

WEEK 3 REPORT

// 2020 LEGISLATIVE SESSION

+ MARINE INDUSTRIES ASSOCIATION OF FLORIDA

JANUARY 27-31, 2020



// WEEK 3 REPORT

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Marine Industries Association of Florida had a great week in Tallahassee! Thank you to all the regional chapters that came to the Capitol to listen to our speakers and meet with State Senators and Representatives on behalf of the industry. The general consensus is to make this an annual event. If you could not make it this year, we hope you will consider attending next Session.

I would be remiss if I also did not thank all of our sponsors and volunteers to make this event possible. Many hours went into planning the event, and we hope everyone who attended was able to walk away with a better understanding of what MIAF does in Tallahassee.

Of course, week three was not all fun and games. Committee meetings, bills, amendments and budgets were still our focus.

Marina evacuations is a bill we have been watching closely. MIAF championed the original marina evacuation bill in 2006. The House amended the Transportation package with an amendment relating to hurricane evacuation of marinas in deepwater ports. The language is now included in CS/HB 395. The Senate Bill, SB 826 is on the agenda Monday in the Senate. An amendment is filed to the bill to limit it to marinas in deepwater ports. The language MIAF championed is still in statute 327.59.

Another bill of interest we were briefed on by Associated Industries of Florida is House Bill 1199 relating to Environmental Protection. This bill prohibits local governments from granting legal rights to natural environments. HB 1199 is scheduled to be heard this week in committee. The Senate companion, CS/SB 1382 has passed one committee and has two more to pass before it hits the floor for final passage.

Anchoring bills have not been placed on agenda as of the writing of this report.

We continue to try and finalize negotiations on the St. Petersburg filed by Representative Webb and Senator Rouson. We are hopeful to work out language in time to get the bill on agenda.

Finally, the Senate and House released their proposed budgets. Included in the report are just a few of the items we are watching for MIAF.

A handwritten signature in dark blue ink, reading "Margaret Timmins" with a stylized flourish at the end.

Margaret "Missy" Timmins
President
Timmins Consulting, LLC

// ANCHORING LIMITATION AREAS

Senate Bill 606 // Sen. Aaron Bean // Referred to: Environment and Natural Resources; Community Affairs; Rules

House Bill 417 // Rep. Wyman Duggan // Referred to: Agriculture & Natural Resources Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; State Affairs Committee

HOUSE/SENATE BILL RELATIONSHIP: *IDENTICAL*

CS/Senate Bill 606: SB 606 adds the Ortega and Cedar rivers to the list of designated anchoring limitation areas, which restricts the anchoring of a vessel in such areas at night with certain exceptions.

Most Recent Action: Favorable with CS by Environment and Natural Resources; 3 Yeas, 2 Nays

House Bill 417: HB 417 adds the Ortega and Cedar rivers to the list of designated anchoring limitation areas, which restricts the anchoring of a vessel in such areas at night with certain exceptions.

Most Recent Action: Referred to Agriculture & Natural Resources Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; State Affairs Committee

// MARINA EVACUATIONS

Senate Bill 826 // Sen. Debbie Mayfield // Referred to: Environment and Natural Resources; Infrastructure and Security; Rules

House Bill 475 // Rep. Rene Plasencia // Referred to: Agriculture & Natural Resources Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; State Affairs Committee

****NEW** House Bill 395 // Rep. Alex Andrade // Referred to: Transportation & Infrastructure Subcommittee; Transportation & Tourism Appropriations Subcommittee; State Affairs Committee**

826/475 RELATIONSHIP: *IDENTICAL*

826/395 RELATIONSHIP: *COMPARE*

Senate Bill 826: SB 826 prohibits, upon the issuance of a hurricane watch or warning that affects the waters of marinas located in a deepwater seaport, vessels under 500 gross tons from remaining in the waters of such marinas that have been deemed not suitable for refuge during a hurricane.

The bill provides that after a watch or warning has been issued, if an owner or operator has not removed the vessel pursuant to an order from the seaport, the owner or operator may be subject to existing civil penalties.

Most Recent Action: On Committee agenda - Environment and Natural Resources, 02/03/20, 4:00 pm

House Bill 1329: Prohibits vessels under specified weight from remaining in certain marinas that have been deemed not suitable for refuge during hurricane after issuance of hurricane watch or warning for waters of marina; provides for civil penalties.

Most Recent Action: Referred to Agriculture & Natural Resources Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; State Affairs Committee

CS/House Bill 395: The bill amends various statutory provisions relating to transportation. In summary, the bill:

- Revises the statutory definition of autocycle to incorporate a reference to federal safety standards;
- Increases the allowable weight of personal delivery devices;
- Authorizes portable radar speed display units to display flashing red and blue lights under certain circumstances;
- Allows the use of flashing lights on vehicles during periods of extreme low visibility on specified roads;
- Authorizes the Department of Highway Safety and Motor Vehicles to waive commercial driver license skill test requirements for qualifying veterans;
- Revises requirements governing the use of tarpaulins and other covers on vehicles hauling agricultural products;
- Authorizes for-hire vehicles to be insured by certain non-admitted carriers and reduces the number of for hire vehicles required before an owner or lessee may self-insure;
- Requires certain vessels to be removed from marinas located in deepwater seaports during hurricanes;
- Revises qualification requirements for contractors desiring to bid on certain Department of Transportation contracts, including the submission of specified financial statements; and

- Establishes a regulatory framework governing the operation of disability-accessible transportation network companies and preempts regulation of such companies to the state.

The bill may have a fiscal impact on the Department of Financial Services due to the authorization of disability-accessible transportation network companies. Local governments currently imposing fees on disability-accessible transportation network companies may see a reduction in revenues associated with the preemption of such regulation to the state. See Fiscal Analysis for details.

Most Recent Action: Favorable with CS by Transportation & Infrastructure Subcommittee; 13 Yeas, 0 Nays

Attached documents: SB 826 (as filed) + amendment + staff analysis; CS/HB 395 + staff analysis

// ENVIRONMENTAL ENFORCEMENT

Senate Bill 1450 // Sen. Joe Gruters // Referred to: Environment and Natural Resources; Appropriations Subcommittee on Criminal and Civil Justice; Appropriations

House Bill 1091 // Rep. Randy Fine // Referred to: Agriculture & Natural Resources Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; State Affairs Committee

HOUSE/SENATE BILL RELATIONSHIP: *SIMILAR*

CS/Senate Bill 1450: CS/SB 1450 makes numerous changes to the penalties for violating Florida's environmental laws. The bill increases required or maximum environmental penalties in various sections of the Florida Statutes. Most of the changes increase a penalty by 50 percent. Additionally, the bill changes the duration that certain penalties may run, so that, until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.

Most Recent Action: Favorable with CS by Environment and Natural Resources; 5 Yeas, 0 Nays; Reference to Appropriations Subcommittee on Agriculture, Environment, and General Government removed; Reference to Appropriations Subcommittee on Criminal and Civil Justice added; Remaining references: Appropriations Subcommittee on Criminal and Civil Justice; Appropriations

House Bill 1091: The Department of Environmental Protection (DEP) is Florida's lead agency for environmental management and stewardship, implementing many programs to protect the state's air, water, and land. In accordance with the state's numerous environmental laws, DEP's responsibilities include compliance and enforcement. Violations of Florida's environmental laws can result in damages and administrative, civil, and/or criminal penalties. Several types of violations impose a penalty for each offense, with each day during which a violation occurs

constituting a separate offense.

The bill increases various statutory penalties for violations of environmental laws.

For violations that currently impose a penalty for each day during which a violation occurs, the bill specifies that each day the violation occurs or is not remediated constitutes a separate offense until the violation is resolved by order or judgment.

The bill may have an indeterminate fiscal impact on state and local governments.

Most Recent Action: On Committee agenda - Agriculture & Natural Resources Subcommittee, 02/04/20, 12:00 pm

Attached documents: CS/SB 1450 + staff analysis; HB 1091 (as filed) + staff analysis

// VESSELS

Senate Bill 1378 // Sen. Darryl Rouson // Referred to: Environment and Natural Resources; Judiciary; Rules

House Bill 1407 // Rep. Jennifer Webb // Referred to: Local, Federal & Veterans Affairs Subcommittee; Business & Professions Subcommittee; State Affairs Committee

HOUSE/SENATE BILL RELATIONSHIP: *IDENTICAL*

Senate Bill 1378: Specifying operation of a vessel at slow speed, minimum wake; prohibiting the operation of vessels at speeds faster than slow speed, minimum wake in certain situations; prohibiting the anchoring or mooring of a vessel to, or within a specified distance of, a mangrove or to vegetation upon, or within a specified distance of, public lands; revising civil penalties relating to certain at-risk vessels and prohibited anchoring or mooring, etc.

Most Recent Action: Referred to Environment and Natural Resources; Judiciary; Rules

House Bill 1407: Prohibits operation of vessels at speeds faster than slow speed, minimum wake in hazardous situations; provides requirements for flags displayed from vessels & barges actively engaged in construction operations; prohibits anchoring or mooring of vessel to mangroves & vegetation on public lands; revises civil penalties.

Most Recent Action: Filed

// FLORIDA ENDANGERED AND THREATENED SPECIES ACT

Senate Bill 1360 // Sen. Jose Javier Rodriguez // Referred to: Environment and Natural Resources; Appropriations Subcommittee on Agriculture, Environment, and General Government; Appropriations

House Bill 1067 // Rep. Adam Hattersley // Referred to: Agriculture & Natural Resources Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; State Affairs Committee

HOUSE/SENATE BILL RELATIONSHIP: *SIMILAR*

Senate Bill 1360: Florida Endangered and Threatened Species Act; directing the Fish and Wildlife Conservation Commission to protect certain declassified species; prohibiting the commission and the Department of Environmental Protection from considering certain costs when designating a species as endangered or threatened; revising criteria for placement of species on the Regulated Plant Index by the Department of Agriculture and Consumer Services; directing the department, in consultation with the Endangered Plant Advisory Council, to protect certain declassified species, etc.

Most Recent Action: Referred to Environment and Natural Resources; Appropriations Subcommittee on Agriculture, Environment, and General Government; Appropriations

House Bill 1067: Florida Endangered and Threatened Species Act: Directs FWCC & DACS to protect certain declassified species; revises criteria for placement of species on Regulated Plant Index by DACS; prohibits FWCC & DACS from considering certain costs when designating species as endangered or threatened.

Most Recent Action: Referred to Agriculture & Natural Resources Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; State Affairs Committee

// FISH AND WILDLIFE ACTIVITIES

Senate Bill 1414 // Sen. Debbie Mayfield // Referred to: Environment and Natural Resources; Agriculture; Rules

House Bill 777 // Rep. Tommy Gregory // Referred to: Agriculture & Natural Resources Subcommittee; Ways & Means Committee; State Affairs Committee

HOUSE/SENATE BILL RELATIONSHIP: *COMPARE*

Senate Bill 1414: SB 1414 broadens the prohibition on the harassment of hunters, trappers, or

fishers to include harassment on any public lands, public waters, or publicly or privately owned wildlife management and fish management areas.

The bill expands the number of free fishing days from 4 to 6.

The bill adds tegus and iguanas to the conditional nonnative snakes and lizards list and tightens the restrictions on the list from applying to possession of these species for sale or personal use to prohibiting any use except for educational or research purposes.

Most Recent Action: On Committee agenda - Environment and Natural Resources, 02/03/20, 4:00 pm

House Bill 777: Prohibits certain harassment of hunters, trappers, & fishers in or on specified lands, areas, & waters; authorizes FWCC to designate additional free fishing days; prohibits certain possession of specified reptiles; provides exemption from sales & use tax for retail sale of certain hunting, fishing, & camping supplies during specified period; authorizes certain dealers to opt out of exemption; authorizes DOR to adopt emergency rules; provides appropriation.

Most Recent Action: Referred to Agriculture & Natural Resources Subcommittee; Ways & Means Committee; State Affairs Committee

Attached documents: SB 1414 (as filed) + staff analysis + 1 amendment

// VESSEL SAFETY

Senate Bill 1786 // Sen. Linda Stewart // Referred to: Environment and Natural Resources; Criminal Justice; Rules

Senate Bill 1786: Prohibiting a vessel operator from endangering the life, limb, or property of another person by allowing passengers to ride on the bow of the vessel; providing that careless operation includes causing wake to law enforcement vessels under certain circumstances, etc.

Most Recent Action: Referred to Environment and Natural Resources; Criminal Justice; Rules

Attached documents: None

// BOATING-RESTRICTED AREAS

Senate Bill 1788 // Sen. Linda Stewart // Referred to: Community Affairs; Environment and Natural Resources; Rules

Senate Bill 1788: Authorizing municipalities and counties to establish certain boating-restricted areas by ordinance for areas within a specified distance of any shoreline, etc.

Most Recent Action: Referred to Community Affairs; Environment and Natural Resources; Rules

Attached documents: None

// ENVIRONMENTAL PROTECTION

Senate Bill 1878 // Sen. Rob Bradley // Referred to: Environment and Natural Resources; Appropriations Subcommittee on Agriculture, Environment, and General Government; Appropriations

Senate Bill 1878: SB 1878 creates a new section of law that includes an annual appropriation, beginning in fiscal year 2020-2021, of a minimum of \$625 million for the purposes of Everglades restoration and the protection of water resources in the state. The appropriation would be repealed on June 30, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill states that the annual appropriation to the Department of Environmental Protection must provide for the following distributions:

- The greater of \$300 million or the appropriation under the Land Acquisition Trust Fund for Everglades restoration and the Everglades Agricultural Area reservoir project.
- \$50 million to the South Florida Water Management District for the design, engineering, and construction of aquifer storage and recovery wells.
- Funding for spring restoration under the Land Acquisition Trust Fund.
- \$40 million for alternative water supplies or water conservation.
- \$15 million for projects within St. Johns, Suwannee, and Apalachicola Rivers watersheds.
- \$15 million for projects within the Indian River Lagoon watershed.
- \$10 million for coral reef protection and restoration.
- \$4 million to the Fish and Wildlife Conservation Commission for red tide research.

After the above distributions, any remaining balance must be allocated to fund:

- Targeted water quality improvements.
- Alternative water supplies or water conservation.
- Water quality enhancements and accountability, innovative technologies, and harmful algal bloom prevention and mitigation.
- Land acquisition or easement acquisition, including, but not limited to, lands or easements purchased pursuant to the Florida Forever or Rural and Family Lands Protection programs.

Most Recent Action: On Committee agenda - Environment and Natural Resources, 02/03/20, 4:00 pm

Attached documents: SB 1878 (as filed) + staff analysis + 1 amendment

// WATER QUALITY IMPROVEMENTS

Senate Bill 712 // Sen. Debbie Mayfield // Referred to: Community Affairs; Appropriations Subcommittee on Agriculture, Environment, and General Government; Appropriations

CS/Senate Bill 712: PCS/CS/SB 712 includes recommendations from the Blue-Green Algae Task Force. The major topics in this bill include onsite sewage treatment and disposal systems (OSTDSs, commonly referred to as septic systems), wastewater, stormwater, agriculture, and biosolids. The bill directs the Department of Environmental Protection (DEP) to make rules relating to most of these topics. Note that rules that cost at least \$1 million over the first five years of implementation require legislative ratification.¹ Therefore, several of these provisions may not be fully effectuated without additional legislation.

The DEP will incur indeterminate additional costs in developing multiple new regulatory programs, updating basin management action plans (BMAPs), promulgating rules, and developing, submitting, and reviewing new reports. The DEP can absorb these costs within existing resources. The implementation of the real-time water quality monitoring and wastewater grant programs will have a negative fiscal impact on the DEP, but these provisions are subject to appropriations. See Section V.

Regarding OSTDSs, the bill:

- Transfers the regulation of OSTDSs from the Department of Health (DOH) to the DEP.
- Directs the DEP to adopt rules to locate OSTDSs by July 1, 2022:
 - These rules will take into consideration conventional and advanced OSTDS designs, impaired water bodies, wastewater and drinking water infrastructure,

potable water sources, nonpotable wells, stormwater infrastructure, OSTDS remediation plans, nutrient pollution, and the recommendations of an OSTDS technical advisory committee;

- Once those rules are adopted, they will supersede the existing statutory requirements for setbacks.
- Deletes the DOH OSTDS technical advisory committee and creates a DEP OSTDS technical advisory committee that will expire on August 15, 2022, after making recommendations to the Governor and the Legislature regarding the regulation of OSTDSs.
- Requires local governments to develop OSTDS remediation plans within BMAPs if the DEP determines that OSTDSs contribute at least 20 percent of the nutrient pollution or if the DEP determines remediation is necessary to achieve the total maximum daily load. Such plans must be adopted as part of the BMAPs no later than July 1, 2025.

Regarding wastewater, the bill:

- Creates a wastewater grant program, subject to appropriation, within the DEP that requires a 50 percent local match of funds. Eligible projects include:
 - Projects to upgrade OSTDSs.
 - Projects to construct, upgrade, or expand facilities to provide advanced waste treatment.
 - Projects to connect OSTDSs to central sewer facilities.
- Requires the DEP to submit an annual report to the Governor and the Legislature on the projects funded by the wastewater grant program.
- Provides incentives for wastewater projects that promote efficiency by coordinating wastewater infrastructure expansions with other infrastructure improvements.
- Gives priority in the state revolving loan fund for eligible wastewater projects that meet the additional requirements of the bill to prevent leakage, overflows, infiltration, and inflow.
- Requires the DEP to adopt rules to reasonably limit, reduce, and eliminate leaks, seepages, or inputs into the underground pipes of wastewater collection systems.
- Authorizes the DEP to require public utilities seeking a wastewater discharge permit to file reports and other data regarding utility costs:
 - Such reports may include data related to expenditures on pollution mitigation and prevention, including the prevention of sanitary sewer overflows, collection and transmission system pipe leakages, and inflow and infiltration.
 - The DEP is required to adopt rules related to these requirements.
- Requires local governments to develop wastewater treatment plans within BMAPs if the DEP determines that domestic wastewater facilities contribute at least 20 percent of the nutrient pollution or if the DEP determines remediation is necessary to achieve the total

maximum daily load. Such plans must be adopted as part of the BMAPs no later than July 1, 2025.

- Adds to the DEP's penalty schedule a penalty of \$4,000 for failure to survey an adequate portion of a wastewater collection system and take steps to reduce sanitary sewer overflows, pipe leaks, and inflow and infiltration. Substantial compliance with certain bill requirements is evidence in mitigation for penalty assessment.
- Increases the cap on the DEP's administrative penalties from \$10,000 to \$50,000.
- Doubles the wastewater administrative penalties.
- Prohibits facilities for sanitary sewage disposal from disposing of waste into the Indian River Lagoon and its tributaries without providing advanced waste treatment.
- Requires facilities for sanitary sewage disposal to provide for a power outage contingency plan for collection systems and pump stations.
- Requires facilities for sanitary sewage to prevent sanitary sewer overflows or underground pipe leaks and ensure that collected wastewater reaches the facility for appropriate treatment.
 - The bill requires studies, plans, and reports related to this requirement (the action plan).
 - The DEP must adopt rules regarding the implementation of inflow and infiltration studies and leakage surveys.
- Authorizes certain facilities for sanitary sewage to receive 10-year permits if they are meeting the goals in their action plan for inflow, infiltration, and leakage prevention.
- Makes the following changes relating to water pollution operation permits:
 - The permit must require the investigation or surveying of the wastewater collection system to determine pipe integrity.
 - The permit must require an annual report to the DEP, which details facility revenues and expenditures in a manner prescribed by the DEP rule, including any deviation from annual expenditures related to their action plan.
- Requires the DEP to submit an annual report to the Governor and the Legislature that identifies all wastewater utilities that experienced a sanitary sewer overflow in the preceding calendar year. The DEP must include with this report certain utility-specific information for each utility that experienced an overflow.

Regarding stormwater, the bill:

- Requires the DEP and the Water Management Districts (WMDs), by January 1, 2021, to initiate rulemaking to update their stormwater rules.
- Requires the DEP, by January 1, 2021, to evaluate inspection data relating to entities that self-certify their stormwater permits and provide the Legislature with recommendations for improvements to the self-certification program.

- Directs the DEP and the Department of Economic Opportunity to include in their model stormwater management program ordinances that target nutrient reduction practices and use green infrastructure.

Regarding agriculture, the bill:

- Requires the Department of Agriculture and Consumer Services (DACS) to collect and provide to the DEP fertilization and nutrient records from each agriculture producer enrolled in best management practices.
- Requires the DACS to perform onsite inspections of each agricultural producer that enrolls in a best management practice every two years.
- Authorizes the DACS and institutions of higher education with agricultural research programs to develop research plans and legislative budget requests relating to the evaluation and improvement of agricultural best management practices and agricultural nutrient reduction projects.

Regarding biosolids, the bill:

- Requires the DEP to adopt rules for biosolids management.
- Exempts the biosolids rules from legislative ratification if they are adopted prior to the 2021 legislative session.
- Clarifies that local governments with biosolids ordinances may retain those ordinances until repealed.

The bill also creates a real-time water quality monitoring program, subject to appropriation, within the DEP.

The effective date of the bill is July 1, 2021.

Most Recent Action: On Committee agenda - Appropriations, 02/05/20, 1:00 pm

Attached documents: PCS for CS/SB 712 + staff analysis

// ENVIRONMENTAL RESOURCE MANAGEMENT

Senate Bill 1382 // Sen. Ben Albritton // Referred to: Environment and Natural Resources; Appropriations Subcommittee on Agriculture, Environment, and General Government; Appropriations

House Bill 1199 // Rep. Blaise Ingoglia // Referred to: Civil Justice Subcommittee; Agriculture & Natural Resources Subcommittee; Judiciary Committee

HOUSE/SENATE BILL RELATIONSHIP: *COMPARE*

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

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

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

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

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

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

Most Recent Action: Favorable with CS by Environment and Natural Resources; 4 Yeas, 0 Nays

House Bill 1199: Florida authorizes a citizen to assert standing to stop an activity that will affect his or her use or enjoyment of air, water, or natural resources. However, court rulings and legislation in the U.S. and worldwide have suggested that specific legal rights of nature may exist, authorizing a person to assert standing on behalf of natural resources.

While U.S. Supreme Court precedent clearly limits standing for environmental claims to only an action causing injury to a human, dissenting opinions suggesting otherwise have recently garnered the attention of environmental activists attempting to assert standing on behalf of the environment, often resulting in lengthy, yet unsuccessful, litigation.

The bill amends the Florida Environmental Protection Act to prohibit, unless otherwise authorized by law or specifically granted in the State Constitution, a local government regulation, ordinance, code, rule, comprehensive plan, charter, or any other provision of law:

- From recognizing or granting any legal right to a plant, animal, body of water, or any

other part of the natural environment that is not a person or political subdivision; or

- From granting a person or political subdivision any specific rights relating to the natural environment.

The bill provides that the prohibition on granting rights to nonpersons may not be interpreted to limit:

- The power of an adversely affected party to challenge the consistency of a development order with a comprehensive plan, or to file an action for injunctive relief to enforce the terms of a development agreement or to challenge compliance of the agreement with the Florida Local Government Development Agreement Act; or
- The standing of the Department of Legal Affairs, a political subdivision or municipality of the state, or a citizen of the state to maintain an action for injunctive relief as otherwise provided by the EPA.

The bill may prevent costly litigation related to granting rights to natural resources, when current legal precedent suggests such rights may not be granted at the state or local level.

The bill is effective upon becoming law.

Most Recent Action: On Committee agenda - Agriculture & Natural Resources Subcommittee, 02/04/20, 12:00 pm

Attached documents: CS/SB 1382 + staff analysis; HB 1199 (as filed) + staff analysis

// BOATING-RELATED APPROPRIATIONS

Finally, the Senate and House released their proposed budgets. Below are just a few of the items we are watching for the association:

Senate Budget - SB 2500

1641C GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY
GRANTS AND AIDS - CORAL REEF PROTECTION AND RESTORATION

FROM GENERAL REVENUE FUND 10,000,000

1676 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY
BEACH PROJECTS - STATEWIDE

FROM LAND ACQUISITION TRUST FUND 50,000,000

From the funds in Specific Appropriation 1676, any remaining unencumbered surplus funds shall be available for beach and inlet management projects in continued priority order, based on readiness to proceed.

1737 SPECIAL CATEGORIES FLORIDA RESILIENT COASTLINE INITIATIVE

FROM GENERAL REVENUE FUND 10,000,000

From the funds in Specific Appropriation 1737, \$10,000,000 in recurring funds from the General Revenue Fund are provided for the Florida Resilient Coastline Initiative to assist local governments with storm resiliency, sea level rise planning, coastal resilience projects, and coral reef health.

The department shall perform an analysis for each assessment and planning grant provided to local communities during the 2020-2021 fiscal year. The analysis shall include for each grant; an accounting of grant expenditures, descriptions of goals and objectives, and project recommendations and estimated costs of those projects. The analysis shall be submitted to the chair of the Senate Appropriations Committee, the chair of the House of Representatives Appropriations Committee, and the Executive Office of the Governor's Office of Policy and Budget by October 1, 2020.

1748 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY
CLEAN MARINA

FROM FEDERAL GRANTS TRUST FUND . . . 1,000,000

1809 SPECIAL CATEGORIES BOATING SAFETY EDUCATION PROGRAM

FROM MARINE RESOURCES CONSERVATION TRUST FUND
625,650

1810 FIXED CAPITAL OUTLAY BOATING INFRASTRUCTURE

FROM FEDERAL GRANTS TRUST FUND . . . 3,900,000

1811 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY
DERELICT VESSEL REMOVAL PROGRAM

FROM GENERAL REVENUE FUND 1,000,000

FROM MARINE RESOURCES CONSERVATION TRUST FUND 3,727,800

1813 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY
FLORIDA BOATING IMPROVEMENT PROGRAM

FROM MARINE RESOURCES CONSERVATION TRUST FUND	1,756,175
FROM STATE GAME TRUST FUND	1,250,000

1882 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY
ARTIFICIAL FISHING REEF CONSTRUCTION PROGRAM

FROM FEDERAL GRANTS TRUST FUND . . .	300,000
FROM MARINE RESOURCES CONSERVATION TRUST FUND	300,000

1883 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY
GRANTS AND AIDS - INNOVATIVE TECHNOLOGY DEVELOPMENT - LIONFISH

FROM GENERAL REVENUE FUND	400,000
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1641C GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY
GRANTS AND AIDS - CORAL REEF PROTECTION AND RESTORATION

FROM GENERAL REVENUE FUND	10,000,000
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1737 SPECIAL CATEGORIES FLORIDA RESILIENT COASTLINE INITIATIVE

FROM GENERAL REVENUE FUND	10,000,000
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1748 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY
CLEAN MARINA

FROM FEDERAL GRANTS TRUST FUND . . .	1,000,000
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1809 SPECIAL CATEGORIES BOATING SAFETY EDUCATION PROGRAM

FROM MARINE RESOURCES CONSERVATION TRUST FUND
625,650

1810 FIXED CAPITAL OUTLAY BOATING INFRASTRUCTURE

FROM FEDERAL GRANTS TRUST FUND 3,900,000

1811 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY
DERELICT VESSEL REMOVAL PROGRAM

FROM GENERAL REVENUE FUND 1,000,000
FROM MARINE RESOURCES CONSERVATION TRUST FUND 3,727,800

1813 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY
FLORIDA BOATING IMPROVEMENT PROGRAM

FROM MARINE RESOURCES CONSERVATION TRUST FUND 1,756,175
FROM STATE GAME TRUST FUND 1,250,000

1882 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY
ARTIFICIAL FISHING REEF CONSTRUCTION PROGRAM

FROM FEDERAL GRANTS TRUST FUND 300,000
FROM MARINE RESOURCES CONSERVATION TRUST FUND 300,000

1883 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY
GRANTS AND AIDS - INNOVATIVE TECHNOLOGY DEVELOPMENT - LIONFISH

FROM GENERAL REVENUE FUND 400,000

House Budget - APC 11641 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY
GRANTS AND AIDS - WATER QUALITY IMPROVEMENTS

FROM GENERAL REVENUE FUND 122,000,000

The nonrecurring funds in Specific Appropriation 1641 are provided for a grant program to provide up to a 50 percent matching grant to local governmental agencies as defined in section 403.1835, Florida Statutes, for wastewater and stormwater improvements,

including septic conversion and remediation. The program supports the efforts of the Blue-Green Algae Task Force consensus findings to address nutrient loads to impaired waterbodies affected by blue-green algae. The Department of Environmental Protection may contract with local governmental agencies to administer the program.

From the nonrecurring funds in Specific Appropriation 1641, \$15,000,000 is provided for projects in the St. Johns River, Suwannee River, and Apalachicola River watersheds, and \$10,000,000 is provided for coral reef ecosystem protection and restoration.

1737 SPECIAL CATEGORIES FLORIDA RESILIENT COASTLINE INITIATIVE

FROM GENERAL REVENUE FUND	5,500,353
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Funds in Specific Appropriation 1737 are provided for the purpose of assisting local governments with sea level rise planning and coastal resilience projects. Funds may also be used for storm resiliency, including the placement of sand to mitigate erosion and ensure public safety, or for the protection of coral reef health, including restoration and monitoring.

1748 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY CLEAN MARINA

FROM FEDERAL GRANTS TRUST FUND . . .	1,000,000
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1809 SPECIAL CATEGORIES BOATING SAFETY EDUCATION PROGRAM

FROM MARINE RESOURCES CONSERVATION TRUST FUND	625,650
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1810 FIXED CAPITAL OUTLAY BOATING INFRASTRUCTURE

FROM FEDERAL GRANTS TRUST FUND . . .	3,900,000
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1811 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY DERELICT VESSEL REMOVAL PROGRAM

FROM MARINE RESOURCES CONSERVATION TRUST FUND	3,496,800
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1813 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY FLORIDA BOATING IMPROVEMENT PROGRAM

FROM MARINE RESOURCES CONSERVATION TRUST FUND	756,175
FROM STATE GAME TRUST FUND	1,250,000

1882 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY
ARTIFICIAL FISHING REEF CONSTRUCTION PROGRAM

FROM FEDERAL GRANTS TRUST FUND	300,000
FROM MARINE RESOURCES CONSERVATION TRUST FUND	300,000

1883 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY
GRANTS AND AIDS - INNOVATIVE TECHNOLOGY DEVELOPMENT - LIONFISH

FROM GENERAL REVENUE FUND	400,000
-------------------------------------	---------

1906A GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL
OUTLAY GRANTS AND AIDS - FLORIDA AQUARIUM EXPANSION OF THREATENED CORAL ARCHIVE
AND REPRODUCTION

FROM GENERAL REVENUE FUND	250,000
-------------------------------------	---------

From the funds provided in Specific Appropriation 1906A, \$250,000 in nonrecurring funds from the General Revenue Fund is provided for the Florida Aquarium Coral Research Laboratory and Visitors Center (HB 3115).

2020-2021 Governor's Proposed Budget

1641 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND
NONSTATE ENTITIES - FIXED CAPITAL OUTLAY

GRANTS AND AIDS - WATER QUALITY IMPROVEMENTS

FROM GENERAL REVENUE FUND	150,000,000
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Funds in Specific Appropriation 1641 are provided for a grant program to provide up to a 50 percent matching grant to local governmental agencies as defined in section 403.1835, Florida Statutes, for wastewater and stormwater improvements, including septic conversion and remediation. This program supports the efforts of the Blue-Green Algae Task Force consensus findings to address nutrient loads to impaired waterbodies affected by blue-green algae. The Department of Environmental Protection may contract with local governmental agencies to administer the program.

From the funds in Specific Appropriation 1641, \$15,000,000 is provided for projects in the St. Johns River, Suwannee River, and Apalachicola River watersheds, and

\$10,000,000 is provided for coral reef ecosystem protection and restoration.

1737 SPECIAL CATEGORIES

FLORIDA RESILIENT COASTLINE INITIATIVE

FROM GENERAL REVENUE FUND 5,500,353

Funds in Specific Appropriation 1737 are provided for the purpose of assisting local governments with sea level rise planning and coastal resilience projects. Funds may also be used for storm resiliency, including the placement of sand to mitigate erosion and ensure public safety, or for the protection of coral reef health, including restoration and monitoring.

1748 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND

NONSTATE ENTITIES - FIXED CAPITAL OUTLAY CLEAN MARINA

FROM FEDERAL GRANTS TRUST FUND . . . 1,000,000

1800 SPECIAL CATEGORIES

BOAT RAMP MAINTENANCE CATEGORY

FROM FEDERAL GRANTS TRUST FUND . . . 359,466

FROM MARINE RESOURCES CONSERVATION TRUST FUND 67,048

FROM STATE GAME TRUST FUND 143,750

1804 SPECIAL CATEGORIES

BOATING AND WATERWAYS ACTIVITIES

FROM MARINE RESOURCES CONSERVATION TRUST FUND 2,192,

1809 SPECIAL CATEGORIES

BOATING SAFETY EDUCATION PROGRAM

FROM MARINE RESOURCES CONSERVATION TRUST FUND 625,650

1810 FIXED CAPITAL OUTLAY

BOATING INFRASTRUCTURE

FROM FEDERAL GRANTS TRUST FUND . . . 3,900,000

1811	GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY DERELICT VESSEL REMOVAL PROGRAM FROM MARINE RESOURCES CONSERVATION TRUST FUND	2,135,136
1813	GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY FLORIDA BOATING IMPROVEMENT PROGRAM FROM MARINE RESOURCES CONSERVATION TRUST FUND FROM STATE GAME TRUST FUND	1,756,175 1,250,000
1882	GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY ARTIFICIAL FISHING REEF CONSTRUCTION PROGRAM FROM FEDERAL GRANTS TRUST FUND FROM MARINE RESOURCES CONSERVATION TRUST FUND	300,000 300,000

That is just a brief summary for your review. We have highlighted several other bills you might be interested in the report. We have also attached a list of all the bills we are tracking for your information. Many of those bills are tagged so we can review potential filed amendments.

We appreciate the opportunity to be your voice in Tallahassee!

APPENDIX

// ANCHORING LIMITATION AREAS

No attachments

// MARINA EVACUATION

SB 826 (as filed) + Staff Analysis + 1 Amendment
HB 395 (as filed) + Staff Analysis

// ENVIRONMENTAL ENFORCEMENT

CS/SB 1450 (as filed) + Staff Analysis
HB 1091 (as filed) + Staff Analysis

// VESSELS

No attachments

// FLORIDA ENDANGERED & THREATENED SPECIES ACT

No attachments

// FISH AND WILDLIFE ACTIVITIES

SB 1414 (as filed) + Staff Analysis + 1 Amendment

// VESSEL SAFETY

No attachments

// BOATING-RESTRICTED AREAS

No attachments

// ENVIRONMENTAL PROTECTION

SB 1878 (as filed) + Staff Analysis + 1 Amendment

// WATER QUALITY IMPROVEMENTS

PCS for CS/SB 712 + Staff Analysis

// ENVIRONMENTAL RESOURCE MANAGEMENT

CS/1382 + Staff Analysis
HB 1199 + Staff Analysis

// CURRENT BILL TRACKING LIST

By Senator Mayfield

17-00936A-20

2020826__

A bill to be entitled

An act relating to marina evacuations; amending s. 327.59, F.S.; prohibiting vessels under a specified weight from remaining in certain marinas that have been deemed not suitable for refuge during a hurricane after the issuance of a hurricane watch or warning for the waters of the marina; providing for civil penalties; providing an effective date.

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

Section 1. Subsection (1) of section 327.59, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

327.59 Marina evacuations.—

(1) Except as provided in this section ~~After June 1, 1994,~~ marinas may not adopt, maintain, or enforce policies pertaining to evacuation of vessels which require vessels to be removed from marinas following the issuance of a hurricane watch or warning, in order to ensure that protecting the lives and safety of vessel owners is placed before interests of protecting property.

(5) Upon the issuance of a hurricane watch or warning affecting the waters of marinas located in a deepwater seaport, vessels under 500 gross tons may not remain in the waters of such marinas that have been deemed not suitable for refuge during a hurricane. After the hurricane watch or warning has been issued, the owner or operator of any vessel that has not been removed, pursuant to an order from the seaport, from the

17-00936A-20

2020826__

30 waters of the marina may be subject to the penalties under s.
31 313.22(3).

32 Section 2. This act shall take effect July 1, 2020.



363196

LEGISLATIVE ACTION

Senate

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House

The Committee on Environment and Natural Resources (Mayfield)
recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (1) of section 327.59, Florida
Statutes, is amended, and subsection (5) is added to that
section, to read:

327.59 Marina evacuations.—

(1) Except as provided in this section ~~After June 1, 1994,~~
marinas may not adopt, maintain, or enforce policies pertaining



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to evacuation of vessels which require vessels to be removed from marinas following the issuance of a hurricane watch or warning, in order to ensure that protecting the lives and safety of vessel owners is placed before interests of protecting property.

(5) Upon the issuance of a hurricane watch affecting the waters of marinas located in a deepwater seaport, vessels under 500 gross tons may not remain in the waters of such marinas that have been deemed not suitable for refuge during a hurricane. Vessel owners shall promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport. If the United States Coast Guard captain of the port sets the port condition to "Yankee" and a vessel owner has failed to remove a vessel from the waterway, the marina owner, operator, employee, or agent, regardless of any existing contractual provisions between the marina owner and the vessel owner, shall remove the vessel, or cause the vessel to be removed, if reasonable, from its slip and may charge the vessel owner a reasonable fee for any such services rendered. A marina owner, operator, employee, or agent may not be held liable for any damage incurred to a vessel from a hurricane and is held harmless as a result of such actions to remove the vessel from the waterways. Nothing in this section may be construed to provide immunity to a marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence when removing a vessel pursuant to under this section. After the hurricane watch has been issued, the owner or operator of any vessel that has not been removed from the waterway of the marina, pursuant to an order from the deepwater seaport, may be



363196

subject to the penalties under s. 313.22(3).

Section 2. This act shall take effect July 1, 2020.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to marina evacuations; amending s.
327.59, F.S.; prohibiting vessels under a specified
weight from remaining in certain marinas that have
been deemed unsuitable for refuge during a hurricane
after the issuance of a hurricane watch; requiring a
marina owner, operator, employee, or agent to remove
specified vessels under certain circumstances;
providing that such owner, operator, employee, or
agent may charge the vessel owner a reasonable fee for
such removal and may not be held liable for any
damages as a result of such removal; providing
construction; authorizing certain penalty fees;
providing an effective date.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 826

INTRODUCER: Senator Mayfield

SUBJECT: Marina Evacuations

DATE: January 31, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	Pre-meeting
2.			IS	
3.			RC	

I. Summary:

SB 826 prohibits, upon the issuance of a hurricane watch or warning that affects the waters of marinas located in a deepwater seaport, vessels under 500 gross tons from remaining in the waters of such marinas that have been deemed not suitable for refuge during a hurricane.

The bill provides that after a watch or warning has been issued, if an owner or operator has not removed the vessel pursuant to an order from the seaport, the owner or operator may be subject to existing civil penalties.

II. Present Situation:

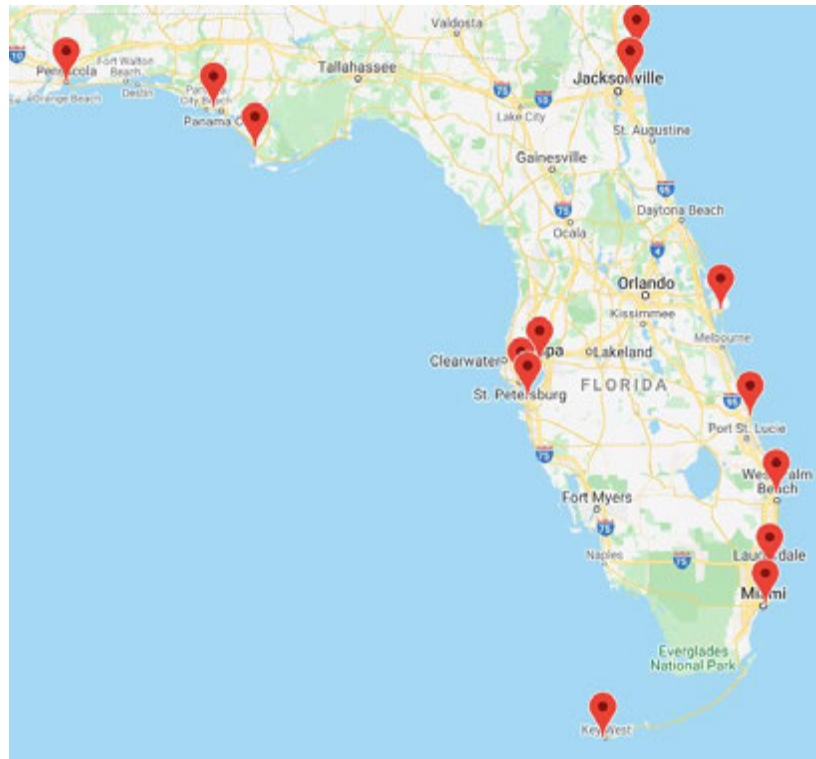
Deepwater Ports in Florida

Under Florida law, a “port” means a port authority or district.¹ Ports are created by and given authority under general or special law. Each port, in agreement with the United States Coast Guard (Coast Guard), state pilots, and other ports in its operating port area, is required to adopt guidelines for minimum bottom clearance for each berth and channel, for the movement of vessels, and for radio communications of vessel traffic for all commercial vessels entering and leaving its harbor channels.²

¹ Section 313.21, F.S.; *see also* s. 315.02, F.S. “Port authority” means a port authority in Florida created by or pursuant to the provisions of any general or special law or any district or board of county commissioners acting as a port authority under or pursuant to the provisions of any general or special law. “Port district” means any district created by or pursuant to the provisions of any general or special law and authorized to own or operate any port facilities.

² Section 313.23, F.S.

There are 14 deepwater seaports in Florida, indicated in the map below:³



Port Canaveral

Port Canaveral was dedicated on November 4, 1953.⁴ It is a gateway for Central Florida and the world's second busiest cruise port.⁵ Annually, Port Canaveral moves nearly 4 million tons of cargo and sees 4 million cruise passengers.⁶ It also houses U.S. Army, Navy, and Air Force facilities.⁷ Port Canaveral is a key part of Florida's gasoline supply system. Gasoline and other petroleum products are primarily delivered by marine tankers and barges to the state's ports, including Port Canaveral, where the products are offloaded and later stored and distributed around the state.⁸ Additionally, 200 small businesses ranging from marinas, restaurants, retail, and charter boats currently lease and operate at Port Canaveral.⁹

In fiscal year 2018, Port Canaveral reported \$103.8 million in revenues, the highest in its history.¹⁰

³ Florida Ports Council, *Seaports*, <https://flaports.org/seaports/> (last visited Jan. 25, 2020).

⁴ Port Canaveral, *History*, <https://www.portcanaveral.com/About/History> (last visited Jan. 25, 2020).

⁵ Port Canaveral, *Port and Cruise Facts*, <https://www.portcanaveral.com/Cruise/Port-Cruise-Facts> (last visited Jan. 28, 2020).

⁶ Port Canaveral, *History*, <https://www.portcanaveral.com/About/History> (last visited Jan. 25, 2020).

⁷ Port Canaveral, *About Us*, <https://www.portcanaveral.com/About/> (last visited Jan. 25, 2020).

⁸ Office of Program Policy Analysis and Government Accountability, Florida Legislature, *Feasibility Analysis for Petroleum Distribution Centers*, 11 (Nov. 29, 2018), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/18-PETRO.pdf>.

⁹ Port Canaveral, *About Us*, <https://www.portcanaveral.com/About/> (last visited Jan. 25, 2020).

¹⁰ Florida Ports Council, *Port Canaveral*, <https://flaports.org/ports/port-canaveral/> (last visited Jan. 28, 2020).

Canaveral Port Authority

The Canaveral Port District (Port District) was created by the Legislature by special act in 1953, as amended in 2014.¹¹ It is an independent special taxing district and political subdivision of the state.¹² The Canaveral Port Authority (Port Authority) has the power to make rules and regulations for the promotion and conduct of navigation, commerce, and industry in the Port District.¹³ The Port Authority also has the power to make rules and regulations governing the docking, storing, mooring, and anchoring of vessels within the Port District and to remove all obstacles to navigation, commerce, and industry in the waters of the port.¹⁴

The Port Canaveral Tariff No. 16 provides the current rates, rules, and regulations governing its marine and port services.¹⁵ Anyone who uses the waterways and facilities under the jurisdiction of the Port Authority, consents to the terms and conditions of the tariff.¹⁶ According to the tariff, Port Canaveral is not a suitable refuge during hurricanes or tropical storms. All Port Canaveral waterway tenants and users must comply with evacuation orders and storm preparation directives given by the Port Authority, the U.S. Coast Guard, the Brevard County Sheriff's Office, and Canaveral Fire Rescue.¹⁷

The tariff specifically states that recreational and commercial vessels under 500 gross tons are not eligible to remain in Port and must be removed from the waters of the Port, at the expense of the vessel owner or operator, before hurricane condition Zulu is set by the U.S. Coast Guard (see discussion below of Hurricane Season Port Conditions and Categories).¹⁸ The Port Authority is authorized to issue penalties to vessel owners or operators in accordance with statutory provisions (see discussion below of Vessel Movements and Penalties for Delay).¹⁹

Vessel Movements and Penalties for Delay

Pursuant to Florida law, each port may regulate vessel movements within its jurisdiction, whether involving public or private facilities or areas, by:

- Scheduling vessels for use of berths, anchorages, or other facilities at the port.
- Ordering and enforcing a vessel, at its own expense and risk, to vacate or change position at a berth, anchorage, or facility, whether public or private, in order to facilitate navigation, commerce, protection of other vessels or property, or dredging of channels or berths.
- Designating port facilities for the loading or discharging of vessels.

¹¹ Ch. 2014-241, Laws of Fla. Each special district in existence at the time was required to submit to the Legislature a draft codified charter so that its special acts could be codified into a single act for reenactment by the Legislature.

¹² Section 189.403(1), F.S., defines a "special district" as a confined local government unit established for a special purpose. The public policy intent of special districts is to provide private and public sectors an alternative governing method to "manage, own, operate, construct and finance basic capital infrastructure, facilities and services."

¹³ Art. IV, s. 9 of the Canaveral Port Authority Charter, as amended by Ch. 2014-241, Laws of Fla.

¹⁴ Art. IV, s. 10 of the Canaveral Port Authority Charter, as amended by Ch. 2014-241, Laws of Fla.

¹⁵ Canaveral Port Authority, *Tariff No. 16 – Governing Rates, Rules, & Regulations of the Marine and Port Services*, Rule 520 (Oct. 1, 2019), available at [https://www.portcanaveral.com/getattachment/Tariffs/CPA-Tariff-16-FY20-\(2\).pdf.aspx?lang=en-US](https://www.portcanaveral.com/getattachment/Tariffs/CPA-Tariff-16-FY20-(2).pdf.aspx?lang=en-US).

¹⁶ *Id.*, Rule 100.

¹⁷ *Id.*, Rule 520.

¹⁸ *Id.*

¹⁹ Section 313.22(3), F.S.

- Assigning berths at wharves for arriving vessels.²⁰

Ports are authorized to establish fees and compensation for the services regulating vessel movements provided by the port.²¹

A port may impose and collect a penalty from a vessel that unnecessarily delays in moving under an order to vacate or change position. This penalty may not exceed \$1,000 per hour or fraction thereof, plus 150 percent of the demurrage costs incurred by a waiting vessel, until the order is complied with.²²

Marinas

A marina is a licensed commercial facility that provides secured public moorings or dry storage for vessels on a leased basis.²³ There are five marinas within Port Canaveral, with approximately 260 wet slips hosted on Port property for recreational vessels under 500 gross tons.²⁴ This number does not include boats in marina storage within Port property. The map below shows Port Canaveral, including its marina district.²⁵



Marina Evacuations

Storm Condition Effects on Vessels and Marinas

Hurricanes and storm conditions can include high winds, storm surges, wave action, and heavy rainfall.²⁶ These conditions can cause catastrophic damage to marinas and vessels. Vessels that

²⁰ Section 313.22(1), F.S.

²¹ Section 313.22(2), F.S.

²² Section 313.22(3), F.S.

²³ Section 327.02(25), F.S.

²⁴ Email from Caitlin Lewis, Government Relations Manager, Canaveral Port Authority, to Senate Environment and Natural Resources Committee (Jan. 22, 2020)(on file with the Senate Environment and Natural Resources Committee).

²⁵ Port Canaveral, *Port and Cruise Facts*, <https://www.portcanaveral.com/Cruise/Port-Cruise-Facts> (last visited Jan. 28, 2020).

²⁶ UF/IFAS, *Hurricane Manual for Marine Interest*, available at [https://sfyl.ifas.ufl.edu/media/sfyliifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-\(2\).pdf](https://sfyl.ifas.ufl.edu/media/sfyliifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-(2).pdf).

are left in a marina during hurricane and storm conditions can lead to problems in the port, including the inability to secure docks, causing potential damage to infrastructure such as piers, and other harm to persons or property. Weather during a storm event can force a vessel into an obstruction, propel objects into the vessel, or sink or damage a boat.²⁷ A moored vessel can repeatedly collide with a stationary dock, leading to damage to both the vessel and dock. Storm surges can even lift entire floating docks above their pilings or knock boats off their cradles.²⁸

Vessels left in the harbor can also pose navigational issues and cause problems and delays in clearing channels. However, boater preparedness education and preparation can reduce the loss of property for both the vessel owner and others.²⁹ To this end, marinas and ports have an interest in requiring vessel owners to secure their vessels during a storm to prevent damage to persons or property.

Safe Haven

Some marina docking contracts contain “safe haven” or “hurricane” clauses. These clauses provide that, when a hurricane watch is issued, boat owners shall immediately remove their vessels and all personal property from the marina and seek safe haven somewhere else. Failure to comply with this requirement, according to the clauses, will result in the boat owner being liable for all damage to docks, piers, other vessels, or any other property damage directly caused by the owner's vessel or resulting from its presence in the marina.³⁰

Marina Evacuation Statute

Florida enacted a law designed to prevent marinas from using safe haven clauses as a basis for recovering their property damage from vessel owners after a hurricane.³¹ Florida law emphasizes the protection of life over property by prohibiting marinas from requiring vessel owners to remove their vessels from a marina following the issuance of a hurricane watch or warning.³²

However, after a tropical storm or hurricane watch has been issued, a marina owner or operator, or their employee or agent, may take reasonable actions to further secure a vessel within the marina to minimize damage to the vessel and to protect marina property, private property, and the environment.³³ The owner or operator may charge a reasonable fee for such services.³⁴ A marina owner may include this in a contractual agreement with a vessel owner.³⁵ Marina owners are not able to be held liable for damage to a vessel from a storm or hurricane, but may be liable for damage due to intentional acts or negligence when removing or securing a vessel.³⁶

²⁷ *Id.*; Florida Keys National Marine Sanctuary, *Protect your Boat in a Hurricane: Making a Plan (Part I)*, <https://floridakeys.noaa.gov/whatsnew/around/2015/boathurricane1.html> (last visited Jan. 28, 2020).

²⁸ *Id.*

²⁹ UF/IFAS, *Hurricane Manual for Marine Interest*, available at [https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-\(2\).pdf](https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-(2).pdf).

³⁰ Mercante, James, *Hurricanes and Act of God: When the Best Defense is a Good Offense*, 18 U.S.F. MAR. L.J. (2006).

³¹ Ch. 93-211, s. 22, Laws of Fla. (creating s. 327.59, F.S.).

³² Section 327.59(1), F.S.

³³ Ch. 2006-309, s. 2, Laws of Fla. (creating s. 327.59(2), F.S., effective Jul. 1, 2006).

³⁴ *Id.*

³⁵ Ch. 2006-309, s. 2, Laws of Fla. (creating s. 327.59(3), F.S., effective Jul. 1, 2006).

³⁶ Ch. 2006-309, s. 2, Laws of Fla. (creating s. 327.59(4), F.S., effective Jul. 1, 2006).

Burklow & Associates, Inc. v. Belcher is the only Florida state court decision that specifically mentions Florida's marina evacuation statute.³⁷ A marina owner sued owners of 16 stored vessels for damages allegedly caused by the vessel owners' failure to move their vessels after a hurricane warning was issued as was required by their marina contracts.³⁸ The court upheld the state statute and found that the vessel owners had no duty, contractually or otherwise, to move their vessels following the issuance of a hurricane watch or warning.³⁹ The court's analysis pointed to the clear legislative policy "to ensure that protecting lives and safety of vessel owners is placed before interests of protecting property" when a hurricane approaches.⁴⁰

Hurricane Season Port Conditions and Categories

Port conditions are set by the Coast Guard Captain of the Port of a sector, or regulated area. Port conditions are explained in the table below.⁴¹ "Gale force winds" mean winds of 34 knots or 39 miles per hour.

Port Condition	Storm Status	Port Status
Whiskey	Gale force winds are predicted to arrive within 72 hours	Open to all commercial and recreational traffic
X-Ray	Gale force winds are predicted to arrive within 48 hours	Open to all commercial and recreational traffic
Yankee	Gale force winds are predicted to arrive within 24 hours	Closed to inbound traffic and vessel traffic control measures in effect on vessel movements within the port
Zulu	Gale force winds are predicted to arrive within 12 hours	Closed to all inbound and outbound traffic
Recovery	The storm is no longer a threat to the area, but response and recovery operations may be in progress to address damage.	Reopened to outbound traffic at completion of port survey; vessel traffic control measures remain in effect on vessel movements within the port

³⁷ 719 So.2d 31 (Fla. Dist. Ct. App. 1998).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ 33 C.F.R. s. 165.720; 33 C.F.R. 165.781; *see also* Brazos Pilots Association, *Hurricane Season Port Conditions and Categories*, available at <http://www.brazospilots.com/Hurricane-Season.pdf>.

III. Effect of Proposed Changes:

The bill amends s. 327.59, F.S. to prohibit, upon the issuance of a hurricane watch or warning that affects the waters of marinas located in a deepwater seaport, vessels under 500 gross tons from remaining in the waters of such marinas that have been deemed not suitable for refuge during a hurricane.

The bill provides that after a hurricane watch or warning has been issued, if an owner or operator of a vessel has not removed the vessel pursuant to an order from the seaport, the owner or operator may be subject to existing penalties under s. 313.22, F.S.

The existing penalties provide that until an order is complied with, a vessel that unnecessarily delays in moving under an order to vacate a vessel or change its position may be penalized as follows:

- In an amount not exceeding \$1,000 per hour or fraction thereof; and
- 150 percent of the demurrage costs incurred by a waiting vessel for exceeding the time allotted to the vessel to be in a specific area.

The penalty is imposed and collected by the port issuing the movement order.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

Vessel owners may incur increased costs from moving their vessel pursuant to a movement order or due to penalties incurred from noncompliance with a movement order.

C. Government Sector Impact:

Ports may see a positive fiscal impact due to increased collection of penalties from vessel owners that do not comply with a movement order and cost savings associated with prevention of damage to port facilities and infrastructure.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 327.59 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.)

None.

B. Amendments:

None.

1 A bill to be entitled
2 An act relating to transportation; amending s.
3 316.003, F.S.; revising definitions; amending s.
4 316.2397, F.S.; authorizing certain vehicles to show
5 or display certain lights under certain circumstances;
6 amending s. 316.520, F.S.; revising application of
7 agricultural load securing requirements; amending s.
8 322.12, F.S.; authorizing the Department of Highway
9 Safety and Motor Vehicles to waive certain commercial
10 motor vehicle testing requirements for specified
11 persons under certain circumstances; amending ss.
12 324.031 and 324.032, F.S.; revising the manner of
13 providing financial responsibility for owners,
14 operators, or lessees of certain for-hire passenger
15 transportation vehicles; amending s. 327.59, F.S.;
16 prohibiting certain vessels from remaining in certain
17 marinas that have been deemed unsuitable for refuge
18 during a hurricane; authorizing removal of such
19 vessels under certain circumstances; limiting
20 liability for certain damages; providing construction;
21 providing for penalties; amending s. 337.14, F.S.;
22 requiring certain contractors to be certified by the
23 Department of Transportation as qualified; revising
24 the financial statements required to accompany an
25 application for certification; prohibiting the

26 department from considering certain financial
27 information; requiring the contractor to submit
28 interim financial statements under certain
29 circumstances; providing requirements for such
30 statements; amending s. 627.748, F.S.; revising and
31 providing definitions; deleting for-hire vehicles from
32 the list of vehicles not considered TNC vehicles;
33 revising automobile insurance requirements for TNCs
34 and TNC drivers; authorizing certain entities to be
35 regulated as disability-accessible TNCs; providing
36 requirements; providing that disability-accessible
37 TNCs, disability-accessible TNC drivers, and
38 disability-accessible TNC vehicles are governed by
39 state law; providing an effective date.

40
41 Be It Enacted by the Legislature of the State of Florida:

42
43 Section 1. Subsection (2) and paragraph (b) of subsection
44 (55) of section 316.003, Florida Statutes, are amended to read:
45 316.003 Definitions.—The following words and phrases, when
46 used in this chapter, shall have the meanings respectively
47 ascribed to them in this section, except where the context
48 otherwise requires:

49 (2) AUTOCYCLE.—A three-wheeled motorcycle that has two
50 wheels in the front and one wheel in the back; is equipped with

51 a roll cage or roll hoops, a seat belt for each occupant,
52 ~~antilock~~ brakes meeting Federal Motor Vehicle Safety Standard
53 No. 122, a steering mechanism ~~wheel~~, and seating that does not
54 require the operator to straddle or sit astride it; and is
55 manufactured in accordance with the applicable federal
56 motorcycle safety standards in 49 C.F.R. part 571 by a
57 manufacturer registered with the National Highway Traffic Safety
58 Administration.

59 (55) PERSONAL DELIVERY DEVICE.—An electrically powered
60 device that:

61 (b) Weighs less than 150 ~~80~~ pounds, excluding cargo;

62
63 A personal delivery device is not considered a vehicle unless
64 expressly defined by law as a vehicle. A mobile carrier is not
65 considered a personal delivery device.

66 Section 2. Subsections (2) and (7) of section 316.2397,
67 Florida Statutes, are amended to read:

68 316.2397 Certain lights prohibited; exceptions.—

69 (2) It is expressly prohibited for any vehicle or
70 equipment, ~~except police vehicles~~, to show or display blue
71 lights, except that:

72 (a) Police vehicles may show or display blue lights.

73 (b) ~~However~~, Vehicles owned, operated, or leased by the
74 Department of Corrections or any county correctional agency may
75 show or display blue lights when responding to emergencies.

76 (c) Portable radar speed display units in advance of a
77 work zone area on roadways with a posted speed limit of 55 miles
78 per hour or more may show or display flashing red and blue
79 lights when workers are present.

80 (7) Flashing lights are prohibited on vehicles except:

81 (a) As a means of indicating a right or left turn, to
82 change lanes, or to indicate that the vehicle is lawfully
83 stopped or disabled upon the highway;

84 (b) When a motorist intermittently flashes his or her
85 vehicle's headlamps at an oncoming vehicle notwithstanding the
86 motorist's intent for doing so;

87 (c) During periods of extreme low visibility on roadways
88 with a posted speed limit of 55 miles per hour or more; and

89 (d)~~(e)~~ For the lamps authorized under subsections ~~(1)~~,
90 (2), (3), (4), (5), and (9), s. 316.2065, or s. 316.235(6) which
91 may flash.

92 Section 3. Subsection (4) of section 316.520, Florida
93 Statutes, is amended to read:

94 316.520 Loads on vehicles.—

95 (4) The provision of subsection (2) requiring covering and
96 securing the load with a close-fitting tarpaulin or other
97 appropriate cover does not apply to vehicles carrying
98 agricultural products locally from a harvest site or to or from
99 a farm on roads where the posted speed limit is 65 miles per
100 hour or less ~~and the distance driven on public roads is less~~

101 ~~than 20 miles.~~

102 Section 4. Paragraph (c) is added to subsection (4) of
103 section 322.12, Florida Statutes, to read:

104 322.12 Examination of applicants.—

105 (4) The examination for an applicant for a commercial
106 driver license shall include a test of the applicant's eyesight
107 given by a driver license examiner designated by the department
108 or by a licensed ophthalmologist, optometrist, or physician and
109 a test of the applicant's hearing given by a driver license
110 examiner or a licensed physician. The examination shall also
111 include a test of the applicant's ability to read and understand
112 highway signs regulating, warning, and directing traffic; his or
113 her knowledge of the traffic laws of this state pertaining to
114 the class of motor vehicle which he or she is applying to be
115 licensed to operate, including laws regulating driving under the
116 influence of alcohol or controlled substances, driving with an
117 unlawful blood-alcohol level, and driving while intoxicated; his
118 or her knowledge of the effects of alcohol and controlled
119 substances and the dangers of driving a motor vehicle after
120 having consumed alcohol or controlled substances; and his or her
121 knowledge of any special skills, requirements, or precautions
122 necessary for the safe operation of the class of vehicle which
123 he or she is applying to be licensed to operate. In addition,
124 the examination shall include an actual demonstration of the
125 applicant's ability to exercise ordinary and reasonable control

126 in the safe operation of a motor vehicle or combination of
127 vehicles of the type covered by the license classification which
128 the applicant is seeking, including an examination of the
129 applicant's ability to perform an inspection of his or her
130 vehicle.

131 (c) Notwithstanding any provision of law to the contrary,
132 the department may waive the skill test requirements provided in
133 this subsection for a commercial driver license for a person
134 with military commercial motor vehicle experience who qualifies
135 under 49 C.F.R. s. 383.77 if the person is on active duty or has
136 been honorably discharged from military service for 1 year or
137 less.

138 Section 5. Section 324.031, Florida Statutes, is amended
139 to read:

140 324.031 Manner of proving financial responsibility.—The
141 owner or operator of a taxicab, limousine, jitney, or any other
142 for-hire passenger transportation vehicle may prove financial
143 responsibility by providing satisfactory evidence of holding a
144 motor vehicle liability policy as defined in s. 324.021(8) or s.
145 324.151, which policy is provided by an insurer authorized to do
146 business in this state ~~issued by an insurance carrier~~ which is a
147 member of the Florida Insurance Guaranty Association or an
148 eligible nonadmitted insurer that has a superior, excellent,
149 exceptional, or equivalent financial strength rating by a rating
150 agency acceptable to the Office of Insurance Regulation of the

151 Financial Services Commission. The operator or owner of any
152 other vehicle may prove his or her financial responsibility by:

153 (1) Furnishing satisfactory evidence of holding a motor
154 vehicle liability policy as defined in ss. 324.021(8) and
155 324.151;

156 (2) Furnishing a certificate of self-insurance showing a
157 deposit of cash in accordance with s. 324.161; or

158 (3) Furnishing a certificate of self-insurance issued by
159 the department in accordance with s. 324.171.

160
161 Any person, including any firm, partnership, association,
162 corporation, or other person, other than a natural person,
163 electing to use the method of proof specified in subsection (2)
164 shall furnish a certificate of deposit equal to the number of
165 vehicles owned times \$30,000, to a maximum of \$120,000; in
166 addition, any such person, other than a natural person, shall
167 maintain insurance providing coverage in excess of limits of
168 \$10,000/20,000/10,000 or \$30,000 combined single limits, and
169 such excess insurance shall provide minimum limits of
170 \$125,000/250,000/50,000 or \$300,000 combined single limits.
171 These increased limits shall not affect the requirements for
172 proving financial responsibility under s. 324.032(1).

173 Section 6. Subsection (2) of section 324.032, Florida
174 Statutes, is amended to read:

175 324.032 Manner of proving financial responsibility; for-

176 hire passenger transportation vehicles.—Notwithstanding the
177 provisions of s. 324.031:

178 (2) An owner or a lessee who is required to maintain
179 insurance under s. 324.021(9)(b) and who operates at least 150
180 ~~300~~ taxicabs, limousines, jitneys, or any other for-hire
181 passenger transportation vehicles may provide financial
182 responsibility by complying with ~~the provisions of~~ s. 324.171,
183 such compliance to be demonstrated by maintaining at its
184 principal place of business an audited financial statement,
185 prepared in accordance with generally accepted accounting
186 principles, and providing to the department a certification
187 issued by a certified public accountant that the applicant's net
188 worth is at least equal to the requirements of s. 324.171 as
189 determined by the Office of Insurance Regulation of the
190 Financial Services Commission, including claims liabilities in
191 an amount certified as adequate by a Fellow of the Casualty
192 Actuarial Society.

193
194 Upon request by the department, the applicant must provide the
195 department at the applicant's principal place of business in
196 this state access to the applicant's underlying financial
197 information and financial statements that provide the basis of
198 the certified public accountant's certification. The applicant
199 shall reimburse the requesting department for all reasonable
200 costs incurred by it in reviewing the supporting information.

201 The maximum amount of self-insurance permissible under this
202 subsection is \$300,000 and must be stated on a per-occurrence
203 basis, and the applicant shall maintain adequate excess
204 insurance issued by an authorized or eligible insurer licensed
205 or approved by the Office of Insurance Regulation. All risks
206 self-insured shall remain with the owner or lessee providing it,
207 and the risks are not transferable to any other person, unless a
208 policy complying with subsection (1) is obtained.

209 Section 7. Subsection (1) of section 327.59, Florida
210 Statutes, is amended, and subsection (5) is added to that
211 section, to read:

212 327.59 Marina evacuations.—

213 (1) Except as provided in this section ~~After June 1, 1994,~~
214 marinas may not adopt, maintain, or enforce policies pertaining
215 to evacuation of vessels which require vessels to be removed
216 from marinas following the issuance of a hurricane watch or
217 warning, in order to ensure that protecting the lives and safety
218 of vessel owners is placed before interests of protecting
219 property.

220 (5) Upon the issuance of a hurricane watch affecting the
221 waters of a marina located in a deepwater seaport, a vessel that
222 weighs less than 500 gross tons may not remain in the waters of
223 such a marina that has been deemed not suitable for refuge
224 during a hurricane. The owner of such a vessel shall promptly
225 remove the vessel from the waterway upon issuance of an

226 evacuation order by the deepwater seaport. If the United States
227 Coast Guard Captain of the Port sets the deepwater seaport
228 condition to Yankee and a vessel owner has failed to remove a
229 vessel from the waterway, the marina owner or operator, or an
230 employee or agent thereof, regardless of existing contractual
231 provisions between the marina owner and vessel owner, shall
232 remove the vessel, or cause it to be removed, if reasonable,
233 from its slip and may charge the vessel owner a reasonable fee
234 for such removal. A marina owner, operator, employee, or agent
235 is not liable for any damage incurred by a vessel as the result
236 of a hurricane and is held harmless as a result of such actions
237 to remove the vessel from the waterway. This section does not
238 provide immunity to a marina owner, operator, employee, or agent
239 for any damage caused by intentional acts or negligence when
240 removing a vessel under this subsection. After a hurricane watch
241 has been issued, the owner or operator of a vessel that has not
242 been removed from the waterway of the marina pursuant to an
243 evacuation order by the deepwater seaport may be subject to the
244 penalties provided in s. 313.22(3).

245 Section 8. Subsection (1) of section 337.14, Florida
246 Statutes, is amended to read:

247 337.14 Application for qualification; certificate of
248 qualification; restrictions; request for hearing.—

249 (1) Any contractor desiring to bid for the performance of
250 any construction contract in excess of \$250,000 which the

department proposes to let must first be certified by the department as qualified pursuant to this section and rules of the department. The rules of the department must address the qualification of contractors to bid on construction contracts in excess of \$250,000 and must include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor which are necessary to perform the specific class of work for which the contractor seeks certification. Any contractor who desires to bid on contracts in excess of \$50 million and is not qualified and in good standing with the department as of January 1, 2019, must first be certified by the department as qualified and ~~desires to bid on contracts in excess of \$50 million~~ must have satisfactorily completed two projects, each in excess of \$15 million, for the department or for any other state department of transportation. The department may limit the dollar amount of any contract upon which a contractor is qualified to bid or the aggregate total dollar volume of contracts such contractor is allowed to have under contract at any one time. Each applying contractor seeking qualification to bid on construction contracts in excess of \$250,000 shall furnish the department a statement under oath, on such forms as the department may prescribe, setting forth detailed information as required on the application. Each application for certification must be accompanied by audited financial statements prepared in

276 accordance with United States generally accepted accounting
277 principles and United States generally accepted auditing
278 standards by a certified public accountant licensed by this
279 state or another state ~~the latest annual financial statement of~~
280 ~~the applying contractor completed within the last 12 months. The~~
281 audited financial statements must be for the applying contractor
282 specifically and must have been prepared within the immediately
283 preceding 12 months. The department may not consider any
284 financial information relating to the parent entity of the
285 applying contractor, if any. The department shall not certify as
286 qualified any applying contractor that fails to submit the
287 audited financial statements required by this subsection. If the
288 application or the annual financial statement shows the
289 financial condition of the applying contractor more than 4
290 months before ~~prior to~~ the date on which the application is
291 received by the department, the applying contractor must also
292 submit interim audited financial statements prepared in
293 accordance with United States generally accepted accounting
294 principles and United States generally accepted auditing
295 standards by a certified public accountant licensed by this
296 state or another state ~~an interim financial statement and an~~
297 ~~updated application must be submitted. The interim financial~~
298 statements ~~statement~~ must cover the period from the end date of
299 the annual statement and must show the financial condition of
300 the applying contractor no more than 4 months before ~~prior to~~

the date that the interim financial statements are ~~statement is~~ received by the department. However, upon the request of the applying contractor, an application and accompanying annual or interim financial statements ~~statement~~ received by the department within 15 days after either 4-month period under this subsection shall be considered timely. ~~Each required annual or interim financial statement must be audited and accompanied by the opinion of a certified public accountant.~~ An applying contractor desiring to bid exclusively for the performance of construction contracts with proposed budget estimates of less than \$1 million may submit reviewed annual or reviewed interim financial statements prepared by a certified public accountant. The information required by this subsection is confidential and exempt from s. 119.07(1). The department shall act upon the application for qualification within 30 days after the department determines that the application is complete. The department may waive the requirements of this subsection for projects having a contract price of \$500,000 or less if the department determines that the project is of a noncritical nature and the waiver will not endanger public health, safety, or property.

Section 9. Paragraphs (b), (e), and (g) of subsection (1), subsection (2), paragraphs (b) and (c) of subsection (7), and paragraph (a) of present subsection (15) of section 627.748, Florida Statutes, are amended, and a new subsection (15) is

added to that section, to read:

627.748 Transportation network companies.—

(1) DEFINITIONS.—As used in this section, the term:

(b) "Prearranged ride" means the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network controlled by a transportation network company, continuing while the TNC driver transports the rider, and ending when the last rider exits from and is no longer occupying the TNC vehicle. The term does not include a taxicab, ~~for hire vehicle,~~ or street hail service and does not include ridesharing as defined in s. 341.031, carpool as defined in s. 450.28, or any other type of service in which the driver receives a fee that does not exceed the driver's cost to provide the ride.

(e) "Transportation network company" or "TNC" means an entity operating in this state pursuant to this section using a digital network to connect a rider to a TNC driver, who provides prearranged rides. A TNC is not deemed to own, control, operate, direct, or manage the TNC vehicles or TNC drivers that connect to its digital network, except where agreed to by written contract, and is not a taxicab association ~~or for hire vehicle owner.~~ An individual, corporation, partnership, sole proprietorship, or other entity that arranges medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or a managed care

organization is not a TNC. This section does not prohibit a TNC from providing prearranged rides to individuals who qualify for Medicaid or Medicare if it meets the requirements of this section.

(g) "Transportation network company vehicle" or "TNC vehicle" means a vehicle that is not a taxicab, jitney, or limousine, ~~or for-hire vehicle as defined in s. 320.01(15)~~ and that is:

1. Used by a TNC driver to offer or provide a prearranged ride; and

2. Owned, leased, or otherwise authorized to be used by the TNC driver.

Notwithstanding any other provision of law, a vehicle that is let or rented to another for consideration may be used as a TNC vehicle.

(2) NOT OTHER CARRIERS.—A TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab ~~or for-hire vehicle~~ service. In addition, a TNC driver is not required to register the vehicle that the TNC driver uses to provide prearranged rides as a commercial motor vehicle ~~or a for-hire vehicle~~.

(7) TRANSPORTATION NETWORK COMPANY AND TNC DRIVER INSURANCE REQUIREMENTS.—

(b) The following automobile insurance requirements apply

while a participating TNC driver is logged on to the digital network but is not engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident, and \$25,000 for property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405; and

c. Uninsured and underinsured vehicle coverage as required by s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver or the TNC vehicle owner;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(c) The following automobile insurance requirements apply while a TNC driver is engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least \$1 million for death, bodily injury, and property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required of a limousine under ss.

627.730-627.7405; and

c. Uninsured and underinsured vehicle coverage as required by s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver or the TNC vehicle owner;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(15) DISABILITY-ACCESSIBLE TRANSPORTATION NETWORK COMPANIES.—

(a) As used in this subsection, the term:

1. "Disability-accessible TNC" means a company that:

a. Meets the requirements of paragraph (b); and

b. Notwithstanding other provisions of this section, uses a digital network to connect riders to drivers who operate disability-accessible vehicles.

2. "Disability-accessible vehicle" means a for-hire vehicle as defined in s. 320.01(15) which meets or exceeds the requirements of the Americans with Disabilities Act.

(b) An entity may elect, upon written notification to the department, to be regulated as a disability-accessible TNC. A disability-accessible TNC must:

1. Comply with all of the requirements of this section applicable to a TNC, including subsection (16), which do not

426 conflict with subparagraph 2. or prohibit the company from
427 connecting riders to drivers who operate for-hire vehicles as
428 defined in s. 320.01(15), including disability-accessible
429 vehicles.

430 2. Maintain insurance coverage required in this section
431 when the disability-accessible TNC driver is logged on to a
432 digital network or while the disability-accessible TNC driver is
433 engaged in a prearranged ride. However, a prospective
434 disability-accessible TNC that satisfies minimum financial
435 responsibility at the time of written notification to the
436 department through compliance with s. 324.032(2) by using self-
437 insurance may continue to use self-insurance to satisfy the
438 requirements of this subparagraph.

439 (16) ~~(15)~~ PREEMPTION.—

440 (a) It is the intent of the Legislature to provide for
441 uniformity of laws governing TNCs, TNC drivers, ~~and~~ TNC
442 vehicles, and disability-accessible TNCs, disability-accessible
443 TNC drivers, and disability-accessible TNC vehicles throughout
444 the state. TNCs, TNC drivers, ~~and~~ TNC vehicles, disability-
445 accessible TNCs, disability-accessible TNC drivers, and
446 disability-accessible TNC vehicles are governed exclusively by
447 state law, including in any locality or other jurisdiction that
448 enacted a law or created rules governing TNCs, TNC drivers, ~~or~~
449 TNC vehicles, disability-accessible TNCs, disability-accessible
450 TNC drivers, and disability-accessible TNC vehicles before July

451 1, 2017. A county, municipality, special district, airport
452 authority, port authority, or other local governmental entity or
453 subdivision may not:

454 1. Impose a tax on, or require a license for, a TNC, a TNC
455 driver, ~~or~~ a TNC vehicle, a disability-accessible TNC, a
456 disability-accessible TNC driver, or a disability-accessible TNC
457 vehicle if such tax or license relates to providing prearranged
458 rides;

459 2. Subject a TNC, a TNC driver, ~~or~~ a TNC vehicle, a
460 disability-accessible TNC, a disability-accessible TNC driver,
461 or a disability-accessible TNC vehicle to any rate, entry,
462 operation, or other requirement of the county, municipality,
463 special district, airport authority, port authority, or other
464 local governmental entity or subdivision; or

465 3. Require a TNC, ~~or~~ a TNC driver, a disability-accessible
466 TNC, or a disability-accessible TNC driver to obtain a business
467 license or any other type of similar authorization to operate
468 within the local governmental entity's jurisdiction.

469 Section 10. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 395 Transportation

SPONSOR(S): Transportation & Infrastructure Subcommittee, Andrade

TIED BILLS: **IDEN./SIM. BILLS:** SB 1172

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	13 Y, 0 N, As CS	Johnson	Vickers
2) Transportation & Tourism Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The bill amends various statutory provisions relating to transportation. In summary, the bill:

- Revises the statutory definition of autocycle to incorporate a reference to federal safety standards;
- Increases the allowable weight of personal delivery devices;
- Authorizes portable radar speed display units to display flashing red and blue lights under certain circumstances;
- Allows the use of flashing lights on vehicles during periods of extreme low visibility on specified roads;
- Authorizes the Department of Highway Safety and Motor Vehicles to waive commercial driver license skill test requirements for qualifying veterans;
- Revises requirements governing the use of tarpaulins and other covers on vehicles hauling agricultural products;
- Authorizes for-hire vehicles to be insured by certain non-admitted carriers and reduces the number of for hire vehicles required before an owner or lessee may self-insure;
- Requires certain vessels to be removed from marinas located in deepwater seaports during hurricanes;
- Revises qualification requirements for contractors desiring to bid on certain Department of Transportation contracts, including the submission of specified financial statements; and
- Establishes a regulatory framework governing the operation of disability-accessible transportation network companies and preempts regulation of such companies to the state.

The bill may have a fiscal impact on the Department of Financial Services due to the authorization of disability-accessible transportation network companies. Local governments currently imposing fees on disability-accessible transportation network companies may see a reduction in revenues associated with the preemption of such regulation to the state. See Fiscal Analysis for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Autocycles

Current Situation

Florida law defines the term “autocycle” as a three-wheeled motorcycle that is equipped with a roll cage or roll hoops, a seat belt for each occupant, antilock brakes, a steering wheel, and seating that does not require the operator to straddle or sit astride it. The autocycle must be manufactured in accordance with the applicable federal motorcycle safety standards by a manufacturer registered with the National Highway Traffic Safety Administration.¹ Autocycle drivers are not required to hold a motorcycle endorsement on his or her driver license.²

Federal Motor Vehicle Safety Standard No. 122,³ provides standards for all motorcycle braking systems.

Effect of the Bill

The bill amends the definition of the term “autocycle” to provide that it must have a “steering mechanism” rather than a “steering wheel”. The bill also removes the requirement that an autocycle have antilock, replacing it with a requirement to have brakes meeting federal safety standards for motorcycle brakes.

Personal Delivery Devices

Present Situation

A personal delivery device (PDD) is electrically powered device that: is operated on sidewalks and crosswalks and intended primarily for transporting property; weighs less than 80 pounds, excluding cargo; has a maximum speed of 10 miles per hour; and is equipped with technology to allow for operation of the device with or without the active control or monitoring of a natural person.⁴

A PDD may operate on sidewalks and crosswalks where it has all the rights and duties applicable to a pedestrian, except that a PDD may not unreasonably interfere with pedestrians or traffic and must yield the right-of-way to pedestrians on the sidewalk or crosswalk.⁵

A PDD must obey all official traffic and pedestrian control signals and devices, include identifying information on the PDD, and be equipped with a braking system.⁶ However, PDDs may not operate on a public highway except to the extent necessary to cross a crosswalk, operate on a sidewalk or crosswalk unless the PDD operator is actively controlling or monitoring its navigation and operation, or transport hazardous materials.⁷

Effect of the Bill

The bill increases the statutory weight limit of a personal delivery device from 80 pounds to 150 pounds.

¹ Section 316.003(2), F.S.

² Sections 322.03(4) and 322.12, F.S.

³ 49 C.F.R. 571.122

⁴ Section 316.003(55), F.S.

⁵ Section 316.2071(1), F.S.

⁶ Section 316.0271(2), F.S.

⁷ Section 316.2071(3), F.S.

Flashing Red and Blue Lights

Present Situation

Florida law prohibits blue lights on any vehicle or equipment, except police vehicles, and vehicles of the Department of Corrections or any county correctional agency when responding to emergencies.⁸

Road or street maintenance equipment, road or street maintenance vehicles, road service vehicles, refuse collection vehicles, petroleum tankers, and mail carrier vehicles are authorized to display amber lights when in operation or a hazard exists.⁹ Additionally, road maintenance and construction equipment and vehicles may display flashing white lights or flashing white strobe lights when in operation and where a hazard exists.¹⁰

Effect of the Bill

The bill authorizes portable radar speed display units in advance of a work zone area on roadways with a posted speed limit of 55 miles per hour or more to show or display flashing red or blue lights when workers are present.

Flashing Lights on Vehicles

Present Situation

Florida law prohibits flashing lights on vehicles except:

- As a means of indicating a right or left turn, to change lanes, or to indicate that the vehicle is lawfully stopped or disabled upon the highway;
- When a motorist intermittently flashes his or her vehicle's headlamps at an oncoming vehicle notwithstanding the motorist's intent for doing so; and
- For certain lamps authorized in statute, which may flash, including various types of emergency vehicles.¹¹

With the exception of funeral processions,¹² Florida law does not expressly authorize the use of hazard lights in moving vehicles. The Florida Driver Handbook indicates you **should not** use your emergency flashers in instances of low visibility or rain, and may only be used when a vehicle is disabled or stopped on the side of the road.¹³

Effect of the Bill

The bill authorizes the use of flashing lights during periods of extreme low visibility on roadways with a posted speed limit of 55 hours or more, effectively authorizing the use of hazard lights on moving vehicles under specified circumstances.

Agricultural Loads on Vehicle

Present Situation

Federal rules require that each commercial motor vehicle, when transporting cargo on public roads to have its cargo secured to prevent the cargo from leaking, spilling, blowing or falling from the motor vehicle.¹⁴

Under Florida law, a vehicle may not be driven or moved on any highway unless the vehicle is constructed or loaded as to prevent any of its load from dropping, shifting, leaking, blowing, or otherwise escaping from the vehicle.¹⁵

⁸ Section 316.2397(2), F.S.

⁹ Section 316.2397(4), F.S.

¹⁰ Section 316.2397(5), F.S.

¹¹ Section 316.2397(7), F.S.

¹² Section 316.1974(3)(c), F.S.

¹³ Department of Highway Safety and Motor Vehicles, *2018 Florida Driver Handbook*, available at: <https://www3.flhsmv.gov/handbooks/englishdriverhandbook.pdf> (last visited Oct. 30, 2019).

¹⁴ 49 C.F.R. 393.100

¹⁵ Section 316.520(1), F.S.

