality standards.

(2) As used in this section, the term:

(a) "Advanced treated reclaimed water" means the water produced from an advanced water treatment process for potable reuse applications.

(b) "Advanced treatment technology" means the treatment technology selected by a utility to address emerging constituents and pathogens in reclaimed water as part of a

potable reuse project.

(c) "Direct potable reuse" means the introduction of advanced treated reclaimed water into a raw water supply immediately upstream from a drinking water treatment facility or directly into a potable water supply distribution system.

(d) "Emerging constituents" means pharmaceuticals, personal care products, and other chemicals not regulated as part of drinking water quality standards.

(e) "Indirect potable reuse" means the planned delivery or discharge of reclaimed water to groundwater or surface waters for the development of, or to supplement, the potable water supply.

(f) "Off-spec reclaimed water" means reclaimed water that does not meet the standards for potable reuse.

(g) "Potable reuse" means the augmentation of a drinking water supply with advanced treated reclaimed water from a domestic wastewater treatment facility, and consists of direct potable reuse and indirect potable reuse.

(h) "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.

(3) Reclaimed water is deemed a water source for public water supply systems.

(4) Existing water quality protections that prohibit discharges from causing or contributing to violations of water quality standards in groundwater and surface waters apply to potable reuse projects. In addition, when reclaimed water is released or discharged into groundwater or surface waters for potable reuse purposes, consideration of emerging constituents

may be required due to existing regulatory requirements, such as antidegradation and discharge standards, as well as impacts to other users of such groundwater or surface water.

(5) Potable reuse is an alternative water supply as defined in s. 373.019, and potable reuse projects are eligible for alternative water supply funding. The use of potable reuse water may not be excluded from regional water supply planning under s. 373.709.

(6) The department shall:

(a) Adopt rules that authorize potable reuse projects that are consistent with this section.

(b) Review existing rules governing reclaimed water and potable reuse to identify obsolete and inconsistent requirements and adopt rules that revise existing potable reuse rules to eliminate such inconsistencies, while maintaining existing public health and environmental protections.

(c) Review aquifer recharge rules, and, if revisions are necessary to ensure continued compliance with existing public health and environmental protection rules when reclaimed water is used for aquifer recharge, adopt such rules.

(d) Initiate rulemaking by December 31, 2020, and submit the adopted rules to the President of the Senate and the Speaker of the House of Representatives by December 12, 2022, for ratification. Such rules are effective only upon ratification by the Legislature.

(7) The department and the water management districts shall develop and execute a memorandum of agreement providing for the procedural requirements of a coordinated review of all permits associated with the construction and operation of an indirect

potable reuse project. The memorandum of agreement must provide that the coordinated review will occur only if requested by a permittee. The purpose of the coordinated review is to share information, to avoid the redundancy of information requested from the permittee, and to ensure consistency in the permit for the protection of the public health and the environment. The department and the water management districts shall develop and execute the memorandum of agreement by December 31, 2022.

(8) To encourage investment in the development of potable reuse projects by private entities, a potable reuse project developed as a qualifying project pursuant to s. 255.065 is:

(a) Beginning January 1, 2025, eligible for expedited permitting under s. 403.973.

(b) Granted an annual credit against the tax imposed by chapter 220 in an amount equal to 5 percent of the eligible capital costs generated by a qualifying project for a period not to exceed 20 years after the date that project operations begin. The tax credit applies only to the corporate income tax liability or the premium tax liability generated by or arising out of the qualifying project, and the sum of all tax credits provided pursuant to this section may not exceed 100 percent of the eligible capital costs as defined in s. 220.191(1)(c). Any credit granted pursuant to this paragraph may not be carried forward or backward.

(c) Granted a 3-year extension of any deadlines imposed under s. 403.064(17).

(d) Consistent with s. 373.707, eligible for priority funding in the same manner as other alternative water supply projects from the Drinking Water State Revolving Fund, under the

Water Protection and Sustainability Program, and for water management district cooperative funding.

(9) This section is not intended and may not be construed to supersede s. 373.250(3).

Section 2. Subsection (17) is added to section 403.064, Florida Statutes, to read:

403.064 Reuse of reclaimed water.—

(17) Notwithstanding any other provisions in this section to the contrary, beginning January 1, 2026, domestic wastewater treatment facilities may not dispose of effluent, reclaimed water, or reuse water by surface water discharge, except that this prohibition does not apply to indirect potable reuse projects; domestic wastewater treatment facility discharges during wet weather which occur in accordance with the applicable department permit; discharges into a stormwater management system which are subsequently withdrawn by a user for irrigation purposes; domestic wastewater treatment facilities located in fiscally constrained counties as defined in s. 218.67(1); projects where reclaimed water is recovered from an aquifer recharge system and subsequently discharged into a surface water for potable reuse; wetlands creation, restoration, and enhancement projects; surface water minimum flows and levels recovery or prevention strategy plan projects; or domestic wastewater treatment facilities located in municipalities that are entirely within a rural area of opportunity designated under s. 288.0656.

