

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 715 Reclaimed Water
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Maggard
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1656

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	9 Y, 0 N, As CS	Melkun	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee	7 Y, 0 N	White	Pigott
3) State Affairs Committee			

SUMMARY ANALYSIS

Reclaimed water is water from a domestic wastewater treatment facility that has received at least secondary treatment and basic disinfection for reuse. Reuse is the deliberate application of reclaimed water for a beneficial purpose. The use of reclaimed water for the purpose of directly or indirectly augmenting drinking water supplies is known as potable reuse. Indirect potable reuse is the planned discharge of reclaimed water to ground or surface waters for the development or supplementation of potable water supply. Direct potable reuse is the introduction of advanced treated reclaimed water into a raw water supply immediately upstream of a drinking water treatment facility or directly into a potable water distribution system.

Although regulations currently exist in Florida for using reclaimed water for indirect potable reuse for augmenting surface water, there are no regulations that address using reclaimed water for indirect potable reuse involving groundwater replenishment or direct potable reuse.

The bill requires the Department of Environmental Protection (DEP) to adopt rules for potable reuse to authorize potable reuse projects; protect the public health and environment; support the use of reclaimed water for potable reuse purposes; implement the recommendations of the Potable Reuse Commission; and require the point of compliance with drinking water standards for potable reuse projects to be the final discharge point for finished water from the water treatment facility. The bill further requires the rules to include certain procedures for the treatment of reclaimed water.

The bill requires DEP to initiate rulemaking by December 31, 2020, and submit the adopted rules to the Legislature by December 12, 2021.

The bill states that reclaimed water is deemed a water source for public water supply systems. The bill also declares that potable reuse is an alternative water supply, and potable reuse projects are eligible for alternative water supply funding. The bill specifies that potable reuse projects developed as qualifying public-private partnerships are eligible for expedited permitting beginning January 1, 2025, and are granted an annual tax credit. The bill further specifies that potable reuse projects developed as qualifying public-private partnerships are granted a 3-year extension on any deadlines imposed on domestic wastewater treatment disposal and are eligible for priority funding from the Drinking Water State Revolving Fund and water management district cooperative funding.

Beginning January 1, 2026, the bill prohibits domestic wastewater treatment facilities from disposing of effluent, reclaimed water, or reuse water by surface water discharge unless certain exceptions apply.

The bill requires local governments to authorize the use of residential graywater technologies that comply with the Florida Building Code and provide incentives to developers to use such technologies.

The bill may have an indeterminate negative fiscal impact on DEP that can be absorbed within existing resources due to the costs associated with the rulemaking and technical advisory committee requirements of the bill. There is an indeterminate negative fiscal impact to the state for the tax credit. The bill may have an indeterminate negative fiscal impact on local governments.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Drinking Water

The federal Safe Drinking Water Act (SDWA) was passed by Congress in 1974 to protect public health by regulating the nation's public drinking water supply.¹ The SDWA applies to all public water systems in the U.S. which are regulated by the Environmental Protection Agency (EPA).² However, the most direct oversight of water systems is conducted by state drinking water programs. States can apply to the EPA for "primacy," or the authority to implement the SDWA within their jurisdictions, if they can show that they will adopt standards at least as stringent as the EPA's and ensure their water systems meet these standards. All states and territories, except Wyoming and the District of Columbia, have received primacy.³

Florida Safe Water Requirements

The "Florida Safe Drinking Water Act"⁴ (act) establishes DEP as the agency with primary responsibility for regulating drinking water, with support by the Department of Health and its units, including county health departments. The act is intended to:

- Implement the federal SDWA;
- Encourage cooperation between federal, state, and local agencies, not only in their enforcement role, but also in their service and assistance roles to city and county elected bodies; and
- Provide for safe drinking water at all times throughout the state, with due regard for economic factors and efficiency in government.⁵

Drinking Water State Revolving Fund

The Drinking Water State Revolving Fund (DWSRF) program is a federal-state partnership created within the SDWA to help ensure safe drinking water. The DWSRF program provides financial support to water systems and to state safe water programs.⁶ In Florida, the DWSRF program within DEP provides low-interest loans to local governments and private utilities to plan, design, and build or upgrade drinking water systems.⁷