Every vehicle owner and driver has the duty to prevent items from escaping from his or her vehicle. Covering and securing the load with a close-fitting tarpaulin or other appropriate cover or a load securing device meeting Federal requirements or a device designed to reasonably ensure that cargo will not shift upon or fall from the vehicle is required and constitutes compliance.¹⁶

However, Florida's load covering and securing provisions do not apply to vehicles carrying agricultural products locally from a harvest site or to or from a farm on roads where the posted speed limit is 65 miles per hour or less and the distance driven on public roads is less than 20 miles.¹⁷

Effect of the Bill

The bill removes the 20-mile maximum distance that vehicles carrying agricultural products may travel without covering the load. This will allow vehicles hauling agricultural products to travel an unlimited distance across the state without covering the load.

Commercial Driver License Testing Exemption for Veterans

Present Situation

Florida law requires every applicant for an original driver license to pass an examination. However, the Department of Highway Safety and Motor Vehicles (DHSMV) may waive the knowledge, endorsement, and skills tests requirements for an applicant who is otherwise qualified and who surrenders a valid driver license issued by another state, a Canadian province, or the United States Armed Forces, if the driver applies for a Florida license of an equal or lesser classification.¹⁸

Under Florida law, the examination for a commercial driver license (CDL) must include various tests including an actual demonstration of the applicant's ability to operate a motor vehicle or combination of vehicles of the type covered by the license classification which the applicant is seeking, including his or her ability to perform a vehicle inspection.¹⁹

Under Federal Motor Carrier Safety Administration rules, states may waive knowledge and skill test requirements for CDLs for military veterans for current and former military service members who have experience driving a commercial motor vehicle in the military for an equivalent state license. The application must be made within one year of discharge of military service and certain conditions must be met.²⁰

Under DHSMV's rules, applicants seeking a waiver of CDL skill testing due to military experience must pass all written knowledge exams for the CDL class and any applicable endorsements, and apply for a waiver while on active duty or within 90 days of separation from military service. Additionally, he or she must certify that he or she for at least two years immediately preceding the application operated a motor vehicle in the appropriate class, and present a Certificate for Waiver of Skill Test for Military Personnel form signed by his or her commanding officer.²¹

Effect of the Bill

The bill authorizes DHSMV to waive the skill test requirements for a CDL for persons with military commercial motor vehicle experience while on active military service or within one year of honorable discharge, which is consistent with Federal rules regarding CDL license waivers for veterans.

For-hire Passenger Vehicle Insurance

Current Situation

¹⁶ Section 316.520(2), F.S.

¹⁷ Section 316.520(4), F.S.

¹⁸ Section 322.12(1), F.S.

¹⁹ Section 322.12(4), F.S.

²⁰ 49 C.F.R. 383.77

²¹ Rule 15A-7.018, F.A.C.

Section 324.031, F.S., provides that the owner or operator of a taxicab, limousine, jitney, or any other for-hire passenger transportation vehicle may prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy issued by an insurance carrier that is a member of the Florida Insurance Guaranty Association (FIGA).²² However, a motor vehicle owner or lessee required to maintain insurance, including lessors of motor vehicles and owners who loan their motor vehicles, and who operates at least 300 for-hire passenger vehicles may prove financial responsibility through self-insurance.²³

Proposed Changes

The bill provides that a for-hire passenger vehicle's motor vehicle liability policy must be provided by an insurer authorized to do business in this state, and who is a member of FIGA, or by an eligible nonadmitted insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the Office of Insurance Regulation. The bill reduces the minimum number of for-hire passenger vehicles an owner or lessee must operate to be eligible to self-insure, from 300 vehicles to 150 vehicles.

Evacuation of Marinas

Present Situation

In order to ensure that protecting the lives and safety of vessel owners is placed before interests of protecting property, s. 327.59(1), F.S., prohibits marinas from adopting, maintaining, or enforcing policies requiring vessels to be removed from marinas following the issuance of a hurricane watch or warning.

After a tropical storm or hurricane watch has been issued, a marina owner or operator may take reasonable actions to further secure any vessel within the marina to minimize damage to a vessel and to protect marina property, private property, and the environment and may charge a reasonable fee for such services.²⁴

A marina owner may provide by contract that in the event a vessel owner fails to promptly remove a vessel from a marina after a tropical storm or hurricane watch has been issued, the marina owner may remove the vessel, if reasonable, from its slip or take whatever reasonable actions are deemed necessary to properly secure a vessel to minimize damage to a vessel and to protect marina property, private property, and the environment. The marina owner may charge the vessel owner a reasonable fee for any such services rendered. In order to add such a provision to a contract, the marina owner must provide notice to the vessel owner in any such contract.²⁵

A marina owner is not liable for any damage incurred to a vessel from storms or hurricanes and is held harmless as a result of such actions. Nothing in s. 327.59, F.S., may be construed to provide immunity to a marina owner for any damage caused by intentional acts or negligence when removing or securing a vessel as permitted under s. 327.59, F.S.²⁶

Several of the state's deepwater seaports have recreational marinas located within the seaport, and have encountered problems associated with marina tenants not removing their boats during hurricanes. Seaport managers have expressed concerns that if a boat leaves its slip or bulkhead, it may cause damage to port infrastructure or sink, which may adversely impact other port activities such as cruise traffic and fuel delivery.

Effect of the Bill

²² The Florida Insurance Guaranty Association is created in s. 631.55, F.S.

²³ Section 324.032(2), F.S. The maximum amount of self-insurance permissible under this section is \$300,000 on a per occurrence basis, and the self-insurer must maintain adequate excess insurance issued by an authorized or eligible insurer licensed or approved by the Office of Insurance Regulation.

²⁴ Section 327.59(2), F.S.

²⁵ Section 327.59(3), F.S.

²⁶ Section 327.59(4), F.S.

The bill provides upon the issuance of a hurricane watch affecting the waters of a marina located in a deepwater seaport, vessels weighing under 500 gross tons may not remain in the waters of such marinas that have been deemed not suitable for refuge during a hurricane.

Vessel owners must promptly remove their vessels upon issuance of an evacuation order by the deepwater seaport. If the U.S. Coast Guard Captain of the Port sets the deepwater seaport condition to Yankee²⁷ and a vessel owner has failed to remove a vessel, the marina owner, operator, employee or agent, regardless of existing contractual provisions between the marina owner and vessel owner, must remove the vessel, or cause it to be removed, if reasonable, from its slip and may charge the vessel owner a reasonable fee for any such services.

A marina owner, operator, employee or agent is not liable for any damage incurred to a vessel from hurricanes and is held harmless as a result of such actions to remove the vessel from the waterways. Section 327.59, F.S., does not provide immunity to a marina owner, operator, employee or agent for any damage caused by intentional acts or negligence when removing a vessel. After the hurricane watch has been issued, the owner or operator of any vessel that has not been removed from the waterway of the marina, pursuant to an order from the deepwater seaport, may be subject to the penalties under s. 313.22(3), F.S., providing that vessels that unnecessarily delay moving in order to vacate or change positions may be penalized up to \$1,000 per hour, plus 150 percent of the damage incurred by a waiting vessel.²⁸

DOT Application for Qualification

Present Situation

Any contractor desiring to bid for the performance of any construction contract in excess of \$250,000 which DOT proposes to let must first be certified by DOT as qualified pursuant to s. 337.14, F.S., and DOT's rules.^{29, 30}

Any contractor who is not qualified and in good standing with DOT as of January 1, 2019, and desires to bid on contracts in excess of \$50 million must have satisfactorily completed two projects, each in excess of \$15 million, for DOT or for any other state department of transportation.³¹

Each application for certification must be accompanied by the applying contractor's latest annual financial statement, which must have been completed within the last 12 months. If the application or the annual financial statement shows the applying contractor's financial condition more than four months prior to the date on which DOT receives the application, the applying contractor must also submit an interim financial statement and an updated application. Each required annual or interim financial statement must be audited and accompanied by the opinion of a certified public accountant.³²

Effect of the Bill

The bill clarifies that any contractor who desires to bid on contracts in excess of \$50 million must, in addition to have successfully completed two projects, each in excess of \$15 million for DOT or another state transportation department, must also first be certified by DOT as qualified.

The bill requires each application for certification to be accompanied by audited financial statements prepared in accordance with United States generally accepted accounting principles and United States generally accepted auditing standards by a certified public accountant licensed in this state or another state. The applying contractor's audited financial statements must be specifically for the applying contractor and must have been prepared within the immediately preceding 12 months. DOT may not

²⁷ Hurricane Port Condition Yankee means condition set when weather advisories indicate that sustained gale force winds (39-54 mph/34-47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 24 hours. 33 C.F.R. s. 165.781

²⁸ Section 313.22, F.S., relates to vessel movements and interference with such movements.

²⁹ DOT's rules regarding qualifications to bid are contained in Ch. 14-22, F.A.C.

³⁰ Section 337.14(1), F.S.

³¹ *Id.*

³² *Id.*

consider any financial information relating to the applying contractor's parent entity. DOT may not certify as qualified any applying contractor that fails to submit the required audited financial statements.

If the application or the annual financial statement shows the applying contractor's financial condition more than four months before the date on which DOT receives the application, the applying contractor must also submit interim audited financial statements.

Disability-Accessible Transportation Network Companies

Present Situation

Transportation Network Companies (TNCs)

In 2017, the Legislature established a regulatory framework for transportation network companies (TNCs). The law defines a "TNC" as an entity operating in this state that uses a digital network to connect a rider³³ to a TNC driver, who provides prearranged rides. A TNC is not deemed to own, control, operate, direct, or manage the TNC vehicles or TNC drivers that connect to its digital network, except where agreed to by written contract, and is not a taxicab association or for-hire vehicle owner. The term does not include entities arranging nonemergency medical transportation for individuals who qualify for Medicaid or Medicare pursuant to a contract with the state or a managed care organization.³⁴

A "TNC vehicle" is defined as a vehicle that is used by a TNC driver to offer or provide a prearranged ride and that is owned, leased, or otherwise authorized to be used by the TNC driver. A vehicle that is let or rented to another for consideration may be used as a TNC vehicle. The law specifies that a taxicab, jitney, limousine, or for-hire vehicle is not a TNC vehicle.³⁵

A "prearranged ride" is defined as the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network³⁶ controlled by a TNC, continuing while the TNC driver transports the requesting rider, and ending when the last requesting rider departs from the TNC vehicle. The term does not include a taxicab, for-hire vehicle, or street hail³⁷ service and does not include ridesharing,³⁸ carpool,³⁹ or any other type of service in which the driver receives a fee that does not exceed the driver's cost to provide the ride.⁴⁰

A "TNC driver" is defined as an individual who receives connections to potential riders and related services from a TNC and in return for compensation, uses a TNC vehicle to offer or provide a prearranged ride to a rider upon connection through a digital network. The law specifies that a TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab or for-hire vehicle service. The law provides that a TNC driver is not required to register a TNC vehicle as a commercial motor vehicle or a for-hire vehicle. It requires the TNC's digital network to display the TNC driver's photograph and the TNC vehicle's license plate number before the rider enters the TNC vehicle.⁴¹

³³ Section 627.748(1)(c), F.S., defines the term "Rider" as an individual who uses a digital network to connect with a TNC driver in order to obtain a prearranged ride in the TNC driver's TNC vehicle between points chosen by the rider.

³⁴ Section 627.748(1)(e), F.S.

³⁵ Section 627.748(1)(g), F.S.

³⁶ Section 627.748(1)(a), F.S., defines the term "digital network" as any online-enabled technology application service, website, or system offered or used by a TNC that enables the prearrangement of riders with TNC drivers.

³⁷ The term "street hail" means an immediate arrangement on a street with a driver by a person using any method other than a digital network to seek immediate transportation.

³⁸ Section 341.031(9)(a), F.S., defines the term "ridesharing" as an arrangement between persons with a common destination, or destinations, within the same proximity, to share the use of a motor vehicle on a recurring basis for round-trip transportation to and from their place of employment or other common destination.

³⁹ Section 450.28(3), F.S., defines the term "carpool" as an arrangement made by the workers using one worker's own vehicle for transportation to and from work and for which the driver or owner of the vehicle is not paid by any third person other than the members of the carpool.

⁴⁰ Section 627.748(1)(b), F.S.

⁴¹ Section 627.748(1)(f), F.S.

If a fare is collected from a rider, a TNC is required to disclose the fare or fare calculation method on its website or within the online-enabled technology application service before beginning the prearranged ride. If the fare is not disclosed, the rider must have the option to receive an estimated fare before beginning the prearranged ride. In addition, a TNC is required to transmit to the rider an electronic receipt within a reasonable period of time after the completion of a ride. The receipt must list the origin and destination of the ride, total time and distance of the ride, and total fare paid.

A TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab or for-hire vehicle service. Therefore, a TNC driver is not required to register the TNC vehicle as a commercial motor vehicle or a for-hire vehicle.⁴²

While a TNC driver is logged on to the digital network but is not engaged in a prearranged ride, the TNC or TNC driver must have automobile insurance that provides:

- Primary automobile liability coverage of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident, and \$25,000 for property damage; and
- Personal injury protection benefits that meet the minimum coverage amounts required under the Florida Motor Vehicle No-Fault Law.^{43, 44}

When a TNC driver is engaged in a prearranged ride, the automobile insurance must provide:

- Primary automobile liability coverage of at least \$1 million for death, bodily injury, and property damage; and
- Personal injury protection benefits that meet the minimum coverage amounts required of a limousine under the Florida Motor Vehicle No-Fault Law.⁴⁵

The coverage requirements may be satisfied by automobile insurance maintained by the TNC driver, an automobile insurance policy maintained by the TNC, or a combination of automobile insurance policies maintained by the TNC driver and the TNC.⁴⁶

The law preempts to the state the regulation of TNCs and specifies that a county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision may not:

- Impose a tax on or require a license for a TNC, TNC driver, or TNC vehicle if such tax or license relates to providing prearranged rides;
- Subject a TNC, TNC driver, or TNC vehicle to any rate, entry, operation, or other requirement of the county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision; or
- Require a TNC or TNC driver to obtain a business license or any other type of similar authorization to operate within the local governmental entity's jurisdiction.⁴⁷

For-Hire Vehicles

With certain exceptions, offering for lease or rent any motor vehicle qualifies the vehicle as a “for-hire vehicle.” A “for-hire vehicle” is a motor vehicle used for transporting persons or goods for compensation. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is considered “for hire”. The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation “for hire”.⁴⁸

Florida law provides specific financial responsibility requirements to for-hire vehicles. For-hire vehicles, such as taxis and limousines must maintain a motor vehicle liability policy with minimum limits of

⁴² Section 627.748(2), F.S.

⁴³ Sections 627.730-627.7405, F.S. The amount of insurance required is \$10,000 for emergency medical disability, \$2,500 non-emergency medical, and \$5,000 for death.

⁴⁴ Section 627.748(7)(b), F.S.

⁴⁵ Section 627.748(7)(c), F.S.

⁴⁶ Section 627.748(7)(b) & (c), F.S.

⁴⁷ Section 627.748(15), F.S.

⁴⁸ Section 320.01(15)(a), F.S.

\$125,000 per person for bodily injury, \$250,000 per incident for bodily injury, and \$50,000 for property damage.⁴⁹ The owner or operator of a for-hire vehicle may also prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy issued by an insurance carrier, which is a member of the Florida Insurance Guaranty Association, or by providing a certificate of self-insurance.⁵⁰

For counties, to the extent not inconsistent with general or special law, the legislative and governing body of a county has the power to carry on county government, including, but not restricted to, the power to license and regulate taxis, jitneys, and limousines for hire, rental cars, and other passenger vehicles for hire that operate in the unincorporated areas of the county.⁵¹

Americans with Disabilities Act

The Americans with Disabilities Act (ADA) is a civil rights law prohibiting discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public. The purpose of the law is to make sure that people with disabilities have the same rights and opportunities as everyone else and guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation government services, and telecommunications.⁵²

Private entities providing transportation services to the public are required to be accessible to individuals with disabilities.⁵³ Federal regulations provide ADA specifications for various transportation vehicles including disability accessible buses and vans.⁵⁴

Effect of the Bill

The bill defines the term “disability-accessible TNC,” as a company that uses a digital network to connect riders exclusively to drivers who operate disability accessible vehicles

The bill defines the term “disability-accessible vehicle” as a for hire vehicle, which meets or exceeds the requirements of the ADA.

The entity may elect, upon written notification to the Department of Financial Services (DFS), to be regulated as a disability-accessible TNC. A disability-accessible TNC must comply with all of the requirements of s. 627.748, F.S., that are applicable to a TNC, including the preemption requirements, but is not required to comply with any requirements that prohibit the company from connecting riders to drivers who operate for-hire vehicles. At all times a disability-accessible TNC must maintain insurance coverage at the levels at least equal to the greater of those required in s. 627.748, F.S., and those required of for-hire vehicles, regardless of whether the driver is operating as a for-hire vehicle driver or disability accessible TNC driver. However, a prospective disability access TNC that satisfies minimum financial responsibility requirements at the time of written notification to DFS by using self-insurance may continue to use self-insurance to satisfy the insurance requirements for a disability accessible TNC.

A disability-accessible TNC is not considered a for-hire vehicle for purposes of Ch. 627, F.S. In order for the bill’s definition of “disability-accessible TNC” to be compatible with current law, the bill makes conforming changes to the definitions of “prearranged ride”, “transportation network company”, and “transportation network company vehicle”, by removing references to “for-hire vehicle”, and “for-hire vehicle owner.” Additionally, the reference to “for-hire vehicle” is removed from the provision of law that states that a TNC or TNC driver is not considered a common carrier and does not have to register a TNC vehicle as a commercial motor vehicle or vehicle for-hire.

⁴⁹ Section 324.032(1), F.S.

⁵⁰ Section 324.031, F.S.

⁵¹ Section 125.01(1)(n), F.S.

⁵² ADA National Network Website, *What is the Americans with Disabilities Act*, Available at: <https://adata.org/learn-about-ada> (Last visited Jan. 29, 2020).

⁵³ ADA National Network Website, *The ADA & Accessible Ground Transportation*, Available at: <https://adata.org/factsheet/ADA-accessible-transportation> (Last visited Jan 29, 2020).

⁵⁴ 59 C.F.R. part 38

The bill authorizes TNC vehicle owners, rather than just TNC drivers, to maintain insurance that satisfies the insurance requirements required for TNCs. This allows the owner of a TNC, who is not necessarily the driver, to maintain insurance on the vehicles.

Lastly, the bill preempts to the state the regulation of disability accessible TNCs, disability accessible TNC drivers, and disability accessible TNC vehicles.

B. SECTION DIRECTORY:

Section 1 amends s. 316.003, F.S., defining terms.

Section 2 amends s. 316.2397, F.S., providing that certain lights are prohibited.

Section 3 amends s. 322.12, F.S., relating to the examination of applicants.

Section 4 amends s. 316.520, F.S., relating to loads on vehicles.

Section 5 amends s. 324.031, F.S., relating to the manner of providing financial responsibility.

Section 6 amends s. 324.032, F.S., relating to proving financial responsibility; for-hire passenger transportation vehicles.

Section 7 amends s. 327.59, F.S., relating to marina evacuations.

Section 8 amends s. 337.14, F.S., providing for applications for qualification and certificates of qualification.

Section 9 amends s. 627.748, F.S., relating to transportation network companies.

Section 10 provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to impact state revenues.

2. Expenditures:

This bill may have a fiscal impact on DFS, but the impact is unknown at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to impact local government revenues.

2. Expenditures:

This bill preempts to the state the regulation of disability-accessible TNCs. To the extent municipalities, counties, and other governmental entities are imposing fees on disability-accessible TNCs, they will experience an indeterminate fiscal impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners of vessels at marinas located in deepwater seaports may incur some expenditures associated with removing their vessels prior to hurricanes.

D. FISCAL COMMENTS:

Federal rules require that each commercial motor vehicle, when transporting cargo to have its cargo secured to prevent the cargo from leaving the motor vehicle. The bill authorizes agricultural loads to travel across the state uncovered. It is unknown if this conflict with Federal law will jeopardize Federal funding.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill reduces the ability of a county or municipality to raise revenue; however, an exception may apply since the bill is expected to have an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DOT may need to amend Rule 14-22, F.A.C., regarding qualifications to bid on construction projects to incorporate changes made in the bill.

DHSMV may need to amend rule 15A-7.018, F.A.C., to authorize additional time for veterans to be exempt from CDL testing requirements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 28, 2020, the Transportation & Infrastructure Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Removed provisions authorizing the use of blue lights on construction vehicles;
- Amended the definition of the term "autocycle" to clarify equipment requirements;
- Removed provisions establishing the Secretary of Transportation's salary;
- Increased the allowed weight of a personal delivery device to from 80 to 150 pounds;
- Authorized an exemption for commercial driver license skill test requirements for certain veterans;
- Authorized certain vehicles to transport agricultural products without covering the load;
- Removed the expansion of a public records exemption for certain DOT bid documents;
- Removed provisions revising DOT contractor liability;
- Authorized for-hire vehicles to be insured by certain non-admitted carriers and reduced the number of for hire vehicles required before an owner or lessee may self-insure;
- Required certain vessels to be removed from marinas located in deepwater seaports during hurricanes;
- Authorized disability-accessible TNCs and preempted their regulation to the state; and
- Removed provisions relating to the reinstatement of tolls after an emergency evacuation.

This analysis is drafted to the committee substitute as approve by the Transportation & Infrastructure Subcommittee.

By the Committee on Environment and Natural Resources; and
Senator Gruters

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A bill to be entitled

An act relating to environmental enforcement; amending s. 161.054, F.S.; revising administrative penalties for violations of certain provisions relating to beach and shore construction and activities; providing that each day that certain violations occur or are not remediated constitutes a separate offense until such violations are resolved by order or judgment; making technical changes; amending ss. 258.397, 258.46, 373.129, 376.16, 376.25, 377.37, 378.211, and 403.141, F.S.; revising civil penalties for violations of certain provisions relating to the Biscayne Bay Aquatic Preserve, aquatic preserves, water resources, the Pollutant Discharge Prevention and Control Act, the Clean Ocean Act, regulation of oil and gas resources, the Phosphate Land Reclamation Act, and other provisions relating to pollution and the environment, respectively; providing that each day that certain violations occur or are not remediated constitutes a separate offense until such violations are resolved by order or judgment; making technical changes; amending ss. 373.209, 376.065, 376.071, 403.086, 403.413, 403.7234, and 403.93345, F.S.; revising civil penalties for violations of certain provisions relating to artesian wells, terminal facilities, discharge contingency plans for vessels, sewage disposal facilities, dumping litter, small quantity generators, and coral reef protection, respectively; making technical changes; amending ss.

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373.430 and 403.161, F.S.; revising criminal penalties for violations of certain provisions relating to pollution and the environment; providing that each day that certain violations occur or are not remediated constitutes a separate offense until such violations are resolved by order or judgment; making technical changes; amending s. 403.121, F.S.; revising civil and administrative penalties for violations of certain provisions relating to pollution and the environment; providing that each day that certain violations occur or are not remediated constitutes a separate offense until such violations are resolved by order or judgment; increasing the amount of penalties that can be assessed administratively; making technical changes; amending ss. 403.726 and 403.727, F.S.; revising civil penalties for violations of certain provisions relating to hazardous waste for each day that certain violations occur and are not resolved by order or judgment; making technical changes; reenacting s. 823.11(5), F.S., to incorporate the amendment made to s. 376.16, F.S., in a reference thereto; reenacting ss. 403.077(5), 403.131(2), 403.4154(3)(d), and 403.860(5), F.S., to incorporate the amendment made to s. 403.121, F.S., in a reference thereto; reenacting ss. 403.708(10), 403.7191(7), and 403.811, F.S., to incorporate the amendment made to s. 403.141, F.S., in a reference thereto; reenacting s. 403.7255(2), F.S., to incorporate the amendment made to s. 403.161, F.S., in a reference thereto;

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reenacting s. 403.7186(8), F.S., to incorporate the amendment made to ss. 403.141 and 403.161, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (1) of section 161.054, Florida Statutes, is amended to read:

161.054 Administrative fines; liability for damage; liens.—

(1) In addition to the penalties provided for in ss. 161.052, 161.053, and 161.121, any person, firm, corporation, or governmental agency, or agent thereof, refusing to comply with or willfully violating ~~any of the provisions of~~ s. 161.041, s. 161.052, or s. 161.053, or any rule or order prescribed by the department thereunder, shall incur a fine for each offense in an amount up to \$15,000 ~~\$10,000~~ to be fixed, imposed, and collected by the department. Until a violation is resolved by order or judgment, each day during any portion of which such violation occurs or is not remediated constitutes a separate offense.

Section 2. Subsection (7) of section 258.397, Florida Statutes, is amended to read:

258.397 Biscayne Bay Aquatic Preserve.—

(7) ENFORCEMENT. ~~The provisions of~~ This section may be enforced in accordance with ~~the provisions of~~ s. 403.412. In addition, the Department of Legal Affairs may ~~is authorized to~~ bring an action for civil penalties of \$7,500 ~~\$5,000~~ per day against any person, natural or corporate, who violates ~~the provisions of~~ this section or any rule or regulation issued hereunder. Until a violation is resolved by order or judgment,

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each day during any portion of which such violation occurs or is not remediated constitutes a separate offense. Enforcement of applicable state regulations shall be supplemented by the Miami-Dade County Department of Environmental Resources Management through the creation of a full-time enforcement presence along the Miami River.

Section 3. Section 258.46, Florida Statutes, is amended to read:

258.46 Enforcement; violations; penalty. ~~The provisions of~~ This act may be enforced by the Board of Trustees of the Internal Improvement Trust Fund or in accordance with ~~the provisions of~~ s. 403.412. However, any violation by any person, natural or corporate, of ~~the provisions of~~ this act or any rule or regulation issued hereunder is ~~shall be~~ further punishable by a civil penalty of not less than \$750 ~~\$500~~ per day or more than \$7,500 ~~\$5,000~~ per day of such violation. Until a violation is resolved by order or judgment, each day during any portion of which such violation occurs or is not remediated constitutes a separate offense.

Section 4. Subsections (5) and (7) of section 373.129, Florida Statutes, are amended to read:

373.129 Maintenance of actions.—The department, the governing board of any water management district, any local board, or a local government to which authority has been delegated pursuant to s. 373.103(8), is authorized to commence and maintain proper and necessary actions and proceedings in any court of competent jurisdiction for any of the following purposes:

(5) To recover a civil penalty for each offense in an

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amount not to exceed \$15,000 ~~\$10,000~~ per offense. Until a violation is resolved by order or judgment, each date during any portion of which such violation occurs or is not remediated constitutes a separate offense.

(a) A civil penalty recovered by a water management district pursuant to this subsection shall be retained and used exclusively by the water management district that collected the money. A civil penalty recovered by the department pursuant to this subsection must be deposited into the Water Quality Assurance Trust Fund established under s. 376.307.

(b) A local government that is delegated authority pursuant to s. 373.103(8) may deposit a civil penalty recovered pursuant to this subsection into a local water pollution control program trust fund, notwithstanding ~~the provisions of~~ paragraph (a). However, civil penalties that are deposited in a local water pollution control program trust fund and that are recovered for violations of state water quality standards may be used only to restore water quality in the area that was the subject of the action, and civil penalties that are deposited in a local water pollution control program trust fund and that are recovered for violation of requirements relating to water quantity may be used only to purchase lands and make capital improvements associated with surface water management, or other purposes consistent with the requirements of this chapter for the management and storage of surface water.

(7) ~~To enforce the provisions of~~ part IV of this chapter in the same manner and to the same extent as provided in ss. 373.430, 403.121(1) and (2), 403.131, 403.141, and 403.161.

Section 5. Subsection (3) of section 373.209, Florida

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Statutes, is amended to read:

373.209 Artesian wells; penalties for violation.—

(3) Any person who violates ~~any provision of~~ this section is ~~shall be~~ subject to either:

(a) The remedial measures provided for in s. 373.436; or

(b) A civil penalty of \$150 ~~\$100~~ a day for each and every day of such violation and for each and every act of violation. The civil penalty may be recovered by the water management board of the water management district in which the well is located or by the department in a suit in a court of competent jurisdiction in the county where the defendant resides, in the county of residence of any defendant if there is more than one defendant, or in the county where the violation took place. The place of suit shall be selected by the board or department, and the suit, by direction of the board or department, shall be instituted and conducted in the name of the board or department by appropriate counsel. The payment of any such damages does not impair or abridge any cause of action which any person may have against the person violating ~~any provision of~~ this section.

Section 6. Subsections (2) through (5) of section 373.430, Florida Statutes, are amended to read:

373.430 Prohibitions, violation, penalty, intent.—

(2) A person who ~~Whoever~~ commits a violation specified in subsection (1) is liable for any damage caused and for civil penalties as provided in s. 373.129.

(3) A ~~Any~~ person who willfully commits a violation specified in paragraph (1)(a) commits ~~is guilty of~~ a felony of the third degree, punishable as provided in ss. 775.082(3)(e) and 775.083(1)(g), by a fine of not more than \$50,000 or by

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175 imprisonment for 5 years, or by both, for each offense. Until a
176 violation is resolved by order or judgment, each day during any
177 portion of which such violation occurs or is not remediated
178 constitutes a separate offense.

179 (4) A ~~Any~~ person who commits a violation specified in
180 paragraph (1)(a) or paragraph (1)(b) due to reckless
181 indifference or gross careless disregard commits ~~is guilty of~~ a
182 misdemeanor of the second degree, punishable as provided in ss.
183 775.082(4)(b) and 775.083(1)(g), by a fine of not more than
184 \$10,000 ~~\$5,000~~ or 60 days in jail, or by both, for each offense.

185 (5) A ~~Any~~ person who willfully commits a violation
186 specified in paragraph (1)(b) or who commits a violation
187 specified in paragraph (1)(c) commits ~~is guilty of~~ a misdemeanor
188 of the first degree, punishable as provided in ss. 775.082(4)(a)
189 and 775.083(1)(g), by a fine of not more than \$10,000 or by 6
190 months in jail, or by both, for each offense.

191 Section 7. Paragraphs (a) and (e) of subsection (5) of
192 section 376.065, Florida Statutes, are amended to read:

193 376.065 Operation of terminal facility without discharge
194 prevention and response certificate prohibited; penalty.—

195 (5)(a) A person who violates this section or the terms and
196 requirements of such certification commits a noncriminal
197 infraction. The civil penalty for any such infraction shall be
198 \$750 ~~\$500~~, except as otherwise provided in this section.

199 (e) A person who elects to appear before the county court
200 or who is required to so appear waives the limitations of the
201 civil penalty specified in paragraph (a). The court, after a
202 hearing, shall make a determination as to whether an infraction
203 has been committed. If the commission of the infraction is

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proved, the court shall impose a civil penalty of \$750 ~~\$500~~.

Section 8. Paragraphs (a) and (e) of subsection (2) of section 376.071, Florida Statutes, are amended to read:

376.071 Discharge contingency plan for vessels.—

(2)(a) A master of a vessel that violates subsection (1) commits a noncriminal infraction and shall be cited for such infraction. The civil penalty for such an infraction shall be \$7,500 ~~\$5,000~~, except as otherwise provided in this subsection.

(e) A person who elects to appear before the county court or who is required to appear waives the limitations of the civil penalty specified in paragraph (a). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of the infraction is proved, the court shall impose a civil penalty of \$7,500 ~~\$5,000~~.

Section 9. Section 376.16, Florida Statutes, is amended to read:

376.16 Enforcement and penalties.—

(1) It is unlawful for any person to violate ~~any provision of~~ ss. 376.011-376.21 or any rule or order of the department made pursuant to this act. A violation is ~~shall be~~ punishable by a civil penalty of up to \$75,000 ~~\$50,000~~ per violation per day to be assessed by the department. Until a violation is resolved by order or judgment, each day during any portion of which the violation occurs or is not remediated constitutes a separate offense. The penalty provisions of this subsection do ~~shall~~ not apply to any discharge promptly reported and removed by a person responsible, in accordance with the rules and orders of the department, or to any discharge of pollutants equal to or less than 5 gallons.

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(2) In addition to the penalty provisions which may apply under subsection (1), a person responsible for two or more discharges of any pollutant reported pursuant to s. 376.12 within a 12-month period at the same facility commits a noncriminal infraction and shall be cited by the department for such infraction.

(a) For discharges of gasoline or diesel over 5 gallons, the civil penalty for the second discharge shall be \$750 ~~\$500~~ and the civil penalty for each subsequent discharge within a 12-month period shall be \$1,500 ~~\$1,000~~, except as otherwise provided in this section.

(b) For discharges of any pollutant other than gasoline or diesel, the civil penalty for a second discharge shall be \$3,750 ~~\$2,500~~ and the civil penalty for each subsequent discharge within a 12-month period shall be \$7,500 ~~\$5,000~~, except as otherwise provided in this section.

(3) A person responsible for two or more discharges of any pollutant reported pursuant to s. 376.12 within a 12-month period at the same facility commits a noncriminal infraction and shall be cited by the department for such infraction.

(a) For discharges of gasoline or diesel equal to or less than 5 gallons, the civil penalty shall be \$75 ~~\$50~~ for each discharge subsequent to the first.

(b) For discharges of pollutants other than gasoline or diesel equal to or less than 5 gallons, the civil penalty shall be \$150 ~~\$100~~ for each discharge subsequent to the first.

(4) A person charged with a noncriminal infraction pursuant to subsection (2) or subsection (3) may:

(a) Pay the civil penalty;

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(b) Post a bond equal to the amount of the applicable civil penalty; or

(c) Sign and accept a citation indicating a promise to appear before the county court.

The department employee authorized to issue these citations may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(5) Any person who willfully refuses to post bond or accept and sign a citation commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) After compliance with paragraph (4)(b) or paragraph (4)(c), any person charged with a noncriminal infraction under subsection (2) or subsection (3) may:

(a) Pay the civil penalty, either by mail or in person, within 30 days after the date of receiving the citation; or

(b) If the person has posted bond, forfeit the bond by not appearing at the designated time and location.

A person cited for an infraction under this section who pays the civil penalty or forfeits the bond has admitted the infraction and waives the right to a hearing on the issue of commission of the infraction. Such admission may not be used as evidence in any other proceeding.

(7) Any person who elects to appear before the county court or who is required to appear waives the limitations of the civil penalties specified in subsection (2). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction is

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proved, the court may impose a civil penalty up to, but not exceeding, \$750 ~~\$500~~ for the second discharge of gasoline or diesel and a civil penalty up to, but not exceeding, \$1,500 ~~\$1,000~~ for each subsequent discharge of gasoline or diesel within a 12-month period.

(8) Any person who elects to appear before the county court or who is required to appear waives the limitations of the civil penalties specified in subsection (2) or subsection (3). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction is proved, the court may impose a civil penalty up to, but not exceeding, \$7,500 ~~\$5,000~~ for the second discharge of pollutants other than gasoline or diesel and a civil penalty up to, but not exceeding, \$15,000 ~~\$10,000~~ for each subsequent discharge of pollutants other than gasoline or diesel within a 12-month period.

(9) At a hearing under this section, the commission of a charged offense must be proved by the greater weight of the evidence.

(10) A person who is found by a hearing official to have committed an infraction may appeal that finding to the circuit court.

(11) Any person who has not posted bond and who neither pays the applicable civil penalty, as specified in subsection (2) or subsection (3) within 30 days of receipt of the citation nor appears before the court commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(12) Any person who makes or causes to be made a false statement that ~~which~~ the person does not believe to be true in

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response to requirements of ~~the provisions of~~ ss. 376.011-376.21
commits a felony of the second degree, punishable as provided in
s. 775.082, s. 775.083, or s. 775.084.

Section 10. Paragraph (a) of subsection (6) of section
376.25, Florida Statutes, is amended to read:

376.25 Gambling vessels; registration; required and
prohibited releases.—

(6) PENALTIES.—

(a) A person who violates this section is subject to a
civil penalty of not more than \$75,000 ~~\$50,000~~ for each
violation. Until a violation is resolved by order or judgment,
each day during any portion of which such violation occurs or is
not remediated constitutes a separate offense.

Section 11. Paragraph (a) of subsection (1) of section
377.37, Florida Statutes, is amended to read:

377.37 Penalties.—

(1) (a) Any person who violates ~~any provision of~~ this law or
any rule, regulation, or order of the division made under this
chapter or who violates the terms of any permit to drill for or
produce oil, gas, or other petroleum products referred to in s.
377.242(1) or to store gas in a natural gas storage facility, or
any lessee, permitholder, or operator of equipment or facilities
used in the exploration for, drilling for, or production of oil,
gas, or other petroleum products, or storage of gas in a natural
gas storage facility, who refuses inspection by the division as
provided in this chapter, is liable to the state for any damage
caused to the air, waters, or property, including animal, plant,
or aquatic life, of the state and for reasonable costs and
expenses of the state in tracing the source of the discharge, in

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controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including animal, plant, and aquatic life, of the state. Furthermore, such person, lessee, permitholder, or operator is subject to the judicial imposition of a civil penalty in an amount of not more than \$15,000 ~~\$10,000~~ for each offense. However, the court may receive evidence in mitigation. Until a violation is resolved by order or judgment, each day during any portion of which such violation occurs or is not remediated constitutes a separate offense. This section does not ~~Nothing herein shall~~ give the department the right to bring an action on behalf of any private person.

Section 12. Subsection (2) of section 378.211, Florida Statutes, is amended to read:

378.211 Violations; damages; penalties.—

(2) The department may institute a civil action in a court of competent jurisdiction to impose and recover a civil penalty for violation of this part or of any rule adopted or order issued pursuant to this part. The penalty may ~~shall~~ not exceed the following amounts, and the court shall consider evidence in mitigation:

(a) For violations of a minor or technical nature, \$150 ~~\$100~~ per violation.

(b) For major violations by an operator on which a penalty has not been imposed under this paragraph during the previous 5 years, \$1,500 ~~\$1,000~~ per violation.

(c) For major violations not covered by paragraph (b), \$7,500 ~~\$5,000~~ per violation.

Subject to ~~the provisions of~~ subsection (4), until a violation

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is resolved by order or judgment, each day or any portion thereof in which the violation continues or is not remediated shall constitute a separate violation.

Section 13. Subsection (2) of section 403.086, Florida Statutes, is amended to read:

403.086 Sewage disposal facilities; advanced and secondary waste treatment.—

(2) Any facilities for sanitary sewage disposal shall provide for secondary waste treatment and, in addition thereto, advanced waste treatment as deemed necessary and ordered by the Department of Environmental Protection. Failure to conform shall be punishable by a civil penalty of \$750 ~~\$500~~ for each 24-hour day or fraction thereof that such failure is allowed to continue thereafter.

Section 14. Section 403.121, Florida Statutes, is amended to read:

403.121 Enforcement; procedure; remedies.—The department shall have the following judicial and administrative remedies available to it for violations of this chapter, as specified in s. 403.161(1).

(1) Judicial remedies:

(a) The department may institute a civil action in a court of competent jurisdiction to establish liability and to recover damages for any injury to the air, waters, or property, including animal, plant, and aquatic life, of the state caused by any violation.

(b) The department may institute a civil action in a court of competent jurisdiction to impose and to recover a civil penalty for each violation in an amount of not more than \$15,000

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407 ~~\$10,000~~ per offense. However, the court may receive evidence in
408 mitigation. Until a violation is resolved by order or judgment,
409 each day during any portion of which such violation occurs or is
410 not remediated constitutes a separate offense.

411 (c) Except as provided in paragraph (2)(c), it is ~~shall~~ not
412 ~~be~~ a defense to, or ground for dismissal of, these judicial
413 remedies for damages and civil penalties that the department has
414 failed to exhaust its administrative remedies, has failed to
415 serve a notice of violation, or has failed to hold an
416 administrative hearing prior to the institution of a civil
417 action.

418 (2) Administrative remedies:

419 (a) The department may institute an administrative
420 proceeding to establish liability and to recover damages for any
421 injury to the air, waters, or property, including animal, plant,
422 or aquatic life, of the state caused by any violation. The
423 department may order that the violator pay a specified sum as
424 damages to the state. Judgment for the amount of damages
425 determined by the department may be entered in any court having
426 jurisdiction thereof and may be enforced as any other judgment.

427 (b) If the department has reason to believe a violation has
428 occurred, it may institute an administrative proceeding to order
429 the prevention, abatement, or control of the conditions creating
430 the violation or other appropriate corrective action. Except for
431 violations involving hazardous wastes, asbestos, or underground
432 injection, the department shall proceed administratively in all
433 cases in which the department seeks administrative penalties
434 that do not exceed \$50,000 ~~\$10,000~~ per assessment as calculated
435 in accordance with subsections (3), (4), (5), (6), and (7).

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Pursuant to 42 U.S.C. s. 300g-2, the administrative penalty assessed pursuant to subsection (3), subsection (4), or subsection (5) against a public water system serving a population of more than 10,000 shall be not less than \$1,000 per day per violation. The department may ~~shall~~ not impose administrative penalties in excess of \$50,000 ~~\$10,000~~ in a notice of violation. The department may ~~shall~~ not have more than one notice of violation seeking administrative penalties pending against the same party at the same time unless the violations occurred at a different site or the violations were discovered by the department subsequent to the filing of a previous notice of violation.

(c) An administrative proceeding shall be instituted by the department's serving of a written notice of violation upon the alleged violator by certified mail. If the department is unable to effect service by certified mail, the notice of violation may be hand delivered or personally served in accordance with chapter 48. The notice shall specify the ~~provision of the law~~, rule, regulation, permit, certification, or order of the department alleged to be violated and the facts alleged to constitute a violation thereof. An order for corrective action, penalty assessment, or damages may be included with the notice. When the department is seeking to impose an administrative penalty for any violation by issuing a notice of violation, any corrective action needed to correct the violation or damages caused by the violation must be pursued in the notice of violation or they are waived. However, an ~~no~~ order is not ~~shall~~ ~~become~~ effective until after service and an administrative hearing, if requested within 20 days after service. Failure to

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request an administrative hearing within this time period
constitutes ~~shall constitute~~ a waiver thereof, unless the
respondent files a written notice with the department within
this time period opting out of the administrative process
initiated by the department to impose administrative penalties.
Any respondent choosing to opt out of the administrative process
initiated by the department in an action that seeks the
imposition of administrative penalties must file a written
notice with the department within 20 days after service of the
notice of violation opting out of the administrative process. A
respondent's decision to opt out of the administrative process
does not preclude the department from initiating a state court
action seeking injunctive relief, damages, and the judicial
imposition of civil penalties.

(d) If a person timely files a petition challenging a
notice of violation, that person will thereafter be referred to
as the respondent. The hearing requested by the respondent shall
be held within 180 days after the department has referred the
initial petition to the Division of Administrative Hearings
unless the parties agree to a later date. The department has the
burden of proving with the preponderance of the evidence that
the respondent is responsible for the violation. ~~No~~
Administrative penalties should not be imposed unless the
department satisfies that burden. Following the close of the
hearing, the administrative law judge shall issue a final order
on all matters, including the imposition of an administrative
penalty. When the department seeks to enforce that portion of a
final order imposing administrative penalties pursuant to s.
120.69, the respondent may ~~shall~~ not assert as a defense the

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inappropriateness of the administrative remedy. The department retains its final-order authority in all administrative actions that do not request the imposition of administrative penalties.

(e) After filing a petition requesting a formal hearing in response to a notice of violation in which the department imposes an administrative penalty, a respondent may request that a private mediator be appointed to mediate the dispute by contacting the Florida Conflict Resolution Consortium within 10 days after receipt of the initial order from the administrative law judge. The Florida Conflict Resolution Consortium shall pay all of the costs of the mediator and for up to 8 hours of the mediator's time per case at \$150 per hour. Upon notice from the respondent, the Florida Conflict Resolution Consortium shall provide to the respondent a panel of possible mediators from the area in which the hearing on the petition would be heard. The respondent shall select the mediator and notify the Florida Conflict Resolution Consortium of the selection within 15 days of receipt of the proposed panel of mediators. The Florida Conflict Resolution Consortium shall provide all of the administrative support for the mediation process. The mediation must be completed at least 15 days before the final hearing date set by the administrative law judge.

(f) In any administrative proceeding brought by the department, the prevailing party shall recover all costs as provided in ss. 57.041 and 57.071. The costs must be included in the final order. The respondent is the prevailing party when an order is entered awarding no penalties to the department and such order has not been reversed on appeal or the time for seeking judicial review has expired. The respondent is ~~shall be~~

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entitled to an award of attorney's fees if the administrative law judge determines that the notice of violation issued by the department seeking the imposition of administrative penalties was not substantially justified as defined in s. 57.111(3)(e). An ~~no~~ award of attorney's fees as provided by this subsection may not ~~shall~~ exceed \$15,000.

(g) Nothing herein shall be construed as preventing any other legal or administrative action in accordance with law. Nothing in this subsection shall limit the department's authority provided in ss. 403.131, 403.141, and this section to judicially pursue injunctive relief. When the department exercises its authority to judicially pursue injunctive relief, penalties in any amount up to the statutory maximum sought by the department must be pursued as part of the state court action and not by initiating a separate administrative proceeding. The department retains the authority to judicially pursue penalties in excess of \$50,000 ~~\$10,000~~ for violations not specifically included in the administrative penalty schedule, or for multiple or multiday violations alleged to exceed a total of \$50,000 ~~\$10,000~~. The department also retains the authority provided in ss. 403.131, 403.141, and this section to judicially pursue injunctive relief and damages, if a notice of violation seeking the imposition of administrative penalties has not been issued. The department has the authority to enter into a settlement, either before or after initiating a notice of violation, and the settlement may include a penalty amount different from the administrative penalty schedule. Any case filed in state court because it is alleged to exceed a total of \$50,000 ~~\$10,000~~ in penalties may be settled in the court action for less than

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552 \$50,000 ~~\$10,000~~.

553 (h) Chapter 120 applies ~~shall apply~~ to any administrative
554 action taken by the department or any delegated program pursuing
555 administrative penalties in accordance with this section.

556 (3) Except for violations involving hazardous wastes,
557 asbestos, or underground injection, administrative penalties
558 must be calculated according to the following schedule:

559 (a) For a drinking water contamination violation, the
560 department shall assess a penalty of \$3,000 ~~\$2,000~~ for a Maximum
561 Containment Level (MCL) violation; plus \$1,500 ~~\$1,000~~ if the
562 violation is for a primary inorganic, organic, or radiological
563 Maximum Contaminant Level or it is a fecal coliform bacteria
564 violation; plus \$1,500 ~~\$1,000~~ if the violation occurs at a
565 community water system; and plus \$1,500 ~~\$1,000~~ if any Maximum
566 Contaminant Level is exceeded by more than 100 percent. For
567 failure to obtain a clearance letter prior to placing a drinking
568 water system into service when the system would not have been
569 eligible for clearance, the department shall assess a penalty of
570 \$4,500 ~~\$3,000~~.

571 (b) For failure to obtain a required wastewater permit,
572 other than a permit required for surface water discharge, the
573 department shall assess a penalty of \$1,500 ~~\$1,000~~. For a
574 domestic or industrial wastewater violation not involving a
575 surface water or groundwater quality violation, the department
576 shall assess a penalty of \$3,000 ~~\$2,000~~ for an unpermitted or
577 unauthorized discharge or effluent-limitation exceedance. For an
578 unpermitted or unauthorized discharge or effluent-limitation
579 exceedance that resulted in a surface water or groundwater
580 quality violation, the department shall assess a penalty of

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581 \$7,500 ~~\$5,000~~.

582 (c) For a dredge and fill or stormwater violation, the
583 department shall assess a penalty of \$1,500 ~~\$1,000~~ for
584 unpermitted or unauthorized dredging or filling or unauthorized
585 construction of a stormwater management system against the
586 person or persons responsible for the illegal dredging or
587 filling, or unauthorized construction of a stormwater management
588 system plus \$3,000 ~~\$2,000~~ if the dredging or filling occurs in
589 an aquatic preserve, an Outstanding Florida Water, a
590 conservation easement, or a Class I or Class II surface water,
591 plus \$1,500 ~~\$1,000~~ if the area dredged or filled is greater than
592 one-quarter acre but less than or equal to one-half acre, and
593 plus \$1,500 ~~\$1,000~~ if the area dredged or filled is greater than
594 one-half acre but less than or equal to one acre. The
595 administrative penalty schedule does ~~shall~~ not apply to a dredge
596 and fill violation if the area dredged or filled exceeds one
597 acre. The department retains the authority to seek the judicial
598 imposition of civil penalties for all dredge and fill violations
599 involving more than one acre. The department shall assess a
600 penalty of \$4,500 ~~\$3,000~~ for the failure to complete required
601 mitigation, failure to record a required conservation easement,
602 or for a water quality violation resulting from dredging or
603 filling activities, stormwater construction activities or
604 failure of a stormwater treatment facility. For stormwater
605 management systems serving less than 5 acres, the department
606 shall assess a penalty of \$3,000 ~~\$2,000~~ for the failure to
607 properly or timely construct a stormwater management system. In
608 addition to the penalties authorized in this subsection, the
609 department shall assess a penalty of \$7,500 ~~\$5,000~~ per violation

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610 against the contractor or agent of the owner or tenant that
611 conducts unpermitted or unauthorized dredging or filling. For
612 purposes of this paragraph, the preparation or signing of a
613 permit application by a person currently licensed under chapter
614 471 to practice as a professional engineer does ~~shall~~ not make
615 that person an agent of the owner or tenant.

616 (d) For mangrove trimming or alteration violations, the
617 department shall assess a penalty of \$7,500 ~~\$5,000~~ per violation
618 against the contractor or agent of the owner or tenant that
619 conducts mangrove trimming or alteration without a permit as
620 required by s. 403.9328. For purposes of this paragraph, the
621 preparation or signing of a permit application by a person
622 currently licensed under chapter 471 to practice as a
623 professional engineer does ~~shall~~ not make that person an agent
624 of the owner or tenant.

625 (e) For solid waste violations, the department shall assess
626 a penalty of \$3,000 ~~\$2,000~~ for the unpermitted or unauthorized
627 disposal or storage of solid waste; plus \$1,000 if the solid
628 waste is Class I or Class III (excluding yard trash) or if the
629 solid waste is construction and demolition debris in excess of
630 20 cubic yards, plus \$1,500 ~~\$1,000~~ if the waste is disposed of
631 or stored in any natural or artificial body of water or within
632 500 feet of a potable water well, plus \$1,500 ~~\$1,000~~ if the
633 waste contains PCB at a concentration of 50 parts per million or
634 greater; untreated biomedical waste; friable asbestos greater
635 than 1 cubic meter which is not wetted, bagged, and covered;
636 used oil greater than 25 gallons; or 10 or more lead acid
637 batteries. The department shall assess a penalty of \$4,500
638 ~~\$3,000~~ for failure to properly maintain leachate control;

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639 unauthorized burning; failure to have a trained spotter on duty
640 at the working face when accepting waste; or failure to provide
641 access control for three consecutive inspections. The department
642 shall assess a penalty of \$3,000 ~~\$2,000~~ for failure to construct
643 or maintain a required stormwater management system.

644 (f) For an air emission violation, the department shall
645 assess a penalty of \$1,500 ~~\$1,000~~ for an unpermitted or
646 unauthorized air emission or an air-emission-permit exceedance,
647 ~~plus \$1,000 if the emission results in an air quality violation,~~
648 plus \$4,500 ~~\$3,000~~ if the emission was from a major source and
649 the source was major for the pollutant in violation; plus \$1,500
650 ~~\$1,000~~ if the emission was more than 150 percent of the
651 allowable level.

652 (g) For storage tank system and petroleum contamination
653 violations, the department shall assess a penalty of \$7,500
654 ~~\$5,000~~ for failure to empty a damaged storage system as
655 necessary to ensure that a release does not occur until repairs
656 to the storage system are completed; when a release has occurred
657 from that storage tank system; for failure to timely recover
658 free product; or for failure to conduct remediation or
659 monitoring activities until a no-further-action or site-
660 rehabilitation completion order has been issued. The department
661 shall assess a penalty of \$4,500 ~~\$3,000~~ for failure to timely
662 upgrade a storage tank system. The department shall assess a
663 penalty of \$3,000 ~~\$2,000~~ for failure to conduct or maintain
664 required release detection; failure to timely investigate a
665 suspected release from a storage system; depositing motor fuel
666 into an unregistered storage tank system; failure to timely
667 assess or remediate petroleum contamination; or failure to

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properly install a storage tank system. The department shall assess a penalty of \$1,500 ~~\$1,000~~ for failure to properly operate, maintain, or close a storage tank system.

(4) In an administrative proceeding, in addition to the penalties that may be assessed under subsection (3), the department shall assess administrative penalties according to the following schedule:

(a) For failure to satisfy financial responsibility requirements or for violation of s. 377.371(1), \$7,500 ~~\$5,000~~.

(b) For failure to install, maintain, or use a required pollution control system or device, \$6,000 ~~\$4,000~~.

(c) For failure to obtain a required permit before construction or modification, \$4,500 ~~\$3,000~~.

(d) For failure to conduct required monitoring or testing; failure to conduct required release detection; or failure to construct in compliance with a permit, \$3,000 ~~\$2,000~~.

(e) For failure to maintain required staff to respond to emergencies; failure to conduct required training; failure to prepare, maintain, or update required contingency plans; failure to adequately respond to emergencies to bring an emergency situation under control; or failure to submit required notification to the department, \$1,500 ~~\$1,000~~.

(f) Except as provided in subsection (2) with respect to public water systems serving a population of more than 10,000, for failure to prepare, submit, maintain, or use required reports or other required documentation, \$750 ~~\$500~~.

(5) Except as provided in subsection (2) with respect to public water systems serving a population of more than 10,000, for failure to comply with any other departmental regulatory

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statute or rule requirement not otherwise identified in this section, the department may assess a penalty of \$1,000 ~~\$500~~.

(6) For each additional day during which a violation occurs, the administrative penalties in subsections ~~subsection~~ (3), ~~subsection~~ (4), and ~~subsection~~ (5) may be assessed per day per violation.

(7) The history of noncompliance of the violator for any previous violation resulting in an executed consent order, but not including a consent order entered into without a finding of violation, or resulting in a final order or judgment after the effective date of this law involving the imposition of \$3,000 ~~\$2,000~~ or more in penalties shall be taken into consideration in the following manner:

(a) One previous such violation within 5 years prior to the filing of the notice of violation will result in a 25-percent per day increase in the scheduled administrative penalty.

(b) Two previous such violations within 5 years prior to the filing of the notice of violation will result in a 50-percent per day increase in the scheduled administrative penalty.

(c) Three or more previous such violations within 5 years prior to the filing of the notice of violation will result in a 100-percent per day increase in the scheduled administrative penalty.

(8) The direct economic benefit gained by the violator from the violation, where consideration of economic benefit is provided by Florida law or required by federal law as part of a federally delegated or approved program, shall be added to the scheduled administrative penalty. The total administrative

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penalty, including any economic benefit added to the scheduled administrative penalty, may ~~shall~~ not exceed \$15,000 ~~\$10,000~~.

(9) The administrative penalties assessed for any particular violation may ~~shall~~ not exceed \$7,500 ~~\$5,000~~ against any one violator, unless the violator has a history of noncompliance, the economic benefit of the violation as described in subsection (8) exceeds \$7,500 ~~\$5,000~~, or there are multiday violations. The total administrative penalties may ~~shall~~ not exceed \$50,000 ~~\$10,000~~ per assessment for all violations attributable to a specific person in the notice of violation.

(10) The administrative law judge may receive evidence in mitigation. The penalties identified in subsections ~~subsection~~ (3), ~~subsection~~ (4), and ~~subsection~~ (5) may be reduced up to 50 percent by the administrative law judge for mitigating circumstances, including good faith efforts to comply prior to or after discovery of the violations by the department. Upon an affirmative finding that the violation was caused by circumstances beyond the reasonable control of the respondent and could not have been prevented by respondent's due diligence, the administrative law judge may further reduce the penalty.

(11) Penalties collected pursuant to this section shall be deposited into the Water Quality Assurance Trust Fund or other trust fund designated by statute and shall be used to fund the restoration of ecosystems, or polluted areas of the state, as defined by the department, to their condition before pollution occurred. The Florida Conflict Resolution Consortium may use a portion of the fund to administer the mediation process provided in paragraph (2) (e) and to contract with private mediators for

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administrative penalty cases.

(12) The purpose of the administrative penalty schedule and process is to provide a more predictable and efficient manner for individuals and businesses to resolve relatively minor environmental disputes. Subsections (3)-(7) may ~~Subsection (3), subsection (4), subsection (5), subsection (6), or subsection (7)~~ shall not be construed as limiting a state court in the assessment of damages. The administrative penalty schedule does not apply to the judicial imposition of civil penalties in state court as provided in this section.

Section 15. Subsection (1) of section 403.141, Florida Statutes, is amended to read:

403.141 Civil liability; joint and several liability.—

(1) A person who ~~Whoever~~ commits a violation specified in s. 403.161(1) is liable to the state for any damage caused to the air, waters, or property, including animal, plant, or aquatic life, of the state and for reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including animal, plant, and aquatic life, of the state to their former condition, and furthermore is subject to the judicial imposition of a civil penalty for each offense in an amount of not more than \$15,000 ~~\$10,000~~ per offense. However, the court may receive evidence in mitigation. Until a violation is resolved by order or judgment, each day during any portion of which such violation occurs or is not remediated constitutes a separate offense. Nothing herein gives ~~shall give~~ the department the right to bring an action on behalf of any private person.

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784 Section 16. Subsections (2) through (5) of section 403.161,
785 Florida Statutes, are amended to read:

786 403.161 Prohibitions, violation, penalty, intent.—

787 (2) A person who ~~Whoever~~ commits a violation specified in
788 subsection (1) is liable to the state for any damage caused and
789 for civil penalties as provided in s. 403.141.

790 (3) A ~~Any~~ person who willfully commits a violation
791 specified in paragraph (1)(a) commits ~~is guilty of~~ a felony of
792 the third degree, punishable as provided in ss. 775.082(3)(e)
793 and 775.083(1)(g) by a fine of not more than \$50,000 or by
794 imprisonment for 5 years, or by both, for each offense. Until a
795 violation is resolved by order or judgment, each day during any
796 portion of which such violation occurs or is not remediated
797 constitutes a separate offense.

798 (4) A ~~Any~~ person who commits a violation specified in
799 paragraph (1)(a) or paragraph (1)(b) due to reckless
800 indifference or gross careless disregard commits ~~is guilty of~~ a
801 misdemeanor of the second degree, punishable as provided in ss.
802 775.082(4)(b) and 775.083(1)(g) by a fine of not more than
803 \$10,000 ~~\$5,000~~ or by 60 days in jail, or by both, for each
804 offense.

805 (5) A ~~Any~~ person who willfully commits a violation
806 specified in paragraph (1)(b) or who commits a violation
807 specified in paragraph (1)(c) commits ~~is guilty of~~ a misdemeanor
808 of the first degree punishable as provided in ss. 775.082(4)(a)
809 and 775.083(1)(g) by a fine of not more than \$10,000 or by 6
810 months in jail, or by both for each offense.

811 Section 17. Paragraph (a) of subsection (6) of section
812 403.413, Florida Statutes, is amended to read:

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403.413 Florida Litter Law.—

(6) PENALTIES; ENFORCEMENT.—

(a) Any person who dumps litter in violation of subsection (4) in an amount not exceeding 15 pounds in weight or 27 cubic feet in volume and not for commercial purposes commits ~~is guilty~~ of a noncriminal infraction, punishable by a civil penalty of \$150 ~~\$100~~, from which \$50 shall be deposited into the Solid Waste Management Trust Fund to be used for the solid waste management grant program pursuant to s. 403.7095. In addition, the court may require the violator to pick up litter or perform other labor commensurate with the offense committed.

Section 18. Subsection (5) of section 403.7234, Florida Statutes, is amended to read:

403.7234 Small quantity generator notification and verification program.—

(5) Any small quantity generator who does not comply with the requirements of subsection (4) and who has received a notification and survey in person or through one certified letter from the county is subject to a fine of between \$75 ~~\$50~~ and \$150 ~~\$100~~ per day for a maximum of 100 days. The county may collect such fines and deposit them in its general revenue fund. Fines collected by the county shall be used to carry out the notification and verification procedure established in this section. If there are excess funds after the notification and verification procedures have been completed, such funds shall be used for hazardous and solid waste management purposes only.

Section 19. Subsection (3) of section 403.726, Florida Statutes, is amended to read:

403.726 Abatement of imminent hazard caused by hazardous

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substance.—

(3) An imminent hazard exists if any hazardous substance creates an immediate and substantial danger to human health, safety, or welfare or to the environment. The department may institute action in its own name, using the procedures and remedies of s. 403.121 or s. 403.131, to abate an imminent hazard. However, the department is authorized to recover a civil penalty of not more than \$37,500 ~~\$25,000~~ for each day until a ~~of~~ ~~continued~~ violation is resolved by order or judgment. Whenever serious harm to human health, safety, and welfare; the environment; or private or public property may occur prior to completion of an administrative hearing or other formal proceeding that which might be initiated to abate the risk of serious harm, the department may obtain, ex parte, an injunction without paying filing and service fees prior to the filing and service of process.

Section 20. Paragraph (a) of subsection (3) of section 403.727, Florida Statutes, is amended to read:

403.727 Violations; defenses, penalties, and remedies.—

(3) Violations of the provisions of this act are punishable as follows:

(a) Any person who violates ~~the provisions of~~ this act, the rules or orders of the department, or the conditions of a permit is liable to the state for any damages specified in s. 403.141 and for a civil penalty of not more than \$75,000 ~~\$50,000~~ for each day of continued violation or until a violation is resolved by order or judgment, except as otherwise provided herein. The department may revoke any permit issued to the violator. In any action by the department against a small hazardous waste

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generator for the improper disposal of hazardous wastes, a rebuttable presumption of improper disposal shall be created if the generator was notified pursuant to s. 403.7234; the generator shall then have the burden of proving that the disposal was proper. If the generator was not so notified, the burden of proving improper disposal shall be placed upon the department.

Section 21. Subsection (8) of section 403.93345, Florida Statutes, is amended to read:

403.93345 Coral reef protection.—

(8) In addition to the compensation described in subsection (5), the department may assess, per occurrence, civil penalties according to the following schedule:

(a) For any anchoring of a vessel on a coral reef or for any other damage to a coral reef totaling less than or equal to an area of 1 square meter, \$225 ~~\$150~~, provided that a responsible party who has anchored a recreational vessel as defined in s. 327.02 which is lawfully registered or exempt from registration pursuant to chapter 328 is issued, at least once, a warning letter in lieu of penalty; with aggravating circumstances, an additional \$225 ~~\$150~~; occurring within a state park or aquatic preserve, an additional \$225 ~~\$150~~.

(b) For damage totaling more than an area of 1 square meter but less than or equal to an area of 10 square meters, \$450 ~~\$300~~ per square meter; with aggravating circumstances, an additional \$450 ~~\$300~~ per square meter; occurring within a state park or aquatic preserve, an additional \$450 ~~\$300~~ per square meter.

(c) For damage exceeding an area of 10 square meters, \$1,500 ~~\$1,000~~ per square meter; with aggravating circumstances,

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an additional \$1,500 ~~\$1,000~~ per square meter; occurring within a state park or aquatic preserve, an additional \$1,500 ~~\$1,000~~ per square meter.

(d) For a second violation, the total penalty may be doubled.

(e) For a third violation, the total penalty may be tripled.

(f) For any violation after a third violation, the total penalty may be quadrupled.

(g) The total of penalties levied may not exceed \$375,000 ~~\$250,000~~ per occurrence.

Section 22. Subsection (5) of s. 823.11, Florida Statutes, is reenacted for the purpose of incorporating the amendment made by this act to s. 376.16, Florida Statutes, in a reference thereto.

Section 23. Subsection (5) of s. 403.077, subsection (2) of s. 403.131, paragraph (d) of subsection (3) of s. 403.4154, and subsection (5) of s. 403.860, Florida Statutes, are reenacted for the purpose of incorporating the amendment made by this act to s. 403.121, Florida Statutes, in references thereto.

Section 24. Subsection (10) of s. 403.708, subsection (7) of s. 403.7191, and s. 403.811, Florida Statutes, are reenacted for the purpose of incorporating the amendment made by this act to s. 403.141, Florida Statutes, in references thereto.

Section 25. Subsection (2) of s. 403.7255, Florida Statutes, is reenacted for the purpose of incorporating the amendment made by this act to s. 403.161, Florida Statutes, in a reference thereto.

Section 26. Subsection (8) of s. 403.7186, Florida

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929 Statutes, is reenacted for the purpose of incorporating the
930 amendments made by this act to ss. 403.141 and 403.161, Florida
931 Statutes, in references thereto.

932 Section 27. This act shall take effect July 1, 2020.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1450

INTRODUCER: Environment and Natural Resources Committee and Senator Gruters

SUBJECT: Environmental Enforcement

DATE: January 27, 2020

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1450 makes numerous changes to the penalties for violating Florida's environmental laws. The bill increases required or maximum environmental penalties in various sections of the Florida Statutes. Most of the changes increase a penalty by 50 percent. Additionally, the bill changes the duration that certain penalties may run, so that, until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.

II. Present Situation:

Environmental Violations

The Department of Environmental Protection (DEP) is Florida's lead agency for environmental management and stewardship, implementing many programs to protect the state's air, water, and land.¹ In accordance with the state's numerous environmental laws, DEP's responsibilities include the compliance and enforcement process.² Violations of Florida's environmental laws can result in damages and administrative, civil, and/or criminal penalties.

¹ DEP, *About DEP*, <https://floridadep.gov/about-dep> (last visited Jan. 21, 2020); s. 20.255, F.S.

² See DEP, *Enforcement Manual, Chapter One: DEP Regulatory Enforcement Organization* (2017), available at <https://floridadep.gov/sites/default/files/Chapter%201%20October%202017.pdf>.

Damages

In environmental enforcement, damages should compensate the state for the value of the loss to natural resources caused by the violation.³ DEP may institute a civil action in court or an administrative proceeding in the Division of Administrative Hearings (DOAH) to recover damages for any injury to the air, waters, or property, including animal, plant, and aquatic life, of the state caused by any violation.⁴ Damages can cover the cost of remediating the damage done to the environment, and/or costs incurred by the state in responding to the damage, such as tracing the source, controlling and abating the source, and restoring the environmental resources to their former condition.⁵

Penalties

In addition to damages, a violator can be liable for penalties. Penalties differ from damages in that they are designed to punish the wrongdoer rather than to address the harm caused by the violation.⁶ In environmental enforcement, penalties should create incentives to bring immediate compliance and curb future violations.⁷

Administrative penalties can be levied directly by the agency or in a proceeding in DOAH.⁸ The formal administrative enforcement process is typically initiated by serving a notice of violation, and is finalized through entry of a consent order or final order.⁹ In most administrative proceedings, DEP has the final decision.¹⁰ An administrative law judge has the final decision for administrative proceedings involving the Environmental Litigation Reform Act, codified in s. 403.121, F.S., which is the primary statute addressing DEP's administrative penalties.¹¹ Compared to the judicial process, the administrative process is generally considered less expensive, faster and less time consuming, and more conducive to negotiated settlement.¹² However, if DEP is seeking immediate injunctive relief, which compels a party to act or stop acting, an order must be obtained from a court.¹³

DEP must proceed administratively in cases in which DEP seeks administrative penalties that do not exceed \$10,000 per assessment.¹⁴ DEP is prohibited from imposing administrative penalties in excess of \$10,000 in a notice of violation.¹⁵ DEP may not have more than one notice of

³ DEP, *Enforcement Manual, Chapter 6: Judicial Process and Remedies, Collections, and Bankruptcies*, 89 (2014), available at <https://floridadep.gov/sites/default/files/chapter6.pdf>.

⁴ See s. 403.121, F.S.

⁵ See ss. 403.121 and 403.141, F.S.

⁶ See BLACK'S LAW DICTIONARY 1247 (9th ed. 2009).

⁷ DEP, *Enforcement Manual, Chapter 6: Judicial Process and Remedies, Collections, and Bankruptcies*, 89 (2014), available at <https://floridadep.gov/sites/default/files/chapter6.pdf>.

⁸ See ch. 120, F.S. The administrative process is formalized in the Administrative Procedure Act.

⁹ DEP, *Enforcement Manual, Chapter Five: The Administrative Process and Remedies*, 58 (2014), available at https://floridadep.gov/sites/default/files/chapter5_0.pdf.

¹⁰ *Id.*

¹¹ *Id.* at 58-59, 66-70; Ch. 2001-258, Laws of Fla.

¹² DEP, *Enforcement Manual, Chapter Five: The Administrative Process and Remedies*, 59 (2014).

¹³ *Id.* at 59-60.

¹⁴ Section 403.121(2)(b), F.S.; DEP, *Enforcement Manual, Chapter Five: The Administrative Process and Remedies*, 66-67 (2014). This requirement does not apply to underground injection, hazardous waste, or asbestos programs.

¹⁵ Section 403.121(2)(b), F.S.

violation pending against a party unless the violations occurred at a different site or the violations were discovered by DEP subsequent to the filing of a previous notice of violation.¹⁶

Civil penalties are noncriminal fines that are generally levied by a court, and which agencies may be authorized to impose.¹⁷ DEP may pursue two forms of action in state court: a petition to enforce an order previously entered through the administrative process, or a complaint for violations of statutes or rules.¹⁸ Under both forms, DEP may seek injunctive relief, civil penalties, damages, and costs and expenses.¹⁹ For judicially imposed civil penalties, DEP is authorized to recover up to \$10,000 per offense, with each day during any portion of which a violation occurs constituting a separate offense.²⁰

A court or an administrative law judge may receive evidence in mitigation, which may result in the decrease or elimination of penalties.²¹

Criminal penalties can include jail/prison time, a criminal fine, or both. Florida law imposes criminal penalties for certain violations of environmental law.²² Punishments for such violations may vary based on standards of intent, such as willful, reckless indifference, or gross careless disregard.²³

This present situation describes DEP's general authority to levy penalties, largely pursuant to ch. 403, F.S. DEP derives enforcement authority from several different chapters of Florida law based on subject matter, so DEP has additional enforcement authority for programs not covered in ch. 403, F.S. Additionally, the Department of Legal Affairs, any political subdivision or municipality of the state, or a citizen of the state may maintain an action for injunctive relief against the government entity charged with enforcing environmental laws or the violator of the laws.²⁴

Dredge and Fill Permitting Program

In 2018, the Legislature authorized DEP to assume responsibility for the federal dredge and fill permitting program under the Clean Water Act, to regulate the discharge of dredged or fill material into Florida's navigable waters.²⁵ Currently, in Florida, the program is jointly implemented by the United States Environmental Protection Agency (EPA) and the United States Army Corps of Engineers (USACE).²⁶ Assumption of the dredge and fill permitting program requires EPA approval. DEP may adopt any federal requirements, criteria, or

¹⁶ *Id.*

¹⁷ The Environmental Litigation Reform Act allows DEP to seek civil penalties of up to \$10,000 through the administrative process for most environmental violations. The Act may not be used if penalties exceed \$10,000.

¹⁸ DEP, *Enforcement Manual, Chapter Six: Judicial Process and Remedies, Collections, and Bankruptcies*, 86 (2014), available at <https://floridadep.gov/sites/default/files/chapter6.pdf>.

¹⁹ *Id.*

²⁰ Section 403.121(1)(b), F.S.

²¹ Section 403.121, F.S.

²² Section 403.161, F.S.

²³ *Id.*

²⁴ Section 403.412, F.S.

²⁵ Chapter 2018-88, Laws of Fla.; s. 373.4146, F.S.; 33 U.S.C. s. 1344(g).

²⁶ 33 U.S.C. s. 1344(a) and (b).

regulations necessary to obtain assumption.²⁷ Prior to assuming the program, DEP must submit various materials to the EPA, including a complete program description, a memorandum of understanding between the state and EPA, a memorandum of understanding between the state and USACE, copies of all applicable statutes and regulations, and more.²⁸ DEP is still in the process of developing the elements of the program for submission to the EPA.

Regarding enforcement authority, federal regulations require the state to have authority to carry out certain enforcement actions. For example, to assume the program, DEP must have authority to seek criminal fines of at least \$5,000 per violation against any person who:

- Knowingly makes false statements or representation in any document required under the Clean Water Act, federal regulations, or the state program; or
- Falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under a permit.²⁹

The approved maximum criminal fine must be assessable for each violation and, if the violation is continuous, must be assessable in that maximum amount for each day of violation.³⁰ The burden of proof and degree of knowledge or intent required under state law for establishing violations may not be greater than the burden of proof or degree of knowledge or intent EPA must bear when it brings an action under the Clean Water Act.³¹

Florida law provides that it is a violation of part IV of ch. 373, F.S., and ch. 403, F.S., to:

- Knowingly make any false statement or representation in documents required by state law; or
- Falsify, tamper with, or knowingly render inaccurate any monitoring device or method required by state law, rule, or permit.³²

The criminal penalties for these violations are fines of up to \$10,000, 6 months in jail, or both.³³ However, the penalty provisions in Florida law apply to “[a]ny person who willfully” commits the violations.³⁴ This application of the “willfully” standard of intent in the state penalties is inconsistent with the requirements in the federal regulations, which do not contain such a standard.

III. Effect of Proposed Changes:

Sections 1-21 amend sections of the Florida Statutes containing various penalties for violations of environmental laws. In general, the bill increases the required or maximum penalties in the provisions listed below. In most cases, the penalties are increased by 50 percent.

Several places in existing law impose a penalty for each offense, with each day during which a violation occurs constituting a separate offense. The bill changes that standard to: each day

²⁷ Section 373.4146(2) and (5), F.S.

²⁸ 40 C.F.R. ss. 233.10-233.16.

²⁹ 40 C.F.R. s. 233.41(a)(3)(iii).

³⁰ 40 C.F.R. s. 233.41(b)(1).

³¹ 40 C.F.R. s. 233.41(b)(2).

³² Sections 373.430(1)(c) and (5) and 403.161(1)(c) and (5), F.S.

³³ Sections 373.403(5) and 403.161(5), F.S.

³⁴ *Id.*

during which a violation occurs or is not remediated,³⁵ until a violation is resolved by order or judgment. This standard is changed in several sections and created in others.

The table below summarizes existing penalties and the penalties as revised by the bill. All penalties are levied by the Department of Environmental Protection (DEP) unless otherwise specified.

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
161.054 (1), F.S.	Violating statutes, rules or orders regarding coastal construction	An administrative fine for each offense of up to \$10,000. Each day during any portion of which a violation occurs constitutes a separate offense.	An administrative fine for each offense of up to \$15,000. Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.
258.397 (7), F.S.	Violating a statute or rules regarding Biscayne Bay Aquatic Preserve	Authorizes the Department of Legal Affairs to bring an action for civil penalties of \$5,000 per day.	Authorizes the Department of Legal Affairs to bring an action for civil penalties of \$7,500 per day. Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.
258.46, F.S.	Violating the Florida Aquatic Preserve Act or related rules	A civil penalty of not less than \$500 per day and not more than \$5,000 per day of a violation.	A civil penalty of not less than \$750 per day and not more than \$7,500 per day of a violation. Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.
373.129 (5), F.S.	Violating ch. 373, F.S., relating to water resources	Authorizes DEP, any water management district, any local board, or certain local	Authorizes DEP, any water management district, any local board, or certain local governments to recover a civil

³⁵ The word “remediation” can refer to a large range of activities and timescales. In environmental law, remediation is generally described as restoring land, water, or air to its former state following some harm or pollution; *see* BLACK’S LAW DICTIONARY 1407 (9th ed. 2009).

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
		governments ³⁶ to recover a civil penalty for each offense, in an amount not to exceed \$10,000 per offense. Each date during which a violation occurs constitutes a separate offense.	penalty for each offense, in an amount not to exceed \$15,000 per offense. Until a violation is resolved by order or judgment, each date during any portion of which a violation occurs or is not remediated constitutes a separate offense.
373.209 (3)(b), F.S.	Violating a statute regarding artesian wells	A civil penalty of \$100 per day for each day of a violation and each act of a violation.	A civil penalty of \$150 per day for each day of a violation and each act of a violation.
373.430 (3), F.S.	Violating statutes regarding surface waters by willfully causing pollution	A fine of not more than \$50,000 or imprisonment for 5 years, or both, for each offense. Each day during any portion of which a violation occurs constitutes a separate offense.	A fine of not more than \$50,000 or imprisonment for 5 years, or both, for each offense. Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.
373.430 (4) and (5), F.S.	Violating statutes regarding surface waters by causing pollution due to reckless indifference or gross careless disregard	A fine of not more than \$5,000 or 60 days in jail, or both, for each offense: causing certain pollution. A fine of not more than \$10,000, 6 months in jail, or both for willfully committing the following violation: knowingly falsifying required documentation or falsifying, tampering with, or rendering inaccurate required monitoring devices or methods.	A fine of not more than \$10,000 or 60 days in jail, or both, for each offense: causing certain pollution; failing to obtain any permit; or violating or failing to comply with any rule, regulation, order, or permit. A fine of not more than \$10,000, 6 months in jail, or both for committing the following violation: knowingly falsifying required documentation or falsifying, tampering with, or rendering inaccurate required monitoring devices or methods.

³⁶ Section 373.103(8), F.S. Under certain circumstances, DEP may authorize a water management district to delegate to a local government by rule or agreement the power and duty to administer and enforce any of the statutes, rules, or regulations relating to stormwater permitting or surface water management which the district is authorized or required to administer.

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
376.065 (5)(a) and (e), F.S.	Violating a statute regarding terminal facility certifications	<p>A civil penalty of \$500 for any violation of the section or a certification.</p> <p>A civil penalty of \$500 imposed by a county court if commission of the infraction is proved.</p>	<p>A civil penalty of \$750 for any violation of the section or a certification.</p> <p>A civil penalty of \$750 imposed by a county court if commission of the infraction is proved.</p>
376.071 (2)(a) and (e), F.S.	Violations regarding discharge contingency plans for vessels	<p>A civil penalty of \$5,000 for each infraction.</p> <p>A civil penalty of \$5,000 imposed by a county court if commission of the infraction is proved.</p>	<p>A civil penalty of \$7,500 for each infraction.</p> <p>A civil penalty of \$7,500 imposed by a county court if commission of the infraction is proved.</p>
376.16 (1), F.S.	Violating the Pollutant Discharge Prevention and Control Act or DEP rules or orders	<p>A civil penalty of up to \$50,000 per violation per day.</p> <p>Each day during any portion of which a violation occurs constitutes a separate offense.</p>	<p>A civil penalty of up to \$75,000 per violation per day.</p> <p>Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.</p>
376.16 (2), (3), (7), and (8), F.S.	Violating the Pollutant Discharge Prevention and Control Act or DEP rules or orders	<p>In addition to the penalty in subsection (1), for persons responsible for two or more discharges within a 12-month period at the same facility, the statute provides the following penalties:</p> <ul style="list-style-type: none"> Gasoline/diesel over 5 gallons - a civil penalty of \$500 for the second discharge and \$1,000 for each subsequent discharge within a 12-month period. Other pollutants - a civil penalty of \$2,500 for the second discharge and \$5,000 for each subsequent discharge within a 12-month period. <p>For persons responsible for two or more discharges within a 12-month period at the same facility,</p>	<p>In addition to the penalty in subsection (1), for persons responsible for two or more discharges within a 12-month period at the same facility, the statute provides the following penalties:</p> <ul style="list-style-type: none"> Gasoline/diesel over 5 gallons - a civil penalty of \$750 for the second discharge and \$1,500 for each subsequent discharge within a 12-month period. Other pollutants - a civil penalty of \$3,750 for the second discharge and \$7,500 for each subsequent discharge within a 12-month period. <p>For persons responsible for two or more discharges within a 12-month period at the same facility,</p>

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
		<p>the statute provides the following penalties:</p> <ul style="list-style-type: none"> • Gasoline/diesel equal to or less than 5 gallons - a civil penalty of \$50 for each discharge subsequent to the first. • Other pollutants equal to or less than 5 gallons - a civil penalty of \$100 for each discharge subsequent to the first. <p>Authorizes the county court to impose the following civil penalties if the commission of an infraction is proved: up to \$500 for the second discharge of gasoline/diesel and up to \$1,000 for each subsequent discharge of gasoline/diesel within a 12-month period; up to \$5,000 for the second discharge of other pollutants and up to \$10,000 for each subsequent discharge within a 12-month period.</p>	<p>the statute provides the following penalties:</p> <ul style="list-style-type: none"> • Gasoline/diesel equal to or less than 5 gallons - a civil penalty of \$75 for each discharge subsequent to the first; • Other pollutants equal to or less than 5 gallons - a civil penalty of \$150 for each discharge subsequent to the first. <p>Authorizes the county court to impose the following civil penalties if the commission of an infraction is proved: up to \$750 for the second discharge of gasoline/diesel and up to \$1,500 for each subsequent discharge of gasoline/diesel within a 12-month period; up to \$7,500 for the second discharge of other pollutants and up to \$15,000 for each subsequent discharge within a 12-month period.</p>
376.25 (6)(a), F.S.	Violating a statute regarding gambling vessels	A civil penalty of not more than \$50,000 for each violation.	<p>A civil penalty of not more than \$75,000 for each violation.</p> <p>Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.</p>
377.37 (1)(a), F.S.	Violating statutory provisions, rules, orders or permits regarding oil and gas resources	<p>A civil penalty of not more than \$10,000 for each offense.</p> <p>Each day during any portion of which a violation occurs constitutes a separate offense.</p>	<p>A civil penalty of not more than \$15,000 for each offense.</p> <p>Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.</p>

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
378.211 (2), F.S.	Violating statutes, rules, or orders regarding land reclamation	<p>A civil penalty of \$100 per violation of a minor or technical nature; \$1,000 per major violation by an operator on which a penalty has not been imposed during the 5 previous years; and \$5,000 per major violation not otherwise covered.</p> <p>Each day or any portion thereof in which a violation continues constitutes a separate violation.³⁷</p>	<p>A civil penalty of \$150 per violation of a minor or technical nature; \$1,500 per major violation by an operator on which a penalty has not been imposed during the 5 previous years; and \$7,500 per major violation not otherwise covered.</p> <p>Until a violation is resolved by order or judgment, each day or any portion thereof in which a violation continues or is not remediated constitutes a separate violation.</p>
403.086 (2), F.S.	Violating orders regarding sanitary sewage disposal	A civil penalty of \$500 for each 24-hour day or fraction thereof that the failure is allowed to continue.	A civil penalty of \$750 for each 24-hour day or fraction thereof that the failure is allowed to continue.
403.121 (1)(b), F.S.	Violating ch. 403, F.S., regarding environmental control	<p>For judicial remedies - authorizes DEP to judicially pursue and recover a civil penalty of not more than \$10,000 per offense.</p> <p>Each day during any portion of which a violation occurs constitutes a separate offense.</p>	<p>For judicial remedies - authorizes DEP to judicially pursue and recover a civil penalty of not more than \$15,000 per offense.</p> <p>Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.</p>
403.121 (2)(b) and (g) F.S.	Violating ch. 403, F.S., regarding environmental control	For administrative remedies - (except for violations involving hazardous wastes, asbestos, or underground injection) DEP must proceed administratively when seeking administrative penalties not exceeding \$10,000 per assessment.	For administrative remedies - (except for violations involving hazardous wastes, asbestos, or underground injection) DEP must proceed administratively when seeking administrative penalties not exceeding \$50,000 per assessment.