Section 3. (1) In implementing s. 403.8531, Florida Statutes, as created by this act, the Department of Environmental Protection, in coordination with one or more

technical working groups pursuant to subsection (2), shall adopt rules for the implementation of potable reuse projects. The department shall:

(a) Revise the appropriate chapters in the Florida Administrative Code, including chapter 62-610, Florida Administrative Code, to ensure that all rules implementing potable reuse are in the Florida Administrative Code division 62 governing drinking water regulation.

(b) Revise existing drinking water rules to include reclaimed water as a source water for the public water supply and require such treatment of the water as is necessary to meet existing drinking water rules, including rules for pathogens. The potable reuse rules must include the implementation of a log reduction credit system using advanced treatment technology to meet pathogen treatment requirements, and must require a public water supplier to provide an approach to meet the required pathogen treatment requirements in an engineering report as part of its public water supply permit application for authorization of potable reuse. To ensure protection of the public health, as part of the public water supply permit application to authorize potable reuse, a public water supplier shall provide a department-specified level of treatment or propose an approach to achieving the log reduction targets based on source water characterization that is sufficient for a pathogen risk of infection which meets the national drinking water criteria of less than 1 x 10-4 annually.

(c) Prescribe the means for using appropriate treatment technology to address emerging constituents in potable reuse projects. The advanced treatment technology must be technically

and economically feasible and must provide for flexibility in the specific treatment processes employed to recognize different project scenarios, emerging constituent concentrations, desired finished water quality, and the treatment capability of the facility. The advanced treatment technology may also be used for pathogen removal or reduction.

1. The rules must require appropriate monitoring to evaluate advanced treatment technology treatment performance, including the monitoring of surrogate parameters and controls, which monitoring must occur either before or after the advanced treatment technologies treatment process, or both, as appropriate.

2. For direct potable reuse projects, the rules must require reclaimed water to be included in the source water characterization for a drinking water treatment facility and, if that source water characterization indicates the presence of emerging constituents at levels of public health interest, must specify how appropriate treatment technology will be used to address those emerging constituents.

3. For indirect potable reuse projects, the department shall amend the existing monitoring requirements contained within part V of chapter 62-610, Florida Administrative Code, to require monitoring for one or more representative emerging constituents. The utility responsible for the indirect potable reuse project shall develop an emerging constituent monitoring protocol consisting of the selection of one or more representative emerging constituents for monitoring and the identification of action levels associated with such emerging constituents. The monitoring protocol must provide that, if

elevated levels of the representative emerging constituent are detected, the utility must report the elevated detection to the department and investigate the source and cause of such elevated emerging constituent. The utility shall submit the monitoring protocol to the department for review and approval and shall implement the monitoring protocol as approved by the department. If the monitoring protocol detects an elevated emerging constituent, and if the utility's investigation indicates that the use of the reclaimed water is the cause of such elevated emerging constituent, the utility must develop a plan to address or remedy that cause. The utility's monitoring results, investigation of any detected elevated emerging constituent levels, determination of cause, and any plan developed to address or remedy the cause must be submitted to the department for review and approval.

(d) Specify industrial pretreatment requirements for potable reuse projects. These industrial pretreatment requirements must match the industrial pretreatment requirements contained in chapter 62-625, Florida Administrative Code, as of the effective date of this act. If necessary, the department also must require the utility operating a potable reuse project to implement a source control program, and the utility shall identify the sources that need to be addressed.

(e) Provide off-spec reclaimed water requirements for potable reuse projects which include the immediate disposal, temporary storage, alternative nonpotable reuse, or retreatment or disposal of off-spec reclaimed water based on operating protocols established by the public water supplier and approved by the department.

(f) Revise existing rules to specify the point of compliance with drinking water standards for potable reuse projects as the point where the finished water is finally discharged from the drinking water treatment facility to the water distribution system.

(g) Ensure that, as rules for potable reuse projects are implemented, chapter 62-610.850, Florida Administrative Code, is applicable.

(h) Revise the definition of the term "indirect potable reuse" provided in chapter 62-610, Florida Administrative Code, to match the definition provided in s. 403.8531, Florida Statutes.

(2) The department shall convene and lead one or more technical advisory committees to coordinate the rulemaking and review of rules required by s. 403.8531, Florida Statutes. The technical advisory committees, which shall assist in the development of such rules, must be composed of knowledgeable representatives of a broad group of interested stakeholders, including, but not limited to, representatives from the water management districts, the wastewater utility industry, the water utility industry, the environmental community, the business community, the public health community, and the agricultural community, and consumers.

Section 4. To further promote the reuse of reclaimed water for irrigation purposes, the rules that apply when reclaimed water is injected into a receiving groundwater having 1,000 to 3,000 mg/L total dissolved solids are applicable to reclaimed water aquifer storage and recovery wells injecting into a receiving groundwater of less than 1,000 mg/L total dissolved

solids if the applicant demonstrates that there are no public supply wells within 3,500 feet of the aquifer storage and recovery wells and that it has implemented institutional controls to prevent the future construction of public supply wells within 3,500 feet of the aquifer storage and recovery wells.

Section 5. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date the act becomes a law.

Section 6. This act shall take effect upon becoming a law.