Wastewater Treatment Facilities

Because domestic wastewater treatment facilities are stationary installations that are reasonably expected to be sources of water pollution, they must be operated, maintained, constructed, expanded, or modified with a permit issued by the Department of Environmental Protection (DEP).⁸ Approximately 2,000 domestic wastewater treatment facilities in the state serve roughly two-thirds of the state's population.⁹ Each day, over 1.5 billion gallons of treated wastewater effluent¹⁰ and reclaimed water¹¹

¹ United States Environmental Protection Agency (EPA), *Understanding the Safe Drinking Water Act* (June 2004), available at <https://www.epa.gov/sites/production/files/2015-04/documents/epa816f04030.pdf> (last visited Jan. 27, 2020).

² Pub. L. No. 93-523, 88 Stat. 1660 (1974). Under the Safe Drinking Water Act, the EPA is authorized to regulate contaminants in public drinking water systems.

³ EPA, *Understanding the Safe Drinking Water Act* (June 2004), available at <https://www.epa.gov/sites/production/files/2015-04/documents/epa816f04030.pdf> (last visited Jan. 27, 2020).

⁴ Section 403.850, F.S. The act includes ss. 403.850-403.891, F.S.

⁵ Section 403.851, F.S.

⁶ EPA, *Drinking Water State Revolving Fund (DWSRF)*, available at <https://www.epa.gov/dwsrf> (last visited Jan. 28, 2020).

⁷ DEP, *State Revolving Fund*, available at <https://floridadep.gov/wra/srf> (last visited Jan. 28, 2020).

⁸ Section 403.087(1), F.S.

⁹ DEP, *General Facts and Statistics about Wastewater in Florida*, available at <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Jan. 23, 2020); the remainder of the state is served by onsite sewage and disposal systems permitted and regulated by the Department of Health.

¹⁰ Rule 62-600.200(22), F.A.C., defines "effluent" to mean, unless specifically stated otherwise, water that is not reused after flowing out of any plant or other works used for the purpose of treating, stabilizing, or holding wastes.

are disposed of from these facilities.¹² Methods of disposal include reuse and land application systems, groundwater disposal by underground injection, groundwater recharge using injection wells, surface water discharges, disposal to coastal and open ocean waters, and wetland discharges.¹³

Most domestic wastewater treatment facilities must meet either basic disinfection or high-level disinfection requirements, dependent upon the type of discharge.¹⁴ Basic disinfection requires the effluent to contain less than 200 fecal coliforms per 100 micrograms per milliliter,¹⁵ while high-level disinfection requires fecal coliforms to be reduced below detection.¹⁶ Domestic wastewater treatment facilities that discharge to surface waters¹⁷ must also obtain a National Pollutant Discharge Elimination System (NPDES) permit, which is established by the Clean Water Act to control point source discharges.¹⁸ NPDES permit requirements for most domestic wastewater facilities are incorporated into the DEP-issued permit.¹⁹

Consumptive Use Permits

Before using waters of the state,²⁰ a person must apply for and obtain a consumptive use permit (CUP) from the applicable water management district (WMD)²¹ or DEP. The WMD or DEP may impose reasonable conditions necessary to assure that the proposed use is consistent with the overall objectives of the WMD or DEP and is not harmful to the water resources of the area.²² To obtain a CUP, an applicant must establish that the proposed use of water is a reasonable-beneficial use,²³ will not interfere with any presently existing legal use of water, and is consistent with the public interest.²⁴

It is possible for consumptive use to lower the flows and levels of water bodies to a point that the resource values are significantly harmed. To prevent this harm, the WMDs are responsible for identifying and establishing the limit at which further water withdrawals would be significantly harmful to the water resources or ecology of the area, known as the minimum flow²⁵ or minimum level (MFL).²⁶

¹¹ Rule 62-600.200(54), F.A.C., defines “reclaimed water” to mean water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.

¹² DEP, *General Facts and Statistics about Wastewater in Florida*, available at <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Jan. 23, 2020).

¹³ Rule 62-600.440(4), F.A.C.

¹⁴ DEP, *Ultraviolet Disinfection for Domestic Wastewater*, available at <https://floridadep.gov/water/domestic-wastewater/content/ultraviolet-uv-disinfection-domestic-wastewater> (last visited Jan. 23, 2020).

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

¹⁶ Rule 62-600.440(6), F.A.C.

¹⁷ Section 373.019(21), F.S., defines “surface water” to mean water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs is classified as surface water when it exits from the spring onto the earth’s surface; s. 403.031(13), F.S., defines “waters” to mean rivers, lakes, streams, springs, impoundments, wetlands, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface, or underground waters; r. 62-620.200(56), F.A.C.

¹⁸ 33 U.S.C. s. 1342.

¹⁹ Section 403.0885, F.S.; ch. 62-620, F.A.C.; DEP, *Wastewater Permitting*, available at <https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting> (last visited Jan. 23, 2020); Florida’s Water Permitting Portal, *Types of Permits*, available at <http://flwaterpermits.com/typesofpermits.html> (last visited Jan. 23, 2020).

²⁰ Section 373.019(22), F.S., defines the term “water” or “waters in the state” to mean any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.

²¹ Section 373.216, F.S.; see chs. 40A-2, 40B-2, 40C-2, 40D-2, and 40E-2, F.A.C., for CUP permitting requirements.

²² Section 373.219(1), F.S.; an individual solely using water for domestic consumption is exempt from CUP requirements.

²³ Section 373.019(16), F.S., defines the term “reasonable-beneficial use” to mean the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner that is both reasonable and consistent with the public interest.

²⁴ Section 373.223(1), F.S.

²⁵ Section 373.042(1)(a), F.S., provides that the minimum flow for a given watercourse is the limit at which further water withdrawals would be significantly harmful to the water resources or ecology of the area.

²⁶ Section 373.042(1)(b), F.S., provides that the minimum level is the level of groundwater in an aquifer or the level of a surface waterbody at which further withdrawals will significantly harm the water resources of the area. DEP, *Minimum Flows and Minimum Water Levels and Reservations*, available at <https://floridadep.gov/water-policy/water-policy/content/minimum-flows-and-minimum-water-levels-and-reservations> (last visited Jan. 27, 2020).

For water bodies that are below their MFL, or are projected to fall below it within 20 years, the WMDs are required to implement a recovery or prevention strategy to ensure the MFL is maintained.²⁷ A recovery or prevention strategy must include the development of additional water supplies and other actions to achieve recovery to the established MFL as soon as practicable or prevent the existing flow or water level from falling below the established MFL.²⁸ A recovery or prevention strategy must also include a phased-in approach or a timetable that will allow for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses, including implementation of conservation and other efficiency measures to offset reductions in permitted withdrawals.²⁹

Reclaimed Water

Reclaimed water is water from a domestic wastewater³⁰ treatment facility that has received at least secondary treatment³¹ and basic disinfection³² for reuse.³³ Reuse is the deliberate application of reclaimed water for a beneficial purpose.³⁴ Current law specifies that encouraging and promoting the reuse of reclaimed water are state objectives and are considered to be in the public interest. In response to these objectives, DEP and the WMDs have implemented a comprehensive reuse program.³⁵

Florida law allows reclaimed water to be used in slow-rate land application systems for public access areas (e.g., golf courses, parks, and highway medians), residential irrigation, and edible crops;³⁶ rapid-rate land application systems;³⁷ groundwater recharge and indirect potable reuse systems;³⁸ and overland flow systems.³⁹ Industrial uses for reclaimed water such as cooling water, wash water, and process water are also authorized.⁴⁰ Florida has been utilizing reclaimed water for landscape irrigation and industrial uses since the early 1970s. Currently, Florida is the national leader in water reuse, utilizing 48 percent of the total domestic wastewater in the state for nonpotable uses.⁴¹

Aquifer Storage and Recovery and Aquifer Recharge

DEP has general regulatory authority over underground water, lakes, rivers, streams, canals, ditches, and coastal waters under the jurisdiction of the state to the extent that the pollution of these waters may impact public health or impair the interests of the public or persons lawfully using the waters.⁴² Accordingly, through its Aquifer Protection Program, DEP regulates the disposal of appropriately treated fluids, such as reclaimed water, through underground injection wells while also protecting underground sources of drinking water.⁴³ The program is aimed at preventing degradation of the quality of aquifers adjacent to the injection zone.⁴⁴

²⁷ DEP, *Minimum Flows and Minimum Water Levels and Reservations*, available at <https://floridadep.gov/water-policy/water-policy/content/minimum-flows-and-minimum-water-levels-and-reservations> (last visited Jan. 27, 2020).

²⁸ Section 373.0421(2), F.S.

²⁹ *Id.*

³⁰ Section 367.021(5), F.S., defines the term “domestic wastewater” to mean wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.

³¹ Rule 62-610.200(54), F.A.C., defines the term “secondary treatment.”

³² Rule 62-600.440(5), F.A.C., provides the requirements for basic disinfection.

³³ Section 373.019(17), F.S.; r. 62-610.200(48), F.A.C.

³⁴ Rule 62-610.200(52), F.A.C.

³⁵ DEP, *Risk Impact Statement* (Dec. 21, 1998), available at https://floridadep.gov/sites/default/files/risreuse_508C.pdf (last visited Jan. 24, 2020).

³⁶ Chapter 62-610, Part III, F.A.C.

³⁷ Chapter 62-610, Part IV, F.A.C., includes rapid infiltration basins and absorption fields.

³⁸ Chapter 62-610, Part V, F.A.C.

³⁹ Chapter 62-610, Part VI, F.A.C., includes the treatment of domestic wastewater to meet effluent limitations for discharge to surface waters.

⁴⁰ Chapter 62-610, Part VII, F.A.C.

⁴¹ PRC, *Framework for the Implementation of Potable Reuse in Florida* (Jan. 2020), xxiii, available at <http://prc.watereuseflorida.com/wp-content/uploads/Framework-for-Potable-Reuse-in-Florida-FINAL-January-2020-web10495.pdf> (last visited Jan. 27, 2020).

⁴² Section 403.062, F.S.

⁴³ Rule 62-528.200(66), F.A.C., defines the term “underground source of drinking water” to mean aquifer. DEP, *Aquifer Protection Program – UIC*, available at <https://floridadep.gov/water/aquifer-protection> (last visited Jan. 27, 2020).

⁴⁴ DEP, *Aquifer Protection Program – UIC*, available at <https://floridadep.gov/water/aquifer-protection> (last visited Jan. 27, 2020); see ch. 62-528, F.A.C., for underground injection control permitting requirements.

Aquifer storage and recovery (ASR) is the underground injection and storage of water into a subsurface formation for the purpose of withdrawing the water for beneficial purposes at a later date.⁴⁵ ASR provides for storage of large quantities of water for both seasonal and long-term storage and ultimate recovery that would otherwise be unavailable due to land limitations, loss to tides, or evaporation.⁴⁶ Similar to ASR, aquifer recharge (AR) is the underground injection and storage of water into an aquifer, but the water used to recharge the aquifer is not being stored for the purpose of withdrawing the water from the same facility at a later date.⁴⁷ AR is primarily considered a water resource development and conservation strategy used to preserve and enhance water resources and natural systems (e.g., sustain water levels, meet MFLs) and to attenuate flooding.⁴⁸

For both ASR and AR, the aquifer acts as an underground reservoir for the recharged water. Whereas ASR is most commonly utilized near major population centers requiring storage to ensure water system reliability (e.g., public supply and commercial/industrial/mining uses), AR is most effective as a water management strategy in sparsely populated rural areas whose water resources rely on stable regional aquifer levels.⁴⁹

ASR and AR wells are regulated as Class V injection wells, which include all wells that inject non-hazardous fluids into or above formations that contain underground sources of drinking water. While ASR wells are all wells associated with an ASR facility, AR wells include:

- Recharger wells, which replenish, augment, or store water in an aquifer;
- Saltwater intrusion barrier wells, which inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water;
- Subsidence control wells, which inject fluids into a zone that does not produce oil or gas to reduce or eliminate subsidence associated with the overdraft of fresh water; and
- Connector wells, which connect two aquifers to allow the interchange of water between them.⁵⁰

Potable Reuse

The use of reclaimed water for the purpose of directly or indirectly augmenting drinking water supplies is known as potable reuse. Indirect potable reuse is the planned discharge of reclaimed water to ground or surface waters for the development or supplementation of potable water supply. Direct potable reuse is the introduction of advanced treated reclaimed water into a raw water supply immediately upstream of a drinking water treatment facility or directly into a potable water distribution system.⁵¹

Although regulations currently exist in Florida for using reclaimed water for indirect potable reuse for augmenting surface water, there are no regulations that address using reclaimed water for indirect potable reuse involving groundwater replenishment or direct potable reuse.⁵²

Potable Reuse Commission

The Potable Reuse Commission (PRC) was organized by stakeholders to develop a consensus-based framework to advance the safe implementation of potable reuse in Florida. The framework was developed to safeguard the protection of public health and the environment, provide regulatory and financial certainty to communities considering potable reuse, and ensure consistency in permitting and implementation of potable reuse projects throughout the state.⁵³

⁴⁵ DEP, *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater and Excess Surface Water* (Dec. 1, 2015), 83, available at <https://floridadep.gov/sites/default/files/SB536%20Final%20Report.pdf> (last visited Jan. 27, 2020).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Rule 62-528.300(1)(e), F.A.C.

⁵¹ *Id.* at xxiv.

⁵² *Id.*

⁵³ *Id.* at iii.

The final report on the framework was published in January 2020, and provided the following recommendations:

- Move Florida's existing reclaimed water regulations that apply to potable reuse into the appropriate drinking water regulation rule chapters;
- Revise the existing drinking water regulations to specify that reclaimed water is a water supply source;
- Require potable reuse to meet drinking water standards by providing pathogen treatment; and
- Address emerging constituents,⁵⁴ such as pharmaceuticals and personal care products, in potable reuse.⁵⁵

Economic-Based Designations

A rural area of opportunity (RAO) is a rural community, or a region composed of rural communities, designated by the Governor that presents a unique economic development opportunity of regional impact or that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster.⁵⁶ The three designated RAOs are the:

- Northwest RAO, which includes Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington Counties, and the City of Freeport;
- South Central RAO, which includes DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee Counties, and the Cities of Pahokee, Belle Glade, South Bay, and Immokalee; and
- North Central RAO, which includes Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union Counties.⁵⁷

A fiscally constrained county is a county that is entirely within a RAO or a county for which the value of a mill will raise no more than \$5 million in revenue.⁵⁸

Effect of the Bill

The bill defines the following terms:

- "Advanced treated reclaimed water" means the water produced from an advanced water treatment process for potable reuse applications;
- "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;
- "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;
- "Emerging constituents" means pharmaceuticals, personal care products, and other chemicals not regulated as part of drinking water quality standards;
- "Indirect potable reuse" means the planned delivery or discharge of reclaimed water to groundwater or surface water for the development of, or to supplement, the potable water supply;
- "Off-spec reclaimed water" means reclaimed water that does not meet the standards for potable reuse;

⁵⁴ Emerging constituents, also known as "emerging substances of concern" and "contaminants of emerging concern," is a catch-all term used to describe a fluid list of contaminants of interest to regulatory agencies on both the state and federal level. DEP, *Emerging Substances of Concern* (Dec. 2008), 2, available at https://floridadep.gov/sites/default/files/esoc_fdep_report_12_8_08.pdf (last visited Jan. 27, 2020).

⁵⁵ PRC, *Framework for the Implementation of Potable Reuse in Florida* (Jan. 2020), xxvii-xxviii, available at <http://prc.watereuseflorida.com/wp-content/uploads/Framework-for-Potable-Reuse-in-Florida-FINAL-January-2020-web10495.pdf> (last visited Jan. 27, 2020).

⁵⁶ Section 288.0656(2)(d), F.S.

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

⁵⁸ Section 218.67(1), F.S.

- "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; and
- "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.

The bill requires DEP to adopt rules for potable reuse to:

- Authorize potable reuse projects;
- Protect the public health and environment by ensuring the rules meet federal and state drinking water and water quality standards and, when possible, implement such rules through existing regulatory programs;
- Support the use of reclaimed water for potable reuse purposes;
- Implement the recommendations in the PRC's 2020 report; and
- Require the point of compliance with drinking water standards for potable reuse projects to be the final discharge point for finished water from the water treatment facility.

The bill requires the potable reuse rules to include:

- Implementation of a log reduction credit system using advanced treatment technology to meet pathogen treatment requirements;
- An approach by a public water supplier to meet required pathogen treatment in an engineering report as part of its public water supply permit application for authorization of potable reuse;
- Procedures for using appropriate treatment technology⁵⁹ to address emerging constituents in potable reuse projects;
- Appropriate monitoring to evaluate advanced treatment technology performance;
- Industrial pretreatment requirements that match current law; and
- Off-spec reclaimed water requirements for projects that include immediate disposal, temporary storage, alternative nonpotable reuse, or retreatment or disposal of off-spec reclaimed water.

The bill specifies that if an applicant for a reclaimed water ASR well injecting into a receiving groundwater with less than 1,000 mg/L total dissolved solids demonstrates that there are no public supply wells within 3,500 feet of the ASR well, and the applicant has implemented institutional controls to prevent the future construction of public supply wells within 3,500 feet of the ASR well, the rules that apply when reclaimed water is injected into a receiving groundwater that has 1,000 to 3,000 mg/L total dissolved solids are applicable to the ASR well.

The bill requires treatment of reclaimed water, as necessary, to meet existing drinking water rules, including the rules for pathogens.

The bill requires DEP to review existing rules governing reclaimed water and potable reuse to identify obsolete and inconsistent requirements and, in adopting new potable reuse rules, eliminate such inconsistencies. The bill requires DEP to review its AR rules and, if revisions are necessary to ensure continued compliance when reclaimed water is used for AR, adopt such rules.

The bill requires DEP to initiate rulemaking by December 31, 2020, and submit the adopted rules to the Legislature by December 12, 2021, for approval and incorporation into ch. 403, F.S., by the Legislature. The bill prohibits DEP from publishing such rules as administrative rules.

The bill requires DEP to convene and lead one or more technical advisory committees to coordinate the rulemaking and review of the rules required by the bill.

The bill requires DEP, by December 31, 2022, to develop and execute a memorandum of agreement with the WMDs that provides the process for a coordinated review of permits associated with the

⁵⁹ The advanced treatment technology must be technically and economically feasible and provide flexibility in the processes employed to recognize different project scenarios, emerging constituent concentrations, desired finished water quality, and the treatment capability of the facility.

construction and operation of an indirect potable reuse project to ensure a permit's consistency, if a permittee requests such review.

The bill states that, to comply with drinking water quality standards, reclaimed water is deemed a water source for public water supply systems. The bill also declares that potable reuse is an alternative water supply, and potable reuse projects are eligible for alternative water supply funding.

The bill specifies that potable reuse projects developed as qualifying public-private partnerships are eligible for expedited permitting beginning January 1, 2025, and are granted an annual tax credit. 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 may not exceed 100 percent of the eligible capital costs. The bill further specifies that any tax credit granted may not be carried forward or backward.

The bill further specifies that potable reuse projects developed as qualifying public-private partnerships are granted a 3-year extension on any deadlines imposed on domestic wastewater treatment disposal and are eligible for priority funding from the Drinking Water State Revolving Fund and WMD cooperative funding.

Beginning January 1, 2026, the bill prohibits domestic wastewater treatment facilities from disposing of effluent, reclaimed water, or reuse water by surface water discharge. However, the prohibition does not apply to:

- Indirect potable reuse projects;
- Domestic wastewater treatment facility discharges during wet weather which occur in accordance with the applicable DEP permit;
- Discharges into a stormwater management system that are subsequently withdrawn by a user for irrigation purposes;
- Domestic wastewater treatment facilities located in fiscally constrained counties;
- 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;
- MFLs recovery or prevention strategy plan projects;
- Domestic wastewater treatment facilities with reuse systems that provide a minimum of 90 percent of a facility's annual average flow for reuse purposes authorized by DEP;
- Domestic wastewater treatment facilities located in municipalities that have less than \$10 million in total revenue; or
- Domestic wastewater treatment facilities located in municipalities that are entirely within a RAO.

The bill requires a county, municipality, or special district to authorize the use of residential graywater⁶⁰ technologies that comply with the Florida Building Code in their respective jurisdictions. The bill further requires such entities to provide incentives to developers to fully offset the costs of their beneficial reuse of water through graywater technology. Such incentives may include, but are not limited to:

- Allowing the developer density or intensity bonus incentives or more floor space than allowed under the current or proposed future land use designation or zoning; or
- Reducing or waiving fees, such as impact fees or water and sewer charges.

If the local government has already applied one of the previously identified incentives to the development, the bill requires the local government to provide an additional incentive to the developer.

The bill specifies that the Legislature determines that the bill fulfills an important state interest.

B. SECTION DIRECTORY:

Section 1. Amends s. 403.064, F.S., relating to the reuse of reclaimed water.

⁶⁰ Section 381.0065(2)(e), F.S., defines the term "graywater" to mean the part of domestic sewage that is not blackwater, including waste from the bath, lavatory, laundry, and sink, except kitchen sink waste.

- Section 2. Creates s. 403.8531, F.S., relating to potable reuse.
- Section 3. Creates s. 403.892, F.S., relating to incentives for graywater technologies.
- Section 4. Creates an unnumbered section of law relating to potable reuse and reclaimed water.
- Section 5. Creates an unnumbered section of law relating to the reuse of reclaimed water for irrigation purposes.
- Section 6. Creates an unnumbered section of law relating to the Division of Law Revision.
- Section 7. Provides an important state interest.
- Section 8. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill allows an annual corporate income tax credit of 5% 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 premium tax liability generated by or arising out of the qualifying project, and the sum of all tax credits may not exceed 100% of the eligible capital costs. The REC determined the fiscal impact of the tax credit to be negative indeterminate.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on DEP due to the costs associated with the rulemaking and technical advisory committee requirements of the bill. It is anticipated that these costs can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a significant indeterminate negative fiscal impact on local government-owned wastewater treatment facilities that will be required to comply with potable reuse rules adopted by DEP and the prohibition on surface water discharges. The bill may also have an indeterminate negative fiscal impact on local governments because they will be required to provide incentives for the use of graywater technologies.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a significant indeterminate negative fiscal impact on privately-owned wastewater treatment facilities that will be required to comply with potable reuse rules adopted by DEP and the prohibition on surface water discharges.

The bill may have an indeterminate positive fiscal impact on developers who utilize incentives for the use of graywater technologies.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill prohibits local governments that own wastewater treatment facilities from discharging into surface waters unless an exception applies. An exemption may apply because the requirement applies to similarly situated persons and the bill provides a legislative finding that the requirements of the bill fulfill an important state interest. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DEP to adopt rules relating to potable reuse and reclaimed water.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Agriculture & Natural Resources Subcommittee adopted a PCS and reported the bill favorably as a committee substitute. The PCS provided additional exceptions to the prohibition on surface water discharges, removed the requirement that potable reuse rules be ratified by the Legislature, and required local governments, municipalities, and special districts to provide incentives for the use of graywater technologies.

This analysis is drafted to the committee substitute as approved by the Agriculture & Natural Resources Subcommittee.