³⁷ Section 378.211(4), F.S. These civil penalties do not begin to accrue until the expiration of a specified time for initiating corrective action, set forth in a written notice of violation issued by DEP.

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
		<p>DEP may not impose penalties in excess of \$10,000 in a notice of violation.</p> <p>DEP retains the authority to judicially pursue penalties in excess of \$10,000 for violations not included in the penalty schedule, or for multiple or multiday violations alleged to exceed a total of \$10,000.</p> <p>Any case filed in state court because it is alleged to exceed a total of \$10,000 in penalties may be settled in the court action for less than \$10,000.</p>	<p>DEP may not impose penalties in excess of \$50,000 in a notice of violation.</p> <p>DEP retains the authority to judicially pursue penalties in excess of \$50,000 for violations not included in the penalty schedule, or for multiple or multiday violations alleged to exceed a total of \$50,000.</p> <p>Any case filed in state court because it is alleged to exceed a total of \$50,000 in penalties may be settled in the court action for less than \$50,000.</p>
403.121 (3)(a), F.S. ³⁸	Administrative penalty schedule: violations regarding drinking water contamination	<p>\$2,000 for a Maximum Containment Level violation; plus \$1,000 for a primary, inorganic, organic, or radiological Maximum Contaminant Level or fecal coliform bacteria violation; plus \$1,000 if the violation occurs at a community water system; plus \$1,000 if any Maximum Contaminant Level is exceeded by more than 100 percent.</p> <p>\$3,000 for failure to obtain a clearance letter before placing an ineligible drinking water system into service.</p>	<p>\$3,000 for a Maximum Containment Level violation; plus \$1,500 for a primary, inorganic, organic, or radiological Maximum Contaminant Level or fecal coliform bacteria violation; plus \$1,500 if the violation occurs at a community water system; plus \$1,500 if any Maximum Contaminant Level is exceeded by more than 100 percent.</p> <p>\$4,500 for failure to obtain a clearance letter before placing an ineligible drinking water system into service.</p>
403.121 (3)(b), F.S.	Administrative penalty schedule: violations regarding wastewater	<p>\$1,000 for failure to obtain a required wastewater permit (other than a permit for surface water discharge).</p> <p>\$2,000 for an unlawful discharge or exceedance resulting in a domestic or industrial wastewater violation (not involving a surface</p>	<p>\$1,500 for failure to obtain a required wastewater permit (other than a permit for surface water discharge).</p> <p>\$3,000 for an unlawful discharge or exceedance resulting in a domestic or industrial wastewater violation (not involving a surface</p>

³⁸ Section 403.121(3), F.S. The administrative penalties in this subsection do not apply to hazardous waste, asbestos, or underground injection.

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
		<p>water or groundwater quality violation).</p> <p>\$5,000 for an unlawful discharge or exceedance resulting in a surface water or groundwater quality violation.</p>	<p>water or groundwater quality violation).</p> <p>\$7,500 for an unlawful discharge or exceedance resulting in a surface water or groundwater quality violation.</p>
403.121 (3)(c), F.S.	Administrative penalty schedule: violations regarding dredge and fill or stormwater	<p>\$1,000 for an unlawful dredging, filling, or construction of a stormwater management system; plus \$2,000 if the dredging or filling occurs in an aquatic preserve, an Outstanding Florida water, a conservation easement, or a Class I or Class II surface water; plus \$1,000 if the area dredged or filled is greater than .25 acres but less than or equal to .5 acres; plus \$1,000 if the area dredged or filled is greater than .5 acres but less than or equal to 1 acre.</p> <p>\$3,000 for failure to complete required mitigation, record a required conservation easement, or for a water quality violation resulting from dredging and filling activities, stormwater construction activities or failure of a stormwater treatment facility.</p> <p>\$2,000 (stormwater systems serving less than 5 acres) for failure to properly or timely construct a stormwater treatment system.</p> <p>\$5,000 per violation, in addition to the above penalties, for conducting unlawful dredging or filling.</p>	<p>\$1,500 for an unlawful dredging, filling, or construction of a stormwater management system; plus \$3,000 if the dredging or filling occurs in an aquatic preserve, an Outstanding Florida water, a conservation easement, or a Class I or Class II surface water; plus \$1,500 if the area dredged or filled is greater than .25 acres but less than or equal to .5 acres; plus \$1,500 if the area dredged or filled is greater than .5 acres but less than or equal to 1 acre.</p> <p>\$4,500 for failure to complete required mitigation, record a required conservation easement, or for a water quality violation resulting from dredging and filling activities, stormwater construction activities or failure of a stormwater treatment facility.</p> <p>\$3,000 (stormwater systems serving less than 5 acres) for failure to properly or timely construct a stormwater treatment system.</p> <p>\$7,500 per violation, in addition to the above penalties, for conducting unlawful dredging or filling.</p>
403.121 (3)(d), F.S.	Administrative penalty schedule:	\$5,000 per violation for conducting mangrove trimming or alterations without a permit.	\$7,500 per violation for conducting mangrove trimming or alterations without a permit.

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
	violations regarding mangrove trimming		
403.121 (3)(e), F.S.	Administrative penalty schedule: violations regarding solid waste	<p>\$2,000 for unlawful disposal or storage of solid waste; plus \$1,000 for Class I or III or construction and demolition debris in excess of 20 cubic yards; plus \$1,000 if the waste is disposed of or stored in a waterbody or within 500 feet of a potable water well; plus \$1,000 if the waste contains certain amounts of PCB, untreated biomedical waste, friable asbestos, used oil, or lead acid batteries.</p> <p>\$3,000 for failure to maintain leachate control, unauthorized burning, failure to have a trained spotter on duty, or failure to provide access control for three consecutive inspections.</p> <p>\$2,000 for failure to construct or maintain a required stormwater management system.</p>	<p>\$3,000 for unlawful disposal or storage of solid waste; plus \$1,000 for Class I or III or construction and demolition debris in excess of 20 cubic yards; plus \$1,500 if the waste is disposed of or stored in a waterbody or within 500 feet of a potable water well; plus \$1,500 if the waste contains certain amounts of PCB, untreated biomedical waste, friable asbestos, used oil, or lead acid batteries.</p> <p>\$4,500 for failure to maintain leachate control, unauthorized burning, failure to have a trained spotter on duty, or failure to provide access control for three consecutive inspections.</p> <p>\$3,000 for failure to construct or maintain a required stormwater management system.</p>
403.121 (3)(f), F.S.	Administrative penalty schedule: violations regarding air emissions	\$1,000 for an unlawful air emission or exceedance; plus \$3,000 for emissions from the major source of the violating pollutant; plus \$1,000 if over 150% of the allowable level.	\$1,500 for an unlawful air emission or exceedance; plus \$4,500 for emissions from the major source of the violating pollutant; plus \$1,500 if over 150% of the allowable level.
403.121 (3)(g), F.S.	Administrative penalty schedule: violations regarding storage tank system and petroleum contamination	\$5,000 for failure to empty a damaged storage system as necessary to ensure a release does not occur until repairs are completed, when a release has occurred, failure to timely recover free product, or failure to conduct remediation or monitoring activities until a no-further-action	\$7,500 for failure to empty a damaged storage system as necessary to ensure a release does not occur until repairs are completed, when a release has occurred, failure to timely recover free product, or failure to conduct remediation or monitoring activities until a no-further-action

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
		<p>or site-rehabilitation completion order has been issued.</p> <p>\$3,000 for failure to timely upgrade a storage tank system.</p> <p>\$2,000 for failure to conduct or maintain required release detection, failure to timely investigate a suspected release, depositing motor fuel into an unregistered storage tank system, failure to timely assess or remediate petroleum contamination, or failure to properly install a storage tank system.</p> <p>\$1,000 for failure to properly operate, maintain, or close a storage tank system.</p>	<p>or site-rehabilitation completion order has been issued.</p> <p>\$4,500 for failure to timely upgrade a storage tank system.</p> <p>\$3,000 for failure to conduct or maintain required release detection, failure to timely investigate a suspected release, depositing motor fuel into an unregistered storage tank system, failure to timely assess or remediate petroleum contamination, or failure to properly install a storage tank system.</p> <p>\$1,500 for failure to properly operate, maintain, or close a storage tank system.</p>
403.121 (4), F.S.	Violating ch. 403, F.S., regarding environmental control	<p>In administrative proceedings, in addition to penalties assessed under subsection (3):</p> <ul style="list-style-type: none"> • \$5,000 for failure to satisfy financial responsibility requirements or for oil and gas pollution violations. • \$4,000 for failure to install, maintain, or use a required pollution control system or device. • \$3,000 for failure to obtain a required permit before construction or modification. • \$2,000 for failure to conduct required monitoring or testing, conduct required release detection, or construct in compliance with a permit. • \$1,000 for failure to maintain required staff to respond to emergencies, failure to conduct required training, failure to 	<p>In administrative proceedings, in addition to penalties assessed under subsection (3):</p> <ul style="list-style-type: none"> • \$7,500 for failure to satisfy financial responsibility requirements or for oil and gas pollution violations. • \$6,000 for failure to install, maintain, or use a required pollution control system or device. • \$4,500 for failure to obtain a required permit before construction or modification. • \$3,000 for failure to conduct required monitoring or testing, conduct required release detection, or construct in compliance with a permit. • \$1,500 for failure to maintain required staff to respond to emergencies, failure to conduct required training, failure to

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
		<p>prepare, maintain, or update required contingency plans, failure to adequately respond to emergencies to bring an emergency situation under control, or failure to submit required notification to DEP.</p> <ul style="list-style-type: none"> • \$500 for failure to prepare, submit, maintain, or use required reports or documentation. 	<p>prepare, maintain, or update required contingency plans, failure to adequately respond to emergencies to bring an emergency situation under control, or failure to submit required notification to DEP.</p> <ul style="list-style-type: none"> • \$750 for failure to prepare, submit, maintain, or use required reports or documentation.
403.121 (5), (7), (8), and (9), F.S.	Violating ch. 403, F.S., regarding environmental control	<p>A penalty of \$500 for failure to comply with any other department regulatory statute or rule.</p> <p>A violator's history of noncompliance for any previous violation found in an executed consent order finding violation, or resulting in a final order or judgment involving the imposition of \$2,000 must be taken into consideration in a manner specified in statute.</p> <p>The total administrative penalty, including direct economic benefit gained by the violator that is added to the scheduled administrative penalty, may not exceed \$10,000.</p> <p>The administrative penalties for a particular violation that are assessed against any one violator may not exceed \$5,000, unless there is a history of noncompliance, the economic benefit exceeds \$5,000, or there are multiday violations. Total administrative penalties may not exceed \$10,000 per assessment for all violations attributable to a</p>	<p>A penalty of \$1,000 for failure to comply with any other department regulatory statute or rule.</p> <p>A violator's history of noncompliance for any previous violation found in an executed consent order finding violation, or resulting in a final order or judgment involving the imposition of \$3,000 must be taken into consideration in a manner specified in statute.</p> <p>The total administrative penalty, including direct economic benefit gained by the violator that is added to the scheduled administrative penalty, may not exceed \$15,000.</p> <p>The administrative penalties for a particular violation that are assessed against any one violator may not exceed \$7,500, unless there is a history of noncompliance, the economic benefit exceeds \$7,500, or there are multiday violations. Total administrative penalties may not exceed \$50,000 per assessment for all violations attributable to a</p>

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
		specific person in a notice of violation.	specific person in a notice of violation.
403.141 (1), F.S.	Violating ch. 403, F.S., regarding environmental control, by committing prohibited acts	<p>A civil penalty for each offense in an amount not to exceed \$10,000.</p> <p>Each day during any portion of which a violation occurs constitutes a separate offense.</p>	<p>A civil penalty for each offense in an amount not to exceed \$15,000.</p> <p>Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.</p>
403.161 (3) and (5), F.S.	Violating ch. 403, F.S., regarding environmental control, by willfully causing pollution	<p>A fine of not more than \$50,000 or imprisonment for five years, or both, for each offense.</p> <p>Each day during any portion of which a violation occurs constitutes a separate offense.</p> <p>A fine of not more than \$10,000, 6 months in jail, or both for willfully committing the following violation: knowingly falsifying required documentation or falsifying, tampering with, or rendering inaccurate required monitoring devices or methods.</p>	<p>A fine of not more than \$50,000 or imprisonment for five years, or both, for each offense.</p> <p>Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.</p> <p>A fine of not more than \$10,000, 6 months in jail, or both for committing the following violation: knowingly falsifying required documentation or falsifying, tampering with, or rendering inaccurate required monitoring devices or methods.</p>
403.161 (4), F.S.	Violating ch. 403, F.S., regarding environmental control, by committing prohibited acts specified in the statute	A violation causing pollution due to reckless indifference or gross careless disregard is punishable by a fine of not more than \$5,000 or 60 days in jail, or both, for each offense.	A violation causing pollution; failure to obtain a permit required under Ch. 403, F.S., or rules; or violating any rule, order, permit or certification adopted or issued by DEP due to reckless indifference or gross careless disregard is punishable by a fine of not more than \$10,000 or 60 days in jail, or both, for each offense.
403.413 (6)(a), F.S.	Dumping litter	A civil penalty of \$100 for dumping litter (not for commercial purposes) not exceeding 15 pounds or 27 cubic feet.	A civil penalty of \$150 for dumping litter (not for commercial purposes) not exceeding 15 pounds or 27 cubic feet.

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
403.7234 (5), F.S.	Violations involving small quantity generators	A fine of between \$50 and \$100 per day for a maximum of 100 days for a noncompliant small quantity generator.	A fine of between \$75 and \$150 per day for a maximum of 100 days for a noncompliant small quantity generator.
403.726 (3), F.S.	Violations regarding hazardous waste creating an imminent hazard	Authorizes DEP to institute action to abate an imminent hazard and may recover a civil penalty of not more than \$25,000 for each day of continued violation.	Authorizes DEP to institute action to abate an imminent hazard and may recover a civil penalty of not more than \$37,000 for each day until a violation is resolved by order or judgment.
403.727 (3)(a), F.S.	Violations regarding hazardous waste	A civil penalty of not more than \$50,000 for each day of continued violation.	A civil penalty of not more than \$75,000 for each day of continued violation or until a violation is resolved by order or judgment.
403.93345 (8)(a)-(c) and (g), F.S.	Civil penalty schedule: violating the Florida Coral Reef Protection Act	<p>Damage to a coral reef less than or equal to 1 square meter: \$150; additional \$150 with aggravating circumstances; additional \$150 if occurring within a state park or aquatic preserve.</p> <p>Damage to a coral reef of more than 1 square meter but less than or equal to 10 square meters: \$300 per square meter; additional \$300 per square meter with aggravating circumstances; additional \$300 per square meter if occurring within a state park or aquatic preserve.</p> <p>Damage exceeding an area of 10 square meters: \$1,000 per square meter; additional \$1,000 per square meter with aggravating circumstances; additional \$1,000 per square meter if occurring within a state park or aquatic preserve.</p> <p>The total penalties levied may not exceed \$250,000 per occurrence.</p>	<p>Damage to a coral reef less than or equal to 1 square meter: \$225; additional \$225 with aggravating circumstances; additional \$225 if occurring within a state park or aquatic preserve.</p> <p>Damage to a coral reef of more than 1 square meter but less than or equal to 10 square meters: \$450 per square meter; additional \$450 per square meter with aggravating circumstances; additional \$450 per square meter if occurring within a state park or aquatic preserve.</p> <p>Damage exceeding an area of 10 square meters: \$1,500 per square meter; additional \$1,500 per square meter with aggravating circumstances; additional \$1,500 per square meter if occurring within a state park or aquatic preserve.</p> <p>The total penalties levied may not exceed \$375,000 per occurrence.</p>

Sections 22-26 reenact ss. 823.11(5); 403.077(5); 403.131(2); 403.4154(3)(d); 403.860(5); 403.708(10); 403.7191(7); 403.811; 403.7255(2); and 403.7186(8), F.S. This reenactment is done for the purpose of incorporating certain amendments made by the bill, as the reenacted provisions reference sections of law that are amended by the bill.

Section 27 states that the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The vagueness doctrine was developed to ensure compliance with the Due Process Clause in the Fifth Amendment of the United States Constitution, and Florida's Constitution includes a similar due process guarantee.³⁹ The vagueness doctrine provides that a statute must give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, and it must provide explicit standards for those who apply them to avoid arbitrary and discriminatory enforcement.⁴⁰ A statute is void for vagueness when, because of its imprecision, it fails to give an adequate notice of what conduct is prohibited.⁴¹ Thus, it invites arbitrary and discriminatory enforcement.⁴² A statute is not void for vagueness if the language conveys a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices.⁴³ However, the Supreme Court has indicated that a statute giving fair notice of the prohibited conduct can still be void for vagueness if it lends itself to arbitrary enforcement.⁴⁴ The need for definiteness is even greater when a law imposes criminal penalties on individual behavior or implicates constitutionally protected rights.⁴⁵

³⁹ *Simmons v. State*, 944 So.2d 317, 324 (Fla. 2006).

⁴⁰ *Florida Ass'n of Professional Lobbyists, Inc. v. Div. of Legislative Info. Services of the Florida Office of Legislative Services*, 525 F.3d 1073, 1078 (11th Cir. 2008) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)).

⁴¹ *Sult v. State*, 906 So.2d 1013, 1020 (Fla. 2005).

⁴² *Id.*

⁴³ *Simmons*, 944 at 324.

⁴⁴ *Id.*; see *Kolender v. Lawson*, 461 U.S. 352, 358 (1983).

⁴⁵ *Simmons*, 944 at 324.

In several places in the bill, a penalty standard is revised or added such that “until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.” In such instances, the meaning of the word “remediated” is crucial for determining the number of separate offenses. This term is undefined in the statutes amended by the bill. This condition is applied to criminal penalties in addition to administrative and civil penalties.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill increases numerous penalties for violations of environmental laws. In some instances, the bill also expands the potential time period when each passing day may constitute a separate offense. Overall, the bill increases the penalties that the private sector must pay for violations of environmental laws.

C. Government Sector Impact:

The bill increases the amounts of numerous penalties. If imposed, the funds from such penalties would increase revenue to the state. Therefore, the bill may have a positive, indeterminate impact on the government sector.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In sections of the bill containing “[u]ntil a violation is resolved by order or judgment, each day during any portion of which such violation occurs or is not remediated constitutes a separate offense,” or similar language, a definition for the word “remediated” is recommended.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 161.054, 258.397, 258.46, 373.129, 373.209, 373.430, 376.065, 376.071, 376.16, 376.25, 377.37, 378.211, 403.086, 403.121, 403.141, 403.161, 403.413, 403.7234, 403.726, 403.727, 403.93345.

This bill reenacts parts or all of the following sections of the Florida Statutes: 823.11, 403.077, 403.131, 403.4154, 403.860, 403.708, 403.7191, 403.811, 403.7255, 403.7186.

IX. Additional Information:

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

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

- Removes the “willfully” standard of intent from applying to criminal penalties in two sections of Florida’s environmental statutes. The penalties apply to violations of knowingly falsifying documents or tampering with required monitoring. DEP’s authority to seek criminal fines for such falsification or tampering is required by the federal regulations for state assumption of the 404 dredge and fill program. Applying a “willfully” standard to the penalties is not consistent with the federal regulations, so the bill removes the standard.
- Revises the title of the bill to more accurately describe the contents of the bill.

- B. **Amendments:**

None.

1 A bill to be entitled
2 An act relating to environmental enforcement; amending
3 ss. 161.054, 258.397, 258.46, 373.129, 373.209,
4 373.430, 376.065, 376.071, 376.16, 376.25, 377.37,
5 378.211, 403.086, 403.121, 403.141, 403.161, 403.413,
6 403.7234, 403.726, 403.727, and 403.93345, F.S.;
7 increasing the civil penalties for violations of
8 certain provisions relating to beach and shore
9 construction, the Biscayne Bay Aquatic Preserve,
10 aquatic preserves, the state water resource plan,
11 artesian wells, pollution, operating a terminal
12 facility without discharge prevention and response
13 certificates, discharge contingency plans for vessels,
14 the Pollutant Discharge Prevention and Control Act,
15 the Clean Ocean Act, the pollution of surface and
16 ground waters, the regulation of oil and gas
17 resources, the Phosphate Land Reclamation Act, sewage
18 disposal facilities, pollution control, reasonable
19 costs and expenses for pollution releases, necessary
20 permits, dumping litter, small quantity generators,
21 the abatement of imminent hazards caused by hazardous
22 substances, hazardous waste generators, transporters,
23 or facilities, and coral reef protection,
24 respectively; providing that each day that certain
25 violations are not remediated constitutes a separate

26 offense; making technical changes; reenacting s.
27 823.11(5), F.S., to incorporate the amendment made to
28 s. 376.16, F.S., in a reference thereto; reenacting
29 ss. 403.077(5), 403.131(2), 403.4154(3)(d), and
30 403.860(5), F.S., to incorporate the amendment made to
31 s. 403.121, F.S., in a reference thereto; reenacting
32 ss. 403.708(10), 403.7191(7), and 403.811, F.S., to
33 incorporate the amendment made to s. 403.141, F.S., in
34 a reference thereto; reenacting s. 403.7255(2), F.S.,
35 to incorporate the amendment made to s. 403.161, F.S.,
36 in a reference thereto; reenacting s. 403.7186(8),
37 F.S., to incorporate the amendment made to ss. 403.141
38 and 403.161, F.S., in references thereto; providing an
39 effective date.

40
41 Be It Enacted by the Legislature of the State of Florida:

42
43 Section 1. Subsection (1) of section 161.054, Florida
44 Statutes, is amended to read:

45 161.054 Administrative fines; liability for damage;
46 liens.—

47 (1) In addition to the penalties provided for in ss.
48 161.052, 161.053, and 161.121, any person, firm, corporation, or
49 governmental agency, or agent thereof, refusing to comply with
50 or willfully violating ~~any of the provisions of~~ s. 161.041, s.

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161.052, or s. 161.053, or any rule or order prescribed by the department thereunder, shall incur a fine for each offense in an amount up to \$15,000 ~~\$10,000~~ to be fixed, imposed, and collected by the department. Until a violation is resolved by order or judgment, each day during any portion of which such violation occurs or is not remediated constitutes a separate offense.

Section 2. Subsection (7) of section 258.397, Florida Statutes, is amended to read:

258.397 Biscayne Bay Aquatic Preserve.—

(7) ENFORCEMENT.—~~The provisions of~~ This section may be enforced in accordance with ~~the provisions of~~ s. 403.412. In addition, the Department of Legal Affairs may ~~is authorized to~~ bring an action for civil penalties of \$7,500 ~~\$5,000~~ per day against any person, natural or corporate, who violates ~~the provisions of~~ this section or any rule or regulation issued hereunder. Until a violation is resolved by order or judgment, each day during any portion of which such violation occurs or is not remediated constitutes a separate offense. Enforcement of applicable state regulations shall be supplemented by the Miami-Dade County Department of Environmental Resources Management through the creation of a full-time enforcement presence along the Miami River.

Section 3. Section 258.46, Florida Statutes, is amended to read:

258.46 Enforcement; violations; penalty.—~~The provisions of~~

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76 This act may be enforced by the Board of Trustees of the
77 Internal Improvement Trust Fund or in accordance with ~~the~~
78 ~~provisions of s. 403.412~~. However, any violation by any person,
79 natural or corporate, of ~~the provisions of~~ this act or any rule
80 or regulation issued hereunder ~~is shall be~~ further punishable by
81 a civil penalty of not less than \$750 ~~\$500~~ per day or more than
82 \$7,500 ~~\$5,000~~ per day of such violation. Until a violation is
83 resolved by order or judgment, each day during any portion of
84 which such violation occurs or is not remediated constitutes a
85 separate offense.

86 Section 4. Subsections (5) and (7) of section 373.129,
87 Florida Statutes, are amended, to read:

88 373.129 Maintenance of actions.—The department, the
89 governing board of any water management district, any local
90 board, or a local government to which authority has been
91 delegated pursuant to s. 373.103(8), is authorized to commence
92 and maintain proper and necessary actions and proceedings in any
93 court of competent jurisdiction for any of the following
94 purposes:

95 (5) To recover a civil penalty for each offense in an
96 amount not to exceed \$15,000 ~~\$10,000~~ per offense. Until a
97 violation is resolved by order or judgment, each date during any
98 portion of which such violation occurs or is not remediated
99 constitutes a separate offense.

100 (a) A civil penalty recovered by a water management

101 district pursuant to this subsection shall be retained and used
102 exclusively by the water management district that collected the
103 money. A civil penalty recovered by the department pursuant to
104 this subsection must be deposited into the Water Quality
105 Assurance Trust Fund established under s. 376.307.

106 (b) A local government that is delegated authority
107 pursuant to s. 373.103(8) may deposit a civil penalty recovered
108 pursuant to this subsection into a local water pollution control
109 program trust fund, notwithstanding ~~the provisions of~~ paragraph
110 (a). However, civil penalties that are deposited in a local
111 water pollution control program trust fund and that are
112 recovered for violations of state water quality standards may be
113 used only to restore water quality in the area that was the
114 subject of the action, and civil penalties that are deposited in
115 a local water pollution control program trust fund and that are
116 recovered for violation of requirements relating to water
117 quantity may be used only to purchase lands and make capital
118 improvements associated with surface water management, or other
119 purposes consistent with the requirements of this chapter for
120 the management and storage of surface water.

121 (7) To enforce ~~the provisions of~~ part IV of this chapter
122 in the same manner and to the same extent as provided in ss.
123 373.430, 403.121(1) and (2), 403.131, 403.141, and 403.161.

124 Section 5. Subsection (3) of section 373.209, Florida
125 Statutes, is amended to read:

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373.209 Artesian wells; penalties for violation.—

(3) Any person who violates ~~any provision of~~ this section ~~is shall be~~ subject to either:

(a) The remedial measures provided for in s. 373.436; or

(b) A civil penalty of \$150 ~~\$100~~ a day for each and every day of such violation and for each and every act of violation. The civil penalty may be recovered by the water management board of the water management district in which the well is located or by the department in a suit in a court of competent jurisdiction in the county where the defendant resides, in the county of residence of any defendant if there is more than one defendant, or in the county where the violation took place. The place of suit shall be selected by the board or department, and the suit, by direction of the board or department, shall be instituted and conducted in the name of the board or department by appropriate counsel. The payment of any such damages does not impair or abridge any cause of action which any person may have against the person violating ~~any provision of~~ this section.

Section 6. Subsections (2) through (5) of section 373.430, Florida Statutes, are amended to read:

373.430 Prohibitions, violation, penalty, intent.—

(2) A person who ~~Whoever~~ commits a violation specified in subsection (1) is liable for any damage caused and for civil penalties as provided in s. 373.129.

(3) A ~~Any~~ person who willfully commits a violation

151 specified in paragraph (1)(a) commits ~~is guilty of~~ a felony of
152 the third degree, punishable as provided in ss. 775.082(3)(e)
153 and 775.083(1)(g), by a fine of not more than \$50,000 or by
154 imprisonment for 5 years, or by both, for each offense. Until a
155 violation is resolved by order or judgment, each day during any
156 portion of which such violation occurs or is not remediated
157 constitutes a separate offense.

158 (4) A ~~Any~~ person who commits a violation specified in
159 paragraph (1)(a) or paragraph (1)(b) due to reckless
160 indifference or gross careless disregard commits ~~is guilty of~~ a
161 misdemeanor of the second degree, punishable as provided in ss.
162 775.082(4)(b) and 775.083(1)(g), by a fine of not more than
163 \$10,000 ~~\$5,000~~ or 60 days in jail, or by both, for each offense.

164 (5) A ~~Any~~ person who willfully commits a violation
165 specified in paragraph (1)(b) or paragraph (1)(c) commits ~~is~~
166 ~~guilty of~~ a misdemeanor of the first degree, punishable as
167 provided in ss. 775.082(4)(a) and 775.083(1)(g), by a fine of
168 not more than \$10,000 or by 6 months in jail, or by both, for
169 each offense.

170 Section 7. Paragraphs (a) and (e) of subsection (5) of
171 section 376.065, Florida Statutes, are amended to read:

172 376.065 Operation of terminal facility without discharge
173 prevention and response certificate prohibited; penalty.—

174 (5)(a) A person who violates this section or the terms and
175 requirements of such certification commits a noncriminal

176 infraction. The civil penalty for any such infraction shall be
177 \$750 ~~\$500~~, except as otherwise provided in this section.

178 (e) A person who elects to appear before the county court
179 or who is required to so appear waives the limitations of the
180 civil penalty specified in paragraph (a). The court, after a
181 hearing, shall make a determination as to whether an infraction
182 has been committed. If the commission of the infraction is
183 proved, the court shall impose a civil penalty of \$750 ~~\$500~~.

184 Section 8. Paragraphs (a) and (e) of subsection (2) of
185 section 376.071, Florida Statutes, are amended to read:

186 376.071 Discharge contingency plan for vessels.—

187 (2)(a) A master of a vessel that violates subsection (1)
188 commits a noncriminal infraction and shall be cited for such
189 infraction. The civil penalty for such an infraction shall be
190 \$7,500 ~~\$5,000~~, except as otherwise provided in this subsection.

191 (e) A person who elects to appear before the county court
192 or who is required to appear waives the limitations of the civil
193 penalty specified in paragraph (a). The court, after a hearing,
194 shall make a determination as to whether an infraction has been
195 committed. If the commission of the infraction is proved, the
196 court shall impose a civil penalty of \$7,500 ~~\$5,000~~.

197 Section 9. Section 376.16, Florida Statutes, is amended to
198 read:

199 376.16 Enforcement and penalties.—

200 (1) It is unlawful for any person to violate ~~any provision~~

201 ~~of~~ ss. 376.011-376.21 or any rule or order of the department
202 made pursuant to this act. A violation is ~~shall be~~ punishable by
203 a civil penalty of up to \$75,000 ~~\$50,000~~ per violation per day
204 to be assessed by the department. Until a violation is resolved
205 by order or judgment, each day during any portion of which the
206 violation occurs or is not remediated constitutes a separate
207 offense. The penalty provisions of this subsection do ~~shall~~ not
208 apply to any discharge promptly reported and removed by a person
209 responsible, in accordance with the rules and orders of the
210 department, or to any discharge of pollutants equal to or less
211 than 5 gallons.

212 (2) In addition to the penalty provisions which may apply
213 under subsection (1), a person responsible for two or more
214 discharges of any pollutant reported pursuant to s. 376.12
215 within a 12-month period at the same facility commits a
216 noncriminal infraction and shall be cited by the department for
217 such infraction.

218 (a) For discharges of gasoline or diesel over 5 gallons,
219 the civil penalty for the second discharge shall be \$750 ~~\$500~~
220 and the civil penalty for each subsequent discharge within a 12-
221 month period shall be \$1,500 ~~\$1,000~~, except as otherwise
222 provided in this section.

223 (b) For discharges of any pollutant other than gasoline or
224 diesel, the civil penalty for a second discharge shall be \$3,750
225 ~~\$2,500~~ and the civil penalty for each subsequent discharge

within a 12-month period shall be \$7,500 ~~\$5,000~~, except as otherwise provided in this section.

(3) A person responsible for two or more discharges of any pollutant reported pursuant to s. 376.12 within a 12-month period at the same facility commits a noncriminal infraction and shall be cited by the department for such infraction.

(a) For discharges of gasoline or diesel equal to or less than 5 gallons, the civil penalty shall be \$75 ~~\$50~~ for each discharge subsequent to the first.

(b) For discharges of pollutants other than gasoline or diesel equal to or less than 5 gallons, the civil penalty shall be \$150 ~~\$100~~ for each discharge subsequent to the first.

(4) A person charged with a noncriminal infraction pursuant to subsection (2) or subsection (3) may:

(a) Pay the civil penalty;

(b) Post a bond equal to the amount of the applicable civil penalty; or

(c) Sign and accept a citation indicating a promise to appear before the county court.

The department employee authorized to issue these citations may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(5) Any person who willfully refuses to post bond or accept and sign a citation commits a misdemeanor of the second

degree, punishable as provided in s. 775.082 or s. 775.083.

(6) After compliance with paragraph (4)(b) or paragraph (4)(c), any person charged with a noncriminal infraction under subsection (2) or subsection (3) may:

(a) Pay the civil penalty, either by mail or in person, within 30 days after the date of receiving the citation; or

(b) If the person has posted bond, forfeit the bond by not appearing at the designated time and location.

A person cited for an infraction under this section who pays the civil penalty or forfeits the bond has admitted the infraction and waives the right to a hearing on the issue of commission of the infraction. Such admission may not be used as evidence in any other proceeding.

(7) Any person who elects to appear before the county court or who is required to appear waives the limitations of the civil penalties specified in subsection (2). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction is proved, the court may impose a civil penalty up to, but not exceeding, \$750 ~~\$500~~ for the second discharge of gasoline or diesel and a civil penalty up to, but not exceeding, \$1,500 ~~\$1,000~~ for each subsequent discharge of gasoline or diesel within a 12-month period.

(8) Any person who elects to appear before the county

276 court or who is required to appear waives the limitations of the
277 civil penalties specified in subsection (2) or subsection (3).
278 The court, after a hearing, shall make a determination as to
279 whether an infraction has been committed. If the commission of
280 an infraction is proved, the court may impose a civil penalty up
281 to, but not exceeding, \$7,500 ~~\$5,000~~ for the second discharge of
282 pollutants other than gasoline or diesel and a civil penalty up
283 to, but not exceeding, \$15,000 ~~\$10,000~~ for each subsequent
284 discharge of pollutants other than gasoline or diesel within a
285 12-month period.

286 (9) At a hearing under this section, the commission of a
287 charged offense must be proved by the greater weight of the
288 evidence.

289 (10) A person who is found by a hearing official to have
290 committed an infraction may appeal that finding to the circuit
291 court.

292 (11) Any person who has not posted bond and who neither
293 pays the applicable civil penalty, as specified in subsection
294 (2) or subsection (3) within 30 days of receipt of the citation
295 nor appears before the court commits a misdemeanor of the second
296 degree, punishable as provided in s. 775.082 or s. 775.083.

297 (12) Any person who makes or causes to be made a false
298 statement that which the person does not believe to be true in
299 response to requirements of ~~the provisions of~~ ss. 376.011-376.21
300 commits a felony of the second degree, punishable as provided in

s. 775.082, s. 775.083, or s. 775.084.

Section 10. Paragraph (a) of subsection (6) of section 376.25, Florida Statutes, is amended to read:

376.25 Gambling vessels; registration; required and prohibited releases.—

(6) PENALTIES.—

(a) A person who violates this section is subject to a civil penalty of not more than \$75,000 ~~\$50,000~~ for each violation. Until a violation is resolved by order or judgment, each day during any portion of which such violation occurs or is not remediated constitutes a separate offense.

Section 11. Paragraph (a) of subsection (1) of section 377.37, Florida Statutes, is amended to read:

377.37 Penalties.—

(1)(a) Any person who violates ~~any provision of this law~~ or any rule, regulation, or order of the division made under this chapter or who violates the terms of any permit to drill for or produce oil, gas, or other petroleum products referred to in s. 377.242(1) or to store gas in a natural gas storage facility, or any lessee, permitholder, or operator of equipment or facilities used in the exploration for, drilling for, or production of oil, gas, or other petroleum products, or storage of gas in a natural gas storage facility, who refuses inspection by the division as provided in this chapter, is liable to the state for any damage caused to the air, waters, or property,

including animal, plant, or aquatic life, of the state and for reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including animal, plant, and aquatic life, of the state. Furthermore, such person, lessee, permitholder, or operator is subject to the judicial imposition of a civil penalty in an amount of not more than \$15,000 ~~\$10,000~~ for each offense. However, the court may receive evidence in mitigation. Until a violation is resolved by order or judgment, each day during any portion of which such violation occurs or is not remediated constitutes a separate offense. This section does not ~~Nothing herein shall~~ give the department the right to bring an action on behalf of any private person.

Section 12. Subsection (2) of section 378.211, Florida Statutes, is amended to read:

378.211 Violations; damages; penalties.—

(2) The department may institute a civil action in a court of competent jurisdiction to impose and recover a civil penalty for violation of this part or of any rule adopted or order issued pursuant to this part. The penalty may ~~shall~~ not exceed the following amounts, and the court shall consider evidence in mitigation:

(a) For violations of a minor or technical nature, \$150 ~~\$100~~ per violation.

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(b) For major violations by an operator on which a penalty has not been imposed under this paragraph during the previous 5 years, \$1,500 ~~\$1,000~~ per violation.

(c) For major violations not covered by paragraph (b), \$7,500 ~~\$5,000~~ per violation.

Subject to ~~the provisions of~~ subsection (4), until a violation is resolved by order or judgment, each day or any portion thereof in which the violation continues or is not remediated shall constitute a separate violation.

Section 13. Subsection (2) of section 403.086, Florida Statutes, is amended to read:

403.086 Sewage disposal facilities; advanced and secondary waste treatment.—

(2) Any facilities for sanitary sewage disposal shall provide for secondary waste treatment and, in addition thereto, advanced waste treatment as deemed necessary and ordered by the Department of Environmental Protection. Failure to conform shall be punishable by a civil penalty of \$750 ~~\$500~~ for each 24-hour day or fraction thereof that such failure is allowed to continue thereafter.

Section 14. Section 403.121, Florida Statutes, is amended to read:

403.121 Enforcement; procedure; remedies.—The department shall have the following judicial and administrative remedies

available to it for violations of this chapter, as specified in s. 403.161(1).

(1) Judicial remedies:

(a) The department may institute a civil action in a court of competent jurisdiction to establish liability and to recover damages for any injury to the air, waters, or property, including animal, plant, and aquatic life, of the state caused by any violation.

(b) The department may institute a civil action in a court of competent jurisdiction to impose and to recover a civil penalty for each violation in an amount of not more than \$15,000 ~~\$10,000~~ per offense. However, the court may receive evidence in mitigation. Until a violation is resolved by order or judgment, each day during any portion of which such violation occurs or is not remediated constitutes a separate offense.

(c) Except as provided in paragraph (2)(c), it is ~~shall~~ not be a defense to, or ground for dismissal of, these judicial remedies for damages and civil penalties that the department has failed to exhaust its administrative remedies, has failed to serve a notice of violation, or has failed to hold an administrative hearing prior to the institution of a civil action.

(2) Administrative remedies:

(a) The department may institute an administrative proceeding to establish liability and to recover damages for any

injury to the air, waters, or property, including animal, plant, or aquatic life, of the state caused by any violation. The department may order that the violator pay a specified sum as damages to the state. Judgment for the amount of damages determined by the department may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

(b) If the department has reason to believe a violation has occurred, it may institute an administrative proceeding to order the prevention, abatement, or control of the conditions creating the violation or other appropriate corrective action. Except for violations involving hazardous wastes, asbestos, or underground injection, the department shall proceed administratively in all cases in which the department seeks administrative penalties that do not exceed \$50,000 ~~\$10,000~~ per assessment as calculated in accordance with subsections (3), (4), (5), (6), and (7). Pursuant to 42 U.S.C. s. 300g-2, the administrative penalty assessed pursuant to subsection (3), subsection (4), or subsection (5) against a public water system serving a population of more than 10,000 shall be not less than \$1,000 per day per violation. The department may ~~shall~~ not impose administrative penalties in excess of \$50,000 ~~\$10,000~~ in a notice of violation. The department may ~~shall~~ not have more than one notice of violation seeking administrative penalties pending against the same party at the same time unless the violations occurred at a different site or the violations were

426 discovered by the department subsequent to the filing of a
427 previous notice of violation.

428 (c) An administrative proceeding shall be instituted by
429 the department's serving of a written notice of violation upon
430 the alleged violator by certified mail. If the department is
431 unable to effect service by certified mail, the notice of
432 violation may be hand delivered or personally served in
433 accordance with chapter 48. The notice shall specify the
434 ~~provision of the~~ law, rule, regulation, permit, certification,
435 or order of the department alleged to be violated and the facts
436 alleged to constitute a violation thereof. An order for
437 corrective action, penalty assessment, or damages may be
438 included with the notice. When the department is seeking to
439 impose an administrative penalty for any violation by issuing a
440 notice of violation, any corrective action needed to correct the
441 violation or damages caused by the violation must be pursued in
442 the notice of violation or they are waived. However, an ~~no~~ order
443 is not ~~shall become~~ effective until after service and an
444 administrative hearing, if requested within 20 days after
445 service. Failure to request an administrative hearing within
446 this time period constitutes ~~shall constitute~~ a waiver thereof,
447 unless the respondent files a written notice with the department
448 within this time period opting out of the administrative process
449 initiated by the department to impose administrative penalties.
450 Any respondent choosing to opt out of the administrative process

initiated by the department in an action that seeks the imposition of administrative penalties must file a written notice with the department within 20 days after service of the notice of violation opting out of the administrative process. A respondent's decision to opt out of the administrative process does not preclude the department from initiating a state court action seeking injunctive relief, damages, and the judicial imposition of civil penalties.

(d) If a person timely files a petition challenging a notice of violation, that person will thereafter be referred to as the respondent. The hearing requested by the respondent shall be held within 180 days after the department has referred the initial petition to the Division of Administrative Hearings unless the parties agree to a later date. The department has the burden of proving with the preponderance of the evidence that the respondent is responsible for the violation. ~~No~~ Administrative penalties should not be imposed unless the department satisfies that burden. Following the close of the hearing, the administrative law judge shall issue a final order on all matters, including the imposition of an administrative penalty. When the department seeks to enforce that portion of a final order imposing administrative penalties pursuant to s. 120.69, the respondent may ~~shall~~ not assert as a defense the inappropriateness of the administrative remedy. The department retains its final-order authority in all administrative actions

476 that do not request the imposition of administrative penalties.

477 (e) After filing a petition requesting a formal hearing in
478 response to a notice of violation in which the department
479 imposes an administrative penalty, a respondent may request that
480 a private mediator be appointed to mediate the dispute by
481 contacting the Florida Conflict Resolution Consortium within 10
482 days after receipt of the initial order from the administrative
483 law judge. The Florida Conflict Resolution Consortium shall pay
484 all of the costs of the mediator and for up to 8 hours of the
485 mediator's time per case at \$150 per hour. Upon notice from the
486 respondent, the Florida Conflict Resolution Consortium shall
487 provide to the respondent a panel of possible mediators from the
488 area in which the hearing on the petition would be heard. The
489 respondent shall select the mediator and notify the Florida
490 Conflict Resolution Consortium of the selection within 15 days
491 of receipt of the proposed panel of mediators. The Florida
492 Conflict Resolution Consortium shall provide all of the
493 administrative support for the mediation process. The mediation
494 must be completed at least 15 days before the final hearing date
495 set by the administrative law judge.

496 (f) In any administrative proceeding brought by the
497 department, the prevailing party shall recover all costs as
498 provided in ss. 57.041 and 57.071. The costs must be included in
499 the final order. The respondent is the prevailing party when an
500 order is entered awarding no penalties to the department and

such order has not been reversed on appeal or the time for seeking judicial review has expired. The respondent is ~~shall be~~ entitled to an award of attorney's fees if the administrative law judge determines that the notice of violation issued by the department seeking the imposition of administrative penalties was not substantially justified as defined in s. 57.111(3)(e). An ~~No~~ award of attorney's fees as provided by this subsection may not ~~shall~~ exceed \$15,000.

(g) Nothing herein shall be construed as preventing any other legal or administrative action in accordance with law. Nothing in this subsection shall limit the department's authority provided in ss. 403.131, 403.141, and this section to judicially pursue injunctive relief. When the department exercises its authority to judicially pursue injunctive relief, penalties in any amount up to the statutory maximum sought by the department must be pursued as part of the state court action and not by initiating a separate administrative proceeding. The department retains the authority to judicially pursue penalties in excess of \$50,000 ~~\$10,000~~ for violations not specifically included in the administrative penalty schedule, or for multiple or multiday violations alleged to exceed a total of \$50,000 ~~\$10,000~~. The department also retains the authority provided in ss. 403.131, 403.141, and this section to judicially pursue injunctive relief and damages, if a notice of violation seeking the imposition of administrative penalties has not been issued.

526 The department has the authority to enter into a settlement,
527 either before or after initiating a notice of violation, and the
528 settlement may include a penalty amount different from the
529 administrative penalty schedule. Any case filed in state court
530 because it is alleged to exceed a total of \$50,000 ~~\$10,000~~ in
531 penalties may be settled in the court action for less than
532 \$50,000 ~~\$10,000~~.

533 (h) Chapter 120 applies ~~shall apply~~ to any administrative
534 action taken by the department or any delegated program pursuing
535 administrative penalties in accordance with this section.

536 (3) Except for violations involving hazardous wastes,
537 asbestos, or underground injection, administrative penalties
538 must be calculated according to the following schedule:

539 (a) For a drinking water contamination violation, the
540 department shall assess a penalty of \$3,000 ~~\$2,000~~ for a Maximum
541 Containment Level (MCL) violation; plus \$1,500 ~~\$1,000~~ if the
542 violation is for a primary inorganic, organic, or radiological
543 Maximum Contaminant Level or it is a fecal coliform bacteria
544 violation; plus \$1,500 ~~\$1,000~~ if the violation occurs at a
545 community water system; and plus \$1,500 ~~\$1,000~~ if any Maximum
546 Contaminant Level is exceeded by more than 100 percent. For
547 failure to obtain a clearance letter prior to placing a drinking
548 water system into service when the system would not have been
549 eligible for clearance, the department shall assess a penalty of
550 \$4,500 ~~\$3,000~~.

(b) For failure to obtain a required wastewater permit, other than a permit required for surface water discharge, the department shall assess a penalty of \$1,500 ~~\$1,000~~. For a domestic or industrial wastewater violation not involving a surface water or groundwater quality violation, the department shall assess a penalty of \$3,000 ~~\$2,000~~ for an unpermitted or unauthorized discharge or effluent-limitation exceedance. For an unpermitted or unauthorized discharge or effluent-limitation exceedance that resulted in a surface water or groundwater quality violation, the department shall assess a penalty of \$7,500 ~~\$5,000~~.

(c) For a dredge and fill or stormwater violation, the department shall assess a penalty of \$1,500 ~~\$1,000~~ for unpermitted or unauthorized dredging or filling or unauthorized construction of a stormwater management system against the person or persons responsible for the illegal dredging or filling, or unauthorized construction of a stormwater management system plus \$3,000 ~~\$2,000~~ if the dredging or filling occurs in an aquatic preserve, an Outstanding Florida Water, a conservation easement, or a Class I or Class II surface water, plus \$1,500 ~~\$1,000~~ if the area dredged or filled is greater than one-quarter acre but less than or equal to one-half acre, and plus \$1,500 ~~\$1,000~~ if the area dredged or filled is greater than one-half acre but less than or equal to one acre. The administrative penalty schedule does ~~shall~~ not apply to a dredge

576 and fill violation if the area dredged or filled exceeds one
577 acre. The department retains the authority to seek the judicial
578 imposition of civil penalties for all dredge and fill violations
579 involving more than one acre. The department shall assess a
580 penalty of \$4,500 ~~\$3,000~~ for the failure to complete required
581 mitigation, failure to record a required conservation easement,
582 or for a water quality violation resulting from dredging or
583 filling activities, stormwater construction activities or
584 failure of a stormwater treatment facility. For stormwater
585 management systems serving less than 5 acres, the department
586 shall assess a penalty of \$3,000 ~~\$2,000~~ for the failure to
587 properly or timely construct a stormwater management system. In
588 addition to the penalties authorized in this subsection, the
589 department shall assess a penalty of \$7,500 ~~\$5,000~~ per violation
590 against the contractor or agent of the owner or tenant that
591 conducts unpermitted or unauthorized dredging or filling. For
592 purposes of this paragraph, the preparation or signing of a
593 permit application by a person currently licensed under chapter
594 471 to practice as a professional engineer does ~~shall~~ not make
595 that person an agent of the owner or tenant.

596 (d) For mangrove trimming or alteration violations, the
597 department shall assess a penalty of \$7,500 ~~\$5,000~~ per violation
598 against the contractor or agent of the owner or tenant that
599 conducts mangrove trimming or alteration without a permit as
600 required by s. 403.9328. For purposes of this paragraph, the

601 preparation or signing of a permit application by a person
602 currently licensed under chapter 471 to practice as a
603 professional engineer does ~~shall~~ not make that person an agent
604 of the owner or tenant.

605 (e) For solid waste violations, the department shall
606 assess a penalty of \$3,000 ~~\$2,000~~ for the unpermitted or
607 unauthorized disposal or storage of solid waste; plus \$1,000 if
608 the solid waste is Class I or Class III (excluding yard trash)
609 or if the solid waste is construction and demolition debris in
610 excess of 20 cubic yards, plus \$1,500 ~~\$1,000~~ if the waste is
611 disposed of or stored in any natural or artificial body of water
612 or within 500 feet of a potable water well, plus \$1,500 ~~\$1,000~~
613 if the waste contains PCB at a concentration of 50 parts per
614 million or greater; untreated biomedical waste; friable asbestos
615 greater than 1 cubic meter which is not wetted, bagged, and
616 covered; used oil greater than 25 gallons; or 10 or more lead
617 acid batteries. The department shall assess a penalty of \$4,500
618 ~~\$3,000~~ for failure to properly maintain leachate control;
619 unauthorized burning; failure to have a trained spotter on duty
620 at the working face when accepting waste; or failure to provide
621 access control for three consecutive inspections. The department
622 shall assess a penalty of \$3,000 ~~\$2,000~~ for failure to construct
623 or maintain a required stormwater management system.

624 (f) For an air emission violation, the department shall
625 assess a penalty of \$1,500 ~~\$1,000~~ for an unpermitted or

626 unauthorized air emission or an air-emission-permit exceedance,
627 ~~plus \$1,000 if the emission results in an air quality violation,~~
628 plus \$4,500 ~~\$3,000~~ if the emission was from a major source and
629 the source was major for the pollutant in violation; plus \$1,500
630 ~~\$1,000~~ if the emission was more than 150 percent of the
631 allowable level.

632 (g) For storage tank system and petroleum contamination
633 violations, the department shall assess a penalty of \$7,500
634 ~~\$5,000~~ for failure to empty a damaged storage system as
635 necessary to ensure that a release does not occur until repairs
636 to the storage system are completed; when a release has occurred
637 from that storage tank system; for failure to timely recover
638 free product; or for failure to conduct remediation or
639 monitoring activities until a no-further-action or site-
640 rehabilitation completion order has been issued. The department
641 shall assess a penalty of \$4,500 ~~\$3,000~~ for failure to timely
642 upgrade a storage tank system. The department shall assess a
643 penalty of \$3,000 ~~\$2,000~~ for failure to conduct or maintain
644 required release detection; failure to timely investigate a
645 suspected release from a storage system; depositing motor fuel
646 into an unregistered storage tank system; failure to timely
647 assess or remediate petroleum contamination; or failure to
648 properly install a storage tank system. The department shall
649 assess a penalty of \$1,500 ~~\$1,000~~ for failure to properly
650 operate, maintain, or close a storage tank system.

651 (4) In an administrative proceeding, in addition to the
652 penalties that may be assessed under subsection (3), the
653 department shall assess administrative penalties according to
654 the following schedule:

655 (a) For failure to satisfy financial responsibility
656 requirements or for violation of s. 377.371(1), \$7,500 ~~\$5,000~~.

657 (b) For failure to install, maintain, or use a required
658 pollution control system or device, \$6,000 ~~\$4,000~~.

659 (c) For failure to obtain a required permit before
660 construction or modification, \$4,500 ~~\$3,000~~.

661 (d) For failure to conduct required monitoring or testing;
662 failure to conduct required release detection; or failure to
663 construct in compliance with a permit, \$3,000 ~~\$2,000~~.

664 (e) For failure to maintain required staff to respond to
665 emergencies; failure to conduct required training; failure to
666 prepare, maintain, or update required contingency plans; failure
667 to adequately respond to emergencies to bring an emergency
668 situation under control; or failure to submit required
669 notification to the department, \$1,500 ~~\$1,000~~.

670 (f) Except as provided in subsection (2) with respect to
671 public water systems serving a population of more than 10,000,
672 for failure to prepare, submit, maintain, or use required
673 reports or other required documentation, \$750 ~~\$500~~.

674 (5) Except as provided in subsection (2) with respect to
675 public water systems serving a population of more than 10,000,

for failure to comply with any other departmental regulatory statute or rule requirement not otherwise identified in this section, the department may assess a penalty of \$1,000 ~~\$500~~.

(6) For each additional day during which a violation occurs, the administrative penalties in subsections ~~subsection~~ (3), ~~subsection~~ (4), and ~~subsection~~ (5) may be assessed per day per violation.

(7) The history of noncompliance of the violator for any previous violation resulting in an executed consent order, but not including a consent order entered into without a finding of violation, or resulting in a final order or judgment after the effective date of this law involving the imposition of \$3,000 ~~\$2,000~~ or more in penalties shall be taken into consideration in the following manner:

(a) One previous such violation within 5 years prior to the filing of the notice of violation will result in a 25-percent per day increase in the scheduled administrative penalty.

(b) Two previous such violations within 5 years prior to the filing of the notice of violation will result in a 50-percent per day increase in the scheduled administrative penalty.

(c) Three or more previous such violations within 5 years prior to the filing of the notice of violation will result in a 100-percent per day increase in the scheduled administrative

701 penalty.

702 (8) The direct economic benefit gained by the violator
703 from the violation, where consideration of economic benefit is
704 provided by Florida law or required by federal law as part of a
705 federally delegated or approved program, shall be added to the
706 scheduled administrative penalty. The total administrative
707 penalty, including any economic benefit added to the scheduled
708 administrative penalty, may ~~shall~~ not exceed \$15,000 ~~\$10,000~~.

709 (9) The administrative penalties assessed for any
710 particular violation may ~~shall~~ not exceed \$7,500 ~~\$5,000~~ against
711 any one violator, unless the violator has a history of
712 noncompliance, the economic benefit of the violation as
713 described in subsection (8) exceeds \$7,500 ~~\$5,000~~, or there are
714 multiday violations. The total administrative penalties may
715 ~~shall~~ not exceed \$50,000 ~~\$10,000~~ per assessment for all
716 violations attributable to a specific person in the notice of
717 violation.

718 (10) The administrative law judge may receive evidence in
719 mitigation. The penalties identified in subsections ~~subsection~~
720 (3), ~~subsection~~ (4), and ~~subsection~~ (5) may be reduced up to 50
721 percent by the administrative law judge for mitigating
722 circumstances, including good faith efforts to comply prior to
723 or after discovery of the violations by the department. Upon an
724 affirmative finding that the violation was caused by
725 circumstances beyond the reasonable control of the respondent

and could not have been prevented by respondent's due diligence, the administrative law judge may further reduce the penalty.

(11) Penalties collected pursuant to this section shall be deposited into the Water Quality Assurance Trust Fund or other trust fund designated by statute and shall be used to fund the restoration of ecosystems, or polluted areas of the state, as defined by the department, to their condition before pollution occurred. The Florida Conflict Resolution Consortium may use a portion of the fund to administer the mediation process provided in paragraph (2)(e) and to contract with private mediators for administrative penalty cases.

(12) The purpose of the administrative penalty schedule and process is to provide a more predictable and efficient manner for individuals and businesses to resolve relatively minor environmental disputes. Subsections (3)-(7) may ~~Subsection (3), subsection (4), subsection (5), subsection (6), or subsection (7)~~ shall not be construed as limiting a state court in the assessment of damages. The administrative penalty schedule does not apply to the judicial imposition of civil penalties in state court as provided in this section.

Section 15. Subsection (1) of section 403.141, Florida Statutes, is amended to read:

403.141 Civil liability; joint and several liability.—

(1) A person who ~~Whoever~~ commits a violation specified in s. 403.161(1) is liable to the state for any damage caused to

751 the air, waters, or property, including animal, plant, or
752 aquatic life, of the state and for reasonable costs and expenses
753 of the state in tracing the source of the discharge, in
754 controlling and abating the source and the pollutants, and in
755 restoring the air, waters, and property, including animal,
756 plant, and aquatic life, of the state to their former condition,
757 and furthermore is subject to the judicial imposition of a civil
758 penalty for each offense in an amount of not more than \$15,000
759 ~~\$10,000~~ per offense. However, the court may receive evidence in
760 mitigation. Until a violation is resolved by order or judgment,
761 each day during any portion of which such violation occurs or is
762 not remediated constitutes a separate offense. Nothing herein
763 gives ~~shall give~~ the department the right to bring an action on
764 behalf of any private person.

765 Section 16. Subsections (2) through (5) of section
766 403.161, Florida Statutes, are amended to read:

767 403.161 Prohibitions, violation, penalty, intent.—

768 (2) A person who ~~Whoever~~ commits a violation specified in
769 subsection (1) is liable to the state for any damage caused and
770 for civil penalties as provided in s. 403.141.

771 (3) A ~~Any~~ person who willfully commits a violation
772 specified in paragraph (1)(a) commits ~~is guilty of~~ a felony of
773 the third degree, punishable as provided in ss. 775.082(3)(e)
774 and 775.083(1)(g) by a fine of not more than \$50,000 or by
775 imprisonment for 5 years, or by both, for each offense. Until a

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776 violation is resolved by order or judgment, each day during any
777 portion of which such violation occurs or is not remediated
778 constitutes a separate offense.

779 (4) A ~~Any~~ person who commits a violation specified in
780 paragraph (1)(a) or paragraph (1)(b) due to reckless
781 indifference or gross careless disregard commits ~~is guilty of~~ a
782 misdemeanor of the second degree, punishable as provided in ss.
783 775.082(4)(b) and 775.083(1)(g) by a fine of not more than
784 \$10,000 ~~\$5,000~~ or by 60 days in jail, or by both, for each
785 offense.

786 (5) A ~~Any~~ person who willfully commits a violation
787 specified in paragraph (1)(b) or paragraph (1)(c) commits ~~is~~
788 ~~guilty of~~ a misdemeanor of the first degree punishable as
789 provided in ss. 775.082(4)(a) and 775.083(1)(g) by a fine of not
790 more than \$10,000 or by 6 months in jail, or by both for each
791 offense.

792 Section 17. Paragraph (a) of subsection (6) of section
793 403.413, Florida Statutes, is amended to read:

794 403.413 Florida Litter Law.—

795 (6) PENALTIES; ENFORCEMENT.—

796 (a) Any person who dumps litter in violation of subsection
797 (4) in an amount not exceeding 15 pounds in weight or 27 cubic
798 feet in volume and not for commercial purposes commits ~~is guilty~~
799 ~~of~~ a noncriminal infraction, punishable by a civil penalty of
800 \$150 ~~\$100~~, from which \$50 shall be deposited into the Solid

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Waste Management Trust Fund to be used for the solid waste management grant program pursuant to s. 403.7095. In addition, the court may require the violator to pick up litter or perform other labor commensurate with the offense committed.

Section 18. Subsection (5) of section 403.7234, Florida Statutes, is amended to read:

403.7234 Small quantity generator notification and verification program.—

(5) Any small quantity generator who does not comply with the requirements of subsection (4) and who has received a notification and survey in person or through one certified letter from the county is subject to a fine of between \$75 ~~\$50~~ and \$150 ~~\$100~~ per day for a maximum of 100 days. The county may collect such fines and deposit them in its general revenue fund. Fines collected by the county shall be used to carry out the notification and verification procedure established in this section. If there are excess funds after the notification and verification procedures have been completed, such funds shall be used for hazardous and solid waste management purposes only.

Section 19. Subsection (3) of section 403.726, Florida Statutes, is amended to read:

403.726 Abatement of imminent hazard caused by hazardous substance.—

(3) An imminent hazard exists if any hazardous substance creates an immediate and substantial danger to human health,

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safety, or welfare or to the environment. The department may institute action in its own name, using the procedures and remedies of s. 403.121 or s. 403.131, to abate an imminent hazard. However, the department is authorized to recover a civil penalty of not more than \$37,500 ~~\$25,000~~ for each day until a ~~of~~ ~~continued~~ violation is resolved by order or judgment. Whenever serious harm to human health, safety, and welfare; the environment; or private or public property may occur prior to completion of an administrative hearing or other formal proceeding that which might be initiated to abate the risk of serious harm, the department may obtain, ex parte, an injunction without paying filing and service fees prior to the filing and service of process.

Section 20. Paragraph (a) of subsection (3) of section 403.727, Florida Statutes, is amended to read:

403.727 Violations; defenses, penalties, and remedies.—

(3) Violations of the provisions of this act are punishable as follows:

(a) Any person who violates ~~the provisions of~~ this act, the rules or orders of the department, or the conditions of a permit is liable to the state for any damages specified in s. 403.141 and for a civil penalty of not more than \$75,000 ~~\$50,000~~ for each day of continued violation or until a violation is resolved by order or judgment, except as otherwise provided herein. The department may revoke any permit issued to the

851 violator. In any action by the department against a small
852 hazardous waste generator for the improper disposal of hazardous
853 wastes, a rebuttable presumption of improper disposal shall be
854 created if the generator was notified pursuant to s. 403.7234;
855 the generator shall then have the burden of proving that the
856 disposal was proper. If the generator was not so notified, the
857 burden of proving improper disposal shall be placed upon the
858 department.

859 Section 21. Subsection (8) of section 403.93345, Florida
860 Statutes, is amended to read:

861 403.93345 Coral reef protection.—

862 (8) In addition to the compensation described in
863 subsection (5), the department may assess, per occurrence, civil
864 penalties according to the following schedule:

865 (a) For any anchoring of a vessel on a coral reef or for
866 any other damage to a coral reef totaling less than or equal to
867 an area of 1 square meter, \$225 ~~\$150~~, provided that a
868 responsible party who has anchored a recreational vessel as
869 defined in s. 327.02 which is lawfully registered or exempt from
870 registration pursuant to chapter 328 is issued, at least once, a
871 warning letter in lieu of penalty; with aggravating
872 circumstances, an additional \$225 ~~\$150~~; occurring within a state
873 park or aquatic preserve, an additional \$225 ~~\$150~~.

874 (b) For damage totaling more than an area of 1 square
875 meter but less than or equal to an area of 10 square meters,

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876 \$450 ~~\$300~~ per square meter; with aggravating circumstances, an
877 additional \$450 ~~\$300~~ per square meter; occurring within a state
878 park or aquatic preserve, an additional \$450 ~~\$300~~ per square
879 meter.

880 (c) For damage exceeding an area of 10 square meters,
881 \$1,500 ~~\$1,000~~ per square meter; with aggravating circumstances,
882 an additional \$1,500 ~~\$1,000~~ per square meter; occurring within a
883 state park or aquatic preserve, an additional \$1,500 ~~\$1,000~~ per
884 square meter.

885 (d) For a second violation, the total penalty may be
886 doubled.

887 (e) For a third violation, the total penalty may be
888 tripled.

889 (f) For any violation after a third violation, the total
890 penalty may be quadrupled.

891 (g) The total of penalties levied may not exceed \$375,000
892 ~~\$250,000~~ per occurrence.

893 Section 22. Subsection (5) of s. 823.11, Florida Statutes,
894 is reenacted for the purpose of incorporating the amendment made
895 by this act to s. 376.16, Florida Statutes, in a reference
896 thereto.

897 Section 23. Subsection (5) of s. 403.077, subsection (2)
898 of s. 403.131, paragraph (d) of subsection (3) of s. 403.4154,
899 and subsection (5) of s. 403.860, Florida Statutes, are
900 reenacted for the purpose of incorporating the amendment made by

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901 this act to s. 403.121, Florida Statutes, in references thereto.

902 Section 24. Subsection (10) of s. 403.708, subsection (7)
903 of s. 403.7191, and s. 403.811, Florida Statutes, are reenacted
904 for the purpose of incorporating the amendment made by this act
905 to s. 403.141, Florida Statutes, in references thereto.

906 Section 25. Subsection (2) of s. 403.7255, Florida
907 Statutes, is reenacted for the purpose of incorporating the
908 amendment made by this act to s. 403.161, Florida Statutes, in a
909 reference thereto.

910 Section 26. Subsection (8) of s. 403.7186, Florida
911 Statutes, is reenacted for the purpose of incorporating the
912 amendments made by this act to ss. 403.141 and 403.161, Florida
913 Statutes, in references thereto.

914 Section 27. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1091 Environmental Enforcement

SPONSOR(S): Fine

TIED BILLS: **IDEN./SIM. BILLS:** SB 1450

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Melkun	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Department of Environmental Protection (DEP) is Florida's lead agency for environmental management and stewardship, implementing many programs to protect the state's air, water, and land. In accordance with the state's numerous environmental laws, DEP's responsibilities include compliance and enforcement. Violations of Florida's environmental laws can result in damages and administrative, civil, and/or criminal penalties. Several types of violations impose a penalty for each offense, with each day during which a violation occurs constituting a separate offense.

The bill increases various statutory penalties for violations of environmental laws.

For violations that currently impose a penalty for each day during which a violation occurs, the bill specifies that each day the violation occurs or is not remediated constitutes a separate offense until the violation is resolved by order or judgment.

The bill may have an indeterminate fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Environmental Violations

The Department of Environmental Protection (DEP) is Florida's lead agency for environmental management and stewardship, implementing many programs to protect the state's air, water, and land.¹ In accordance with the state's numerous environmental laws, DEP's responsibilities include compliance and enforcement.² Violations of Florida's environmental laws can result in damages and administrative, civil, and/or criminal penalties.

Damages

In environmental enforcement, damages should compensate the state for the value of the loss to natural resources caused by the violation.³ DEP may institute a civil action in court or an administrative proceeding in the Division of Administrative Hearings (DOAH) to recover damages for any injury to the air, waters, or property, including animal, plant, and aquatic life, of the state caused by any violation.⁴ Damages can cover the cost of remediating the damage done to the environment, and/or costs incurred by the state in responding to the damage, such as tracing the source, controlling and abating the source, and restoring the environmental resources to their former condition.⁵

Penalties

In addition to damages, a violator can be liable for penalties. Penalties differ from damages in that they are designed to punish the wrongdoer rather than to address the harm caused by the violation.⁶ In environmental enforcement, penalties should create incentives to bring immediate compliance and curb future violations.⁷ In current law, several types of violations impose a penalty for each offense, with each day during which a violation occurs constituting a separate offense.

Administrative penalties can be levied directly by the agency or in a proceeding in DOAH.⁸ The formal administrative enforcement process is typically initiated by serving a notice of violation, and is finalized through entry of a consent order or final order.⁹ In most administrative proceedings, DEP has the final decision.¹⁰ An administrative law judge has the final decision for administrative proceedings involving the Environmental Litigation Reform Act (Reform Act), codified in s. 403.121, F.S., which is the primary statute addressing DEP's administrative penalties.¹¹ Compared to the judicial process, the administrative process is generally considered less expensive, faster, and more conducive to negotiated settlement.¹² However, if DEP is seeking immediate injunctive relief, which compels a party to act or stop acting, an order must be obtained from a court.¹³

¹ DEP, *About DEP*, available at <https://floridadep.gov/about-dep> (last visited Jan. 27, 2020); s. 20.255, F.S.

² DEP, *Enforcement Manual: DEP Regulatory Enforcement Organization* (2017), available at <https://floridadep.gov/sites/default/files/Chapter%201%20October%202017.pdf> (last visited Jan. 27, 2020).

³ DEP, *Enforcement Manual: Judicial Process and Remedies, Collections, and Bankruptcies* (2014), 89, available at <https://floridadep.gov/sites/default/files/chapter6.pdf> (last visited Jan. 27, 2020).

⁴ See s. 403.121, F.S.

⁵ See ss. 403.121 and 403.141, F.S.

⁶ See BLACK'S LAW DICTIONARY 1247 (9th ed. 2009).

⁷ DEP, *Enforcement Manual: Judicial Process and Remedies, Collections, and Bankruptcies* (2014), 89, available at <https://floridadep.gov/sites/default/files/chapter6.pdf> (last visited Jan. 27, 2020).

⁸ See ch. 120, F.S. The administrative process is formalized in the Administrative Procedure Act.

⁹ DEP, *Enforcement Manual: The Administrative Process and Remedies* (2014), 58, available at https://floridadep.gov/sites/default/files/chapter5_0.pdf (last visited Jan. 27, 2020).

¹⁰ *Id.*

¹¹ *Id.* at 58-59, 66-70; ch. 2001-258, Laws of Fla.

¹² DEP, *Enforcement Manual: The Administrative Process and Remedies* (2014), 59, available at https://floridadep.gov/sites/default/files/chapter5_0.pdf (last visited Jan. 27, 2020).

¹³ *Id.* at 59-60.

DEP must proceed administratively when it seeks administrative penalties that do not exceed \$10,000 per assessment, and DEP is prohibited from imposing administrative penalties in excess of \$10,000 in a single notice of violation.¹⁴ DEP also may not have more than one notice of violation pending against a party unless the additional violation occurred at a different site or was discovered subsequent to the filing of a previous notice of violation.¹⁵

Civil penalties are noncriminal fines that are generally levied by a court, but certain agencies are authorized to impose them under certain circumstances. The Reform Act allows DEP to seek civil penalties of up to \$10,000 through the administrative process for most environmental violations.¹⁶

In state court, DEP may pursue two forms of action: a petition to enforce an order previously entered through the administrative process, or a complaint for violations of statutes or rules.¹⁷ Under both actions, DEP may seek injunctive relief, civil penalties, damages, and costs and expenses.¹⁸ For judicially imposed civil penalties, DEP is authorized to recover up to \$10,000 per offense, with each day during any portion of which a violation occurs constituting a separate offense.¹⁹

A court or an administrative law judge may receive evidence in mitigation, which may result in the decrease or elimination of penalties.²⁰

Criminal penalties can include jail/prison time, a criminal fine, or both. Florida law imposes criminal penalties for certain violations of environmental law.²¹ Punishments for such violations may vary based on standards of intent, such as willful, reckless indifference, or gross careless disregard.²²

In addition to DEP, the Department of Legal Affairs, any political subdivision or municipality of the state, and any citizen of the state also have the authority to bring an action for injunctive relief against violators of environmental laws.²³

Effect of the Bill

The bill increases various statutory penalties for violations of environmental laws.

The table below outlines the increased penalties for certain environmental violations proposed by the bill. For violations that currently impose a penalty for each day during which a violation occurs, the bill specifies that each day the violation occurs or is not remediated constitutes a separate offense until the violation is resolved by order or judgment.

SECTION OF LAW	DESCRIPTION OF VIOLATION	CURRENT FINE/PENALTY	PROPOSED FINE/PENALTY
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¹⁴ Section 403.121(2)(b), F.S.; DEP, *Enforcement Manual: The Administrative Process and Remedies* (2014), 66-67, available at https://floridadep.gov/sites/default/files/chapter5_0.pdf (last visited Jan. 27, 2020). This requirement does not apply to underground injection, hazardous waste, or asbestos programs.

¹⁵ *Id.*

¹⁶ Section 403.121, F.S.

¹⁷ DEP, *Enforcement Manual: Judicial Process and Remedies, Collections, and Bankruptcies* (2014), 86, available at <https://floridadep.gov/sites/default/files/chapter6.pdf> (last visited Jan. 27, 2020).

¹⁸ *Id.*

¹⁹ Section 403.121(1)(b), F.S.

²⁰ Section 403.121, F.S.

²¹ Section 403.161, F.S.

²² *Id.*

²³ Section 403.412, F.S.

SECTION OF LAW	DESCRIPTION OF VIOLATION	CURRENT FINE/PENALTY	PROPOSED FINE/PENALTY
161.054	DEP is required to assess a civil penalty for refusing to comply with the requirements of a coastal construction; a reconstruction or change of existing structures; a construction or physical activity undertaken specifically for shore protection purposes; or certain other structures and physical activities.	Up to \$10,000 per day	Up to \$15,000 per day
258.397	The Department of Legal Affairs is authorized to bring a civil action for a violation of the requirements of the Biscayne Bay Aquatic Preserve.	\$5,000 per day	\$7,500 per day
258.46	The Board of Trustees of the Internal Improvement Trust Fund is required to charge a civil penalty for violations of regulations for all aquatic preserves.	Between \$500 and \$5,000 per day	Between \$750 and \$7,500 per day
373.129	DEP and the water management districts are authorized to bring actions and proceedings to enforce rules, regulations, and adopted or issued orders; enjoin or abate violations of law, rules, regulations, and adopted orders; protect and preserve the water resources of the state; defend all actions and proceedings involving their powers and duties pertaining to the water resources of the state; and recover a civil penalty for each offense.	\$10,000 per offense	\$15,000 per offense
373.209	DEP is required to assess a civil penalty for violations of regulations for artesian wells.	\$100 per day for each offense	\$150 per day for each offense
376.065	DEP is required to assess a civil penalty for the operation of a terminal facility without a discharge prevention and response certificate.	\$500	\$750
376.071	DEP is required to assess a civil penalty for any vessel with a pollutant capacity of 10,000 gallons or more that fails to maintain a discharge prevention and control contingency plan.	\$5,000	\$7,500
376.16	DEP is required to assess a civil penalty for violations of the Pollutant Discharge Prevention and Control Act.	Up to \$50,000 per day for each offense	Up to \$75,000 per day for per offense
	DEP is required to assess a civil penalty for a second or subsequent discharge of more than 5 gallons of gasoline or diesel within 12 months of the first discharge.	2 nd discharge: \$500 Subsequent discharges: \$1,000	2 nd discharge: \$750 Subsequent discharges: \$1,500
	DEP is required to assess a civil penalty for a second or subsequent discharge of any pollutant other than gasoline or diesel within 12 months of the first discharge.	2 nd discharge: \$2,500 Subsequent discharges: \$5,000	2 nd discharge: \$3,750 Subsequent discharges: \$7,500
	DEP is required to assess a civil penalty for a subsequent discharge of gasoline or diesel equal to or less than 5 gallons within 12 months of the first discharge.	\$50	\$75
	DEP is required to assess a civil penalty for a subsequent discharge of a pollutant other than gasoline or diesel equal to or less than 5 gallons within 12 months of the first discharge.	\$100	\$150

SECTION OF LAW	DESCRIPTION OF VIOLATION	CURRENT FINE/PENALTY	PROPOSED FINE/PENALTY
	A county court is authorized to impose a civil penalty if a violator elects to appear before the court and the court determines that an infraction has been committed for the discharge of gasoline or diesel.	2 nd discharge: Up to \$500 Subsequent discharges: Up to \$1,000	2 nd discharge: Up to \$750 Subsequent discharges: Up to \$1,500
	A county court is authorized to impose a civil penalty if a violator elects to appear before the court and the court determines that an infraction has been committed for the discharge of a pollutant other than gasoline or diesel.	2 nd discharge: Up to \$5,000 Subsequent discharges: Up to \$10,000	2 nd discharge: Up to \$7,500 Subsequent discharges: Up to \$15,000
376.25	DEP is required to assess a civil penalty for violations of regulations for gambling vessels.	Up to \$50,000 for each violation	Up to \$75,000 for each violation
377.37	DEP is required to assess a civil penalty for violations of the regulations of oil and gas resources.	Up to \$10,000 for each violation	Up to \$15,000 for each violation
378.211	DEP is authorized to impose a civil penalty for violations of a minor or technical nature of phosphate land reclamation regulations.	\$100 each day for each violation	\$150 each day for each violation
	DEP is authorized to impose a civil penalty for a major violation by an operator of phosphate land reclamation regulations of which a penalty has not been imposed within the last 5 years.	\$1,000 each day for each violation	\$1,500 each day for each violation
	DEP is authorized to impose a civil penalty for major violations not covered by the violations above for phosphate land reclamation regulations.	\$5,000 each day for each violation	\$7,500 each day for each violation
403.086	DEP is required to assess a civil penalty for failing to conform with regulations for sewage disposal facilities using advanced and secondary waste treatment.	\$500 per day	\$750 per day
403.121	DEP is authorized to impose a civil penalty for violations of pollution control regulations.	Up to \$10,000 per offense	Up to \$15,000 per offense
	DEP is authorized to seek administrative penalties to provide appropriate corrective action with respect to various environmental violations. The law specifies the maximum civil penalty DEP may seek.	Up to \$10,000 per assessment	Up to \$50,000 per assessment
	DEP is required to assess administrative penalties for a drinking water contamination violation related to maximum contaminant levels, with additional penalties under certain conditions.	\$2,000 plus \$1,000 per condition	\$3,000 plus \$1,500 per condition
	DEP is required to assess an administrative penalty for failing to obtain a clearance letter prior to placing a drinking water system into service when the system would not have been eligible for clearance.	\$3,000	\$4,500
	DEP is required to assess an administrative penalty for failing to obtain a wastewater permit other than a surface water discharge permit.	\$1,000	\$1,500
	DEP is required to assess an administrative penalty for an unpermitted or unauthorized wastewater discharge that did not result in a water quality violation.	\$2,000	\$3,000
	DEP is required to assess an administrative penalty for the unpermitted or unauthorized discharge that resulted in a water quality violation.	\$5,000	\$7,500

SECTION OF LAW	DESCRIPTION OF VIOLATION	CURRENT FINE/PENALTY	PROPOSED FINE/PENALTY
	DEP is required to assess an administrative penalty for a dredge and fill or stormwater violation with additional penalties under the following conditions:	\$1,000	\$1,500
	• If the violation occurs in a certain waterbody	plus \$2,000	plus \$3,000
	• If the violation occurs in an area of a certain size	plus \$1,000	plus \$1,500
	DEP is required to assess an administrative penalty for failing to complete required mitigation, record a conservation easement, or a water quality violation resulting from certain activities.	\$3,000	\$4,500
	DEP is required to assess an administrative penalty for failing to properly or timely construct a stormwater management system for systems serving less than 5 acres.	\$2,000	\$3,000
	DEP is required to assess an administrative penalty against a contractor that conducts unpermitted or unauthorized dredging or filling.	\$5,000	\$7,500
	DEP is required to assess an administrative penalty against a contractor for mangrove trimming or alteration violations.	\$5,000	\$7,500
	DEP is required to assess an administrative penalty for the unpermitted or unauthorized disposal of solid waste, with additional penalties for certain conditions.	\$2,000 plus \$1,000 per condition	\$3,000 plus \$1,500 per condition
	DEP is required to assess an administrative penalty for failure to properly maintain leachate control.	\$3,000	\$4,500
	DEP is required to assess an administrative penalty for failing to construct or maintain a required stormwater management system.	\$2,000	\$3,000
	DEP is required to assess an administrative penalty for an unpermitted or unauthorized air emission or air-emission-permit exceedance, with additional penalties if:	\$1,000	\$1,500
	• The emission was from a major source and the source was major for the pollutant in violation	\$3,000	\$4,500
	• The emission was more than 150% of the allowable level	\$1,000	\$1,500
	DEP is required to assess an administrative penalty for storage tank system and petroleum contamination violations.	\$5,000	\$7,500
	DEP is required to assess an administrative penalty for failing to timely upgrade a storage tank system.	\$3,000	\$4,500
	DEP is required to assess an administrative penalty for release violations of storage tank systems.	\$2,000	\$3,000
	DEP is required to assess an administrative penalty for failing to properly operate, maintain, or close a storage tank system.	\$1,000	\$1,500
	DEP is required to assess an administrative penalty for failure to satisfy financial responsibility requirements or pollution of land, water, wildlife, or property by drilling for oil, gas, or other petroleum products.	\$5,000	\$7,500

SECTION OF LAW	DESCRIPTION OF VIOLATION	CURRENT FINE/PENALTY	PROPOSED FINE/PENALTY
	DEP is required to assess an administrative penalty for failing to install, maintain, or use a required pollution control system or device.	\$4,000	\$6,000
	DEP is required to assess an administrative penalty for failing to obtain a required permit before construction or modification.	\$3,000	\$4,500
	DEP is required to assess an administrative penalty for failing to conduct regular monitoring or testing, to conduct required release detection, or to construct in compliance with a permit.	\$2,000	\$3,000
	DEP is required to assess an administrative penalty for failing to maintain and train staff; prepare and maintain contingency plans; adequately respond to emergencies; or submit required notification to DEP.	\$1,000	\$1,500
	DEP is required to assess an administrative penalty for failing to prepare, submit, maintain, or use required reports or other documentation.	\$500	\$750
	DEP is required to assess an administrative penalty for failing to comply with any departmental regulatory statute or rule not described above.	\$500	\$1,000
	When considering the economic benefit gained by a violator from a violation, the law specifies that the total administrative penalty may not exceed a certain amount.	\$10,000	\$15,000
	The law specifies that the administrative penalties assessed for any violation may not exceed a certain amount against any one violator unless the violator has a history of noncompliance or the economic benefit exceeds a certain amount.	\$5,000 per violator unless economic benefit exceeds \$5,000	\$7,500 per violator unless economic benefit exceeds \$7,500
	The law specifies that the total administrative penalties per assessment for all violations attributable to a specific person may not exceed a certain amount.	\$10,000 per assessment	\$50,000 per assessment
403.141	Any person who causes pollution, fails to obtain a permit, knowingly makes false statements, or fails to provide required notice is liable to the state for any damage to airs, waters, or properties (including wildlife) of the state and is subject to a civil penalty for each offense.	Up to \$10,000 per offense	Up to \$15,000 per offense
403.161	Any person who fails to obtain a permit due to reckless indifference commits a 2 nd degree misdemeanor punishable by 60 days in jail, a fine, or both for each offense.	Up to \$5,000 per offense	Up to \$10,000 per offense
403.413	A law enforcement officer is required to assess a civil penalty for dumping litter.	\$100	\$150
403.7234	DEP is required to assess a civil penalty for any small quantity generator who does not comply with the small quantity generator notification and verification program	Between \$50 and \$100 per day for up to 100 days	Between \$75 and \$150 for up to 100 days
403.726	DEP is authorized impose a civil penalty for a violation of hazardous substance regulations.	Up to \$25,000 per day	Up to \$37,500 per day
403.727	DEP is required to assess a civil penalty for a violation of hazardous waste regulations.	Up to \$50,000 per day	Up to \$75,000 per day

SECTION OF LAW	DESCRIPTION OF VIOLATION	CURRENT FINE/PENALTY	PROPOSED FINE/PENALTY
403.93345	DEP is authorized to impose a civil penalty for any anchoring of a vessel on a coral reef or any other damage to a coral reef totaling less than 1 square meter, if the responsible party has been previously issued at least 1 warning letter, with additional penalties for violations that occur under certain conditions.	\$150 plus \$150 per condition	\$225 plus \$225 per condition
	DEP is authorized to impose a civil penalty for damage totaling more than 1 square meter but less than or equal to 10 sq. meters of a coral reef, with additional penalties for damage occurring under certain conditions.	\$300 plus \$300 per condition	\$450 plus \$450 per condition
	DEP is authorized to impose a civil penalty for damage totaling more than 10 square meters of a coral reef, with additional penalties for damage occurring under certain conditions.	\$1,000 plus \$1,000 per condition	\$1,500 plus \$1,500 per condition
	The law specifies that the total penalties DEP may impose for damage totaling more than 10 square meters of a coral reef may not exceed a certain amount per occurrence.	\$250,000	\$375,000

B. SECTION DIRECTORY:

Section 1. Amends s. 161.054, F.S., to increase penalties.

Section 2. Amends s. 258.397, F.S., to increase penalties.

Section 3. Amends s. 258.46, F.S., to increase penalties.

Section 4. Amends s. 373.129, F.S., to increase penalties.

Section 5. Amends s. 373.209, F.S., to increase penalties.

Section 6. Amends s. 373.430, F.S., to increase penalties.

Section 7. Amends s. 376.065, F.S., to increase penalties.

Section 8. Amends s. 376.071, F.S., to increase penalties.

Section 9. Amends s. 376.16, F.S., to increase penalties.

Section 10. Amends s. 376.25, F.S., to increase penalties.

Section 11. Amends s. 377.37, F.S., to increase penalties.

Section 12. Amends s. 378.211, F.S., to increase penalties.

Section 13. Amends s. 403.086, F.S., to increase penalties.

Section 14. Amends s. 403.121, F.S., to increase penalties.

Section 15. Amends s. 403.141, F.S., to increase penalties.

Section 16. Amends s. 403.161, F.S., to increase penalties.

Section 17. Amends s. 403.413, F.S., to increase penalties.

Section 18. Amends s. 403.7234, F.S., to increase penalties.

- Section 19. Amends s. 403.726, F.S., to increase penalties.
- Section 20. Amends s. 403.727, F.S., to increase penalties.
- Section 21. Amends s. 403.93345, F.S., to increase penalties.
- Section 22. Reenacts s. 823.11, F.S., to incorporate amendments made by the bill.
- Section 23. Reenacts ss. 403.077, 403.131, 403.4154, and 403.860, F.S., to incorporate amendments made by the bill.
- Section 24. Reenacts ss. 403.708, 403.7191, and 403.811, F.S., to incorporate amendments made by the bill.
- Section 25. Reenacts s. 403.7255, F.S., to incorporate amendments made by the bill.
- Section 26. Reenacts s. 403.7186, F.S., to incorporate amendments made by the bill.
- Section 27. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive fiscal impact on state government revenues because the bill increases various penalties associated with the violation of environmental laws.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have an indeterminate positive fiscal impact on the revenues of local governments with the delegated authority to assess penalties because the bill increases a number of penalties associated with the violation of environmental laws.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on local governments that own and operate wastewater treatment facilities because the bill increases a number of penalties associated with the violation of environmental laws, including permit violations for wastewater treatment facilities.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on the private sector because it increases a number of penalties associated with the violation of environmental laws and, in some instances, may increase the time period during which each day constitutes a separate offense.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue

On line 298 of the bill, the word "which" should be struck through.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

By Senator Mayfield

17-01106B-20

20201414__

A bill to be entitled
An act relating to fish and wildlife activities;
amending s. 379.105, F.S.; prohibiting certain
harassment of hunters, trappers, and fishers within or
on public lands or publicly or privately owned
wildlife and fish management areas, or in or on public
waters; amending s. 379.354, F.S.; authorizing the
Fish and Wildlife Conservation Commission to designate
additional annual free freshwater and saltwater
fishing days; amending s. 379.372, F.S.; prohibiting
the keeping, possessing, importing, selling,
bartering, trading, or breeding of certain species
except for educational or research purposes; providing
an effective date.

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

Section 1. Subsection (1) of section 379.105, Florida
Statutes, is amended to read:

379.105 Harassment of hunters, trappers, or fishers.—

(1) A person may not intentionally, within or on any public
lands or a publicly or privately owned wildlife management and
~~or~~ fish management areas, area or in or on any public waters
~~state-owned water body~~:

(a) Interfere with or attempt to prevent the lawful taking
of fish, game, or nongame animals by another within or on such
lands or areas, or in or on such waters.

(b) Attempt to disturb fish, game, or nongame animals or
attempt to affect their behavior with the intent to prevent

17-01106B-20

20201414__

their lawful taking by another within or on such lands or areas,
or in or on such waters.

Section 2. Subsection (15) of section 379.354, Florida Statutes, is amended to read:

379.354 Recreational licenses, permits, and authorization numbers; fees established.—

(15) FREE FISHING DAYS.—The commission may designate by rule no more than 6 4 consecutive or nonconsecutive days in each year as free freshwater fishing days and no more than 6 4 consecutive or nonconsecutive days in each year as free saltwater fishing days. Notwithstanding any other provision of this chapter, a ~~any~~ person may take freshwater fish for noncommercial purposes on a free freshwater fishing day and may take saltwater fish for noncommercial purposes on a free saltwater fishing day, without obtaining or possessing a license or permit or paying a license or permit fee as set forth ~~prescribed~~ in this section. A person who takes freshwater or saltwater fish on a free fishing day must comply with all laws, rules, and regulations governing the holders of a fishing license or permit and all other conditions and limitations regulating the taking of freshwater or saltwater fish as are imposed by law or rule.

Section 3. Paragraph (a) of subsection (2) of section 379.372, Florida Statutes, is amended to read:

379.372 Capturing, keeping, possessing, transporting, or exhibiting venomous reptiles, reptiles of concern, conditional reptiles, or prohibited reptiles; license required.—

(2)(a) A ~~No~~ person, party, firm, association, or corporation may not ~~shall~~ keep, possess, import into the state,

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20201414__

59 sell, barter, trade, or breed the following species except for
60 educational or research purposes ~~personal use or for sale for~~
61 ~~personal use~~:

- 62 1. Burmese or Indian python (*Python molurus*).
- 63 2. Reticulated python (*Python reticulatus*).
- 64 3. Northern African python (*Python sebae*).
- 65 4. Southern African python (*Python natalensis*).
- 66 5. Amethystine or scrub python (*Morelia amethystinus*).
- 67 6. Green Anaconda (*Eunectes murinus*).
- 68 7. Nile monitor (*Varanus niloticus*).
- 69 8. Green iguana (*Iguana iguana*).
- 70 9. Black and white tegu (*Salvator merianae*).
- 71 10. Any other reptile designated as a conditional or
72 prohibited species by the commission.
- 73 Section 4. This act shall take effect July 1, 2020.



523760

LEGISLATIVE ACTION

Senate

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House

The Committee on Environment and Natural Resources (Mayfield)
recommended the following:

Senate Amendment (with title amendment)

Delete lines 70 - 73
and insert:

9. Tegu lizard (any species of the genera *Salvator* or
Tupinambis).

10. Any other reptile designated as a conditional or
prohibited species by the commission.

Section 4. For the purpose of incorporating the amendment
made by this act to section 379.372, Florida Statutes, in a



523760

reference thereto, subsection (1) of section 379.2311, Florida Statutes, is reenacted to read:

379.2311 Nonnative animal management.—

(1) As used in this section, the term "priority invasive species" means the following:

(a) Lizards of the genus *Tupinambis*, also known as tegu lizards;

(b) Species identified in s. 379.372(2)(a);

(c) *Pterois volitans*, also known as red lionfish; and

(d) *Pterois miles*, also known as the common lionfish or devil firefish.

Section 5. This act shall take effect July 1, 2020.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 13

and insert:

except for educational or research purposes; including green iguanas and species of the genera *Salvator* and *Tupinambis* in such prohibition; reenacting s.

379.2311(1), F.S., relating to the definition of the term "priority invasive species," to incorporate the amendment made to s. 379.372, F.S., in a reference thereto; providing

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1414

INTRODUCER: Senator Mayfield

SUBJECT: Fish and Wildlife Activities

DATE: January 26, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rogers	Rogers	EN	Pre-meeting
2.			AG	
3.			RC	

I. Summary:

SB 1414 broadens the prohibition on the harassment of hunters, trappers, or fishers to include harassment on any public lands, public waters, or publicly or privately owned wildlife management and fish management areas.

The bill expands the number of free fishing days from 4 to 6.

The bill adds tegus and iguanas to the conditional nonnative snakes and lizards list and tightens the restrictions on the list from applying to possession of these species for sale or personal use to prohibiting any use except for educational or research purposes.

II. Present Situation:

Penalties for Violations Pertaining to Fish and Wildlife

Under Art. IV, s. 9 of the Florida Constitution, the Fish and Wildlife Conservation Commission (FWC) is granted the authority to exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life. The Legislature may enact laws that aid FWC in its exercise of regulatory functions and executive powers in the areas of planning, budgeting, personnel management, and purchasing.¹

Section 379.401, F.S., details FWC's four-tier system for penalties and violations, civil penalties for noncriminal infractions, criminal penalties, and suspension and forfeiture of licenses and permits. Level One violations are considered the least serious while Level Four violations the most serious.

¹ FLA. CONST. art. IV, s. 9.

The penalties for Level Two violations are as follows:

Level Two Violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
First offense	2 nd Degree Misdemeanor ²	Max: \$500 or Max: 60 days	None
Second offense within three years of previous Level Two violation (or higher)	1 st Degree Misdemeanor ³	Min: \$250; Max: \$1,000 Max: one year	None
Third offense within five years of two previous Level Two violations (or higher)	1 st Degree Misdemeanor ⁴	Min: \$500; Max: \$1,000 Max: one year	Suspension of license for one year
Fourth offense within 10 years of three previous Level Two violations (or higher)	1 st Degree Misdemeanor ⁵	Min: \$750; Max \$1,000 or Max: one year	Suspension of license for three years

Right to Hunt or Fish

The Legislature recognizes that hunting, fishing, and the taking of game are a valued part of the cultural heritage of Florida and should be forever preserved for Floridians.⁶ The Legislature further recognizes that these activities play an important part in the state's economy and in the conservation, preservation, and management of the state's natural areas and resources. Therefore, the Legislature intends that the citizens of Florida have a right to hunt, fish, and take game, subject to the regulations and restrictions prescribed by general law and by the FWC.⁷

Fees for Freshwater or Saltwater Fishing Licenses

The law and FWC rules prohibit the taking of game, freshwater or saltwater fish, or fur-bearing animals within this state without having first obtained a license, permit, or authorization number and paid the associated fees.⁸ The following lists are freshwater and saltwater fees for fishing licenses set out in statute, though there can be additional fees for specialized permits.

For residents:

- An annual freshwater or saltwater fishing license costs \$15.50.⁹
- A 5-year freshwater or saltwater fishing license costs \$77.50.¹⁰
- A lifetime freshwater or saltwater fishing license costs:¹¹

² Section 379.401(2)(b)1., F.S.

³ Section 379.401(2)(b)2., F.S.

⁴ Section 379.401(2)(b)3., F.S.

⁵ Section 379.401(2)(b)4., F.S.

⁶ Section 379.104, F.S.

⁷ *Id.*

⁸ Section 379.354(1), F.S.

⁹ Section 379.354(4), F.S.

¹⁰ Section 379.354(9), F.S.

¹¹ Section 379.354(11), F.S.

- \$125 for persons 4 years of age or younger.
- \$225 for persons 5 years of age or older but under 13 years of age.
- \$300 for persons 13 years of age or older.

For nonresidents:

- A freshwater or saltwater fishing license for 3 consecutive days costs \$15.50.
- A freshwater or saltwater fishing license for 7 consecutive days costs \$28.50.
- An annual freshwater or saltwater fishing license costs \$45.50.¹²

FWC also charges \$1.50 for the cost of issuing the permit.¹³ Exemptions from the fishing license requirement exist for those under the age of 16 or are over the age of 65.¹⁴

Free Fishing Days

Florida law expressly authorizes FWC to designate by rule no more than 4 days a year as free freshwater fishing days and no more than 4 days year as free saltwater fishing days.¹⁵ This means people can fish without a license or permit on those days. A person who takes freshwater or saltwater fish on a free fishing day must comply with all laws, rules, and regulations governing the holders of a fishing license or permit and all other conditions and limitations regulating the taking of freshwater or saltwater fish as are imposed by law or rule.¹⁶

Harassment of Hunters, Trappers, or Fishers

Under 379.105, F.S., a person may not intentionally, within a publicly or privately owned wildlife management or fish management area or on any state-owned water body:

- Interfere with or attempt to prevent the lawful taking of fish, game, or nongame animals by another.
- Attempt to disturb fish, game, or nongame animals or attempt to affect their behavior with the intent to prevent their lawful taking by another.

Anyone in violation of this provision is guilty of a Level Two violation (see above).

Nonnative Species

FWC is responsible for the control and management of nonnative species.¹⁷ Nonnative species are animals living outside captivity and which are not historically present in the state.¹⁸ More

¹² Section 379.354(5), F.S.

¹³ Section 379.352(5), F.S.

¹⁴ Section 379.353, F.S.

¹⁵ Section 379.354(15), F.S.; Fla. Admin. Code R. 68A-5.006 sets out “Free-Freshwater Fishing Day-Spring” as the first weekend in April, and “Free-Freshwater Fishing Day-Summer” as the second weekend in June, or such other period as may be specified by order of FWC; Fla. Admin. Code R. 68A-5.006 sets out “License-Free Saltwater Fishing Days” as the first weekend in June, the first Saturday in September, and the Saturday following Thanksgiving.

¹⁶ Section 379.354(15), F.S.

¹⁷ Fla. Admin. Code Ch. 68-5.

¹⁸ Fish and Wildlife Conservation Commission (FWC), *What is a nonnative species?*, <https://myfwc.com/wildlifehabitats/nonnatives/exotic-information/> (last visited Jan. 13, 2020).

than 500 fish and wildlife nonnative species have been documented in Florida.¹⁹ Not all nonnative species pose a threat to Florida's ecology, but some nonnative species become invasive species by causing harm to native species, posing a threat to human health and safety, or causing economic damage.²⁰ To manage and minimize the impacts of nonnative species, it is unlawful to import for sale or use, or to release within the state, any species not native to Florida unless authorized by the FWC.²¹

Prohibited or Conditional Nonnative Snakes and Lizards

Prohibited species are nonnative species that pose a very high risk to native fish and wildlife, to the ecology of native wildlife communities, or to human safety. Possession of these species requires a permit from FWC and is generally limited to public exhibition and research.²²

Conditional species²³ are nonnative species that pose a risk to native fish and wildlife or to the ecology of native wildlife communities. Conditional nonnative snakes and lizards are not authorized to be acquired for personal possession.²⁴ Specifically, the following nonnative snakes and lizards are prohibited from being kept, possessed, imported into the state, sold, bartered, traded, or bred for personal use or for sale for personal use:

- Burmese or Indian python;
- Reticulated python;
- Northern African python;
- Southern African python;
- Amethystine or scrub python;
- Green Anaconda;
- Nile Monitor; and
- Any other reptile designated as a conditional or prohibited species by FWC.²⁵

A reptile dealer, researcher, or public exhibitor providing educational exhibits may apply for a permit to import or possess conditional nonnative snakes and lizards.²⁶ Conditional nonnative snakes and lizards must be kept indoors or in outdoor enclosures with a fixed roof and must be permanently identified with a passive integrated transponder (PIT) tag, also known as a microchip.²⁷ Owners of such species must submit a Captive Wildlife Disaster and Critical Incident Plan to FWC and must maintain records of their inventory.²⁸

¹⁹ FWC, *Florida's Exotic Fish and Wildlife*, <http://myfwc.com/wildlifehabitats/nonnatives/> (last visited on Jan. 13, 2020).

²⁰ *Id.*

²¹ Section 379.231, F.S.

²² Section 379.372, F.S.; see Fla. Admin. Code R. 68-5.003 for a complete list of prohibited species.

²³ Statute uses the phrase "reptiles of concern," but FWC lists such species in its conditional species list. See FWC, *Reptiles of Concern*, <https://myfwc.com/license/captive-wildlife/reptiles-of-concern/> (last visited Dec. 30, 2019); s. 379.372(b), F.S.

²⁴ FWC, *Conditional Snakes and Lizards*, <http://myfwc.com/wildlifehabitats/nonnatives/regulations/snakes-and-lizards/> (last visited Jan. 13, 2020).

²⁵ Section 379.372(2)(a), F.S.

²⁶ Fla. Admin. Code R. 68-5.005(1); see FWC, *Conditional Snakes and Lizards*, <http://myfwc.com/wildlifehabitats/nonnatives/regulations/snakes-and-lizards/> (last visited Jan. 13, 2020).

²⁷ Fla. Admin. Code R. 68-5.005(5).

²⁸ *Id.*

In 2018, the Legislature created s. 379.2311, F.S., which directed FWC to create a pilot program to mitigate the impact of priority invasive species on the public lands or waters of the state. The goal of the pilot program is to examine the benefits of using strategically deployed, trained private contractors to slow the advance of priority invasive species, contain their populations, and eradicate them from this state. As part of the program, FWC is authorized to enter into contracts to capture or destroy animals belonging to priority invasive species found on public lands, in the waters of this state, or on private lands or waters with the consent of the owner. All captures and disposals of animals that are priority invasive species must be documented and photographed and the geographic location of the take must be recorded for research purposes. FWC is required to submit a report of findings and recommendations regarding its implementation of the pilot program to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2021.

Priority invasive species are:

- Lizards of the genus *Tupinambis*, also known as tegu lizards;
- The conditional lizard and snake species listed above;
- *Pterois volitans*, also known as red lionfish; and
- *Pterois miles*, also known as the common lionfish or devil firefish.²⁹

Tegus

The Argentine Black and White Tegu (*Tupinambis merianae*), commonly referred to as a tegu, is a large species of lizard that can grow up to four feet in length and is native to South America.³⁰ Tegus are not innately aggressive but have sharp teeth, strong jaws, and sharp claws, which they will use to defend themselves if threatened.³¹ Tegus are an invasive species and have known breeding populations in Miami-Dade and Hillsborough counties³² and an emerging population in Charlotte County.³³ The tegu causes harm to native species by disturbing alligator nests and consuming their eggs, and utilizing gopher tortoise burrows and consuming juvenile gopher tortoises.³⁴

The tegu is not designated as a conditional or prohibited species.³⁵ However, a person must possess a license from FWC to sell a tegu or for public exhibition.³⁶ A November 2019 survey of all Class III license holders allowing for the sale of reptiles found 106 license holders listed that may sell tegus with more than 1,245 in inventory.³⁷ FWC developed a trapping removal program and works with other agencies and organizations to assess the tegu's threat and develop

²⁹ Section 379.2311, F.S.

³⁰ FWC, *Argentine black and white tegu*, <https://myfwc.com/wildlifehabitats/nonnatives/reptiles/whiptails-and-wall-lizards/tegu/> (last visited Jan. 2, 2020).

³¹ *Id.*

³² *Id.*

³³ FWC, *Senate Bill 1414 Agency Bill Analysis*, 2 (Dec. 19, 2019) (on file with the Senate Committee on Environment and Natural Resources).

³⁴ FWC, *Argentine black and white tegu*, <https://myfwc.com/wildlifehabitats/nonnatives/reptiles/whiptails-and-wall-lizards/tegu/> (last visited Jan. 2, 2020).

³⁵ *Id.*

³⁶ *Id.*; see s. 379.3761, F.S.

³⁷ FWC, *Senate Bill 1414 Agency Bill Analysis*, 2 (Dec. 19, 2019) (on file with the Senate Committee on Environment and Natural Resources).

management strategies.³⁸ The goal of the program is to minimize the impact of tegus on native wildlife and natural areas.³⁹ A limited number of commercial wildlife operators trap and remove tegus for homeowners or on other private lands.⁴⁰

Members of the public may also remove and kill tegus from 22 FWC managed public lands without a license or permit.⁴¹ Through these efforts, over 7,800 tegus have been reported to the Commission as removed from the wild or found dead in Florida by FWC staff, partners, and the public since 2012, primarily in Miami-Dade County.⁴²

Green Iguanas

Green iguanas (*Iguana iguana*) are large, typically green lizards, though they can sometimes be brown or almost black in color.⁴³ Some adults can take on an orange or pink coloration during certain times of the year. Male green iguanas can grow to over five feet in length and weigh up to 17 pounds. Females can also reach five feet in length but usually do not exceed seven pounds. Females typically reach reproductive maturity at two to four years of age. Green iguanas can live up to 10 years in the wild and 19 years in captivity. Green iguanas thrive in southern Florida and are not cold hardy.⁴⁴

Green iguanas are a nonnative, invasive species in Florida.⁴⁵ Green iguanas can live on the ground, in shrubs, or in trees in a variety of habitats including suburban developments, urban areas, small towns, and agricultural areas. They are excellent swimmers, tolerating both salt and freshwater and can submerge themselves for up to four hours at a time.⁴⁶

Green iguanas cause damage to residential and commercial landscape vegetation and are often considered a nuisance by property owners. Iguanas are attracted to trees with foliage or flowers, most fruits (except citrus) and almost any vegetable. Some green iguanas cause damage to infrastructure by digging burrows that erode and collapse sidewalks, foundations, seawalls, berms, and canal banks. Green iguanas may also leave droppings on docks, moored boats, seawalls, porches, decks, pool platforms, and inside swimming pools.

Green iguanas are not designated as conditional or prohibited species.⁴⁷ However, a person must possess a license from the FWC to sell a green iguana or for public exhibition.⁴⁸ A November

³⁸ *Id.* (under Frequently Asked Questions).

³⁹ *Id.*

⁴⁰ FWC, *Senate Bill 230 Agency Bill Analysis*, 2 (Feb. 17, 2017) (on file with the Senate Committee on Environment and Natural Resources).

⁴¹ FWC, EO 17-11 (Mar. 31, 2017), available at <https://myfwc.com/media/3682/eo-17-11.pdf>.

⁴² FWC, *Senate Bill 1414 Agency Bill Analysis*, 2 (Dec. 19, 2019) (on file with the Senate Committee on Environment and Natural Resources).

⁴³ FWC, *Invasive Green Iguana*, <https://myfwc.com/wildlifehabitats/profiles/reptiles/green-iguana/> (last visited Dec. 30, 2019).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*; see s. 379.3761, F.S.

2019 survey of all Class III license holders allowing for the sale of reptiles found 382 license holders listed that may sell iguanas with more than 5,307 in inventory.⁴⁹

The FWC encourages removal of green iguanas from private properties by landowners. Members of the public may also remove and kill iguanas from 22 FWC managed public lands without a license or permit.⁵⁰ The FWC hosts Iguana Technical Assistance Public Workshops to help empower homeowners to manage this nonnative species on their own property with legal trapping and removal options.⁵¹ In 2018, FWC initiated removal efforts on public conservation lands, resulting in nearly 5,000 iguanas being removed.⁵²

III. Effect of Proposed Changes:

Section 1 amends s. 379.105, F.S., relating to harassment of hunters, trappers, or fishers. The bill revises existing language to protect hunters, trappers, or fishers from harassment within or on any public lands, publicly or privately owned wildlife management areas or fish management areas, or public waters. The bill increases areas upon which hunters, trappers, or fishers are protected from harassment by expanding the protection to all public lands and all public waters (from wildlife management or fish management areas or a state-owned water body).

Section 2 amends s. 379.354, F.S., to increase the free saltwater and freshwater fishing days from 4 to 6.

Section 3 amends s. 379.372, F.S., to state that no person, party, firm, association, or corporation may keep, possess, import into the state, sell, barter, trade, or breed the following species except for educational or research purposes:

- Burmese or Indian python (*Python molurus*).
- Reticulated python (*Python reticulatus*).
- Northern African python (*Python sebae*).
- Southern African python (*Python natalensis*).
- Amethystine or scrub python (*Morelia amethystinus*).
- Green Anaconda (*Eunectes murinus*).
- Nile monitor (*Varanus niloticus*).
- Green iguana (*Iguana iguana*).
- Black and white tegu (*Salvator merianae*).
- Any other reptile designated as a conditional or prohibited species by FWC.

This adds the green iguana and the black and white tegu to the list of species that cannot be kept or sold for personal use. It also makes the prohibition stricter by changing it from prohibiting these species for being “kept or sold for personal use” to prohibiting anyone from possessing them “except for educational or research purposes.”

⁴⁹ FWC, *Senate Bill 1414 Agency Bill Analysis*, 3 (Dec. 19, 2019) (on file with the Senate Committee on Environment and Natural Resources).

⁵⁰ FWC, EO 17-11 (Mar. 31, 2017), available at <https://myfwc.com/media/3682/eo-17-11.pdf>.

⁵¹ FWC, *Nonnative Species Public Workshops*, <https://myfwc.com/wildlifehabitats/nonnatives/public-workshops/> (last visited Dec. 30, 2019).

⁵² FWC, *Senate Bill 1414 Agency Bill Analysis*, 2 (Dec. 19, 2019) (on file with the Senate Committee on Environment and Natural Resources).

Section 4 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be a negative fiscal impact to commercial owners of tegus and iguana who are no longer able to sell the species under the bill.

C. Government Sector Impact:

There may be a negative fiscal impact to the state for additional free fishing days, but it is likely negligible.

VI. Technical Deficiencies:

None.

VII. Related Issues:

FWC has suggested that for enforcement purposes, language including all tegu species would be preferable. FWC suggested that the language on line 70 of the bill be replaced with “any species

of the genera *Salvator* and *Tupinambis*” to prevent law enforcement and prosecutors from having to prove species and prevent additional damage from tegu species that aren’t currently listed.⁵³

There is more than one species of tegu currently in trade in the commercial herpetological industry, including but not limited to, gold tegus and red tegus. The pet industry has created designer color hybrids of tegu species, which could make it difficult for law enforcement to enforce the proposed language because of challenges in identification of the species.⁵⁴ If all species of tegu are not regulated simultaneously, the commercial herpetological industry may move to sell other species that would cause similar impacts to native species if released or create additional hybrid species that may make the statute difficult to enforce.⁵⁵ There are currently seven identified species of tegus split between two genera: *Salvator* and *Tupinambis*.⁵⁶

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 379.105, 379.354, and 379.372.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

⁵³ Fish and Wildlife Conservation Commission (FWC), *Senate Bill 1414 Agency Bill Analysis*, 2 (Dec. 19, 2019) (on file with the Senate Committee on Environment and Natural Resources).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

By Senator Bradley

5-01697C-20

20201878__

A bill to be entitled
An act relating to environmental protection; creating
s. 373.477, F.S.; requiring a minimum annual
appropriation for Everglades restoration and the
protection of water resources in this state beginning
in a specified fiscal year; providing requirements for
the allocation of such funding; providing for future
repeal of the appropriation unless reviewed and saved
from repeal through reenactment by the Legislature;
providing an effective date.

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

Section 1. Section 373.477, Florida Statutes, is created to
read:

373.477 Everglades restoration and protection of water
resources.—For fiscal year 2020-2021, and annually thereafter, a
minimum of \$625 million shall be appropriated as provided in
this section for the purposes of Everglades restoration and the
protection of water resources in this state. The funding must be
used for a science-based process to identify projects that are
needed to achieve such restoration and protection.

(1) The annual appropriations to the Department of
Environmental Protection must provide for the following
distributions:

(a) The greater of \$300 million or as provided pursuant to
s. 375.041(3)(b)1., for Everglades restoration, and s.
375.041(3)(b)4., for the Everglades Agricultural Area reservoir
project.

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30 (b) The sum of \$50 million to the South Florida Water
31 Management District for the design, engineering, and
32 construction of aquifer storage and recovery wells.

33 (c) Funding for spring restoration pursuant to s.
34 375.041(3)(b)2.

35 (d) The sum of \$40 million for alternative water supplies
36 or water conservation.

37 (e) The sum of \$15 million for projects within the
38 watersheds of the St. Johns River, the Suwannee River, and the
39 Apalachicola River.

40 (f) The sum of \$15 million for projects within the
41 watersheds of the Indian River Lagoon.

42 (g) The sum of \$10 million for coral reef protection and
43 restoration.

44 (2) The sum of \$4 million to the Fish and Wildlife
45 Conservation Commission for red tide research.

46 (3) Any remaining balance shall be allocated to fund any of
47 the following:

48 (a) Targeted water quality improvements.

49 (b) Alternative water supplies or water conservation.

50 (c) Water quality enhancements and accountability,
51 innovative technologies, and harmful algal bloom prevention and
52 mitigation.

53 (d) Land acquisition or easement acquisition, including,
54 but not limited to, lands or easements purchased pursuant to the
55 Florida Forever program or the Rural and Family Lands Protection
56 Program.

57 (4) This section is repealed on June 30, 2023, unless
58 reviewed and saved from repeal through reenactment by the

5-01697C-20

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59 Legislature.

60 Section 2. This act shall take effect July 1, 2020.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Environment and Natural Resources (Bradley)
recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 373.477, Florida Statutes, is created to
read:

373.477 Everglades restoration and protection of water
resources.—For fiscal year 2020-2021, and annually thereafter, a
minimum of \$625 million shall be appropriated as provided in
this section for the purposes of Everglades restoration and the



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protection of water resources in this state. The funding must be used for a science-based process to identify projects that are needed to achieve such restoration and protection.

(1) For fiscal year 2020-2021, and annually thereafter, a minimum of \$625 million shall be appropriated in the following distributions as delineated in the 2020-2021 General Appropriations Act:

(a) A minimum of \$236 million for Everglades projects in accordance with the provisions of s. 375.041(3)(b)1.

(b) The sum of \$64 million in accordance with s. 375.041(3)(b)4., for the Everglades Agricultural Area reservoir project.

(c) The sum of \$50 million for springs restoration in accordance with s. 375.041(3)(b)2.

(d) A minimum of \$40 million for alternative water supplies or water conservation.

(e) A minimum of \$25 million as delineated in the 2020-2021 General Appropriations Act for projects within the watersheds of the St. Johns River, the Suwannee River, and the Apalachicola River.

(f) A minimum of \$10 million for the Florida Resilient Coastline Initiative.

(g) A minimum of \$50 million to the South Florida Water Management District for the design, engineering, and construction of aquifer storage and recovery wells.

(h) A minimum of \$4 million as delineated in the 2020-2021 General Appropriations Act for red tide research.

(2) Any remaining balance after the distributions indicated in subsection (1) shall be allocated to fund any of the



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following:

(a) Targeted water quality improvements.

(b) Alternative water supplies or water conservation.

(c) Water quality enhancements and accountability, innovative technologies, and harmful algal bloom prevention and mitigation.

(d) Land acquisition or easement acquisition, including, but not limited to, lands or easements purchased pursuant to the Florida Forever program or the Rural and Family Lands Protection Program.

(e) Coral reef protection and restoration.

(f) Projects within the watersheds of the Indian River Lagoon.

(3) This section is repealed on June 30, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Paragraph (b) of subsection (3) of section 375.041, Florida Statutes, is amended to read:

375.041 Land Acquisition Trust Fund.—

(3) Funds distributed into the Land Acquisition Trust Fund pursuant to s. 201.15 shall be applied:

(b) Of the funds remaining after the payments required under paragraph (a), but before funds may be appropriated, pledged, or dedicated for other uses:

1. A minimum of \$236 million ~~the lesser of 25 percent or \$200 million~~ shall be appropriated annually for Everglades projects that implement the Comprehensive Everglades Restoration Plan as set forth in s. 373.470, including the Central Everglades Planning Project subject to Congressional



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69 authorization; the Long-Term Plan as defined in s. 373.4592(2);
70 and the Northern Everglades and Estuaries Protection Program as
71 set forth in s. 373.4595. From these funds, \$32 million shall be
72 distributed each fiscal year through the 2023-2024 fiscal year
73 to the South Florida Water Management District for the Long-Term
74 Plan as defined in s. 373.4592(2). After deducting the \$32
75 million distributed under this subparagraph, from the funds
76 remaining, a minimum of the lesser of 76.5 percent or \$100
77 million shall be appropriated each fiscal year through the 2025-
78 2026 fiscal year for the planning, design, engineering, and
79 construction of the Comprehensive Everglades Restoration Plan as
80 set forth in s. 373.470, including the Central Everglades
81 Planning Project, the Everglades Agricultural Area Storage
82 Reservoir Project, the Lake Okeechobee Watershed Project, the C-
83 43 West Basin Storage Reservoir Project, the Indian River
84 Lagoon-South Project, the Western Everglades Restoration
85 Project, and the Picayune Strand Restoration Project. The
86 Department of Environmental Protection and the South Florida
87 Water Management District shall give preference to those
88 Everglades restoration projects that reduce harmful discharges
89 of water from Lake Okeechobee to the St. Lucie or Caloosahatchee
90 estuaries in a timely manner. For the purpose of performing the
91 calculation provided in this subparagraph, the amount of debt
92 service paid pursuant to paragraph (a) for bonds issued after
93 July 1, 2016, for the purposes set forth under paragraph (b)
94 shall be added to the amount remaining after the payments
95 required under paragraph (a). The amount of the distribution
96 calculated shall then be reduced by an amount equal to the debt
97 service paid pursuant to paragraph (a) on bonds issued after



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July 1, 2016, for the purposes set forth under this subparagraph.

2. A minimum of the lesser of 7.6 percent or \$50 million shall be appropriated annually for spring restoration, protection, and management projects. For the purpose of performing the calculation provided in this subparagraph, the amount of debt service paid pursuant to paragraph (a) for bonds issued after July 1, 2016, for the purposes set forth under paragraph (b) shall be added to the amount remaining after the payments required under paragraph (a). The amount of the distribution calculated shall then be reduced by an amount equal to the debt service paid pursuant to paragraph (a) on bonds issued after July 1, 2016, for the purposes set forth under this subparagraph.

3. The sum of \$5 million shall be appropriated annually each fiscal year through the 2025-2026 fiscal year to the St. Johns River Water Management District for projects dedicated to the restoration of Lake Apopka. This distribution shall be reduced by an amount equal to the debt service paid pursuant to paragraph (a) on bonds issued after July 1, 2016, for the purposes set forth in this subparagraph.

4. The sum of \$64 million is appropriated and shall be transferred to the Everglades Trust Fund for the 2018-2019 fiscal year, and each fiscal year thereafter, for the EAA reservoir project pursuant to s. 373.4598. Any funds remaining in any fiscal year shall be made available only for Phase II of the C-51 reservoir project or projects identified in subparagraph 1. and must be used in accordance with laws relating to such projects. Any funds made available for such



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purposes in a fiscal year are in addition to the amount appropriated under subparagraph 1. This distribution shall be reduced by an amount equal to the debt service paid pursuant to paragraph (a) on bonds issued after July 1, 2017, for the purposes set forth in this subparagraph.

5. Notwithstanding subparagraph 3., for the 2019-2020 fiscal year, funds shall be appropriated as provided in the General Appropriations Act. This subparagraph expires July 1, 2020.

Section 3. The amendment made to s. 375.041(3)(b), Florida Statutes, by this act expires June 30, 2023, and the text of that paragraph shall revert to that in existence on June 30, 2020, except that any amendments to such text enacted other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of text which expire pursuant to this section.

Section 4. This act shall take effect July 1, 2020.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to environmental protection; creating
s. 373.477, F.S.; requiring a minimum annual
appropriation for Everglades restoration and the
protection of water resources in this state beginning
in a specified fiscal year; specifying requirements
for the allocation of such funding; providing for



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156 future repeal of the appropriation unless reviewed and
157 saved from repeal through reenactment by the
158 Legislature; amending s. 375.041, F.S.; revising the
159 minimum annual appropriation for certain
160 appropriations from the Land Acquisition Trust Fund;
161 providing that such revisions expire on a specified
162 date; providing an effective date.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1878

INTRODUCER: Senators Bradley and Mayfield

SUBJECT: Environmental Protection

DATE: January 31, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	Pre-meeting
2.			AEG	
3.			AP	

I. Summary:

SB 1878 creates a new section of law that includes an annual appropriation, beginning in fiscal year 2020-2021, of a minimum of \$625 million for the purposes of Everglades restoration and the protection of water resources in the state. The appropriation would be repealed on June 30, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill states that the annual appropriation to the Department of Environmental Protection must provide for the following distributions:

- The greater of \$300 million or the appropriation under the Land Acquisition Trust Fund for Everglades restoration and the Everglades Agricultural Area reservoir project.
- \$50 million to the South Florida Water Management District for the design, engineering, and construction of aquifer storage and recovery wells.
- Funding for spring restoration under the Land Acquisition Trust Fund.
- \$40 million for alternative water supplies or water conservation.
- \$15 million for projects within St. Johns, Suwannee, and Apalachicola Rivers watersheds.
- \$15 million for projects within the Indian River Lagoon watershed.
- \$10 million for coral reef protection and restoration.
- \$4 million to the Fish and Wildlife Conservation Commission for red tide research.

After the above distributions, any remaining balance must be allocated to fund:

- Targeted water quality improvements.
- Alternative water supplies or water conservation.
- Water quality enhancements and accountability, innovative technologies, and harmful algal bloom prevention and mitigation.
- Land acquisition or easement acquisition, including, but not limited to, lands or easements purchased pursuant to the Florida Forever or Rural and Family Lands Protection programs.

II. Present Situation:

Executive Order Number 19-12: Achieving More Now for Florida's Environment

In January of 2019, Governor DeSantis issued the comprehensive Executive Order Number 19-12 (EO 19-12).¹ EO 19-12 directs strategic action on Florida's environmental issues with a focus on accountability, transparency, and collaboration, and includes a proposed \$2.5 billion investment over the next four years.² The order directs the Department of Environmental Protection (DEP) to implement actions on a large range of topics, including water quality, Everglades restoration and protection, harmful algal blooms, reservoir projects, Lake Okeechobee, alternative water supply, and more.

Office of Environmental Accountability and Transparency

EO 19-12 directed DEP to create the Office of Environmental Accountability and Transparency, which was created in 2019.³ The Office is led by the Chief Science Officer and is located in the Office of the Secretary. The Office is charged with ensuring key water quality objectives are clearly communicated to the public, as well as organizing agency resources and science to focus on and solve complex challenges. The roles and responsibilities of the Office of Environmental Accountability and Transparency include:

- Providing leadership for agency priority issues that require integration of science, policy, and management, from multiple programs and organizations internal and external to DEP.
- Organizing and managing external communication on priority issues.
- Promoting and facilitating key agency research initiatives to address priority environmental issues.
- Exploring data and identifying opportunities for innovative approaches to addressing priority environmental issues.⁴

Blue-Green Algae Task Force

EO 19-12 directed DEP to establish a Blue-Green Algae Task Force, which is charged with expediting progress towards reducing nutrient pollution and the impacts of blue-green algae (cyanobacteria) blooms in the state.⁵ The task force's responsibilities include identifying priority projects for funding and making recommendations for regulatory changes. The five-person task force issued a consensus document on October 11, 2019.⁶ This document contains guidance and recommendations on several topics, including: basin management action plans (BMAPs), agriculture and best management practices, septic systems, sanitary sewer overflows, and stormwater systems.

¹ State of Florida, Office of the Governor, *Executive Order Number 19-12* (2019)[hereinafter *EO 19-12*], available at https://www.flgov.com/wp-content/uploads/orders/2019/EO_19-12.pdf.

² Department of Environmental Protection (DEP), *Protecting Florida Together*, <https://protectingfloridatogether.gov/> (last visited Jan. 30, 2020).

³ DEP, *Office of Environmental Accountability and Transparency*, <https://floridadep.gov/oeat> (last visited Jan. 30, 2020).

⁴ *Id.*

⁵ *EO 19-12*, at 2; DEP, *Blue-Green Algae Task Force*, <https://protectingfloridatogether.gov/state-action/blue-green-algae-task-force> (last visited Jan. 30, 2020).

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

Harmful Algal Bloom Task Force/Red Tide Task Force

In 1999, the Legislature established a Harmful Algal Bloom Task Force for the purpose of determining research, monitoring, control, and mitigation strategies for red tide and other harmful algal blooms in Florida waters.⁷ The Fish and Wildlife Conservation Commission (FWC) appoints members to and coordinates the task force, and prior to 2019 its last official meeting was in 2002.⁸ Governor DeSantis reactivated the Harmful Algal Bloom Task Force, which is now also known as the Red Tide Task Force, and which has agreed to focus on issues associated with red tide as their top priority.⁹ EO 19-12 directs DEP and the Department of Health (DOH) to participate in the task force to provide technical expertise and help study air quality and human health impacts of red tide.¹⁰

Everglades Restoration

Historically, the Everglades covered over seven million acres of South Florida, and water flowed down the Kissimmee River into Lake Okeechobee, then south through the vast Everglades to Florida Bay.¹¹ The present Everglades system has been subdivided by the construction of canals, levees, roads, and other facilities as part of efforts to drain the system for agriculture, development, and flood control. As a result, the Everglades is less than half the size it was a century ago, and connections between the central Everglades and adjacent transitional wetlands have been lost. This separation and isolation can impair the Everglades' wildlife communities and the sustainability of the ecosystem.¹² Over time, the construction of canals and water control structures along with urban and agricultural expansion contributed to unintended consequences.¹³

After years of litigation concerning the water quality in the Everglades Protection Area, a consent decree was entered in the case of *United States v. South Florida Water Management District* in 1992.¹⁴ The consent decree, as implemented by the Everglades Forever Act in 1994,¹⁵ set forth a two-pronged approach consisting of building stormwater treatment areas (STAs) and implementing best management practices (BMPs) in the Everglades Agricultural Area (EAA) to reduce the total phosphorous levels in the Everglades Protection Area.¹⁶ The plan originally consisted of the construction of four STAs covering 35,000 acres, but by 2006, the need for

⁷ Section 379.2271, F.S.

⁸ FWC, *Harmful Algal Bloom/Red Tide Task Force*, <https://myfwc.com/research/redtide/taskforce/> (last visited Jan. 31, 2020).

⁹ *Id.*; EO 19-12, at 3; DEP, *State Task Force Efforts: Red Tide Task Force*, <https://protectingfloridatogether.gov/state-action/red-tide-task-force> (last visited Jan. 30, 2020).

¹⁰ EO 19-12, at 3.

¹¹ SFWMD, *Everglades*, <https://www.sfwmd.gov/our-work/everglades> (last visited Jan. 30, 2020).

¹² *Id.*

¹³ See SFWMD, *Everglades Restoration Progress*, 1 (2017), available at https://www.sfwmd.gov/sites/default/files/documents/spl_everglades_progress.pdf.

¹⁴ Case No. 88-1886-CIV-Moreno (S.D. Fla. 1992); see also SFWMD, *Restoration Strategies Regional Water Quality Plan, Science Plan for the Everglades Stormwater Treatment Areas*, 2 (June 2013) [hereinafter *Science Plan*], available at https://www.sfwmd.gov/sites/default/files/documents/rs_scienceplan_060713_final.pdf (last visited Jan. 31, 2020).

¹⁵ Section 373.4592, F.S.

¹⁶ See SFWMD, *Long-Term Plan for Achieving Water Quality Goals*, <https://www.sfwmd.gov/our-work/wq-stas/long-term-plan> (last visited Jan. 18, 2020); see SFWMD, *Regulatory Source Control Programs*, <https://www.sfwmd.gov/our-work/source-control-bmps> (last visited Jan. 19, 2020); see SFWMD, *Water Quality Improvement - Stormwater Treatment Areas (STAs)*, <https://www.sfwmd.gov/our-work/wq-stas> (last visited Jan. 19, 2020).

additional STA acreage became clear.¹⁷ By 2010, approximately 57,000 acres of STAs were built and operating.¹⁸ Subsequently, conversations began between the United States Environmental Protection Agency (EPA) and the South Florida Water Management District (SFWMD) and, in 2012, they were able to reach a consensus on a new strategy for improving the water quality in the Everglades called the Restoration Strategies Regional Water Quality Plan.¹⁹

Restoration Strategies is an \$800 million technical plan to complete a suite of projects intended to expand water quality improvement projects necessary to achieve phosphorous water quality standards.²⁰ Under these strategies, the SFWMD must complete several projects that will create more than 6,500 acres of new STAs and 116,000 acre-feet of additional water storage.²¹

Comprehensive Everglades Restoration Plan (CERP)

The aforementioned programs work in cooperation with the multi-billion-dollar, multi-decade Comprehensive Everglades Restoration Plan (CERP).²² CERP was submitted to Congress in 1999 and received congressional authorization in 2000.²³ Under CERP, the federal government and the state equally fund the costs of restoration in a 50-50 partnership. The United States Army Corps of Engineers is the lead federal agency, and the SFWMD is the lead state agency.²⁴ CERP is composed of a series of projects designed to address four major characteristics of water flow: quantity, quality, timing, and distribution.²⁵ The primary goal is to capture freshwater that flows unused to the Atlantic Ocean and the Gulf of Mexico, through the C-44 and C-43 Canals respectively, and to deliver it when and where it is needed most. The CERP includes more than 68 project components which focus on improving the water delivery and timing within the Everglades system by increasing the size of natural areas, improving water quality, releasing water in a manner that mimics historical flow patterns, and storing and distributing water for urban, agricultural, and ecological uses.²⁶ Major features of the CERP include surface water storage reservoirs, water preserve areas, management of Lake Okeechobee as an ecological resource, improvement of water deliveries to the estuaries, underground water storage, treatment wetlands, improvement of water deliveries to the Everglades, removal of barriers to sheet flow,

¹⁷ *Science Plan* at 2.

¹⁸ *Id.*

¹⁹ SFWMD, *quick facts on...Restoration Strategies for Clean Water for the Everglades* (Feb. 2017), available at https://www.sfwmd.gov/sites/default/files/documents/spl_restoration_strategies.pdf.

²⁰ SFWMD, *Harmful Nutrients in the Everglades Now Reduced by 90%*, 2, available at https://www.sfwmd.gov/sites/default/files/documents/infographic_everglades_wq.pdf.

²¹ *Science Plan* at 3; see SFWMD, *Restoration Strategies for Clean Water for the Everglades*, <https://www.sfwmd.gov/our-work/restoration-strategies> (last visited Jan. 30, 2020).

²² SFWMD, *CERP Project Planning*, <https://www.sfwmd.gov/our-work/cerp-project-planning> (last visited Jan. 18, 2020).

²³ Water Resources Development Act of 2000, P.L. 106-541, Dec. 11, 2000.

²⁴ U.S. Army Corps of Engineers (USACE), *Corps of Engineers, Partners, Report on Progress Restoring America's Everglades* (Mar. 30, 2016), <https://www.usace.army.mil/Media/News-Archive/Story-Article-View/Article/710178/corps-of-engineers-partners-report-on-progress-restoring-americas-everglades/> (last visited Jan. 30, 2020).

²⁵ USACE, *Corps of Engineers, Partners, Report on Progress Restoring America's Everglades* (Mar. 30, 2016), <https://www.usace.army.mil/Media/News-Archive/Story-Article-View/Article/710178/corps-of-engineers-partners-report-on-progress-restoring-americas-everglades/> (last visited Jan. 30, 2020).

²⁶ See USACE, *Comprehensive Everglades Restoration (CERP) Overview* (Jul. 2018), <https://usace.contentdm.oclc.org/digital/api/collection/p16021coll11/id/2570/download>.

storage of water in existing quarries, reuse of wastewater, and the improvement of water flows to Florida Bay.²⁷

The Integrated Delivery Schedule (IDS) is the timeline of Everglades restoration projects cost shared by the state and federal governments.²⁸ The IDS provides the sequencing strategy for planning, designing, and constructing projects based on ecosystem needs, benefits, costs, and available funding.²⁹ The IDS achieves restoration benefits by maximizing benefits to the regional system as early as possible, ensuring the readiness of additional projects, and maintaining consistency among projects.³⁰ The IDS was most recently updated in October of 2019.³¹

CERP: Aquifer Storage and Recovery

As part of CERP, it was estimated that up to 333 wells could store water underground for the Everglades and natural systems.³² Aquifer Storage and Recovery (ASR) systems involve taking surplus fresh surface water, treating it as required for permit compliance, and storing it in the Floridan Aquifer System for subsequent recovery.³³ The injected fresh water replaces brackish water to form a “freshwater bubble.”³⁴ In 2015, a regional study of ASR was completed and found that large capacity ASR systems could be built and operated in South Florida; however, based on groundwater monitoring evaluations, the study recommended reducing the overall number of ASR wells to 131, to avoid adverse effects to the aquifer, groundwater, and existing users.³⁵

Additionally, two pilot projects were completed: one in the Kissimmee Basin and one near the Hillsboro Canal, which determined that ASR systems in the Lake Okeechobee in the upper portions of the Floridan aquifer system could achieve a rate of recoverability of upwards of 100 percent of stored water due to the freshwater quality of the aquifer in that region, but, conversely, ASR systems south of the lake, because of the brackish quality of the aquifer in that region,

²⁷ USACE and SFWMD, *Central and Southern Florida Project Comprehensive Review Study, Final Feasibility Report and Programmatic Environmental Impact Statement*, vii-ix (Apr. 1999), available at https://www.sfwmd.gov/sites/default/files/documents/CENTRAL_AND_SOUTHERN_FLORIDA_PROJECT_COMPREHENSIVE_REVIEW_STUDY.pdf.

²⁸ SFWMD, *CERP Planning*, <https://www.sfwmd.gov/our-work/cerp-project-planning> (Jan. 30, 2020); USACE, *Integrated Delivery Schedule*, <https://www.saj.usace.army.mil/Missions/Environmental/Ecosystem-Restoration/Integrated-Delivery-Schedule/> (last visited Jan. 30, 2020).

²⁹ SFWMD, *CERP Planning*, <https://www.sfwmd.gov/our-work/cerp-project-planning> (Jan. 30, 2020).

³⁰ *Id.*

³¹ USACE, *Integrated Delivery Schedule - A South Florida Ecosystem Restoration program Snapshot Through 2030*, <https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll11/id/4143> (last visited Jan. 30, 2020).

³² USACE, *Aquifer Storage and Recovery (ASR), Regional Study* (2018), <http://cdm16021.contentdm.oclc.org/utis/getfile/collection/p16021coll11/id/1994> (last visited Jan. 30, 2020).

³³ *Id.*

³⁴ SFWMD, *Aquifer Storage and Recovery*, <https://www.sfwmd.gov/our-work/alternative-water-supply/asr> (Jan. 30, 2020).

³⁵ USACE and SFWMD, *Final Technical Data Report, Aquifer Storage and Recovery Regional Study*, xvii, xx (May 2015), available at http://www.saj.usace.army.mil/Portals/44/docs/Environmental/ASR%20Regional%20Study/Final_Report/ASR_RegionalStudy_Final_2015.pdf.pdf (last visited Jan. 31, 2017); USACE, *Aquifer Storage and Recovery (ASR), Regional Study* (2018), <http://cdm16021.contentdm.oclc.org/utis/getfile/collection/p16021coll11/id/1994> (last visited Jan. 30, 2020).

would require successive cycles over a few years to achieve a target of 70 percent recovery.³⁶ Water injected into ASR wells must meet Florida’s drinking water quality standards.³⁷

CERP: Everglades Agricultural Area Reservoir

The EAA Reservoir project was conditionally authorized in the federal Water Resources Development Act of 2000 as a component of CERP.³⁸ To accelerate progress on the project, Senate Bill 10 was passed by the Florida Legislature and signed into law by Gov. Rick Scott in 2017.³⁹ In 2018, the U.S. Congress provided the required federal authorization and approved a plan developed by the South Florida Water Management District.⁴⁰ In 2019, EO 19-12 directed DEP to instruct SFWMD to immediately start the next phase of the project design and ensure that USACE approve the project according to schedule.⁴¹

The project includes a combination of canals, STAs, and a storage reservoir—all intended to improve water quality in the Everglades.⁴² The reservoir is anticipated to hold 240,000 acre-feet of water and include a new STA.⁴³ SFWMD expects to begin the full design of the A-2 STA component of the project soon and is working to obtain state and federal permits to clear land for the construction of a canal for the project. Right now, critical site preparation and preliminary design work is underway.⁴⁴

Outstanding Florida Springs

Florida’s springs are unique and beautiful resources that form when groundwater is forced out through natural openings in the ground.⁴⁵ The historically crystal clear waters provide not only a variety of recreational opportunities and habitats, but also great economic value for recreation and tourism. Springs are major sources of stream flow in a number of rivers such as the Rainbow, Chassahowitzka, Homosassa, and Ichetucknee.⁴⁶ Additionally, Florida’s springs provide a “window” into the Floridan aquifer system, which provides most of the state’s drinking water.

Florida has more than 700 recognized springs, categorized by flow in cubic feet per second.⁴⁷ First magnitude springs are those that discharge 100 cubic feet of water per second or greater.

³⁶ USACE and SFWMD, *Final Technical Data Report, Aquifer Storage and Recovery Regional Study*, xxix (May 2015).

³⁷ DEP, *UIC Wells Classification*, <https://floridadep.gov/water/aquifer-protection/content/uic-wells-classification> (last visited Jan. 30, 2020).

³⁸ The Water Resources Development Act of 2000 (P.L. 106-541, Dec. 11, 2000).

³⁹ Chapter 2017-10, Laws of Fla.

⁴⁰ SFWMD, *Everglades Agricultural Area Storage Reservoir Project*, <https://www.sfwmd.gov/our-work/cerp-project-planning/ea-reservoir> (last visited Jan. 30, 2020).

⁴¹ EO 19-12, at 2, available at https://www.flgov.com/wp-content/uploads/orders/2019/EO_19-12.pdf.

⁴² SFWMD, *Everglades Agricultural Area Storage Reservoir Project*, <https://www.sfwmd.gov/our-work/cerp-project-planning/ea-reservoir> (last visited Jan. 30, 2020).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Department of Community Affairs, *Protecting Florida’s Springs: An Implementation Guidebook*, 3-1 to 3-2 (Feb. 2008), available at <http://www.tampabay.wateratlas.usf.edu/upload/documents/Protecting-Floridas-Springs-Implementation-Guidebook.pdf>.

⁴⁶ *Id.* at 3-1.

⁴⁷ Florida Geological Survey, *Springs of Florida Bulletin No. 66*, available at http://publicfiles.dep.state.fl.us/FGS/WEB/springs/bulletin_66.pdf.

Florida has 33 first magnitude springs in 18 counties that discharge more than 64 million gallons of water per day. Spring discharges are used to determine groundwater quality and the degree of human impact on a spring's recharge area. Rainfall, surface conditions, soil type, mineralogy, the composition and porous nature of the aquifer system, flow, and length of time in the aquifer all contribute to groundwater chemistry.⁴⁸

In 2016, the Legislature passed the Florida Springs and Aquifer Protection Act, which identified 30 "Outstanding Florida Springs" (OFS) that have additional statutory protections and requirements to ensure their conservation and restoration for future generations.⁴⁹ A key aspect of the Springs and Aquifer Protection Act relating to water quality is the designation of a priority focus area for each OFS where the Floridan Aquifer is generally most vulnerable to pollutant inputs as delineated in a BMAP.⁵⁰ Additionally, the Springs and Aquifer Protection Act includes the development of onsite sewage treatment and disposal system (OSTDS) remediation plans.⁵¹

Alternative Water Supply

Between 2010 and 2030, statewide demand for water is expected to increase due to increased public supply, agricultural irrigation, and other water uses. Total water withdrawals for all uses are expected to increase by almost 21 percent to about 1.3 billion gallons per day.⁵² As water use continues to increase, one of the ways water demands can be met is through the development of alternative water supplies (AWSs).⁵³ Alternative water supplies include:⁵⁴

- Salt water or brackish surface water and groundwater, which can be converted to fresh water through desalination;⁵⁵
- Sources made available through increasing storage capacity for surface or groundwater; for example, through surface reservoirs or by injecting potable water into the aquifer;⁵⁶
- Water that has been reclaimed after one or more public supply, municipal, industrial, commercial, or agricultural uses;
- The downstream augmentation of waterbodies with reclaimed water;
- Stormwater; and
- Any other water supply source that is designated as a nontraditional source for a water supply planning region in a regional water supply plan.

⁴⁸ *Id.*

⁴⁹ Chapter 2016-1, Laws of Fla.; see s. 373.802, F.S., Outstanding Florida Springs include all historic first magnitude springs, including their associated spring runs, as determined by DEP using the most recent Florida Geological Survey springs bulletin, and De Leon Springs, Peacock Springs, Poe Springs, Rock Springs, Wekiwa Springs, and Gemini Springs, and their associated spring runs.

⁵⁰ Section 373.802(5), F.S.

⁵¹ Commonly called a "septic remediation plan."

⁵² DEP, *Alternative Water Supply*, <https://floridadep.gov/water-policy/water-policy/content/alternative-water-supply> (last visited Jan. 30, 2020).

⁵³ Sections 373.707, F.S.

⁵⁴ Section 373.019(1), F.S.

⁵⁵ DEP, *Alternative Water Supply*, <https://floridadep.gov/water-policy/water-policy/content/alternative-water-supply> (last visited Jan. 30, 2020).

⁵⁶ *Id.*; see also DEP, *Water Supply*, <https://floridadep.gov/water-policy/water-policy/content/water-supply> (last visited Jan. 30, 2020).

Funding for the development of AWSs is a shared responsibility between water suppliers and users, the state, and WMDs.⁵⁷ Water suppliers and users have the primary responsibility for providing funding, while the state and WMDs have the responsibility to provide funding assistance.⁵⁸

AWS development projects may receive state funding through specific appropriation or through the Water Protection and Sustainability Program (WPSP) if funded by the Legislature.⁵⁹ Applicants for projects that receive funding through the WPSP are required to pay at least 60 percent of the project's construction costs.⁶⁰ A WMD may waive this requirement for projects developed by financially disadvantaged small local governments. Additionally, a WMD may, at its discretion, use ad valorem or federal revenues to assist a project applicant in meeting the match requirement.⁶¹

St. Johns River

The St. Johns River is the longest river that is entirely within the state.⁶² The St. Johns River is divided into three watersheds: the Lower St. Johns River Basin, the Middle St. Johns River Basin, and the Upper St. Johns River Basin. Because the river flows north, the upper basin refers to the area that forms in Indian River and Brevard counties, south of the middle and lower basins.⁶³ Major tributaries that flow into the St. Johns River include the Wekiva River, the Econlockhatchee River, and the Ocklawaha River.⁶⁴ The river is home to many plant species and marine animals, including manatees, largemouth bass and many other species of fish, crabs, shrimp, river otters, waterfowl, blue herons, bald eagles, and alligators.⁶⁵

Stormwater runoff from urban areas, treated domestic and industrial wastewater, and agricultural runoff from farming areas affects the water quality of the St. Johns River.⁶⁶ The largest contributor of pollution in the lower basin is treated wastewater, with additional significant sources of nutrient pollution coming from agricultural areas.⁶⁷ The upper basin was drained and diked for agricultural purposes and now the floodwaters from the basin drain to the Indian River Lagoon to the east, which diminishes the water quality in the lagoon and degrades the upper basin's remaining marshes.⁶⁸

⁵⁷ Section 373.707(2)(c), F.S.

⁵⁸ *Id.*

⁵⁹ Section 373.707(1)(d), and (6), F.S.

⁶⁰ Section 373.707(8)(e), F.S.

⁶¹ *Id.*

⁶² SJRWMD, *The St. Johns River*, <https://www.sjrwmd.com/waterways/st-johns-river/> (last visited Jan. 30, 2020).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ SJRWMD, *Lower St. Johns River Basin*, <https://www.sjrwmd.com/waterways/st-johns-river/lower/> (last visited Jan. 30, 2020).

⁶⁷ *Id.*

⁶⁸ SJRWMD, *Upper St. Johns River Basin*, <https://www.sjrwmd.com/waterways/st-johns-river/upper/> (last visited Jan. 30, 2020).

Suwannee River

The Suwannee River Watershed covers approximately 9,950 square miles in south Georgia and north Florida.⁶⁹ The watershed consists of the Suwannee River and all the creeks and streams which flow into the Suwannee as it makes its way to the Gulf of Mexico. The Suwannee River originates in the Okefenokee Swamp and has three major tributaries: the Alapaha, Little, and Withlacoochee Rivers.⁷⁰ The swamp and all three rivers begin in south Georgia.

Seven springs in the Suwannee River Basin are impaired Outstanding Florida Springs: Fanning Springs, Manatee Spring, Falmouth Spring, Troy Spring, Lafayette Blue Spring, Madison Blue Spring, and Peacock Springs.⁷¹ Many species of fish and wildlife depend on the watershed, including deer, raccoon, fox, egrets, herons, manatees, alligator snapping turtles, and black bears.⁷² The Suwannee River Watershed also includes the Big Bend Seagrasses Aquatic Preserve, which is the second largest contiguous area of seagrass habitat in the eastern Gulf of Mexico.⁷³

Apalachicola River

The Apalachicola River is the largest river in Florida and provides 35 percent of the freshwater entering the northeastern Gulf of Mexico, accounting for the second largest freshwater inflow to the Gulf.⁷⁴ The Apalachicola River and the adjoining Chattahoochee and Flint Rivers comprise a drainage system encompassing more than 19,000 square miles of southern Georgia, eastern Alabama, and northern Florida.⁷⁵

The area harbors one of the highest concentrations of threatened and endangered species in the United States.⁷⁶ Apalachicola Bay is a productive estuary, supplying approximately 90% of the oysters in Florida and 10% nationally, and is an important nursery ground for numerous commercially and recreationally important fish and invertebrate species.⁷⁷ The coastal systems within the Apalachicola River System are nationally recognized for their important

⁶⁹ United States Fish & Wildlife Service, *Suwannee River Watershed: Conserving the Georgia/Florida Connection*, available at https://www.fws.gov/northflorida/Documents/NFL_Suwannee_factsheet.pdf.

⁷⁰ *Id.*

⁷¹ DEP, *Suwannee River Basin Management Action Plan*, 12 (June 2018), available at <https://floridadep.gov/sites/default/files/Suwannee%20Final%202018.pdf>.

⁷² United States Fish & Wildlife Service, *Suwannee River Watershed: Conserving the Georgia/Florida Connection*, available at https://www.fws.gov/northflorida/Documents/NFL_Suwannee_factsheet.pdf.

⁷³ DEP, *Big Bend Seagrasses Aquatic Preserve- Management and Protection of Seagrasses*, <https://floridadep.gov/rcp/aquatic-preserve/content/big-bend-seagrasses-aquatic-preserve-management-and-protection> (last visited Jan. 29, 2020).

⁷⁴ Department of Economic Opportunity, *Apalachicola Bay Area*, <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern/city-of-apalachicola> (last visited Jan. 30, 2020); *see also*, U.S. Fish and Wildlife Service, *Next Steps for a Healthy Gulf of Mexico Watershed*, <https://www.fws.gov/southeast/gulf-restoration/next-steps/focal-area/greater-apalachicola-basin/> (last visited Jan. 30, 2020).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

environmental resources through designations such as State Aquatic Preserve,⁷⁸ Outstanding Florida Water,⁷⁹ and National Estuarine Research Reserve.⁸⁰

Diminished flow rates resulting from recent droughts and upstream consumptive water uses have impacted the ecology of the river systems and Apalachicola Bay, which is directly influenced by the amount, timing, and duration of freshwater inflow from the Apalachicola River.⁸¹

Indian River Lagoon

The Indian River Lagoon system (IRL) is a 156-mile-long estuary spanning approximately 40 percent of Florida's east coast.⁸² There are six coastal counties in the IRL watershed: Volusia, Brevard, Indian River, St. Lucie, Martin, and Palm Beach.⁸³ There are three interconnected lagoons in the IRL basin: Mosquito Lagoon, Banana River Lagoon, and Indian River Lagoon.⁸⁴ The IRL is one of the most biologically diverse estuaries in North America.⁸⁵ It is home to more than 2,000 species of plants, 600 species of fish, 300 species of birds, and 53 threatened or endangered species.⁸⁶ 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.⁸⁷ Industry groups that are directly influenced by the IRL support nearly 72,000 jobs.⁸⁸

The IRL ecosystem has been harmed by human activities in the region. Stormwater runoff from urban and agricultural areas, wastewater treatment facility discharges, canal discharges, septic systems, animal waste, and fertilizer applications have led to harmful levels of nutrients and sediments entering the lagoon.⁸⁹ 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.⁹⁰ During the 2011 "Superbloom," intense algal blooms of phytoplankton occurred throughout most of the IRL, lasting for seven months and resulting in

⁷⁸ DEP, *Apalachicola Bay Aquatic Preserve*, <https://floridadep.gov/rcp/aquatic-preserve/locations/apalachicola-bay-aquatic-preserve> (last visited Jan. 30, 2020).

⁷⁹ Fla. Admin. Code R. 62-302.700.

⁸⁰ DEP, *National Estuarine Research Reserves – Apalachicola*, <https://floridadep.gov/RCP/NERR-Apalachicola> (last visited Jan. 30, 2020).

⁸¹ U.S. Fish and Wildlife Service, *Next Steps for a Healthy Gulf of Mexico Watershed*, <https://www.fws.gov/southeast/gulf-restoration/next-steps/focal-area/greater-apalachicola-basin/> (last visited Jan. 30, 2020).

⁸² IRLNEP, *About the Indian River Lagoon*, <http://www.irlcouncil.com/> (last visited Jan. 30, 2019).

⁸³ DEP, Basin Management Action Plan, *Indian River Lagoon Basin Central Indian River Lagoon*, xi (2013), available at <https://floridadep.gov/sites/default/files/central-irl-bmap.pdf>.

⁸⁴ DEP, *TMDL Report, Nutrient and Dissolved Oxygen TMDLs for the Indian River Lagoon and Banana River Lagoon*, 1 (Mar. 2009), available at <https://floridadep.gov/sites/default/files/indian-banana-nutrient-do-tmdl.pdf>.

⁸⁵ IRLNEP, *About the Indian River Lagoon*, <http://www.irlcouncil.com/> (last visited Jan. 30, 2020).

⁸⁶ *Id.*

⁸⁷ 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 http://tcrpc.org/special_projects/IRL_Econ_Valu/FinalReportIRL08_26_2016.pdf.

⁸⁸ *Id.* at ix.

⁸⁹ *Save Our Lagoon* at xii; 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>.

⁹⁰ *Save Our Lagoon* at xii.

massive losses of seagrass that has yet to fully recover.⁹¹ 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.⁹² 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 2012.⁹³ The St. Lucie Estuary is a major tributary to the southern IRL, so freshwater discharges from Lake Okeechobee, which can include toxic cyanobacteria, also impact the IRL.⁹⁴

Coral Reef Protection

Coral reefs are valuable natural resources. They protect coastlines by reducing wave energy from storms and hurricanes. They serve as a source of food and shelter and provide critical habitat for over 6,000 species, including commercially important fisheries. Many medicines, as well as other health and beauty products, are derived from marine plants, algae, and animals found on coral reefs.⁹⁵ Coral reefs in southeast Florida support a rich and diverse assemblage of stony corals, octocorals, macroalgae, sponges, and fishes. These ecological communities extend over 330 nautical miles from the Dry Tortugas to the St. Lucie Inlet in Martin County.⁹⁶

People use coral reefs as a resource for recreation, education, scientific research, and public inspiration. Millions of tourists and local residents enjoy scuba diving, snorkeling, and fishing on Florida's coral reefs. A study of reefs along southeast Florida and the Florida Keys showed that fishing, diving, and boating-related expenditures generate \$6.3 billion in sales and income and sustain more than 71,000 jobs annually.⁹⁷

Unfortunately, coral reefs are vulnerable to harmful environmental changes, particularly those resulting from human activities. Corals are highly sensitive to even small temperature changes and can react through bleaching, reduced growth rates, reduced reproduction, increased vulnerability to diseases, and die-offs. In recent years, corals have experienced declines due to a combination of factors including coral disease, coral bleaching, high ocean temperatures, and human impacts.⁹⁸

⁹¹ IRL 2011 Consortium, *Indian River Lagoon 2011 Superbloom - Plan of Investigation*, 2-3 (2012), available at http://www.irlcouncil.com/uploads/7/9/2/7/79276172/23_2011superbloom_investigationplan_june_2012.pdf; IRLNEP, *Annual Report - 2018*, 9 (2018), available at http://www.irlcouncil.com/uploads/7/9/2/7/79276172/2018annualrept_medred.pdf.

⁹² *Save Our Lagoon* at xii.

⁹³ SJRWMD, *Renewing the Lagoon - Frequently Asked Questions*, <https://www.sjrwmd.com/waterways/renew-lagoon/#faq-01> (last visited Nov. 25, 2019); FWC, *Effects of Brown Tide in the Indian River Lagoon* (2012), <https://myfwc.com/research/redtide/monitoring/historical-events/brown-tide/> (last visited Nov. 25, 2019).

⁹⁴ DEP, Basin Management Action Plan, *St. Lucie River and Estuary Basin*, xi (2013), available at <https://floridadep.gov/sites/default/files/stlucie-estuary-nutr-bmap.pdf>; IRLNEP, *Annual Report - 2018*, 9 (2018); Marine Resources Council, *Indian River Lagoon Health Update*, 11 (2018).

⁹⁵ DEP, *Coral Reef Conservation Program*, <https://floridadep.gov/rcp/coral> (last visited Jan. 30, 2020); DEP, *Coral Reef Conservation Program 2011-2016 Strategic Plan*, 3 (July 2011), available at https://floridadep.gov/sites/default/files/CRCP_Strategic_Plan_2011-2016.pdf.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ DEP, *Florida's Coral Reefs*, <https://floridadep.gov/rcp/rcp/content/floridas-coral-reefs> (last visited Jan. 30, 2020).

The Florida Coral Reef Protection Act requires responsible parties to notify DEP when they run their vessel aground, strike, or otherwise damage coral reefs. The responsible party must remove the vessel and work with DEP to assess the damage and restore the reef.⁹⁹ DEP may require the responsible party to pay the cost of assessment and restoration, as well as pay a fine.¹⁰⁰

Florida Coral Reef Programs

The Coral Reef Conservation Program (CRCP) within DEP oversees several programs and initiatives to coordinate research and monitoring, develop management strategies, and promote partnerships to protect coral reefs, hard bottom communities, and associated reef resources of southeast Florida.¹⁰¹ The CRCP is a member of the U.S. Coral Reef Task Force and leads the Southeast Florida Coral Reef Initiative (SEFCRI), which is a national action plan to develop and implement strategies to reduce key threats to coral reef resources in southeast Florida through collaborative action among government and non-governmental partners.¹⁰²

FWC also plays a role in protecting Florida's coral reefs. Through the Coral Reef Evaluation and Monitoring Project (CREMP), FWC has monitored the condition of coral reef and hard bottom habitats annually throughout the Florida Keys since 1996, southeast Florida since 2003, and the Dry Tortugas since 2004. The CREMP was able to document the temporal changes that have occurred in recent years.¹⁰³

Red Tide

In the waters around Florida, particularly in the Gulf of Mexico, such high concentrations of algae occur that the water turns red or brown.¹⁰⁴ These harmful algal blooms are known as “red tide,” and have been observed for centuries.¹⁰⁵ In the Gulf of Mexico and around Florida, the species that causes most red tide is *Karenia brevis* (*K. brevis*).¹⁰⁶ *K. brevis* is a single-celled algae that occurs in marine and estuarine waters in Florida.¹⁰⁷ *K. brevis* produces neurotoxins called brevetoxins that can sicken or kill fish, seabirds, turtles, and marine mammals.¹⁰⁸ Wave action can break open *K. brevis* cells and release the brevetoxins into the air, and with winds blowing onshore. This can lead to respiratory irritation in humans, and potentially serious illness for people with severe or chronic respiratory conditions.¹⁰⁹ The red tide toxins can also accumulate in animals such as oysters and clams, which can lead to Neurotoxic Shellfish

⁹⁹ Section 403.93345(5), F.S.

¹⁰⁰ Section 403.93345(6), (7), and (8), F.S.

¹⁰¹ *Id.*

¹⁰² DEP, *Southeast Florida Coral Reef Initiative*, <https://floridadep.gov/CoralReefs> (last visited Jan. 30, 2020); SEFCRI, *What is SEFCRI?*, <http://southeastfloridareefs.net/about-us/what-is-sefcri/> (last visited Jan. 30, 2020).

¹⁰³ FWC, *Coral Reef Evaluation and Monitoring Project (CREMP)*, <http://myfwc.com/research/habitat/coral/cremp/> (last visited Jan. 30, 2020).

¹⁰⁴ FWC, *Red Tide FAQ*, <https://myfwc.com/research/redtide/faq/> (last visited Jan. 31, 2020).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ FWC, *Karenia Brevis: Fact Sheet*, available at <https://myfwc.com/media/12422/karenia-brevis-factsheet.pdf>; Mote Marine Laboratory, *Phytoplankton Ecology*, <https://mote.org/research/program/phytoplankton-ecology> (last visited Jan. 31, 2020). *K. brevis* is a “phytoplankton” because it does photosynthesis like a plant.

¹⁰⁸ FWC, *Karenia Brevis: Fact Sheet*.

¹⁰⁹ Mote Marine Laboratory, *Florida Red Tide FAQ's*, <https://mote.org/news/florida-red-tide> (last visited Jan. 31, 2020).

Poisoning in people who consume contaminated shellfish.¹¹⁰ Though this is less common, blooms of *K. brevis* can also contribute to fish kills by depleting the water of dissolved oxygen.¹¹¹ The algae causing red tide is different from the cyanobacteria (often called “blue-green algae”) found in freshwater systems such as Lake Okeechobee.¹¹²

In 2018, the Governor issued executive orders declaring a state of emergency in 14 counties for red tide algae blooms.¹¹³ These harmful algal blooms can result in significant costs associated with public health, recreation and tourism, and management and monitoring.¹¹⁴ Red tides can last as little as a few weeks or longer than a year.¹¹⁵ The duration of a *K. brevis* bloom depends on the conditions that influence its growth and persistence, including sunlight, nutrients, and salinity, as well as the speed and direction of wind and water currents.¹¹⁶ Florida’s red tides develop 10-40 miles offshore, away from human-contributed nutrient sources.¹¹⁷ Once red tides are transported to shore, they are capable of using human-caused nutrient pollution for their growth.¹¹⁸ Currently, there is no practical and acceptable way to control or kill red tide blooms.¹¹⁹

In 2019, the Legislature established the Florida Red Tide Mitigation and Technology Development Initiative.¹²⁰ This initiative is a partnership between FWC and Mote Marine Laboratory, and its objective is to develop and implement technologies and approaches that will decrease the impacts of Florida red tide on the environment, economy, and quality of life in Florida.¹²¹ The 2019 legislation provides FWC an annual appropriation of \$3 million for six years to implement the initiative.¹²² The initiative will work together with FWC’s Harmful Algal Bloom Task Force, which also focuses on red tide issues.¹²³

¹¹⁰ FWC, *Karenia Brevis: Fact Sheet*, available at <https://myfwc.com/media/12422/karenia-brevis-factsheet.pdf>.

¹¹¹ *Id.*

¹¹² FWC, *Red Tide FAQ*, <https://myfwc.com/research/redtide/faq/> (last visited Jan. 31, 2020); DEP, *Freshwater Algal Blooms, Frequently Asked Questions* (2019), available at https://floridadep.gov/sites/default/files/freshwater-algal-bloom-faqs_2019.pdf.

¹¹³ Office of Economic & Demographic Research, *Annual Assessment of Florida’s Water Resources and Conservation Lands, 2019 Edition*, 154-155 (2019) available at http://edr.state.fl.us/Content/natural-resources/LandandWaterAnnualAssessment_2019Edition.pdf.

¹¹⁴ *Id.* at 156.

¹¹⁵ FWC, *Red Tide FAQ*, <https://myfwc.com/research/redtide/faq/> (last visited Jan. 30, 2020).

¹¹⁶ *Id.*

¹¹⁷ Mote Marine Laboratory, *Florida Red Tide FAQ’s*, <https://mote.org/news/florida-red-tide> (last visited Jan. 30, 2020).

¹¹⁸ *Id.*; see Mote Marine Laboratory, *News & Press: Nutrients that Feed Red Tide “Under the Microscope” in Major Study*, <https://mote.org/news/article/nutrients-that-feed-red-tide-under-the-microscope-in-major-study> (last visited Jan. 30, 2020).

¹¹⁹ FWC, *Red Tide FAQ*, <https://myfwc.com/research/redtide/faq/> (last visited Jan. 30, 2020).

¹²⁰ Chapter 2019-114, Laws of Fla.; s. 379.2273, F.S.

¹²¹ Section 379.2273, F.S.; Mote Marine Laboratory, *Florida Red Tide Mitigation and Technology Development Initiative*, <https://mote.org/research/program/Florida-Red-Tide-Mitigation-and-Technology-Development-Initiative> (last visited Jan. 30, 2020).

¹²² Chapter 2019-114, s. 2, Laws of Fla.

¹²³ DEP, *State Task Force Efforts: Red Tide Task Force*, <https://protectingfloridatogether.gov/state-action/red-tide-task-force> (last visited Jan. 30, 2020); see also Office of Economic & Demographic Research, *Annual Assessment of Florida’s Water Resources and Conservation Lands, 2020 Edition*, 76 (2020), available at http://edr.state.fl.us/Content/natural-resources/LandandWaterAnnualAssessment_2020Edition.pdf.

Florida Forever Program

As a successor to Preservation 2000, the Legislature created the Florida Forever program in 1999 as the blueprint for conserving Florida's natural resources.¹²⁴ The Florida Forever Act reinforced the state's commitment to conserve its natural and cultural heritage, provide urban open space, and better manage the land acquired by the state.¹²⁵ 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.¹²⁶ The state has acquired more than 2.4 million acres since 1991 under the Preservation 2000 and Florida Forever programs.¹²⁷

Under Florida Forever, the issuance of up to \$5.3 billion in Florida Forever bonds is authorized to finance or refinance the cost of acquisition and improvement of land, water areas, and related property interests and resources, in urban and rural settings, for the purposes of restoration, conservation, recreation, water resource development, or historical preservation, and for capital improvements¹²⁸ to lands and water areas which accomplish environmental restoration, enhance public access and recreational enjoyment, promote long-term management goals, and facilitate water resource development.¹²⁹

The Florida Forever Trust Fund was created to serve as the repository for Florida Forever bond proceeds to fund the Florida Forever Program. The Florida Forever Trust Fund is administered by DEP. DEP is required to distribute revenues from the Florida Forever Trust Fund in accordance with s. 259.105(3), F.S., which sets forth the allocation of the proceeds of cash payments or bonds deposited into the Florida Forever Trust Fund and is depicted in the graph below.

¹²⁴ Chapter 99-247, Laws of Fla.

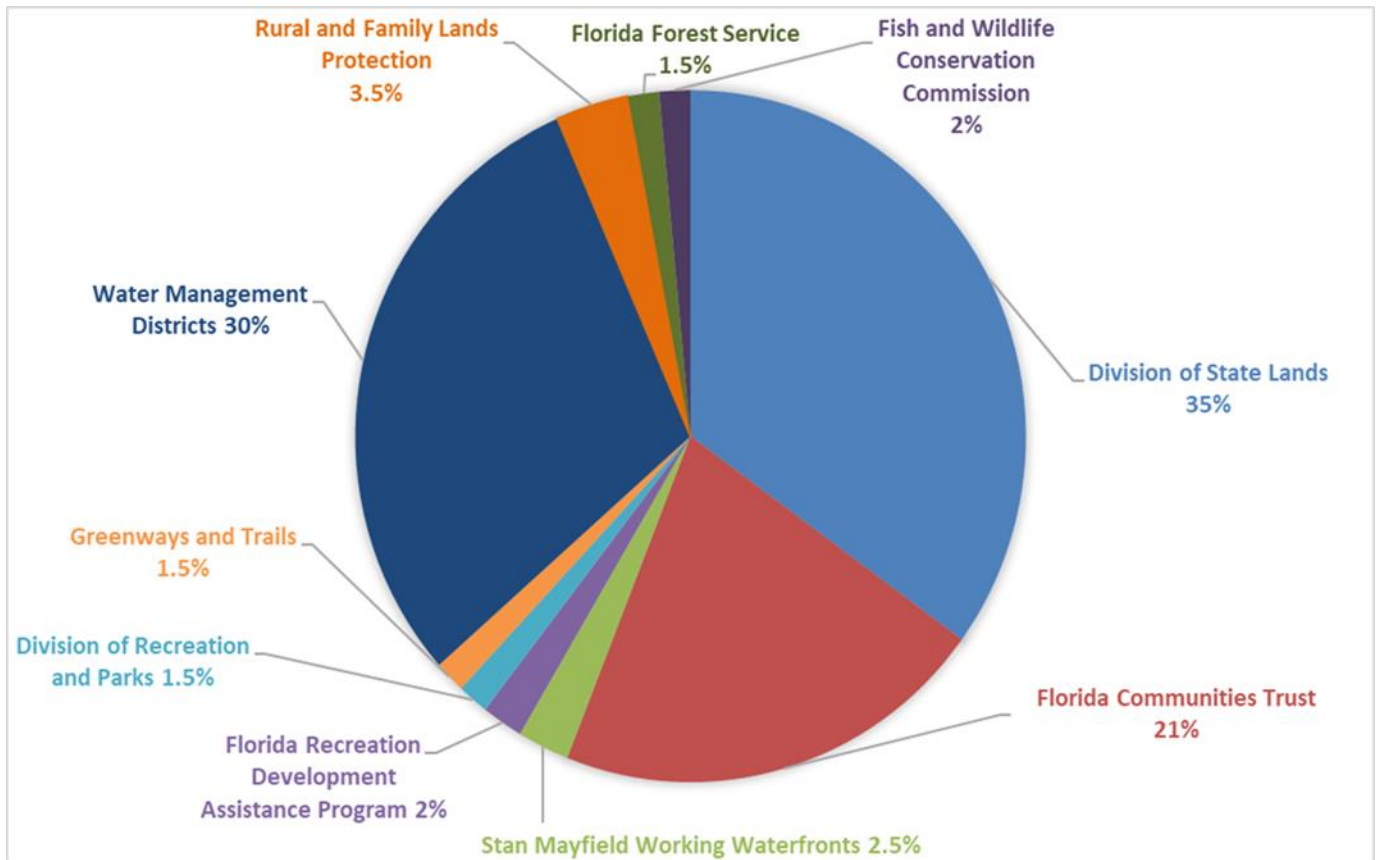
¹²⁵ DEP, *Florida Forever Five Year Plan* (2019), 49, available at <http://publicfiles.dep.state.fl.us/DSL/FFWeb/Current%20Florida%20Forever%20Five-Year%20Plan.pdf>.

¹²⁶ Section 259.105, F.S.

¹²⁷ DEP, *Frequently Asked Questions about Florida Forever*, <https://floridadep.gov/lands/environmental-services/content/faq-florida-forever> (last visited Jan. 30, 2020); see Florida Natural Areas Inventory, *Summary of Florida Conservation Lands* (Feb. 2019), available at https://www.fnai.org/PDF/Maacres_201902_FCL_plus_LTF.pdf for a complete summary of the total amount of conservation lands in Florida.

¹²⁸ As defined in s. 259.03, F.S., the terms "capital improvement" or "capital project expenditure" when used in ch. 259, F.S., mean "those activities relating to the acquisition, restoration, public access, and recreational uses of such lands, water areas, and related resources deemed necessary to accomplish the purposes of this chapter. Eligible activities include, but are not limited to: the initial removal of invasive plants; the construction, improvement, enlargement or extension of facilities' signs, firelanes, access roads, and trails; or any other activities that serve to restore, conserve, protect, or provide public access, recreational opportunities, or necessary services for land or water areas. Such activities shall be identified prior to the acquisition of a parcel or the approval of a project. The continued expenditures necessary for a capital improvement approved under this subsection shall not be eligible for funding provided in this chapter."

¹²⁹ Section 215.618, F.S.



Rural and Family Lands Protection Program – 3.5 Percent

The Rural and Family Lands Protection Program 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.¹³⁰ The purpose of the program is to promote and improve wildlife habitat; protect and enhance water bodies, aquifer recharge areas, wetlands, and watersheds; perpetuate open space on lands with significant natural areas; or protect agricultural lands threatened by conversion to other uses.¹³¹ Under the program, lands must be acquired pursuant to a priority ranking process developed by DACS, DEP, the water management districts, the Department of Economic Opportunity, and FWC.¹³² Preference must be given to ranch and timber lands that are managed using sustainable practices.¹³³

¹³⁰ Department of Agriculture and Consumer Services (DACS), *Rural and Family Lands Protection Program*, <https://www.fdaacs.gov/Divisions-Offices/Florida-Forest-Service/Our-Forests/Land-Planning-and-Administration-Section/Rural-and-Family-Lands-Protection-Program> (last visited Jan. 30, 2020); see DEP, *Florida Forever*, <https://floridadep.gov/lands/environmental-services/content/florida-forever> (last visited Jan. 30, 2020).

¹³¹ Section 570.71, F.S.

¹³² *Id.*; see Fla. Admin. Code Ch. 5I-7.

¹³³ Section 570.71, F.S.

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 \$100.¹³⁴

In 2014, Florida voters approved Amendment One, a constitutional amendment to provide a dedicated funding source for land and water conservation and restoration. 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). 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.¹³⁵

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 DEP as the trust fund to serve as the constitutionally mandated depository for the percentage of documentary stamp tax revenues.¹³⁶

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.

¹³⁴ See ss. 201.02 and 201.08, F.S.

¹³⁵ FLA. CONST. art. X, s. 28(b)(1).

¹³⁶ Ch. 2015-229, ss. 9 and 50, Laws of Fla.

- Then, 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 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; and
 - \$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 CERP, the Long Term Plan, or NEEPP.
- Then, any remaining moneys are authorized to be appropriated for the purposes set forth in Art. X, s. 28 of the State Constitution.¹³⁷

The General Revenue Estimating Conference in January 2020 estimated that for the 2020-2021 Fiscal Year a total of \$2.925 billion would be collected in documentary stamp taxes.¹³⁸ Thirty-three percent of the net revenues collected, or approximately \$962.28 million, must be deposited into the LATF in accordance with Art. X, s. 28 of the State Constitution. Of that number, \$157.60 million is committed to debt service, leaving \$804.68 million to be distributed for the uses specified by s. 375.041, F.S., and other purposes in accordance with the General Appropriations Act.¹³⁹

III. Effect of Proposed Changes:

The bill creates a new section of law that includes an annual appropriation, beginning in fiscal year 2020-2021, of a minimum of \$625 million for the purposes of Everglades restoration and the protection of water resources in the state. The appropriation would be for three years and would be repealed on June 30, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

¹³⁷ Section 375.041(3)-(4), F.S.

¹³⁸ Office of Economic & Demographic Research (EDR), Revenue Estimating Conference, *Documentary Stamp Tax Collections and Distributions* (Jan. 2020), <http://edr.state.fl.us/Content/conferences/docstamp/> (last visited Jan. 30, 2020); see EDR, *Extended Doc Stamp Forecast*, available at <http://edr.state.fl.us/Content/conferences/docstamp/docstampextendedforecast.pdf>.

¹³⁹ *Id.*

The bill specifies that the funding must be used for a science-based process to identify projects that are needed to achieve restoration and protection.

The bill states that the annual appropriation to the Department of Environmental Protection must provide for the following distributions:

- The greater of \$300 million or the appropriation provided under the Land Acquisition Trust Fund (LATF) for Everglades restoration, which is a minimum of the lesser of 25 percent of the remaining LATF after debt service or \$200 million, and the appropriation provided under LATF for the Everglades Agricultural Area reservoir project, which is \$64 million.
- \$50 million to the South Florida Water Management District for the design, engineering, and construction of aquifer storage and recovery wells.
- Funding for spring restoration under LATF, which is a minimum of the lesser of 7.6 percent of the remaining LATF after debt service or \$50 million.
- \$40 million for alternative water supplies or water conservation.
- \$15 million for projects within the watersheds of the St. Johns River, the Suwannee River, and the Apalachicola River.
- \$15 million for projects within the watersheds of the Indian River Lagoon.
- \$10 million for coral reef protection and restoration.
- \$4 million to the Fish and Wildlife Conservation Commission for red tide research.

After the above distributions, any remaining balance must be allocated to fund any of the following:

- Targeted water quality improvements.
- Alternative water supplies or water conservation.
- Water quality enhancements and accountability, innovative technologies, and harmful algal bloom prevention and mitigation.
- Land acquisition or easement acquisition, including, but not limited to, lands or easements purchased pursuant to the Florida Forever program or the Rural and Family Lands Protection Program.

The bill takes effect on July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill provides an appropriation of \$625 million for fiscal year 2020-2021 through 2022-2023.

VI. Technical Deficiencies:

On lines 46-56, it is unclear where funds from the remaining balance would be directed. It should be clarified whether this funding would also go to the Department of Environmental Protection or whether it would be available to other agencies or the private sector.

VII. Related Issues:

On line 26-29, it is unclear how the distributed funds relate to the existing distributions under the Land Acquisition Trust Fund. It should be clarified whether this distribution is in lieu of or separate from the distribution for Everglades restoration and the Everglades Agricultural Area reservoir project under the Land Acquisition Trust Fund.

VIII. Statutes Affected:

This bill creates section 373.477 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.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Agriculture, Environment, and
General Government)

A bill to be entitled

An act relating to water quality improvements;
providing a short title; requiring the Department of
Health to provide a specified report to the Governor
and the Legislature by a specified date; requiring the
Department of Health and the Department of
Environmental Protection to submit to the Governor and
the Legislature, by a specified date, certain
recommendations relating to the transfer of the Onsite
Sewage Program; requiring the departments to enter
into an interagency agreement that meets certain
requirements by a specified date; transferring the
Onsite Sewage Program within the Department of Health
to the Department of Environmental Protection by a
type two transfer by a specified date; providing that
certain employees retain and transfer certain types of
leave upon the transfer; amending s. 373.4131, F.S.;
requiring the Department of Environmental Protection
to include stormwater structural controls inspections
as part of its regular staff training; requiring the
department and the water management districts to adopt
rules regarding stormwater design and operation by a
specified date; amending s. 381.0065, F.S.; conforming
provisions to changes made by the act; requiring the
department to adopt rules for the location of onsite
sewage treatment and disposal systems and complete



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such rulemaking by a specified date; requiring the department to evaluate certain data relating to the self-certification program and provide the Legislature with recommendations by a specified date; providing that certain provisions relating to existing setback requirements are applicable to permits only until the adoption of certain rules by the department; creating s. 381.00652, F.S.; creating an onsite sewage treatment and disposal systems technical advisory committee within the department; providing the duties and membership of the committee; requiring the committee to submit a report to the Governor and the Legislature by a specified date; providing for the expiration of the committee; repealing s. 381.0068, F.S., relating to a technical review and advisory panel; amending s. 403.061, F.S.; requiring the department to adopt rules relating to the underground pipes of wastewater collection systems; requiring public utilities or their affiliated companies that hold or are seeking a wastewater discharge permit to file certain reports and data with the department; creating s. 403.0616, F.S.; requiring the department, subject to legislative appropriation, to establish a real-time water quality monitoring program; encouraging the formation of public-private partnerships; amending s. 403.067, F.S.; requiring basin management action plans for nutrient total maximum daily loads to include wastewater treatment and onsite sewage treatment and disposal system



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remediation plans that meet certain requirements;
requiring the Department of Agriculture and Consumer
Services to collect fertilization and nutrient records
from certain agricultural producers and provide the
information to the department annually by a specified
date; requiring the Department of Agriculture and
Consumer Services to perform onsite inspections of the
agricultural producers at specified intervals;
authorizing certain entities to develop research plans
and legislative budget requests relating to best
management practices by a specified date; creating s.
403.0673, F.S.; establishing a wastewater grant
program within the Department of Environmental
Protection; authorizing the department to distribute
appropriated funds for certain projects; providing
requirements for the distribution; requiring the
department to coordinate with each water management
district to identify grant recipients; requiring an
annual report to the Governor and the Legislature by a
specified date; creating s. 403.0855, F.S.; providing
legislative findings regarding the regulation of
biosolids management in this state; requiring the
department to adopt rules for biosolids management;
exempting the rules from a specified statutory
requirement; amending s. 403.086, F.S.; prohibiting
facilities for sanitary sewage disposal from disposing
of any waste in the Indian River Lagoon beginning on a
specified date without first providing advanced waste
treatment; requiring facilities for sanitary sewage



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85 disposal to have a power outage contingency plan;
86 requiring the facilities to take steps to prevent
87 overflows and leaks and ensure that the water reaches
88 the appropriate facility for treatment; requiring the
89 facilities to provide the Department of Environmental
90 Protection with certain information; requiring the
91 department to adopt rules; amending s. 403.087, F.S.;
92 requiring the department to issue operation permits
93 for domestic wastewater treatment facilities to
94 certain facilities under certain circumstances;
95 amending s. 403.088, F.S.; revising the permit
96 conditions for a water pollution operation permit;
97 requiring the department to submit a report to the
98 Governor and the Legislature by a specified date
99 identifying all wastewater utilities that experienced
100 sanitary sewer overflows within a specified timeframe;
101 amending s. 403.0891, F.S.; requiring model stormwater
102 management programs to contain model ordinances for
103 nutrient reduction practices and green infrastructure;
104 amending s. 403.121, F.S.; increasing and providing
105 administrative penalties; amending s. 403.1835, F.S.;
106 conforming a cross-reference; requiring the department
107 to give priority for water pollution control financial
108 assistance to projects that implement certain
109 provisions and that promote efficiency; amending s.
110 403.1838, F.S.; revising requirements for the
111 prioritization of grant applications within the Small
112 Community Sewer Construction Assistance Act; providing
113 a declaration of important state interest; amending



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ss. 153.54, 153.73, 163.3180, 180.03, 311.105, 327.46,
373.250, 373.414, 373.705, 373.707, 373.709, 373.807,
376.307, 380.0552, 381.006, 381.0061, 381.0064,
381.00651, 381.0101, 403.08601, 403.0871, 403.0872,
403.707, 403.861, 489.551, and 590.02, F.S.;
conforming cross-references and provisions to changes
made by the act; providing a directive to the Division
of Law Revision upon the adoption of certain rules by
the Department of Environmental Protection; providing
effective dates.

WHEREAS, nutrients negatively impact groundwater and
surface waters in this state and cause the proliferation of
algal blooms, and

WHEREAS, onsite sewage treatment and disposal systems were
designed to manage human waste and are permitted by the
Department of Health for that purpose, and

WHEREAS, conventional onsite sewage treatment and disposal
systems contribute nutrients to groundwater and surface waters
across this state which can cause harmful blue-green algal
blooms, and

WHEREAS, many stormwater systems are designed primarily to
divert and control stormwater rather than to remove pollutants,
and

WHEREAS, most existing stormwater system design criteria
fail to consistently meet either the 80 percent or 95 percent
target pollutant reduction goals established by the Department
of Environmental Protection, and

WHEREAS, other significant pollutants often can be removed



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143 from stormwater more easily than nutrients and, as a result,
144 design criteria that provide the desired removal efficiencies
145 for nutrients will likely achieve equal or better removal
146 efficiencies for other constituents, and

147 WHEREAS, the Department of Environmental Protection has
148 found that the major causes of sanitary sewer overflows during
149 storm events are infiltration, inflow, and acute power failures,
150 and

151 WHEREAS, the Department of Environmental Protection lacks
152 statutory authority to regulate infiltration and inflow or to
153 require that all lift stations constructed prior to 2003 have
154 emergency backup power, and

155 WHEREAS, sanitary sewer overflows and leaking
156 infrastructure create both a human health concern and a nutrient
157 pollution problem, and

158 WHEREAS, the agricultural sector is a significant
159 contributor to the excess delivery of nutrients to surface
160 waters throughout this state and has been identified as the
161 dominant source of both phosphorus and nitrogen within the Lake
162 Okeechobee watershed and a number of other basin management
163 action plan areas, and

164 WHEREAS, only 75 percent of eligible agricultural parties
165 within the Lake Okeechobee Basin Management Action Plan area are
166 enrolled in an appropriate best management practice and
167 enrollment numbers are considerably less in other basin
168 management action plan areas, and

169 WHEREAS, although agricultural best management practices,
170 by design, should be technically feasible and economically
171 viable, that does not imply that their adoption and full



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implementation, alone, will alleviate downstream water quality
impairments, NOW, THEREFORE,

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

Section 1. This act may be cited as the "Clean Waterways
Act."

Section 2. (1) By July 1, 2020, the Department of Health
must provide a report to the Governor, the President of the
Senate, and the Speaker of the House of Representatives
detailing the following information regarding the Onsite Sewage
Program:

(a) The average number of permits issued each year;

(b) The number of department employees conducting work on
or related to the program each year; and

(c) The program's costs and expenditures, including, but
not limited to, salaries and benefits, equipment costs, and
contracting costs.

(2) By December 31, 2020, the Department of Health and the
Department of Environmental Protection shall submit
recommendations to the Governor, the President of the Senate,
and the Speaker of the House of Representatives regarding the
transfer of the Onsite Sewage Program from the Department of
Health to the Department of Environmental Protection. The
recommendations must address all aspects of the transfer,
including the continued role of the county health departments in
the permitting, inspection, data management, and tracking of
onsite sewage treatment and disposal systems under the direction
of the Department of Environmental Protection.



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201 (3) By June 30, 2021, the Department of Health and the
202 Department of Environmental Protection shall enter into an
203 interagency agreement based on the Department of Health report
204 required under subsection (2) and on recommendations from a plan
205 that must address all agency cooperation for a period not less
206 than 5 years after the transfer, including:

207 (a) The continued role of the county health departments in
208 the permitting, inspection, data management, and tracking of
209 onsite sewage treatment and disposal systems under the direction
210 of the Department of Environmental Protection.

211 (b) The appropriate proportionate number of administrative,
212 auditing, inspector general, attorney, and operational support
213 positions, and their related funding levels and sources and
214 assigned property, to be transferred from the Office of General
215 Counsel, the Office of Inspector General, and the Division of
216 Administrative Services or other relevant offices or divisions
217 within the Department of Health to the Department of
218 Environmental Protection.

219 (c) The development of a recommended plan to address the
220 transfer or shared use of buildings, regional offices, and other
221 facilities used or owned by the Department of Health.

222 (d) Any operating budget adjustments that are necessary to
223 implement the requirements of this act. Adjustments made to the
224 operating budgets of the agencies in the implementation of this
225 act must be made in consultation with the appropriate
226 substantive and fiscal committees of the Senate and the House of
227 Representatives. The revisions to the approved operating budgets
228 for the 2021-2022 fiscal year which are necessary to reflect the
229 organizational changes made by this act must be implemented



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pursuant to s. 216.292(4)(d), Florida Statutes, and are subject to s. 216.177, Florida Statutes. Subsequent adjustments between the Department of Health and the Department of Environmental Protection which are determined necessary by the respective agencies and approved by the Executive Office of the Governor are authorized and subject to s. 216.177, Florida Statutes. The appropriate substantive committees of the Senate and the House of Representatives must also be notified of the proposed revisions to ensure their consistency with legislative policy and intent.

(4) Effective July 1, 2021, all powers, duties, functions, records, offices, personnel, associated administrative support positions, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds for the regulation of onsite sewage treatment and disposal systems relating to the Onsite Sewage Program in the Department of Health are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, to the Department of Environmental Protection.

(5) Notwithstanding chapter 60L-34, Florida Administrative Code, or any law to the contrary, employees who are transferred from the Department of Health to the Department of Environmental Protection to fill positions transferred by this act retain and transfer any accrued annual leave, sick leave, and regular and special compensatory leave balances.

Section 3. Subsection (5) of section 373.4131, Florida Statutes, is amended, and subsection (6) is added to that section, to read:



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373.4131 Statewide environmental resource permitting rules.—

(5) To ensure consistent implementation and interpretation of the rules adopted pursuant to this section, the department shall conduct or oversee regular assessment and training of its staff and the staffs of the water management districts and local governments delegated local pollution control program authority under s. 373.441. The training must include coordinating field inspections of publicly and privately owned stormwater structural controls, such as stormwater retention or detention ponds.

(6) By January 1, 2021:

(a) The department and the water management districts shall initiate rulemaking to update the stormwater design and operation regulations using the most recent scientific information available; and

(b) The department shall evaluate inspection data relating to compliance by those entities that self-certify under s. 403.814(12) and provide the Legislature with recommendations for improvements to the self-certification program.

Section 4. Effective July 1, 2021, present paragraphs (d) through (q) of subsection (2) of section 381.0065, Florida Statutes, are redesignated as paragraphs (e) through (r), respectively, a new paragraph (d) is added to that subsection, and subsections (3) and (4) of that section are amended, to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(2) DEFINITIONS.—As used in ss. 381.0065-381.0067, the



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term:

(d) "Department" means the Department of Environmental Protection.

(3) DUTIES AND POWERS OF THE DEPARTMENT ~~OF HEALTH~~.—The department shall:

(a) Adopt rules to administer ss. 381.0065-381.0067, including definitions that are consistent with the definitions in this section, ~~decreases to setback requirements where no health hazard exists,~~ increases for the lot-flow allowance for performance-based systems, requirements for separation from water table elevation during the wettest season, requirements for the design and construction of any component part of an onsite sewage treatment and disposal system, application and permit requirements for persons who maintain an onsite sewage treatment and disposal system, requirements for maintenance and service agreements for aerobic treatment units and performance-based treatment systems, and recommended standards, including disclosure requirements, for voluntary system inspections to be performed by individuals who are authorized by law to perform such inspections and who shall inform a person having ownership, control, or use of an onsite sewage treatment and disposal system of the inspection standards and of that person's authority to request an inspection based on all or part of the standards.

(b) Perform application reviews and site evaluations, issue permits, and conduct inspections and complaint investigations associated with the construction, installation, maintenance, modification, abandonment, operation, use, or repair of an onsite sewage treatment and disposal system for a residence or



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establishment with an estimated domestic sewage flow of 10,000 gallons or less per day, or an estimated commercial sewage flow of 5,000 gallons or less per day, which is not currently regulated under chapter 403.

(c) Develop a comprehensive program to ensure that onsite sewage treatment and disposal systems regulated by the department are sized, designed, constructed, installed, sited, repaired, modified, abandoned, used, operated, and maintained in compliance with this section and rules adopted under this section to prevent groundwater contamination, including impacts from nutrient pollution, and surface water contamination and to preserve the public health. The department is the final administrative interpretive authority regarding rule interpretation. In the event of a conflict regarding rule interpretation, the secretary of the department ~~State Surgeon General~~, or his or her designee, shall timely assign a staff person to resolve the dispute.

(d) Grant variances in hardship cases under the conditions prescribed in this section and rules adopted under this section.

(e) Permit the use of a limited number of innovative systems for a specific period of time, when there is compelling evidence that the system will function properly and reliably to meet the requirements of this section and rules adopted under this section.

(f) Issue annual operating permits under this section.

(g) Establish and collect fees as established under s. 381.0066 for services provided with respect to onsite sewage treatment and disposal systems.

(h) Conduct enforcement activities, including imposing



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346 fines, issuing citations, suspensions, revocations, injunctions,
347 and emergency orders for violations of this section, part I of
348 chapter 386, or part III of chapter 489 or for a violation of
349 any rule adopted under this section, part I of chapter 386, or
350 part III of chapter 489.

351 (i) Provide or conduct education and training of department
352 personnel, service providers, and the public regarding onsite
353 sewage treatment and disposal systems.

354 (j) Supervise research on, demonstration of, and training
355 on the performance, environmental impact, and public health
356 impact of onsite sewage treatment and disposal systems within
357 this state. Research fees collected under s. 381.0066(2)(k) must
358 be used to develop and fund hands-on training centers designed
359 to provide practical information about onsite sewage treatment
360 and disposal systems to septic tank contractors, master septic
361 tank contractors, contractors, inspectors, engineers, and the
362 public and must also be used to fund research projects which
363 focus on improvements of onsite sewage treatment and disposal
364 systems, including use of performance-based standards and
365 reduction of environmental impact. Research projects shall be
366 initially approved by the technical review and advisory panel
367 and shall be applicable to and reflect the soil conditions
368 specific to Florida. Such projects shall be awarded through
369 competitive negotiation, using the procedures provided in s.
370 287.055, to public or private entities that have experience in
371 onsite sewage treatment and disposal systems in Florida and that
372 are principally located in Florida. Research projects may ~~shall~~
373 not be awarded to firms or entities that employ or are
374 associated with persons who serve on either the technical review



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and advisory panel or the research review and advisory committee.

(k) Approve the installation of individual graywater disposal systems in which blackwater is treated by a central sewerage system.

(l) Regulate and permit the sanitation, handling, treatment, storage, reuse, and disposal of byproducts from any system regulated under this chapter and not regulated by the Department of Environmental Protection.

(m) Permit and inspect portable or temporary toilet services and holding tanks. The department shall review applications, perform site evaluations, and issue permits for the temporary use of holding tanks, privies, portable toilet services, or any other toilet facility that is intended for use on a permanent or nonpermanent basis, including facilities placed on construction sites when workers are present. The department may specify standards for the construction, maintenance, use, and operation of any such facility for temporary use.

(n) Regulate and permit maintenance entities for performance-based treatment systems and aerobic treatment unit systems. To ensure systems are maintained and operated according to manufacturer's specifications and designs, the department shall establish by rule minimum qualifying criteria for maintenance entities. The criteria shall include: training, access to approved spare parts and components, access to manufacturer's maintenance and operation manuals, and service response time. The maintenance entity shall employ a contractor licensed under s. 489.105(3)(m), or part III of chapter 489, or



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a state-licensed wastewater plant operator, who is responsible for maintenance and repair of all systems under contract.

(4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system without first obtaining a permit approved by the department. The department may issue permits to carry out this section, ~~but shall not make the issuance of such permits contingent upon prior approval by the Department of Environmental Protection, except that~~ The issuance of a permit for work seaward of the coastal construction control line established under s. 161.053 shall be contingent upon receipt of any required coastal construction control line permit from the department ~~of Environmental Protection~~. A construction permit is valid for 18 months from the issuance date and may be extended by the department for one 90-day period under rules adopted by the department. A repair permit is valid for 90 days from the date of issuance. An operating permit must be obtained before ~~prior to~~ the use of any aerobic treatment unit or if the establishment generates commercial waste. Buildings or establishments that use an aerobic treatment unit or generate commercial waste shall be inspected by the department at least annually to assure compliance with the terms of the operating permit. The operating permit for a commercial wastewater system is valid for 1 year from the date of issuance and must be renewed annually. The operating permit for an aerobic treatment unit is valid for 2 years from the date of issuance and must be renewed every 2 years. If all information pertaining to the siting, location, and installation conditions or repair of an onsite sewage treatment and disposal system remains the same, a



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433 construction or repair permit for the onsite sewage treatment
434 and disposal system may be transferred to another person, if the
435 transferee files, within 60 days after the transfer of
436 ownership, an amended application providing all corrected
437 information and proof of ownership of the property. There is no
438 fee associated with the processing of this supplemental
439 information. A person may not contract to construct, modify,
440 alter, repair, service, abandon, or maintain any portion of an
441 onsite sewage treatment and disposal system without being
442 registered under part III of chapter 489. A property owner who
443 personally performs construction, maintenance, or repairs to a
444 system serving his or her own owner-occupied single-family
445 residence is exempt from registration requirements for
446 performing such construction, maintenance, or repairs on that
447 residence, but is subject to all permitting requirements. A
448 municipality or political subdivision of the state may not issue
449 a building or plumbing permit for any building that requires the
450 use of an onsite sewage treatment and disposal system unless the
451 owner or builder has received a construction permit for such
452 system from the department. A building or structure may not be
453 occupied and a municipality, political subdivision, or any state
454 or federal agency may not authorize occupancy until the
455 department approves the final installation of the onsite sewage
456 treatment and disposal system. A municipality or political
457 subdivision of the state may not approve any change in occupancy
458 or tenancy of a building that uses an onsite sewage treatment
459 and disposal system until the department has reviewed the use of
460 the system with the proposed change, approved the change, and
461 amended the operating permit.



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(a) Subdivisions and lots in which each lot has a minimum area of at least one-half acre and either a minimum dimension of 100 feet or a mean of at least 100 feet of the side bordering the street and the distance formed by a line parallel to the side bordering the street drawn between the two most distant points of the remainder of the lot may be developed with a water system regulated under s. 381.0062 and onsite sewage treatment and disposal systems, provided the projected daily sewage flow does not exceed an average of 1,500 gallons per acre per day, and provided satisfactory drinking water can be obtained and all distance and setback, soil condition, water table elevation, and other related requirements of this section and rules adopted under this section can be met.

(b) Subdivisions and lots using a public water system as defined in s. 403.852 may use onsite sewage treatment and disposal systems, provided there are no more than four lots per acre, provided the projected daily sewage flow does not exceed an average of 2,500 gallons per acre per day, and provided that all distance and setback, soil condition, water table elevation, and other related requirements that are generally applicable to the use of onsite sewage treatment and disposal systems are met.

(c) Notwithstanding paragraphs (a) and (b), for subdivisions platted of record on or before October 1, 1991, when a developer or other appropriate entity has previously made or makes provisions, including financial assurances or other commitments, acceptable to the Department of Health, that a central water system will be installed by a regulated public utility based on a density formula, private potable wells may be used with onsite sewage treatment and disposal systems until the



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agreed-upon densities are reached. In a subdivision regulated by this paragraph, the average daily sewage flow may not exceed 2,500 gallons per acre per day. This section does not affect the validity of existing prior agreements. After October 1, 1991, the exception provided under this paragraph is not available to a developer or other appropriate entity.

(d) Paragraphs (a) and (b) do not apply to any proposed residential subdivision with more than 50 lots or to any proposed commercial subdivision with more than 5 lots where a publicly owned or investor-owned sewerage system is available. It is the intent of this paragraph not to allow development of additional proposed subdivisions in order to evade the requirements of this paragraph.

(e) The department shall adopt rules to locate onsite sewage treatment and disposal systems, including establishing setback distances, to prevent groundwater contamination and surface water contamination and to preserve the public health. The rulemaking process for such rules must be completed by July 1, 2022, and the department shall notify the Division of Law Revision of the date such rules are adopted. The rules must consider conventional and enhanced nutrient-reducing onsite sewage treatment and disposal system designs, impaired or degraded water bodies, domestic wastewater and drinking water infrastructure, potable water sources, nonpotable wells, stormwater infrastructure, the onsite sewage treatment and disposal system remediation plans developed pursuant to s. 403.067(7)(a)9.b., nutrient pollution, and the recommendations of the onsite sewage treatment and disposal systems technical advisory committee established pursuant to s. 381.00652.



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520 (f)~~(e)~~ Onsite sewage treatment and disposal systems that
521 are permitted before adoption of the rules identified in
522 paragraph (e) may ~~must~~ not be placed closer than:

523 1. Seventy-five feet from a private potable well.

524 2. Two hundred feet from a public potable well serving a
525 residential or nonresidential establishment having a total
526 sewage flow of greater than 2,000 gallons per day.

527 3. One hundred feet from a public potable well serving a
528 residential or nonresidential establishment having a total
529 sewage flow of less than or equal to 2,000 gallons per day.

530 4. Fifty feet from any nonpotable well.

531 5. Ten feet from any storm sewer pipe, to the maximum
532 extent possible, but in no instance shall the setback be less
533 than 5 feet.

534 6. Seventy-five feet from the mean high-water line of a
535 tidally influenced surface water body.

536 7. Seventy-five feet from the mean annual flood line of a
537 permanent nontidal surface water body.

538 8. Fifteen feet from the design high-water line of
539 retention areas, detention areas, or swales designed to contain
540 standing or flowing water for less than 72 hours after a
541 rainfall or the design high-water level of normally dry drainage
542 ditches or normally dry individual lot stormwater retention
543 areas.

544 ~~(f) Except as provided under paragraphs (e) and (t), no~~
545 ~~limitations shall be imposed by rule, relating to the distance~~
546 ~~between an onsite disposal system and any area that either~~
547 ~~permanently or temporarily has visible surface water.~~

548 (g) All provisions of this section and rules adopted under



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549 this section relating to soil condition, water table elevation,
550 distance, and other setback requirements must be equally applied
551 to all lots, with the following exceptions:

552 1. Any residential lot that was platted and recorded on or
553 after January 1, 1972, or that is part of a residential
554 subdivision that was approved by the appropriate permitting
555 agency on or after January 1, 1972, and that was eligible for an
556 onsite sewage treatment and disposal system construction permit
557 on the date of such platting and recording or approval shall be
558 eligible for an onsite sewage treatment and disposal system
559 construction permit, regardless of when the application for a
560 permit is made. If rules in effect at the time the permit
561 application is filed cannot be met, residential lots platted and
562 recorded or approved on or after January 1, 1972, shall, to the
563 maximum extent possible, comply with the rules in effect at the
564 time the permit application is filed. At a minimum, however,
565 those residential lots platted and recorded or approved on or
566 after January 1, 1972, but before January 1, 1983, shall comply
567 with those rules in effect on January 1, 1983, and those
568 residential lots platted and recorded or approved on or after
569 January 1, 1983, shall comply with those rules in effect at the
570 time of such platting and recording or approval. In determining
571 the maximum extent of compliance with current rules that is
572 possible, the department shall allow structures and
573 appurtenances thereto which were authorized at the time such
574 lots were platted and recorded or approved.

575 2. Lots platted before 1972 are subject to a 50-foot
576 minimum surface water setback and are not subject to lot size
577 requirements. The projected daily flow for onsite sewage



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treatment and disposal systems for lots platted before 1972 may not exceed:

a. Two thousand five hundred gallons per acre per day for lots served by public water systems as defined in s. 403.852.

b. One thousand five hundred gallons per acre per day for lots served by water systems regulated under s. 381.0062.

(h)1. The department may grant variances in hardship cases which may be less restrictive than ~~the provisions~~ specified in this section. If a variance is granted and the onsite sewage treatment and disposal system construction permit has been issued, the variance may be transferred with the system construction permit, if the transferee files, within 60 days after the transfer of ownership, an amended construction permit application providing all corrected information and proof of ownership of the property and if the same variance would have been required for the new owner of the property as was originally granted to the original applicant for the variance. There is no fee associated with the processing of this supplemental information. A variance may not be granted under this section until the department is satisfied that:

a. The hardship was not caused intentionally by the action of the applicant;

b. No reasonable alternative, taking into consideration factors such as cost, exists for the treatment of the sewage; and

c. The discharge from the onsite sewage treatment and disposal system will not adversely affect the health of the applicant or the public or significantly degrade the groundwater or surface waters.



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Where soil conditions, water table elevation, and setback provisions are determined by the department to be satisfactory, special consideration must be given to those lots platted before 1972.

2. The department shall appoint and staff a variance review and advisory committee, which shall meet monthly to recommend agency action on variance requests. The committee shall make its recommendations on variance requests at the meeting in which the application is scheduled for consideration, except for an extraordinary change in circumstances, the receipt of new information that raises new issues, or when the applicant requests an extension. The committee shall consider the criteria in subparagraph 1. in its recommended agency action on variance requests and shall also strive to allow property owners the full use of their land where possible. The committee consists of the following:

a. The Secretary of Environmental Protection ~~State Surgeon General~~ or his or her designee.

b. A representative from the county health departments.

c. A representative from the home building industry recommended by the Florida Home Builders Association.

d. A representative from the septic tank industry recommended by the Florida Onsite Wastewater Association.

e. A representative from the Department of Health ~~Environmental Protection~~.

f. A representative from the real estate industry who is also a developer in this state who develops lots using onsite sewage treatment and disposal systems, recommended by the



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636 Florida Association of Realtors.

637 g. A representative from the engineering profession
638 recommended by the Florida Engineering Society.

639
640 Members shall be appointed for a term of 3 years, with such
641 appointments being staggered so that the terms of no more than
642 two members expire in any one year. Members shall serve without
643 remuneration, but if requested, shall be reimbursed for per diem
644 and travel expenses as provided in s. 112.061.

645 (i) A construction permit may not be issued for an onsite
646 sewage treatment and disposal system in any area zoned or used
647 for industrial or manufacturing purposes, or its equivalent,
648 where a publicly owned or investor-owned sewage treatment system
649 is available, or where a likelihood exists that the system will
650 receive toxic, hazardous, or industrial waste. An existing
651 onsite sewage treatment and disposal system may be repaired if a
652 publicly owned or investor-owned sewerage system is not
653 available within 500 feet of the building sewer stub-out and if
654 system construction and operation standards can be met. This
655 paragraph does not require publicly owned or investor-owned
656 sewerage treatment systems to accept anything other than
657 domestic wastewater.

658 1. A building located in an area zoned or used for
659 industrial or manufacturing purposes, or its equivalent, when
660 such building is served by an onsite sewage treatment and
661 disposal system, must not be occupied until the owner or tenant
662 has obtained written approval from the department. The
663 department may ~~shall~~ not grant approval when the proposed use of
664 the system is to dispose of toxic, hazardous, or industrial



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wastewater or toxic or hazardous chemicals.

2. Each person who owns or operates a business or facility in an area zoned or used for industrial or manufacturing purposes, or its equivalent, or who owns or operates a business that has the potential to generate toxic, hazardous, or industrial wastewater or toxic or hazardous chemicals, and uses an onsite sewage treatment and disposal system that is installed on or after July 5, 1989, must obtain an annual system operating permit from the department. A person who owns or operates a business that uses an onsite sewage treatment and disposal system that was installed and approved before July 5, 1989, need not obtain a system operating permit. However, upon change of ownership or tenancy, the new owner or operator must notify the department of the change, and the new owner or operator must obtain an annual system operating permit, regardless of the date that the system was installed or approved.

3. The department shall periodically review and evaluate the continued use of onsite sewage treatment and disposal systems in areas zoned or used for industrial or manufacturing purposes, or its equivalent, and may require the collection and analyses of samples from within and around such systems. If the department finds that toxic or hazardous chemicals or toxic, hazardous, or industrial wastewater have been or are being disposed of through an onsite sewage treatment and disposal system, the department shall initiate enforcement actions against the owner or tenant to ensure adequate cleanup, treatment, and disposal.

(j) An onsite sewage treatment and disposal system designed by a professional engineer registered in the state and certified



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by such engineer as complying with performance criteria adopted by the department must be approved by the department subject to the following:

1. The performance criteria applicable to engineer-designed systems must be limited to those necessary to ensure that such systems do not adversely affect the public health or significantly degrade the groundwater or surface water. Such performance criteria shall include consideration of the quality of system effluent, the proposed total sewage flow per acre, wastewater treatment capabilities of the natural or replaced soil, water quality classification of the potential surface-water-receiving body, and the structural and maintenance viability of the system for the treatment of domestic wastewater. However, performance criteria shall address only the performance of a system and not a system's design.

2. A person electing to utilize an engineer-designed system shall, upon completion of the system design, submit such design, certified by a registered professional engineer, to the county health department. The county health department may utilize an outside consultant to review the engineer-designed system, with the actual cost of such review to be borne by the applicant. Within 5 working days after receiving an engineer-designed system permit application, the county health department shall request additional information if the application is not complete. Within 15 working days after receiving a complete application for an engineer-designed system, the county health department either shall issue the permit or, if it determines that the system does not comply with the performance criteria, shall notify the applicant of that determination and refer the



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723 application to the department for a determination as to whether
724 the system should be approved, disapproved, or approved with
725 modification. The department engineer's determination shall
726 prevail over the action of the county health department. The
727 applicant shall be notified in writing of the department's
728 determination and of the applicant's rights to pursue a variance
729 or seek review under ~~the provisions of~~ chapter 120.

730 3. The owner of an engineer-designed performance-based
731 system must maintain a current maintenance service agreement
732 with a maintenance entity permitted by the department. The
733 maintenance entity shall inspect each system at least twice each
734 year and shall report quarterly to the department on the number
735 of systems inspected and serviced. The reports may be submitted
736 electronically.

737 4. The property owner of an owner-occupied, single-family
738 residence may be approved and permitted by the department as a
739 maintenance entity for his or her own performance-based
740 treatment system upon written certification from the system
741 manufacturer's approved representative that the property owner
742 has received training on the proper installation and service of
743 the system. The maintenance service agreement must conspicuously
744 disclose that the property owner has the right to maintain his
745 or her own system and is exempt from contractor registration
746 requirements for performing construction, maintenance, or
747 repairs on the system but is subject to all permitting
748 requirements.

749 5. The property owner shall obtain a biennial system
750 operating permit from the department for each system. The
751 department shall inspect the system at least annually, or on



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such periodic basis as the fee collected permits, and may collect system-effluent samples if appropriate to determine compliance with the performance criteria. The fee for the biennial operating permit shall be collected beginning with the second year of system operation.

6. If an engineer-designed system fails to properly function or fails to meet performance standards, the system shall be re-engineered, if necessary, to bring the system into compliance with ~~the provisions of~~ this section.

(k) An innovative system may be approved in conjunction with an engineer-designed site-specific system which is certified by the engineer to meet the performance-based criteria adopted by the department.

(l) For the Florida Keys, the department shall adopt a special rule for the construction, installation, modification, operation, repair, maintenance, and performance of onsite sewage treatment and disposal systems which considers the unique soil conditions and water table elevations, densities, and setback requirements. On lots where a setback distance of 75 feet from surface waters, saltmarsh, and buttonwood association habitat areas cannot be met, an injection well, approved and permitted by the department, may be used for disposal of effluent from onsite sewage treatment and disposal systems. The following additional requirements apply to onsite sewage treatment and disposal systems in Monroe County:

1. The county, each municipality, and those special districts established for the purpose of the collection, transmission, treatment, or disposal of sewage shall ensure, in accordance with the specific schedules adopted by the



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Administration Commission under s. 380.0552, the completion of onsite sewage treatment and disposal system upgrades to meet the requirements of this paragraph.

2. Onsite sewage treatment and disposal systems must cease discharge by December 31, 2015, or must comply with department rules and provide the level of treatment which, on a permitted annual average basis, produces an effluent that contains no more than the following concentrations:

a. Biochemical Oxygen Demand (CBOD5) of 10 mg/l.

b. Suspended Solids of 10 mg/l.

c. Total Nitrogen, expressed as N, of 10 mg/l or a reduction in nitrogen of at least 70 percent. A system that has been tested and certified to reduce nitrogen concentrations by at least 70 percent shall be deemed to be in compliance with this standard.

d. Total Phosphorus, expressed as P, of 1 mg/l.

In addition, onsite sewage treatment and disposal systems discharging to an injection well must provide basic disinfection as defined by department rule.

3. In areas not scheduled to be served by a central sewer, onsite sewage treatment and disposal systems must, by December 31, 2015, comply with department rules and provide the level of treatment described in subparagraph 2.

4. In areas scheduled to be served by central sewer by December 31, 2015, if the property owner has paid a connection fee or assessment for connection to the central sewer system, the property owner may install a holding tank with a high water alarm or an onsite sewage treatment and disposal system that



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meets the following minimum standards:

a. The existing tanks must be pumped and inspected and certified as being watertight and free of defects in accordance with department rule; and

b. A sand-lined drainfield or injection well in accordance with department rule must be installed.

5. Onsite sewage treatment and disposal systems must be monitored for total nitrogen and total phosphorus concentrations as required by department rule.

6. The department shall enforce proper installation, operation, and maintenance of onsite sewage treatment and disposal systems pursuant to this chapter, including ensuring that the appropriate level of treatment described in subparagraph 2. is met.

7. The authority of a local government, including a special district, to mandate connection of an onsite sewage treatment and disposal system is governed by s. 4, chapter 99-395, Laws of Florida.

8. Notwithstanding any other ~~provision of~~ law, an onsite sewage treatment and disposal system installed after July 1, 2010, in unincorporated Monroe County, excluding special wastewater districts, that complies with the standards in subparagraph 2. is not required to connect to a central sewer system until December 31, 2020.

(m) No product sold in the state for use in onsite sewage treatment and disposal systems may contain any substance in concentrations or amounts that would interfere with or prevent the successful operation of such system, or that would cause discharges from such systems to violate applicable water quality



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standards. The department shall publish criteria for products known or expected to meet the conditions of this paragraph. In the event a product does not meet such criteria, such product may be sold if the manufacturer satisfactorily demonstrates to the department that the conditions of this paragraph are met.

(n) Evaluations for determining the seasonal high-water table elevations or the suitability of soils for the use of a new onsite sewage treatment and disposal system shall be performed by department personnel, professional engineers registered in the state, or such other persons with expertise, as defined by rule, in making such evaluations. Evaluations for determining mean annual flood lines shall be performed by those persons identified in paragraph (2)(k) ~~(2)(j)~~. The department shall accept evaluations submitted by professional engineers and such other persons as meet the expertise established by this section or by rule unless the department has a reasonable scientific basis for questioning the accuracy or completeness of the evaluation.

(o) The department shall appoint a research review and advisory committee, which shall meet at least semiannually. The committee shall advise the department on directions for new research, review and rank proposals for research contracts, and review draft research reports and make comments. The committee is comprised of:

1. A representative of the Secretary of Environmental Protection ~~State Surgeon General~~, or his or her designee.

2. A representative from the septic tank industry.

3. A representative from the home building industry.

4. A representative from an environmental interest group.



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5. A representative from the State University System, from a department knowledgeable about onsite sewage treatment and disposal systems.

6. A professional engineer registered in this state who has work experience in onsite sewage treatment and disposal systems.

7. A representative from local government who is knowledgeable about domestic wastewater treatment.

8. A representative from the real estate profession.

9. A representative from the restaurant industry.

10. A consumer.

Members shall be appointed for a term of 3 years, with the appointments being staggered so that the terms of no more than four members expire in any one year. Members shall serve without remuneration, but are entitled to reimbursement for per diem and travel expenses as provided in s. 112.061.

(p) An application for an onsite sewage treatment and disposal system permit shall be completed in full, signed by the owner or the owner's authorized representative, or by a contractor licensed under chapter 489, and shall be accompanied by all required exhibits and fees. No specific documentation of property ownership shall be required as a prerequisite to the review of an application or the issuance of a permit. The issuance of a permit does not constitute determination by the department of property ownership.

(q) The department may not require any form of subdivision analysis of property by an owner, developer, or subdivider prior to submission of an application for an onsite sewage treatment and disposal system.



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(r) Nothing in this section limits the power of a municipality or county to enforce other laws for the protection of the public health and safety.

(s) In the siting of onsite sewage treatment and disposal systems, including drainfields, shoulders, and slopes, guttering ~~may shall~~ not be required on single-family residential dwelling units for systems located greater than 5 feet from the roof drip line of the house. If guttering is used on residential dwelling units, the downspouts shall be directed away from the drainfield.

(t) Notwithstanding ~~the provisions of~~ subparagraph (g)1., onsite sewage treatment and disposal systems located in floodways of the Suwannee and Aucilla Rivers must adhere to the following requirements:

1. The absorption surface of the drainfield ~~may shall~~ not be subject to flooding based on 10-year flood elevations. Provided, however, for lots or parcels created by the subdivision of land in accordance with applicable local government regulations prior to January 17, 1990, if an applicant cannot construct a drainfield system with the absorption surface of the drainfield at an elevation equal to or above 10-year flood elevation, the department shall issue a permit for an onsite sewage treatment and disposal system within the 10-year floodplain of rivers, streams, and other bodies of flowing water if all of the following criteria are met:

- a. The lot is at least one-half acre in size;
- b. The bottom of the drainfield is at least 36 inches above the 2-year flood elevation; and
- c. The applicant installs either: a waterless,



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incinerating, or organic waste composting toilet and a graywater system and drainfield in accordance with department rules; an aerobic treatment unit and drainfield in accordance with department rules; a system ~~approved by the State Health Office~~ that is capable of reducing effluent nitrate by at least 50 percent in accordance with department rules; or a system other than a system using alternative drainfield materials in accordance with department rules ~~approved by the county health department pursuant to department rule other than a system using alternative drainfield materials~~. The United States Department of Agriculture Soil Conservation Service soil maps, State of Florida Water Management District data, and Federal Emergency Management Agency Flood Insurance maps are resources that shall be used to identify flood-prone areas.

2. The use of fill or mounding to elevate a drainfield system out of the 10-year floodplain of rivers, streams, or other bodies of flowing water may ~~shall~~ not be permitted if such a system lies within a regulatory floodway of the Suwannee and Aucilla Rivers. In cases where the 10-year flood elevation does not coincide with the boundaries of the regulatory floodway, the regulatory floodway will be considered for the purposes of this subsection to extend at a minimum to the 10-year flood elevation.

(u)1. The owner of an aerobic treatment unit system shall maintain a current maintenance service agreement with an aerobic treatment unit maintenance entity permitted by the department. The maintenance entity shall inspect each aerobic treatment unit system at least twice each year and shall report quarterly to the department on the number of aerobic treatment unit systems



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inspected and serviced. The reports may be submitted electronically.

2. The property owner of an owner-occupied, single-family residence may be approved and permitted by the department as a maintenance entity for his or her own aerobic treatment unit system upon written certification from the system manufacturer's approved representative that the property owner has received training on the proper installation and service of the system. The maintenance entity service agreement must conspicuously disclose that the property owner has the right to maintain his or her own system and is exempt from contractor registration requirements for performing construction, maintenance, or repairs on the system but is subject to all permitting requirements.

3. A septic tank contractor licensed under part III of chapter 489, if approved by the manufacturer, may not be denied access by the manufacturer to aerobic treatment unit system training or spare parts for maintenance entities. After the original warranty period, component parts for an aerobic treatment unit system may be replaced with parts that meet manufacturer's specifications but are manufactured by others. The maintenance entity shall maintain documentation of the substitute part's equivalency for 2 years and shall provide such documentation to the department upon request.

4. The owner of an aerobic treatment unit system shall obtain a system operating permit from the department and allow the department to inspect during reasonable hours each aerobic treatment unit system at least annually, and such inspection may include collection and analysis of system-effluent samples for



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performance criteria established by rule of the department.

(v) The department may require the submission of detailed system construction plans that are prepared by a professional engineer registered in this state. The department shall establish by rule criteria for determining when such a submission is required.

(w) Any permit issued and approved by the department for the installation, modification, or repair of an onsite sewage treatment and disposal system shall transfer with the title to the property in a real estate transaction. A title may not be encumbered at the time of transfer by new permit requirements by a governmental entity for an onsite sewage treatment and disposal system which differ from the permitting requirements in effect at the time the system was permitted, modified, or repaired. An inspection of a system may not be mandated by a governmental entity at the point of sale in a real estate transaction. This paragraph does not affect a septic tank phase-out deferral program implemented by a consolidated government as defined in s. 9, Art. VIII of the State Constitution (1885).

(x) A governmental entity, including a municipality, county, or statutorily created commission, may not require an engineer-designed performance-based treatment system, excluding a passive engineer-designed performance-based treatment system, before the completion of the Florida Onsite Sewage Nitrogen Reduction Strategies Project. This paragraph does not apply to a governmental entity, including a municipality, county, or statutorily created commission, which adopted a local law, ordinance, or regulation on or before January 31, 2012. Notwithstanding this paragraph, an engineer-designed



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performance-based treatment system may be used to meet the requirements of the variance review and advisory committee recommendations.

(y)1. An onsite sewage treatment and disposal system is not considered abandoned if the system is disconnected from a structure that was made unusable or destroyed following a disaster and if the system was properly functioning at the time of disconnection and was not adversely affected by the disaster. The onsite sewage treatment and disposal system may be reconnected to a rebuilt structure if:

a. The reconnection of the system is to the same type of structure which contains the same number of bedrooms or fewer, if the square footage of the structure is less than or equal to 110 percent of the original square footage of the structure that existed before the disaster;

b. The system is not a sanitary nuisance; and

c. The system has not been altered without prior authorization.

2. An onsite sewage treatment and disposal system that serves a property that is foreclosed upon is not considered abandoned.

(z) If an onsite sewage treatment and disposal system permittee receives, relies upon, and undertakes construction of a system based upon a validly issued construction permit under rules applicable at the time of construction but a change to a rule occurs within 5 years after the approval of the system for construction but before the final approval of the system, the rules applicable and in effect at the time of construction approval apply at the time of final approval if fundamental site



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conditions have not changed between the time of construction approval and final approval.

(aa) An existing-system inspection or evaluation and assessment, or a modification, replacement, or upgrade of an onsite sewage treatment and disposal system is not required for a remodeling addition or modification to a single-family home if a bedroom is not added. However, a remodeling addition or modification to a single-family home may not cover any part of the existing system or encroach upon a required setback or the unobstructed area. To determine if a setback or the unobstructed area is impacted, the local health department shall review and verify a floor plan and site plan of the proposed remodeling addition or modification to the home submitted by a remodeler which shows the location of the system, including the distance of the remodeling addition or modification to the home from the onsite sewage treatment and disposal system. The local health department may visit the site or otherwise determine the best means of verifying the information submitted. A verification of the location of a system is not an inspection or evaluation and assessment of the system. The review and verification must be completed within 7 business days after receipt by the local health department of a floor plan and site plan. If the review and verification is not completed within such time, the remodeling addition or modification to the single-family home, for the purposes of this paragraph, is approved.

Section 5. Section 381.00652, Florida Statutes, is created to read:

381.00652 Onsite sewage treatment and disposal systems technical advisory committee.—



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(1) An onsite sewage treatment and disposal systems technical advisory committee, a committee as defined in s. 20.03(8), is created within the department. The committee shall:

(a) Provide recommendations to increase the availability in the marketplace of enhanced nutrient-reducing onsite sewage treatment and disposal systems, including systems that are cost-effective, low-maintenance, and reliable.

(b) Consider and recommend regulatory options, such as fast-track approval, prequalification, or expedited permitting, to facilitate the introduction and use of enhanced nutrient-reducing onsite sewage treatment and disposal systems that have been reviewed and approved by a national agency or organization, such as the American National Standards Institute 245 systems approved by the NSF International.

(c) Provide recommendations for appropriate setback distances for onsite sewage treatment and disposal systems from surface water, groundwater, and wells.

(2) The department shall use existing and available resources to administer and support the activities of the committee.

(3)(a) By August 1, 2021, the department, in consultation with the Department of Health, shall appoint no more than nine members to the committee, including, but not limited to, the following:

1. A professional engineer.

2. A septic tank contractor.

3. A representative from the home building industry.

4. A representative from the real estate industry.

5. A representative from the onsite sewage treatment and



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disposal system industry.

6. A representative from local government.

7. Two representatives from the environmental community.

8. A representative of the scientific and technical community who has substantial expertise in the areas of the fate and transport of water pollutants, toxicology, epidemiology, geology, biology, or environmental sciences.

(b) Members shall serve without compensation and are not entitled to reimbursement for per diem or travel expenses.

(4) By January 1, 2022, the committee shall submit its recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(5) This section expires August 15, 2022.

(6) For purposes of this section, the term "department" means the Department of Environmental Protection.

Section 6. Effective July 1, 2021, section 381.0068, Florida Statutes, is repealed.

Section 7. Present subsections (14) through (44) of section 403.061, Florida Statutes, are redesignated as subsections (15) through (45), respectively, a new subsection (14) is added to that section, and subsection (7) of that section is amended, to read:

403.061 Department; powers and duties.—The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to:

(7) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement ~~the provisions of~~ this act. Any rule adopted pursuant to this act must ~~shall~~ be consistent with the provisions of



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1129 federal law, if any, relating to control of emissions from motor
1130 vehicles, effluent limitations, pretreatment requirements, or
1131 standards of performance. A ~~No~~ county, municipality, or
1132 political subdivision may not ~~shall~~ adopt or enforce any local
1133 ordinance, special law, or local regulation requiring the
1134 installation of Stage II vapor recovery systems, as currently
1135 defined by department rule, unless such county, municipality, or
1136 political subdivision is or has been in the past designated by
1137 federal regulation as a moderate, serious, or severe ozone
1138 nonattainment area. Rules adopted pursuant to this act may ~~shall~~
1139 not require dischargers of waste into waters of the state to
1140 improve natural background conditions. The department shall
1141 adopt rules to reasonably limit, reduce, and eliminate domestic
1142 wastewater collection and transmission system pipe leakages and
1143 inflow and infiltration. Discharges from steam electric
1144 generating plants existing or licensed under this chapter on
1145 July 1, 1984, may ~~shall~~ not be required to be treated to a
1146 greater extent than may be necessary to assure that the quality
1147 of nonthermal components of discharges from nonrecirculated
1148 cooling water systems is as high as the quality of the makeup
1149 waters; that the quality of nonthermal components of discharges
1150 from recirculated cooling water systems is no lower than is
1151 allowed for blowdown from such systems; or that the quality of
1152 noncooling system discharges which receive makeup water from a
1153 receiving body of water which does not meet applicable
1154 department water quality standards is as high as the quality of
1155 the receiving body of water. The department may not adopt
1156 standards more stringent than federal regulations, except as
1157 provided in s. 403.804.



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(14) In order to promote resilient utilities, require public utilities or their affiliated companies holding, applying for, or renewing a domestic wastewater discharge permit to file annual reports and other data regarding transactions or allocations of common costs and expenditures on pollution mitigation and prevention among the utility's permitted systems, including, but not limited to, the prevention of sanitary sewer overflows, collection and transmission system pipe leakages, and inflow and infiltration. The department shall adopt rules to implement this subsection.

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Section 8. Section 403.0616, Florida Statutes, is created to read:

403.0616 Real-time water quality monitoring program.-

(1) Subject to appropriation, the department shall establish a real-time water quality monitoring program to assist in the restoration, preservation, and enhancement of impaired waterbodies and coastal resources.

(2) In order to expedite the creation and implementation of the program, the department is encouraged to form public-private partnerships with established scientific entities that have proven existing real-time water quality monitoring equipment and experience in deploying the equipment.

Section 9. Subsection (7) of section 403.067, Florida Statutes, is amended to read:



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403.067 Establishment and implementation of total maximum daily loads.—

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

(a) *Basin management action plans.*—

1. In developing and implementing the total maximum daily load for a water body, the department, or the department in conjunction with a water management district, may develop a basin management action plan that addresses some or all of the watersheds and basins tributary to the water body. Such plan must integrate the appropriate management strategies available to the state through existing water quality protection programs to achieve the total maximum daily loads and may provide for phased implementation of these management strategies to promote timely, cost-effective actions as provided for in s. 403.151. The plan must establish a schedule implementing the management strategies, establish a basis for evaluating the plan's effectiveness, and identify feasible funding strategies for implementing the plan's management strategies. The management strategies may include regional treatment systems or other public works, where appropriate, and voluntary trading of water quality credits to achieve the needed pollutant load reductions.

2. A basin management action plan must equitably allocate, pursuant to paragraph (6) (b), pollutant reductions to individual basins, as a whole to all basins, or to each identified point source or category of nonpoint sources, as appropriate. For nonpoint sources for which best management practices have been adopted, the initial requirement specified by the plan must be those practices developed pursuant to paragraph (c). When ~~Where~~



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appropriate, the plan may take into account the benefits of pollutant load reduction achieved by point or nonpoint sources that have implemented management strategies to reduce pollutant loads, including best management practices, before the development of the basin management action plan. The plan must also identify the mechanisms that will address potential future increases in pollutant loading.

3. The basin management action planning process is intended to involve the broadest possible range of interested parties, with the objective of encouraging the greatest amount of cooperation and consensus possible. In developing a basin management action plan, the department shall assure that key stakeholders, including, but not limited to, applicable local governments, water management districts, the Department of Agriculture and Consumer Services, other appropriate state agencies, local soil and water conservation districts, environmental groups, regulated interests, and affected pollution sources, are invited to participate in the process. The department shall hold at least one public meeting in the vicinity of the watershed or basin to discuss and receive comments during the planning process and shall otherwise encourage public participation to the greatest practicable extent. Notice of the public meeting must be published in a newspaper of general circulation in each county in which the watershed or basin lies at least not less than 5 days, but not ~~not~~ more than 15 days, before the public meeting. A basin management action plan does not supplant or otherwise alter any assessment made under subsection (3) or subsection (4) or any calculation or initial allocation.



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1245 4. Each new or revised basin management action plan shall
1246 include:

1247 a. The appropriate management strategies available through
1248 existing water quality protection programs to achieve total
1249 maximum daily loads, which may provide for phased implementation
1250 to promote timely, cost-effective actions as provided for in s.
1251 403.151;

1252 b. A description of best management practices adopted by
1253 rule;

1254 c. A list of projects in priority ranking with a planning-
1255 level cost estimate and estimated date of completion for each
1256 listed project;

1257 d. The source and amount of financial assistance to be made
1258 available by the department, a water management district, or
1259 other entity for each listed project, if applicable; and

1260 e. A planning-level estimate of each listed project's
1261 expected load reduction, if applicable.

1262 5. The department shall adopt all or any part of a basin
1263 management action plan and any amendment to such plan by
1264 secretarial order pursuant to chapter 120 to implement ~~the~~
1265 ~~provisions of~~ this section.

1266 6. The basin management action plan must include milestones
1267 for implementation and water quality improvement, and an
1268 associated water quality monitoring component sufficient to
1269 evaluate whether reasonable progress in pollutant load
1270 reductions is being achieved over time. An assessment of
1271 progress toward these milestones shall be conducted every 5
1272 years, and revisions to the plan shall be made as appropriate.
1273 Revisions to the basin management action plan shall be made by



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the department in cooperation with basin stakeholders. Revisions to the management strategies required for nonpoint sources must follow the procedures set forth in subparagraph (c)4. Revised basin management action plans must be adopted pursuant to subparagraph 5.

7. In accordance with procedures adopted by rule under paragraph (9)(c), basin management action plans, and other pollution control programs under local, state, or federal authority as provided in subsection (4), may allow point or nonpoint sources that will achieve greater pollutant reductions than required by an adopted total maximum daily load or wasteload allocation to generate, register, and trade water quality credits for the excess reductions to enable other sources to achieve their allocation; however, the generation of water quality credits does not remove the obligation of a source or activity to meet applicable technology requirements or adopted best management practices. Such plans must allow trading between NPDES permittees, and trading that may or may not involve NPDES permittees, where the generation or use of the credits involve an entity or activity not subject to department water discharge permits whose owner voluntarily elects to obtain department authorization for the generation and sale of credits.

8. ~~The provisions of~~ The department's rule relating to the equitable abatement of pollutants into surface waters do not apply to water bodies or water body segments for which a basin management plan that takes into account future new or expanded activities or discharges has been adopted under this section.

9. In order to promote resilient utilities, if the department identifies domestic wastewater facilities or onsite



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sewage treatment and disposal systems as contributors of at least 20 percent of point source or nonpoint source nutrient pollution or if the department determines remediation is necessary to achieve the total maximum daily load, a basin management action plan for a nutrient total maximum daily load must include the following:

a. A wastewater treatment plan that addresses domestic wastewater developed by each local government in cooperation with the department, the water management district, and the public and private domestic wastewater facilities within the jurisdiction of the local government. The wastewater treatment plan must:

(I) Provide for construction, expansion, or upgrades necessary to achieve the total maximum daily load requirements applicable to the domestic wastewater facility.

(II) Include the permitted capacity in average annual gallons per day for the domestic wastewater facility; the average nutrient concentration and the estimated average nutrient load of the domestic wastewater; a timeline of the dates by which the construction of any facility improvements will begin and be completed and the date by which operations of the improved facility will begin; the estimated cost of the improvements; and the identity of responsible parties.

The wastewater treatment plan must be adopted as part of the basin management action plan no later than July 1, 2025. A local government that does not have a domestic wastewater treatment facility in its jurisdiction is not required to develop a wastewater treatment plan unless there is a demonstrated need to



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establish a domestic wastewater treatment facility within its jurisdiction to improve water quality necessary to achieve a total maximum daily load. A local government is not responsible for a private domestic wastewater facility's compliance with a basin management action plan.

b. An onsite sewage treatment and disposal system remediation plan developed by each local government in cooperation with the department, the Department of Health, water management districts, and public and private domestic wastewater facilities.

(I) The onsite sewage treatment and disposal system remediation plan must identify cost-effective and financially feasible projects necessary to achieve the nutrient load reductions required for onsite sewage treatment and disposal systems. To identify cost-effective and financially feasible projects for remediation of onsite sewage treatment and disposal systems, the local government shall:

(A) Include an inventory of onsite sewage treatment and disposal systems based on the best information available;

(B) Identify onsite sewage treatment and disposal systems that would be eliminated through connection to existing or future central domestic wastewater infrastructure in the jurisdiction or domestic wastewater service area of the local government, that would be replaced with or upgraded to enhanced nutrient-reducing systems, or that would remain on conventional onsite sewage treatment and disposal systems;

(C) Estimate the costs of potential onsite sewage treatment and disposal systems connections, upgrades, or replacements; and

(D) Identify deadlines and interim milestones for the



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1361 planning, design, and construction of projects.

1362 (II) The department shall adopt the onsite sewage treatment
1363 and disposal system remediation plan as part of the basin
1364 management action plan no later than July 1, 2025, or as
1365 required for Outstanding Florida Springs under s. 373.807.

1366 10. When identifying wastewater projects in a basin
1367 management action plan, the department may not require the
1368 higher cost option if it achieves the same nutrient load
1369 reduction as a lower cost option.

1370 *(b) Total maximum daily load implementation.—*

1371 1. The department shall be the lead agency in coordinating
1372 the implementation of the total maximum daily loads through
1373 existing water quality protection programs. Application of a
1374 total maximum daily load by a water management district must be
1375 consistent with this section and does not require the issuance
1376 of an order or a separate action pursuant to s. 120.536(1) or s.
1377 120.54 for the adoption of the calculation and allocation
1378 previously established by the department. Such programs may
1379 include, but are not limited to:

1380 a. Permitting and other existing regulatory programs,
1381 including water-quality-based effluent limitations;

1382 b. Nonregulatory and incentive-based programs, including
1383 best management practices, cost sharing, waste minimization,
1384 pollution prevention, agreements established pursuant to s.
1385 403.061(22) ~~s. 403.061(21)~~, and public education;

1386 c. Other water quality management and restoration
1387 activities, for example surface water improvement and management
1388 plans approved by water management districts or basin management
1389 action plans developed pursuant to this subsection;



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d. Trading of water quality credits or other equitable economically based agreements;

e. Public works including capital facilities; or

f. Land acquisition.

2. For a basin management action plan adopted pursuant to paragraph (a), any management strategies and pollutant reduction requirements associated with a pollutant of concern for which a total maximum daily load has been developed, including effluent limits set forth for a discharger subject to NPDES permitting, if any, must be included in a timely manner in subsequent NPDES permits or permit modifications for that discharger. The department may not impose limits or conditions implementing an adopted total maximum daily load in an NPDES permit until the permit expires, the discharge is modified, or the permit is reopened pursuant to an adopted basin management action plan.

a. Absent a detailed allocation, total maximum daily loads must be implemented through NPDES permit conditions that provide for a compliance schedule. In such instances, a facility's NPDES permit must allow time for the issuance of an order adopting the basin management action plan. The time allowed for the issuance of an order adopting the plan may not exceed 5 years. Upon issuance of an order adopting the plan, the permit must be reopened or renewed, as necessary, and permit conditions consistent with the plan must be established. Notwithstanding the other provisions of this subparagraph, upon request by an NPDES permittee, the department as part of a permit issuance, renewal, or modification may establish individual allocations before the adoption of a basin management action plan.

b. For holders of NPDES municipal separate storm sewer



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1419 system permits and other stormwater sources, implementation of a
1420 total maximum daily load or basin management action plan must be
1421 achieved, to the maximum extent practicable, through the use of
1422 best management practices or other management measures.

1423 c. The basin management action plan does not relieve the
1424 discharger from any requirement to obtain, renew, or modify an
1425 NPDES permit or to abide by other requirements of the permit.

1426 d. Management strategies set forth in a basin management
1427 action plan to be implemented by a discharger subject to
1428 permitting by the department must be completed pursuant to the
1429 schedule set forth in the basin management action plan. This
1430 implementation schedule may extend beyond the 5-year term of an
1431 NPDES permit.

1432 e. Management strategies and pollution reduction
1433 requirements set forth in a basin management action plan for a
1434 specific pollutant of concern are not subject to challenge under
1435 chapter 120 at the time they are incorporated, in an identical
1436 form, into a subsequent NPDES permit or permit modification.

1437 f. For nonagricultural pollutant sources not subject to
1438 NPDES permitting but permitted pursuant to other state,
1439 regional, or local water quality programs, the pollutant
1440 reduction actions adopted in a basin management action plan must
1441 be implemented to the maximum extent practicable as part of
1442 those permitting programs.

1443 g. A nonpoint source discharger included in a basin
1444 management action plan must demonstrate compliance with the
1445 pollutant reductions established under subsection (6) by
1446 implementing the appropriate best management practices
1447 established pursuant to paragraph (c) or conducting water



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quality monitoring prescribed by the department or a water management district. A nonpoint source discharger may, in accordance with department rules, supplement the implementation of best management practices with water quality credit trades in order to demonstrate compliance with the pollutant reductions established under subsection (6).

h. A nonpoint source discharger included in a basin management action plan may be subject to enforcement action by the department or a water management district based upon a failure to implement the responsibilities set forth in subparagraph g.

i. A landowner, discharger, or other responsible person who is implementing applicable management strategies specified in an adopted basin management action plan may not be required by permit, enforcement action, or otherwise to implement additional management strategies, including water quality credit trading, to reduce pollutant loads to attain the pollutant reductions established pursuant to subsection (6) and shall be deemed to be in compliance with this section. This subparagraph does not limit the authority of the department to amend a basin management action plan as specified in subparagraph (a)6.

(c) Best management practices.—

1. The department, in cooperation with the water management districts and other interested parties, as appropriate, may develop suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for nonagricultural nonpoint pollutant sources in allocations developed pursuant to subsection (6) and this subsection. These practices and measures



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may be adopted by rule by the department and the water management districts and, where adopted by rule, shall be implemented by those parties responsible for nonagricultural nonpoint source pollution.

2. The Department of Agriculture and Consumer Services may develop and adopt by rule pursuant to ss. 120.536(1) and 120.54 suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for agricultural pollutant sources in allocations developed pursuant to subsection (6) and this subsection or for programs implemented pursuant to paragraph (12)(b). These practices and measures may be implemented by those parties responsible for agricultural pollutant sources and the department, the water management districts, and the Department of Agriculture and Consumer Services shall assist with implementation. In the process of developing and adopting rules for interim measures, best management practices, or other measures, the Department of Agriculture and Consumer Services shall consult with the department, the Department of Health, the water management districts, representatives from affected farming groups, and environmental group representatives. Such rules must also incorporate provisions for a notice of intent to implement the practices and a system to assure the implementation of the practices, including site inspection and recordkeeping requirements.

3. Where interim measures, best management practices, or other measures are adopted by rule, the effectiveness of such practices in achieving the levels of pollution reduction established in allocations developed by the department pursuant



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to subsection (6) and this subsection or in programs implemented pursuant to paragraph (12) (b) must be verified at representative sites by the department. The department shall use best professional judgment in making the initial verification that the best management practices are reasonably expected to be effective and, where applicable, must notify the appropriate water management district or the Department of Agriculture and Consumer Services of its initial verification before the adoption of a rule proposed pursuant to this paragraph. Implementation, in accordance with rules adopted under this paragraph, of practices that have been initially verified to be effective, or verified to be effective by monitoring at representative sites, by the department, shall provide a presumption of compliance with state water quality standards and release from ~~the provisions of~~ s. 376.307(5) for those pollutants addressed by the practices, and the department is not authorized to institute proceedings against the owner of the source of pollution to recover costs or damages associated with the contamination of surface water or groundwater caused by those pollutants. Research projects funded by the department, a water management district, or the Department of Agriculture and Consumer Services to develop or demonstrate interim measures or best management practices shall be granted a presumption of compliance with state water quality standards and a release from ~~the provisions of~~ s. 376.307(5). The presumption of compliance and release is limited to the research site and only for those pollutants addressed by the interim measures or best management practices. Eligibility for the presumption of compliance and release is limited to research projects on sites where the owner



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or operator of the research site and the department, a water management district, or the Department of Agriculture and Consumer Services have entered into a contract or other agreement that, at a minimum, specifies the research objectives, the cost-share responsibilities of the parties, and a schedule that details the beginning and ending dates of the project.

4. Where water quality problems are demonstrated, despite the appropriate implementation, operation, and maintenance of best management practices and other measures required by rules adopted under this paragraph, the department, a water management district, or the Department of Agriculture and Consumer Services, in consultation with the department, shall institute a reevaluation of the best management practice or other measure. Should the reevaluation determine that the best management practice or other measure requires modification, the department, a water management district, or the Department of Agriculture and Consumer Services, as appropriate, shall revise the rule to require implementation of the modified practice within a reasonable time period as specified in the rule.

5. Subject to subparagraph 6., the Department of Agriculture and Consumer Services shall provide to the department information that it obtains pursuant to subparagraph (d) 3.

6. Agricultural records relating to processes or methods of production, costs of production, profits, or other financial information held by the Department of Agriculture and Consumer Services pursuant to subparagraphs 3., ~~and 4.~~, and 5. or pursuant to any rule adopted pursuant to subparagraph 2. are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I



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of the State Constitution. Upon request, records made confidential and exempt pursuant to this subparagraph shall be released to the department or any water management district provided that the confidentiality specified by this subparagraph for such records is maintained.

~~7.6. The provisions of~~ Subparagraphs 1. and 2. do not preclude the department or water management district from requiring compliance with water quality standards or with current best management practice requirements set forth in any applicable regulatory program authorized by law for the purpose of protecting water quality. Additionally, subparagraphs 1. and 2. are applicable only to the extent that they do not conflict with any rules adopted by the department that are necessary to maintain a federally delegated or approved program.

(d) *Enforcement and verification of basin management action plans and management strategies.*—

1. Basin management action plans are enforceable pursuant to this section and ss. 403.121, 403.141, and 403.161.

Management strategies, including best management practices and water quality monitoring, are enforceable under this chapter.

2. No later than January 1, 2017:

a. The department, in consultation with the water management districts and the Department of Agriculture and Consumer Services, shall initiate rulemaking to adopt procedures to verify implementation of water quality monitoring required in lieu of implementation of best management practices or other measures pursuant to sub-subparagraph (b)2.g.;

b. The department, in consultation with the water management districts and the Department of Agriculture and



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Consumer Services, shall initiate rulemaking to adopt procedures to verify implementation of nonagricultural interim measures, best management practices, or other measures adopted by rule pursuant to subparagraph (c)1.; and

c. The Department of Agriculture and Consumer Services, in consultation with the water management districts and the department, shall initiate rulemaking to adopt procedures to verify implementation of agricultural interim measures, best management practices, or other measures adopted by rule pursuant to subparagraph (c)2.

The rules required under this subparagraph shall include enforcement procedures applicable to the landowner, discharger, or other responsible person required to implement applicable management strategies, including best management practices or water quality monitoring as a result of noncompliance.

3. At least every 2 years, the Department of Agriculture and Consumer Services shall perform onsite inspections of each agricultural producer that enrolls in a best management practice to ensure that such practice is being properly implemented. Such verification must include a review of the best management practice documentation required by rule adopted in accordance with subparagraph (c)2., including, but not limited to, nitrogen and phosphorous fertilizer application records, which must be collected and retained pursuant to subparagraphs (c)3., 4., and 6.

(e) Data collection and research.—

1. The Department of Agriculture and Consumer Services, the University of Florida Institute of Food and Agricultural



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Sciences, and other state universities and Florida College
System institutions with agricultural research programs may
annually develop research plans and legislative budget requests
to:

a. Evaluate and suggest enhancements to the existing
adopted agricultural best management practices to reduce
nutrients;

b. Develop new best management practices that, if proven
effective, the Department of Agriculture and Consumer Services
may adopt by rule pursuant to paragraph (c); and

c. Develop agricultural nutrient reduction projects that
willing participants could implement on a site-specific,
cooperative basis, in addition to best management practices. The
department may consider these projects for inclusion in a basin
management action plan. These nutrient reduction projects must
reduce the nutrient impacts from agricultural operations on
water quality when evaluated with the projects and management
strategies currently included in the basin management action
plan.

2. To be considered for funding, the University of Florida
Institute of Food and Agricultural Sciences and other state
universities and Florida College System institutions that have
agricultural research programs must submit such plans to the
department and the Department of Agriculture and Consumer
Services by August 1 of each year.

Section 10. Section 403.0673, Florida Statutes, is created
to read:

403.0673 Wastewater grant program.—A wastewater grant
program is established within the Department of Environmental



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Protection.

(1) Subject to the appropriation of funds by the Legislature, the department may provide grants for the following projects within a basin management action plan, an alternative restoration plan adopted by final order, or a rural area of opportunity under s. 288.0656 which will individually or collectively reduce excess nutrient pollution:

(a) Projects to retrofit onsite sewage treatment and disposal systems to upgrade them to enhanced nutrient-reducing onsite sewage treatment and disposal systems.

(b) Projects to construct, upgrade, or expand facilities to provide advanced waste treatment, as defined in s. 403.086(4).

(c) Projects to connect onsite sewage treatment and disposal systems to central sewer facilities.

(2) In allocating such funds, priority must be given to projects that subsidize the connection of onsite sewage treatment and disposal systems to wastewater treatment plants. First priority must be given to subsidize connection to existing infrastructure. Second priority must be given to 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 must be given to all other connection of onsite sewage treatment and disposal systems to a wastewater treatment plants. The department shall consider the estimated reduction in nutrient load per project; project readiness; cost-effectiveness of the project; overall environmental benefit of a project; the location of a project;



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1680 the availability of local matching funds; and projected water
1681 savings or quantity improvements associated with a project.

1682 (3) Each grant for a project described in subsection (1)
1683 must require a minimum of a 50 percent local match of funds.
1684 However, the department may, at its discretion, waive, in whole
1685 or in part, this consideration of the local contribution for
1686 proposed projects within an area designated as a rural area of
1687 opportunity under s. 288.0656.

1688 (4) The department shall coordinate with each water
1689 management district, as necessary, to identify grant recipients
1690 in each district.

1691 (5) Beginning January 1, 2021, and each January 1
1692 thereafter, the department shall submit a report regarding the
1693 projects funded pursuant to this section to the Governor, the
1694 President of the Senate, and the Speaker of the House of
1695 Representatives.

1696 Section 11. Section 403.0855, Florida Statutes, is created
1697 to read:

1698 403.0855 Biosolids management.—The Legislature finds that
1699 it is in the best interest of this state to regulate biosolids
1700 management in order to minimize the migration of nutrients that
1701 impair waterbodies. The Legislature further finds that the
1702 expedited implementation of the recommendations of the Biosolids
1703 Technical Advisory Committee, including permitting according to
1704 site-specific application conditions, an increased inspection
1705 rate, groundwater and surface water monitoring protocols, and
1706 nutrient management research, will improve biosolids management
1707 and assist in protecting this state's water resources and water
1708 quality. The department shall adopt rules for biosolids



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management. Rules adopted by the department pursuant to this section before the 2021 regular legislative session are not subject to s. 120.541(3). A municipality or county may enforce or extend an ordinance, a regulation, a resolution, a rule, a moratorium, or a policy, any of which was adopted before November 1, 2019, relating to the land application of Class B biosolids until the ordinance, regulation, resolution, rule, moratorium, or policy is repealed by the municipality or county.

Section 12. Present subsections (7) through (10) of section 403.086, Florida Statutes, are redesignated as subsections (8) through (11), respectively, a new subsection (7) is added to that section, and paragraph (c) of subsection (1) and subsection (2) of that section are amended, to read:

403.086 Sewage disposal facilities; advanced and secondary waste treatment.—

(1)

(c) Notwithstanding any other provisions of this chapter or chapter 373, facilities for sanitary sewage disposal may not dispose of any wastes into Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, or Charlotte Harbor Bay, Indian River Lagoon beginning July 1, 2025, or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto, without providing advanced waste treatment, as defined in subsection (4), approved by the department. This paragraph shall not apply to facilities which were permitted by February 1, 1987, and which discharge secondary treated effluent, followed by water hyacinth treatment, to tributaries of tributaries of the named waters; or



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to facilities permitted to discharge to the nontidally
influenced portions of the Peace River.

(2) Any facilities for sanitary sewage disposal shall
provide for secondary waste treatment, a power outage
contingency plan that mitigates the impacts of power outages on
the utility's collection system and pump stations, and, ~~in~~
~~addition thereto,~~ advanced waste treatment as deemed necessary
and ordered by the Department of Environmental Protection.
Failure to conform is ~~shall be~~ punishable by a civil penalty of
\$500 for each 24-hour day or fraction thereof that such failure
is allowed to continue thereafter.

(7) All facilities for sanitary sewage under subsection (2)
which control a collection or transmission system of pipes and
pumps to collect and transmit wastewater from domestic or
industrial sources to the facility shall take steps to prevent
sanitary sewer overflows or underground pipe leaks and ensure
that collected wastewater reaches the facility for appropriate
treatment. Facilities must use inflow and infiltration studies
and leakage surveys to develop pipe assessment, repair, and
replacement action plans that comply with department rule to
limit, reduce, and eliminate leaks, seepages, or inputs into
wastewater treatment systems' underground pipes. The pipe
assessment, repair, and replacement action plans must be
reported to the department. The facility action plan must
include information regarding the annual expenditures dedicated
to the inflow and infiltration studies and the required
replacement action plans, as well as expenditures that are
dedicated to pipe assessment, repair, and replacement. The
department shall adopt rules regarding the implementation of



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inflow and infiltration studies and leakage surveys; however,
such department rules may not fix or revise utility rates or
budgets. Any entity subject to this subsection and s.
403.061(14) may submit one report to comply with both
provisions. Substantial compliance with this subsection is
evidence in mitigation for the purposes of assessing penalties
pursuant to ss. 403.121 and 403.141.

Section 13. Present subsections (4) through (10) of section 403.087, Florida Statutes, are redesignated as subsections (5) through (11), respectively, and a new subsection (4) is added to that section, to read:

403.087 Permits; general issuance; denial; revocation; prohibition; penalty.—

(4) The department shall issue an operation permit for a
domestic wastewater treatment facility other than a facility
regulated under the National Pollutant Discharge Elimination
System Program under s. 403.0885 for a term of up to 10 years if
the facility is meeting the stated goals in its action plan
adopted pursuant to s. 403.086(7).

Section 14. Present subsections (3) and (4) of section 403.088, Florida Statutes, are redesignated as subsections (4) and (5), respectively, a new subsection (3) is added to that section, and paragraph (c) of subsection (2) of that section is amended, to read:

403.088 Water pollution operation permits; conditions.—

(2)

(c) A permit shall:

1. Specify the manner, nature, volume, and frequency of the discharge permitted;



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2. Require proper operation and maintenance of any pollution abatement facility by qualified personnel in accordance with standards established by the department;

3. Require a deliberate, proactive approach to investigating or surveying a significant percentage of the domestic wastewater collection system throughout the duration of the permit to determine pipe integrity, which must be accomplished in an economically feasible manner. The permittee shall submit an annual report to the department which details facility revenues and expenditures in a manner prescribed by department rule. The report must detail any deviation of annual expenditures from identified system needs related to inflow and infiltration studies; model plans for pipe assessment, repair, and replacement; and pipe assessment, repair, and replacement required under s. 403.086(7). Substantial compliance with this subsection is evidence in mitigation for the purposes of assessing penalties pursuant to ss. 403.121 and 403.141;

4. Contain such additional conditions, requirements, and restrictions as the department deems necessary to preserve and protect the quality of the receiving waters;

~~5.4.~~ Be valid for the period of time specified therein; and

~~6.5.~~ Constitute the state National Pollutant Discharge Elimination System permit when issued pursuant to the authority in s. 403.0885.

(3) No later than March 1 of each year, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which identifies all domestic wastewater treatment facilities that experienced a sanitary sewer overflow in the preceding calendar



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year. The report must identify the utility name, operator, permitted capacity in annual average gallons per day, the number of overflows, and the total volume of sewage released, and, to the extent known and available, the volume of sewage recovered, the volume of sewage discharged to surface waters, and the cause of the sanitary sewer overflow, including whether it was caused by a third party. The department shall include with this report the annual report specified under subparagraph (2)(c)3. for each utility that experienced an overflow.

Section 15. Subsection (6) of section 403.0891, Florida Statutes, is amended to read:

403.0891 State, regional, and local stormwater management plans and programs.—The department, the water management districts, and local governments shall have the responsibility for the development of mutually compatible stormwater management programs.

(6) The department and the Department of Economic Opportunity, in cooperation with local governments in the coastal zone, shall develop a model stormwater management program that could be adopted by local governments. The model program must contain model ordinances that target nutrient reduction practices and use green infrastructure. The model program shall contain dedicated funding options, including a stormwater utility fee system based upon an equitable unit cost approach. Funding options shall be designed to generate capital to retrofit existing stormwater management systems, build new treatment systems, operate facilities, and maintain and service debt.

Section 16. Paragraphs (b) and (g) of subsection (2),



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paragraph (b) of subsection (3), and subsections (8) and (9) of section 403.121, Florida Statutes, are amended to read:

403.121 Enforcement; procedure; remedies.—The department shall have the following judicial and administrative remedies available to it for violations of this chapter, as specified in s. 403.161(1).

(2) Administrative remedies:

(b) If the department has reason to believe a violation has occurred, it may institute an administrative proceeding to order the prevention, abatement, or control of the conditions creating the violation or other appropriate corrective action. Except for violations involving hazardous wastes, asbestos, or underground injection, the department shall proceed administratively in all cases in which the department seeks administrative penalties that do not exceed \$50,000 ~~\$10,000~~ per assessment as calculated in accordance with subsections (3), (4), (5), (6), and (7). Pursuant to 42 U.S.C. s. 300g-2, the administrative penalty assessed pursuant to subsection (3), subsection (4), or subsection (5) against a public water system serving a population of more than 10,000 shall be not less than \$1,000 per day per violation. The department shall not impose administrative penalties in excess of \$50,000 ~~\$10,000~~ in a notice of violation. The department shall not have more than one notice of violation seeking administrative penalties pending against the same party at the same time unless the violations occurred at a different site or the violations were discovered by the department subsequent to the filing of a previous notice of violation.

(g) Nothing herein shall be construed as preventing any



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other legal or administrative action in accordance with law. Nothing in this subsection shall limit the department's authority provided in ss. 403.131, 403.141, and this section to judicially pursue injunctive relief. When the department exercises its authority to judicially pursue injunctive relief, penalties in any amount up to the statutory maximum sought by the department must be pursued as part of the state court action and not by initiating a separate administrative proceeding. The department retains the authority to judicially pursue penalties in excess of \$50,000 ~~\$10,000~~ for violations not specifically included in the administrative penalty schedule, or for multiple or multiday violations alleged to exceed a total of \$50,000 ~~\$10,000~~. The department also retains the authority provided in ss. 403.131, 403.141, and this section to judicially pursue injunctive relief and damages, if a notice of violation seeking the imposition of administrative penalties has not been issued. The department has the authority to enter into a settlement, either before or after initiating a notice of violation, and the settlement may include a penalty amount different from the administrative penalty schedule. Any case filed in state court because it is alleged to exceed a total of \$50,000 ~~\$10,000~~ in penalties may be settled in the court action for less than \$50,000 ~~\$10,000~~.

(3) Except for violations involving hazardous wastes, asbestos, or underground injection, administrative penalties must be calculated according to the following schedule:

(b) For failure to obtain a required wastewater permit, other than a permit required for surface water discharge, the department shall assess a penalty of \$2,000 ~~\$1,000~~. For a



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domestic or industrial wastewater violation not involving a surface water or groundwater quality violation, the department shall assess a penalty of \$4,000 ~~\$2,000~~ for an unpermitted or unauthorized discharge or effluent-limitation exceedance or failure to comply with s. 403.061(14) or s. 403.086(7) or rules adopted thereunder. For an unpermitted or unauthorized discharge or effluent-limitation exceedance that resulted in a surface water or groundwater quality violation, the department shall assess a penalty of \$10,000 ~~\$5,000~~.

(8) The direct economic benefit gained by the violator from the violation, where consideration of economic benefit is provided by Florida law or required by federal law as part of a federally delegated or approved program, shall be added to the scheduled administrative penalty. The total administrative penalty, including any economic benefit added to the scheduled administrative penalty, shall not exceed \$20,000 ~~\$10,000~~.

(9) The administrative penalties assessed for any particular violation shall not exceed \$10,000 ~~\$5,000~~ against any one violator, unless the violator has a history of noncompliance, the economic benefit of the violation as described in subsection (8) exceeds \$10,000 ~~\$5,000~~, or there are multiday violations. The total administrative penalties shall not exceed \$50,000 ~~\$10,000~~ per assessment for all violations attributable to a specific person in the notice of violation.

Section 17. Subsection (7) of section 403.1835, Florida Statutes, is amended to read:

403.1835 Water pollution control financial assistance.—

(7) Eligible projects must be given priority according to the extent each project is intended to remove, mitigate, or



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prevent adverse effects on surface or ground water quality and public health. The relative costs of achieving environmental and public health benefits must be taken into consideration during the department's assignment of project priorities. The department shall adopt a priority system by rule. In developing the priority system, the department shall give priority to projects that:

(a) Eliminate public health hazards;

(b) Enable compliance with laws requiring the elimination of discharges to specific water bodies, including the requirements of s. 403.086(10) ~~s. 403.086(9)~~ regarding domestic wastewater ocean outfalls;

(c) Assist in the implementation of total maximum daily loads adopted under s. 403.067;

(d) Enable compliance with other pollution control requirements, including, but not limited to, toxics control, wastewater residuals management, and reduction of nutrients and bacteria;

(e) Assist in the implementation of surface water improvement and management plans and pollutant load reduction goals developed under state water policy;

(f) Promote reclaimed water reuse;

(g) Eliminate failing onsite sewage treatment and disposal systems or those that are causing environmental damage; or

(h) Reduce pollutants to and otherwise promote the restoration of Florida's surface and ground waters.

(i) Implement the requirements of ss. 403.086(7) and 403.088(2) (c).

(j) Promote efficiency by planning for the installation of



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wastewater transmission facilities to be constructed
concurrently with other construction projects occurring within
or along a transportation facility right-of-way.

Section 18. Paragraph (b) of subsection (3) of section
403.1838, Florida Statutes, is amended to read:

403.1838 Small Community Sewer Construction Assistance
Act.—

(3)

(b) The rules of the Environmental Regulation Commission
must:

1. Require that projects to plan, design, construct,
upgrade, or replace wastewater collection, transmission,
treatment, disposal, and reuse facilities be cost-effective,
environmentally sound, permittable, and implementable.

2. Require appropriate user charges, connection fees, and
other charges sufficient to ensure the long-term operation,
maintenance, and replacement of the facilities constructed under
each grant.

3. Require grant applications to be submitted on
appropriate forms with appropriate supporting documentation, and
require records to be maintained.

4. Establish a system to determine eligibility of grant
applications.

5. Establish a system to determine the relative priority of
grant applications. The system must consider public health
protection and water pollution prevention or abatement and must
prioritize projects that plan for the installation of wastewater
transmission facilities to be constructed concurrently with
other construction projects occurring within or along a



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transportation facility right-of-way.

6. Establish requirements for competitive procurement of engineering and construction services, materials, and equipment.

7. Provide for termination of grants when program requirements are not met.

Section 19. The Legislature determines and declares that this act fulfills an important state interest.

Section 20. Effective July 1, 2021, subsection (5) of section 153.54, Florida Statutes, is amended to read:

153.54 Preliminary report by county commissioners with respect to creation of proposed district.—Upon receipt of a petition duly signed by not less than 25 qualified electors who are also freeholders residing within an area proposed to be incorporated into a water and sewer district pursuant to this law and describing in general terms the proposed boundaries of such proposed district, the board of county commissioners if it shall deem it necessary and advisable to create and establish such proposed district for the purpose of constructing, establishing or acquiring a water system or a sewer system or both in and for such district (herein called "improvements"), shall first cause a preliminary report to be made which such report together with any other relevant or pertinent matters, shall include at least the following:

(5) For the construction of a new proposed central sewerage system or the extension of an existing sewerage system that was not previously approved, the report shall include a study that includes the available information from the Department of Environmental Protection ~~Health~~ on the history of onsite sewage treatment and disposal systems currently in use in the area and



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a comparison of the projected costs to the owner of a typical lot or parcel of connecting to and using the proposed sewerage system versus installing, operating, and properly maintaining an onsite sewage treatment and disposal system that is approved by the Department of Environmental Protection ~~Health~~ and that provides for the comparable level of environmental and health protection as the proposed central sewerage system; consideration of the local authority's obligations or reasonably anticipated obligations for water body cleanup and protection under state or federal programs, including requirements for water bodies listed under s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq.; and other factors deemed relevant by the local authority.

Such report shall be filed in the office of the clerk of the circuit court and shall be open for the inspection of any taxpayer, property owner, qualified elector or any other interested or affected person.

Section 21. Effective July 1, 2021, paragraph (c) of subsection (2) of section 153.73, Florida Statutes, is amended to read:

153.73 Assessable improvements; levy and payment of special assessments.—Any district may provide for the construction or reconstruction of assessable improvements as defined in s. 153.52, and for the levying of special assessments upon benefited property for the payment thereof, under ~~the provisions of~~ this section.

(2)

(c) For the construction of a new proposed central sewerage



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system or the extension of an existing sewerage system that was not previously approved, the report shall include a study that includes the available information from the Department of Environmental Protection ~~Health~~ on the history of onsite sewage treatment and disposal systems currently in use in the area and a comparison of the projected costs to the owner of a typical lot or parcel of connecting to and using the proposed sewerage system versus installing, operating, and properly maintaining an onsite sewage treatment and disposal system that is approved by the Department of Environmental Protection ~~Health~~ and that provides for the comparable level of environmental and health protection as the proposed central sewerage system; consideration of the local authority's obligations or reasonably anticipated obligations for water body cleanup and protection under state or federal programs, including requirements for water bodies listed under s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq.; and other factors deemed relevant by the local authority.

Section 22. Effective July 1, 2021, subsection (2) of section 163.3180, Florida Statutes, is amended to read:

163.3180 Concurrency.—

(2) Consistent with public health and safety, sanitary sewer, solid waste, drainage, adequate water supplies, and potable water facilities shall be in place and available to serve new development no later than the issuance by the local government of a certificate of occupancy or its functional equivalent. Prior to approval of a building permit or its functional equivalent, the local government shall consult with the applicable water supplier to determine whether adequate



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water supplies to serve the new development will be available no later than the anticipated date of issuance by the local government of a certificate of occupancy or its functional equivalent. A local government may meet the concurrency requirement for sanitary sewer through the use of onsite sewage treatment and disposal systems approved by the Department of Environmental Protection ~~Health~~ to serve new development.

Section 23. Effective July 1, 2021, subsection (3) of section 180.03, Florida Statutes, is amended to read:

180.03 Resolution or ordinance proposing construction or extension of utility; objections to same.—

(3) For the construction of a new proposed central sewerage system or the extension of an existing central sewerage system that was not previously approved, the report shall include a study that includes the available information from the Department of Environmental Protection ~~Health~~ on the history of onsite sewage treatment and disposal systems currently in use in the area and a comparison of the projected costs to the owner of a typical lot or parcel of connecting to and using the proposed central sewerage system versus installing, operating, and properly maintaining an onsite sewage treatment and disposal system that is approved by the Department of Environmental Protection ~~Health~~ and that provides for the comparable level of environmental and health protection as the proposed central sewerage system; consideration of the local authority's obligations or reasonably anticipated obligations for water body cleanup and protection under state or federal programs, including requirements for water bodies listed under s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251



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et seq.; and other factors deemed relevant by the local authority. The results of such a study shall be included in the resolution or ordinance required under subsection (1).

Section 24. Subsections (2), (3), and (6) of section 311.105, Florida Statutes, are amended to read:

311.105 Florida Seaport Environmental Management Committee; permitting; mitigation.—

(2) Each application for a permit authorized pursuant to s. 403.061(38) ~~s. 403.061(37)~~ must include:

(a) A description of maintenance dredging activities to be conducted and proposed methods of dredged-material management.

(b) A characterization of the materials to be dredged and the materials within dredged-material management sites.

(c) A description of dredged-material management sites and plans.

(d) A description of measures to be undertaken, including environmental compliance monitoring, to minimize adverse environmental effects of maintenance dredging and dredged-material management.

(e) Such scheduling information as is required to facilitate state supplementary funding of federal maintenance dredging and dredged-material management programs consistent with beach restoration criteria of the Department of Environmental Protection.

(3) Each application for a permit authorized pursuant to s. 403.061(39) ~~s. 403.061(38)~~ must include ~~the provisions of~~ paragraphs (2)(b)-(e) and the following:

(a) A description of dredging and dredged-material management and other related activities associated with port



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development, including the expansion of navigation channels, dredged-material management sites, port harbors, turning basins, harbor berths, and associated facilities.

(b) A discussion of environmental mitigation as is proposed for dredging and dredged-material management for port development, including the expansion of navigation channels, dredged-material management sites, port harbors, turning basins, harbor berths, and associated facilities.

(6) Dredged-material management activities authorized pursuant to s. 403.061(38) ~~s. 403.061(37)~~ or s. 403.061(39) ~~(38)~~ shall be incorporated into port master plans developed pursuant to s. 163.3178(2)(k).

Section 25. Paragraph (d) of subsection (1) of section 327.46, Florida Statutes, is amended to read:

327.46 Boating-restricted areas.—

(1) Boating-restricted areas, including, but not limited to, restrictions of vessel speeds and vessel traffic, may be established on the waters of this state for any purpose necessary to protect the safety of the public if such restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards or to protect seagrasses on privately owned submerged lands.

(d) Owners of private submerged lands that are adjacent to Outstanding Florida Waters, as defined in s. 403.061(28) ~~s. 403.061(27)~~, or an aquatic preserve established under ss. 258.39-258.399 may request that the commission establish boating-restricted areas solely to protect any seagrass and contiguous seagrass habitat within their private property



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boundaries from seagrass scarring due to propeller dredging. Owners making a request pursuant to this paragraph must demonstrate to the commission clear ownership of the submerged lands. The commission shall adopt rules to implement this paragraph, including, but not limited to, establishing an application process and criteria for meeting the requirements of this paragraph. Each approved boating-restricted area shall be established by commission rule. For marking boating-restricted zones established pursuant to this paragraph, owners of privately submerged lands shall apply to the commission for a uniform waterway marker permit in accordance with ss. 327.40 and 327.41, and shall be responsible for marking the boating-restricted zone in accordance with the terms of the permit.

Section 26. Paragraph (d) of subsection (3) of section 373.250, Florida Statutes, is amended to read:

373.250 Reuse of reclaimed water.—

(3)

(d) The South Florida Water Management District shall require the use of reclaimed water made available by the elimination of wastewater ocean outfall discharges as provided for in s. 403.086(10) ~~s. 403.086(9)~~ in lieu of surface water or groundwater when the use of reclaimed water is available; is environmentally, economically, and technically feasible; and is of such quality and reliability as is necessary to the user. Such reclaimed water may also be required in lieu of other alternative sources. In determining whether to require such reclaimed water in lieu of other alternative sources, the water management district shall consider existing infrastructure investments in place or obligated to be constructed by an



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executed contract or similar binding agreement as of July 1, 2011, for the development of other alternative sources.

Section 27. Subsection (9) of section 373.414, Florida Statutes, is amended to read:

373.414 Additional criteria for activities in surface waters and wetlands.—

(9) The department and the governing boards, on or before July 1, 1994, shall adopt rules to incorporate ~~the provisions of~~ this section, relying primarily on the existing rules of the department and the water management districts, into the rules governing the management and storage of surface waters. Such rules shall seek to achieve a statewide, coordinated and consistent permitting approach to activities regulated under this part. Variations in permitting criteria in the rules of individual water management districts or the department shall only be provided to address differing physical or natural characteristics. Such rules adopted pursuant to this subsection shall include the special criteria adopted pursuant to s. 403.061(30) ~~s. 403.061(29)~~ and may include the special criteria adopted pursuant to s. 403.061(35) ~~s. 403.061(34)~~. Such rules shall include a provision requiring that a notice of intent to deny or a permit denial based upon this section shall contain an explanation of the reasons for such denial and an explanation, in general terms, of what changes, if any, are necessary to address such reasons for denial. Such rules may establish exemptions and general permits, if such exemptions and general permits do not allow significant adverse impacts to occur individually or cumulatively. Such rules may require submission of proof of financial responsibility which may include the



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posting of a bond or other form of surety prior to the commencement of construction to provide reasonable assurance that any activity permitted pursuant to this section, including any mitigation for such permitted activity, will be completed in accordance with the terms and conditions of the permit once the construction is commenced. Until rules adopted pursuant to this subsection become effective, existing rules adopted under this part and rules adopted pursuant to the authority of ss. 403.91-403.929 shall be deemed authorized under this part and shall remain in full force and effect. Neither the department nor the governing boards are limited or prohibited from amending any such rules.

Section 28. Paragraph (b) of subsection (4) of section 373.705, Florida Statutes, is amended to read:

373.705 Water resource development; water supply development.—

(4)

(b) Water supply development projects that meet the criteria in paragraph (a) and that meet one or more of the following additional criteria shall be given first consideration for state or water management district funding assistance:

1. The project brings about replacement of existing sources in order to help implement a minimum flow or minimum water level;

2. The project implements reuse that assists in the elimination of domestic wastewater ocean outfalls as provided in s. 403.086(10) ~~s. 403.086(9)~~; or

3. The project reduces or eliminates the adverse effects of competition between legal users and the natural system.



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Section 29. Paragraph (f) of subsection (8) of section 373.707, Florida Statutes, is amended to read:

373.707 Alternative water supply development.—

(8)

(f) The governing boards shall determine those projects that will be selected for financial assistance. The governing boards may establish factors to determine project funding; however, significant weight shall be given to the following factors:

1. Whether the project provides substantial environmental benefits by preventing or limiting adverse water resource impacts.

2. Whether the project reduces competition for water supplies.

3. Whether the project brings about replacement of traditional sources in order to help implement a minimum flow or level or a reservation.

4. Whether the project will be implemented by a consumptive use permittee that has achieved the targets contained in a goal-based water conservation program approved pursuant to s. 373.227.

5. The quantity of water supplied by the project as compared to its cost.

6. Projects in which the construction and delivery to end users of reuse water is a major component.

7. Whether the project will be implemented by a multijurisdictional water supply entity or regional water supply authority.

8. Whether the project implements reuse that assists in the



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elimination of domestic wastewater ocean outfalls as provided in
s. 403.086(10) ~~s. 403.086(9)~~.

9. Whether the county or municipality, or the multiple
counties or municipalities, in which the project is located has
implemented a high-water recharge protection tax assessment
program as provided in s. 193.625.

Section 30. Subsection (4) of section 373.709, Florida
Statutes, is amended to read:

373.709 Regional water supply planning.—

(4) The South Florida Water Management District shall
include in its regional water supply plan water resource and
water supply development projects that promote the elimination
of wastewater ocean outfalls as provided in s. 403.086(10) ~~s.~~
~~403.086(9)~~.

Section 31. Effective July 1, 2021, subsection (3) of
section 373.807, Florida Statutes, is amended to read:

373.807 Protection of water quality in Outstanding Florida
Springs.—By July 1, 2016, the department shall initiate
assessment, pursuant to s. 403.067(3), of Outstanding Florida
Springs or spring systems for which an impairment determination
has not been made under the numeric nutrient standards in effect
for spring vents. Assessments must be completed by July 1, 2018.

(3) As part of a basin management action plan that includes
an Outstanding Florida Spring, the department, ~~the Department of~~
~~Health~~, relevant local governments, and relevant local public
and private wastewater utilities shall develop an onsite sewage
treatment and disposal system remediation plan for a spring if
the department determines onsite sewage treatment and disposal
systems within a priority focus area contribute at least 20



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percent of nonpoint source nitrogen pollution or if the department determines remediation is necessary to achieve the total maximum daily load. The plan shall identify cost-effective and financially feasible projects necessary to reduce the nutrient impacts from onsite sewage treatment and disposal systems and shall be completed and adopted as part of the basin management action plan no later than the first 5-year milestone required by subparagraph (1)(b)8. The department is the lead agency in coordinating the preparation of and the adoption of the plan. The department shall:

(a) Collect and evaluate credible scientific information on the effect of nutrients, particularly forms of nitrogen, on springs and springs systems; and

(b) Develop a public education plan to provide area residents with reliable, understandable information about onsite sewage treatment and disposal systems and springs.

In addition to the requirements in s. 403.067, the plan shall include options for repair, upgrade, replacement, drainfield modification, addition of effective nitrogen reducing features, connection to a central sewerage system, or other action for an onsite sewage treatment and disposal system or group of systems within a priority focus area that contribute at least 20 percent of nonpoint source nitrogen pollution or if the department determines remediation is necessary to achieve a total maximum daily load. For these systems, the department shall include in the plan a priority ranking for each system or group of systems that requires remediation and shall award funds to implement the remediation projects contingent on an appropriation in the



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General Appropriations Act, which may include all or part of the costs necessary for repair, upgrade, replacement, drainfield modification, addition of effective nitrogen reducing features, initial connection to a central sewerage system, or other action. In awarding funds, the department may consider expected nutrient reduction benefit per unit cost, size and scope of project, relative local financial contribution to the project, and the financial impact on property owners and the community. The department may waive matching funding requirements for proposed projects within an area designated as a rural area of opportunity under s. 288.0656.

Section 32. Paragraph (k) of subsection (1) of section 376.307, Florida Statutes, is amended to read:

376.307 Water Quality Assurance Trust Fund.—

(1) The Water Quality Assurance Trust Fund is intended to serve as a broad-based fund for use in responding to incidents of contamination that pose a serious danger to the quality of groundwater and surface water resources or otherwise pose a serious danger to the public health, safety, or welfare. Moneys in this fund may be used:

(k) For funding activities described in s. 403.086(10) ~~s. 403.086(9)~~ which are authorized for implementation under the Leah Schad Memorial Ocean Outfall Program.

Section 33. Paragraph (i) of subsection (2), paragraph (b) of subsection (4), paragraph (j) of subsection (7), and paragraph (a) of subsection (9) of section 380.0552, Florida Statutes, are amended to read:

380.0552 Florida Keys Area; protection and designation as area of critical state concern.—



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(2) LEGISLATIVE INTENT.—It is the intent of the Legislature to:

(i) Protect and improve the nearshore water quality of the Florida Keys through federal, state, and local funding of water quality improvement projects, including the construction and operation of wastewater management facilities that meet the requirements of ss. 381.0065(4)(1) and 403.086(11) ~~403.086(10)~~, as applicable.

(4) REMOVAL OF DESIGNATION.—

(b) Beginning November 30, 2010, the state land planning agency shall annually submit a written report to the Administration Commission describing the progress of the Florida Keys Area toward completing the work program tasks specified in commission rules. The land planning agency shall recommend removing the Florida Keys Area from being designated as an area of critical state concern to the commission if it determines that:

1. All of the work program tasks have been completed, including construction of, operation of, and connection to central wastewater management facilities pursuant to s. 403.086(11) ~~s. 403.086(10)~~ and upgrade of onsite sewage treatment and disposal systems pursuant to s. 381.0065(4)(1);

2. All local comprehensive plans and land development regulations and the administration of such plans and regulations are adequate to protect the Florida Keys Area, fulfill the legislative intent specified in subsection (2), and are consistent with and further the principles guiding development; and

3. A local government has adopted a resolution at a public



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hearing recommending the removal of the designation.

(7) PRINCIPLES FOR GUIDING DEVELOPMENT.—State, regional, and local agencies and units of government in the Florida Keys Area shall coordinate their plans and conduct their programs and regulatory activities consistent with the principles for guiding development as specified in chapter 27F-8, Florida Administrative Code, as amended effective August 23, 1984, which is adopted and incorporated herein by reference. For the purposes of reviewing the consistency of the adopted plan, or any amendments to that plan, with the principles for guiding development, and any amendments to the principles, the principles shall be construed as a whole and specific provisions may not be construed or applied in isolation from the other provisions. However, the principles for guiding development are repealed 18 months from July 1, 1986. After repeal, any plan amendments must be consistent with the following principles:

(j) Ensuring the improvement of nearshore water quality by requiring the construction and operation of wastewater management facilities that meet the requirements of ss. 381.0065(4)(l) and s. 403.086(11) ~~403.086(10)~~, as applicable, and by directing growth to areas served by central wastewater treatment facilities through permit allocation systems.

(9) MODIFICATION TO PLANS AND REGULATIONS.—

(a) Any land development regulation or element of a local comprehensive plan in the Florida Keys Area may be enacted, amended, or rescinded by a local government, but the enactment, amendment, or rescission becomes effective only upon approval by the state land planning agency. The state land planning agency shall review the proposed change to determine if it is in



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compliance with the principles for guiding development specified in chapter 27F-8, Florida Administrative Code, as amended effective August 23, 1984, and must approve or reject the requested changes within 60 days after receipt. Amendments to local comprehensive plans in the Florida Keys Area must also be reviewed for compliance with the following:

1. Construction schedules and detailed capital financing plans for wastewater management improvements in the annually adopted capital improvements element, and standards for the construction of wastewater treatment and disposal facilities or collection systems that meet or exceed the criteria in s. 403.086(11) ~~s. 403.086(10)~~ for wastewater treatment and disposal facilities or s. 381.0065(4)(l) for onsite sewage treatment and disposal systems.

2. Goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours. The hurricane evacuation clearance time shall be determined by a hurricane evacuation study conducted in accordance with a professionally accepted methodology and approved by the state land planning agency.

Section 34. Effective July 1, 2021, subsections (7) and (18) of section 381.006, Florida Statutes, are amended to read:

381.006 Environmental health.—The department shall conduct an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. The environmental health program shall include, but not be limited to:



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~~(7) An onsite sewage treatment and disposal function.~~

(17) ~~(18)~~ A food service inspection function for domestic violence centers that are certified by the Department of Children and Families and monitored by the Florida Coalition Against Domestic Violence under part XII of chapter 39 and group care homes as described in subsection (15) ~~(16)~~, which shall be conducted annually and be limited to the requirements in department rule applicable to community-based residential facilities with five or fewer residents.

The department may adopt rules to carry out the provisions of this section.

Section 35. Effective July 1, 2021, subsection (1) of section 381.0061, Florida Statutes, is amended to read:

381.0061 Administrative fines.—

(1) In addition to any administrative action authorized by chapter 120 or by other law, the department may impose a fine, which may ~~shall~~ not exceed \$500 for each violation, for a violation of s. 381.006(15) ~~s. 381.006(16)~~, s. 381.0065, s. 381.0066, s. 381.0072, or part III of chapter 489, for a violation of any rule adopted under this chapter, or for a violation of ~~any of the provisions of~~ chapter 386. Notice of intent to impose such fine shall be given by the department to the alleged violator. Each day that a violation continues may constitute a separate violation.

Section 36. Effective July 1, 2021, subsection (1) of section 381.0064, Florida Statutes, is amended to read:

381.0064 Continuing education courses for persons installing or servicing septic tanks.—



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(1) The Department of Environmental Protection ~~Health~~ shall establish a program for continuing education which meets the purposes of ss. 381.0101 and 489.554 regarding the public health and environmental effects of onsite sewage treatment and disposal systems and any other matters the department determines desirable for the safe installation and use of onsite sewage treatment and disposal systems. The department may charge a fee to cover the cost of such program.

Section 37. Effective July 1, 2021, paragraph (d) of subsection (7), subsection (8), and paragraphs (b), (c), and (d) of subsection (9) of section 381.00651, Florida Statutes, are amended to read:

381.00651 Periodic evaluation and assessment of onsite sewage treatment and disposal systems.—

(7) The following procedures shall be used for conducting evaluations:

(d) *Assessment procedure.*—All evaluation procedures used by a qualified contractor shall be documented in the environmental health database of the Department of Environmental Protection ~~Health~~. The qualified contractor shall provide a copy of a written, signed evaluation report to the property owner upon completion of the evaluation and to the county health department within 30 days after the evaluation. The report must ~~shall~~ contain the name and license number of the company providing the report. A copy of the evaluation report shall be retained by the local county health department for a minimum of 5 years and until a subsequent inspection report is filed. The front cover of the report must identify any system failure and include a clear and conspicuous notice to the owner that the owner has a



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right to have any remediation of the failure performed by a qualified contractor other than the contractor performing the evaluation. The report must further identify any crack, leak, improper fit, or other defect in the tank, manhole, or lid, and any other damaged or missing component; any sewage or effluent visible on the ground or discharging to a ditch or other surface water body; any downspout, stormwater, or other source of water directed onto or toward the system; and any other maintenance need or condition of the system at the time of the evaluation which, in the opinion of the qualified contractor, would possibly interfere with or restrict any future repair or modification to the existing system. The report shall conclude with an overall assessment of the fundamental operational condition of the system.

(8) The county health department, in coordination with the department, shall administer any evaluation program on behalf of a county, or a municipality within the county, that has adopted an evaluation program pursuant to this section. In order to administer the evaluation program, the county or municipality, in consultation with the county health department, may develop a reasonable fee schedule to be used solely to pay for the costs of administering the evaluation program. Such a fee schedule shall be identified in the ordinance that adopts the evaluation program. When arriving at a reasonable fee schedule, the estimated annual revenues to be derived from fees may not exceed reasonable estimated annual costs of the program. Fees shall be assessed to the system owner during an inspection and separately identified on the invoice of the qualified contractor. Fees shall be remitted by the qualified contractor to the county



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health department. The county health department's administrative responsibilities include the following:

(a) Providing a notice to the system owner at least 60 days before the system is due for an evaluation. The notice may include information on the proper maintenance of onsite sewage treatment and disposal systems.

(b) In consultation with the department ~~of Health~~, providing uniform disciplinary procedures and penalties for qualified contractors who do not comply with the requirements of the adopted ordinance, including, but not limited to, failure to provide the evaluation report as required in this subsection to the system owner and the county health department. Only the county health department may assess penalties against system owners for failure to comply with the adopted ordinance, consistent with existing requirements of law.

(9)

(b) Upon receipt of the notice under paragraph (a), the department ~~of Environmental Protection~~ shall, within existing resources, notify the county or municipality of the potential use of, and access to, program funds under the Clean Water State Revolving Fund or s. 319 of the Clean Water Act, provide guidance in the application process to receive such moneys, and provide advice and technical assistance to the county or municipality on how to establish a low-interest revolving loan program or how to model a revolving loan program after the low-interest loan program of the Clean Water State Revolving Fund. This paragraph does not obligate the department ~~of Environmental Protection~~ to provide any county or municipality with money to fund such programs.



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(c) The department ~~of Health~~ may not adopt any rule that alters ~~the provisions of~~ this section.

(d) The department ~~of Health~~ must allow county health departments and qualified contractors access to the environmental health database to track relevant information and assimilate data from assessment and evaluation reports of the overall condition of onsite sewage treatment and disposal systems. The environmental health database must be used by contractors to report each service and evaluation event and by a county health department to notify owners of onsite sewage treatment and disposal systems when evaluations are due. Data and information must be recorded and updated as service and evaluations are conducted and reported.

Section 38. Effective July 1, 2021, paragraph (g) of subsection (1) of section 381.0101, Florida Statutes, is amended to read:

381.0101 Environmental health professionals.—

(1) DEFINITIONS.—As used in this section:

(g) "Primary environmental health program" means those programs determined by the department to be essential for providing basic environmental and sanitary protection to the public. At a minimum, these programs shall include food protection program work ~~and onsite sewage treatment and disposal system evaluations.~~

Section 39. Section 403.08601, Florida Statutes, is amended to read:

403.08601 Leah Schad Memorial Ocean Outfall Program.—The Legislature declares that as funds become available the state may assist the local governments and agencies responsible for



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implementing the Leah Schad Memorial Ocean Outfall Program pursuant to s. 403.086(10) ~~s. 403.086(9)~~. Funds received from other sources provided for in law, the General Appropriations Act, from gifts designated for implementation of the plan from individuals, corporations, or other entities, or federal funds appropriated by Congress for implementation of the plan, may be deposited into an account of the Water Quality Assurance Trust Fund.

Section 40. Section 403.0871, Florida Statutes, is amended to read:

403.0871 Florida Permit Fee Trust Fund.—There is established within the department a nonlapsing trust fund to be known as the “Florida Permit Fee Trust Fund.” All funds received from applicants for permits pursuant to ss. 161.041, 161.053, 161.0535, 403.087(7) ~~403.087(6)~~, and 403.861(7)(a) shall be deposited in the Florida Permit Fee Trust Fund and shall be used by the department with the advice and consent of the Legislature to supplement appropriations and other funds received by the department for the administration of its responsibilities under this chapter and chapter 161. In no case shall funds from the Florida Permit Fee Trust Fund be used for salary increases without the approval of the Legislature.

Section 41. Paragraph (a) of subsection (11) of section 403.0872, Florida Statutes, is amended to read:

403.0872 Operation permits for major sources of air pollution; annual operation license fee.—Provided that program approval pursuant to 42 U.S.C. s. 7661a has been received from the United States Environmental Protection Agency, beginning January 2, 1995, each major source of air pollution, including



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electrical power plants certified under s. 403.511, must obtain from the department an operation permit for a major source of air pollution under this section. This operation permit is the only department operation permit for a major source of air pollution required for such source; provided, at the applicant's request, the department shall issue a separate acid rain permit for a major source of air pollution that is an affected source within the meaning of 42 U.S.C. s. 7651a(1). Operation permits for major sources of air pollution, except general permits issued pursuant to s. 403.814, must be issued in accordance with the procedures contained in this section and in accordance with chapter 120; however, to the extent that chapter 120 is inconsistent with ~~the provisions of~~ this section, the procedures contained in this section prevail.

(11) Each major source of air pollution permitted to operate in this state must pay between January 15 and April 1 of each year, upon written notice from the department, an annual operation license fee in an amount determined by department rule. The annual operation license fee shall be terminated immediately in the event the United States Environmental Protection Agency imposes annual fees solely to implement and administer the major source air-operation permit program in Florida under 40 C.F.R. s. 70.10(d).

(a) The annual fee must be assessed based upon the source's previous year's emissions and must be calculated by multiplying the applicable annual operation license fee factor times the tons of each regulated air pollutant actually emitted, as calculated in accordance with the department's emissions computation and reporting rules. The annual fee shall only apply



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to those regulated pollutants, except carbon monoxide and greenhouse gases, for which an allowable numeric emission limiting standard is specified in the source's most recent construction or operation permit; provided, however, that:

1. The license fee factor is \$25 or another amount determined by department rule which ensures that the revenue provided by each year's operation license fees is sufficient to cover all reasonable direct and indirect costs of the major stationary source air-operation permit program established by this section. The license fee factor may be increased beyond \$25 only if the secretary of the department affirmatively finds that a shortage of revenue for support of the major stationary source air-operation permit program will occur in the absence of a fee factor adjustment. The annual license fee factor may never exceed \$35.

2. The amount of each regulated air pollutant in excess of 4,000 tons per year emitted by any source, or group of sources belonging to the same Major Group as described in the Standard Industrial Classification Manual, 1987, may not be included in the calculation of the fee. Any source, or group of sources, which does not emit any regulated air pollutant in excess of 4,000 tons per year, is allowed a one-time credit not to exceed 25 percent of the first annual licensing fee for the prorated portion of existing air-operation permit application fees remaining upon commencement of the annual licensing fees.

3. If the department has not received the fee by March 1 of the calendar year, the permittee must be sent a written warning of the consequences for failing to pay the fee by April 1. If the fee is not postmarked by April 1 of the calendar year, the



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department shall impose, in addition to the fee, a penalty of 50 percent of the amount of the fee, plus interest on such amount computed in accordance with s. 220.807. The department may not impose such penalty or interest on any amount underpaid, provided that the permittee has timely remitted payment of at least 90 percent of the amount determined to be due and remits full payment within 60 days after receipt of notice of the amount underpaid. The department may waive the collection of underpayment and may ~~shall~~ not be required to refund overpayment of the fee, if the amount due is less than 1 percent of the fee, up to \$50. The department may revoke any major air pollution source operation permit if it finds that the permitholder has failed to timely pay any required annual operation license fee, penalty, or interest.

4. Notwithstanding the computational provisions of this subsection, the annual operation license fee for any source subject to this section may ~~shall~~ not be less than \$250, except that the annual operation license fee for sources permitted solely through general permits issued under s. 403.814 may ~~shall~~ not exceed \$50 per year.

5. Notwithstanding s. 403.087(7)(a)5.a., which authorizes ~~the provisions of s. 403.087(6)(a)5.a., authorizing~~ air pollution construction permit fees, the department may not require such fees for changes or additions to a major source of air pollution permitted pursuant to this section, unless the activity triggers permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a. Costs to issue and administer such permits shall be considered direct and indirect costs of the major stationary



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2724 source air-operation permit program under s. 403.0873. The
2725 department shall, however, require fees pursuant to s.
2726 403.087(7)(a)5.a. ~~the provisions of s. 403.087(6)(a)5.a.~~ for the
2727 construction of a new major source of air pollution that will be
2728 subject to the permitting requirements of this section once
2729 constructed and for activities triggering permitting
2730 requirements under Title I, Part C or Part D, of the federal
2731 Clean Air Act, 42 U.S.C. ss. 7470-7514a.

2732 Section 42. Paragraph (d) of subsection (3) of section
2733 403.707, Florida Statutes, is amended to read:

2734 403.707 Permits.—

2735 (3)

2736 (d) The department may adopt rules to administer this
2737 subsection. However, the department is not required to submit
2738 such rules to the Environmental Regulation Commission for
2739 approval. Notwithstanding the limitations of s. 403.087(7)(a) ~~s.~~
2740 ~~403.087(6)(a)~~, permit fee caps for solid waste management
2741 facilities shall be prorated to reflect the extended permit term
2742 authorized by this subsection.

2743 Section 43. Subsections (8) and (21) of section 403.861,
2744 Florida Statutes, are amended to read:

2745 403.861 Department; powers and duties.—The department shall
2746 have the power and the duty to carry out the provisions and
2747 purposes of this act and, for this purpose, to:

2748 (8) Initiate rulemaking to increase each drinking water
2749 permit application fee authorized under s. 403.087(7) ~~s.~~
2750 ~~403.087(6)~~ and this part and adopted by rule to ensure that such
2751 fees are increased to reflect, at a minimum, any upward
2752 adjustment in the Consumer Price Index compiled by the United



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States Department of Labor, or similar inflation indicator, since the original fee was established or most recently revised.

(a) The department shall establish by rule the inflation index to be used for this purpose. The department shall review the drinking water permit application fees authorized under s. 403.087(7) ~~s. 403.087(6)~~ and this part at least once every 5 years and shall adjust the fees upward, as necessary, within the established fee caps to reflect changes in the Consumer Price Index or similar inflation indicator. In the event of deflation, the department shall consult with the Executive Office of the Governor and the Legislature to determine whether downward fee adjustments are appropriate based on the current budget and appropriation considerations. The department shall also review the drinking water operation license fees established pursuant to paragraph (7)(b) at least once every 5 years to adopt, as necessary, the same inflationary adjustments provided for in this subsection.

(b) The minimum fee amount shall be the minimum fee prescribed in this section, and such fee amount shall remain in effect until the effective date of fees adopted by rule by the department.

(21)(a) Upon issuance of a construction permit to construct a new public water system drinking water treatment facility to provide potable water supply using a surface water that, at the time of the permit application, is not being used as a potable water supply, and the classification of which does not include potable water supply as a designated use, the department shall add treated potable water supply as a designated use of the surface water segment in accordance with s. 403.061(30)(b) ~~s.~~



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~~403.061(29)(b).~~

(b) For existing public water system drinking water treatment facilities that use a surface water as a treated potable water supply, which surface water classification does not include potable water supply as a designated use, the department shall add treated potable water supply as a designated use of the surface water segment in accordance with s. 403.061(30)(b) ~~s. 403.061(29)(b).~~

Section 44. Effective July 1, 2021, subsection (1) of section 489.551, Florida Statutes, is amended to read:

489.551 Definitions.—As used in this part:

(1) "Department" means the Department of Environmental Protection ~~Health~~.

Section 45. Paragraph (b) of subsection (10) of section 590.02, Florida Statutes, is amended to read:

590.02 Florida Forest Service; powers, authority, and duties; liability; building structures; Withlacoochee Training Center.—

(10)

(b) The Florida Forest Service may delegate to a county, municipality, or special district its authority:

1. As delegated by the Department of Environmental Protection pursuant to ss. 403.061(29) ~~ss. 403.061(28)~~ and 403.081, to manage and enforce regulations pertaining to the burning of yard trash in accordance with s. 590.125(6).

2. To manage the open burning of land clearing debris in accordance with s. 590.125.

Section 46. The Division of Law Revision is directed to replace the phrase "adoption of the rules identified in



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2811 paragraph (e)" as it is used in the amendment made by this act
2812 to s. 381.0065, Florida Statutes, with the date such rules are
2813 adopted, as provided by the Department of Environmental
2814 Protection pursuant to s. 381.0065(4)(e), Florida Statutes, as
2815 amended by this act.

2816 Section 47. Except as otherwise expressly provided in this
2817 act, this act shall take effect July 1, 2020.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government

BILL: PCS/CS/SB 712 (413536)

INTRODUCER: Appropriations Subcommittee on Agriculture, Environment, and General Government;
Community Affairs Committee; and Senator Mayfield

SUBJECT: Water Quality Improvements

DATE: January 24, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Paglialonga/Rogers</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
2. <u>Reagan</u>	<u>Betta</u>	<u>AEG</u>	Recommend: Fav/CS
3. _____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 712 includes recommendations from the Blue-Green Algae Task Force. The major topics in this bill include onsite sewage treatment and disposal systems (OSTDSs, commonly referred to as septic systems), wastewater, stormwater, agriculture, and biosolids. The bill directs the Department of Environmental Protection (DEP) to make rules relating to most of these topics. Note that rules that cost at least \$1 million over the first five years of implementation require legislative ratification.¹ Therefore, several of these provisions may not be fully effectuated without additional legislation.

The DEP will incur indeterminate additional costs in developing multiple new regulatory programs, updating basin management action plans (BMAPs), promulgating rules, and developing, submitting, and reviewing new reports. The DEP can absorb these costs within existing resources. The implementation of the real-time water quality monitoring and wastewater grant programs will have a negative fiscal impact on the DEP, but these provisions are subject to appropriations. See Section V.

Regarding OSTDSs, the bill:

- Transfers the regulation of OSTDSs from the Department of Health (DOH) to the DEP.
- Directs the DEP to adopt rules to locate OSTDSs by July 1, 2022:

¹ Section 120.541(3), F.S.

- These rules will take into consideration conventional and advanced OSTDS designs, impaired water bodies, wastewater and drinking water infrastructure, potable water sources, nonpotable wells, stormwater infrastructure, OSTDS remediation plans, nutrient pollution, and the recommendations of an OSTDS technical advisory committee;
 - Once those rules are adopted, they will supersede the existing statutory requirements for setbacks.
- Deletes the DOH OSTDS technical advisory committee and creates a DEP OSTDS technical advisory committee that will expire on August 15, 2022, after making recommendations to the Governor and the Legislature regarding the regulation of OSTDSs.
- Requires local governments to develop OSTDS remediation plans within BMAPs if the DEP determines that OSTDSs contribute at least 20 percent of the nutrient pollution or if the DEP determines remediation is necessary to achieve the total maximum daily load. Such plans must be adopted as part of the BMAPs no later than July 1, 2025.

Regarding wastewater, the bill:

- Creates a wastewater grant program, subject to appropriation, within the DEP that requires a 50 percent local match of funds. Eligible projects include:
 - Projects to upgrade OSTDSs.
 - Projects to construct, upgrade, or expand facilities to provide advanced waste treatment.
 - Projects to connect OSTDSs to central sewer facilities.
- Requires the DEP to submit an annual report to the Governor and the Legislature on the projects funded by the wastewater grant program.
- Provides incentives for wastewater projects that promote efficiency by coordinating wastewater infrastructure expansions with other infrastructure improvements.
- Gives priority in the state revolving loan fund for eligible wastewater projects that meet the additional requirements of the bill to prevent leakage, overflows, infiltration, and inflow.
- Requires the DEP to adopt rules to reasonably limit, reduce, and eliminate leaks, seepages, or inputs into the underground pipes of wastewater collection systems.
- Authorizes the DEP to require public utilities seeking a wastewater discharge permit to file reports and other data regarding utility costs:
 - Such reports may include data related to expenditures on pollution mitigation and prevention, including the prevention of sanitary sewer overflows, collection and transmission system pipe leakages, and inflow and infiltration.
 - The DEP is required to adopt rules related to these requirements.
- Requires local governments to develop wastewater treatment plans within BMAPs if the DEP determines that domestic wastewater facilities contribute at least 20 percent of the nutrient pollution or if the DEP determines remediation is necessary to achieve the total maximum daily load. Such plans must be adopted as part of the BMAPs no later than July 1, 2025.
- Adds to the DEP's penalty schedule a penalty of \$4,000 for failure to survey an adequate portion of a wastewater collection system and take steps to reduce sanitary sewer overflows, pipe leaks, and inflow and infiltration. Substantial compliance with certain bill requirements is evidence in mitigation for penalty assessment.
- Increases the cap on the DEP's administrative penalties from \$10,000 to \$50,000.
- Doubles the wastewater administrative penalties.
- Prohibits facilities for sanitary sewage disposal from disposing of waste into the Indian River Lagoon and its tributaries without providing advanced waste treatment.

- Requires facilities for sanitary sewage disposal to provide for a power outage contingency plan for collection systems and pump stations.
- Requires facilities for sanitary sewage to prevent sanitary sewer overflows or underground pipe leaks and ensure that collected wastewater reaches the facility for appropriate treatment.
 - The bill requires studies, plans, and reports related to this requirement (the action plan).
 - The DEP must adopt rules regarding the implementation of inflow and infiltration studies and leakage surveys.
- Authorizes certain facilities for sanitary sewage to receive 10-year permits if they are meeting the goals in their action plan for inflow, infiltration, and leakage prevention.
- Makes the following changes relating to water pollution operation permits:
 - The permit must require the investigation or surveying of the wastewater collection system to determine pipe integrity.
 - The permit must require an annual report to the DEP, which details facility revenues and expenditures in a manner prescribed by the DEP rule, including any deviation from annual expenditures related to their action plan.
- Requires the DEP to submit an annual report to the Governor and the Legislature that identifies all wastewater utilities that experienced a sanitary sewer overflow in the preceding calendar year. The DEP must include with this report certain utility-specific information for each utility that experienced an overflow.

Regarding stormwater, the bill:

- Requires the DEP and the Water Management Districts (WMDs), by January 1, 2021, to initiate rulemaking to update their stormwater rules.
- Requires the DEP, by January 1, 2021, to evaluate inspection data relating to entities that self-certify their stormwater permits and provide the Legislature with recommendations for improvements to the self-certification program.
- Directs the DEP and the Department of Economic Opportunity to include in their model stormwater management program ordinances that target nutrient reduction practices and use green infrastructure.

Regarding agriculture, the bill:

- Requires the Department of Agriculture and Consumer Services (DACS) to collect and provide to the DEP fertilization and nutrient records from each agriculture producer enrolled in best management practices.
- Requires the DACS to perform onsite inspections of each agricultural producer that enrolls in a best management practice every two years.
- Authorizes the DACS and institutions of higher education with agricultural research programs to develop research plans and legislative budget requests relating to the evaluation and improvement of agricultural best management practices and agricultural nutrient reduction projects.

Regarding biosolids, the bill:

- Requires the DEP to adopt rules for biosolids management.
- Exempts the biosolids rules from legislative ratification if they are adopted prior to the 2021 legislative session.

- Clarifies that local governments with biosolids ordinances may retain those ordinances until repealed.

The bill also creates a real-time water quality monitoring program, subject to appropriation, within the DEP.

The effective date of the bill is July 1, 2021.

II. Present Situation:

Water Quality and Nutrients

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

Phosphorus and nitrogen are derived from natural and human-made sources. Natural inputs include the atmosphere, soils, and the decay of plants and animals. Human-made sources include sewage disposal systems (wastewater treatment facilities and septic systems), overflows of storm and sanitary sewers (untreated sewage), agricultural production and irrigation practices, and stormwater runoff.²

Excessive nutrient loads may result in harmful algal blooms, nuisance aquatic weeds, and the alteration of the natural community of plants and animals. Dense, harmful algal blooms can also cause human health problems, fish kills, problems for water treatment plants, and impairment of the aesthetics and taste of waters. Growth of nuisance aquatic weeds tends to increase in nutrient-enriched waters, which can impact recreational activities.³

Blue-Green Algae Task Force

In January of 2019, Governor DeSantis issued the comprehensive Executive Order Number 19-12.⁴ The order directed the Department of Environmental Protection (DEP) to establish a Blue-Green Algae Task Force charged with expediting progress towards reducing nutrient pollution and the impacts of blue-green algae (cyanobacteria) blooms in the state.⁵ The task force's responsibilities include identifying priority projects for funding and making recommendations for regulatory changes. The five-person task force issued a consensus document on October 11, 2019.⁶ To the extent that the task force has issued recommendations on topics addressed in this Present Situation, those recommendations are included in the relevant section.

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

³ EPA, *The Problem*, <https://www.epa.gov/nutrientpollution/problem> (last visited Dec. 2, 2019).

⁴ State of Florida, Office of the Governor, *Executive Order Number 19-12* (2019), available at https://www.flgov.com/wp-content/uploads/orders/2019/EO_19-12.pdf.

⁵ *Id.* at 2; DEP, *Blue-Green Algae Task Force*, <https://protectingfloridatogether.gov/state-action/blue-green-algae-task-force> (last visited Dec. 2, 2019).

⁶ DEP, *Blue-Green Algae Task Force Consensus Document #1* (Dec. 2, 2019), available at https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf.

Total Maximum Daily Loads

A total maximum daily load (TMDL), which must be adopted by rule, is a scientific determination of the maximum amount of a given pollutant that can be absorbed by a waterbody and still meet water quality standards.⁷ Waterbodies or sections of waterbodies that do not meet the established water quality standards are deemed impaired. Pursuant to the federal Clean Water Act, the DEP is required to establish a TMDL for impaired waterbodies.⁸ A TMDL for an impaired waterbody is defined as the sum of the individual waste load allocations for point sources and the load allocations for nonpoint sources and natural background.⁹ Point sources are discernible, confined, and discrete conveyances including pipes, ditches, and tunnels. Nonpoint sources are unconfined sources that include runoff from agricultural lands or residential areas.¹⁰

Basin Management Action Plans and Best Management Practices

The DEP is the lead agency in coordinating the development and implementation of TMDLs.¹¹ 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, for a watershed. BMAPs generally include:

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Best management practices (BMPs) and non-regulatory and incentive-based programs, including cost-sharing, waste minimization, pollution prevention, agreements, and public education;
- Public works projects, including capital facilities; and
- Land acquisition.¹²

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.¹³ Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations. The BMAP development process provides an opportunity for local stakeholders, local government and community leaders, and the public to

⁷ DEP, *Total Maximum Daily Loads Program*, <https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program> (last visited Dec. 2, 2019).

⁸ Section 403.067(1), F.S.

⁹ Section 403.031(21), F.S.

¹⁰ Fla. Admin. Code R. 62-620.200(37). “Point source” is defined as “any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.” Nonpoint sources of pollution are sources of pollution that are not point sources. Nonpoint sources can include runoff from agricultural lands or residential areas; oil, grease and toxic materials from urban runoff; and sediment from improperly managed construction sites.

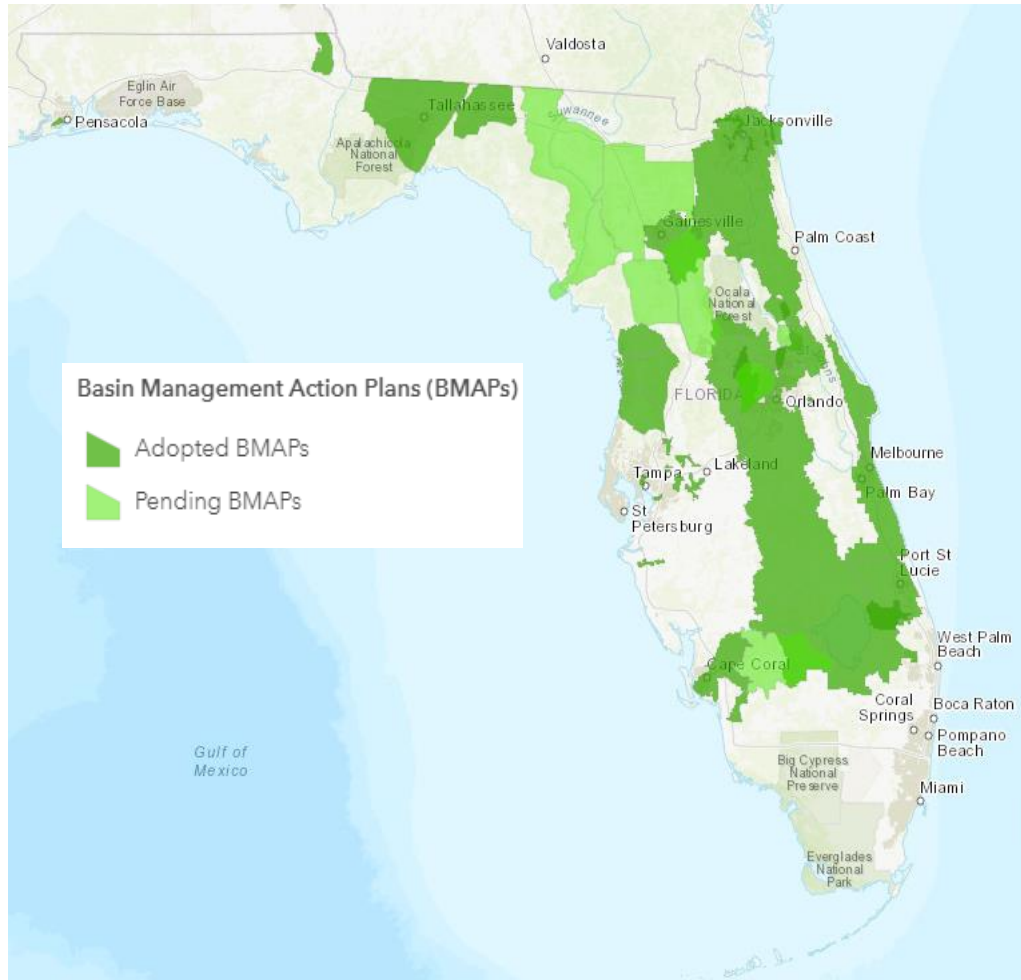
¹¹ Section 403.061, F.S. DEP has the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. Furthermore, s. 403.061(21), F.S., allows DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.

¹² Section 403.067(7), F.S.

¹³ *Id.*

collectively determine and share water quality cleanup responsibilities collectively.¹⁴ BMAPs are adopted by secretarial order.¹⁵

BMAPs must include milestones for implementation and water quality improvement. They must also include an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones must be conducted every five years, and revisions to the BMAP must be made as appropriate.¹⁶



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.¹⁷ A nonpoint source discharger may be subject to enforcement action by the DEP or a water management district (WMD) based on a failure to implement these

¹⁴ DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Dec. 4, 2019).

¹⁵ Section 403.067(7)(a)5., F.S.

¹⁶ Section 403.067(7)(a)6., F.S.

¹⁷ 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.

requirements.¹⁸ BMPs are designed to reduce the amount of nutrients, sediments, and pesticides that enter the water system and to help reduce water use. BMPs are developed for agricultural operations as well as for other activities, such as nutrient management on golf courses, forestry operations, and stormwater management.¹⁹

Currently, BMAPs are adopted or pending for a significant portion of the state and will continue to be developed as necessary to address water quality impairments. The graphic above shows the state's adopted and pending BMAPs.²⁰

The Blue-Green Algae Task Force made the following recommendations for BMAPs:

- Include regional storage and treatment infrastructure in South Florida watersheds.
- Consider land use changes, legacy nutrients, and the impact of the BMAP on downstream waterbodies.
- Develop a more targeted approach to project selection.
- Evaluate project effectiveness through monitoring.²¹

Agricultural BMPs

Agricultural best management practices (BMPs) are practical measures that agricultural producers undertake to reduce the impacts of fertilizer and water use and otherwise manage the landscape to further protect water resources. BMPs are developed using the best available science with economic and technical consideration and, in certain circumstances, can maintain or enhance agricultural productivity.²² BMPs are implemented by the Department of Agriculture and Consumer Services (DACS). Since the BMP program was implemented in 1999,²³ the DACS has adopted nine BMP manuals and is currently developing two more that cover nearly all major agricultural commodities in Florida. According to the annual report on BMPs prepared by the DACS, approximately 54 percent of agricultural acreage is enrolled in the DACS BMP program statewide.²⁴ Producers implementing BMPs receive a presumption of compliance with state water quality standards for the pollutants addressed by the BMPs²⁵ and those who enroll in the BMP program become eligible for technical assistance and cost-share funding for BMP implementation. To enroll in the BMP program, producers must meet with the Office of Agricultural Water Policy (OAWP) to determine the BMPs that are applicable to their operation

¹⁸ Section 403.067(7)(b)2.h., F.S.

¹⁹ DEP, *NPDES Stormwater Program*, <https://floridadep.gov/Water/Stormwater> (last visited Dec. 2, 2019).

²⁰ DEP, *Impaired Waters, TMDLs, and Basin Management Action Plans Interactive Map*, <https://floridadep.gov/dear/water-quality-restoration/content/impaired-waters-tmdls-and-basin-management-action-plans> (last visited Dec. 5, 2019).

²¹ DEP, *Blue-Green Algae Task Force Consensus Document #1*, 2-4 (Oct. 11, 2019), available at https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf.

²² Florida Department of Agriculture and Consumer Services Office of Agricultural Water Policy, *Status of Implementation of Agricultural Nonpoint Source Best Management Practices*, 3, (Jul. 1, 2019), available at <https://www.fdacs.gov/ezs3download/download/84080/2481615/Media/Files/Agricultural-Water-Policy-Files/Status-of-Implementation-of-BMPs-Report-2019.pdf> (last visited Dec. 5, 2019).

²³ The program was voluntary from 1999-2005. In 2005 the Florida Legislature modified the law requiring agricultural producers to adopt BMPs or conduct water quality monitoring.

²⁴ Florida Department of Agriculture and Consumer Services Office of Agricultural Water Policy, *Status of Implementation of Agricultural Nonpoint Source Best Management Practices*, 2, (Jul. 1, 2019), available at <https://www.fdacs.gov/ezs3download/download/84080/2481615/Media/Files/Agricultural-Water-Policy-Files/Status-of-Implementation-of-BMPs-Report-2019.pdf> (last visited Dec. 5, 2019).

²⁵ Section 403.067(7), F.S.

and submit a Notice of Intent to Implement the BMPs, along with the BMP checklist from the applicable BMP manual.²⁶ Within a BMAP, management strategies, including BMPs and water quality monitoring, are enforceable.²⁷ The University of Florida's Institute of Food and Agricultural Sciences (IFAS) is heavily involved in the adoption and implementation of BMPs. The IFAS provides expertise to both the DACS and agriculture producers, and has extension offices throughout Florida. The IFAS puts on summits and workshops on BMPs,²⁸ conducts research to issue recommendations for improving BMPs,²⁹ and issues training certificates for BMPs that require licenses such as Green Industry BMPs.³⁰

For agriculture and BMPs, the Blue-Green Algae Task Force recommended:

- Increasing BMP enrollment.
- Improving records and additional data collection.
- Accelerating updates to BMP manuals.³¹

BMAPs for Outstanding Florida Springs

In 2016, the Legislature passed the Florida Springs and Aquifer Protection Act, which identified 30 "Outstanding Florida Springs" (OFS) that have additional statutory protections and requirements.³² Key aspects of the Springs and Aquifer Protection Act relating to water quality include:

- The designation of a priority focus area for each OFS. A priority focus area of an OFS means the area or areas of a basin where the Florida Aquifer is generally most vulnerable to pollutant inputs where there is a known connectivity between groundwater pathways and an Outstanding Florida Spring, as determined by the DEP in consultation with the appropriate WMDs, and delineated in a BMAP;³³
- The development of an onsite sewage treatment and disposal system (OSTDS) remediation plan³⁴ if it has been determined that OSTDSs within a priority focus area contribute at least 20 percent of nonpoint source nitrogen pollution or that remediation is necessary to achieve the TMDL;
- A 20-year timeline for implementation of the TMDL, including 5-, 10-, and 15-year targets;³⁵ and

²⁶ Florida Department of Agriculture and Consumer Services Office of Agricultural Water Policy, *Status of Implementation of Agricultural Nonpoint Source Best Management Practices*, 3, (Jul. 1, 2019), available at <https://www.fdacs.gov/ezs3download/download/84080/2481615/Media/Files/Agricultural-Water-Policy-Files/Status-of-Implementation-of-BMPs-Report-2019.pdf> (last visited Dec. 5, 2019).

²⁷ Section 403.067(7)(d), F.S.

²⁸ UF/IFAS, *BMP Resource*, available at <https://bmp.ifas.ufl.edu/> (last visited Dec. 5, 2019).

²⁹ UF/IFAS Everglades Research & Education Center, *Best Management Practices & Water Resources*, available at <https://erec.ifas.ufl.edu/featured-3-menus/research/-best-management-practices--water-resources/> (last visited Dec. 5, 2019).

³⁰ UF/IFAS Florida-Friendly Landscaping, *GI-BMP Training Program Overview*, available at https://ffl.ifas.ufl.edu/professionals/BMP_overview.htm (last visited Dec. 5, 2019).

³¹ *Id.*

³² Chapter 2016-1, Laws of Fla.; see s. 373.802, F.S., Outstanding Florida Springs include all historic first magnitude springs, including their associated spring runs, as determined by DEP using the most recent Florida Geological Survey springs bulletin, and De Leon Springs, Peacock Springs, Poe Springs, Rock Springs, Wekiwa Springs, and Gemini Springs, and their associated spring runs.

³³ Section 373.802(5), F.S.

³⁴ Commonly called a "septic remediation plan."

³⁵ Section 373.807, F.S.

- The prohibition against new OSTDSs on parcels of less than 1 acre, unless the system complies with the OSTDS remediation plan.³⁶

The DEP is the lead agency in coordinating the preparation and adoption of the OSTDS remediation plan. The OSTDS remediation plan must include options for repair, upgrade, replacement, drainfield modification, the addition of effective nitrogen reducing features, connection to a central sewerage system, or other action for a sewage system or group of systems.³⁷ The options must be cost-effective and financially feasible projects necessary to reduce the nutrient impacts from OSTDSs within the area.³⁸

In June 2018, the DEP adopted 13 BMAPs, addressing all 24 nitrogen-impaired OFS.³⁹ Eight of these plans are currently effective, while five others are pending the outcome of legal challenges on various alleged deficiencies in the BMAPs.⁴⁰ These alleged deficiencies include lack of specificity in the required list of projects and programs identified to implement a TMDL, lack of detail in cost estimates, incomplete or unclear strategies for nutrient reduction, and failure to account for population growth and agricultural activity.

Wastewater Treatment Facilities

The proper treatment and disposal or reuse of domestic wastewater is an important part of protecting Florida's water resources. The majority of Florida's domestic wastewater is controlled and treated by centralized treatment facilities regulated by the DEP. Florida has approximately 2,000 permitted domestic wastewater treatment facilities.⁴¹

Chapter 403, F.S., requires that any facility or activity which discharges waste into waters of the state or which will reasonably be expected to be a source of water pollution must obtain a permit from the DEP.⁴² Generally, persons who intend to collect, transmit, treat, dispose, or reuse wastewater are required to obtain a wastewater permit. A wastewater permit issued by the DEP is required for both operation and certain construction activities associated with domestic or industrial wastewater facilities or activities. A DEP permit must also be obtained prior to construction of a domestic wastewater collection and transmission system.⁴³

Under section 402 of the Clean Water Act, any discharge of a pollutant from a point source to surface waters (i.e., the navigable waters of the United States or beyond) must obtain a National

³⁶ Section 373.811, F.S.

³⁷ Section 373.807(3), F.S.

³⁸ *Id.*

³⁹ DEP, *Springs*, <https://floridadep.gov/springs> (last visited Nov. 26, 2019).

⁴⁰ *Our Santa Fe River, Inc., et. al. v. DEP*, No. 18-1601, DEP No. 18-2013; *Sierra Club v. DEP*, No. 17-1175, DEP No. 18-0204; *Friends of Wekiva River, Inc. v. DEP*, No. 18-1065, DEP No. 18-0217; *Thomas Greenhalgh v. DEP*, No. 17-1165, DEP No. 18-0204; *Paul Still v. DEP*, No. 18-1061; *Save the Manatee Club, Inc. v. DEP*, No. 17-1167, DEP No. 18-0206; *Silver Springs Alliance, Inc. and Rainbow River Conservation, Inc. v. DEP*, No. 18-1060, DEP No. 18-0211.

⁴¹ DEP, *General Facts and Statistics About Wastewater in Florida*, <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Dec. 2, 2019).

⁴² Section 403.087, F.S.

⁴³ DEP, *Wastewater Permitting*, <https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting> (last visited Dec. 2, 2019).

Pollution Discharge Elimination System (NPDES) permit.⁴⁴ 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.⁴⁵ The DEP issues operation 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.⁴⁶

In its 2016 Report Card for Florida's Infrastructure, the American Society of Civil Engineers reported that the state's wastewater system is increasing in age and the condition of installed treatment and conveyance systems is declining.⁴⁷ As existing infrastructure ages, Florida utilities are placing greater emphasis on asset management systems to maintain service to customers. Population growth, aging infrastructure, and sensitive ecological environments are increasing the need to invest in Florida's wastewater infrastructure.⁴⁸

Advanced Waste Treatment

Under Florida law, facilities for sanitary sewage disposal are required to provide for advanced waste treatment, as deemed necessary by the DEP.⁴⁹ The standard for advanced waste treatment is defined in statute using the maximum concentrations of nutrients or contaminants that a reclaimed water product may contain.⁵⁰ The standard also requires high-level disinfection.⁵¹

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

Facilities for sanitary sewage disposal are prohibited from disposing of waste into certain waters in the state without providing advanced waste treatment approved by the DEP.⁵² Specifically, Tampa Bay is viewed as a success story for this type of prohibition.

[Tampa Bay is] one of the few estuaries in the U.S. that has shown evidence of improving environmental conditions. These water-quality

⁴⁴ 33 U.S.C. s. 1342.

⁴⁵ Sections 403.061 and 403.087, F.S.

⁴⁶ Section 403.087(3), F.S.

⁴⁷ American Society of Civil Engineers, *Report Card for Florida's Infrastructure* (2016), available at https://www.infrastructurereportcard.org/wp-content/uploads/2017/01/2016_RC_Final_screen.pdf.

⁴⁸ *Id.*

⁴⁹ Section 403.086(2), F.S.

⁵⁰ Section 403.086(4), F.S.

⁵¹ Section 403.086(4)(b), F.S.; Fla. Admin. Code R. 62-600.440(6).

⁵² Section 403.086(1)(c), F.S. Facilities for sanitary sewage disposal may not dispose of any wastes into Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, or Charlotte Harbor Bay, or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto, without providing advanced waste treatment approved by DEP. This prohibition does not apply to facilities permitted by February 1, 1987, and which discharge secondary treated effluent, followed by water hyacinth treatment, to tributaries of the named waters; or to facilities permitted to discharge to the nontidally influenced portions of the Peace River.

improvements have been due, in large part, to upgrades in wastewater-treatment practices at municipal wastewater-treatment plants in the region. Since 1980, all wastewater-treatment plants that discharge to the bay or its tributaries have been required by state legislation to meet advanced wastewater-treatment standards, a step that has reduced the annual nutrient loads from these sources by about 90 percent.⁵³

Sanitary Sewer Overflows, Leakages, and Inflow and Infiltration

Although domestic wastewater treatment facilities are permitted and designed to safely and properly collect and manage a specified wastewater capacity, obstructions or extreme conditions can cause a sanitary sewer overflow (SSO). Any overflow, spill, release, discharge, or diversion of untreated or partially treated wastewater from a sanitary sewer system is a SSO.⁵⁴ A SSO may subject the owner or operator of a facility to civil penalties of not more than \$10,000 for each offense, a criminal conviction or fines, and additional administrative penalties.⁵⁵ Each day during the period in which a violation occurs constitutes a separate offense.⁵⁶ However, administrative penalties are capped at \$10,000.⁵⁷

A key concern with SSOs entering rivers, lakes, or streams is their negative effect on water quality. In addition, because SSOs contain partially treated or potentially untreated domestic wastewater, ingestion or similar contact may cause illness. People can be exposed through direct contact in areas of high public access, food that has been contaminated, inhalation, and skin absorption. The Department of Health (DOH) issues health advisories when bacteria levels present a risk to human health and may post warning signs when bacteria affect public beaches or other areas where there is a risk of human exposure.⁵⁸

Reduction of SSOs can be achieved through:

- Cleaning and maintaining the sewer system;
- Reducing inflow and infiltration through rehabilitation and repairing broken or leaking lines;
- Enlarging or upgrading sewer, pump station, or sewage treatment plant capacity and/or reliability; and
- Constructing wet weather storage and treatment facilities to treat excess flows.⁵⁹

Inflow and Infiltration (I&I) occurs when groundwater and/or rainwater enters the sanitary sewer system and ends up at the wastewater treatment facility, necessitating its treatment as if it were

⁵³ U.S. Department of the Interior and U.S. Geological Survey, *Integrating Science and Resource Management in Tampa Bay, Florida*, 110 (2011), available at https://pubs.usgs.gov/circ/1348/pdf/Chapter%205_105-156.pdf (internal citations omitted).

⁵⁴ DEP, *Sanitary Sewer Overflows (SSOs)*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last visited Dec. 4, 2019).

⁵⁵ Sections 403.121 and 403.141, F.S.

⁵⁶ *Id.*

⁵⁷ Section 403.121(2)(b),(8), and (9), F.S.

⁵⁸ DEP, *SSOs*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf>.

⁵⁹ *Id.*

wastewater.⁶⁰ I&I can be caused by groundwater infiltrating the sewer system through faulty pipes or infrastructure, or any inflows of rainwater or non-wastewater into the sewer system.

I&I is a major cause of SSOs in Florida.⁶¹ When domestic wastewater facilities are evaluated for permit renewal, collection systems are not evaluated for issues such as excessive infiltration/inflow unless problems result at the treatment plant.⁶² Another major cause of SSOs is the loss of electricity to the infrastructure for the collection and transmission of wastewater, such as pump stations, especially during storms.⁶³ Pump stations receiving flow from another station through a force main, or those discharging through pipes 12 inches or larger, must have emergency generators.⁶⁴ All other pump stations must have emergency pumping capability through one of three specified arrangements.⁶⁵ These requirements for emergency pumping capacity only apply to domestic wastewater collection/transmission facilities existing after November 6, 2003, unless facilities existing prior to that date are modified.⁶⁶

The Blue-Green Algae Task Force made the following recommendations relating to SSOs:

- Emergency back-up capabilities should be required for all lift stations constructed prior to 2003.
- The DEP and wastewater facilities should take a more proactive approach to infiltration and inflow issues.⁶⁷

Wastewater Asset Management

Asset management is the practice of managing infrastructure capital assets to minimize the total cost of owning and operating these assets while delivering the desired service levels.⁶⁸ Many utilities use asset management to pursue and achieve sustainable infrastructure. A high-performing asset management program includes detailed asset inventories, operation and maintenance tasks, and long-range financial planning.⁶⁹

⁶⁰ City of St. Augustine, *Inflow & Infiltration Elimination Program*, <https://www.citystaug.com/549/Inflow-Infiltration-Elimination-Program> (last visited Dec. 6, 2019).

⁶¹ See generally RS&H, Inc., *Evaluation of Sanitary Sewer Overflows and Unpermitted Discharges Associated with Hurricanes Hermine and Matthew* (Jan. 2017), available at https://floridadep.gov/sites/default/files/Final%20Report_Evaluation%20of%20SSO%20and%20Unpermitted%20Discharges%2001_06_17.pdf.

⁶² Fla. Admin. Code R. 62-600.735; see Fla. Admin. Code R. 62-600.200. “Collection/transmission systems” are defined as “sewers, pipelines, conduits, pumping stations, force mains, and all other facilities used for collection and transmission of wastewater from individual service connections to facilities intended for the purpose of providing treatment prior to release to the environment.”

⁶³ See generally RS&H, Inc., *Evaluation of Sanitary Sewer Overflows and Unpermitted Discharges Associated with Hurricanes Hermine and Matthew* (Jan. 2017), available at https://floridadep.gov/sites/default/files/Final%20Report_Evaluation%20of%20SSO%20and%20Unpermitted%20Discharges%2001_06_17.pdf.

⁶⁴ Fla. Admin. Code R. 62-604.400.

⁶⁵ *Id.*

⁶⁶ Fla. Admin. Code R. 62-604.100.

⁶⁷ DEP, *Blue-Green Algae Task Force Consensus Document #1*, 7 (Oct. 11, 2019), available at https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf.

⁶⁸ EPA, *Sustainable Water Infrastructure - Asset Management for Water and Wastewater Utilities*, <https://www.epa.gov/sustainable-water-infrastructure/asset-management-water-and-wastewater-utilities> (last visited Dec 9, 2019).

⁶⁹ *Id.*

Each utility is responsible for making sure that its system stays in good working order, regardless of the age of its components or the availability of additional funds.⁷⁰ Asset management programs with good data can be the most efficient method of meeting this challenge. Some key steps for asset management are making an inventory of critical assets, evaluating the condition and performance of such assets, and developing plans to maintain, repair, and replace assets and to fund these activities.⁷¹ The United States Environmental Protection Agency (EPA) provides guidance and reference manuals for utilities to aid in developing asset management plans.⁷²

Many states, including Florida, provide financial incentives for the development and implementation of an asset management plan when requesting funding under a State Revolving Fund or other state funding mechanism.⁷³ Florida's incentives include priority scoring,⁷⁴ reduction of interest rates,⁷⁵ principal forgiveness for financially disadvantaged small communities,⁷⁶ and eligibility for small community wastewater facilities grants.⁷⁷

In 2016, the Legislature authorized the Public Service Commission (PSC) to allow a utility to create a utility reserve fund for repair and replacement of existing distribution and collection infrastructure that is nearing the end of its useful life or is detrimental to water quality or reliability of service. The utility reserve fund would be funded by a portion of the rates charged by the utility, by a secured escrow account, or through a letter of credit.

The PSC adopted rules governing the implementation, management, and use of the fund, including expenses for which the fund may be used, segregation of reserve account funds, requirements for a capital improvement plan, and requirements for the PSC authorization before fund disbursements.⁷⁸ The PSC requires an applicant to provide a capital improvement plan or an asset management plan in seeking authorization to create a utility reserve fund.⁷⁹

The Clean Water State Revolving Fund Program

Florida's Clean Water State Revolving Fund (CWSRF) is a federal-state partnership that provides communities a permanent, independent source of low-cost financing for a wide-range of water quality infrastructure projects.⁸⁰ The CWSRF is funded through money received from

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² EPA, *Asset Management: A Best Practices Guide* (2008), available at <https://nepis.epa.gov/Exec/QueryPDF.cgi/P1000LP0.PDF?Dockkey=P1000LP0.PDF>; EPA, *Reference Guide for Asset Management Tools/Asset Management Plan Components and Implementation Tools for Small and Medium Sized Drinking Water and Wastewater Systems* (May 2014), available at https://www.epa.gov/sites/production/files/2016-04/documents/am_tools_guide_may_2014.pdf.

⁷³ EPA, *State Asset Management Initiatives* (Aug. 2012), available at https://www.epa.gov/sites/production/files/2016-04/documents/state_asset_management_initiatives_11-01-12.pdf.

⁷⁴ Fla. Admin. Code R. 62-503.300(e).

⁷⁵ Fla. Admin. Code R. 62-503.300(5)(b)1. and 62-503.700(7).

⁷⁶ Fla. Admin. Code R. 62-503.500(4).

⁷⁷ Fla. Admin. Code R. 62-505.300(d) and 62-505.350(5)(c).

⁷⁸ Fla. Admin. Code R. 25-30.444.

⁷⁹ Fla. Admin. Code R. 25-30.444(2)(e) and (m).

⁸⁰ 33 USC s. 1383; EPA, *CWSRF*, <https://www.epa.gov/cwsrf> (last visited Jan. 23, 2020); EPA, *Learn about the CWSRF*, <https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf> (last visited Jan. 23, 2020).

federal grants as well as state contributions, which then "revolve" through the repayment of previous loans and interest earned. While these programs offer loans, grant-like funding is also available for qualified small, disadvantaged communities, which reduces the amount owed on loans by the percentage for which the community qualifies.

The CWSRF provides low-interest loans to local governments to plan, design, and build or upgrade wastewater, stormwater, and nonpoint source pollution prevention projects. Certain agricultural best management practices may also qualify for funding. Very low interest rate loans, grants, and other discounted assistance for small communities are available. Interest rates on loans are below market rates and vary based on the economic means of the community. Generally, local governments and special districts are eligible loan sponsors.⁸¹ The EPA classifies eleven types of projects that are eligible to receive CWSRF assistance. They include projects for:

- A publicly owned treatment works;
- A public, private, or nonprofit entity to implement a state nonpoint source pollution management program;
- A public, private, or nonprofit entity to develop and implement a conservation and management plan;
- A public, private, or nonprofit entity to construct, repair, or replace decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage;
- A public, private, or nonprofit entity to manage, reduce, treat, or recapture stormwater or subsurface drainage water;
- A public entity to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse;
- A public, private, or nonprofit entity to develop and implement watershed projects;
- A public entity to reduce the energy consumption needs for publicly owned treatment works;
- A public, private, or nonprofit entity for projects for reusing or recycling wastewater, stormwater, or subsurface drainage water;
- A public, private, or nonprofit entity to increase the security of publicly owned treatment works; and
- Any qualified nonprofit entity, to provide technical assistance to owners and operators of small and medium sized publicly owned treatment works to plan, develop, and obtain financing for the CWSRF eligible projects and to assist each treatment works in achieving compliance with the Clean Water Act.⁸²

Of these eligible projects, the DEP is required to give priority to projects that:

- Eliminate public health hazards;
- Enable compliance with laws requiring the elimination of discharges to specific water bodies, including the requirements of s. 403.086(9), F.S., regarding domestic wastewater ocean outfalls;
- Assist in the implementation of total maximum daily loads adopted under s. 403.067, F.S.;

⁸¹ DEP, *State Revolving Fund*, <https://floridadep.gov/wra/srf> (last visited Feb. 11, 2019).

⁸² EPA, *Learn about the CWSRF*, <https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf> (last visited Jan. 23, 2020).

- Enable compliance with other pollution control requirements, including, but not limited to, toxics control, wastewater residuals management, and reduction of nutrients and bacteria;
- Assist in the implementation of surface water improvement and management plans and pollutant load reduction goals developed under state water policy;
- Promote reclaimed water reuse;
- Eliminate failing onsite sewage treatment and disposal systems or those that are causing environmental damage; or
- Reduce pollutants to and otherwise promote the restoration of Florida's surface and ground waters.⁸³

Small Community Sewer Construction

The Small Community Sewer Construction Assistance Act is a grant program established as part of the CWSRF program that requires the DEP to award grants to assist financially disadvantaged small communities with their needs for adequate domestic wastewater facilities.⁸⁴ Under the program, a financially disadvantaged small community is defined as a county, municipality, or special district⁸⁵ with a total population of 10,000 or less, and a per capita income less than the state average per capita income.⁸⁶ In 2016, the Legislature included counties and special districts as eligible entities for grants under the program if they otherwise met the definition of a financially disadvantaged small community.⁸⁷

In accordance with rules adopted by the Environmental Regulation Commission, the DEP may provide grants, for up to 100 percent of the costs of planning, designing, constructing, upgrading, or replacing wastewater collection, transmission, treatment, disposal, and reuse facilities, including necessary legal and administrative expenses.⁸⁸ The rules of the commission must also:

- Require that projects to plan, design, construct, upgrade, or replace wastewater collection, transmission, treatment, disposal, and reuse facilities be cost-effective, environmentally sound, permissible, and implementable;
- Require appropriate user charges, connection fees, and other charges to ensure the long-term operation, maintenance, and replacement of the facilities constructed under each grant;
- Require grant applications to be submitted on appropriate forms with appropriate supporting documentation and require records to be maintained;
- Establish a system to determine eligibility of grant applications;
- Establish a system to determine the relative priority of grant applications, which must consider public health protection and water pollution abatement;
- Establish requirements for competitive procurement of engineering and construction services, materials, and equipment; and
- Provide for termination of grants when program requirements are not met.⁸⁹

⁸³ Section 403.1835(7), F.S.

⁸⁴ Sections 403.1835(3)(d) and 403.1838, F.S.

⁸⁵ Section 189.012(6), F.S., defines special district; s. 189.012(2) and (3), F.S., define dependent special district and independent special district, respectively.

⁸⁶ Section 403.1838(2), F.S.

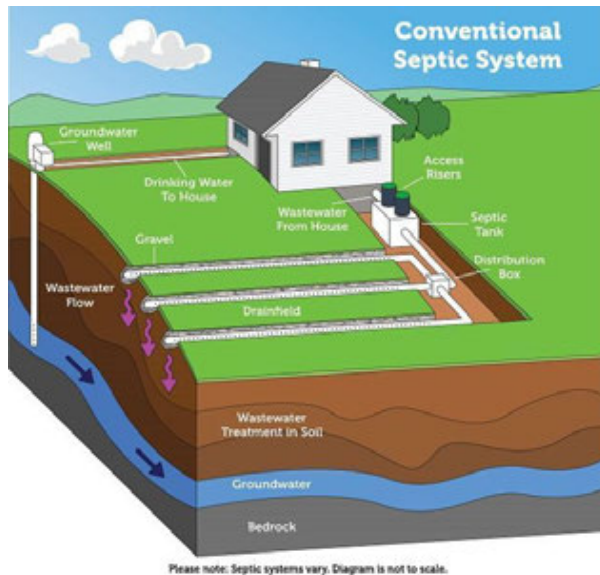
⁸⁷ Chapter 2016-55, Laws of Fla.

⁸⁸ Section 403.1838(3)(a), F.S.

⁸⁹ Section 403.1838(3)(b), F.S.; Fla. Admin. Code R. Ch. 62-505.

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.⁹⁰ 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.⁹¹



The DOH administers OSTDS programs, develops statewide rules, and provides training and standardization for county health department employees responsible for issuing permits for the installation and repair of OSTDSs within the state.⁹² The DOH regulations focus on construction standards and setback distances. The regulations are primarily designed to protect the public from waterborne illnesses.⁹³ The DOH also conducts research to evaluate performance, environmental health, and public health effects of OSTDSs. Innovative OSTDS products and technologies must be approved by the DOH.⁹⁴

The DOH and the DEP have an interagency agreement that standardizes procedures and clarifies responsibilities between them regarding the regulation of OSTDSs.⁹⁵ The DEP has jurisdiction

⁹⁰ DOH, *Septic System Information and Care*, <http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html> (last visited Dec. 2, 2019); EPA, *Types of Septic Systems*, <https://www.epa.gov/septic/types-septic-systems> (last visited Dec. 2, 2019) (showing the graphic provided in the analysis).

⁹¹ *Id.*

⁹² Section 381.0065(3), F.S.

⁹³ DOH, *Overview of Onsite Sewage Treatment and Disposal Systems*, 5 (Aug. 1, 2019), <http://floridadep.gov/file/19018/download?token=6r94Bi2B>.

⁹⁴ Section 381.0065(3), F.S.

⁹⁵ *Interagency Agreement Between the Department of Environmental Protection and the Department of Health for Onsite Sewage Treatment and Disposal Systems* (Sept. 30, 2015), available at https://floridadep.gov/sites/default/files/HOHOSTDS_9_30_15.pdf.

over OSTDSs when: domestic sewage flow exceeds 10,000 gallons per day; commercial sewage flow exceeds 5,000 gallons per day; there is a likelihood of hazardous or industrial wastes; a sewer system is available; or if any system or flow from the establishment is currently regulated by the DEP (unless the DOH grants a variance).⁹⁶ In all other circumstances, the DOH regulates OSTDSs.

There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state's population.⁹⁷ In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.⁹⁸ For example, in rural areas and low-density developments, central sewer systems are not cost-effective. Less than one percent of OSTDSs in Florida are actively managed under operating permits and maintenance agreements.⁹⁹ The remainder of systems are generally serviced only when they fail, often leading to costly repairs that could have been avoided with routine maintenance.¹⁰⁰

In a conventional OSTDS, a septic tank does not reduce nitrogen from the raw sewage. In Florida, 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.¹⁰¹ This still leaves a significant amount of nitrogen to percolate into the groundwater, which makes nitrogen from OSTDSs a potential contaminant in groundwater.¹⁰²

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).¹⁰³ The DOH publishes on its website approved products and resources on advanced systems.¹⁰⁴ Determining which advanced system is the best option can depend on site-specific conditions.

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.¹⁰⁵ Owners of an OSTDS in need of repair or modification must connect within 90 days of notification from the DOH.¹⁰⁶

⁹⁶ *Id.* at 6-13; s. 381.0065(3)(b), F.S.; DEP, *Septic Systems*, <https://floridadep.gov/water/domestic-wastewater/content/septic-systems> (last visited Dec. 2, 2019).

⁹⁷ DOH, *Onsite Sewage*, <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last visited Dec. 2, 2019).

⁹⁸ DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, Executive Summary (Oct. 1, 2008), available at http://www.floridahealth.gov/environmental-health/onsite-sewage/research/_documents/rrac/2008-11-06.pdf. The report begins on page 56 of the PDF.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ 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).

¹⁰² University of Florida Institute of Food and Agricultural Sciences (IFAS), *Onsite Sewage Treatment and Disposal Systems: Nitrogen*, 3 (Feb. 2014), available at <http://edis.ifas.ufl.edu/pdf/SS/SS55000.pdf>.

¹⁰³ DOH, *Nitrogen-Reducing Systems for Areas Affected by the Florida Springs and Aquifer Protection Act* (2019), available at http://www.floridahealth.gov/environmental-health/onsite-sewage/products/_documents/bmap-n-reducing-tech-18-10-29.pdf.

¹⁰⁴ DOH, *Onsite Sewage Programs, Product Listings and Approval Requirements*, <http://www.floridahealth.gov/environmental-health/onsite-sewage/products/index.html> (last visited Dec. 2, 2019).

¹⁰⁵ Section 381.00655, F.S.

¹⁰⁶ *Id.*

The Blue-Green Algae Task Force made the following recommendations relating to OSTDSs:

- The DEP should develop a more comprehensive regulatory program to ensure that OSTDSs are sized, designed, constructed, installed, operated, and maintained to prevent nutrient pollution, reduce environmental impact, and preserve human health.
- More post-permitting septic tank inspections should take place.
- Protections for vulnerable areas in the state should be expanded.
- Additional funding to accelerate septic to sewer conversions.¹⁰⁷

The DOH Technical Review and Advisory Panel

The DOH has a technical review and advisory panel to review agency rules and provide assistance to the DOH with rule adoption.¹⁰⁸ It is comprised of, at a minimum:

- A soil scientist;
- A professional engineer registered in this state who is recommended by the Florida Engineering Society and who has work experience in OSTDSs;
- Two representatives from the home-building industry recommended by the Florida Home Builders Association, including one who is a developer in this state who develops lots using onsite sewage treatment and disposal systems;
- A representative from the county health departments who has experience permitting and inspecting the installation of onsite sewage treatment and disposal systems in this state;
- A representative from the real estate industry who is recommended by the Florida Association of Realtors;
- A consumer representative with a science background;
- Two representatives of the septic tank industry recommended by the Florida Onsite Wastewater Association, including one who is a manufacturer of onsite sewage treatment and disposal systems;
- A representative from local government who is knowledgeable about domestic wastewater treatment and who is recommended by the Florida Association of Counties and the Florida League of Cities; and
- A representative from the environmental health profession who is recommended by the Florida Environmental Health Association and who is not employed by a county health department.¹⁰⁹

Members are to be appointed for a term of two years. The panel may also, as needed, be expanded to include ad hoc, nonvoting representatives who have topic-specific expertise.¹¹⁰

¹⁰⁷ DEP, *Blue-Green Algae Task Force Consensus Document #1*, 6-7 (Oct. 11, 2019), available at https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf.

¹⁰⁸ Section 381.0068, F.S.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

Stormwater Management

Stormwater is the flow of water resulting from, and immediately following, a rainfall event.¹¹¹ When stormwater falls on pavement, buildings, and other impermeable surfaces, the runoff flows quickly and can pick up sediment, nutrients (such as nitrogen and phosphorous), chemicals, and other pollutants.¹¹² Stormwater pollution is a major source of water pollution in Florida.¹¹³

There are two main regulatory programs to address water quality from stormwater: the federal program that regulates discharges of pollutants into waters of the United States¹¹⁴ and the state Environmental Resource Permitting (ERP) Program that regulates activities involving the alteration of surface water flows.¹¹⁵ The federal NPDES Stormwater Program regulates the following types of stormwater pollution:¹¹⁶

- Certain municipal storm sewer systems;
- Runoff from certain construction activities; and
- Runoff from industrial activities.¹¹⁷

Florida's ERP Program includes regulation of activities that create stormwater runoff, as well as dredging and filling in wetlands and other surface waters.¹¹⁸ ERPs are designed to prevent flooding, protect wetlands and other surface waters, and protect Florida's water quality from stormwater pollution.¹¹⁹ The statewide ERP Program is implemented by the DEP, the WMDs, and certain local governments. The ERP Applicant Handbook, incorporated by reference into the DEP rules, provides guidance on the DEP's ERP Program, including stormwater topics such as the design of stormwater management systems.¹²⁰

¹¹¹ DEP and Water Management Districts, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)*, 2-10 (June 1, 2018), available at

https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Applicant_Hanbook_I_-_Combined.pdf.

¹¹² DEP, *Stormwater Management*, 1 (2016), available at https://floridadep.gov/sites/default/files/stormwater-management_0.pdf. When rain falls on fields, forests, and other areas with naturally permeable surfaces the water not absorbed by plants filters through the soil and replenishes Florida's groundwater supply.

¹¹³ DEP, *Stormwater Support*, <https://floridadep.gov/water/engineering-hydrology-geology/content/stormwater-support> (last visited Dec. 2, 2019); DEP, *Nonpoint Source Program Update*, 10 (2015), available at <https://floridadep.gov/sites/default/files/NPS-ManagementPlan2015.pdf>.

¹¹⁴ National Pollutant Discharge Elimination System (NPDES), 33 U.S.C. s. 1342 (2019); 40 C.F.R. pt. 122.

¹¹⁵ Chapter 373, pt. IV, F.S.; Fla. Admin. Code Ch. 62-330.

¹¹⁶ A point source is discernible, confined and discrete conveyance, such as a pipe, ditch, channel, tunnel, conduit, discrete fissure, or container. See The Clean Water Act, 33 U.S.C. s. 1362(14) and 40 C.F.R. 122.2; Stormwater can be either a pointsource or a nonpoint source of pollution. EPA, *Monitoring and Evaluating Nonpoint Source Watershed Projects*, 1-1, available at https://www.epa.gov/sites/production/files/2016-02/documents/chapter_1_draft_aug_2014.pdf; DEP, *Nonpoint Source Program Update*, 9 (2015), available at <https://floridadep.gov/sites/default/files/NPS-ManagementPlan2015.pdf>.

¹¹⁷ See generally EPA, *NPDES Stormwater Program*, <https://www.epa.gov/npdes/npdes-stormwater-program> (last visited Dec. 2, 2019).

¹¹⁸ DEP, *DEP 101: Environmental Resource Permitting*, <https://floridadep.gov/comm/press-office/content/dep-101-environmental-resource-permitting> (last visited Dec 2, 2019).

¹¹⁹ South Florida Water Management District, *Environmental Resource Permits*, <https://www.swfwmd.gov/doing-business-with-us/permits/environmental-resource-permits> (last visited Dec. 2, 2019).

¹²⁰ Fla. Admin. Code R. 62-330.010(4); DEP and WMDs, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)*, 2-10 (June 1, 2018), available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Applicant_Hanbook_I_-_Combined.pdf, *Environmental Resource Permit Applicant's Handbook Volume II*, available at <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/erp-stormwater> (last visited Dec. 2, 2019).

The DEP and the WMDs are authorized to require permits and impose reasonable conditions:

- To ensure that construction or alteration of stormwater management systems and related structures are consistent with applicable law and not harmful to water resources;¹²¹ and
- For the maintenance or operation of such structures.¹²²

The DEP's stormwater rules are technology-based effluent limitations rather than water quality-based effluent limitations.¹²³ This means that stormwater rules rely on design criteria for BMPs to achieve a performance standard for pollution reduction, rather than specifying the amount of a specific pollutant that may be discharged to a waterbody and still ensure that the waterbody attains water quality standards.¹²⁴ The rules contain minimum stormwater treatment performance standards, which require design and performance criteria for new stormwater management systems to achieve at least 80 percent reduction of the average annual load of pollutants that would cause or contribute to violations of state water quality standards.¹²⁵ The standard is 95 percent reduction when applied to Outstanding Florida Waters. In 2007, an evaluation performed for the DEP generally concluded that Florida's stormwater design criteria failed to consistently meet either the 80 percent or 95 percent target goals in the DEP's rules.¹²⁶ The images shown here depict six major types of surface water management systems:¹²⁷

¹²¹ Section 373.413, F.S.; see s. 403.814(12), F.S.

¹²² Section 373.416, F.S.

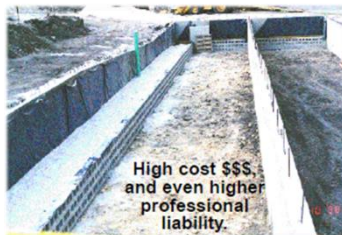
¹²³ DEP, *ERP Stormwater*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/erp-stormwater> (last visited Nov. 8, 2019).

¹²⁴ See generally, EPA, National Pollutant Discharge Elimination System (NPDES), www.epa.gov/npdes/npdes-permit-limits (last visited Dec. 2, 2019).

¹²⁵ Fla. Admin. Code R. 62-40.432(2).

¹²⁶ Environmental Research & Design, Inc., *Evaluation of Current Stormwater Design Criteria Within the State of Florida*, 6-1 (2007), available at <https://www.sfwmd.gov/sites/default/files/documents/sw%20treatment%20report-final71907.pdf>. The report makes an exception for the St. John's River Water Management District's standards for on-line dry retention.

¹²⁷ Presentation to the Blue-Green Algae Task Force by Benjamin Melnik, Deputy Director of the Division of Water Resource Management, *Stormwater*, 12 (September 24, 2019) (on file with Committee on Environment and Natural Resources).

**"Filtered" Ponds****Underground Vaults****"Dry" Retention Ponds****"Wet" Detention Ponds****Underground Exfiltration Trenches****Pervious Pavement**

The DEP and the WMDs must require applicants to provide reasonable assurance that state water quality standards will not be violated.¹²⁸ If a stormwater management system is designed in accordance with the stormwater treatment requirements and criteria adopted by the DEP or the WMDs, then the system design is presumed not to cause or contribute to violations of applicable state water quality standards.¹²⁹ If a stormwater management system is constructed, operated, and maintained for stormwater treatment in accordance with a valid permit or exemption, then the stormwater discharged from the system is presumed not to cause or contribute to violations of applicable state water quality standards.¹³⁰ If an applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the DEP or a WMD must consider mitigation measures that cause a net improvement of the water quality in the water body that does not meet the standards.¹³¹

¹²⁸ Section 373.414(1), F.S.; see s. 373.403(11), F.S.; see Fla. Admin. Code Ch. 62-4, 62-302, 62-520, and 62-550.

¹²⁹ Section 373.4131(3)(b), F.S. Fla. Admin. Code R. 62-40.432(2); see also DEP, *ERP Stormwater*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/erp-stormwater> (last visited Dec. 2, 2019) (stating that a key component of the stormwater rule is a “rebuttable presumption that discharges from a stormwater management system designed in accordance with the BMP design criteria will not cause harm to water resources”).

¹³⁰ Section 373.4131(3)(c), F.S.

¹³¹ Section 373.414(1)(b)3., F.S.

2010 Stormwater Rulemaking

From 2008 to 2010, the DEP and the WMDs worked together on developing a statewide unified stormwater rule to protect Florida's surface waters from the effects of excessive nutrients in stormwater runoff.¹³² A technical advisory committee was established. In 2010, the DEP announced a series of workshops to present for public comment the statewide stormwater quality draft rule Chapter 62-347 of the Florida Administrative Code and an Applicant's Handbook.¹³³ The notice stated the goal of the rule was to "increase the level of nutrient treatment in stormwater discharges and provide statewide consistency by establishing revised stormwater quality treatment performance standards and best management practices design criteria."¹³⁴

These rulemaking efforts produced a draft document called the "Environmental Resource Permit Stormwater Quality Applicant's Handbook: Design Requirements for Stormwater Treatment in Florida."¹³⁵ The 2010 draft handbook's stormwater quality permitting requirements:

- Provided for different stormwater treatment performance standards based on various classifications of water quality.¹³⁶
- Included instructions for calculating a project's required nutrient load reduction based on comparing the predevelopment and post-development loadings.¹³⁷
- Provided the required criteria for stormwater BMPs.
- Listed fifteen different types of stormwater treatment systems, including low impact design, pervious pavements, and stormwater harvesting.¹³⁸

The new rule and revised handbook were expected to be adopted in 2011.¹³⁹ However, no such rules or revised handbook were ever adopted. While the draft Stormwater Quality Applicant's Handbook never went into effect, it can provide context for understanding what new rules on these topics may look like.

The Blue-Green Algae Task Force recommended that the DEP revise and update stormwater design criteria and implement an effective inspection and monitoring program.¹⁴⁰

¹³² South Florida Water Management District, *Quick Facts on the Statewide Unified Stormwater Rule*, available at https://www.sfwmd.gov/sites/default/files/documents/spl_stormwater_rule.pdf.

¹³³ Florida Administrative Register, Notices of Meetings, Workshops, and Public Hearings, *Notice of Rescheduling*, pg. 1885 (Apr. 23, 2010), available at <https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2010/3616/3616doc.pdf>.

¹³⁴ *Id.*

¹³⁵ DEP and Water Management Districts, *March 2010 Draft, Environmental Resource Permit Stormwater Quality Applicant's Handbook, Design Requirements for Stormwater Treatment Systems in Florida* (2010), available at https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/content2/roadway/drainage/files/stormwaterqualityapphb-draft.pdf?sfvrsn=579bf184_0.

¹³⁶ *Id.* at 6-7.

¹³⁷ *Id.* at 8-11.

¹³⁸ *Id.* at 3.

¹³⁹ Nicole C. Kibert, *Status of Low Impact Development in Florida and Legal Considerations for Operation and Maintenance of LID Systems*, FLORIDA BAR JOURNAL Vol. 85, No. 1 (2011), <https://www.floridabar.org/the-florida-bar-journal/status-of-low-impact-development-in-florida-and-legal-considerations-for-operation-and-maintenance-of-lid-systems/> (last visited Nov. 14, 2019).

¹⁴⁰ DEP, *Blue-Green Algae Task Force Consensus Document #1* (Dec. 2, 2019), available at https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf.

Water Quality Monitoring

One of the DEP's goals is to determine the quality of the state's surface and ground water resources. This goal is primarily accomplished through several water quality monitoring strategies that are administered through the Water Quality Assessment Program. Responsibilities of the program include: monitoring and assessing how water quality is changing over time; the overall water quality and impairment status of the state's water resources; and the effectiveness of water resource management, protection, and restoration programs.¹⁴¹

Within the Water Quality Assessment Program, the DEP administers the Watershed Monitoring Program. This program is responsible for collecting reliable data through water samples from rivers, streams, lakes, canals, and wells around the state.¹⁴² This information is used by the DEP to determine which waters are impaired and what restoration efforts are needed.

The Blue-Green Algae Task Force recommended that science-based decision making and monitoring programs be enhanced, including the development of an expanded and more comprehensive statewide water quality monitoring strategy. Monitoring programs should focus on informing restoration project selection, implementation, and evaluation.¹⁴³

Indian River Lagoon

The Indian River Lagoon (IRL) system is an estuary¹⁴⁴ that runs along 156 miles of Florida's east coast and borders Volusia, Brevard, Indian River, St. Lucie, and Martin counties.¹⁴⁵ The IRL system is composed of three main waterbodies: Mosquito Lagoon, Banana River, and the Indian River Lagoon.¹⁴⁶ Four BMAPs have been adopted for the IRL region.¹⁴⁷

The IRL is one of the most biologically diverse estuaries in North America and is home to more than 2,000 species of plants, 600 species of fish, 300 species of birds, and 53 endangered or threatened species.¹⁴⁸ The estimated economic value received from the IRL in 2014 was

¹⁴¹ DEP, *Water Quality Assessment Program*, <https://floridadep.gov/dear/water-quality-assessment> (last visited Dec. 2, 2019).

¹⁴² DEP, *Watershed Monitoring*, <https://floridadep.gov/dear/watershed-monitoring-section> (last visited Dec. 2, 2019).

¹⁴³ DEP, *Blue-Green Algae Task Force Consensus Document #1* (Oct. 11, 2019), available at https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf.

¹⁴⁴ An estuary is a partially enclosed, coastal waterbody where 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 Dec. 2, 2019); NOAA, *What Is An Estuary?*, <https://oceanservice.noaa.gov/facts/estuary.html> (last visited Dec. 2, 2019).

¹⁴⁵ IRL National Estuary Program, *About the Indian River Lagoon*, <http://www.irlcouncil.com/> (last visited Dec. 2, 2019).

¹⁴⁶ *Id.*

¹⁴⁷ East Central Florida Regional Planning Council and the Treasure Coast Regional Planning Council, *Indian River Lagoon Economic Valuation Update*, x (Aug. 26, 2016), available at http://tcrpc.org/special_projects/IRL_Econ_Valu/FinalReportIRL08_26_2016.pdf; DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Dec. 2, 2019).

¹⁴⁸ IRL National Estuary Program, *About the Indian River Lagoon*, <http://www.irlcouncil.com/> (last visited Dec. 2, 2019).

approximately \$7.6 billion.¹⁴⁹ Industry groups that are directly influenced by the IRL support nearly 72,000 jobs.¹⁵⁰

The IRL ecosystem has been harmed by human activities in the region. Stormwater runoff from urban and agricultural areas, wastewater treatment facility discharges, canal discharges, septic systems, animal waste, and fertilizer applications have led to harmful levels of nutrients and sediments entering the lagoon.¹⁵¹ 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.¹⁵²

Type Two Transfer

Section 20.06(2), F.S., defines a type two transfer as the merging of an existing department, program, or activity into another department. Any program or activity transferred by a type two transfer retains all the statutory powers, duties, and functions it held previous to the transfer. The program or activity also retains its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, unless otherwise provided by law. The transfer of segregated funds must be made in such a manner that the relation between the program and the revenue source is retained.¹⁵³

Rural Areas of Opportunity

A rural area of opportunity (RAO) is a rural community or region of rural communities that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.¹⁵⁴ By executive order, the Governor may designate up to three RAOs, establishing each region as a priority assignment for Rural Economic Development Initiative (REDI) agencies. The Governor can waive the criteria, requirements, or any similar provisions of any state economic development incentive for projects in a RAO.¹⁵⁵

The currently designated RAOs are:¹⁵⁶

- Northwestern RAO: Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and part of Walton County.

¹⁴⁹ East Central Florida Regional Planning Council and the Treasure Coast Regional Planning Council, *Indian River Lagoon Economic Valuation Update*, vi (Aug. 26, 2016), available at http://tcrpc.org/special_projects/IRL_Econ_Valu/FinalReportIRL08_26_2016.pdf.

¹⁵⁰ *Id.* at ix. The main IRL-related industry groups are categorized as: Living Resources; Marine Industries; Recreation and Visitor-related; Resource Management; and Defense & Aerospace.

¹⁵¹ Tetra Tech, Inc. & Closewaters, LLC, *Draft Save Our Indian River Lagoon Project Plan 2019 Update for Brevard County, Florida*, xii (Mar. 2019), available at <https://www.dropbox.com/s/j9pxd59mt1baf7q/Revised%202019%20Save%20Our%20Indian%20River%20Lagoon%20Project%20Plan%20Update%20032519.pdf?dl=0>.

¹⁵² *Id.*

¹⁵³ Section 20.06(2), F.S.

¹⁵⁴ Section 288.0656(2)(d), F.S.

¹⁵⁵ Section 288.0656(7), F.S.

¹⁵⁶ Department of Economic Opportunity, *Rural Areas of Opportunity*, <http://www.floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity> (last visited Dec. 2, 2019).

- South Central RAO: DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the cities of Pahokee, Belle Glade, South Bay (Palm Beach County), and Immokalee (Collier County).
- North Central RAO: Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.

Statement of Estimated Regulatory Cost

If a proposed agency rule will have an adverse impact on small business or is likely to increase directly or indirectly regulatory costs in excess of \$200,000 aggregated within one year after implementation, an agency must prepare a statement of estimated regulatory costs (SERC).¹⁵⁷ The SERC must include an economic analysis projecting a proposed rule's adverse effect on specified aspects of the state's economy or an increase in regulatory costs. If the SERC shows that the adverse impact or regulatory costs of the proposed rule exceeds \$1 million in the aggregate within five years after implementation, then the proposed rule must be submitted to the Legislature for ratification and may not take effect until it is ratified by the Legislature.¹⁵⁸

Biosolids

Approximately two-thirds of Florida's population is served by around 2,000 domestic wastewater facilities permitted by the DEP.¹⁵⁹ When domestic wastewater is treated, solid, semisolid, or liquid residue known as biosolids¹⁶⁰ accumulates in the wastewater treatment plant and must be removed periodically to keep the plant operating properly.¹⁶¹ Biosolids also include products and treated material from biosolids treatment facilities and septage management facilities regulated by the DEP.¹⁶² The collected residue is high in organic content and contains moderate amounts of nutrients.¹⁶³

The DEP has stated that wastewater treatment facilities produce about 340,000 dry tons of biosolids each year.¹⁶⁴ Biosolids can be disposed of in several ways: transfer to another facility, placement in a landfill, distribution and marketing as fertilizer, incineration, bioenergy, and land

¹⁵⁷ Section 120.541, F.S.

¹⁵⁸ *Id.*

¹⁵⁹ DEP, *General Facts and Statistics about Wastewater in Florida*, <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Dec. 9, 2019).

¹⁶⁰ Section 373.4595, F.S. Biosolids are the solid, semisolid, or liquid residue generated during the treatment of domestic wastewater in a domestic wastewater treatment facility and include products and treated material from biosolids treatment facilities and septage management facilities. The term does not include the treated effluent or reclaimed water from a domestic wastewater treatment facility, solids removed from pump stations and lift stations, screenings and grit removed from the preliminary treatment components of domestic wastewater treatment facilities, or ash generated during the incineration of biosolids.

¹⁶¹ DEP, *Domestic Wastewater Biosolids*, <https://floridadep.gov/water/domestic-wastewater/content/domestic-wastewater-biosolids> (last visited Dec. 9, 2019).

¹⁶² Fla. Admin. Code R. 62-640.200(6).

¹⁶³ *Id.*

¹⁶⁴ DEP, *Presentation to Senate Committee on Environment and Natural Resources*, 40-62 (Nov. 13, 2019) available at http://www.flsenate.gov/Committees/Show/EN/MeetingPacket/4733/8393_MeetingPacket_4733.13.19.pdf; DEP Technical Advisory Committee, *Biosolids Use and Regulations in Florida Presentation*, 5 (Sept. 2018), available at <https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf> (last visited Dec. 9, 2019).

application to pasture or agricultural lands.¹⁶⁵ About one-third of the total amount of biosolids produced is used for land application¹⁶⁶ and is subject to regulatory requirements established by the DEP to protect public health and the environment.¹⁶⁷

Land application is the use of biosolids at a permitted site to provide nutrients or organic matter to the soil, such as agricultural land, golf courses, forests, parks, or reclamation sites. Biosolids are applied in accordance with restrictions based on crop nutrient needs, phosphorus limits in the area, and soil fertility.¹⁶⁸ Biosolids contain macronutrients (such as nitrogen and phosphorus) and micronutrients (such as copper, iron, and manganese) that are utilized by crops. The application of these nutrient-rich biosolids increases the organic content of the soil, fostering more productive plant growth.¹⁶⁹ To prevent odor or the contamination of soil, crops, livestock, and humans, land application sites must meet site management requirements such as site slopes, setbacks, and proximity to groundwater restrictions.¹⁷⁰ There are approximately 140 permitted land application sites in Florida, with waste haulers being the most common site permittees.¹⁷¹

¹⁶⁵ *Id.* at 4.

¹⁶⁶ *Id.* at 5.

¹⁶⁷ Fla. Admin. Code R. 62-640.

¹⁶⁸ DEP Technical Advisory Committee, *Biosolids Use and Regulations in Florida*, 8 (Sept. 2018), available at <https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf> (last visited Dec. 9, 2019); see also, United States EPA, A Plain English Guide to the EPA Part 503 Biosolids Rule, 26 (Sept. 1994), available at <https://www.epa.gov/sites/production/files/2018-12/documents/plain-english-guide-part503-biosolids-rule.pdf> (last visited Dec. 9, 2019).

¹⁶⁹ *Id.* at 20.

¹⁷⁰ *Id.* at 9.

¹⁷¹ DEP, *Presentation to Senate Committee on Environment and Natural Resources*, 40-62 (Nov. 13, 2019) available at http://www.flsenate.gov/Committees/Show/EN/MeetingPacket/4733/8393_MeetingPacket_4733.13.19.pdf; DEP Technical Advisory Committee, *Biosolids Use and Regulations in Florida Presentation*, 20 (Sept. 2018), available at <https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf> (last visited Dec. 9, 2019). Wastewater treatment facilities commonly contract with waste haulers instead of applying the biosolids themselves.



Regulation of Biosolids by the DEP

The DEP regulates three classes of biosolids for beneficial use.

- Class B - minimum level of treatment;
- Class A - intermediate level of treatment; and
- Class AA - highest level of treatment.¹⁷²

The DEP categorizes the classes based on treatment and quality. Treatment of biosolids must:

- Reduce or completely eliminate pathogens;
- Reduce the attractiveness of the biosolids for pests (such as insects and rodents); and
- Reduce the amount of toxic metals in the biosolids.¹⁷³

Class AA biosolids can be distributed and marketed as fertilizer. Because they are the highest quality, they are not subject to the same regulations as Class A and Class B biosolids and are exempt from nutrient restrictions.¹⁷⁴ Typically, Class B biosolids are used in land application.¹⁷⁵

¹⁷² *Id.* at 6.

¹⁷³ *Id.* at 7.

¹⁷⁴ *Id.* at 8.

¹⁷⁵ *Id.* at 6.

Biosolids are regulated under Rule 62-640 of the Florida Administrative Code. The rules provide minimum requirements, including monitoring and reporting requirements, for the treatment, management, use, and disposal of biosolids. The rules are applicable to wastewater treatment facilities, applicators, and distributors¹⁷⁶ and include permit requirements for both treatment facilities and biosolids application sites.¹⁷⁷

Each permit application for a biosolids application site must include a site-specific nutrient management plan (NMP) that establishes the specific rates of application and procedures to apply biosolids to land.¹⁷⁸ Biosolids may only be applied to land application sites that are permitted by the DEP and have a valid NMP.¹⁷⁹ Biosolids must be applied at rates established in accordance with the nutrient management plan and may be applied to a land application site only if all concentrations of minerals do not exceed ceiling and cumulative concentrations determined by rule.¹⁸⁰ According to the St. Johns Water Management District, application rates of biosolids are determined by crop nitrogen demand, which can often result in the overapplication of phosphorus to the soil and can increase the risk of nutrient runoff into nearby surface waters.¹⁸¹

Once a facility or site is permitted, it is subject to monitoring, record-keeping, reporting, and notification requirements.¹⁸² The requirements are site-specific and can be increased or reduced by the DEP based on the quality or quantity of wastewater or biosolids treated; historical variations in biosolids characteristics; industrial wastewater or sludge contributions to the facility; the use, land application, or disposal of the biosolids; the water quality of surface and ground water and the hydrogeology of the area; wastewater or biosolids treatment processes; and the compliance history of the facility or application site.¹⁸³

State Bans on the Land Application of Biosolids

Section 373.4595, F.S., sets out the statutory guidelines for the Northern Everglades and Estuaries Protection Program. This statute is designed to protect and promote the hydrology of Lake Okeechobee, and the Caloosahatchee and St. Lucie Rivers and their estuaries. As part of those protections, the Legislature banned the disposal of domestic wastewater biosolids within the Lake Okeechobee, Caloosahatchee River, and St. Lucie River watersheds unless the applicant can affirmatively demonstrate that the nutrients in the biosolids will not add to nutrient loadings in the watershed.¹⁸⁴ The prohibition against land application in these watersheds does not apply to Class AA biosolids that are distributed as fertilizer products in accordance with Rule 62-640.850 of the Florida Administrative Code.¹⁸⁵

¹⁷⁶ Fla. Admin. Code R. 62-640.100.

¹⁷⁷ Fla. Admin. Code R. 62-640.300.

¹⁷⁸ Fla. Admin. Code R. 62-640.500.

¹⁷⁹ *Id.*

¹⁸⁰ Fla. Admin. Code R. 62-640.700.

¹⁸¹ Victoria R. Hoge, Environmental Scientist IV, St. Johns River Water Management District, *Developing a Biosolids Database for Watershed Modeling Efforts*, abstract available at http://archives.waterinstitute.ufl.edu/symposium2018/abstract_detail.asp?AssignmentID=1719 (last visited Mar. 8, 2019).

¹⁸² Fla. Admin. Code R. 62-640.650.

¹⁸³ *Id.*

¹⁸⁴ Chapter 2016-1, Laws of Florida; see s. 373.4595, F.S.

¹⁸⁵ *Id.*

The land application of Class A and Class B biosolids is also prohibited within priority focus areas in effect for Outstanding Florida Springs if the land application is not in accordance with a NMP that has been approved by the DEP.¹⁸⁶ The NMP must establish the rate at which all biosolids, soil amendments, and nutrient sources at the land application site can be applied to the land for crop production while minimizing the amount of pollutants and nutrients discharged into groundwater and waters of the states.¹⁸⁷

Local Regulation of Biosolids

The Indian River County Code addresses land application of biosolids by providing criteria for designated setbacks, reporting requirements, and required approval. In July 2018, the Indian River County Commission voted for a six-month moratorium on the land application of Class B biosolids on all properties within the unincorporated areas of the county.¹⁸⁸ The ordinance also directs the County Administrator to coordinate with the DEP on a study to report the findings and recommendations concerning Class B biosolids land application activities and potential adverse effects.¹⁸⁹ The County Commission voted in January 2019 to extend the moratorium for an additional six months.¹⁹⁰

The City Council of Fellsmere adopted a similar moratorium, Ordinance 2018-06, in August 2018, authorizing a temporary moratorium for 180 days or until a comprehensive review of the impact on the city's ecosystem is completed.¹⁹¹ In January 2019, the ordinance was extended for an additional 180 days.¹⁹²

The Treasure Coast Regional Planning Council held a Regional Biosolids Symposium in June 2018, where regional representatives and stakeholders discussed biosolids and alternative techniques for disposal.¹⁹³ At its meeting in July, the Treasure Coast Regional Planning Council adopted a resolution encouraging state and local governments to prioritize the reduction and eventual elimination of the land application of human wastewater biosolids.¹⁹⁴ It also encouraged the state to establish a Pilot Projects Program to incentivize local utilities to implement new wastewater treatment technologies that would allow more efficient use of biosolids.¹⁹⁵

¹⁸⁶ Section 373.811(4), F.S.

¹⁸⁷ *Id.*

¹⁸⁸ Indian River County Commission Ordinance 18-2020 (Jul. 17, 2018), available at http://ircgov.granicus.com/player/clip/183?view_id=1&meta_id=64650 (last visited Dec. 9, 2019).

¹⁸⁹ *Id.*

¹⁹⁰ Indian River County Commission Ordinance 18-2642 (Jan. 14, 2019), available at http://ircgov.granicus.com/player/clip/204?view_id=1&meta_id=77302 (last visited Dec. 9, 2019).

¹⁹¹ Fellsmere City Council Meeting, *Agenda* (Aug. 16, 2018), available at https://www.cityoffellsmere.org/sites/default/files/fileattachments/city_council/meeting/8301/co20180816agenda.pdf.

¹⁹² Fellsmere City Council Meeting, *Agenda* (Feb. 7, 2019), available at https://www.cityoffellsmere.org/sites/default/files/fileattachments/city_council/meeting/14391/co20190221agenda.pdf.

¹⁹³ Treasure Coast Regional Planning Council Regional Biosolids Symposium, *Charting the Future of Biosolids Management Executive Summary* (Jun. 18, 2018), available at <http://www.tcrpc.org/announcements/Biosolids/summit%20summary.pdf>.

¹⁹⁴ Treasure Coast Regional Planning Council Resolution 18-03 (Jul. 20, 2018), available at <http://www.flregionalcouncils.org/wp-content/uploads/2019/01/Treasure-Coast-Resolution-No.-18-03.pdf>.

¹⁹⁵ *Id.*

Rule Development

In 2018, the DEP created a Biosolids Technical Advisory Committee (TAC) to establish an understanding of potential nutrient impacts of the land application of biosolids, evaluate current management practices, and explore opportunities to better protect Florida's water resources. The TAC members represent various stakeholders, including environmental and agricultural industry experts, large and small utilities, waste haulers, consultants, and academics.¹⁹⁶

The TAC convened on four occasions from September 2018 to January 2019 and discussed the current options for biosolids management in the state, ways to manage biosolids to improve the protection of water resources, and research needs to build upon and improve biosolids management.¹⁹⁷

Based on recommendations of the TAC and public input, the DEP published a draft rule on October 29, 2019.¹⁹⁸ Key proposals in the draft rule include:

- A prohibition on the land application of biosolids where the seasonal high water table is within 15 cm of the soil surface or 15 cm of the intended depth of biosolids placement. The existing rule requires a soil depth of two feet between the depth of biosolids placement and the water table level at the time the Class A or Class B biosolids are applied to the soil.
- A requirement that land application must be done in accordance with applicable BMAPs.
- Definitions for “capacity index,” “percent water extractable phosphorus,” and “seasonal high water table.”
- More stringent requirements must be provided in the Nutrient Management Plan.
- All biosolids sites must enroll in a DACS BMP Program.
- All biosolids applications are considered projects of heightened public concern/interest,¹⁹⁹ meaning that a permit applicant must publish notice of their application one time only within fourteen days after a complete application is filed.²⁰⁰
- Increased monitoring for surface and groundwater.
- The requirement measures to be taken to prevent leaching of nutrients for the storage of biosolids.
- Existing facilities must be in compliance with the new rule within three years of the adoption date.

This biosolids rule required a SERC that exceeds the threshold to trigger the requirement for legislative ratification.²⁰¹ The SERC makes the following statements:

¹⁹⁶ The seven members of TAC included two academic representatives from the University of Florida, two representatives of small and large utilities, and one representative each for environmental interests, agricultural interests, and waste haulers.

¹⁹⁷ DEP, *DEP Biosolids Technical Advisory Committee*, <https://floridadep.gov/water/domestic-wastewater/content/dep-biosolids-technical-advisory-committee> (last visited Mar. 6, 2019).

¹⁹⁸ Florida Department of State, Notice of Proposed Rule: Rule No.: 62-640.100, 62-640.200, 62-640.210, 62-640.300, 62-640.500, 62-640.600, 62-640.650, 62-640.700, 62-640.800, 62-640.850, 62-640.880 (Oct. 29, 2019), https://www.flrules.org/gateway/View_Notice.asp?id=22546212 (last visited Dec. 5, 2019).

¹⁹⁹ Note: the draft rule uses the phrase “public interest” but the rule crossreferenced in the draft rule uses the phrase “public concern.”

²⁰⁰ Fla. Admin. Code R. 62-110.106(6).

²⁰¹ DEP, *Statement of Estimated Regulatory Costs (SERC)*, available at https://content.govdelivery.com/attachments/FLDEP/2019/10/29/file_attachments/1313532/62-640%20SERC.pdf.

The revised rule may significantly reduce biosolids land application rates (the amount applied per acre on an annual basis) by an estimated 75 percent. In 2018, just under 90,000 dry tons of Class B biosolids were applied to biosolids land application sites with about 84,000 acres of the currently permitted 100,000 acres in Florida. Reduced land application rates would necessitate the permitting about four to ten times more land to accommodate the current quantity of land applied Class B biosolids.

As haulers have already permitted land application sites closer to the domestic wastewater facilities that generate biosolids, any additional sites are expected to be at greater distances from these facilities. This could result in longer hauling distances. Additionally, some existing sites may cease land application completely, either because the site may not be suitable for land application or because the landowner may not want to subject their property to ground water or surface water quality monitoring. The additional site monitoring requirements for ground water and surface water will also increase operational costs, so some biosolids site permittees, especially for smaller sites, may choose to cease operations. Under the proposed rule, some portion of currently land-applied Class B biosolids are expected to then be disposed of in landfills or be converted to Class AA biosolids. The reduction in land application rates, loss of land application sites, and shift away from land application could result in:

- Loss of biosolids hauling contracts.
- Loss of jobs with biosolids hauling companies.
- Loss of grass production and income for landowners.
- Increased operational expenses for biosolids haulers, and;
- Loss of cost savings and production for cattle ranchers and hay farmers.

Under the revised rule, biosolids land application rates will drop by an average of 75 percent. Some farmers indicate an economic value of about \$60 per acre in fertilizer savings through biosolids land application. In 2018, approximately 84,000 acres were utilized for the land application of biosolids, which would represent a current fertilizer cost savings of approximately \$5,040,000. This would be a loss of \$3,780,000 in cost savings annually if 75 percent less biosolids can be applied per acre.²⁰²

The SERC includes the following statewide estimates:

- Capital costs for new permitting and land application sites of \$10 million;
- Recurring costs for additional sites and transportation of wet biosolids of at least \$31 million; and
- Additional monitoring costs of \$1 million.²⁰³

²⁰² *Id.*

²⁰³ *Id.*

The DEP expects more biosolids to be converted to class AA biosolids/fertilizer. They estimate the capital cost for additional class AA biosolids projects will be between \$300-\$400 million.²⁰⁴ The DEP is currently reviewing lower cost regulatory alternatives that have been submitted.²⁰⁵ The next step will be a hearing before the Environmental Regulation Commission and adoption of the rule. Following rule adoption, legislative ratification is required.²⁰⁶

Damages and Monetary Penalties

The DEP may institute a civil action (in court) or an administrative proceeding (in the Division of Administrative Hearings) to recover damages for any injury to the air, waters, or property, including animal, plant, and aquatic life, of the state caused by any violation.²⁰⁷ Civil actions and administrative proceedings have different procedures.²⁰⁸ Administrative proceedings are often viewed as less formal, less lengthy, and less costly.

With respect to damages, the violator is liable for:

- Damage caused to the air, waters, or property, including animal, plant, or aquatic life, of the state; and
- Reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including animal, plant, and aquatic life, of the state to their former condition.²⁰⁹

In addition to damages, a violator can be liable for penalties. For civil penalties, the DEP can levy up to \$10,000 per offense. Each day of the violation is a separate offense. The DEP is directed to proceed administratively in all cases in which the DEP seeks penalties that do not exceed \$10,000 per assessment. The DEP is prohibited from imposing penalties in excess of \$10,000 in a notice of violation. The DEP cannot have more than one notice of violation pending against a party unless it occurred at a different site or the violations were discovered by the department subsequent to the filing of a previous notice of violation.²¹⁰

Section 403.121(3), F.S., sets out a penalty schedule for various violations. In particular, it includes the following penalties related to wastewater:

- \$1,000 for failure to obtain a required wastewater permit.
- \$2,000 for a domestic or industrial wastewater violation not involving a surface water or groundwater quality violation resulting in an unpermitted or unauthorized discharge or effluent-limitation exceedance.
- \$5,000 for an unpermitted or unauthorized discharge or effluent-limitation exceedance that resulted in a surface water or groundwater quality violation.²¹¹

²⁰⁴ *Id.*

²⁰⁵ Email from Justin Wolfe, General Counsel, DEP, RE: Biosolids Rule (Dec. 2. 2019)(on file with the Environment and Natural Resources Committee).

²⁰⁶ Section 120.541(3), F.S.

²⁰⁷ Section 403.121, F.S.

²⁰⁸ Sections 403.121 and 403.141, F.S.

²⁰⁹ Section 403.121, F.S.

²¹⁰ *Id.*

²¹¹ Section 403.121(3)(b), F.S.

A court or an administrative law judge may receive evidence in mitigation.²¹² The DEP may also seek injunctive relief either judicially or administratively.²¹³ Additionally, criminal penalties are available for various types of violations of chapter 403, F.S.²¹⁴

III. Effect of Proposed Changes:

The bill provides a series of whereas clauses related to water quality issues the state is seeking to resolve.

Section 1 titles the bill the “Clean Waterways Act.”

Section 2 takes the following steps toward shifting regulation of onsite sewage treatment and disposal systems (OSTDSs) from the Department of Health (DOH) to the Department of Environmental Protection (DEP):

- By July 1, 2020, the DOH must provide a report to the Governor and the Legislature detailing the following information regarding OSTDSs:
 - The average number of permits issued each year;
 - The number of department employees conducting work on or related to the program each year; and
 - The program’s costs and expenditures, including, but not limited to, salaries and benefits, equipment costs, and contracting costs.
- By December 31, 2020, the DOH and the DEP must submit recommendations to the Governor and the Legislature regarding the transfer of the Onsite Sewage Program from the DOH to the DEP. The recommendations must address all aspects of the transfer, including the continued role of the county health departments in the permitting, inspection, data management, and tracking of onsite sewage treatment and disposal systems under the direction of the DEP.
- By June 30, 2021, the DOH and the DEP must enter into an interagency agreement that must address all agency cooperation for a period not less than five years after the transfer, including:
 - The continued role of the county health departments in the permitting, inspection, data management, and tracking of OSTDSs under the direction of the DEP.
 - The appropriate proportionate number of administrative positions, and their related funding levels and sources and assigned property, to be transferred from the DOH to the DEP.
 - The development of a recommended plan to address the transfer or shared use of facilities used or owned by the DOH.
 - Any operating budget adjustments that are necessary to implement the requirements of the bill. The bill details how operating budget adjustments will be made. The appropriate substantive committees of the Senate and the House of Representatives will be notified of the proposed revisions to ensure their consistency with legislative policy and intent.

Section 403.121(3)(b),
F.S.

²¹⁴ Section 403.161, F.S.

- Effective July 1, 2021, the regulation of OSTDSs relating to the Onsite Sewage Program in the DOH is transferred by a type two transfer to the DEP. Transferred employees will retain their leave.

Section 3 amends s. 373.4131, F.S., relating to statewide environmental resource permitting (ERPs). The bill requires the DEP to train its staff on coordinating field inspections of stormwater structural controls, such as stormwater retention or detention ponds.

By January 1, 2021:

- The DEP and the water management districts (WMDs) must initiate rulemaking to update the stormwater design and operation regulations using the most recent scientific information available; and
- The DEP must evaluate inspection data relating to compliance by those entities that self-certify stormwater ERPs and must provide the Legislature with recommendations for improvements to the self-certification program.

*Note: More stringent stormwater rules would likely exceed the regulatory cost threshold of \$1 million in the aggregate within five years after implementation; therefore, the proposed rule may have to be submitted to the Legislature for ratification and may not take effect until it is ratified by the Legislature.*²¹⁵

Section 4 amends s. 381.0065, F.S., relating to OSDTS regulation, effective July 1, 2021, to coincide with the DEP's role as the regulating entity for OSTDSs.

The bill requires the DEP to adopt rules to locate OSTDSs, including establishing setback distances, to prevent groundwater contamination and surface water contamination and to preserve the public health. The rulemaking process must be completed by July 1, 2022. The rules must consider conventional and advanced OSTDS designs, impaired or degraded water bodies, wastewater and drinking water infrastructure, potable water sources, nonpotable wells, stormwater infrastructure, the OSTDS remediation plans developed as part of the basin management action plans (BMAPs), nutrient pollution, and the recommendations of the OSTDS technical advisory committee created by the bill.

Upon adoption of these rules, the rules will supersede existing statutory revisions relating to setbacks. The DEP must report the date of adoption of the rules to the Division of Law Revision for incorporation into the statutes.

The bill deletes language that is inconsistent with these provisions.

*Note: New OSTDS rules would likely exceed the regulatory cost threshold of \$1 million in the aggregate within five years after implementation; therefore, the proposed rule may have to be submitted to the Legislature for ratification and may not take effect until it is ratified by the Legislature.*²¹⁶

²¹⁵ *Id.*

²¹⁶ *Id.*

Section 5 creates s. 381.00652, F.S., to create an OSTDS technical advisory committee (TAC) within the DEP.

The responsibilities of the TAC are to:

- Provide recommendations to increase the availability in the marketplace of nutrient-removing OSTDSs, including systems that are cost-effective, low-maintenance, and reliable.
- Consider and recommend regulatory options, such as fast-track approval, prequalification, or expedited permitting, to facilitate the introduction and use of nutrient-removing OSTDSs that have been reviewed and approved by a national agency or organization, such as the American National Standards Institute 245 systems approved by the NSF International.
- Provide recommendations for appropriate setback distances for OSTDSs from surface water, groundwater, and wells.

The DEP must use existing and available resources to administer and support the activities of the TAC.

By August 1, 2021, the DEP, in consultation with the DOH, will appoint nine members to the TAC:

- A professional engineer.
- A septic tank contractor.
- A representative from the home building industry.
- A representative from the real estate industry.
- A representative from the OSTDS industry.
- A representative from local government.
- Two representatives from the environmental community.
- A representative of the scientific and technical community who has substantial expertise in the areas of the fate and transport of water pollutants, toxicology, epidemiology, geology, biology, or environmental sciences.

Members will serve without compensation and are not entitled to reimbursement for per diem or travel expenses.

By January 1, 2022, the TAC will submit its recommendations to the Governor and the Legislature.

The TAC is repealed on August 15, 2022.

Section 6 repeals the DOH's technical review and advisory panel, effective July 1, 2021.

Section 7 amends s. 403.061, F.S., which sets out the DEP's powers and duties. The bill requires the DEP rules to reasonably limit, reduce, and eliminate domestic wastewater collection and transmission system pipe leakages and inflow and infiltration.

The bill authorizes the DEP to require public utilities or their affiliated companies holding, applying for, or renewing a domestic wastewater discharge permit to file annual reports and other data regarding transactions or allocations of common costs among the utility's permitted

systems. The DEP may require such reports or other data necessary to ensure a permitted entity is reporting expenditures on pollution mitigation and prevention, including, but not limited to, the prevention of sanitary sewer overflows, collection and transmission system pipe leakages, and inflow and infiltration. The DEP is required to adopt rules to implement this subsection.

*Note: Such rules would likely exceed the regulatory cost threshold of \$1 million in the aggregate within five years after implementation; therefore, the proposed rule may have to be submitted to the Legislature for ratification and may not take effect until it is ratified by the Legislature.*²¹⁷

Section 8 creates s. 403.0616, F.S., to establish a real-time water quality monitoring program within the DEP, subject to appropriation. The program's purpose is to assist in the restoration, preservation, and enhancement of impaired waterbodies and coastal resources. The DEP is encouraged to form public-private partnerships with established scientific entities with existing, proven real-time water quality monitoring equipment and experience in deploying such equipment.

Section 9 amends s. 403.067(7), F.S., relating to basin management action plans (BMAPs), to set out parameters for an OSTDS remediation plan and a wastewater treatment plan. It prohibits the DEP from requiring a higher cost option for a wastewater project within a BMAP if it achieves the same nutrient load reduction as a lower-cost option. It also makes revisions relating to agricultural best management practices (BMPs).

If the DEP identifies domestic wastewater facilities or OSTDSs as contributors of at least 20 percent of point source or nonpoint source nutrient pollution or if the DEP determines that remediation is necessary to achieve the total maximum daily load (TMDL), the BMAP for a nutrient TMDL must create a wastewater treatment plan and/or an OSTDS remediation plan.

A wastewater treatment plan must address domestic wastewater and be developed by each local government in cooperation with the DEP, the WMD, and the public and private domestic wastewater facilities within the jurisdiction of the local government. The wastewater treatment plan must:

- Provide for construction, expansion, or upgrades necessary to achieve the TMDL requirements applicable to the domestic wastewater facility.
- Include: the permitted capacity in average annual gallons per day for the domestic wastewater facility; the average nutrient concentration and the estimated average nutrient load of the domestic wastewater; a timeline of the dates by which the construction of any facility improvements will begin and be completed and the date by which operations of the improved facility will begin; the estimated cost of the improvements; and the identity of responsible parties.

The wastewater treatment plan must be adopted as part of the BMAP no later than July 1, 2025. A local government that does not have a domestic wastewater treatment facility in its jurisdiction is not required to develop a wastewater treatment plan unless there is a demonstrated need to establish a domestic wastewater treatment facility within its jurisdiction to improve water quality

²¹⁷ *Id.*

necessary to achieve a TMDL. The bill clarifies that a local government is not responsible for a private domestic wastewater facility's compliance with a BMAP.

An OSTDS remediation plan must be developed by each local government in cooperation with the DEP, the Department of Health, the WMDs, and public and private domestic wastewater facilities. The OSTDS remediation plan must identify cost-effective and financially feasible projects necessary to achieve the nutrient load reductions required for OSTDSs. To identify cost-effective and financially feasible projects for remediation of OSTDSs, the local government shall:

- Include an inventory of OSTDSs based on the best information available;
- Identify OSTDSs that would be eliminated through connection to existing or future central wastewater infrastructure, that would be replaced with or upgraded to enhanced nutrient-reducing systems, or that would remain on conventional OSTDSs;
- Estimate the costs of potential OSTDS connections, upgrades, or replacements; and
- Identify deadlines and interim milestones for the planning, design, and construction of projects.

The DEP must adopt the OSTDS remediation plan as part of the BMAP no later than July 1, 2025, or as required by existing law for Outstanding Florida Springs.

At least every two years, the Department of Agriculture and Consumer Services (DACS) must perform on-site inspections of each agricultural producer that enrolls in a BMP to ensure that such practice is being properly implemented. Verification must include a review of the BMP documentation required by the rule adopted by the DACS, including, but not limited to, nitrogen and phosphorus fertilizer application records. This information shall be provided to the DEP.

The bill authorizes the DACS, the University of Florida Institute of Food and Agricultural Sciences, and other state universities and Florida College System institutions with agricultural research programs to annually develop research plans and legislative budget requests to:

- Evaluate and suggest enhancements to the existing adopted BMPs to reduce nutrients;
- Develop new BMPs that, if proven effective, the DACS may adopt by rule; and
- Develop agricultural nutrient reduction projects that willing participants could implement on a site-specific, cooperative basis, in addition to BMPs. The DEP may consider these projects for inclusion in a BMAP. These nutrient reduction projects must reduce the nutrient impacts from agricultural operations on water quality when evaluated with the projects and management strategies currently included in the BMAP.

To be considered for funding, the University of Florida Institute of Food and Agricultural Sciences and other state universities and Florida College System institutions that have agricultural research programs must submit such plans to the DEP and the DACS, by August 1 of each year.

Section 10 creates s. 403.0673, F.S., a wastewater grant program within the DEP. Subject to appropriation, the DEP may provide grants for projects that will reduce excess nutrient pollution for:

- Projects to retrofit OSTDSs to upgrade them to nutrient-reducing OSTDSs.
- Projects to construct, upgrade, or expand facilities to provide advanced waste treatment.
- Projects to connect OSTDSs to central sewer facilities.

In allocating such funds, first priority must be given to projects that subsidize the connection of OSTDSs to a wastewater treatment plant. Second priority must be given to 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 along a transportation right-of-way. Third priority must be given to all other connections of onsite sewage treatment and disposal systems to wastewater treatment plants.

In determining priorities, the DEP must consider:

- The estimated reduction in nutrient load per project;
- Project readiness;
- Cost-effectiveness of the project;
- The overall environmental benefit of a project;
- The location of a project within the plan area;
- The availability of local matching funds; and
- Projected water savings or quantity improvements associated with a project.

Each grant must require a minimum of a 50 percent local match of funds. However, the DEP may waive, in whole or in part, this consideration of the local contribution for proposed projects within an area designated as a rural area of opportunity. The DEP and the WMDs will coordinate to identify grant recipients in each district.

Beginning January 1, 2021, and each January 1 thereafter, the DEP must submit a report regarding the projects funded by the grant program to the Governor and the Legislature.

Section 11 creates s. 403.0855, F.S., on biosolids management. The bill provides legislative findings, requires the DEP to adopt rules for biosolids management, and exempts such rules from legislative ratification if they are adopted prior to the 2021 legislative session.

The bill specifies that a municipality or county may enforce or extend an ordinance, regulation, resolution, rule, moratorium, or policy that was adopted prior to November 1, 2019, relating to the land application of Class B biosolids until repealed by the municipality or county.

Section 12 amends s. 403.086, F.S., relating to sewage disposal facilities.

The bill prohibits facilities for sanitary sewage disposal from disposing of waste into Indian River Lagoon or its tributaries without providing for advanced waste treatment, beginning July 1, 2025.

The bill requires facilities for sanitary sewage disposal to have a power outage contingency plan that mitigates the impacts of power outages on the utility's collection system and pump stations.

All facilities for sanitary sewage that control a collection or transmission system of pipes and pumps to collect and transmit wastewater from domestic or industrial sources to the facility must

take steps to prevent sanitary sewer overflows or underground pipe leaks and ensure that collected waste water reaches the facility for appropriate treatment. Facilities must use inflow and infiltration studies and leakage surveys to develop pipe assessment, repair, and replacement action plans that comply with the DEP rule to limit, reduce, and eliminate leaks, seepages, or inputs into wastewater treatment systems' underground pipes. These facility action plans must be reported to the DEP. The facility report must include information regarding the annual expenditures dedicated to the inflow and infiltration studies and replacement action plans required herein, as well as expenditures dedicated to pipe assessment, repair, and replacement.

The DEP must adopt rules regarding the implementation of inflow and infiltration studies and leakage surveys. These rules may not fix or revise utility rates or budgets. The bill clarifies that a utility, that must submit annual reports under other similar provisions created by the bill, may submit one report to comply with both provisions. Substantial compliance with the action plan described above is evidence in mitigation for the purposes of assessing certain penalties.

*Note: Such rules would likely exceed the regulatory cost threshold of \$1 million in the aggregate within five years after implementation; therefore, the proposed rule may have to be submitted to the Legislature for ratification and may not take effect until it is ratified by the Legislature.*²¹⁸

Section 13 amends s. 403.087, F.S., to require the DEP to issue operating permits for up to 10 years (rather than up to five) for facilities regulated under the National Pollutant Discharge Elimination System Program if the facility is meeting the stated goals in the action plan relating to the prevention of sanitary sewer overflows or underground pipe leaks.

Section 14 amends s. 403.088, F.S., relating to water pollution operation permits. The bill requires the permit to include a deliberate, proactive approach to investigating or surveying a significant percentage of the domestic wastewater collection system throughout the duration of the permit to determine pipe integrity, which must be accomplished in an economically feasible manner.

The permittee must submit an annual report to the DEP, which details facility revenues and expenditures in a manner prescribed by the DEP rule. The report must detail any deviation from annual expenditures related to inflow and infiltration studies; model plans for pipe assessment, repair, and replacement; and pipe assessment, repair, and replacement.

Substantial compliance with the requirements above is evidence in mitigation for the purposes of assessing penalties.

No later than March 1 of each year, the DEP must submit a report to the Governor and the Legislature which identifies all wastewater utilities that experienced a sanitary sewer overflow in the preceding calendar year. The report must identify the utility name; operator; permitted capacity in annual average gallons per day; number of overflows; total volume of sewage released; and, to the extent known and available, the volume of sewage recovered, the volume of

²¹⁸ *Id.*

sewage discharged to surface waters, and the cause of the sanitary sewer overflow, including whether it was caused by a third party.

*Note: Rules required to implement this section would likely exceed the regulatory cost threshold of \$1 million in the aggregate within five years after implementation; therefore, the proposed rule may have to be submitted to the Legislature for ratification and may not take effect until it is ratified by the Legislature.*²¹⁹

Section 15 amends s. 403.0891, F.S., to require the DEP and the Department of Economic Opportunity to develop model ordinances that target nutrient reduction practices and use green infrastructure.

Section 16 amends s. 403.121, F.S., to increase the cap on the DEP's administrative penalties from \$10,000 to \$50,000. It also doubles all wastewater administrative penalties.

The bill provides that "failure to comply with wastewater permitting requirements or rules adopted thereunder will result in a \$4,000 penalty.

Section 17 amends s. 403.1835, F.S., relating to water pollution control financial assistance. This is the section of law that sets out how the DEP administers the Clean Water State Revolving Loan Fund. The bill adds categories to the list of projects that should receive priority for funding. This includes:

- Projects that implement the requirements of the bill relating to wastewater infrastructure maintenance planning and reporting requirements created by the bill.
- Projects that promote efficiency by planning for the installation of wastewater transmission facilities to be constructed concurrently with other construction projects occurring within or along a transportation facility right-of-way.

Section 18 amends s. 403.1838, F.S., to require that rules related to prioritization of funds for the Small Community Sewer Construction Assistance Grant Program include the:

- Prioritization of projects that prevent pollution, and
- Projects that plan for the installation of wastewater transmission facilities to be constructed concurrently with other construction projects occurring within or along a transportation facility right-of-way.

Section 19 provides a statement that this act fulfills an important state interest.

Sections 20-45 make conforming changes.

Section 46 directs the Division of Law Revision to replace certain language in the bill with the date the DEP adopts certain rules on OSTDSs as required by the bill.

Section 47 states that except as otherwise expressly provided in the bill, the act will take effect July 1, 2021.

²¹⁹ *Id.*

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

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply to this bill because it requires local governments to develop OSTDS remediation plans and wastewater treatment plans. If the bill does qualify as a mandate, the law must fulfill an important state interest and final passage must be approved by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

The following discussion identifies aspects of the bill that may cause a negative fiscal impact because they implement more stringent environmental requirements. However, it is worth noting that there are costs associated with failing to address pollution issues. Cleanup costs, human health impacts, ecosystem deterioration, loss of tourism, and decreased real estate values are some key examples of possible costs associated with pollution.

Updating stormwater rules and adopting new onsite sewage treatment disposal systems (OSTDS) and wastewater rules would likely cause a negative fiscal impact to the private sector. However, if that impact exceeds \$1 million over five years, the rules will require legislative ratification, which means they will not go into effect without additional legislation.

The additional requirements of OSTDS remediation plans and wastewater treatment plans may cause a negative fiscal impact to the private sector entities within basin management

action plans (BMAPs) that must address OSTDS or wastewater pollution to meet the total maximum daily load.

Private wastewater utilities that discharge into Indian River Lagoon may have costs associated to conversion to advanced waste treatment.

Utilities that fail to survey an adequate portion of the wastewater collection system and take steps to reduce sanitary sewer overflows, pipe leaks, and inflow and infiltration will be subject to a \$4,000 fine for each violation. All wastewater administrative penalties are doubled under this bill. The cap on the Department of Environmental Protection's administrative penalties is increased to \$50,000 from \$10,000.

C. Government Sector Impact:

The DEP will incur additional costs in developing multiple new regulatory programs, updating BMAPs, and developing, submitting, and reviewing new reports.

The additional requirements of OSTDS remediation plans and wastewater treatment plans may cause a negative fiscal impact to local governments that must address OSTDS or wastewater pollution to meet their TMDL. However, there is flexibility in how these plans are developed, which makes these costs speculative and subject to the development of each specific OSTDS remediation plan or wastewater treatment plan.

The implementation of a real-time water quality monitoring program will have a negative fiscal impact on the DEP, but this provision is subject to appropriation.

The wastewater grant program would have a positive fiscal impact on local governments, but this provision is subject to appropriation. The DEP will likely incur some costs associated with the development of this grant program and the report to the Governor and the Legislature. The DEP can absorb these costs within existing resources.

Public wastewater utilities that discharge into Indian River Lagoon may have costs associated with conversion to advanced waste treatment. However, the local governments in the region are spending substantial amounts on pollution cleanup. Lessening the pollutants in this waterbody may have a positive fiscal impact in the long term.

The impact of exempting the biosolids rule from ratification is speculative at this time because the rule has not been adopted. There is likely a negative fiscal impact to both the public and private sectors to meet the requirements of the new rule. There may be a long-term positive fiscal impact as a result of reduced cleanup costs and reduced damage to the natural systems associated with more rigorous land application requirements.

The increase in administrative penalties will likely have an indeterminate yet positive fiscal impact on the DEP.

VI. Technical Deficiencies:**VII. None.Related Issues:**

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 153.54, 153.73, 163.3180, 180.03, 311.105, 327.46, 373.250, 373.414, 373.4131, 373.705, 373.707, 373.709, 373.807, 376.307, 380.0552, 381.006, 381.0061, 381.0064, 381.0065, 381.00651, 381.0101, 403.061, 403.067, 403.086, 403.08601, 403.087, 403.0871, 403.0872, 403.088, 403.0891, 403.121, 403.1835, 403.1838, 403.707, 403.861, 489.551, and 590.02.

This bill creates the following sections of the Florida Statutes: 381.00652, 403.0616, 403.0673, and 403.0855.

This bill repeals section 381.0068 of the Florida Statutes.

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

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

- **Recommended CS/CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on January 22, 2020:**
The committee substitute:Corrects the name of the “National Sanitation Foundation” because it changed its name to “NSF International”;
- Clarifies that a local government is not responsible for a private wastewater facility’s compliance with a Basin Management Action Plan (BMAP);
- Clarifies that the records collected by the Department of Agriculture and Consumer Services (DACS) during their inspections include nitrogen and phosphorus fertilizer application records;
- Clarifies that wastewater infrastructure projects that comply with the sanitary sewer overflow, leakage, and infiltration and inflow requirements of the bill will receive priority funding from the state revolving loan fund by moving the prioritization to the section of law governing the state revolving loan fund;
- Clarifies that the Department of Environmental Protection (DEP) may not fix or revise utility rates of budgets;
- Clarifies that utilities that need to report on infiltration and inflow and leakage only need to submit one report to the DEP annually;
- Increases the cap on the DEP’s administrative penalties to \$50,000 from \$10,000;
- Doubles the wastewater administrative penalties;
- Provides incentives for projects that promote efficiency by coordinating wastewater infrastructure expansions with other infrastructure improvements occurring within of along a transportation facility right-of-way;

- Includes these incentives in the small community sewer construction assistance program, the state revolving loan program, and the new wastewater grant program created by the bill;
- Clarifies that local governments with biosolids ordinances may retain those ordinance until repealed;
- Requires the DACS to provide information collected from on-site inspections of each agricultural producer enrolled in a best management practice (BMP) to the DEP. These on-site inspections are required at least every two years.

CS by Community Affairs on December 9, 2019:

The committee substitute:

- Effectuates a type two transfer of septic system oversight from the DOH to DEP rather than just requiring a report;
- Requires DEP to develop rules relating to the location of septic systems;
- Revises language related to DEP updating its stormwater rules;
- Requires DEP to make recommendations to the Legislature on self-certification of stormwater permits rather than prohibiting the use of self-certification in BMAP areas;
- Leaves the BMAP process for Outstanding Florida Springs while revising the requirement for OSTDS remediation plans and adding a requirement for wastewater treatment plans in the general BMAP statute;
- Requires that these new plans be incorporated into the BMAP by 2025;
- Removes provisions relating to Florida-Friendly Fertilizer Ordinances;
- Adds rural areas of opportunities to the possible grant recipients for the wastewater grant created by the bill;
- Removes provisions that would make agricultural BMPs enforceable earlier and in more impaired waterbodies;
- Adds a requirement that DACS conduct onsite inspections of BMPs at least every two years;
- Adds a requirement that DACS collect and remit certain records relating to agricultural BMPs to DEP;
- Adds language authorizing DACS and certain institutions of higher education to submit budget requests for certain activities relating to the improvement of agricultural BMPs;
- Removes the provision requiring additional notification and penalties related to sanitary sewer overflows and replaces it with numerous requirements relating to the prevention of sanitary sewer overflows, inflow and infiltration, and leakage;
- Removes provisions increasing penalties but adds “failure to survey an adequate portion of the wastewater collection system and take steps to reduce sanitary sewer overflows, pipe leaks, and inflow and infiltration” to the penalty schedule;
- Deletes the DOH OSTDS technical advisory committee and creates a DEP OSTDS technical advisory committee that will expire on August 15, 2022, after making recommendations to the Governor and Legislature regarding the regulation of OSTDSs;
- Requires DEP to adopt rules relating to biosolids management and exempts such rules from legislative ratification if they are adopted before the 2021 legislative session.

- Directs the Division of Law Revision to incorporate the date of rule adoption into the statutes.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Environment and Natural Resources; and
Senator Albritton

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A bill to be entitled

An act relating to environmental resource management; amending s. 403.067, F.S.; providing additional management strategies for basin management action plans; requiring certain basin management action plans to include certain cooperative regional water quality improvement elements; providing requirements for the Department of Environmental Protection, the Department of Agriculture and Consumer Services, and owners of agricultural operations in developing and implementing such elements; requiring the Department of Agriculture and Consumer Services to work with the Department of Environmental Protection to improve the accuracy of data used to estimate certain agricultural land uses and to work with producers to identify certain agricultural technologies; requiring the University of Florida Institute of Food and Agricultural Sciences to work with the Department of Agriculture and Consumer Services to develop a specified research plan and a legislative budget request; requiring the Department of Environmental Protection to work with the University of Florida Institute of Food and Agricultural Sciences to consider the adoption of best management practices for nutrient impacts from golf courses; establishing a nutrient reduction cost-share program within the Department of Environmental Protection; providing requirements for such program; providing legislative intent regarding rural homesteads; defining the term "rural homesteads";

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30 exempting such homesteads from certain best management
31 practices under certain conditions; amending s.
32 403.0675, F.S.; requiring the Department of
33 Environmental Protection and the Department of
34 Agriculture and Consumer Services to include specified
35 information in annual progress reports for basin
36 management action plans; amending s. 403.412, F.S.;
37 prohibiting local governments from recognizing,
38 granting, conveying, or extending legal rights or
39 legal standing to animals or certain parts of the
40 natural environment under certain circumstances;
41 providing construction; providing an effective date.

42
43 Be It Enacted by the Legislature of the State of Florida:
44

45 Section 1. Subsection (7) of section 403.067, Florida
46 Statutes, is amended, and subsections (14) and (15) are added to
47 that section, to read:

48 403.067 Establishment and implementation of total maximum
49 daily loads.—

50 (7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND
51 IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

52 (a) *Basin management action plans.*—

53 1. In developing and implementing the total maximum daily
54 load for a water body, the department, or the department in
55 conjunction with a water management district, may develop a
56 basin management action plan that addresses some or all of the
57 watersheds and basins tributary to the water body. Such plan
58 must integrate the appropriate management strategies available

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59 to the state through existing water quality protection programs
60 to achieve the total maximum daily loads and may provide for
61 phased implementation of these management strategies to promote
62 timely, cost-effective, and technically and financially
63 practical actions as provided for in s. 403.151. The plan must
64 establish a schedule implementing the management strategies,
65 establish a basis for evaluating the plan's effectiveness, and
66 identify feasible funding strategies for implementing the plan's
67 management strategies. The management strategies may include:

68 a. Regional treatment systems or other public works, where
69 appropriate;~~and~~

70 b. Voluntary trading of water quality credits to achieve
71 the needed pollutant load reductions;

72 c. Interim measures, best management practices, or other
73 measures in paragraph (c);

74 d. Implementation of cooperative agricultural regional
75 water quality improvement projects or practices in paragraph
76 (e); and

77 e. Cooperative urban, suburban, commercial, or
78 institutional regional water quality improvement projects or
79 practices in paragraph (f).

80 2. A basin management action plan must equitably allocate,
81 pursuant to paragraph (6)(b), pollutant reductions to individual
82 basins, as a whole to all basins, or to each identified point
83 source or category of nonpoint sources, as appropriate. For
84 nonpoint sources for which best management practices have been
85 adopted, the initial requirement specified by the plan must be
86 those practices developed pursuant to paragraph (c). Where
87 appropriate, the plan may take into account the benefits of

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pollutant load reduction achieved by point or nonpoint sources that have implemented management strategies to reduce pollutant loads, including best management practices, before the development of the basin management action plan. The plan must also identify the mechanisms that will address potential future increases in pollutant loading.

3. The basin management action planning process is intended to involve the broadest possible range of interested parties, with the objective of encouraging the greatest amount of cooperation and consensus possible. In developing a basin management action plan, the department shall assure that key stakeholders, including, but not limited to, applicable local governments, water management districts, the Department of Agriculture and Consumer Services, other appropriate state agencies, local soil and water conservation districts, environmental groups, regulated interests, and affected pollution sources, are invited to participate in the process. The department shall hold at least one public meeting in the vicinity of the watershed or basin to discuss and receive comments during the planning process and shall otherwise encourage public participation to the greatest practicable extent. Notice of the public meeting must be published in a newspaper of general circulation in each county in which the watershed or basin lies not less than 5 days nor more than 15 days before the public meeting. A basin management action plan does not supplant or otherwise alter any assessment made under subsection (3) or subsection (4) or any calculation or initial allocation.

4. Each new or revised basin management action plan shall

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include:

a. The appropriate management strategies available through existing water quality protection programs to achieve total maximum daily loads, which may provide for phased implementation to promote timely, cost-effective actions as provided for in s. 403.151;

b. A description of best management practices adopted by rule;

c. A list of projects in priority ranking with a planning-level cost estimate and estimated date of completion for each listed project;

d. The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project, if applicable; and

e. A planning-level estimate of each listed project's expected load reduction, if applicable.

5. The department shall adopt all or any part of a basin management action plan and any amendment to such plan by secretarial order pursuant to chapter 120 to implement ~~the provisions of~~ this section.

6. The basin management action plan must include milestones for implementation and water quality improvement, and an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones shall be conducted every 5 years, and revisions to the plan shall be made as appropriate. Revisions to the basin management action plan shall be made by the department in cooperation with basin stakeholders. Revisions

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146 to the management strategies required for nonpoint sources must
147 follow the procedures ~~set forth~~ in subparagraph (c)4. Revised
148 basin management action plans must be adopted pursuant to
149 subparagraph 5.

150 7. In accordance with procedures adopted by rule under
151 paragraph (9)(c), basin management action plans, and other
152 pollution control programs under local, state, or federal
153 authority as provided in subsection (4), may allow point or
154 nonpoint sources that will achieve greater pollutant reductions
155 than required by an adopted total maximum daily load or
156 wasteload allocation to generate, register, and trade water
157 quality credits for the excess reductions to enable other
158 sources to achieve their allocation; however, the generation of
159 water quality credits does not remove the obligation of a source
160 or activity to meet applicable technology requirements or
161 adopted best management practices. Such plans must allow trading
162 between NPDES permittees, and trading that may or may not
163 involve NPDES permittees, where the generation or use of the
164 credits involve an entity or activity not subject to department
165 water discharge permits whose owner voluntarily elects to obtain
166 department authorization for the generation and sale of credits.

167 8. The provisions of the department's rule relating to the
168 equitable abatement of pollutants into surface waters do not
169 apply to water bodies or water body segments for which a basin
170 management plan that takes into account future new or expanded
171 activities or discharges has been adopted under this section.

172 (b) *Total maximum daily load implementation.*—

173 1. The department shall be the lead agency in coordinating
174 the implementation of the total maximum daily loads through

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existing water quality protection programs. Application of a total maximum daily load by a water management district must be consistent with this section and does not require the issuance of an order or a separate action pursuant to s. 120.536(1) or s. 120.54 for the adoption of the calculation and allocation previously established by the department. Such programs may include, but are not limited to:

a. Permitting and other existing regulatory programs, including water-quality-based effluent limitations;

b. Nonregulatory and incentive-based programs, including best management practices, cost sharing, waste minimization, pollution prevention, agreements established pursuant to s. 403.061(21), and public education;

c. Other water quality management and restoration activities, for example surface water improvement and management plans approved by water management districts or basin management action plans developed pursuant to this subsection;

d. Trading of water quality credits or other equitable economically based agreements;

e. Public works including capital facilities; or

f. Land acquisition.

2. For a basin management action plan adopted pursuant to paragraph (a), any management strategies and pollutant reduction requirements associated with a pollutant of concern for which a total maximum daily load has been developed, including effluent limits ~~set forth~~ for a discharger subject to NPDES permitting, if any, must be included in a timely manner in subsequent NPDES permits or permit modifications for that discharger. The department may not impose limits or conditions implementing an

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adopted total maximum daily load in an NPDES permit until the permit expires, the discharge is modified, or the permit is reopened pursuant to an adopted basin management action plan.

a. Absent a detailed allocation, total maximum daily loads must be implemented through NPDES permit conditions that provide for a compliance schedule. In such instances, a facility's NPDES permit must allow time for the issuance of an order adopting the basin management action plan. The time allowed for the issuance of an order adopting the plan may not exceed 5 years. Upon issuance of an order adopting the plan, the permit must be reopened or renewed, as necessary, and permit conditions consistent with the plan must be established. Notwithstanding the other provisions of this subparagraph, upon request by an NPDES permittee, the department as part of a permit issuance, renewal, or modification may establish individual allocations before the adoption of a basin management action plan.

b. For holders of NPDES municipal separate storm sewer system permits and other stormwater sources, implementation of a total maximum daily load or basin management action plan must be achieved, to the maximum extent practicable, through the use of best management practices or other management measures.

c. The basin management action plan does not relieve the discharger from any requirement to obtain, renew, or modify an NPDES permit or to abide by other requirements of the permit.

d. Management strategies ~~set forth~~ in a basin management action plan to be implemented by a discharger subject to permitting by the department must be completed pursuant to the schedule ~~set forth~~ in the basin management action plan. This implementation schedule may extend beyond the 5-year term of an

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NPDES permit.

e. Management strategies and pollution reduction requirements ~~set forth~~ in a basin management action plan for a specific pollutant of concern are not subject to challenge under chapter 120 at the time they are incorporated, in an identical form, into a subsequent NPDES permit or permit modification.

f. For nonagricultural pollutant sources not subject to NPDES permitting but permitted pursuant to other state, regional, or local water quality programs, the pollutant reduction actions adopted in a basin management action plan must be implemented to the maximum extent practicable as part of those permitting programs.

g. A nonpoint source discharger included in a basin management action plan must demonstrate compliance with the pollutant reductions established under subsection (6) by implementing the appropriate best management practices established pursuant to paragraph (c) or conducting water quality monitoring prescribed by the department or a water management district. A nonpoint source discharger may, in accordance with department rules, supplement the implementation of best management practices with water quality credit trades in order to demonstrate compliance with the pollutant reductions established under subsection (6).

h. A nonpoint source discharger included in a basin management action plan may be subject to enforcement action by the department or a water management district based upon a failure to implement the responsibilities ~~set forth~~ in subparagraph g.

i. A landowner, discharger, or other responsible person who

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is implementing applicable management strategies specified in an adopted basin management action plan may not be required by permit, enforcement action, or otherwise to implement additional management strategies, including water quality credit trading, to reduce pollutant loads to attain the pollutant reductions established pursuant to subsection (6) and shall be deemed to be in compliance with this section. This subparagraph does not limit the authority of the department to amend a basin management action plan as specified in subparagraph (a)6.

(c) *Best management practices.*—

1. The department, in cooperation with the water management districts and other interested parties, as appropriate, may develop suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for nonagricultural nonpoint pollutant sources in allocations developed pursuant to subsection (6) and this subsection. These practices and measures may be adopted by rule by the department and the water management districts and, when ~~where~~ adopted by rule, shall be implemented by those parties responsible for nonagricultural nonpoint source pollution.

2. The Department of Agriculture and Consumer Services may develop and adopt by rule pursuant to ss. 120.536(1) and 120.54 suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for agricultural pollutant sources in allocations developed pursuant to subsection (6) and this subsection or for programs implemented pursuant to paragraph (12) (b). These practices and measures may be implemented by

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those parties responsible for agricultural pollutant sources and the department, the water management districts, and the Department of Agriculture and Consumer Services shall assist with implementation. In the process of developing and adopting rules for interim measures, best management practices, or other measures, the Department of Agriculture and Consumer Services shall consult with the department, the Department of Health, the water management districts, representatives from affected farming groups, and environmental group representatives. Such rules must also incorporate provisions for a notice of intent to implement the practices and a system to assure the implementation of the practices, including site inspection and recordkeeping requirements.

3. When ~~Where~~ interim measures, best management practices, or other measures are adopted by rule, the effectiveness of such practices in achieving the levels of pollution reduction established in allocations developed by the department pursuant to subsection (6) and this subsection or in programs implemented pursuant to paragraph (12) (b) must be verified at representative sites by the department. The department shall use best professional judgment in making the initial verification that the best management practices are reasonably expected to be effective and, where applicable, must notify the appropriate water management district or the Department of Agriculture and Consumer Services of its initial verification before the adoption of a rule proposed pursuant to this paragraph. Implementation, in accordance with rules adopted under this paragraph, of practices that have been initially verified to be effective, or verified to be effective by monitoring at

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representative sites, by the department, shall provide a presumption of compliance with state water quality standards and release from ~~the provisions of~~ s. 376.307(5) for those pollutants addressed by the practices, and the department is not authorized to institute proceedings against the owner of the source of pollution to recover costs or damages associated with the contamination of surface water or groundwater caused by those pollutants. Research projects funded by the department, a water management district, or the Department of Agriculture and Consumer Services to develop or demonstrate interim measures or best management practices shall be granted a presumption of compliance with state water quality standards and a release from ~~the provisions of~~ s. 376.307(5). The presumption of compliance and release is limited to the research site and only for those pollutants addressed by the interim measures or best management practices. Eligibility for the presumption of compliance and release is limited to research projects on sites where the owner or operator of the research site and the department, a water management district, or the Department of Agriculture and Consumer Services have entered into a contract or other agreement that, at a minimum, specifies the research objectives, the cost-share responsibilities of the parties, and a schedule that details the beginning and ending dates of the project.

4. When ~~Where~~ water quality problems are demonstrated, despite the appropriate implementation, operation, and maintenance of best management practices and other measures required by rules adopted under this paragraph, the department, a water management district, or the Department of Agriculture and Consumer Services, in consultation with the department,

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shall institute a reevaluation of the best management practice or other measure. Should the reevaluation determine that the best management practice or other measure requires modification, the department, a water management district, or the Department of Agriculture and Consumer Services, as appropriate, shall revise the rule to require implementation of the modified practice within a reasonable time period as specified in the rule.

5. Agricultural records relating to processes or methods of production, costs of production, profits, or other financial information held by the Department of Agriculture and Consumer Services pursuant to subparagraphs 3. and 4. or pursuant to any rule adopted pursuant to subparagraph 2. are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Upon request, records made confidential and exempt pursuant to this subparagraph shall be released to the department or any water management district provided that the confidentiality specified by this subparagraph for such records is maintained.

6. ~~The provisions of~~ Subparagraphs 1. and 2. do not preclude the department or water management district from requiring compliance with water quality standards or with current best management practice requirements ~~set forth~~ in any applicable regulatory program authorized by law for the purpose of protecting water quality. Additionally, subparagraphs 1. and 2. are applicable only to the extent that they do not conflict with any rules adopted by the department that are necessary to maintain a federally delegated or approved program.

(d) *Enforcement and verification of basin management action*

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378 *plans and management strategies.*—

379 1. Basin management action plans are enforceable pursuant
380 to this section and ss. 403.121, 403.141, and 403.161.

381 Management strategies, including best management practices and
382 water quality monitoring, are enforceable under this chapter.

383 2. No later than January 1, 2017:

384 a. The department, in consultation with the water
385 management districts and the Department of Agriculture and
386 Consumer Services, shall initiate rulemaking to adopt procedures
387 to verify implementation of water quality monitoring required in
388 lieu of implementation of best management practices or other
389 measures pursuant to sub-subparagraph (b)2.g.;

390 b. The department, in consultation with the water
391 management districts and the Department of Agriculture and
392 Consumer Services, shall initiate rulemaking to adopt procedures
393 to verify implementation of nonagricultural interim measures,
394 best management practices, or other measures adopted by rule
395 pursuant to subparagraph (c)1.; and

396 c. The Department of Agriculture and Consumer Services, in
397 consultation with the water management districts and the
398 department, shall initiate rulemaking to adopt procedures to
399 verify implementation of agricultural interim measures, best
400 management practices, or other measures adopted by rule pursuant
401 to subparagraph (c)2.

402
403 The rules required under this subparagraph shall include
404 enforcement procedures applicable to the landowner, discharger,
405 or other responsible person required to implement applicable
406 management strategies, including best management practices or

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water quality monitoring as a result of noncompliance.

3. A nonagricultural and agricultural nonpoint source owner or operator who discharges into a basin included in an adopted basin management action plan must comply with the following, as applicable, within 5 years after the date of the adoption of the basin management action plan or an amendment thereto that imposes new requirements:

a. For a nonagricultural nonpoint source discharger, nonagricultural interim measures, nonagricultural best management practices, or other measures adopted by rule pursuant to subparagraph (c)1. or management measures adopted in a basin management action plan.

b. For an agricultural nonpoint source discharger, agricultural interim measures, agricultural best management practices, or other measures adopted by rule pursuant to subparagraph (c)2. and implemented according to a notice of intent filed by the agricultural nonpoint source discharger.

c. For an agricultural and nonagricultural nonpoint source discharger who opts to implement water quality monitoring in lieu of compliance with sub-subparagraph a. or sub-subparagraph b., water quality monitoring required under sub-subparagraph (b)2.g.

4. Implementation of actions in subparagraph 3. shall be verified by a site visit at least once every 2 years by the responsible agency as follows:

a. For nonagricultural interim measures, nonagricultural best management practices, or other measures adopted by rule pursuant to subparagraph (c)1., verification by the department or water management district, as appropriate.

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436 b. For agricultural interim measures, agricultural best
437 management practices, or other measures adopted by rule pursuant
438 to subparagraph (c)2., verification by the Department of
439 Agriculture and Consumer Services.

440 c. For management measures adopted in a basin management
441 action plan, verification by the department.

442
443 If verification pursuant to this subparagraph cannot be
444 accomplished every 2 years, the responsible agency shall include
445 recommendations for meeting the intent of the verification along
446 with a budget request as part of the progress report required
447 under s. 403.0675.

448 (e) Cooperative agricultural regional water quality
449 improvement element.—

450 1. The department, the Department of Agriculture and
451 Consumer Services, and owners of agricultural operations in the
452 basin shall develop a cooperative agricultural regional water
453 quality improvement element as part of a basin management action
454 plan only if:

455 a. Agricultural measures have been adopted by the
456 Department of Agriculture and Consumer Services pursuant to
457 subparagraph (c)2. and have been implemented and the waterbody
458 remains impaired;

459 b. Agricultural nonpoint sources contribute to at least 20
460 percent of nonpoint source nutrient discharges; and

461 c. The department determines that additional measures, in
462 combination with state-sponsored regional projects and other
463 management strategies included in the basin management action
464 plan, are necessary to achieve the total maximum daily load.

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465 2. The element will be implemented through a cost-sharing
466 program as provided by law. The element must include cost-
467 effective and technically and financially practical cooperative
468 regional agricultural nutrient reduction projects that can be
469 implemented on private properties on a site-specific,
470 cooperative basis if funding is made available as provided by
471 law. Such cooperative regional agricultural nutrient reduction
472 projects may include land acquisition in fee or conservation
473 easements on the lands of willing sellers and site-specific
474 water quality improvement or dispersed water management projects
475 on the lands of program participants.

476 3. To qualify for participation in the cooperative
477 agricultural regional water quality improvement element, the
478 participant must have already implemented the interim measures,
479 best management practices, or other measures adopted by the
480 Department of Agriculture and Consumer Services pursuant to
481 subparagraph (c)2. The element may be included in the basin
482 management action plan as a part of the next 5-year assessment
483 under subparagraph (a)6.

484 (f) Cooperative urban, suburban, commercial, or
485 institutional regional water quality improvement element.-

486 1. The department, the Department of Health, local
487 governments, and water management districts with jurisdiction in
488 the basin shall develop a cooperative urban, suburban,
489 commercial, or institutional regional water quality improvement
490 element as part of a basin management action plan in which:

491 a. Nonagricultural interim measures and nonagricultural
492 best management practices have been implemented and the
493 waterbody remains impaired;

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494 b. Nonagricultural nonpoint sources contribute to at least
495 20 percent of nonpoint source nutrient discharges; and

496 c. The department determines that additional measures, in
497 combination with state-sponsored regional projects and other
498 management strategies included in the basin management action
499 plan, are necessary to achieve the total maximum daily load.

500 2. The element shall be implemented through a cost-sharing
501 program as provided by general law. The element must include
502 cost-effective and technically and financially practical
503 cooperative regional nutrient reduction projects that can be
504 implemented on urban, suburban, commercial, or institutional
505 properties if funding is made available as provided by general
506 law. The element must be included in the basin management action
507 plan as a part of the next 5-year assessment under subparagraph
508 (a) 6.

509 (g) Data collection and research.—

510 1. The Department of Agriculture and Consumer Services
511 shall work with the department to improve the accuracy of data
512 used to estimate agricultural land uses in the basin management
513 action plan and work with producers to identify agricultural
514 technologies that are cost-effective and technically and
515 financially practical and could be implemented on agricultural
516 lands if funding is made available as provided by general law.

517 2. The University of Florida Institute of Food and
518 Agricultural Sciences shall work with the Department of
519 Agriculture and Consumer Services to develop a research plan and
520 a legislative budget request to:

521 a. Evaluate and, if cost-effective and technically and
522 financially practical, suggest enhancements to adopted best

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523 management practices;

524 b. Develop new best management practices that are cost-
525 effective and technically and financially practical and that,
526 when proven, can be considered by the Department of Agriculture
527 and Consumer Services for rule adoption pursuant to paragraph
528 (c); and

529 c. Develop technically and financially practical
530 cooperative agricultural nutrient reduction projects to be
531 considered by the department for inclusion in a basin management
532 action plan pursuant to paragraph (e) that will reduce the
533 nutrient impacts from agricultural operations on surface and
534 groundwater quality.

535 3. The department shall work with the University of Florida
536 Institute of Food and Agricultural Sciences and regulated
537 entities to consider the adoption by rule of best management
538 practices for nutrient impacts from golf courses. Such adopted
539 best management practices are subject to the requirements of
540 paragraph (c).

541 (14) NUTRIENT REDUCTION COST-SHARE PROGRAM.—A nutrient
542 reduction cost-share program is established within the
543 department.

544 (a) Subject to appropriation, the department may provide
545 funding for the following projects in a basin management action
546 plan or an alternative restoration plan that will individually
547 or collectively reduce nutrient pollution:

548 1. Projects to retrofit onsite sewage treatment and
549 disposal systems.

550 2. Projects to construct, upgrade, or expand facilities to
551 provide advanced waste treatment as defined in s. 403.086(4).

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552 3. Projects to connect onsite sewage treatment and disposal
553 systems to central sewer facilities.

554 4. Projects identified in the cooperative urban, suburban,
555 commercial, or institutional regional water quality improvement
556 element pursuant to paragraph (7)(f).

557 5. Projects identified in the cooperative agricultural
558 regional water quality improvement element pursuant to paragraph
559 (7)(e).

560 6. Data collection and research activities identified in
561 paragraph (7)(g).

562 (b) In allocating funds for projects, the department shall
563 prioritize projects in subbasins with the highest nutrient
564 concentrations within a basin management action plan and
565 projects that are identified in subparagraphs (a)1.-5. For
566 projects identified in subparagraphs (a)1.-4., further
567 prioritization must be given to projects that subsidize the
568 connection of onsite sewage treatment and disposal systems to a
569 wastewater treatment plant or that subsidize inspections and
570 assessments of onsite sewage treatment and disposal systems.

571 (c) In determining the priority of projects pursuant to
572 paragraph (b), the department shall consider the following for
573 each project:

574 1. The estimated reduction in nutrient load.

575 2. Readiness.

576 3. Cost-effectiveness.

577 4. Overall environmental benefit.

578 5. The location within the plan area.

579 6. The availability of local matching funds.

580 7. Projected water savings or water quantity improvements.

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581 (d) Each project described in subparagraphs (a)1.-3. must
582 require a minimum of 50 percent local matching funds. However,
583 the department may, at its discretion, waive, in whole or in
584 part, consideration of the local contribution for proposed
585 projects within an area designated as a rural area of
586 opportunity as defined in s. 288.0656(2).

587 (e) The department shall coordinate with the Department of
588 Agriculture and Consumer Services, the University of Florida
589 Institute of Food and Agricultural Sciences, and each water
590 management district, as necessary, in allocating funds
591 appropriated pursuant to paragraph (a).

592 (f) Beginning January 1, 2021, and each January 1
593 thereafter, the department shall submit a report regarding the
594 projects funded pursuant to this subsection to the Governor, the
595 President of the Senate, and the Speaker of the House of
596 Representatives.

597 (g) The nutrient reduction cost-share program is in
598 addition to, and does not replace, existing funding
599 authorizations.

600 (15) RURAL HOMESTEADS.—

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

607 (b) As used in this subsection, the term "rural homesteads"
608 means low-density rural residential properties up to 50 acres in
609 size which are homesites and noncommercial in nature that

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610 include single-family homes and accessory structures together
611 with the keeping of livestock, horses, traditional farm animals
612 and poultry, and the planting and maintenance of groves and
613 gardens for the primary purpose of serving the needs and
614 interests of those living on the property.

615 (c) Rural homesteads are not subject to the requirements of
616 paragraph (7)(c). However, if any activity on a rural homestead
617 rises to the level of bona fide agricultural activity and is
618 classified as agricultural use pursuant to s. 193.461, the land
619 owner must comply with the requirements of paragraph (7)(c).

620 Section 2. Section 403.0675, Florida Statutes, is amended
621 to read:

622 403.0675 Progress reports. ~~On or before July 1 of each~~
623 ~~year, beginning in 2018:~~

624 (1) On or before July 1 of each year:

625 (a) Beginning in 2018, the department, in conjunction with
626 the water management districts, shall post on its website and
627 submit electronically an annual progress report to the Governor,
628 the President of the Senate, and the Speaker of the House of
629 Representatives on the status of each total maximum daily load,
630 basin management action plan, minimum flow or minimum water
631 level, and recovery or prevention strategy adopted pursuant to
632 s. 403.067 or parts I and VIII of chapter 373. The report must
633 include the status of each project identified to achieve a total
634 maximum daily load or an adopted minimum flow or minimum water
635 level, as applicable. If a report indicates that any of the 5-
636 year, 10-year, or 15-year milestones, or the 20-year target
637 date, if applicable, for achieving a total maximum daily load or
638 a minimum flow or minimum water level will not be met, the

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report must include an explanation of the possible causes and potential solutions. If applicable, the report must include project descriptions, estimated costs, proposed priority ranking for project implementation, and funding needed to achieve the total maximum daily load or the minimum flow or minimum water level by the target date. Each water management district shall post the department's report on its website.

(b) Beginning in 2021, the department shall include in the report required under paragraph (a):

1. The status of the results of verification of the stormwater systems and nonagricultural best management practices.

2. The number of landowners, dischargers, or other responsible persons required to implement applicable management strategies, including best management practices or water quality monitoring, who did not comply with such requirements.

(2)(a) The Department of Agriculture and Consumer Services shall post on its website and submit electronically an annual progress report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of the implementation of the agricultural nonpoint source best management practices, including an implementation assurance report summarizing survey responses and response rates, site inspections, and other methods used to verify implementation of and compliance with best management practices pursuant to basin management action plans.

(b) Beginning July 1, 2021, and each July 1 thereafter, the Department of Agriculture and Consumer Services shall include in the progress report required under paragraph (a) a status of the

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668 results of implementation of agricultural nonpoint source best
669 management practices in the following categories:

670 1. Irrigated and nonirrigated agricultural acres.

671 2. Fallow agricultural acres.

672 3. Agricultural parcels of fewer than 50 acres, excluding
673 rural homesteads as defined in s. 403.067(15).

674 (3) For the progress reports submitted on July 1, 2021, and
675 July 1, 2022, the department and the Department of Agriculture
676 and Consumer Services shall address the priority focus areas
677 identified in the basin management action plans.

678 Section 3. Subsection (9) is added to section 403.412,
679 Florida Statutes, to read:

680 403.412 Environmental Protection Act.—

681 (9)(a) A local government regulation, ordinance, code,
682 rule, comprehensive plan, or charter may not recognize, grant,
683 convey, or extend legal standing or legal rights, as those terms
684 are generally construed, to a plant, an animal, a body of water,
685 or any other part of the natural environment which is not a
686 person or a political subdivision as defined in s. 1.01(8),
687 unless otherwise specifically authorized by state law or the
688 State Constitution.

689 (b) This subsection may not be interpreted or construed to
690 do any of the following:

691 1. Limit the ability of the Department of Legal Affairs,
692 any political subdivision of the state, or a resident of this
693 state to maintain an action for injunctive relief as provided in
694 this section.

695 2. Limit the ability of an aggrieved or adversely affected
696 party to appeal and challenge the consistency of a development

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697 order with a comprehensive plan, as provided in s. 163.3215, or
698 to file an action for injunctive relief to enforce the terms of
699 a development agreement or to challenge compliance of the
700 agreement with the Florida Local Government Development
701 Agreement Act, as provided in s. 163.3243.

702 Section 4. This act shall take effect July 1, 2020.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1382

INTRODUCER: Environment and Natural Resources Committee and Senator Albritton

SUBJECT: Environmental Resource Management

DATE: January 27, 2020

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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

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

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

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

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

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

II. Present Situation:

Water Quality and Nutrients

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

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

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

Total Maximum Daily Loads

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

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

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

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

⁴ Section 403.067(1), F.S.

⁵ Section 403.031(21), F.S.

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

Basin Management Action Plans and Best Management Practices

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

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

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

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

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

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

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

⁸ Section 403.067(7), F.S.

⁹ *Id.*

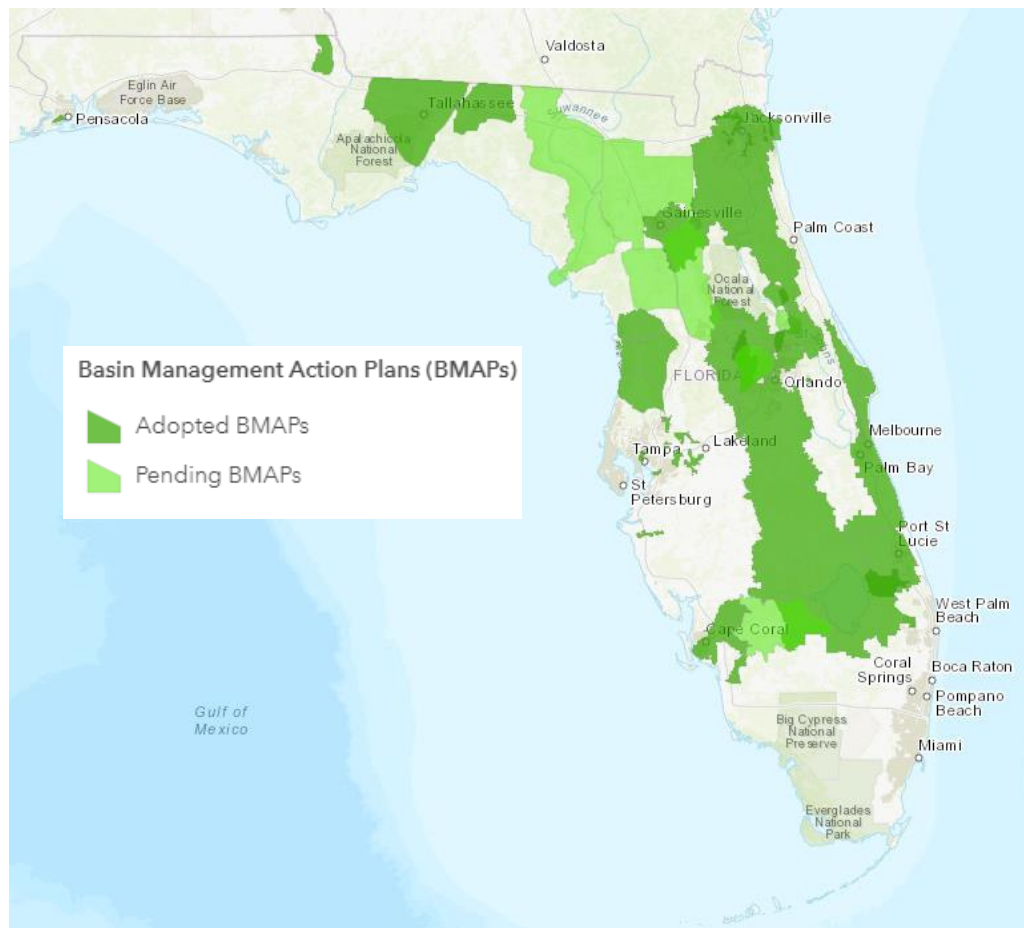
¹⁰ DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Dec. 4, 2019).

¹¹ Section 403.067(7)(a)5., F.S.

¹² Section 403.067(7)(a)6., F.S.

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

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



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

¹⁴ Section 403.067(7)(b)2.h., F.S.

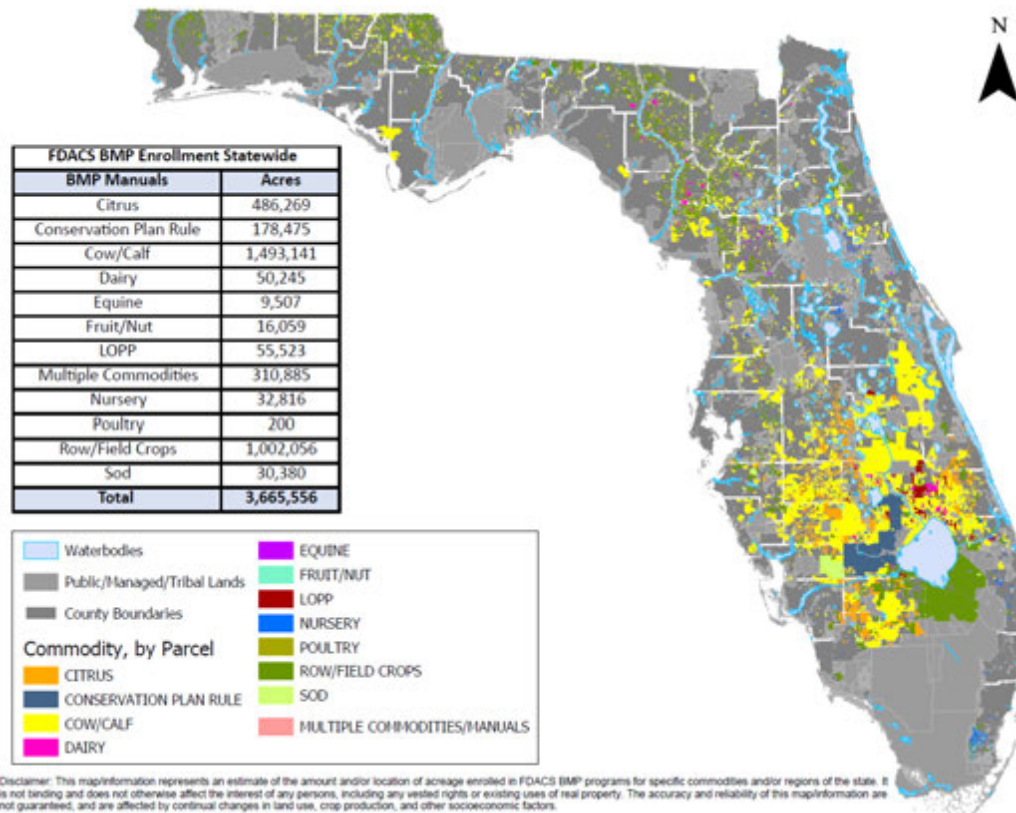
¹⁵ DEP, *NPDES Stormwater Program*, <https://floridadep.gov/Water/Stormwater> (last visited Dec. 2, 2019).

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

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

Agricultural BMPs

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



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

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

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

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

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

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

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

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

Progress Reports

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

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

²² Section 403.067(7), F.S.

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

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

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

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

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

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

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

³⁰ *Id.*

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

Restoration Plans as Alternatives to TMDLS

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

The following information must be documented in a restoration plan:

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

Wastewater Treatment Facilities

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

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

³² Chapter 99-223, Laws of Fla.

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

³⁴ *Id.*

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

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

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

³⁸ *Id.*

³⁹ Section 403.087, F.S.

Advanced Waste Treatment

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

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

Onsite Sewage Treatment and Disposal Systems



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

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

⁴⁰ Section 403.086(2), F.S.

⁴¹ Section 403.086(4), F.S.

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

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

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

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

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

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

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

Stormwater Management

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

Bona Fide Agricultural Purposes

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

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

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

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

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

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

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

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

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

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

⁵⁵ Section 193.461(3)(a), F.S.

⁵⁶ Section 193.461(b), F.S.

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

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

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

Rural Areas of Opportunity

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

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

⁵⁸ *Id.*

⁵⁹ Section 193.461(3)(c), F.S.

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

⁶¹ Section 193.461(3)(d), F.S.

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

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

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

⁶⁵ Section 288.0656(2)(d), F.S.

⁶⁶ Section 288.0656(7), F.S.

The Rights of Nature Movement

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

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

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

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

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

⁶⁸ *Id.*

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

⁷⁰ *Id.*

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

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

⁷³ *Id.*

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

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

⁷⁶ PA. CONST. art. 1, § 27

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

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

The Florida Environmental Protection Act

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

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

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

⁷⁹ Town of Shapleigh Code, §99-16.

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

⁸¹ Santa Monica Municipal Code, Ch. 12.02.030.

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

⁸³ Section 403.412(2)(a), F.S.

⁸⁴ Section 403.412(5), F.S.

⁸⁵ *Id.*

⁸⁶ 390 So.2d 64 (Fla. 1980).

⁸⁷ *Id.*

⁸⁸ *Id.*

III. Effect of Proposed Changes:

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

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

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

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

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

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

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

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

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

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

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

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

Basin Management Action Plan Elements (Section 1)

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

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

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

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

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

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

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

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

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

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

Data Collection and Research (Section 1)

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

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

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

All such proposals must be technically and financially practical.

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

Nutrient Reduction Cost-Share Program (Section 1)

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

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

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

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

Rural Homesteads (Section 1)

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

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

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

Rights of Nature (Section 3)

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

The changes in the bill explicitly do not:

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

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

Effective Date (Section 4)

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

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

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

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

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

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

B. Amendments:

None.

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1 A bill to be entitled
2 An act relating to the Environmental Protection Act;
3 amending s. 403.412, F.S.; prohibiting local
4 governments from recognizing or granting certain legal
5 rights to the natural environment or granting such
6 rights relating to the natural environment to a person
7 or political subdivision; providing construction;
8 providing an effective date.
9

10 Be It Enacted by the Legislature of the State of Florida:
11

12 Section 1. Subsection (9) is added to section 403.412,
13 Florida Statutes, to read:

14 403.412 Environmental Protection Act.—

15 (9) (a) A local government regulation, ordinance, code,
16 rule, comprehensive plan, charter, or any other provision of law
17 may not recognize or grant any legal rights to a plant, an
18 animal, a body of water, or any other part of the natural
19 environment that is not a person or political subdivision as
20 defined in s. 1.01 or grant such person or political subdivision
21 any specific rights relating to the natural environment not
22 otherwise authorized in general law or specifically granted in
23 the State Constitution.

24 (b) This subsection does not limit the power of an
25 adversely affected party to challenge the consistency of a

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26 development order with a comprehensive plan as provided in s.
27 163.3215 or to file an action for injunctive relief to enforce
28 the terms of a development agreement or challenge compliance of
29 the agreement as provided in s. 163.3243.

30 (c) This subsection does not limit the standing of the
31 Department of Legal Affairs, a political subdivision or
32 municipality of the state, or a citizen of the state to maintain
33 an action for injunctive relief as provided in this section.

34 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1199 Environmental Protection Act
SPONSOR(S): Ingoglia
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1382

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 1 N	Frost	Luczynski
2) Agriculture & Natural Resources Subcommittee		Melkun	Moore
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida authorizes a citizen to assert standing to stop an activity that will affect his or her use or enjoyment of air, water, or natural resources. However, court rulings and legislation in the U.S. and worldwide have suggested that specific legal rights of nature may exist, authorizing a person to assert standing on behalf of natural resources.

While U.S. Supreme Court precedent clearly limits standing for environmental claims to only an action causing injury to a human, dissenting opinions suggesting otherwise have recently garnered the attention of environmental activists attempting to assert standing on behalf of the environment, often resulting in lengthy, yet unsuccessful, litigation.

The bill amends the Florida Environmental Protection Act to prohibit, unless otherwise authorized by law or specifically granted in the State Constitution, a local government regulation, ordinance, code, rule, comprehensive plan, charter, or any other provision of law:

- From recognizing or granting any legal right to a plant, animal, body of water, or any other part of the natural environment that is not a person or political subdivision; or
- From granting a person or political subdivision any specific rights relating to the natural environment.

The bill provides that the prohibition on granting rights to nonpersons may not be interpreted to limit:

- The power of an adversely affected party to challenge the consistency of a development order with a comprehensive plan, or to file an action for injunctive relief to enforce the terms of a development agreement or to challenge compliance of the agreement with the Florida Local Government Development Agreement Act; or
- The standing of the Department of Legal Affairs, a political subdivision or municipality of the state, or a citizen of the state to maintain an action for injunctive relief as otherwise provided by the EPA.

The bill may prevent costly litigation related to granting rights to natural resources, when current legal precedent suggests such rights may not be granted at the state or local level.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida's Environmental Protection Act (EPA) authorizes the Department of Legal Affairs, any political subdivision or municipality of the state, or a citizen of the state to take legal action seeking to:¹

- Compel a governmental agency or authority to enforce laws, rules, and regulations protecting Florida's air, water, and other natural resources; or
- Prevent any person or governmental agency or authority from violating any laws, rules, or regulations protecting Florida's air, water, and other natural resources.

In an administrative, licensing, or other legal proceeding to protect Florida's air, water, or other natural resources from pollution, impairment, or destruction, the Department of Legal Affairs, a political subdivision or municipality of the state, or a citizen of the state is authorized to intervene² as a party to the legal action. To intervene, the party must file a verified pleading asserting that the particular activity, conduct, or product will impair, pollute, or otherwise injure the air, water, or other natural resources of the state.³ A citizen may not institute, initiate, petition for, or request such a proceeding unless he or she will suffer a sufficiently immediate injury which is of the type and nature intended to be protected by law. However, a citizen is not required to demonstrate that his or her injury is different than that which the general public is required to show. A citizen's substantial interest injury is sufficient if the proposed activity, conduct, or product will affect his or her use or enjoyment of air, water, or natural resources protected by law.⁴

The Florida Supreme Court has held that the EPA is not an impermissible intrusion by the Legislature into the court's power over practice and procedure in state courts, but instead creates a new cause of action setting out substantive rights not previously possessed by enabling a Florida citizen to take legal action to protect the environment without a showing of special injury.⁵

Rights of Nature

While Florida authorizes a citizen to assert standing to enjoin an activity that will affect his or her use or enjoyment of air, water, or natural resources, some court rulings and legislation in the U.S. and worldwide⁶ have authorized specific legal rights of nature authorizing a person to assert standing on behalf of natural resources.⁷

Federal Level

The U.S. Supreme Court's ruling in *Sierra Club v. Morton* is the closest the U.S. federal government has come to granting personhood to natural resources. In *Sierra Club*, a conservation group took legal action to prevent the U.S. Forest Service from approving a ski development proposed by Walt Disney Productions near the Sequoia National Forest.⁸ The Sierra Club (Club) argued that the ski development

¹ S. 403.412(2), F.S.

² "Intervene" means to join an ongoing ss. 120.569 or 120.57, F.S., proceeding, and does not authorize a citizen to institute, initiate, petition for, or request a proceeding under ss. 120.569 or 120.57, F.S. Nothing herein limits or prohibits a citizen whose substantial interests will be determined or affected by a proposed agency action from initiating a formal administrative proceeding under the administrative procedures act. S. 403.412(5), F.S.

³ S. 403.412(5), F.S.

⁴ *Id.*

⁵ *Florida Wildlife Federation v. State Dept. of Environmental Regulation*, 390 So. 2d 64 (Fla. 1980).

⁶ In 2008, Ecuador granted legal rights to all of nature, and in 2017, four rivers were granted legal rights: the Whanganui River in New Zealand, the Ganges and Yamuna rivers in India, and the Rio Atrato in Colombia. Dr. Julia Talbot-Jones, *Flowing from Fiction to Fact: The Challenges of Implementing Legal Rights for Rivers*, Global Water Forum, <https://globalwaterforum.org/2018/05/14/flowing-from-fiction-to-fact-the-challenges-of-implementing-legal-rights-for-rivers/> (last visited Jan. 30, 2020).

⁷ Lidia Cano Pecharroman, *Rights of Nature: Rivers That Can Stand in Court* (Feb 14, 2018) <https://www.mdpi.com/2079-9276/7/1/13/htm> (last visited Jan. 30, 2020).

⁸ *Sierra Club v. Morton*, 405 U.S. 727 (1972).

would adversely affect the forest, but did not allege any personal injury to any specific member of the Club.⁹ The court held that because there was no injury in fact to any member of the Club, the Club had no standing to sue on behalf of the forest.¹⁰ The court determined that because the Club did not “have a direct stake in the outcome...authoriz[ing] judicial review at the behest of organizations or individuals who seek to do no more than vindicate their own value preferences through the judicial process” would undermine the goal of the Administrative Procedure Act.¹¹

Despite the court’s ruling Justice Douglas’s dissenting opinion suggests that “contemporary public concern for protecting nature’s ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation.”¹² In a separate dissent, Justice Blackmun expressed similar concern and urged the court to consider the dangers of limiting judicial review solely to human injuries.¹³

State Level

While the *Sierra Club* opinion clearly limits standing in environmental actions to action causing injury to a human, the dissenting opinions by Justice Douglas and Justice Blackmun have recently garnered the attention of environmental activists attempting to assert standing on behalf of the environment. For example, in September 2017, the environmental group Deep Green Resistance (DGR) relied on Justice Douglas’s dissent when petitioning the federal District Court of Colorado to recognize legal personhood for the Colorado River System.¹⁴ Joined by citizens of Colorado and Utah, DGR asked the U.S. District Court in Denver to declare the Colorado River ecosystem a “person,” such that the river system’s interest could be represented in court.¹⁵ DGR claimed that the Colorado River System has “the right to exist, flourish, regenerate, and naturally evolve,” and that current laws did not protect the natural environment on which persons depend for survival and livelihood.¹⁶ Following lengthy litigation, DGR voluntarily dismissed its case after the Colorado Attorney General set forth numerous reasons the court did not have jurisdiction and opined that the determination of whether the rights of nature exist should be reserved to Congress.¹⁷

Local Level

Similar attempts to assert the rights of nature have been made on the local level. For example, in New Mexico in 2013, the Mora County Board of Commissioners passed an ordinance protecting the rights of human communities, nature, and natural water.¹⁸ However, an energy exploration firm challenged the ordinance, and the U.S. district court struck down the ordinance, holding the ordinance violated the Supremacy Clause and was impermissibly overbroad, in violation of the First Amendment.¹⁹

In 2013, Lafayette, Colorado voters attempted to impose a similar measure targeting oil extraction by hydraulic fracturing (“fracking”) and proposed “certain rights for city residents and ecosystems as part of the city charter such as clean water, air and freedom from certain chemicals and oil and gas industry byproducts.”²⁰ When challenged by the Colorado Oil and Gas Association, the Boulder District Court held that Lafayette did not have the authority to prohibit practices authorized and permitted by the state.²¹

⁹ *Id.* at 734.

¹⁰ *Id.* at 735.

¹¹ *Id.* at 740.

¹² *Id.* at 741-42.

¹³ *Id.* at 755-56.

¹⁴ Complaint for Declaratory Relief, *Colorado River Ecosystem et al. v. State of Colorado*, No. 1:17-cv-02316-RPM (D. Colo. Sept. 25, 2017), at 12-13.

¹⁵ *Id.* at 12.

¹⁶ *Id.* at 2.

¹⁷ Motion to Dismiss, No. 1:17-cv-02316-NYW (D. Colo. Oct. 17, 2017).

¹⁸ *Swepi, LP v. Mora Cty.*, 81 F. Supp. 3d 1075, 1090 (D.N.M. 2015).

¹⁹ *Swepi*, 81 F. Supp. 3d at 1088.

²⁰ *City of Lafayette “Community Rights Act” Fracking Ban Amendment, Question 300* (November 2013), BALLOTOPEDIA (Nov. 2013),

[https://ballotpedia.org/City_of_Lafayette_%22Community_Rights_Act%22_Fracking_Ban_Amendment,_Question_300_\(November_2013\)](https://ballotpedia.org/City_of_Lafayette_%22Community_Rights_Act%22_Fracking_Ban_Amendment,_Question_300_(November_2013)) (last visited Jan. 30, 2020).

²¹ *Id.*

More recently, the Orange County, Florida Charter Review Commission approved a request to establish a committee to assess adding rights for the Wekiva River and Econlockhatchee River to the county charter.²²

Effect of Proposed Changes

The bill amends the Florida Environmental Protection Act to prohibit, unless otherwise authorized by law or specifically granted in the State Constitution, a local government regulation, ordinance, code, rule, comprehensive plan, charter, or any other provision of law:

- From recognizing or granting any legal right to a plant, animal, body of water, or any other part of the natural environment that is not a person²³ or political subdivision;²⁴ or
- From granting a person or political subdivision any specific rights relating to the natural environment.

The bill provides that the prohibition on granting rights to nonpersons may not be interpreted to limit:

- The power of an adversely affected party to challenge the consistency of a development order with a comprehensive plan, or to file an action for injunctive relief to enforce the terms of a development agreement or to challenge compliance of the agreement with the Florida Local Government Development Agreement Act; or
- The standing of the Department of Legal Affairs, a political subdivision or municipality of the state, or a citizen of the state to maintain an action for injunctive relief as otherwise provided by the EPA.

The bill is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends s. 403.412, F.S., relating to the Environmental Protection Act.

Section 2: Provides the bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

²² Orange County Comptroller, *2020-01-22 Rights of the Wekiva River and Econlockhatchee River Committee*, <https://www.occompt.com/meetings/meeting/2020-01-22-rights-of-the-wekiva-river-and-econlockhatchee-river-committee/> (last visited Jan. 30, 2020).

²³ Person means an: individual; child; firm; association; joint adventure; partnership; estate; trust; business trust; syndicates; fiduciary; corporation; and all other groups or combinations. S. 1.01(3), F.S.

²⁴ Political subdivision means a: county; city; town; village; special tax school district; special road and bridge district; bridge district; and all other districts in Florida. S. 1.01(8), F.S.

None.

D. FISCAL COMMENTS:

The bill may prevent costly litigation related to granting rights to natural resources, when current legal precedent suggests such rights may not be granted at the state or local level.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

MIAF Bill Tracking

Ordered by Bill Number

SB 0034	Prohibited Discrimination by Rouson
Prohibited Discrimination; Citing this act as the "Florida Competitive Workforce Act"; adding sexual orientation and gender identity as impermissible grounds for discrimination in public lodging establishments and public food service establishments; providing an exception for constitutionally protected free exercise of religion, etc. Effective Date: 7/1/2020	
Actions	
09/03/2019 SENATE Withdrawn prior to introduction	
HB 0073	Environmental Regulation by Overdorf
Environmental Regulation: Specifies requirements for contracts between residential recycling collectors or recovered materials processing facilities & counties or municipalities for collecting, transporting, & processing residential recycling material & contaminated recyclable material; prohibits local governments from requiring further verification from DEP for certain projects; revises types of dock & pier replacements & repairs that are exempt from such verification & certain permitting requirements. Effective Date: July 1, 2020	
Actions	
01/29/2020 SENATE In Messages	
SB 0090	Discrimination in Labor and Employment by Stewart
Discrimination in Labor and Employment; Creating the "Senator Helen Gordon Davis Fair Pay Protection Act"; prohibiting an employer from providing less favorable employment opportunities to employees based on their sex; prohibiting an employer from taking certain employment actions against employees; prohibiting an employer from engaging in certain activities relating to wages and benefits, etc. Effective Date: 7/1/2020	
Actions	
08/16/2019 SENATE Referred to Commerce and Tourism; Judiciary; Rules	
SB 0112	Capital Relocation Study by Rader
Capital Relocation Study; Requiring the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a study regarding the relocation of the state capital; prescribing requirements for the study; requiring OPPAGA to submit a report to the Legislature by a specified date, etc. Effective Date: 7/1/2020	
Actions	
08/16/2019 SENATE Referred to Governmental Oversight and Accountability; Community Affairs; Rules	
HB 0133	Towing and Immobilizing Vehicles and Vessels by McClain
Towing and Immobilizing Vehicles and Vessels: Authorizes local governments to enact rates to tow vessels on private property & remove & store vessels; prohibits counties or municipalities from enacting ordinances that impose costs or penalties on owners, persons in control, or lienholders of vehicles or vessels or that require wrecker operators or towing businesses to accept specified form of payment; authorizes persons to place liens on vehicles or vessels to recover fees or charges; revises requirement regarding notices & signs concerning towing or removal of vehicles & vessels. Effective Date: October 1, 2020	
Actions	
01/31/2020 HOUSE Committee Substitute Text (C2) Filed	
SB 0142	Abolishing the Constitution Revision Commission by Brandes
Abolishing the Constitution Revision Commission; Proposing amendments to the State Constitution to abolish the Constitution Revision Commission, etc.	

Actions

01/29/2020 SENATE Placed on Calendar, on 2nd reading

HB 0147 Water Resources by Jacobs

Water Resources: Requires DEP to conduct specified comprehensive & quantitative needs-based overview of state's water resources & submit report to Governor & Legislature. Effective Date: July 1, 2020

Actions

09/23/2019 HOUSE Now in Agriculture & Natural Resources Subcommittee

HB 0153 Indian River Lagoon State Matching Grant Program by Fine

Indian River Lagoon State Matching Grant Program: Provides that certain projects identified in Indian River Lagoon Comprehensive Conservation & Management Plan are eligible for state funding consideration; directs DEP to coordinate with water management districts to identify projects & grant recipients. Effective Date: July 1, 2020

Actions

11/13/2019 HOUSE Now in Agriculture & Natural Resources Appropriations Subcommittee

SB 0178 Public Financing of Construction Projects by Rodriguez (J)

Public Financing of Construction Projects; Prohibiting state-financed constructors from commencing construction of certain structures in coastal areas after a specified date without first taking certain steps regarding a sea level impact projection study; requiring the Department of Environmental Protection to develop by rule a standard for such studies; requiring the department to enforce certain requirements and to adopt rules, etc. Effective Date: On the same date that SB 7016 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law

Actions

12/13/2019 SENATE Now in Appropriations Subcommittee on Agriculture, Environment, and General Government

SB 0182 Preemption of Recyclable and Polystyrene Materials by Stewart

Preemption of Recyclable and Polystyrene Materials; Deleting preemptions of local law relating to the regulation of auxiliary containers, wrappings, or disposable plastic bags; repealing the preemption of local laws regarding the use or sale of polystyrene products to the Department of Agriculture and Consumer Services, etc. Effective Date: 7/1/2020

Actions

09/19/2019 SENATE Referred to Community Affairs; Environment and Natural Resources; Rules

SB 0200 Advanced Well Stimulation Treatment by Montford

Advanced Well Stimulation Treatment; Defining the terms "high-pressure well stimulation" and "matrix acidization"; prohibiting the performance of high-pressure well stimulation or matrix acidization; providing that permits for drilling or for operating a well do not authorize the performance of high-pressure well stimulation or matrix acidization, etc. Effective Date: Upon becoming a law

Actions

11/05/2019 SENATE Now in Innovation, Industry, and Technology

SB 0218 Licensure Requirements for Osteopathic Physicians by Harrell

Licensure Requirements for Osteopathic Physicians; Revising licensure requirements for persons seeking licensure or certification as an osteopathic physician, etc. Effective Date: Upon becoming a law

Actions

10/24/2019 SENATE Now in Appropriations

HB 0221 Osteopathic Physicians Certification and Licensure by Roach

Osteopathic Physicians Certification and Licensure: Requires successful completion of internship or residency in specified accredited program to be licensed or certified as osteopathic physician. Effective Date: upon becoming a law

Actions

01/30/2020 HOUSE Placed on Calendar, on 2nd reading

SB 0226 Athletic Trainers by Harrell

Athletic Trainers; Revising the definition of the term “athletic trainer”; revising athletic trainer licensure requirements; revising continuing education requirements for the renewal of an athletic trainer license; requiring that the supervision of an athletic training student meet certain requirements, etc. Effective Date: 7/1/2020

Actions

01/31/2020 SENATE On Committee agenda - Rules, 02/05/20, 9:30 am, 110 S

SB 0230 Department of Health by Harrell

Department of Health; Requiring the Department of Health to develop strategies to maximize federal-state partnerships that provide incentives for physicians to practice in medically underserved or rural areas; revising licensure requirements for a person seeking licensure or certification as an osteopathic physician; extending through 2025 the Florida Center for Nursing’s responsibility to study and issue an annual report on the implementation of nursing education programs; requiring dentists and certified registered dental hygienists to report in writing certain adverse incidents to the department within a specified timeframe; revising athletic trainer licensure requirements, etc. Effective Date: 7/1/2020

Actions

01/31/2020 SENATE On Committee agenda - Appropriations, 02/05/20, 1:00 pm, 412 K

SB 0250 Development Orders by Berman

Development Orders; Deleting an entitlement for a prevailing party to recover reasonable attorney fees and costs incurred in challenging or defending a certain development order, etc. Effective Date: 7/1/2020

Actions

09/19/2019 SENATE Referred to Community Affairs; Judiciary; Rules

HB 0255 Florida Commission on Human Relations by Antone

Florida Commission on Human Relations: Provides quorum requirements for Commission on Human Relations & its panels; revises number of persons commission may recommend for Florida Civil Rights Hall of Fame; requires commission to provide notice to aggrieved person in certain circumstances; provides limitation on time civil action may be filed after alleged violation of Florida Civil Rights Act; revises length of time commission or AG has to resolve complaint of discrimination in club membership; revises timeline relating to complaints alleging prohibited personnel action. Effective Date: July 1, 2020

Actions

01/31/2020 HOUSE On Committee agenda - Civil Justice Subcommittee, 02/04/20, 3:30 pm, 404 H

SB 0278 Climate Health Planning by Rodriguez (J)

Climate Health Planning; Requiring the Department of Health to prepare an annual climate health planning report that contains specified information and recommendations; requiring the report to be published on the department’s website and submitted to the Governor and the Legislature by a specified date, etc. Effective Date: 7/1/2020

Actions

10/15/2019 SENATE Referred to Health Policy; Infrastructure and Security; Appropriations

HB 0279 Local Government Public Construction Works by Smith (D)

Local Government Public Construction Works: Requires local governing board to consider estimated costs

of certain projects when making specified determination; requires local government that performs project using its own services, employees, & equipment to disclose costs of project after completion to Auditor General; requires Auditor General to review such disclosures as part of routine audits of local governments. Effective Date: July 1, 2020

Actions

01/31/2020 HOUSE On Committee agenda - Business & Professions Subcommittee, 02/04/20, 12:00 pm, 212 K

SB 0280 Climate Fiscal Responsibility by Rodriguez (J)

Climate Fiscal Responsibility; Requiring the Economic Estimating Conference to annually prepare a climate fiscal responsibility report and provide a copy of the report to the Governor and the Legislature; requiring the Office of Economic and Demographic Research to publish the report on its website; requiring the conference to coordinate with and obtain data from certain entities in preparing the report, etc. Effective Date: 7/1/2020

Actions

10/15/2019 SENATE Referred to Infrastructure and Security; Finance and Tax; Appropriations

HB 0305 Preemption of Conditions of Employment by Rommel

Preemption of Conditions of Employment: Preempts to state right to regulate conditions of employment by an employer; voids certain ordinances, regulations, or policies that are preempted by act. Effective Date: upon becoming a law

Actions

01/28/2020 HOUSE Now in Commerce Committee

SB 0318 Sale of Sunscreen by Stewart

Sale of Sunscreen; Prohibiting the sale, offer for sale, or distribution of certain sunscreen products to a consumer who does not have a prescription for such product, etc. Effective Date: 7/1/2020

Actions

10/15/2019 SENATE Referred to Environment and Natural Resources; Commerce and Tourism; Rules

SB 0326 Environmental Regulation by Perry

Environmental Regulation; Specifying requirements for contracts between residential recycling collectors or recovered materials processing facilities and counties or municipalities for the collection or processing of residential recycling material; providing that a residential recycling collector or recovered materials processing facility is not required to collect, transport, or process contaminated recyclable material except pursuant to specified contractual requirements after a contract is executed; prohibiting local governments from requiring further verification from the Department of Environmental Protection for certain projects, etc. Effective Date: 7/1/2020

Actions

01/31/2020 SENATE On Committee agenda - Rules, 02/05/20, 9:30 am, 110 S

SB 0332 Land Acquisition Trust Fund by Stewart

Land Acquisition Trust Fund; Requiring a specified annual appropriation to the Florida Forever Trust Fund; prohibiting moneys from the Land Acquisition Trust Fund from being used for specified costs, etc. Effective Date: 7/1/2020

Actions

11/05/2019 SENATE Now in Appropriations Subcommittee on Agriculture, Environment, and General Government

HB 0343 Recreational Vehicles by Fetterhoff

Recreational Vehicles: Requires DACS to adopt rules specifying requirements for agents to administer certain competency examinations & establishing competency test for license to engage in activities solely

related to service & repair of recreational vehicles; authorizes certain qualifiers & master qualifiers to engage in such activities; requires certain LP gas experience or certification by LP gas manufacturer to apply for master qualifier certification. Effective Date: July 1, 2020

Actions

01/30/2020 HOUSE Now in Commerce Committee

HB 0365 Property Assessed Clean Energy Program by Watson (B)

Property Assessed Clean Energy Program: Revises definition of "qualifying improvements" to include sewage treatment and seawall improvements. Effective Date: July 1, 2020

Actions

10/23/2019 HOUSE Now in Energy & Utilities Subcommittee

SB 0390 Massage Therapy by Hooper

Massage Therapy; Revising requirements for licensure as a massage therapist; providing applicability for persons who were issued a license as a massage apprentice before a specified date, etc. Effective Date: 7/1/2020

Actions

10/15/2019 SENATE Referred to Health Policy; Appropriations; Rules

HB 0401 Shark Fins by Jacobs

Shark Fins: Prohibits import, export, & sale of shark fins. Effective Date: October 1, 2020

Actions

01/15/2020 HOUSE Now in State Affairs Committee

HB 0405 Stormwater Management Systems by Good

Stormwater Management Systems: Directs water management districts, with DEP oversight, to adopt rules for standards relating to new development & redevelopment projects; directs DEP to incorporate such rules for district use; directs DEP & districts to amend such rules into applicant's handbook; provides rebuttable presumption relating to water quality standards for certain systems; revises requirements for construction of certain systems; requires specified staff training; directs DEP & districts to initiate rulemaking. Effective Date: July 1, 2020

Actions

10/30/2019 HOUSE Now in Agriculture & Natural Resources Subcommittee

HB 0417 Anchoring Limitation Areas by Duggan

Anchoring Limitation Areas: Designates specified waterways as anchoring limitation areas. Effective Date: July 1, 2020

Actions

10/30/2019 HOUSE Now in Agriculture & Natural Resources Subcommittee

SB 0422 Recreational Vehicles by Perry

Recreational Vehicles; Defining the term "recreational vehicle"; requiring the Department of Agriculture and Consumer Services to adopt rules specifying requirements for agents to administer certain competency examinations and establishing a written competency examination for a license to engage in activities solely related to the service and repair of recreational vehicles; authorizing certain qualifiers and master qualifiers to engage in activities solely related to the service and repair of recreational vehicles, etc. Effective Date: 7/1/2020

Actions

01/30/2020 SENATE Now in Innovation, Industry, and Technology

SB 0438	Land Acquisition Trust Fund by Harrell
Land Acquisition Trust Fund; Providing an appropriation for certain projects related to the Indian River Lagoon Comprehensive Conservation and Management Plan; authorizing the Department of Environmental Protection to make grants for such projects; providing for a specified local match for such grants, etc. Effective Date: 7/1/2020	
Actions	
10/15/2019	SENATE Referred to Environment and Natural Resources; Appropriations Subcommittee on Agriculture, Environment, and General Government; Appropriations
SB 0444	Customer Service Standards for State Agencies by Rader
Customer Service Standards for State Agencies; Requiring departments within the executive branch of state government to implement certain measures with respect to telephone calls placed by customers, etc. Effective Date: 10/1/2020	
Actions	
12/09/2019	SENATE Now in Innovation, Industry, and Technology
SB 0450	Whistleblower's Act by Brandes
Whistleblower's Act; Revising the actions that an agency or independent contractor is prohibited from taking against an employee who participates in protected activity or discloses certain information; specifying that whistleblower remedies and protections do not apply to certain persons; revising applicability of provisions relating to investigative procedures upon receipt of whistleblower information; revising investigative procedures in response to retaliatory actions, etc. Effective Date: 7/1/2020	
Actions	
10/15/2019	SENATE Referred to Governmental Oversight and Accountability; Judiciary; Rules
SB 0456	Minimum Wage by Rodriguez (J)
Minimum Wage; Revising the formula for the adjusted state minimum wage, etc. Effective Date: 7/1/2020	
Actions	
10/15/2019	SENATE Referred to Commerce and Tourism; Innovation, Industry, and Technology; Rules
HB 0465	High-Speed Passenger Rail Safety by Sirois
High-Speed Passenger Rail Safety: Provides for regulation of railroad companies; requires training for local emergency services under certain circumstances; provides requirements for railroad company reporting & DOT website publication; provides minimum safety standards for high-speed passenger rail; designates responsibility for maintenance of certain safety improvements; provides safety inspection requirements; requires certain fencing; provides liability for failure to construct or maintain fencing; provides for enforcement. Effective Date: July 1, 2020	
Actions	
11/07/2019	HOUSE Now in Transportation & Infrastructure Subcommittee
HB 0485	Athletic Trainers by Antone
Athletic Trainers: Revises definition of term "athletic trainer"; revises athletic trainer licensure requirements; requires certain licensees to maintain certification in good standing without lapse as condition of renewal of their athletic trainer licenses; requires that athletic trainer work within specified scope of practice; requires direct supervision of athletic training student to be in accordance with rules adopted by Board of Athletic Training. Effective Date: July 1, 2020	
Actions	
01/30/2020	HOUSE Placed on Calendar, on 2nd reading
HB 0489	Land Acquisition Trust Fund by Plasencia
Land Acquisition Trust Fund: Provides appropriation for certain projects related to Indian River Lagoon	

Comprehensive Conservation & Management Plan; authorizes DEP to make grants for such projects; provides for specified local match for such grants; requires department to submit annual report to Governor & Legislature. Effective Date: July 1, 2020

Actions

11/07/2019 HOUSE Now in Agriculture & Natural Resources Appropriations Subcommittee

SB 0504

Local Government Public Construction Works by Perry

Local Government Public Construction Works; Revising disclosure requirements for bidding documents and other requests for proposals issued for bids by a local governmental entity and public contracts entered into between local governmental entities and contractors; requiring the governing board of a local government to consider estimated costs of certain projects using generally accepted cost-accounting principles that account for specified costs when the board is making a specified determination, etc. Effective Date: 7/1/2020

Actions

01/16/2020 SENATE Now in Rules

HB 0513

Heat Illness Prevention by Smith (C)

Heat Illness Prevention: Requires certain employers to provide drinking water, shade, & annual training to employees & supervisors; requires DACS & DOH to adopt specified rules. Effective Date: October 1, 2020

Actions

11/15/2019 HOUSE Now in Workforce Development & Tourism Subcommittee

HB 0549

Pub. Rec./Site-specific Location Information of Endangered and Threatened Species by Overdorf

Pub. Rec./Site-specific Location Information of Endangered and Threatened Species: Provides exemption from public records requirements for site-specific location information of endangered & threatened species; provides for future legislative review & repeal of exemption; provides statement of public necessity. Effective Date: July 1, 2020

Actions

01/31/2020 HOUSE On Committee agenda - Agriculture & Natural Resources Subcommittee, 02/04/20, 12:00 pm, 12 H

HB 0571

Vehicle and Vessel Registration Data and Functionality by Fernandez-Barquin

Vehicle and Vessel Registration Data and Functionality: Requires DHSMV to provide tax collectors & their approved agents & vendors with real-time access to certain vehicle & vessel registration data & functionality in same manner as provided to other third parties. Effective Date: July 1, 2020

Actions

01/30/2020 HOUSE On Committee agenda - Transportation & Tourism Appropriations Subcommittee, 02/03/20, 3:00 pm, 102 H

HB 0579

Public Financing of Construction Projects by Aloupis

Public Financing of Construction Projects: Requires sea level impact projection study of state-financed coastal structures before construction begins; requires DEP to develop study standards, publish studies on its website, enforce requirements, & adopt rules. Effective Date: July 1, 2020

Actions

01/31/2020 HOUSE On Committee agenda - Agriculture & Natural Resources Subcommittee, 02/04/20, 12:00 pm, 12 H

HB 0595

Medical Marijuana Employee Protection by Polsky

Medical Marijuana Employee Protection: Prohibits employers from taking adverse personnel action against employees or applicants who are qualified patients using medical marijuana; requires employers to

provide certain written notice to employees or applicants who test positive for marijuana; provides procedures for if employee or applicant tests positive for marijuana; provides cause of action & damages. Effective Date: upon becoming a law

Actions

11/25/2019 HOUSE Now in Oversight, Transparency & Public Management Subcommittee

SB 0606 Anchoring Limitation Areas by Bean

Anchoring Limitation Areas; Designating specified waterways as anchoring limitation areas, etc. Effective Date: 7/1/2020

Actions

01/16/2020 SENATE Now in Community Affairs

SB 0638 Apalachicola Environmental Stewardship Act by Montford

Apalachicola Environmental Stewardship Act; Providing that this act may be referred to as "The Apalachicola Environmental Stewardship Act", appropriating a sum annually for a specified timeframe from the Florida Forever Fund to the Apalachicola Area of Critical State Concern for specified purposes; renaming the Apalachicola Bay Area of Critical State Concern as the Apalachicola Area of Critical State Concern; providing additional principles for guiding development within the Apalachicola Area of Critical State Concern to include projects that protect and improve water quality, etc. Effective Date: 7/1/2020

Actions

12/10/2019 SENATE Now in Appropriations Subcommittee on Agriculture, Environment, and General Government

SB 0640 Indian River Lagoon State Matching Grant Program by Harrell

Indian River Lagoon State Matching Grant Program; Providing that certain projects identified in a specified Indian River Lagoon Comprehensive Conservation and Management Plan are eligible for state funding consideration; directing the Department of Environmental Protection to coordinate with the South Florida Water Management District and the St. Johns River Water Management District to identify projects and grant recipients and to submit an annual report to the Governor, the Legislature, and specified persons, etc. Effective Date: 7/1/2020

Actions

12/10/2019 SENATE Now in Appropriations Subcommittee on Agriculture, Environment, and General Government

SB 0648 Sargassum Seaweed Matching Grant Program by Berman

Sargassum Seaweed Matching Grant Program; Requiring the Department of Environmental Protection to establish a Sargassum Seaweed Matching Grant Program for a specified purpose; requiring the department to submit an annual report to the Governor and the Legislature by a specified date, etc. Effective Date: 7/1/2020

Actions

12/10/2019 SENATE Now in Appropriations Subcommittee on Agriculture, Environment, and General Government

SB 0664 Verification of Employment Eligibility by Lee

Verification of Employment Eligibility; Requiring employers to register with and use the E-Verify system beginning on a specified date to verify the employment eligibility of new employees; requiring the Department of Economic Opportunity to order certain agencies to suspend an employer's license under certain circumstances; requiring the department to notify the United States Immigration and Customs Enforcement Agency and specified law enforcement agencies of certain violations, etc. Effective Date: 7/1/2020

Actions

11/06/2019 SENATE Referred to Judiciary; Commerce and Tourism; Rules

SB 0676 High-speed Passenger Rail Safety by Mayfield

High-speed Passenger Rail Safety; Designating the "Florida High-Speed Passenger Rail Safety Act"; requiring the Department of Transportation to regulate railroad companies when that authority is not federally preempted; providing that certain railroad companies are responsible for ensuring that impacted roadbeds meet specified transition requirements under certain circumstances; requiring the department's railroad inspectors, in accordance with a specified program, to meet certain certification requirements and to coordinate their activities with those of federal inspectors in this state in compliance with certain federal regulations, etc. Effective Date: 7/1/2020

Actions

01/23/2020 SENATE Now in Appropriations Subcommittee on Transportation, Tourism, and Economic Development

HB 0677 Chiropractic Medicine by Smith (D)

Chiropractic Medicine: Authorizes chiropractic physicians who have completed specified training to administer articles of natural origin; authorizes licensed pharmacists to fill such chiropractors' orders for articles of natural origin; authorizes specified number of certain chiropractic continuing education hours to be completed online; provides requirements for such online chiropractic continuing education courses. Effective Date: July 1, 2020

Actions

12/03/2019 HOUSE Now in Health Quality Subcommittee

SB 0680 Shark Fins by Hutson

Shark Fins; Prohibiting the import, export, and sale of shark fins, etc. Effective Date: 10/1/2020

Actions

01/29/2020 SENATE On Committee agenda - Environment and Natural Resources, 02/03/20, 4:00 pm, 37 S

SB 0686 Stormwater Management Systems by Gruters

Stormwater Management Systems; Directing the water management districts, with Department of Environmental Protection oversight, to adopt rules for specified design and performance standards relating to new development and redevelopment projects; providing a rebuttable presumption that certain stormwater management systems do not cause or contribute to violations of applicable state water quality standards; requiring certain inspection training for department, water management district, and local pollution control program staff, etc. Effective Date: 7/1/2020

Actions

11/06/2019 SENATE Referred to Environment and Natural Resources; Appropriations Subcommittee on Agriculture, Environment, and General Government; Appropriations

SB 0690 Water Resources by Albritton

Water Resources; Requiring the Department of Environmental Protection to conduct a comprehensive and quantitative needs-based overview of this state's water resources; specifying requirements for the overview; requiring the department to submit a report every 5 years to the Governor and the Legislature by a specified date, etc. Effective Date: 7/1/2020

Actions

11/06/2019 SENATE Referred to Environment and Natural Resources; Appropriations Subcommittee on Agriculture, Environment, and General Government; Appropriations

HB 0691 Minimum Wage by Jacquet

Minimum Wage: Revises formula for adjusted state minimum wage. Effective Date: July 1, 2020

Actions

12/03/2019 HOUSE Now in Workforce Development & Tourism Subcommittee

HB 0707**Legislative Review of Occupational Regulations** by Renner

Legislative Review of Occupational Regulations: Authorizes schedule for the systematic review of occupational regulatory programs; authorizes Legislature to take certain actions before scheduled repeal of occupational regulatory program; provides regulation of occupation to state if such occupation's regulatory program has been repealed through this act; provides schedule of repeal for occupational regulatory programs. Effective Date: upon becoming a law

Actions

01/17/2020 HOUSE Now in Health & Human Services Committee

SB 0712**Water Quality Improvements** by Mayfield

Water Quality Improvements; Citing this act as the "Clean Waterways Act"; requiring the Department Health to provide a specified report to the Governor and the Legislature by a specified date; transferring the Onsite Sewage Program within the Department of Health to the Department of Environmental Protection by a type two transfer by a specified date; creating an onsite sewage treatment and disposal systems technical advisory committee within the department; requiring the department to adopt rules relating to the underground pipes of wastewater collection systems; requiring basin management action plans for nutrient total maximum daily loads to include wastewater treatment and onsite sewage treatment and disposal system remediation plans that meet certain requirements, etc. Effective Date: Except as otherwise expressly provided in this act this act shall take effect July 1, 2020

Actions

01/31/2020 SENATE On Committee agenda - Appropriations, 02/05/20, 1:00 pm, 412 K - PCS

HB 0713**Department of Health** by Rodriguez (AM)

Department of Health: Authorizes DOH to adopt rules relating to certain programs; revises certain duties & responsibilities of department; revises licensure requirements for certain professions under authority of department; provides adverse incident reporting requirements for certain dental professionals. Effective Date: July 1, 2020

Actions

01/30/2020 HOUSE Now in Health & Human Services Committee

SB 0722**Land Acquisition Trust Fund** by Montford

Land Acquisition Trust Fund; Requiring that certain funds distributed into the Land Acquisition Trust Fund be used for conservation and management projects in certain counties; providing the types of projects for which the Department of Environmental Protection may use such funds, etc. Effective Date: 7/1/2020

Actions

11/18/2019 SENATE Referred to Environment and Natural Resources; Appropriations Subcommittee on Agriculture, Environment, and General Government; Appropriations

SB 0770**Property Assessed Clean Energy Program** by Rodriguez (J)

Property Assessed Clean Energy Program; Amending the definition of "qualifying improvement" to include sewage treatment, seawall improvements, and certain improvements to underground infrastructure, etc. Effective Date: 7/1/2020

Actions

11/21/2019 SENATE Referred to Community Affairs; Innovation, Industry, and Technology; Rules

HB 0775**Everglades Protection Area** by Avila

Everglades Protection Area: Requires comprehensive plans & plan amendments that apply to certain lands within or near Everglades Protection Area to follow state coordinated review process; requires DEP to make determinations, consult, & coordinate with specified entities regarding such plans & amendments; provides additional limitation for compliance determination of such plans & plan amendments; prohibits & provides requirements for adoption of certain development amendments within Everglades Protection Area. Effective Date: July 1, 2020

Actions

02/02/2020 HOUSE Now in State Affairs Committee

HB 0777 Fish and Wildlife Activities by Gregory

Fish and Wildlife Activities: Prohibits certain harassment of hunters, trappers, & fishers in or on specified lands, areas, & waters; authorizes FWCC to designate additional free fishing days; prohibits certain possession of specified reptiles; provides exemption from sales & use tax for retail sale of certain hunting, fishing, & camping supplies during specified period; authorizes certain dealers to opt out of exemption; authorizes DOR to adopt emergency rules; provides appropriation. Effective Date: July 1, 2020

Actions

01/16/2020 Bill to be Discussed During the Office of EDR's Revenue Estimating Impact Conference, 01/17/20, 09:00 am, 117 K (No Votes Will Be Taken)

HB 0791 Florida National Estuary Program Act by Fitzenhagen

Florida National Estuary Program Act: Requires DEP to give funding consideration to estuaries identified under National Estuary Program; requires funds to be used for specified projects; requires programs receiving funding to submit report to Governor, Legislature, DEP, & water management districts. Effective Date: July 1, 2020

Actions

12/16/2019 HOUSE Now in Agriculture & Natural Resources Subcommittee

SB 0812 Public Records/Endangered and Threatened Species by Hutson

Public Records/Endangered and Threatened Species; Providing an exemption from public records requirements for the site-specific location information of certain endangered and threatened species; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. Effective Date: 7/1/2020

Actions

01/29/2020 SENATE On Committee agenda - Governmental Oversight and Accountability, 02/03/20, 1:30 pm, 301 S

SB 0826 Marina Evacuations by Mayfield

Marina Evacuations; Prohibiting vessels under a specified weight from remaining in certain marinas that have been deemed not suitable for refuge during a hurricane after the issuance of a hurricane watch or warning for the waters of the marina; providing for civil penalties, etc. Effective Date: 7/1/2020

Actions

01/29/2020 SENATE On Committee agenda - Environment and Natural Resources, 02/03/20, 4:00 pm, 37 S

HB 0889 Employment Practices by Davis

Employment Practices: Creates "Florida Family Leave Act"; requires employer to allow certain employees to take paid family leave to bond with minor child upon child's birth, adoption, or foster care placement; provides requirements, limitations, & duties; provides for civil action & penalties & criminal penalty; prohibits specified employment practices on basis of pregnancy, childbirth, or medical condition related to pregnancy or childbirth; provides for leave, maintenance of health coverage, reasonable accommodation & transfer, & return rights for employee who is disabled from pregnancy, childbirth, or medical condition related to pregnancy or childbirth. Effective Date: July 1, 2020

Actions

12/19/2019 HOUSE Now in Business & Professions Subcommittee

HB 0913 Florida Climate and Resiliency Research Program by Diamond

Florida Climate and Resiliency Research Program: Establishes program within DEP; provides for program purpose & participants; requires program to submit Florida Resiliency Plan to Governor & Legislature at

specified intervals; provides plan requirements; directs DEP to coordinate & oversee program & provide staff support. Effective Date: July 1, 2020

Actions

12/19/2019 HOUSE Now in Agriculture & Natural Resources Subcommittee

SB 0962 Medical Marijuana Employee Protection by Berman

Medical Marijuana Employee Protection; Prohibiting an employer from taking adverse personnel action against an employee or job applicant who is a qualified patient using medical marijuana; requiring an employer to provide written notice to an employee or job applicant who tests positive for marijuana of his or her right to explain the positive test result; providing procedures when an employee or job applicant tests positive for marijuana; providing a cause of action and damages, etc. Effective Date: Upon becoming a law

Actions

12/13/2019 SENATE Referred to Governmental Oversight and Accountability; Judiciary; Rules

SB 0998 Housing by Hutson

Housing; Authorizing a board of county commissioners to approve development of affordable housing on any parcel zoned for residential, commercial, or industrial use; requiring counties, municipalities, and special districts to include certain data relating to impact fees in their annual financial reports; providing the percentage of the sales price of certain mobile homes which is subject to sales tax; revising an exemption from regulation for certain water service resellers, etc. Effective Date: 7/1/2020

Actions

01/16/2020 SENATE Now in Infrastructure and Security

HB 1023 Train Crew Requirements by Valdes

Train Crew Requirements: Provides minimum crew requirements for freight or passenger train; provides exceptions; provides minimum crew requirements for train that is transporting certain hazardous materials; provides penalties. Effective Date: July 1, 2020

Actions

01/08/2020 HOUSE Now in Transportation & Infrastructure Subcommittee

SB 1030 Public Records/Vessel Title or Registration/Department of Highway Safety and Motor Vehicles by Stargel

Public Records/Vessel Title or Registration/Department of Highway Safety and Motor Vehicles; Creating public records exemptions for certain information contained in any record that pertains to a vessel title or vessel registration issued by the Department of Highway Safety and Motor Vehicles; providing exemptions from public records requirements for electronic mail addresses and cellular telephone numbers collected by the department; providing for future legislative review and repeal of the exemptions; providing statements of public necessity, etc. Effective Date: 7/1/2020

Actions

01/23/2020 SENATE Now in Governmental Oversight and Accountability

SB 1042 Aquatic Preserves by Albritton

Aquatic Preserves; Creating the Nature Coast Aquatic Preserve; designating the preserve for inclusion in the aquatic preserve system; outlining the authority of the Board of Trustees of the Internal Improvement Trust Fund in respect to the preserve; prohibiting the establishment and management of the preserve from infringing upon the riparian rights of upland property owners adjacent to or within the preserve, etc. Effective Date: 7/1/2020

Actions

01/29/2020 SENATE On Committee agenda - Governmental Oversight and Accountability, 02/03/20, 1:30 pm, 301 S

HB 1061**Aquatic Preserves** by Massullo, Jr.

Aquatic Preserves: Creates Nature Coast Aquatic Preserve; designates preserve for inclusion in aquatic preserve system; describes boundaries of preserve; outlines authority of Board of Trustees of Internal Improvement Trust Fund; requires board to adopt rules; prohibits establishment & management of preserve from infringing upon riparian rights of upland property owners adjacent to or within preserve; provides civil penalties. Effective Date: July 1, 2020

Actions

01/31/2020 HOUSE On Committee agenda - Agriculture & Natural Resources Subcommittee, 02/04/20, 12:00 pm, 12 H

HB 1067**Florida Endangered and Threatened Species Act** by Hattersley

Florida Endangered and Threatened Species Act: Directs FWCC & DACS to protect certain declassified species; revises criteria for placement of species on Regulated Plant Index by DACS; prohibits FWCC & DACS from considering certain costs when designating species as endangered or threatened. Effective Date: July 1, 2020

Actions

01/13/2020 HOUSE Now in Agriculture & Natural Resources Subcommittee

HB 1073**Statewide Office of Resiliency** by Stevenson

Statewide Office of Resiliency: Establishes office within EOG; provides for appointment of Chief Resilience Officer by Governor; creates Statewide Sea-Level Rise Task Force within office; requires DEP to serve as task force's contract administrator; requires Environmental Regulation Commission to take certain action on task force's recommendations; provides for task force repeal; provides appropriation. Effective Date: July 1, 2020

Actions

01/29/2020 HOUSE Now in State Affairs Committee

SB 1086**Vehicle and Vessel Registration Data and Functionality** by Diaz

Vehicle and Vessel Registration Data and Functionality; Requiring the Department of Highway Safety and Motor Vehicles to provide tax collectors and their approved agents and vendors with real-time access to certain vehicle and vessel registration data and functionality in the same manner as provided to other third parties, etc. Effective Date: 7/1/2020

Actions

01/23/2020 SENATE Now in Appropriations Subcommittee on Transportation, Tourism, and Economic Development

HB 1091**Environmental Enforcement** by Fine

Environmental Enforcement: Increases civil penalties for violations of certain provisions relating to beach & shore construction, Biscayne Bay Aquatic Preserve, aquatic preserves, state water resource plan, artesian wells, pollution, operating terminal facility without discharge prevention & response certificates, discharge contingency plans for vessels, Pollutant Discharge Prevention & Control Act, Clean Ocean Act, pollution of surface & ground waters, regulation of oil & gas resources, Phosphate Land Reclamation Act, sewage disposal facilities, pollution control, reasonable costs & expenses for pollution releases, necessary permits, dumping litter, small quantity generators, abatement of imminent hazards caused by hazardous substances, hazardous waste generators, transporters, or facilities, & coral reef protection; provides that certain conditions constitute separate offenses. Effective Date: July 1, 2020

Actions

01/31/2020 HOUSE On Committee agenda - Agriculture & Natural Resources Subcommittee, 02/04/20, 12:00 pm, 12 H

SB 1126**Employment Conditions** by Gruters

Employment Conditions; Prohibiting a political subdivision from establishing, mandating, or otherwise requiring an employer to offer conditions of employment which are not otherwise required by state or

federal law; specifying that the regulation of conditions of employment is expressly preempted to the state, etc. Effective Date: Upon becoming a law

Actions

12/13/2019 SENATE Referred to Governmental Oversight and Accountability; Community Affairs; Rules

SB 1176

Captive-bred Animal Culture by Perry

Captive-bred Animal Culture; Creating the "Florida Animal Policy Act"; providing duties of the Department of Agriculture and Consumer Services; requiring the department to submit a list of specified research and development projects with its annual legislative budget request to the Governor and the Legislature; requiring a captive-bred producer to apply to the department for a certificate of registration; creating the Captive-bred Animal Culture Advisory Council adjunct to the department, etc. Effective Date: 7/1/2020

Actions

12/18/2019 SENATE Referred to Agriculture; Appropriations Subcommittee on Agriculture, Environment, and General Government; Appropriations

HB 1177

Personal Watercraft by Thompson

Personal Watercraft: Provides requirements for persons operating, riding on, & being towed behind watercraft; increases age requirement for operation of watercraft; prohibits owner of, or person having charge of or control over, watercraft from authorizing or knowingly permitting operation by certain persons; provides specified liability insurance coverage, instruction, & information requirements for companies that provide watercraft; provides conditions prohibiting operation of certain watercraft; requires persons operating watercraft to have specified documentation on board. Effective Date: July 1, 2020

Actions

01/13/2020 HOUSE Now in Agriculture & Natural Resources Subcommittee

SB 1194

Employment Practices by Cruz

Employment Practices; Creating the "Florida Family Leave Act"; requiring an employer to allow certain employees to take paid family leave to bond with a new child upon the child's birth, adoption, or foster care placement; requiring that family leave be taken concurrently with any leave taken pursuant to federal family and medical leave provisions; requiring the Department of Economic Opportunity to create a poster and a model notice that specify family leave rights, etc. Effective Date: 7/1/2020

Actions

12/18/2019 SENATE Referred to Commerce and Tourism; Governmental Oversight and Accountability; Appropriations

HB 1199

Environmental Protection Act by Ingoglia

Environmental Protection Act: Prohibits local governments from recognizing or granting certain legal rights to natural environment or granting such rights relating to natural environment to person or political subdivision. Effective Date: upon becoming a law

Actions

01/31/2020 HOUSE On Committee agenda - Agriculture & Natural Resources Subcommittee, 02/04/20, 12:00 pm, 12 H

SB 1232

Florida Climate and Resiliency Research Program by Rouson

Florida Climate and Resiliency Research Program; Establishing the program within the Department of Environmental Protection; providing for program purpose and participants; requiring the program to submit the Florida Resiliency Plan to the Governor and Legislature at specified intervals; providing plan requirements; directing the department to coordinate and oversee the program and provide staff support, etc. Effective Date: 7/1/2020

Actions

01/08/2020 SENATE Referred to Infrastructure and Security; Environment and Natural Resources; Appropriations

HB 1265 Verification of Employment Eligibility by Byrd

Verification of Employment Eligibility: Requires public employers, contractors, & subcontractors to use E-Verify system for specified purposes; prohibits such entities from entering into contract unless each party to contract uses E-Verify system; authorizes termination of contract; requires private employers to verify employment eligibility of newly hired employees; provides acceptable methods for verification; provides specified immunity; creates rebuttable presumption for private employers. Effective Date: July 1, 2020

Actions

01/17/2020 HOUSE Now in Commerce Committee

SB 1310 Hunting and Fishing Sales Tax Holiday by Mayfield

Hunting and Fishing Sales Tax Holiday; Providing an exemption from the sales and use tax for the retail sale of firearms, firearm ammunition, camping tents, and fishing supplies during a specified timeframe; defining the terms "firearms" and "fishing supplies"; specifying locations where the exemptions do not apply, etc. APPROPRIATION: \$237,000 Effective Date: Upon becoming a law

Actions

01/21/2020 SENATE Not Considered by Commerce and Tourism

HB 1315 Transportation by Fetterhoff

Transportation: Revises DOT organization & responsibilities; revises provisions relating to distribution of certain moneys; revises time period within which disclosure of beneficial interests must be submitted to state or certain local governmental units; revises provisions relating to notice delivery; removes scheduled repeal of certain provisions; requires vehicle operator to take certain actions when road & bridge maintenance or construction vehicle is on roadside; requires airport protection zoning regulations to require certain permit applicants to submit final valid determination from FAA; revises date by which M.P. O. must submit list of project priorities to DOT district. Effective Date: upon becoming a law

Actions

01/31/2020 HOUSE On Committee agenda - Transportation & Infrastructure Subcommittee, 02/04/20, 12:00 pm, 102 H

HB 1329 Marina Evacuations by Plasencia

Marina Evacuations: Prohibits vessels under specified weight from remaining in certain marinas that have been deemed not suitable for refuge during hurricane after issuance of hurricane watch or warning for waters of marina; provides for civil penalties. Effective Date: July 1, 2020

Actions

01/17/2020 HOUSE Now in Agriculture & Natural Resources Subcommittee

SB 1332 Towing and Immobilizing Vehicles and Vessels by Hooper

Towing and Immobilizing Vehicles and Vessels; Authorizing local governments to enact rates to tow or immobilize vessels on private property and to remove and store vessels under specified circumstances; prohibiting counties from enacting certain ordinances or rules that impose fees or charges on authorized wrecker operators or towing businesses; authorizing certain persons to place liens on vehicles or vessels to recover specified fees or charges; deleting requirements regarding notices and signs concerning the towing or removal of vehicles or vessels, etc. Effective Date: 7/1/2020

Actions

01/23/2020 SENATE Now in Infrastructure and Security

HB 1343 Water Quality Improvements by Payne

Water Quality Improvements: Requires DOH & DEP to submit reports & recommendations relating to transfer of Onsite Sewage Program in DOH to DEP; transfers Onsite Sewage Program from DOH to DEP; requires WMDs to submit consolidated annual reports to OEDR; removes provisions relating to DOH technical review & advisory panel & research & review advisory committee; directs DEP to determine that hardship exists for certain OSTDS onsite variance requests; creates OSTDS technical advisory

committee; requires county health departments to coordinate with DEP to administer evaluation programs; requires basin management action plans to include treatment & remediation plans; requires DEP to submit cost estimates to OEDR; provides for management of biosolids & water quality monitoring; establishes clean water grant program. Effective Date: July 1, 2021

Actions

01/28/2020 HOUSE Now in Appropriations Committee

SB 1360 Florida Endangered and Threatened Species Act by Rodriguez (J)

Florida Endangered and Threatened Species Act; directing the Fish and Wildlife Conservation Commission to protect certain declassified species; prohibiting the commission and the Department of Environmental Protection from considering certain costs when designating a species as endangered or threatened; revising criteria for placement of species on the Regulated Plant Index by the Department of Agriculture and Consumer Services; directing the department, in consultation with the Endangered Plant Advisory Council, to protect certain declassified species, etc. Effective Date: 7/1/2020

Actions

01/13/2020 SENATE Referred to Environment and Natural Resources; Appropriations Subcommittee on Agriculture, Environment, and General Government; Appropriations

HB 1363 Basin Management Action Plans by Overdorf

Basin Management Action Plans: Provides additional management strategies for such plans; requires certain plans to include specified elements; provides requirements for DEP, DACS, DOH, UF/IFAS, local governments, water management districts, & owners of agricultural operations; requires specified data collection & research; establishes nutrient reduction cost-share program within DEP; exempts rural homesteads from certain best management practices under certain conditions; requires DEP & DACS to include specified information in annual progress reports for such plans. Effective Date: July 1, 2020

Actions

01/30/2020 HOUSE On Committee agenda - Agriculture & Natural Resources Appropriations Subcommittee, 02/03/20, 3:00 pm, 17 H

SB 1378 Vessels by Rouson

Vessels; Specifying operation of a vessel at slow speed, minimum wake; prohibiting the operation of vessels at speeds faster than slow speed, minimum wake in certain situations; prohibiting the anchoring or mooring of a vessel to, or within a specified distance of, a mangrove or to vegetation upon, or within a specified distance of, public lands; revising civil penalties relating to certain at-risk vessels and prohibited anchoring or mooring, etc. Effective Date: 7/1/2020

Actions

01/13/2020 SENATE Referred to Environment and Natural Resources; Judiciary; Rules

SB 1382 Environmental Resource Management by Albritton

Environmental Resource Management; Providing additional management strategies for basin management action plans; requiring the Department of Agriculture and Consumer Services to work with the Department of Environmental Protection to improve the accuracy of data used to estimate certain agricultural land uses and to work with producers to identify certain agricultural technologies; prohibiting local governments from recognizing, granting, conveying, or extending legal rights or legal standing to animals or certain parts of the natural environment under certain circumstances, etc. Effective Date: 7/1/2020

Actions

01/30/2020 SENATE Now in Appropriations Subcommittee on Agriculture, Environment, and General Government

SB 1390 Everglades Protection Area by Simmons

Everglades Protection Area; Requiring comprehensive plans and plan amendments adopted by the governing bodies of local governments whose boundaries include any portion of the Everglades Protection

Area to follow the state coordinated review process; requiring the Department of Environmental Protection to make certain determinations for such plans and amendments, to provide written notice of its determination to the local governments within a specified timeframe, and to coordinate with the local governments on certain mitigation measures, etc. Effective Date: 7/1/2020

Actions

01/27/2020 SENATE Now in Community Affairs

HB 1407 Vessels by Webb

Vessels: Prohibits operation of vessels at speeds faster than slow speed, minimum wake in hazardous situations; provides requirements for flags displayed from vessels & barges actively engaged in construction operations; prohibits anchoring or mooring of vessel to mangroves & vegetation on public lands; revises civil penalties. Effective Date: July 1, 2020

Actions

01/17/2020 HOUSE Now in Agriculture & Natural Resources Subcommittee

SB 1414 Fish and Wildlife Activities by Mayfield

Fish and Wildlife Activities; Prohibiting certain harassment of hunters, trappers, and fishers within or on public lands or publicly or privately owned wildlife and fish management areas, or in or on public waters; authorizing the Fish and Wildlife Conservation Commission to designate additional annual free freshwater and saltwater fishing days; prohibiting the keeping, possessing, importing, selling, bartering, trading, or breeding of certain species except for educational or research purposes, etc. Effective Date: 7/1/2020

Actions

01/29/2020 SENATE On Committee agenda - Environment and Natural Resources, 02/03/20, 4:00 pm, 37 S

SB 1450 Environmental Enforcement by Gruters

Environmental Enforcement; Revising administrative penalties for violations of certain provisions relating to beach and shore construction and activities; revising civil penalties for violations of certain provisions relating to the Biscayne Bay Aquatic Preserve, aquatic preserves, water resources, the Pollutant Discharge Prevention and Control Act, the Clean Ocean Act, regulation of oil and gas resources, the Phosphate Land Reclamation Act, and other provisions relating to pollution and the environment, respectively; revising criminal penalties for violations of certain provisions relating to pollution and the environment, etc. Effective Date: 7/1/2020

Actions

01/30/2020 SENATE Now in Appropriations Subcommittee on Criminal and Civil Justice

SB 1468 Trains by Taddeo

Trains; