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 Fiscal Policy

BILL:	CS/CS/SB 1632
INTRODUCER:	Fiscal Policy Committee; Environment and Natural Resources Committee; Senator Brodeur and others
SUBJECT:	Environmental Protection
DATE:	April 26, 2023 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barriero	Rogers	EN	**Fav/CS**
2.	Reagan	Betta	AEG	**Favorable**
3.	Barriero	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1632 is a bill related to environmental protection. The major topics in this bill include wastewater treatment, onsite sewage treatment and disposal systems (OSTDSs), sanitary sewer services, basin management action plans (BMAPs), the wastewater grant program, the Indian River Lagoon (IRL), and the acquisition of state lands.

Regarding advanced wastewater treatment, the bill:

- Requires sewage disposal facilities to provide advanced waste treatment before discharging into certain impaired waters by January 1, 2033; and
- Requires that, for waters that become impaired after July 1, 2023, sewage disposal facilities must provide advanced waste treatment within 10 years of the designation.

Regarding OSTDS, the bill:

- Prohibits new OSTDSs within a BMAP, reasonable assurance plan, or pollution reduction plan where sewer is available. On lots one acre or less where sewer is *not* available, new OSTDSs must be an enhanced system or other treatment system that achieves at least 65 percent nitrogen reduction;
- Encourages local government agencies that receive grants or loans from the Department of Environmental Protection (DEP) for connecting OSTDSs to sewer systems to notify owners of OSTDSs that such funding is available and provide this information online;

- For BMAPs that include an Outstanding Florida Spring, the bill expands the area for which an OSTDS remediation plan is required from a "priority focus area" to the entire BMAP; and
- Saves from repeal the section of law establishing the OSTDS technical advisory committee and requires the committee to submit its recommendations to the Governor and Legislature annually.

Regarding sanitary sewer services, the bill:
- Requires local governments to consider the feasibility of providing sanitary sewer services for developments of more than 50 residential lots that have more than one OSTDS per acre within a 10-year planning horizon (not required for rural areas of opportunity);
- Requires local governments to update their comprehensive plans to include the sanitary sewer planning element by July 1, 2024; and
- Requires local governments that are subject to a BMAP (or located within the basin of waters not meeting applicable nutrient-related water quality standards) to provide the DEP with an annual update on the status of the construction of sanitary sewers to serve such areas.

Regarding BMAPs, the bill:
- Requires BMAPs to include five-year milestones for implementation and water quality improvement;
- Requires entities that have a specific pollutant load reduction requirement to submit to the DEP a list of projects that will be undertaken to meet the five-year milestones;
- Requires the DEP to coordinate with the Department of Agriculture and Consumer Services (DACS) and owners of agricultural operations in a BMAP to identify a list projects that will reduce pollutant loads for agricultural nonpoint sources; and
- Requires local governments to include in their comprehensive plans a list of projects necessary to achieve pollutant load reductions attributable to the local government as part of a BMAP.

Regarding the wastewater grant program, the bill:
- Expands the areas/types of waterbodies that are eligible to receive funding;
- Expands the types of projects that are eligible for grants to include additional wastewater projects, stormwater projects, and regional agricultural projects;
- Removes the requirement that each grant have a minimum 50 percent local match of funds, but allows the DEP to consider percent cost-share identified by an applicant (except for rural areas of opportunity) when prioritizing projects; and
- Requires the DEP to coordinate with local governments, stakeholders, and DACS to identify and prioritize the most effective and beneficial water quality improvement projects.

Regarding the IRL, the bill:
- Establishes the IRL Protection Program, consisting of the Banana River Lagoon BMAP, the Central Indian River Lagoon BMAP, the North Indian River Lagoon BMAP, and the Mosquito Lagoon Reasonable Assurance Plan;
- Requires the IRL Protection Program to establish five-year milestones for implementation and water quality improvement and a water quality monitoring component to evaluate the progress of pollutant load reductions;

- Requires the DEP to evaluate the program every five years and identify any further load reductions necessary to achieve compliance with total maximum daily loads;
- Requires the DEP, in coordination with DACS and other stakeholders, to identify and prioritize projects necessary to achieve water quality standards within the IRL watershed;
- Prohibits new OSTDSs (unless previously permitted) within the IRL Protection Program area beginning January 1, 2024, where a central sewerage system is available. For new developments where sewer is *not* available, only enhanced nutrient-reducing OSTDSs will be authorized; and
- Requires any commercial or residential property with an existing OSTDS located within the IRL Protection Program area to connect to central sewer or upgrade to an enhanced nutrient-reducing OSTDS (or other wastewater treatment system that achieves at least 65 percent nitrogen reduction) by July 1, 2030.

Regarding the acquisition of state lands, the bill:

- Raises the property value threshold for when two appraisals of a parcel are required from $1 million to $5 million;
- Raises the contract price threshold for when the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) must approve an agreement to acquire real property from $1 million to $5 million;
- Removes the requirement that the Board of Trustees approve an acquisition if it is an initial purchase in a Florida Forever project; and provides that the Board of Trustees may expend moneys to acquire land to complete critical linkages within the Florida Wildlife Corridor;
- Appropriates $100 million annually to DEP for the acquisition of land under the Florida Forever Act;
- Provides that property value must be based upon the reasonable market value of the property considering those uses that are legally permissible, physically possible, financially feasible, and maximally productive; and
- Requires DEP and DACS to disclose otherwise confidential appraisal reports to private landowners or their representatives during negotiations for the acquisition of state lands or conservation easements.

The bill also requires DEP and each water management district to review and report on their permitting processes by July 1, 2024.

The DEP will incur indeterminate costs related to implementing the Indian River Lagoon Protection Program, including adopting rules.

The effective date of the bill is July 1, 2023.

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.[1] The correct balance of both nutrients is necessary for a healthy ecosystem; however, excessive nitrogen and phosphorus can cause significant water quality problems.[2]

Phosphorus and nitrogen are derived from natural and human-made sources.[3] 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.[4]

Excessive nutrient loads may result in harmful algal blooms, nuisance aquatic weeds, and the alteration of the natural community of plants and animals.[5] 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.[6]

Wastewater Treatment

The proper treatment and disposal or reuse of wastewater is a crucial part of protecting Florida's water resources. The majority of the state's wastewater is controlled and treated by centralized treatment facilities regulated by the Department of Environmental Protection (DEP). Florida has approximately 2,000 permitted domestic wastewater treatment facilities.[7]

Under section 402 of the federal Clean Water Act, any discharge of a pollutant from a point source[8] to surface waters (*i.e.*, the navigable waters of the United States or beyond) must obtain a National Pollution Discharge Elimination System (NPDES) permit.[9] NPDES permit requirements for most wastewater facilities or activities (domestic or industrial) that discharge to surface waters are incorporated into a state-issued permit, thus giving the permittee one set of permitting requirements rather than one state and one federal permit.[10] The DEP issues operation

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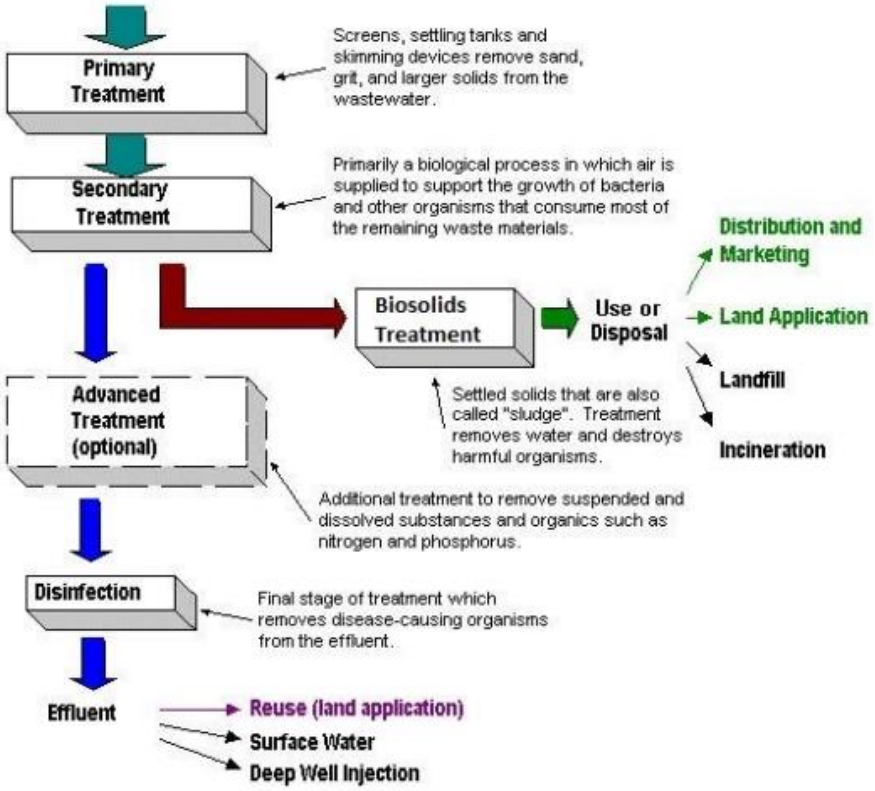
[1] U.S. Environmental Protection Agency (EPA), *The Issue*, https://www.epa.gov/nutrientpollution/issue (last visited Mar. 10, 2023).
[2] *Id.*
[3] *Id.*
[4] EPA, *Sources and Solutions*, https://www.epa.gov/nutrientpollution/sources-and-solutions (last visited Mar. 10, 2023).
[5] EPA, *The Issue*, https://www.epa.gov/nutrientpollution/issue (last visited Mar. 10, 2023).
[6] *Id.*
[7] Dep't of Environmental Protection (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 Mar. 10, 2023).
[8] "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. Fla. Admin. Code R. 62-620.200(37).
[9] 33 U.S.C. s. 1342.
[10] Sections 403.061 and 403.087, F.S.

permits for a period of five years for facilities regulated under the NPDES program and up to 10 years for other domestic wastewater treatment facilities meeting certain statutory requirements.[11]

Sewage disposal facilities are required to provide advanced waste treatment under certain circumstances or when deemed necessary by the DEP.[12] Advanced waste treatment is treatment that provides a reclaimed water product containing no more than the following concentrations of pollutants:

- 5 mg/l of Biochemical Oxygen Demand;
- 5 mg/l of Suspended Solids;
- 3 mg/l of Total Nitrogen; and
- 1 mg/l of Total Phosphorous.[13]

Advanced waste treatment also requires high-level disinfection.[14] Failure to conform to this standard is punishable by a civil penalty of $750 for each day the failure continues.[15]

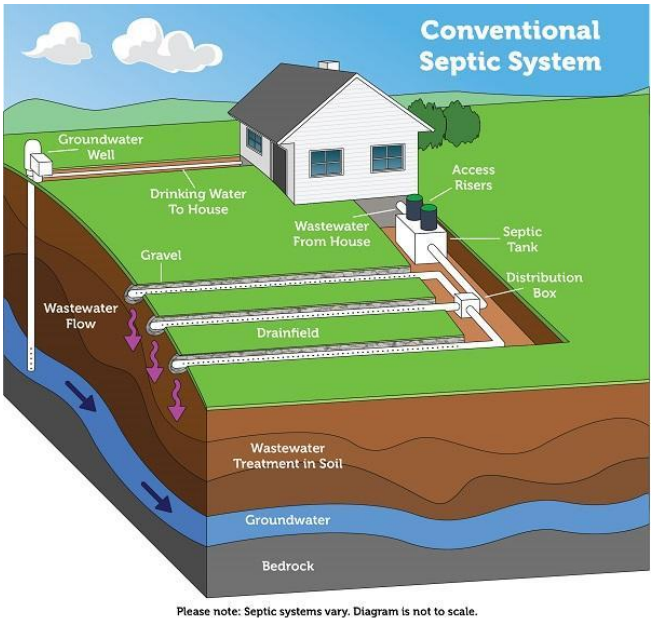


[11] Section 403.087(3), F.S.
[12] Section 403.086(2), F.S.
[13] Section 403.086(4), F.S.
[14] Section 403.086(4)(b), F.S.; Fla. Admin. Code R. 62-600.440(6).
[15] Section 403.086(2), F.S. DEP, *Domestic Wastewater Treatment Process*, *available at* https://floridadep.gov/water/domestic-wastewater/documents/domestic-wastewater-treatment-process (showing flowchart of wastewater treatment process).

Sewage disposal facilities must provide advanced waste treatment approved by the DEP before are disposing of wastes into the following waters: Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, Charlotte Harbor Bay, Biscayne Bay, and, beginning July 1, 2025, Indian River Lagoon, or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto.[16] However, this requirement does not apply to facilities permitted before February 1987 that discharge secondary treated effluent, followed by water hyacinth treatment, to tributaries of tributaries of these waters or to facilities permitted to discharge to the nontidally influenced portions of the Peace River.[17]

Onsite Sewage Treatment and Disposal Systems

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.[18] 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.[19]



There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state's population.[20] Development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.[21] For example, in rural areas and low-

[16] Section 403.086(1)(c), F.S.
[17] *Id.*
[18] Dep't 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 Mar. 13, 2023); EPA, *Types of Septic Systems*, https://www.epa.gov/septic/types-septic-systems (last visited Mar. 13, 2023) (showing the graphic provided in the analysis).
[19] *Id.*
[20] DEP, *Onsite Sewage Program*, https://floridadep.gov/water/onsite-sewage#:~:text=Onsite%20sewage%20treatment%20and%20disposal%20systems%20%28OSTDS%29%2C%20commonly,represents%2012%25%20of%20the%20United%20States%E2%80%99%20septic%20systems (last visited Mar. 13, 2023).
[21] DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, 1 (2008), *available at* http://www.floridahealth.gov/environmental-health/onsite-sewage/_documents/costs-implement-mandatory-statewide-inspection.pdf (last visited Mar. 13, 2023).

density developments, central sewer systems are not cost-effective. A 2008 study found that less than one percent of OSTDSs in Florida were actively managed under operating permits and maintenance agreements.[22] The remainder of the systems are generally serviced only when they fail, often leading to costly repairs that could have been avoided with routine maintenance.[23]

In a conventional OSTDS, the septic tank does not reduce nitrogen from raw sewage. 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.[24] This still leaves a significant amount of nitrogen to percolate into the groundwater, which makes nitrogen from OSTDSs a potential contaminant in groundwater.[25]

Different types of advanced OSTDSs exist that can remove greater amounts of nitrogen than a typical septic system (often referred to as "advanced" or "nutrient-reducing" septic systems).[26] DEP publishes on its website approved products and resources on advanced systems.[27] Determining which advanced system is the best option can depend on site-specific conditions.

Summary of Annual One-Time Construction Cost Impact to Residential Property Owners[28]

Type of System	Cost per System Over Conventional System Cost(1)	Number of Systems Upgraded Annually	Total Annual Cost – Residential Property Owners
INRB	$3,200	1,073	$3,433,600
ATU	$8,200	679	$5,567,800
PBTS	$10,700	36	$385,200
	Total	**1,788**	**$9,386,600**

(1) Estimated conventional system cost is $5,400.[29]

The owner of a properly functioning OSTDS must connect to a sewer system within one year of receiving notification that a sewer system is available for connection.[30] Owners of an OSTDS in need of repair or modification must connect within 90 days of notification from the DEP.[31] Basin management action plans (BMAPs) may require the connection of new properties to central sewer or upgrade to an enhanced-nitrogen reducing system as part of an OSTDS remediation

[22] *Id.*
[23] *Id.*
[24] 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/draftlegreportsm.pdf; *see* Fla. Admin. Code R. 64E-6.006(2).
[25] University of Florida Institute of Food and Agricultural Sciences (IFAS), *Onsite Sewage Treatment and Disposal Systems: Nitrogen*, 3 (2020), *available at* http://edis.ifas.ufl.edu/pdffiles/SS/SS55000.pdf (last visited Feb. 10, 2023).
[26] DOH, *Nitrogen-Reducing Systems for Areas Affected by the Florida Springs and Aquifer Protection Act* (updated May 2021), *available at* http://www.floridahealth.gov/environmental-health/onsite-sewage/products/_documents/bmap-n-reducing-tech-18-10-29.pdf.
[27] DEP, *Onsite Sewage Program, Product Listings and Approval Requirements*, https://floridadep.gov/water/onsite-sewage/content/product-listings-and-approval-requirements (last visited Mar. 15, 2023).
[28] DEP, *Statement of Estimated Regulatory Cost for Proposed Changes to Rule 62-6.001, F.A.C.*, 13 (on file with the Senate Committee on Environment and Natural Resources).
[29] *Id.*
[30] Section 381.00655, F.S.
[31] *Id.*

plan.[32] (See below for a detailed discussion on BMAPs.) The DEP is developing a rule that includes the requirement that OSTDS permits comply with the applicable BMAP.[33]

In 2020, the Clean Waterways Act provided for the transfer of the Onsite Sewage Program from the Department of Health (DOH) to the DEP.[34] The Onsite Sewage Program will be transferred over a period of five years, and guidelines for the transfer are provided by an interagency agreement.[35] 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.[36] The county departments of health still handle permitting and inspection of OSTDSs.[37] 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.[38]

The Clean Waterways Act also established an OSTDS technical advisory committee (TAC) within DEP.[39] The TAC consisted of 10 appointed members, including a professional engineer, a septic tank contractor, representatives from local government and the home building, real estate, and OSTDS industries, among others.[40] The TAC was charged with:

- Providing recommendations to increase the availability of enhanced nutrient-reducing OSTDSs in the marketplace, including such systems that are cost-effective, low maintenance, and reliable;
- Considering and recommending regulatory options, such as fast-track approval, prequalification, or expedited permitting, to facilitate the introduction and use of enhanced nutrient-reducing OSTDSs that have been reviewed and approved by a national agency or organization; and
- Providing recommendations for appropriate setback distances for OSTDSs from surface water, groundwater, and wells.[41]

In December 2021, the TAC submitted its recommendations to the Governor and Legislature.[42] Recommendations included, among other things, accepting treatment systems with a certain certification, increasing funding for enhanced nutrient-reducing OSTDSs, and streamlining

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[32] *See* sections 373.807, 373.811, and 403.067, F.S.
[33] *See* 48 Fla. Admin. Reg. 1276 (Apr. 1, 2022) *available at* https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2022/4864/4864doc.pdf; *see also* DEP, *History of Rule 62-6.001*, https://www.flrules.org/gateway/ruleNo.asp?id=62-6.001 (last visited Mar. 15, 2023).
[34] DEP, *Program Transfer*, https://floridadep.gov/water/onsite-sewage/content/program-transfer (last visited Feb. 10, 2023).
[35] DOH, DEP, *Interagency Agreement between DEP and DOH in Compliance with Florida's Clean Waterways Act for Transfer of the Onsite Sewage Program*, 5 (2021), *available at* http://www.floridahealth.gov/environmental-health/onsite-sewage/_documents/interagency-agreement-between-fdoh-fdep-onsite-signed-06302021.pdf (last visited Feb. 10, 2023).
[36] *Id.* at 14.
[37] *Id.* at 11; DEP, *Onsite Sewage Program*, https://floridadep.gov/water/onsite-sewage (last visited Feb. 10, 2023).
[38] DOH, DEP, *Interagency Agreement between DEP and DOH in Compliance with Florida's Clean Waterways Act for Transfer of the Onsite Sewage Program* at 11.
[39] Section 381.00652, F.S. *See also* Chapter 2020-150, s. 8, Laws of Fla.
[40] Section 381.00652(4)(a), F.S.; DEP, *OSTDS TAC*, https://floridadep.gov/water/onsite-sewage/content/onsite-sewage-treatment-and-disposal-systems-ostds-technical-advisory (last visited Apr. 25, 2023).
[41] Section 381.00652(2), F.S.
[42] DEP, *Recommendations of the OSTDS Technical Advisory Committee (Implementation of Chapter 2020-150, Laws of Florida)* (2021), *available at* https://floridadep.gov/sites/default/files/OSTDS_TAC_Recommendations.pdf.

innovative system testing.[43] The statute establishing the committee expired on August 15, 2022.[44]

Wastewater Grant Program

In 2020, the Legislature created a wastewater grant program in s. 403.0673, F.S., as part of the Clean Waterways Act.[45] The legislation authorized the DEP to provide grants to governmental entities for wastewater projects that reduce excess nutrient pollution within a BMAP, alternative restoration plan adopted by final order, or rural area of opportunity.[46] The program requires at least a 50 percent match, though this requirement can be waived for rural areas of opportunity.[47] Eligible projects include:

- Projects to retrofit OSTDSs to upgrade such systems to enhanced nutrient-reducing systems;
- Projects to construct, upgrade, or expand facilities to provide advanced waste treatment; and
- Projects to connect OSTDSs to central sewer facilities.[48]

The DEP coordinates with the water management districts to identify grant recipients in each district.[49] The 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; the availability of local matching funds; and projected water savings or quantity improvements associated with a project.[50] The DEP submits an annual report identifying the projects funded through the grant program to the Governor and Legislature.[51] Projects that subsidize the connection of OSTDS to wastewater treatment facilities are given priority in the following manner:

- First priority: subsidizing the connection of OSTDS to existing infrastructure.
- Second priority: any expansion of a collection or transmission system that promotes efficiency by planning the installation of wastewater transmission facilities to be constructed concurrently with other construction projects occurring within or along a transportation facility right-of-way.
- Third priority: all other connections of OSTDS to wastewater treatment facilities.

The wastewater grant program is funded by documentary stamp tax revenues.[52] After required distributions from documentary stamp tax revenues are disbursed,[53] an amount equaling 5.4175 percent of the remainder is paid into the Water Protection and Sustainability Program Trust Fund

[43] *Id.* at 2-4.
[44] Section 381.00652(6), F.S.
[45] Chapter 2020-150, Laws of Fla., and section 403.0673, F.S.
[46] Section 403.0673(1), F.S.
[47] *Id.*
[48] *Id.*
[49] Section 403.0673(4), F.S.
[50] Section 403.0673(2), F.S.
[51] Section 403.0673(5), F.S.
[52] Section 201.15(4)(h), F.S. Documentary stamp tax revenues are collected under ch. 201, F.S., which requires an excise tax to be levied on two classes of documents: deeds and other documents related to real property, which are taxed at the rate of 70 cents per $100; and certificates of indebtedness, promissory notes, wage assignments, and retail charge account agreements, which are taxed at 35 cents per $100. *See* sections 201.02(1)(a) and 201.08(1)(a), F.S.
[53] The required distributions are to the Land Acquisition Trust Fund and the service charge representing the estimated pro rata share of the cost of general government paid from the General Revenue Fund. Section 201.15(4), F.S.

to be used to fund wastewater grants.[54] The Office of Economic and Demographic Research estimates that the distribution for wastewater grants in Fiscal Year 2023-2024 will be $95.2 million.[55]

Water Quality Standards

Under section 303(d) of the federal Clean Water Act, states must establish water quality standards for waters within their borders and develop a list of impaired waters that do not meet the established water quality standards, as well as a list of threatened waters that may not meet water quality standards in the following reporting cycle.[56]

If the DEP determines that a waterbody or waterbody segment is impaired, it must be placed on the verified list of impaired waters and a total maximum daily load (TMDL) must be calculated.[57] The waterbody or waterbody segment may be removed from the verified list if it attains water quality criteria.[58] If the DEP determines that a waterbody is impaired, but further study is needed to determine the causative pollutants or other factors contributing to impairment before the waterbody is placed on the verified list, the waterbody or waterbody segment will be placed on the statewide comprehensive study list.[59]

Total Maximum Daily Loads

A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards.[60] Pursuant to the federal Clean Water Act, the DEP must establish a TMDL for impaired waterbodies.[61] As of December 2022, a total of 459 TMDLs have been established for impaired waters in Florida.[62]

[54] Section 201.15(4)(h), F.S.
[55] Office of Economic and Demographic Research (EDR), *Conference Results*, (2023) *available at* http://edr.state.fl.us/Content/conferences/docstamp/docstampresults.pdf.
[56] EPA, *Overview of Identifying and Restoring Impaired Waters under Section 303(d) of the CWA*, https://www.epa.gov/tmdl/overview-identifying-and-restoring-impaired-waters-under-section-303d-cwa (last visited Mar. 13, 2023); 40 C.F.R. 130.7; DEP, *Total Maximum Daily Loads Program*, https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program (last visited Mar. 13, 2023).
[57] DEP, *Assessment Lists*, https://floridadep.gov/dear/watershed-assessment-section/content/assessment-lists (last visited Feb. 24, 2023); DEP, *Verified List Waterbody Ids (WBIDs)*, https://geodata.dep.state.fl.us/datasets/FDEP::verified-list-waterbody-ids-wbids/about (last visited Feb. 24, 2023); and section 403.067(4), F.S.
[58] Section 403.067(5), F.S.
[59] Section 403.067(2), F.S.; ch. 62-303.150, F.A.C.
[60] Section 403.067(6)(a), F.S. *See also* 33 U.S.C. § 1251, s. 303(d) (the Clean Water Act).
[61] Section 403.067(1), F.S.
[62] EDR, *Annual Assessment of Florida's Water Resources: Quality*, 5 (2023), *available at* http://edr.state.fl.us/Content/natural-resources/2023_AnnualAssessmentWaterResources_Chapter4.pdf.

Basin Management Action Plans

BMAPs are one of the primary mechanisms the DEP uses to achieve TMDLs. BMAPs are plans that address the entire pollution load, including point and nonpoint discharges,[63] for a watershed. As of June 2022, there were 33 adopted BMAPs in Florida.[64]

BMAPs generally consist of:

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Best management practices (BMPs) (see below for further discussion of 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.[65]

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 quality monitoring.[66] A nonpoint source discharger may be subject to enforcement action by the DEP or a water management district based on a failure to implement these requirements.[67]

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.[68] Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations.[69]

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.[70] BMAPs are adopted by secretarial order.[71]

Each BMAP must include:

- The management strategies available through existing water quality protection programs to achieve TMDLs;
- A description of BMPs adopted by rule;

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[63] "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. Fla. Admin. Code R. 62-620.200(37).
[64] EDR, *Annual Assessment of Florida's Water Resources: Quality* at 5.
[65] Section 403.067(7), F.S.
[66] 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.
[67] Section 403.067(7)(b)2.h., F.S.
[68] *Id.*
[69] *Id.*
[70] DEP, *Basin Management Action Plans (BMAPs)*, https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps (last visited Mar. 13, 2023).
[71] Section 403.067(7), F.S.

- A list of projects in priority ranking with a planning-level cost estimate and estimated date of completion for each project;
- The source and amount of financial assistance to be made available; and
- A planning-level estimate of each project's expected load reduction, if applicable.[72]

BMAPs must also include milestones for implementation and water quality improvement and an associated water quality monitoring component to evaluate the progress of pollutant load reductions.[73] Every five years an assessment of progress toward these milestones must be conducted and revisions to the plan made as appropriate.[74]

In addition, a BMAP for a nutrient TMDL must include a wastewater treatment plan that addresses domestic wastewater if the DEP identifies domestic wastewater treatment facilities as contributors of at least 20 percent of point source or nonpoint source nutrient pollution or if the DEP determines remediation is necessary to achieve the TMDL.[75] This plan must provide for the construction, expansion, or upgrades necessary to achieve applicable TMDLs and include information regarding the permitted capacity of the domestic wastewater treatment facility; the average nutrient concentration and the estimated average nutrient load of the domestic wastewater; a projected timeline for the construction of any facility improvements; the estimated cost of the improvements; and the identity of responsible parties.[76]

BMAPs must also include an OSTDS remediation plan if the DEP identifies OSTDSs as a contributor of at least 20 percent of point source or nonpoint source nutrient pollution or if the DEP determines remediation is necessary to achieve a TMDL.[77] This remediation plan must identify cost-effective and financially feasible projects necessary to achieve the nutrient load reductions required for OSTDSs.[78] The plan must also include an inventory of OSTDSs (including those systems that would be eliminated through connection to central domestic wastewater infrastructure or that would be upgraded to an enhanced nutrient-reducing system); the estimated cost of potential OSTDS connections, upgrades, or replacements; and deadlines and milestones for the planning, design, and construction of projects.[79]

In addition, a BMAP must include a cooperative agricultural regional water quality improvement element, but only if:

- Agricultural measures have been adopted by the Department of Agriculture and Consumer Services (DACS) and have been implemented and the waterbody remains impaired;
- Agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges; and
- The DEP determines that additional measures are necessary to achieve the TMDL.[80]

[72] Section 403.067(7)(a)4., F.S.
[73] Section 403.067(7)(a)6., F.S.
[74] *Id.*
[75] Section 403.067(7)(a)9., F.S.
[76] Section 403.067(7)(a)9.a., F.S.
[77] Section 403.067(7)(a)9.b., F.S.
[78] *Id.*
[79] *Id.*
[80] Section 403.067(7)(e), F.S.

The cooperative agricultural regional water quality improvement element must be implemented through the use of cost-sharing projects and 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.[81]

Best Management Practices

BMPs are defined in statute as a practice or combination of practices determined by the coordinating agencies—based on research, field-testing, and expert review—to be the most effective and practicable on-location means, including economic and technological considerations, for improving water quality in agricultural and urban discharges.[82] BMPs for agricultural discharges must reflect a balance between water quality improvements and agricultural productivity.[83]

BMPs are designed to protect water resources from nonpoint source pollution,[84] occurring from operations like agriculture, golf courses, forestry, and stormwater management.[85] BMPs are practical measures that can reduce the effects of fertilizer, nutrients, and water use on the environment and otherwise manage the landscape to further protect water resources.[86]

Alternative Restoration Plans

Alternative Restoration Plans (4b or 4e plans) employ the early implementation of restoration activities to avoid being placed on the verified list and the development of TMDLs and BMAPs.[87] A waterbody can be placed in category 4e if it is impaired but recently completed restoration activities (or ongoing restoration activities are underway) to restore the designated uses of the waterbody.[88] For 4e plans, the waterbody is still included on the Clean Water Act's 303(d) list, but placement on the verified list is postponed for one five-year assessment cycle to allow for implementation of the 4e plan and evaluation of progress toward restoration.[89]

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[81] Section 403.067(7)(e), F.S. Eligible projects 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 project participants. *Id.*
[82] Section 373.4595(2)(a), F.S.; *see also* section 373.4592(2)(b), F.S.
[83] *Id.*
[84] Point sources are 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. Fla. Admin. Code R. 62-620.200(37).
[85] University of Florida Institute of Food and Agricultural Sciences (UF/IFAS), *Best Management Practices*, https://hort.ifas.ufl.edu/yourfloridalawn/bmps.shtml (last visited Mar. 15, 2023); DEP, *NPDES Stormwater Program*, https://floridadep.gov/Water/Stormwater (last visited Mar. 15, 2023).
[86] UF/IFAS, *What are Agricultural Best Management Practices?*, https://bmp.ifas.ufl.edu/about-bmps/ (last visited Mar. 15, 2023).
[87] DEP, *Alternative Restoration Plans*, https://floridadep.gov/DEAR/Alternative-Restoration-Plans (last visited Mar. 13, 2023).
[88] *Id.*
[89] DEP, *Category 4e Assessments and Documentation*, https://floridadep.gov/dear/alternative-restoration-plans/content/category-4e-assessments-and-documentation (last visited Mar. 15, 2023).

Category 4b plans include waterbodies that are impaired for one or more designated uses but does not require TMDL development because existing or proposed measures will attain water quality standards.[90] These waterbodies are *not* included in the CWA 303(d) list.[91]

A reasonable assurance plan (RAP) is a control measure that the DEP may implement for category 4b impaired waterbodies.[92] The DEP first determines if a waterbody is impaired or may be reasonably expected to become impaired within the next five years.[93] If a waterbody fits this criteria, the DEP evaluates whether existing or proposed technology-based effluent limitations and other pollution control programs are sufficient to result in the attainment of water quality standards. If the waterbody is expected to attain water quality standards in the future and to make reasonable progress towards attainment of those standards in a certain timeframe, the waterbody will not require a TMDL. The DEP's decision must be based on a plan that provides reasonable assurance that proposed pollution control mechanisms and expected water quality improvements in the waterbody will attain water quality standards.[94]

Outstanding Florida Springs

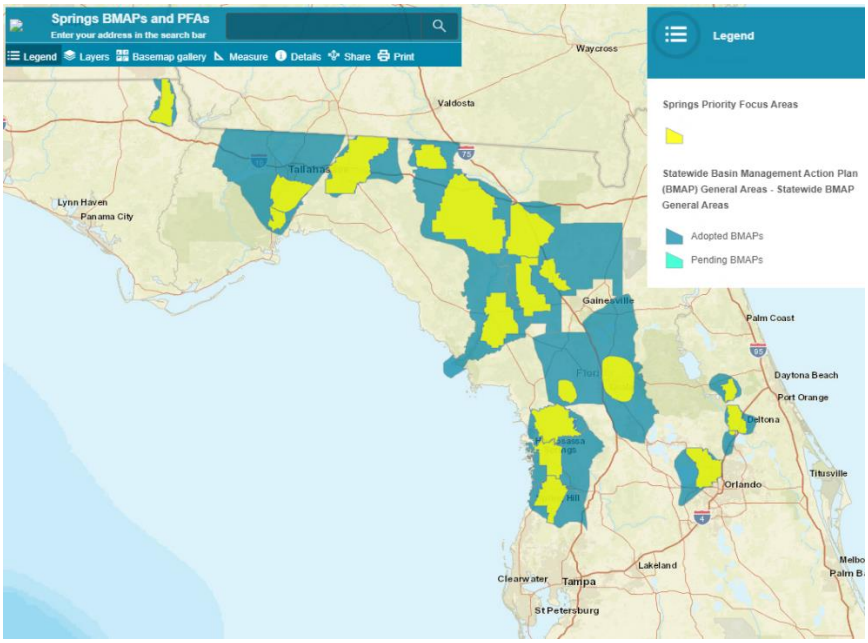
In 2016, the Florida Legislature enacted the Florida Springs and Aquifer Protection Act (the Act) and identified 30 Outstanding Florida Springs (OFSs) that require additional protections to ensure their conservation and restoration for future generations.[95] These springs are a unique part of the state's scenic beauty, provide critical habitat, and have immeasurable natural, recreational, and economic value.[96] The Act requires the DEP to assess the water quality in the OFSs. Based on these assessments, the DEP determined that 24 of these springs are impaired.[97] For these impaired springs, the DEP must adopt (or re-adopt) a BMAP to implement all the protections of the Act, including:

- Prioritized lists of restoration projects along with planning level estimates for cost, schedule, and nutrient load reduction;
- Phased milestones (five-year, 10-year, and 15-year) to achieve water quality restoration targets in 20 years;
- Estimated nutrient pollutant loads, allocated to each source or category of sources;
- Completed remediation plans for OSTDSs where septic loading accounts for at least 20 percent of the estimated nutrient input;[98] and

[90] EDR, *Annual Assessment of Florida's Water Resources: Quality*, 14 (2023), *available at* http://edr.state.fl.us/Content/natural-resources/2023_AnnualAssessmentWaterResources_Chapter4.pdf.
[91] *Id.*
[92] DEP, *Alternative Restoration Plans*, https://floridadep.gov/DEAR/Alternative-Restoration-Plans (last visited Mar. 13, 2023).
[93] Fla. Admin. Code R. 62-303.600.
[94] *Id.*
[95] DEP, *Springs*, https://floridadep.gov/springs/ (last visited Mar. 13, 2023). OFSs include all historic first magnitude springs and the following additional springs, including their associated spring runs: De Leon Springs, Peacock Springs, Poe Springs, Rock Springs, Wekiwa Springs, and Gemini Springs. Section 373.802(4), F.S.
[96] DEP, *Protect and Restore Springs*, https://floridadep.gov/springs/protect-restore (last visited Mar. 13, 2023).
[97] *Id.*
[98] Although OSTDS remediation plans were first only required for springs, in 2020, the requirement was expanded to BMAPs statewide as part of the Clean Waterways Act. *See* Chapters 2016-1, s. 27 and 2020-150, s. 13, Laws of Fla. Notably, OSTDS remediation plans for springs are only required within the priority focus areas, whereas the laws governing BMAPs require OSTDS remediation plans more generally within the entire BMAP.

- Delineated "priority focus areas" where certain activities are prohibited. [99]

A "priority focus area" is the area or areas of a basin where the Floridan Aquifer[100] is generally most vulnerable to pollutant inputs where there is a known connectivity between groundwater pathways and an OFS, as determined by the DEP in consultation with the appropriate water management districts and delineated in a BMAP.[101]



The activities prohibited within priority focus areas include:

- New domestic wastewater disposal facilities with permitted capacities of 100,000 gallons per day or more, except for those facilities that meet an advanced wastewater treatment standard of no more than 3 mg/l total nitrogen, on an annual permitted basis, or a more stringent treatment standard if necessary to attain a TMDL;
- New OSTDSs on lots of less than one acre, if the addition of the specific systems conflicts with an OSTDS remediation plan incorporated into a BMAP;
- New facilities for the disposal of hazardous waste;
- The land application of Class A or Class B domestic wastewater biosolids not in accordance with a DEP-approved nutrient management plan; and

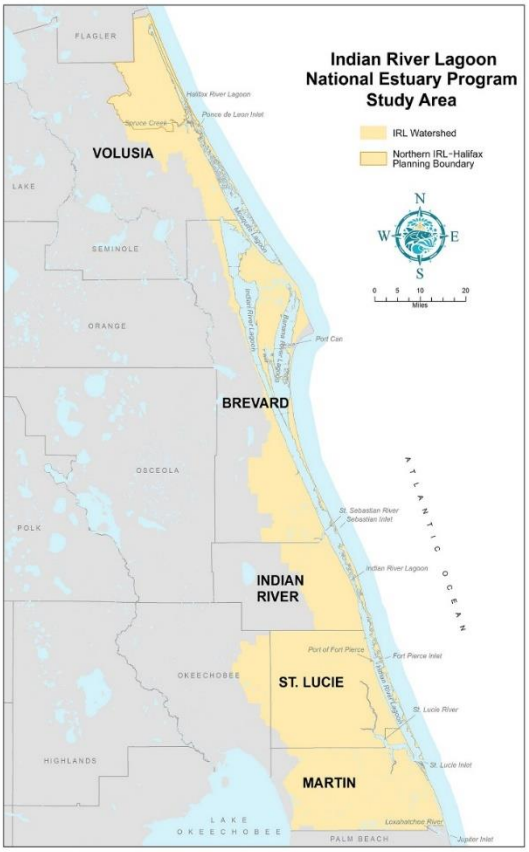
[99] DEP, *Protect and Restore Springs*, https://floridadep.gov/springs/protect-restore (last visited Mar. 13, 2023).
[100] The Floridan Aquifer is the largest aquifer in the southeastern United States and one of the most productive aquifer systems in the world. The aquifer underlies an area of about 100,000 square miles that includes all of Florida and extends into parts of Alabama, Georgia and South Carolina, as well as parts of the Atlantic Ocean and the Gulf of Mexico. St. Johns River Water Management District, *Florida's aquifers*, https://www.sjrwmd.com/water-supply/aquifer/#:~:text=Aquifer%20facts%201%20More%20than%2090%20percent%20of,2%2C000%20feet%20below%20land%20surface.%20...%20More%20items (last visited Mar. 13, 2023).
[101] Section 373.802(5), F.S.; DEP, *Map of Priority Focus Areas in BMAPs*, https://fdep.maps.arcgis.com/apps/View/index.html?appid=1afdd97c67584c06840019241becde74 (last visited Mar. 13, 2023) (map of priority focus areas).

- New agriculture operations that do not implement BMPs, measures necessary to achieve pollution reduction levels established by the DEP, or groundwater monitoring plans.[102]

There have been recent legal challenges to the DEP's development of BMAPs for OFSs. In *Sierra Club v. Department of Environmental Protection*, the court held that the DEP failed to comply with ss. 403.067(6)(b) and 373.801(1)(b), F.S., in creating the BMAPs because the BMAPs failed to include an identification of each *specific* point source or category of nonpoint sources and an estimated allocation of the pollutant for each point source or category of nonpoint sources.[103] Instead, the BMAPs included pie charts that only showed current estimated nitrogen loading in the various springsheds by source and allocations to entire basins, not to any point or nonpoint source.[104]

Indian River Lagoon

The Indian River Lagoon (IRL) is a 156-mile-long estuary spanning approximately 40 percent of Florida's east coast.[105] There are six coastal counties in the IRL watershed: Volusia, Brevard, Indian River, St. Lucie, Martin, and Palm Beach.[106] The IRL extends from Ponce de Leon Inlet near New Smyrna Beach in Volusia County to the southern border of Jupiter Inlet in Martin County.[107] There are three interconnected lagoons in the IRL basin: Mosquito Lagoon, Banana River Lagoon, and Indian River Lagoon.[108]



The IRL is considered the most biologically diverse estuary in North America.[109] It is home to more than 2,000 species of plants, 600 species of fish, 300 species of birds, and 53

[102] Section 373.811, F.S.
[103] *Sierra Club v. DEP*, No. 1D21-1667, *2 (Fla. 1st DCA 2023).
[104] *Id.* at *5.
[105] DEP, Basin Management Action Plan, *Indian River Lagoon Basin Central Indian River Lagoon*, 14 (2021), *available at* https://publicfiles.dep.state.fl.us/DEAR/BMAP/IndianRiverLagoon/BMAP_Documents/2021_IRL_BMAP_Final/CIRL/Final_CIRL_BMAP_02102021.pdf; IRLNEP, *Importance*, https://onelagoon.org/importance/ (last visited Mar. 10, 2023).
[106] DEP, Basin Management Action Plan, *Indian River Lagoon Basin Central Indian River Lagoon* at 14.
[107] *Id.*
[108] DEP, TMDL Report, *Nutrient and Dissolved Oxygen TMDLs for the Indian River Lagoon and Banana River Lagoon*, 1 (2009), *available at* https://floridadep.gov/sites/default/files/indian-banana-nutrient-do-tmdl.pdf.
[109] DEP, Basin Management Action Plan, *Indian River Lagoon Basin Central Indian River Lagoon*, 45 (2021), *available at* https://floridadep.gov/sites/default/files/central-irl-bmap.pdf; An estuary is a partially enclosed, coastal waterbody where

threatened or endangered species.[110] In 2014, the estimated annual economic value received from the IRL was approximately $7.6 billion, around $1.57 billion of which is attributable to recreation and visitor-related activity.[111] Industry groups that are directly influenced by the IRL support nearly 72,000 jobs.[112]

The IRL ecosystem has been harmed by human activities in the region. Stormwater runoff from urban and agricultural areas, discharges from wastewater treatment facilities, canal discharges, septic systems, animal waste, and fertilizer applications have led to harmful levels of nutrients and sediments entering the lagoon.[113] These pollutants create cloudy conditions, feed algal blooms, and lead to muck accumulation, all of which negatively impact the seagrass that provides habitat for much of the IRL's marine life.[114] During the 2011 "Superbloom," intense algal blooms of phytoplankton occurred throughout most of the IRL, lasting for seven months and resulting in massive losses of seagrass that has yet to fully recover.[115] There have also been recurring brown tides; unusual mortalities of dolphins, manatees, and shorebirds; and large fish kills due to low dissolved oxygen from decomposing algae.[116] Brown tide is a type of algal bloom dominated by a brown, microscopic marine algae, which can be harmful to ecosystems in high concentrations, and was first documented in state waters in 2012.[117] The St. Lucie Estuary is a major tributary to the southern IRL, so freshwater discharges from Lake Okeechobee, which can include toxic cyanobacteria ("blue-green algae"), also impact the IRL.[118]

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freshwater from rivers and streams mixes with saltwater from the ocean. Estuaries are among the most productive ecosystems on earth, home to unique plant and animal communities that have adapted to brackish water: freshwater mixed with saltwater. U.S. EPA, *What Is An Estuary?*, https://www.epa.gov/nep/basic-information-about-estuaries (last visited Mar. 10, 2023); NOAA, *What Is An Estuary?*, https://oceanservice.noaa.gov/facts/estuary.html (last visited Mar. 10, 2023).

[110] Indian River Lagoon Species Inventory, *Biodiversity*, https://www.irlspecies.org/misc/Total_Biodiv.php#:~:text=Home%20to%20over%204%2C200%20species%20of%20plants%2C%20birds%2C,species%20of%20fish%20and%20370%20species%20of%20birds (last visited Mar. 10, 2023).

[111] East Central Florida Regional Planning Council and Treasure Coast Regional Planning Council, *Indian River Lagoon Economic Valuation Update*, vi, ix (Aug. 26, 2016), *available at* https://files.tcrpc.org/portfolio%20of%20work/Economic%20Development/IRL%20Valuation/FinalReportIRL08_26_2016.pdf.

[112] *Id.* at ix.

[113] Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update* at xi; Marine Resources Council, *Indian River Lagoon Health Update*, 4-7 (2018), *available at* https://savetheirl.org/wp-content/uploads/mrc-report-card-2018-min.pdf.

[114] Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update* at xi.

[115] IRL 2011 Consortium, *Indian River Lagoon 2011 Superbloom - Plan of Investigation*, 2-3 (2012), *available at* https://www.sjrwmd.com/static/waterways/irl-technical//2011superbloom_investigationplan_June_2012.pdf; Marine Resources Council, *Indian River Lagoon Coastal Community Report Card*, 2,4 (2022), *available at* https://savetheirl.org/wp-content/uploads/IRLReportCard2022-opt.pdf.

[116] Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update* at xi.

[117] SJRWMD, *Renewing the Lagoon - Frequently Asked Questions*, https://www.sjrwmd.com/waterways/renew-lagoon/#faq-01 (last visited Mar. 13, 2023); FWC, *Effects of Brown Tide in the Indian River Lagoon* (2012), https://myfwc.com/research/redtide/monitoring/historical-events/brown-tide/ (last visited Mar. 13, 2023).

[118] DEP, Basin Management Action Plan, *St. Lucie River and Estuary Basin*, 15 (2020), *available at* https://publicfiles.dep.state.fl.us/DEAR/DEARweb/BMAP/NEEP_2020_Updates/St_Lucie_BMAP_01-31-20.pdf ; DEP, Basin Management Action Plan, *Lake Okeechobee*, 14 (2020), *available at* https://publicfiles.dep.state.fl.us/DEAR/DEARweb/BMAP/NEEP_2020_Updates/Lake%20Okeechobee%20BMAP_01-31-20.pdf.

The St. Johns River Water Management District, the South Florida Water Management District, and local governments implement projects that address water quality issues in the IRL.[119] Brevard County established the Save Our Indian River Lagoon Project Plan, which outlines local projects to meet water quality targets and improve the health, productivity, aesthetic appeal, and economic value of the IRL.[120] In 2016, Brevard County passed a referendum, approved by 62.4 percent of voters, to authorize the issuance of a half-cent infrastructure sales tax to pay for a portion of the plan.[121] The sales tax will generate an estimated $542 million over ten years.[122]

OSTDSs account for much of the nitrogen enrichment in groundwater in the IRL watersheds because the six counties adjacent to the IRL rely heavily on OSTDSs for wastewater management.[123] As of 2021, there were approximately 300,000 permitted OSTDSs within the IRL watershed.[124] Indian River and Martin counties used OSTDSs for over 50 percent of their wastewater management, and there were approximately 31,000 septic systems in each county.[125] As of 2019, Brevard County, which borders nearly half of the IRL, had an estimated 53,204 OSTDSs and contributed approximately 17,863 pounds per year of total nitrogen from failing OSTDSs.[126]

IRL National Estuary Program

Established in 1991, the IRL National Estuary Program is part of a national network of 28 estuary programs established under the federal Clean Water Act and administered nationally by the U.S. Environmental Protection Agency (EPA).[127] The program was established to assist with the development a comprehensive plan to restore and protect the IRL.[128]

Today, the program is sponsored by the IRL Council, which was established in February 2015, as a special district of Florida.[129] The IRL Council includes representatives of five counties bordering the lagoon (Volusia, Brevard, the Indian River County Lagoon Coalition, St. Lucie and Martin counties), the St. Johns River and South Florida Water Management Districts, and

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[119] SJRWMD, *The Indian River Lagoon*, https://www.sjrwmd.com/waterways/indian-river-lagoon/ (last visited Mar. 13, 2023); SFWMD, *Celebrating the Indian River Lagoon-South C-23/24 Stormwater Treatment Area Groundbreaking*, https://www.sfwmd.gov/news-events/news/celebrating-indian-river-lagoon-south-c-2324-stormwater-treatment-area (last visited Feb. 15, 2023).
[120] Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update* at xi.
[121] Brevard County Supervisor of Elections, *2016 General Election Official Results*, https://enr.electionsfl.org/BRE/1616/Summary/ (last visited Mar. 13, 2023); Brevard County, *Save our Indian River Lagoon Project Plan*, https://www.brevardfl.gov/SaveOurLagoon/ProjectPlan (last visited Mar. 13, 2023).
[122] *Id.*
[123] L.W. Herren, et al., *Septic systems drive nutrient enrichment of groundwaters and eutrophication in the urbanized Indian River Lagoon, Florida, Marine Pollution Bulletin*, 2 (2021), *available at* https://reader.elsevier.com/reader/sd/pii/S0025326X21009620?token=1384E4307B3A786FC65C7DD3270D91440566F5E2793CAE8F859A2139CF19FE68102D54027EEFF164F8492399C7F65B49&originRegion=us-east-1&originCreation=20230217141616.
[124] *Id.*
[125] *Id.*
[126] Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update* at 22-23.
[127] One Lagoon, *The Indian River Lagoon NEP*, https://onelagoon.org/irlnep/ (last visited Mar. 12, 2023); IRL National Estuary Program, *Second Amended and Restated IRL National Estuary Program Interlocal Agreement*, 1 (2017), *available at* a https://onelagoon.org/wp-content/uploads/2017-2ndAmendedInterlocal__20200201.pdf.
[128] *Id.*
[129] One Lagoon, *The Indian River Lagoon NEP*.

the DEP. The council's goals include (1) attaining and maintaining water and sediment of sufficient quality to support a healthy estuarine lagoon ecosystem; (2) attaining and maintaining a functioning, healthy ecosystem which supports endangered and threatened species, fisheries, commerce, and recreation; (3) promoting public awareness and coordinated interagency management of the IRL ecosystem; and (4) developing long-term funding sources for prioritized projects to preserve, protect, restore, and enhance the IRL.[130] The EPA provides guidance to the council and, every five years, evaluates the program's progress.[131]

The IRL National Estuary Program identifies and implements projects to improve wastewater infrastructure, reduce reliance on conventional septic systems, retain and treat stormwater, rehabilitate habitats, and enhance planning for resilient communities.[132] A list of eligible projects is evaluated and revised annually by the program's Management Conference.[133] The program also developed strategies to, among other things:

- Remove or reduce nutrient-loading to the IRL watershed to meet water quality standards pursuant to a TMDL, BMAP, or RAP;[134]
- Improve wastewater infrastructure to achieve advanced wastewater treatment and to increase capacity to accommodate septic-to-sewer conversions and the region's growing population;[135] and
- Research innovative technologies and emergence of commercial opportunities that will assist with restoration and stewardship of the IRL.[136]

Board of Trustees of the Internal Improvement Trust Fund

The Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) holds state lands in trust for the use and benefit of the people of the state pursuant to Art. II, s. 7 and Art. X, s. 11 of the State Constitution. The Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture constitute the trustees of the internal improvement trust fund.[137] The DEP performs all staff duties and functions related to the acquisition, administration, and disposition of state lands, title to which is or will be vested in the Board of Trustees.[138]

Section 253.025, F.S., outlines the procedures the state must follow when acquiring lands. Prior to the acquisition of land, a state agency is required to coordinate with the Division of State Lands (DSL) within the DEP to determine the availability of existing, suitable state-owned lands

[130] IRL Program, *Looking Ahead to 2030: A 10-Year Comprehensive Conservation and Management Plan for the IRL, Florida*, 12 (2019), *available at* https://onelagoon.org/wp-content/uploads/IRLNEP_Final-Draft-CCMP-REVISION_2018-12-07_LowRes__20200204.pdf.
[131] *Id.* at 13.
[132] IRL Program, *Looking Ahead to 2030: A 10-Year Comprehensive Conservation and Management Plan for the IRL, Florida* at ix.
[133] *Id.* The IRL National Estuary Program's Management Conference represents a more than 100-member citizen and scientist oversight committee that advises the IRL Council Board of Directors as they adopt policies and make annual budget and appropriation decisions to implement the comprehensive plan. *Id.* at 7.
[134] *Id.* at 20-21.
[135] *Id.* at 24, 26-27.
[136] *Id.* at 140.
[137] FLA. CONST. Art. IV s. 4.
[138] Section 253.002, F.S.

in the area and the public purpose for which the acquisition is being proposed.[139] Additionally, each parcel of land that is to be acquired must have at least one appraisal.[140] If the cost of land exceeds $1,000,000 then two appraisals are required. If a parcel is estimated to be worth $100,000 or less and the director of the DSL finds that the cost of an outside appraisal is not justified, a comparable sales analysis, an appraisal prepared by the DSL, or other reasonably prudent procedures may be used by the DSL to estimate the value of the parcel, provided the public's interest is reasonably protected.[141] The maximum amount that the state may pay for a parcel to be acquired is the value indicated in a single approved appraisal if only one appraisal is required.[142] If two appraisals are required and their values do not differ significantly the maximum amount that may be paid is the higher value indicated.[143]

Appraisal reports are confidential and exempt from public records requirements for use by the agency and the Board of Trustees until an option contract is executed or, if no option contract is executed, until two weeks before a contract or agreement for purchase is considered for approval by the Board of Trustees.[144] Appraisal reports may be disclosed to private landowners during negotiations[145] for acquisitions using alternatives to fee simple techniques if DEP determines the disclosure of such reports will bring the proposed acquisition to closure.[146] However, the private landowner must agree to maintain the confidentiality of the reports.[147] In addition, appraisal information may be disclosed to public agencies or nonprofit organizations that agree to maintain the confidentiality of the information when joint acquisition of property is contemplated or when a public agency or nonprofit organization enters into a written multiparty agreement with DEP.[148]

The Board of Trustees, by an affirmative vote of at least three members, may direct the DEP to purchase lands on an immediate basis using up to 15 percent of Florida Forever funds allocated to the DEP for the acquisition of lands that:

- Are listed or placed at auction by the Federal Government as part of the Resolution Trust Corporation sale of lands from failed savings and loan associations;
- Are listed or placed at auction by the Federal Government as part of the Federal Deposit Insurance Corporation sale of lands from failed banks;
- Will be developed or otherwise lost to potential public ownership, or for which federal matching funds will be lost, by the time the land can be purchased under the program within which the land is listed for acquisition; or

[139] Section 253.025(2), F.S.
[140] Section 253.025(8), F.S. Appraisals are not required for lands donated to the state.
[141] *Id.*
[142] Fla. Admin. Code R. 18-1.006.
[143] *Id*.
[144] Sections 253.025(8)(f), F.S. *See also* 570.715(5), F.S. (providing identical requirements for acquisitions by the Department of Agriculture and Consumer Services (DACS))
[145] "Negotiations" does not include preliminary contacts with the property owner to determine the availability of the property, existing appraisal data, existing abstracts, and surveys. Sections 253.05(6), F.S. *See also* 570.715(4), F..S. (providing the same for DACS acquisitions).
[146] Sections 253.025(8)(f), F.S. *See also* 570.715(5), F.S. (providing the same for DACS acquisitions).
[147] *Id.*
[148] *Id.*

- Will prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern pursuant to Chapter 380, F.S.[149]

For such acquisitions, the Board of Trustees may waive or modify all land acquisition procedures and all competitive bid procedures.[150] Additionally, lands acquired must, at the time of purchase, be on one of the acquisition lists established pursuant to Chapter 259, F.S., or be essential for water resource development, protection, or restoration, or a significant portion of the lands must contain natural communities or plant or animal species that are listed by the Florida Natural Areas Inventory as critically imperiled, imperiled, or rare, or as excellent quality occurrences of natural communities.[151]

The Board of Trustees may expend moneys appropriated by the Legislature to acquire the fee or any lesser interest in lands for the following public purposes:

- To conserve and protect environmentally unique and irreplaceable lands that contain native, relatively unaltered flora and fauna;
- To conserve and protect lands within designated areas of critical state concern;
- To conserve and protect native species habitat or endangered or threatened species;
- To conserve, protect, manage, or restore important ecosystems, landscapes, and forests, if the protection and conservation of such lands is necessary to enhance or protect significant surface water, groundwater, coastal, recreational, timber, or fish or wildlife resources;
- To promote water resource development that benefits natural systems and citizens of the state;
- To facilitate the restoration and subsequent health and vitality of the Florida Everglades;
- To provide areas, including recreational trails, for natural resource-based recreation and other outdoor recreation on any part of any site compatible with conservation purposes;
- To preserve significant archaeological or historic sites;
- To conserve urban open spaces suitable for greenways or outdoor recreation which are compatible with conservation purposes; or
- To preserve agricultural lands under threat of conversion to development through less-than-fee acquisitions.[152]

Land Acquisition Trust Fund

Documentary stamp tax revenues are collected under ch. 201, F.S., which requires an excise tax to be levied on two classes of documents: deeds and other documents related to real property, which are taxed at the rate of 70 cents per $100; and certificates of indebtedness, promissory notes, wage assignments, and retail charge account agreements, which are taxed at 35 cents per $100.[153]

[149] Section 253.025(22), F.S.
[150] Section 253.025(24), F.S.
[151] Section 253.025(22), F.S.
[152] Section 259.032, F.S.
[153] *See* ss. 201.02(1)(a) and 201.08(1)(a), F.S.

In 2014, Florida voters approved Amendment One, a constitutional amendment to provide a dedicated funding source for land and water conservation and restoration.[154] The amendment required that starting on July 1, 2015, and for 20 years thereafter, 33 percent of net revenues derived from documentary stamp taxes be deposited into the Land Acquisition Trust Fund (LATF).[155] Article X, s. 28 of the State Constitution requires that funds in the LATF be expended only for the following purposes:

> As provided by law, to finance or refinance: the acquisition and improvement of land, water areas, and related property interests, including conservation easements, and resources for conservation lands including wetlands, forests, and fish and wildlife habitat; wildlife management areas; lands that protect water resources and drinking water sources, including lands protecting the water quality and quantity of rivers, lakes, streams, springsheds, and lands providing recharge for groundwater and aquifer systems; lands in the Everglades Agricultural Area and the Everglades Protection Area, as defined in Article II, Section 7(b); beaches and shores; outdoor recreation lands, including recreational trails, parks, and urban open space; rural landscapes; working farms and ranches; historic or geologic sites; together with management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands. [156]

To implement Art. X, s. 28 of the State Constitution, the Legislature passed ch. 2015-229, Laws of Florida. This act, in part, amended the following sections of law:

- Section 201.15, F.S., to conform to the constitutional requirement that the LATF receive at least 33 percent of net revenues derived from documentary stamp taxes; and
- Section 375.041, F.S., to designate the LATF within the DEP as the trust fund to serve as the constitutionally mandated depository for the percentage of documentary stamp tax revenues.[157]

Under s. 375.041, F.S., funds deposited into the LATF must be distributed in the following order and amounts:

- First, obligations relating to debt service, specifically, payments relating to debt service on Florida Forever Bonds and Everglades restoration bonds.
- Then, unless superseded by the General Appropriations Act, before funds are authorized to be appropriated for other uses:
  - A minimum of the lesser of 25 percent of the funds remaining after the payment of debt service or $200 million annually for Everglades projects that implement the Comprehensive Everglades Restoration Plan (CERP), the Long-Term Plan, or the Northern Everglades and Estuaries Protection Program (NEEPP), with priority given to Everglades restoration projects that reduce harmful discharges of water from Lake

[154] The Florida Senate, *Water and Land Conservation*, https://www.flsenate.gov/media/topics/WLC (last visited Jan. 4, 2023).
[155] *Id.*
[156] FLA. CONST. art. X, s. 28(b)(1).
[157] Ch. 2015-229, ss. 9 and 50, Laws of Fla.

Okeechobee to the St. Lucie or Caloosahatchee estuaries in a timely manner. From these funds, the following specified distributions are required:
    - $32 million annually through the 2023-2024 fiscal year for the Long-Term Plan;
    - After deducting the $32 million, the minimum of the lesser of 76.5 percent of the remainder or $100 million annually through the 2025-2026 fiscal year for the CERP; and
    - Any remaining funds for Everglades projects under the CERP, the Long-Term Plan, or the NEEPP.
  - A minimum of the lesser of 7.6 percent of the funds remaining after the payment of debt service or $50 million annually for spring restoration, protection, and management projects;
  - $5 million annually through the 2025-2026 fiscal year to the St. Johns River Water Management District for projects dedicated to the restoration of Lake Apopka;
  - $64 million to the Everglades Trust Fund in the 2018-2019 fiscal year and each fiscal year thereafter, for the Everglades Agricultural Area reservoir project, and any funds remaining in any fiscal year shall be made available only for Phase II of the C-51 Reservoir Project or projects that implement the CERP, the Long Term Plan, or the NEEPP; and
  - $50 million annually to the South Florida Water Management District for the Lake Okeechobee Watershed Restoration Project.
- Then, any remaining moneys are authorized to be appropriated for the purposes set forth in Art. X, s. 28 of the State Constitution.[158]

During the 2022 session, the Legislature added language that specifies that the purposes set forth in s. 375.041(3)(a)3., F.S., relating to Lake Apopka would instead be appropriated as provided in the General Appropriations Act.[159] In March 2023, the General Revenue Estimating Conference estimated that for fiscal year 2023-2024 a total of $2.86 billion would be collected in documentary stamp taxes.[160] Thirty-three percent of the net revenues collected, or approximately $941.2 million, must be deposited into the LATF in accordance with Art. X, s. 28 of the State Constitution. Of that amount, $104.6 million is committed to debt service, leaving $836.5 million to be distributed for the uses specified by s. 375.041, F.S., and other purposes in accordance with the General Appropriations Act.[161]

Litigation

In 2015, two lawsuits were filed challenging the constitutionality of appropriations from the LATF and expenditures by state agencies.[162] The cases were consolidated and a hearing was held in June of 2018.[163] The plaintiffs argued that funds from the LATF were appropriated and expended for general state expenses in ways that were inconsistent with the State Constitution.

[158] Section 375.041(3)-(4), F.S.
[159] Chapter 2022-157, Laws of Fla.
[160] Office of Economic & Demographic Research, Revenue Estimating Conference, *Documentary Stamp Tax, Conference Results (Mar. 2023), available at* http://edr.state.fl.us/Content/conferences/docstamp/docstampexecsummary.pdf (last visited Apr. 25, 2023).
[161] *Id.*
[162] *Fla. Wildlife Fed'n v. Negron*, No. 2015-CA-001423 (Fla. 2nd Cir. Ct.); *Fla. Defenders of the Env't, Inc., v. Detzner*, No. 2015-CA-002682 (Fla. 2d Cir. Ct.).
[163] *Fla. Wildlife Fed'n v. Negron*, Nos. 2015-CA-001423, 2015-CA-002682 (Fla. 2d Cir. Ct. June 28, 2018).

The circuit court held for the plaintiffs, stating the amendment requires the funds be used for acquiring conservation lands, and for improving, managing, restoring, and enhancing public access to conservation lands acquired after the effective date of the amendment.[164] The decision described how the LATF funds may be used, and ruled that numerous appropriations from 2015 and 2016 were unconstitutional.[165]

On appeal, the First District Court of Appeal overturned the circuit court ruling, holding that the LATF funds are not restricted to use on land purchased by the state after the constitutional amendment took effect in 2015.[166] The court held that the plain language in the Constitution authorizing the use of funds for management, restoration, and enhancement activities would specifically authorize use of the funds on activities beyond land acquisition.[167] The case was then remanded to the circuit court to rule on the legality of appropriations made since the enactment of the constitutional amendment.[168]

The circuit court dismissed the lawsuit on January 3, 2022, finding that it was moot because the money approved by the Legislature in 2015 had already been spent.[169] On July 20, 2022, the Florida Wildlife Federation filed a motion to reopen the case.[170] The case is now on appeal in the First District Court of Appeal.[171]

Rural and Family Lands Protection Program

The Rural and Family Lands Protection Program, created within the Department of Agriculture and Consumer Services (DACS), is an agricultural land preservation program designed to protect important agricultural lands through the acquisition of permanent agricultural land conservation easements.[172] Since its inception, the program has successfully acquired conservation easements consisting of over 64,361 acres of working agricultural land.[173]

Under the program, DACS, on behalf of the Board of Trustees, is authorized to acquire perpetual, less-than-fee interest in land and enter into resource conservation agreements and agricultural protection agreements for the following public purposes:[174]

- Promotion and improvement of wildlife habitat;
- Protection and enhancement of water bodies, aquifer recharge areas, wetlands, and watersheds;
- Perpetuation of open space on lands with significant natural areas; or

[164] *Id.* at 3.
[165] *Id.* at 7–8.
[166] *Oliva v. Fla. Wildlife Fed'n*, 281 So. 3d 531, 539 (Fla. 1st DCA 2019).
[167] *Id.* at 537.
[168] *Id.* at 539.
[169] *Fla Wildlife Fed'n v. Negron*, Nos. 2015-CA-001423, 2015-CA-002682 (Fla. 2d Cir. Ct. Jan. 3, 2022), *available at* https://www.politico.com/states/f/?id=0000017e-21d8-d3d7-a37f-afdee5cb0000&source=email (last visited Jan. 5, 2023).
[170] Dep't of Environmental Protection, *Fla. Enviro. Cases August*, 1 (Aug. 2022) (on file with the Senate Committee on Environment and Natural Resources).
[171] *Fla. Wildlife Fed'n v. Fla. Legislature*, No. 1D22-3142 (Fla. 1st DCA, 2022).
[172] DACS, *Rural and Family Lands Protection Program*, https://www.fdacs.gov/Consumer-Resources/Protect-Our-Environment/Rural-and-Family-Lands-Protection-Program (last visited Mar. 16, 2023).
[173] *Id.*
[174] Section 570.71(1), F.S.

- Protection of agricultural lands threatened by conversion to other uses.[175]

To achieve these purposes, DACS may accept applications for project proposals that:
- Purchase "conservation easements."
- Purchase rural-lands-protection easements pursuant to this section.
- Fund resource conservation agreements pursuant to this section.
- Fund agricultural protection agreements pursuant to this section.[176]

"Conservation easements" means a right or interest in real property which is appropriate to retaining land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition; retaining such areas as suitable habitat for fish, plants, or wildlife; retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or maintaining existing land uses and which prohibits or limits any or all of the following:[177]
- Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground.
- Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials.
- Removal or destruction of trees, shrubs, or other vegetation.
- Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface.
- Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition.
- Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.
- Acts or uses detrimental to such retention of land or water areas.
- Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.[178]

DACS is also authorized to acquire perpetual conservation easements that achieve the objectives of the Florida Forever program.[179] DACS must follow the same appraisal process outlined above when acquiring conservation easements.[180]

Florida Forever

As a successor to Preservation 2000, the Legislature created the Florida Forever program in 1999 as the blueprint for conserving Florida's natural resources.[181] The Florida Forever Act reinforced the state's commitment to conserve its natural and cultural heritage, provide urban open space,

[175] *Id.*
[176] Section 570.71(1), F.S.
[177] Section 704.06(1), F.S.
[178] *Id.*
[179] Section 259.105(3)(i), F.S.
[180] *See* section 570.715, F.S.
[181] Chapter 99-247, Laws of Fla.

and better manage the land acquired by the state.[182] Florida Forever encompasses a wide range of goals including: land acquisition; environmental restoration; water resource development and supply; increased public access; public lands management and maintenance; and increased protection of land through the purchase of conservation easements.[183] The state has acquired more than 2.6 million acres since 1991 under the Preservation 2000 and the Florida Forever programs.[184]

The Acquisition and Restoration Council (ARC) is a 10-member body[185] that makes recommendations on the acquisition, management, and disposal of state-owned lands.[186] The ARC accepts applications from state agencies, local governments, nonprofit and for-profit organizations, private land trusts, and individuals for project proposals eligible for Florida Forever funding.[187] In evaluating each application, the ARC has statutory direction regarding how to prioritize purchases.[188]

The ARC evaluates and selects projects twice per year, in June and December, and ranks the projects annually.[189] Each project on the priority list is placed in one of the following categories of expenditure for land conservation projects: climate change; critical natural lands; less-than-fee; partnerships or regional incentives; or substantially complete (greater than 85 percent complete).[190] Projects are ranked within each category from highest to lowest priority.[191]

Florida Wildlife Corridor

The 2021 Legislature created the Florida Wildlife Corridor Act to create incentives for conservation and sustainable development while sustaining and conserving green infrastructure that acts as the foundation of the state's economy and quality of life.[192] The Legislature

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[182] DEP, *2021 Florida Forever Five Year Plan*, 9, *available at* https://floridadep.gov/sites/default/files/FLDEP_DSL_OES_FF_2021Abstract_2.pdf (last visited Mar. 15, 2023).
[183] Section 259.105, F.S.
[184] DEP, *Florida Forever*, https://floridadep.gov/floridaforever (last visited Mar. 15, 2023).
[185] Section 259.035(1), F.S. Four of ARC's 10 members are appointed by the Governor, three from scientific disciplines related to land, water, or environmental sciences and one with least five years of experience in managing lands for both active and passive types of recreation. Four of the members are the Secretary of Environmental Protection, the director of the Florida Forest Service of the Department of Agriculture and Consumer Services, the executive director of the Fish and Wildlife Conservation Commission, and the director of the Division of Historical Resources of the Department of State, or their respective designees. One member is appointed by the Commissioner of Agriculture from a discipline related to agriculture, including silviculture, and one member is appointed by the Fish and Wildlife Conservation Commission from a discipline related to wildlife management or wildlife ecology. *Id.*
[186] DEP, *Florida Forever Five Year Plan*, 49 (2019), *available at* http://publicfiles.dep.state.fl.us/DSL/FFWeb/Current%20Florida%20Forever%20Five-Year%20Plan.pdf.
[187] DEP, *Florida Forever Frequently Asked Questions*, https://floridadep.gov/lands/environmental-services/content/florida-forever-frequently-asked-questions (last visited Mar. 15, 2023).
[188] DEP, *Acquisition and Restoration Council*, https://floridadep.gov/lands/environmental-services/content/acquisition-and-restoration-council-arc (last visited Mar. 15, 2023).
[189] DEP, *Florida Forever Frequently Asked Questions*, https://floridadep.gov/lands/environmental-services/content/florida-forever-frequently-asked-questions (last visited Mar. 15, 2023); DEP, *Acquisition and Restoration Council*, https://floridadep.gov/lands/environmental-services/content/acquisition-and-restoration-council-arc (last visited Mar. 15, 2023).
[190] Section 259.105(17), F.S.
[191] *Id.*
[192] Section 259.1055(3), F.S.

appropriated $300 million[193] and directed the DEP to encourage and promote investments in areas that protect and enhance the Wildlife Corridor by establishing a network of connected wildlife habitats required for the long-term survival of and genetic exchange amongst regional wildlife populations which serves to prevent fragmentation by providing ecological connectivity of the lands needed to furnish adequate habitats and allow safe movement and dispersal.[194]

The Florida Wildlife Corridor is statutorily defined as "the conserved lands"[195] and "opportunity areas"[196] defined by the DEP as priority one, two, and three categories of the Florida Ecological Greenways Network (FEGN).[197] The FEGN is the primary data layer used to inform the Florida Forever program and other state, federal, and regional land acquisition programs regarding the most important ecological corridors and intact landscapes across the state for protection of Florida's native wildlife, ecosystem services, and ecological resiliency.[198] The priority-category lands are the most important for protecting an ecologically functional connected statewide network of public and private conservation lands.[199]

The Board of Trustees are authorized to spend appropriated funds to acquire the fee or less than-fee interest in lands for a variety of conservation and recreational purposes.[200] Among the authorized uses of the funds is the provision of recreational trails for natural resource-based recreation and other outdoor recreation on any part of any site compatible with conservation purposes.[201]

The existing Wildlife Corridor encompasses nearly 17.7 million acres. Of this, 9.6 million acres (54 percent) are already protected and 8.1 million acres (46 percent) of remaining opportunity areas that do not have conservation status.[202]

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[193] Chapter 2021-37, s. 152, Laws of Fla.
[194] Section 259.1055(4)(g), F.S.
[195] Defined in s. 259.1055(4)(a), F.S., to mean federal, state, or local lands owned or managed for conservation purposes, including, but not limited to, federal, state, and local parks; federal and state forests; wildlife management areas; wildlife refuges; military bases and airports with conservation lands; properties owned by land trust and managed for conservation; and privately owned land with a conservation easement, including, but not limited to, ranches, forestry operations, and groves.
[196] "Opportunity area" means those lands and waters within the Florida wildlife corridor which are not conserved lands and the green spaces within the Florida wildlife corridor which lack conservation status, are contiguous to or between conserved lands, and provide an opportunity to develop the Florida wildlife corridor into a statewide conservation network. Section 259.1055(4)(e).
[197] Section 259.1055(4)(d), F.S. For a 2021 layered map reflecting the Wildlife Corridor, Florida Forever Projects and Acquisitions, and FEGN Priority Levels 1-3, *see* the FDEP's map available at https://floridadep.gov/sites/default/files/Florida%20Forever%20and%20Florida%20Ecological%20Greenways%20Network%20Map_0.pdf (last visited Mar. 15, 2023).
[198] DEP, *Florida Wildlife Corridor*, 1 (2022), *available at* https://floridadep.gov/sites/default/files/Florida_Wildlife_Corridor.pdf.
[199] Florida Natural Areas Inventory (FNAI), *Florida Natural Areas Inventory Geospatial Open Data, Summary*, *available at* https://geodata.fnai.org/datasets/cosspp::fegn2021/about (last visited Mar. 15, 2023). The FNAI provides scientific support to the FDEP. Section 259.1055(4)(c), F.S., defines the FEGN as a periodically updated model developed to delineate large connected areas of statewide ecological significance.
[200] Section 259.032(2), F.S.
[201] Section 259.032(2)(g), F.S.
[202] Florida Wildlife Corridor Foundation, *About the Corridor*, https://floridawildlifecorridor.org/about/about-the-corridor/ (last visited Mar. 15, 2023).

Infrastructure Permitting Process Review

Coastal Construction Permits

Coastal construction is regulated by the DEP in order to protect Florida's beaches and dunes from imprudent construction that may jeopardize the stability of Florida's natural resources.[203] The coastal construction control line (CCCL) defines the portion of the beach-dune system that is subject to severe fluctuations caused by a 100-year storm surge, storm waves, or other forces such as wind, wave, or water level changes.[204] Seaward of the CCCL, new construction and improvements to existing structures require a CCCL permit from DEP.[205] The line defines the landward limit of DEP's authority to regulate construction.[206] DEP's CCCL Program regulates structures and activities which can cause beach erosion, destabilize dunes, damage upland properties, or interfere with public access.[207] CCCLs currently exist for large portions of Florida's coast.[208]

Due to the potential environmental impacts and greater risk of hazards from wind and flood, the standards for construction seaward of the CCCL are often more stringent than those applied in the rest of the coastal building zone.[209] Approval or denial of a permit application is based upon a review of factors such as the location of structures and their potential impacts on the surrounding area.[210] CCCLs are established by DEP on a county basis, but only after such a line has been determined necessary for protecting upland structures and controlling beach erosion, and after a public hearing has been held in the affected county.[211] These hearings are conducted in the manner described in s. 120.54(3)(c), F.S., must be published in the FAR in the same manner as a rule, and are subject to an invalidity challenge as described in s. 120.56(3), F.S. A petitioner may challenge a rule under s. 120.56(3), F.S., on the basis that it is an invalid delegation of legislative authority, and must substantiate this allegation by a preponderance of the evidence.

Joint Costal Permitting (JCP)

DEP implements a concurrent processing of applications for coastal construction permits, environmental resource permits and sovereign submerged lands authorizations.[212] A JCP is required for activities that meet all of the following criteria:

- Located on Florida's natural sandy beaches facing the Atlantic Ocean, the Gulf of Mexico, the Straits of Florida or associated inlets.

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[203] Section 161.053(1)(a), F.S.
[204] Section 161.053, F.S.; Fla. Admin. Code R. 62B-33.005(1); DEP, *The Homeowner's Guide to the Coastal Construction Control Line Program*, 3 (2017), *available at* https://floridadep.gov/sites/default/files/Homeowner%27s%20Guide%20to%20the%20CCCL%20Program%206_2012%20%28002%29_0.pdf.
[205] DEP, *The Homeowner's Guide to the Coastal Construction Control Line Program* at 2.
[206] *Id.*
[207] DEP, *Coastal Construction Control Line Program*, https://floridadep.gov/water/coastal-construction-control-line (last visited Mar. 20, 2023).
[208] DEP, *Geospatial Open Data, CCCL*, https://geodata.dep.state.fl.us/datasets/4674ee6d93894168933e99aa2f14b923_2/explore (last visited Mar. 20, 2023).
[209] Fla. Admin. Code Ch. 62B-33.
[210] Fla. Admin. Code R. 62B-33.005.
[211] Section 161.053(2), F.S.
[212] Section 161.055, F.S.; *see also* DEP, *Beaches, Inlets and Ports*, https://floridadep.gov/rcp/beaches-inlets-ports (last visited Mar. 21, 2023).

- Activities that extend seaward of the mean high water line.
- Activities that extend into sovereign submerged lands.
- Activities that are likely to affect the distribution of sand along the beach.

Activities that require a JCP include beach restoration or nourishment; construction of erosion control structures such as groins and breakwaters; public fishing piers; maintenance of inlets and inlet-related structures; and dredging of navigation channels that include disposal of dredged material onto the beach or in the nearshore area.[213]

Environmental Resource Permits

Part IV of Chapter 373 F.S., regulates the construction, alteration, operation, maintenance, abandonment, and removal of stormwater management systems, dams, impoundments, reservoirs, works, and appurtenant works. DEP regulates activities in, on, or over surface waters, as well as any activity that alters surface water flows, through environmental resource permits (ERPs). ERPs are generally required for the construction or alteration of any stormwater management system, dam, impoundment, reservoir, or appurtenant work.[214] A WMD or DEP may require an ERP and impose conditions necessary to assure that the construction or alteration of any water management system[215] complies with state law and rules, and will not be harmful to water resources.[216] Generally, to receive a permit for a proposed use of water resources, an applicant must demonstrate that the proposed activity is a reasonable-beneficial use, will not interfere with any existing legal use of water, and is consistent with the public interest.[217]

Pursuant to statutory authority,[218] DEP adopted a comprehensive chapter of rules that govern the permitting process.[219]

State Administered Federal Section 404 Dredge and Fill Permits

In 2020,[220] Florida assumed responsibility under section 404 of the federal Clean Water Act[221] for dredge and fill permitting.[222] DEP adopted rules to implement the section 404 program.[223] The State 404 Program is responsible for overseeing the permitting for any project that proposes dredge or fill activities within state assumed waters.[224] There is significant overlap between the federal 404 permitting program and the ERP program.

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[213] *Id*.
[214] Section 373.413(1), F.S.
[215] Section 373.403(10), F.S.
[216] Section 373.413(1), F.S.
[217] Section 373.223(1), F.S.
[218] Section 373.4131, F.S.
[219] Fla. Admin. Code Ch. 62-330.
[220] *See generally* DEP, State *404 Program*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/state-404-program (last visited Mar. 21, 2023) (citing 85 FR 83553).
[221] 33 U.S.C. s. 1251 et seq.
[222] Section 373.4146, F.S.
[223] *See* Fla. Admin. Code Ch. 62-331.
[224] DEP, *State 404 Program*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/state-404-program (last visited Mar. 20, 2023).

Permitting Process

Upon receiving a permit application for use of water resources, DEP or the WMD evaluates the material to determine if the application is complete.[225] If it is incomplete, DEP or the WMD must request additional information within 30 days after its receipt of the application.[226] DEP's rules allow an applicant up to 90 days to respond to such a request.[227] Within 30 days after its receipt of additional information, the DEP or the WMD must review the submissions.[228] If the application is complete, the DEP or WMD must decide whether to issue or deny the ERP within 60 days.[229] Except for permits delegated through the 404 program,[230] any application that the DEP or WMD does not approve or deny within 60 days of completion of the application is deemed approved by default.[231]

Executive Order 23-06

Executive Order 23-06 (the Order) includes several directives regarding environmental protection.[232] The Order directs the DEP to strengthen BMAPs for nutrient-impaired waterbodies by:

- Updating all BMAPs to include the specific projects necessary to meet the requisite water quality standards to achieve restoration goals. The projects most likely to yield maximum pollutant reductions should be prioritized;
- Requiring local governments to identify and expedite high priority projects to meet the nutrient load allocations required under a BMAP; and
- Working with the DACS to identify and seek funding for regional projects that address excess nutrient impacts from agricultural nonpoint sources in BMAP areas where agriculture has been identified as a significant source of nutrient pollution.[233]

The Order also directs the DEP to identify and prioritize strategies and projects to expedite water quality restoration in the IRL by:

- Working with the Legislature to establish the IRL Protection Program and secure at least $100 million annually for priority projects to improve water quality in the IRL;
- Coordinating with stakeholders, including federal agencies, local governments, water management districts, and the IRL Estuary Program, to identify and prioritize projects for water quality restoration;
- Undertaking enhanced water quality monitoring in the IRL to better identify sources of nutrient loading to inform project prioritization and improve water quality in the IRL;
- Taking actions to reduce nutrient contributions to the IRL from septic tanks and wastewater facilities, stormwater discharges, and agriculture nonpoint sources; and

[225] DEP, *Environmental Resource Permit Applicant's Handbook, Vol. 1*, AH 5.5.3, incorporated by reference in Fla. Admin. Code R. 62- 330.010(4) (Oct. 1, 2013), *available at* https://www.flrules.org/Gateway/reference.asp?No=Ref-03174.
[226] Section 373.4141(1), F.S.
[227] DEP, *Environmental Resource Permit Applicant's Handbook, Vol. 1* at AH 5.5.3.5.
[228] Section 373.4141(1), F.S.
[229] Section 373.4141(2), F.S. Most state licensure decisions must be made within 90 days. Section 120.60(1), F.S.
[230] Section 373.4146(5)(a), F.S.
[231] Section 120.60(1), F.S.
[232] Office of the Governor, *Executive Order 23-06* (2023), *available at* https://www.flgov.com/wp-content/uploads/2023/01/EO-23-06.pdf.
[233] *Id.* at 5-6.

- Supporting innovative nature-based solutions including living shorelines, freshwater and coastal wetland restoration, and seagrass recovery utilizing strategic propagation and planting efforts.[234]

The Order also directs the DEP to:

- Continue to seek consistent and meaningful annual funding for the Florida Forever Program; and Take all necessary steps to expedite the state's land conservation efforts, including a strategic focus on acquisitions within the Wildlife Corridor and acquisitions that benefit vulnerable ecosystems, water quality, and resilience.[235]

III. Effect of Proposed Changes:

Section 1 creates s. 120.5436, F.S. regarding infrastructure and environmental permitting review. The bill provides that the Legislature intends to:

- Build a more resilient and responsive government infrastructure to allow for quick recovery after natural disasters, including hurricanes and tropical storms.
- Promote efficiency in state government across branches, agencies, and other governmental entities and to identify any area of improvement within each that allows for quick, effective delivery of services.
- Seek out ways to improve the state's administrative procedures in relevant fields to build a streamlined permitting process that withstands disruptions caused by natural disasters, including hurricanes and tropical storms.

The bill directs the Department of Environmental Protection (DEP) and each water management district (WMD) to conduct a holistic review of their current coastal permitting programs and other permit programs in order to increase efficiency within each process. These permitting processes must include, but are not limited to:

- Coastal construction control line permits;
- Joint coastal permits;
- Environmental resource permits;
- State-administered section 404 permits (consistent with the terms of the Environmental Protection Agency's approval); and
- Permitting processes related to water supply infrastructure, wastewater infrastructure, and onsite sewage treatment and disposal systems.

The scope and purpose of the review is to identify areas of improvement and to increase efficiency within each process. Factors that must be considered in the review include the following:

- Requirements to obtain a permit.
- Time periods for permit review, including by commenting agencies, and approval of the permit application.
- Areas for improved efficiency and decision-point consolidation within a single project's process.
- Areas of duplication across one or more permit programs.

[234] *Id.* at 6-7.
[235] *Id.* at 8-9.

- Methods of requesting permits.
- Adequate staffing levels necessary for complete and efficient review.
- Any other factors that may increase the efficiency of the permitting process and may allow improved storm recovery.

The bill directs DEP and each WMD to submit a report with their findings to the Governor and Legislature by July 1, 2024.

Section 2 amends s. 163.3177, F.S., regarding required and optional elements of a local government's comprehensive plan. The bill provides that a local government's comprehensive plan must include, where applicable, a list of projects necessary to achieve the pollutant load reductions attributable to the local government pursuant to a basin management action plan (BMAP).

The comprehensive plan's sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element must address coordinating the upgrade in treatment of facilities to meet future needs. The element must also prioritize advanced waste treatment.

The bill also provides that, within the local government's jurisdiction, for any development of more than 50 residential lots, built or unbuilt, with more than one onsite sewage treatment and disposal system (OSTDS) per acre, the element must consider the feasibility of providing sanitary sewer services within a 10-year planning horizon. An OSTDS is presumed to exist on a parcel if sanitary sewer services are not available at or adjacent to the parcel boundary. For such developments, the plan must identify:

- The name and location of the intended wastewater facility to receive sanitary sewer flows after connection;
- The capacity of the facility and any associated transmission facilities;
- The projected wastewater flow at that facility for the next 20 years, including expected future new construction and connections of OSTDSs to sanitary sewer; and
- A timeline for the construction of the sanitary sewer system.

Each comprehensive plan must be updated to include this element by July 1, 2024, and as needed thereafter to account for future applicable developments. This requirement does not apply to a local government designated as a rural area of opportunity.[236]

Section 3 amends s. 253.025, F.S., regarding the acquisition of state lands. Currently, DEP may disclose otherwise confidential appraisal reports to private landowners during negotiations for acquisitions using alternatives to fee simple techniques if DEP determines that disclosure of such reports will bring the proposed acquisition to closure.[237] Private landowners are required to maintain the confidentiality of the reports. The bill amends this provision by *requiring* DEP to disclose appraisal reports to private landowners *or their representatives,* regardless of whether alternatives to fee simple techniques are used or such disclosure would bring the proposed

[236] "Rural area of opportunity" means a rural community, or a region composed of rural communities, designated by the Governor, which 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. Section 288.0656(2)(d), F.S.
[237] Section 253.025(8)(f), F.S.

acquisition to closure. The bill also removes the requirement that landowners maintain the confidentiality of such reports or information.

The bill also:
- Raises the property value threshold for when two appraisals of a parcel are required from $1 million to $5 million;
- Raises the contract price threshold for when the Board of Trustees of the Internal Improvement Trust Fund must approve an agreement to acquire real property from $1 million to $5 million;
- Removes the requirement that the Board of Trustees of the Internal Improvement Trust Fund approve an acquisition if it is an initial purchase in a Florida Forever project; and
- Provides that property value must be based upon the reasonable market value of the property considering those uses that are legally permissible, physically possible, financially feasible, and maximally productive.

Section 4 amends s. 259.032, F.S., regarding conservation and recreation lands, to provide that Board of Trustees of the Internal Improvement Trust Fund may expend moneys to acquire land to complete critical linkages through fee or less-than-fee acquisitions that will help preserve and protect the green and blue infrastructure and vital habitat for wide-ranging wildlife within the Florida Wildlife Corridor.

Section 5 amends s. 259.105, F.S., regarding the Florida Forever Act. The bill provides that by March 1, 2024, the Department of Agriculture and Consumer Services (DACS) must submit an updated acquisition priority list to the Acquisition and Restoration Council. Any acquisitions for which funds have been obligated before July 1, 2023, to pay for an appraisal may not be impacted by the updated priority list.

The bill also requires the Acquisition and Restoration Council to give increased priority to:
- Projects in imminent danger of development, loss of significant natural attributes or recreational open space, or subdivision, which would result in multiple ownership and make acquisition of the project costly or less likely to be accomplished.
- Projects located within the Florida Wildlife Corridor.

Section 6 creates s. 373.469, F.S., to establish the Indian River Lagoon (IRL) Protection Program. The bill contains several legislative findings, including:
- The IRL is a critical water resource of this state which provides many economic, natural habitat, and biodiversity functions that benefit the public interest, including fishing, navigation, recreation, and habitat to endangered and threatened species and other flora and fauna;
- Among other causes, land use changes, OSTDSs, aging infrastructure, stormwater runoff, agriculture, and residential fertilizer have resulted in excess nutrients entering the IRL and adversely impacting the lagoon’s water quality;
- Improvement to the hydrology, water quality, and associated aquatic habitats within the IRL is essential to the protection of the resource;
- It is imperative for the state, local governments, and agricultural and environmental communities to commit to restoring and protecting the surface water resources of the IRL,

and a holistic approach to address these issues must be developed and implemented immediately;
- The expeditious implementation of the Banana River Lagoon BMAP, the Central Indian River Lagoon BMAP, the North Indian River Lagoon BMAP, and the Mosquito Lagoon Reasonable Assurance Plan (RAP) are necessary to improve the quality of water in the IRL ecosystem and to provide a reasonable means of achieving the total maximum daily load requirements and achieving and maintaining compliance with state water quality standards; and
- The implementation of the programs contained in this section will benefit the public health, safety, and welfare and is in the public interest.

The bill provides legislative intent that this state to protect and restore surface water resources and achieve and maintain compliance with water quality standards in the IRL through the phased, comprehensive, and innovative protection program, including long-term solutions based upon the total maximum daily loads (TMDLs) established in accordance with state law. The bill defines TMDL as the sum of the individual wasteload allocations for point sources and the load allocations for nonpoint sources and natural background adopted pursuant to s. 403.067, F.S., which provides requirements for the establishment and implementation of TMDLs. Before determining individual wasteload allocations and load allocations, the maximum amount of a pollutant that a water body or water segment can assimilate from all sources without exceeding water quality standards must first be calculated.

The bill also provides that the IRL Protection Program is watershed-based, provides for the consideration of all water quality issues needed to meet the TMDL, and includes research and monitoring, development and implementation of best management practices (BMPs), refinement of existing regulations, and structural and nonstructural projects, including public works. The bill defines BMP as a practice or combination of practices determined by the coordinating agencies, based on research, field-testing, and expert review, to be the most effective and practicable on-location means, including economic and technological considerations, for improving water quality in agricultural and urban discharges. The bill provides that BMPs for agricultural discharges must reflect a balance between water quality improvements and agricultural productivity.

The bill provides that the IRL Protection Program consists of the Banana River Lagoon BMAP, the Central Indian River Lagoon BMAP, the North Indian River Lagoon BMAP, and the Mosquito Lagoon RAP, and such plans are the components of the IRL Protection Program which achieve phosphorous and nitrogen load reductions for the IRL. The bill:
- Requires DEP to conduct an evaluation every five years, update the applicable BMAPs and RAP in the IRL Protection Program, and identify any further load reductions necessary to achieve compliance with the relevant TMDLs;
- Requires the IRL Protection Program to include five-year milestones for implementation and water quality improvement, and a water quality monitoring component to evaluate whether reasonable progress in pollutant load reductions is being achieved over time;
- Requires the DEP, in coordination with DACS, the St. Johns River Water Management District (SJRWMD), the South Florida Water Management District (SFWMD), the IRL Estuary Program, and other stakeholders, to identify and prioritize strategies and projects necessary to achieve water quality standards within the IRL watershed and meet applicable

TMDLs. Projects identified from this evaluation must be incorporated into the Banana River Lagoon BMAP, the Central Indian River Lagoon BMAP, the North Indian River Lagoon BMAP, and the Mosquito Lagoon RAP, as appropriate; and

- Requires the DEP, in coordination with the SJRWMD, the SFWMD, and the IRL Estuary Program, to implement an IRL Watershed Research and Water Quality Monitoring Program to establish a comprehensive water quality monitoring network throughout the IRL and fund research pertaining to water quality, ecosystem restoration, and seagrass impacts and restoration. The DEP must use the results from this program to inform project prioritization and to make modifications to the pertinent BMAPs and RAP.

The bill prohibits new OSTDSs (unless previously permitted) within the IRL Protection Program areas beginning January 1, 2024, where a central sewerage system is available. For new developments where sewer is not available, only enhanced nutrient-reducing OSTDSs or other wastewater treatment systems that achieve at least 65 percent nitrogen reduction are authorized. The bill defines "enhanced nutrient-reducing" OSTDS as an OSTDS approved by the DEP as capable of meeting or exceeding a 50 percent total nitrogen reduction before disposal of wastewater in the drainfield, or at least 65 percent total nitrogen reduction combined from onsite sewage tank or tanks and drainfield.

The bill also requires any commercial or residential property with an existing OSTDS located within the IRL Protection Program area to connect to central sewer or upgrade to an enhanced nutrient-reducing OSTDS or other wastewater treatment system that achieves at least 65 percent nitrogen reduction by July 1, 2030.

The bill provides that this section may not be construed to modify any existing state water quality standard or law. The bill also provides that this section may not be construed to restrict the authority otherwise granted to agencies pursuant to Chapter 373 of the Florida Statutes, pertaining to water resources, and Chapter 403 of the Florida Statutes, pertaining to environmental control, and this section is supplemental to the authority granted to agencies pursuant to this these chapters.

The bill also provides that the DEP and governing boards of the SJRWMD and the SFWMD may adopt rules to implement this section.

Section 7 amends s. 373.501, F.S., regarding appropriation of funds to the WMDs. Currently, s. 373.501, F.S., authorizes the DEP to allocate to the WMDs funds appropriated to the DEP such sums as may be deemed necessary to defray the costs of the administrative, regulatory, and other activities of the WMDs. This bill would *require* the DEP to transfer the funds appropriated to the WMDs through the DEP. The bill also provides that if such sums are to defray the costs "other activities," those activities must be operational in nature. The bill also requires the WMDs to annually report to the DEP on the use of these funds.

Section 8 amends s. 373.802, F.S., which defines terms related to the Florida Springs and Aquifer Protection Act. The bill provides that "enhanced nutrient-reducing onsite sewage treatment and disposal system" means an OSTDS approved by the DEP as capable of meeting or exceeding a 50 percent total nitrogen reduction before disposal of wastewater in the drainfield, or

at least 65 percent total nitrogen reduction combined from onsite sewage tank or tanks and drainfield.

Section 9 amends s. 373.807, F.S., regarding BMAPs that include an Outstanding Florida Spring. For these BMAPs, the bill to expand the area for which an OSTDS remediation plan is required from a "priority focus area" to an entire BMAP. State law provides that a "priority focus area" is the area or areas of a basin where the Floridan Aquifer is generally most vulnerable to pollutant inputs where there is a known connectivity between groundwater pathways and an Outstanding Florida Spring.[238]

Section 10 amends s. 373.811, F.S., regarding prohibited activities within a priority focus area. The bill expands the area for which certain activities are prohibited from a "priority focus area" to an entire BMAP. Currently, new OSTDSs are prohibited within a priority focus area on lots of less than one acre, if the addition of the specific systems conflicts with an OSTDS remediation plan incorporated into a BMAP. The bill replaces this prohibition with one on new OSTSs within a BMAP where connection to a publicly owned or investor-owned sewerage system is available. The bill also provides that, on lots of one acre or less, if a publicly owned or investor-owned sewerage system is not available, only the installation of enhanced nutrient-reducing OSTDSs or other wastewater treatment systems that achieve at least 65 percent nitrogen reduction are authorized.

Section 11 amends s. 375.041, F.S., regarding the Land Acquisition Trust Fund. The bill appropriates $100 million annually to DEP for the acquisition of land pursuant to the Florida Forever Act.

Section 12 amends s. 381.0065, F.S., regarding OSTDSs, to provide that "enhanced nutrient-reducing onsite sewage treatment and disposal system" means an OSTDS approved by the DEP as capable of meeting or exceeding a 50 percent total nitrogen reduction before disposal of wastewater in the drainfield, or at least 65 percent total nitrogen reduction combined from onsite sewage tank or tanks and drainfield.

Section 13 amends s. 381.00652, F.S., regarding the OSTDS technical advisory committee. The bill saves from repeal the section of law establishing the OSTDS technical advisory committee and requires the committee to submit its recommendations to the Governor and Legislature annually.

Section 14 amends s. 381.00655, F.S., regarding the connection of existing OSTDSs to a central sewerage system. The bill provides that local governmental agencies[239] that receive grants or loans from the DEP to offset the cost of connecting OSTDSs to publicly owned or investor-owned sewerage systems are encouraged to do all of the following while such funds remain available:

[238] Section 373.802(5), F.S.

[239] "Local governmental agencies" means any municipality, county, district, or authority, or any agency thereof, or a combination of two or more of the foregoing, acting jointly in connection with a project having jurisdiction over collection, transmission, treatment, or disposal of sewage, industrial wastes, stormwater, or other wastes and includes a district or authority whose principal responsibility is to provide airport, industrial or research park, or port facilities to the public. Section 403.1835(2)(c), F.S.

- Identify the owners of OSTDSs within the jurisdiction of the respective local governmental agency who are eligible to apply for grant or loan funds and notify such owners of the funding availability; and
- Maintain a publicly available website with information relating to the availability of grant or loan funds, including the amount of funds available and information on how the owner of an OSTDS may apply for such funds.

Section 15 amends s. 403.031, F.S., which defines terms related to environmental control, to provide that "enhanced nutrient-reducing onsite sewage treatment and disposal system" means an OSTDS approved by the DEP as capable of meeting or exceeding a 50 percent total nitrogen reduction before disposal of wastewater in the drainfield, or at least 65 percent total nitrogen reduction combined from onsite sewage tank or tanks and drainfield.

The bill provides that "nutrient or nutrient-related standards" means water quality standards and criteria established for total nitrogen and total phosphorous, or their organic or inorganic forms; biological variables, such as chlorophyll-a, biomass, or the structure of the phytoplankton, periphyton, or vascular plant community, that respond to nutrient load or concentration in a predictable and measurable manner; or dissolved oxygen if it is demonstrated for the waterbody that dissolved oxygen conditions result in a biological imbalance and the dissolved oxygen responds to a nutrient load or concentration in a predictable and measurable manner.

The bill provides that OSTDS means a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The term does not include package sewage treatment facilities and other treatment works regulated under Chapter 403, F.S.[240]

Section 16 amends s. 403.067, F.S., regarding the development of BMAPs. The bill:
- Requires BMAPs to include five-year milestones for implementation and water quality improvement; and
- Requires entities that have a specific pollutant load reduction requirement pursuant to a BMAP to identify a list of projects that will be undertaken to meet the five-year milestones, beginning with the first five-year milestone for new BMAPs. These projects must be submitted to the DEP for inclusion in the appropriate BMAP.

The bill prohibits the installation of new OSTDSs within a BMAP, RAP, or a pollution reduction plan where connection to a publicly owned or investor-owned sewerage system is available.[241]

[240] This definition is consistent with how the term is already defined in Florida statutes. *See* sections 373.802(3), 381.0065(2)(l), and 489.551(3), F.S.
[241] "Available" means that the publicly owned or investor-owned sewerage system is capable of being connected to the plumbing of an establishment or residence, is not under a DEP moratorium, and has adequate permitted capacity to accept the sewage to be generated by the establishment or residence; and is within a specified distance from the property. Section 381.0065(2)(a), F.S.

On lots of one acre or less within a BMAP, RAP, or a pollution reduction plan where a publicly owned or investor-owned sewerage system is *not* available, the installation of enhanced nutrient-reducing OSTDS or other wastewater treatment systems that achieve at least 65 percent nitrogen reduction is required.

Local governments subject to a BMAP or within the basin of a waterbody not attaining nutrient or nutrient-related standards must provide to the DEP an update on the status of the construction of sanitary sewers to serve such areas.

Currently, a BMAP must include a cooperative agricultural regional water quality element only if the following conditions are met: agricultural measures have been adopted by DACS and have been implemented and the water body remains impaired; agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges; *and* the DEP determines that additional measures are necessary to achieve the TMDL. The bill would remove the first condition and require BMAPs to include this agricultural element where agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges *or* where the DEP determines additional measures are necessary.

The bill also changes the types of projects that must be identified in the cooperative agricultural regional water quality element. Currently, the 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.[242] The bill removes the requirement that the projects be implemented on private properties on a site-specific, cooperative basis and provides that the element must include a list of regional nutrient reduction projects submitted to the DEP by the DACS which, in combination with the BMPs, additional measures, and other management strategies, will achieve the needed pollutant load reductions established for agricultural nonpoint sources. The list of regional projects must include a planning-level cost estimate of each project along with the estimated amount of nutrient reduction that such project will achieve.

The bill authorizes the DACS to submit a legislative budget request to fund a regional nutrient reduction project. Currently, the statute only authorizes the DEP to submit such a request. The bill also provides that these projects are eligible for funding under the water quality improvement grant program.

Section 17 amends s. 403.0673, F.S., regarding the wastewater grant program. The bill, which changes the title to water quality improvement grant program, expands the existing grant program to address wastewater, stormwater, and agricultural sources of nutrient loading to surface water or groundwater. The purpose of the grant program is to fund projects that will improve the quality of certain impaired waters. Under the existing grant program, eligible projects must be within a BMAP, an alternative restoration plan, or a rural area of opportunity. The bill provides that eligible projects may be within a RAP or an *accepted* alternative restoration plan and expands eligible projects areas to include those with an established TMDL or a water body not attaining nutrient or nutrient-related standards.

[242] Section 403.067(7)(e)2., F.S.

The bill also expands the types of projects that are eligible for funding under the grant program to include the following projects that reduce the amount of nutrients entering the impaired waters protected by this section:

- To repair, upgrade, expand, or construct stormwater treatment facilities that result in improvements to surface or groundwater water quality;
- To repair, upgrade, expand, or construct domestic wastewater treatment facilities that result in improvements to surface or groundwater water quality, including domestic wastewater reuse and collection systems;
- Identified in a BMAP, including those projects identified in a wastewater treatment plan, OSTDS remediation plan, or cooperative agricultural regional water quality improvement element; and
- Identified in a local government's comprehensive plan.

Projects to retrofit and upgrade OSTDSs to enhanced nutrient-reducing systems would still be eligible for funding, but the bill requires that central sewage be unavailable. The grant program would also continue to fund projects to connect OSTDSs to central sewer facilities.

In allocating funds, the DEP is already required to consider the estimated reduction in nutrient load per project, project readiness, and the overall environmental benefit and location of a project. The bill amends these requirements by:

- Removing the requirement that priority must be given to projects that subsidize the connection of OSTDSs to wastewater treatment facilities;
- Removing the requirement that the overall environmental benefit of a project be considered; and
- Requiring the DEP to prioritize projects that:
  - Have the *maximum* estimated reduction in nutrient load per project;
  - Demonstrate project readiness;
  - Are cost-effective;
  - Have a cost share identified by the applicant, except for rural areas of opportunity;
  - Have previous state commitment and involvement in the project, considering previously funded phases, the total amount of previous state funding, and previous partial appropriations for the proposed project; or
  - Are in a location where reductions are needed most to attain the water quality standards of a waterbody not attaining nutrient or nutrient-related standards.

The bill provides that any project that does not result in reducing nutrient loading is not eligible for funding. The bill also removes the requirement that each grant have a minimum 50 percent local match of funds but provides that the DEP must consider percent cost-share identified by an applicant (except in for rural areas of opportunity) when prioritizing projects. The bill also requires the DEP to coordinate with:

- Local governments and stakeholders to identify the most effective and beneficial water quality improvement projects; and
- DACS to prioritize the most effective and beneficial agricultural nonpoint source projects identified pursuant to s. 403.067(7)(e), F.S.

The bill amends existing reporting requirements to require the DEP to submit an annual report regarding the projects funded pursuant to this section to the Governor and the Legislature beginning January 15, 2024. The report must include a list of those projects receiving funding and the following information for each project:

- A description of the project;
- The cost of the project;
- The estimated nutrient load reduction of the project;
- The location of the project;
- The waterbody or waterbodies where the project will reduce nutrients; and
- The total cost share being provided for the project.

Section 18 amends s. 403.086, F.S., which prohibits sewage disposal facilities from disposing of any wastes into certain specified waters[243] without providing advanced waste treatment approved by the DEP. The bill amends this provision by requiring sewage disposal facilities to provide advanced waste treatment—or a more stringent treatment standard if the DEP determines it is necessary to achieve a TMDL or applicable water quality criteria—before discharging into the waters already protected under this statute and waterbodies that are currently not attaining nutrient or nutrient-related standards or that are subject to a nutrient or nutrient-BMAP or adopted RAP. Wastewater facilities in these areas must meet advanced waste treatment standards by January 1, 2033.

The bill also provides that, for any waterbody not attaining nutrient or nutrient-related standards after July 1, 2023, or subject to a nutrient or nutrient-related BMAP or adopted RAP after July 1, 2023, sewage disposal facilities are prohibited from disposing any wastes into such waters without providing advanced waste treatment, as approved by the DEP, within 10 years after such determination or adoption.

Currently, the prohibitions within s. 403.086, F.S., do not apply to facilities permitted before February 1987 that discharge secondary treated effluent, followed by water hyacinth treatment, to tributaries of tributaries of these waters or to facilities permitted to discharge to the nontidally influenced portions of the Peace River.[244] The bill removes this provision.

Section 19 amends s. 570.71, F.S., regarding agricultural conservation easements and agreements. The bill requires DACS to adopt rules that give funding preference to lands in imminent danger of development or degradation or lands within the Florida Wildlife Corridor.

The bill also provides that, notwithstanding any other law or rule, DACS must submit a purchase agreement authorized by this section to the Board of Trustees of the Internal Improvement Trust Fund for approval only if the purchase price exceeds $5 million.

[243] Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, Charlotte Harbor Bay, Biscayne Bay, and, beginning July 1, 2025, Indian River Lagoon, or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto. Section 403.086(1)(c), F.S.

[244] Section 403.086(1)(c), F.S.

Section 20 amends s. 570.715, F.S., regarding conservation easement acquisition procedures. The bill raises the property value threshold for when two appraisals is required for the acquisition of agricultural conservation easements and agreements from $1 million to $5 million.

Sections 21 through 32 make conforming changes.

Section 33 reenacts s. 259.045(6), F.S., regarding the purchase of lands in areas of critical state concern, for the purpose of incorporating the amendment made by this act to s. 259.032, F.S., in a reference thereto. The bill also requires DACS to disclose appraisal reports to private landowners or their representatives during negotiations for acquisitions.

Section 34 provides that this act fulfills an important state interest.

Section 35 provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, s. 18(a) of the Florida Constitution may apply to this bill because local governments may be required to expend funds to plan for sanitary sewer services and update their comprehensive plans as required by this bill. However, the law may an insignificant fiscal impact. Therefore, an exception from Art. VII, s. 18(a) of the Florida Constitution may apply.

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:

Private wastewater treatment facilities may incur costs related to upgrading to advanced waste treatment. Developers may incur costs related to providing for enhanced nutrient-reducing onsite sewage treatment and disposal systems (OSTDSs) for new developments.

C. Government Sector Impact:

The Department of Environmental Protection (DEP) may incur costs related to implementing the Indian River Lagoon Protection Program, including adopting rules. These costs can be handled within existing resources. DEP may also incur costs from the permit review process in the bill and to support the continuation of the OSTDS technical advisory committee. Local governments will incur costs to update their comprehensive plans. Local governments that are owners of wastewater treatment facilities may incur costs related to upgrading to advanced waste treatment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3177, 253.025, 259.032, 259.105, 373.501, 373.802, 373.807, 373.811, 375.041, 381.0065, 381.00652, 381.00655, 403.031, 403.067, 403.0673, 403.086, 201.15, 259.105, 373.019, 373.4132, 373.414, 373.4142, 373.430, 373.4592, 403.890, 403.892, 403.9301, 403.9302, 259.045, 570.71, and 570.715.

This bill creates sections 120.5436 and 373.469 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Fiscal Policy on April 25, 2023:

- Amends the requirement that a local government must plan to provide sanitary sewer services to certain parcels to provide that a local government must only consider the feasibility of providing such services;
- Requires the Department of Environmental Protection (DEP) to consider whether a project previously received state funding when prioritizing projects for the water quality improvement grant program;
- Provides that, for certain areas where sewer is not available, a wastewater treatment system must achieve at least 65 percent nitrogen reduction;

- Provides that, regarding the acquisition of state lands, property value must be based upon the reasonable market value of the property considering those uses that are legally permissible, physically possible, financially feasible, and maximally productive;
- Requires DEP and each water management district to review and report on their permitting processes by July 1, 2024;
- Raises the property value threshold for when two appraisals are required for the acquisition of agricultural conservation easements and agreements from $1 million to $5 million;
- Requires DEP and the Department of Agriculture and Consumer Services (DACS) to disclose otherwise confidential appraisal reports to private landowners or their representatives during negotiations for the acquisition of state lands or conservation easements;
- Specifies that, for Florida Forever projects and agricultural conservation easements and agreements, priority must be given to certain lands/projects, including those in imminent danger of development;
- Requires DACS to submit an updated acquisition priority list by March 1, 2024;
- Appropriates $100 million annually to DEP for the acquisition of land under the Florida Forever Act;
- Saves from repeal the section of law establishing the onsite sewage treatment and disposal systems technical advisory committee and requires the committee to submit its recommendations to the Governor and Legislature annually; and
- Requires coordination with DACS to identify and prioritize projects that will improve the water quality of certain impaired waters.

CS by Environment and Natural Resources Committee on March 20, 2023:

- Provides that the Board of Trustees of the Internal Improvement Fund must designate an agency or agencies to manage lands concurrent with the approval of the acquisition contract for Florida Forever projects. The requirement that this designation be concurrent with the approval of the contract was removed in the underlying bill, and the amendment restores that language;
- Adds the following language to the definition of "best management practices" to make it consistent with other statutory definitions of this term: "Best management practices for agricultural discharges shall reflect a balance between water quality improvements and agricultural productivity;"
- Adds technical specificity to the definition of nutrient or nutrient-related standards;
- Changes "waters of this state" to "waters of the state," restoring existing law and correcting a term of art;
- Specifies that projects in the agricultural element will be cost-effective and technically and financially practical regional agricultural nutrient reduction projects and can include more types of projects than those expressly listed in the statute. The amendment adds that the cost estimate for projects on the list is a "planning-level" cost estimate. The amendment also clarifies that the list of projects will achieve the needed pollutant load reductions in combination with the best management practices, additional measures, and other management strategies;

- Reorganizes the types of waters/areas that the grant program is intended to be utilized for and clarifies that the grants are for projects that reduce the nutrients entering those waters; and
- Changes the term "impaired" to "not attaining nutrient or nutrient-related standards" in the provisions relating to advanced waste treatment.

B. Amendments:

None.