

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 Appropriations Subcommittee on Agriculture, Environment, and General Government

BILL: SB 832

INTRODUCER: Senators Stewart and Rodrigues

SUBJECT: Implementation of the Recommendations of the Blue-Green Algae Task Force

DATE: January 25, 2022 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carroll</u>	<u>Rogers</u>	<u>EN</u>	Favorable
2.	<u>Reagan</u>	<u>Betta</u>	<u>AEG</u>	Recommend: Favorable
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

I. Summary:

SB 832 requires periodic inspection of onsite sewage treatment and disposal systems (OSTDS) that are not required to have an operating permit. The bill directs the Department of Environmental Protection (DEP) to administer an OSTDS inspection program and to adopt rules that include the following:

- A schedule for a five-year inspection cycle;
- A county-by-county implementation plan phased in over a 10-year period, with priority given to those areas within a priority focus area for springs;
- Minimum standards for a functioning system;
- Requirements for the pumpout or repair of a failing system; and
- Enforcement procedures for an owner’s failure to obtain an inspection of the system or a contractor’s failure to timely report inspection results to the DEP and the system owner.

The bill also requires basin management action plans (BMAPs) to include a prioritized list of spatially focused suites of projects in areas likely to yield maximum pollutant reductions. Each project with a total cost exceeding \$1 million must be monitored to determine if it is working to reduce nutrient pollution or water use, or both, as intended. The bill requires the monitoring assessments to be completed expeditiously and included in each BMAP update.

The DEP may incur additional costs in administering the OSTDS inspection program.

II. Present Situation:

Blue-Green Algae Task Force

In 2019, Governor DeSantis directed the DEP to establish a Blue-Green Algae Task Force to expedite reduction of nutrient pollution and cyanobacteria blooms in the state.¹ The task force provides guidance and specific, science-based recommendations to expedite the restoration of water bodies that have been adversely affected by cyanobacteria blooms.² The task force has focused on source identification, nutrient reduction and remediation efforts, algal toxins and human health effects, and innovative technologies for the prevention, cleanup, and mitigation of harmful algal blooms.³

Onsite Sewage Treatment and Disposal Systems

OSTDSs, commonly referred to as “septic systems,” generally consist of two basic parts: the septic tank and the drainfield.⁴ 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.⁵

¹ State of Florida, Office of the Governor, *Executive Order Number 19-12 (2019)*, available at https://www.flgov.com/wp-content/uploads/orders/2019/EO_19-12.pdf; DEP, *Blue-Green Algae Task Force*, <https://protectingfloridatogether.gov/state-action/blue-green-algae-task-force> (last visited Jan. 3, 2022).

² Department of Environmental Protection (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.

³ *Id.*

⁴ Department of Health (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 Jan. 4, 2022); U.S. Environmental Protection Agency (EPA), *Types of Septic Systems*, <https://www.epa.gov/septic/types-septic-systems> (last visited Jan. 4, 2022) (showing the graphic provided in the analysis).

⁵ *Id.*



There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state's population.⁶ In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.⁷ For example, in rural areas and low-density developments, central sewer systems are not cost-effective. Less than one percent of OSTDSs in Florida are actively managed under operating permits and maintenance agreements.⁸ The remainder of systems are generally serviced only when they fail, often leading to costly repairs that could have been avoided with routine maintenance.⁹

In 2019, the Blue-Green Algae Task Force made the following recommendations relating to OSTDSs:

- The DEP should develop a more comprehensive regulatory program to ensure that OSTDSs are sized, designed, constructed, installed, operated, and maintained to prevent nutrient pollution, reduce environmental impact, and preserve human health;
- More post-permitting septic tank inspections should take place;
- Protections for vulnerable areas in the state should be expanded; and
- Additional funding is needed to accelerate septic to sewer conversions.¹⁰

In 2020, the Clean Waterways Act provided for the transfer of the Onsite Sewage Program from the Department of Health (DOH) to the DEP.¹¹ The Onsite Sewage Program will be transferred over a period of five years, and guidelines for the transfer are provided by an interagency

⁶ *Id.*

⁷ DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, Executive Summary (Oct. 1, 2008), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/documents/costs-implement-mandatory-statewide-inspection.pdf>.

⁸ *Id.*

⁹ *Id.*

¹⁰ DEP, *Blue-Green Algae Task Force Consensus Document #1*, 6-7 (Oct. 11, 2019), available at https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf.

¹¹ DEP, *Program Transfer*, <https://floridadep.gov/water/onsite-sewage/content/program-transfer> (last visited Jan. 4, 2022).

agreement.¹² Per the agreement, the DEP has the primary powers and duties of the Onsite Sewage Program, meaning that the county departments of health will implement the OSTDS program under the direction of the DEP instead of the DOH.¹³ The county departments of health will still handle permitting and inspection of OSTDS.¹⁴ In the event of an alleged violation of OSTDS laws, county departments of health will be responsible for conducting an inspection to gather information regarding the allegations.¹⁵

Water Quality and Nutrients

Phosphorous and nitrogen are naturally present in water and are essential nutrients for the healthy growth of plant and animal life.¹⁶ The correct balance of both nutrients is necessary for a healthy ecosystem; however, excessive amounts can cause significant water quality problems.

Phosphorous and nitrogen are derived from natural and human-made sources. Natural sources 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.¹⁷

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.¹⁸ Waterbodies or sections of waterbodies that do not meet the established water quality standards are deemed impaired.¹⁹ Pursuant to the federal Clean Water Act, the DEP is required to establish a TMDL for impaired waterbodies.²⁰

Basin Management Action Plans

The DEP is the lead agency in coordinating the development and implementation of TMDLs.²¹ BMAPs are one of the primary mechanisms the DEP uses to achieve TMDLs. BMAPs are plans

¹² DOH, DEP, *Interagency Agreement between DEP and DOH in Compliance with Florida's Clean Waterways Act for Transfer of the Onsite Sewage Program*, 5 (June 30, 2021), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/documents/interagency-agreement-between-fdoh-fdep-onsite-signed-06302021.pdf>.

¹³ *Id.* at 14.

¹⁴ *Id.* at 11; and DEP, *Onsite Sewage Program*, <https://floridadep.gov/water/onsite-sewage> (last visited Jan. 5, 2022).

¹⁵ DOH, DEP, *Interagency Agreement between DEP and DOH in Compliance with Florida's Clean Waterways Act for Transfer of the Onsite Sewage Program*, 11 (June 30, 2021), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/documents/interagency-agreement-between-fdoh-fdep-onsite-signed-06302021.pdf>.

¹⁶ EPA, *Sources and Solutions*, <https://www.epa.gov/nutrientpollution/sources-and-solutions> (last visited Jan. 4, 2022).

¹⁷ *Id.*

¹⁸ DEP, *Total Maximum Daily Loads Program*, <https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program> (last visited Jan. 3, 2022).

¹⁹ Section 403.067(1), F.S.

²⁰ *Id.*

²¹ 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.

that address the entire pollution load, including point and nonpoint discharges,²² for a watershed. BMAPs generally include:

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Best management practices 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.²³

The 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.²⁴ 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, community leaders, and the public to collectively determine and share water quality cleanup responsibilities collectively.²⁵ BMAPs are adopted by secretarial order.²⁶

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.²⁷

In 2019, the Blue-Green Algae Task Force made the following recommendations for BMAPs:

- Include regional storage and treatment infrastructure in South Florida watersheds;
- Consider land use changes, legacy nutrients, and the impact of the BMAP on downstream waterbodies;
- Develop a more targeted approach to project selection; and
- Evaluate project effectiveness through monitoring.²⁸

III. Effect of Proposed Changes:

The bill contains whereas clauses that acknowledge the following:

- Governor DeSantis created the Blue-Green Algae Task Force to improve water quality for the benefit of all Floridians;

²² 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.

²³ Section 403.067(7), F.S.

²⁴ *Id.*

²⁵ DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Dec. 4, 2019).

²⁶ Section 403.067(7)(a)5., F.S.

²⁷ Section 403.067(7)(a)6., F.S.

²⁸ DEP, *Blue-Green Algae Task Force Consensus Document #1, 2-4* (Oct. 11, 2019), available at https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf.

- The task force has issued recommendations for BMAPs, agriculture, human waste, stormwater, technology, public health, and science;
- The Clean Waterways Act of 2020 implemented many of the recommendations of the task force; and
- The full implementation of the task force's recommendations will require enactment of additional substantive legislation.

Section 1 amends s. 381.0065, F.S., to require periodic inspections for OSTDS, excluding systems required to have an operating permit, once every five years, to assess the fundamental operational condition of the system, prolong the life of the system, and identify any failure within the system. The bill provides that this requirement is effective July 1, 2025.

The bill requires the DEP to administer an OSTDS inspection program, to implement program standards, procedures, and requirements, and to adopt rules that must include, at a minimum, all of the following:

- A schedule for a five-year inspection cycle;
- A county-by-county implementation plan phased in over a ten-year period, with first priority given to those areas within a priority focus area for springs identified by the DEP;
- Minimum standards for a functioning system;
- Requirements for the pumpout or repair of a failing system; and
- Enforcement procedures for failure of a system owner to obtain an inspection and failure of a contractor to timely report inspection results to the DEP and the system owner.

Section 2 amends s. 403.067, F.S., which governs establishment and implementation of TMDLs. The bill requires that a new or revised BMAP must include a list that identifies and prioritizes spatially focused suites of projects in areas likely to yield maximum pollutant reductions.

The bill requires that for each project listed with a total cost exceeding \$1 million, the DEP must assess through integrated and comprehensive monitoring whether the project is working to reduce nutrient pollution or water use, or both, as intended. The bill provides that the assessments must be completed expeditiously and included in each BMAP update.

Section 3 provides an effective date of July 1, 2022.

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:

None.

C. Government Sector Impact:

The DEP may incur additional costs in administering the onsite sewage treatment and disposal system inspection program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.0065 and 403.067.

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

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

None.

B. Amendments:

None.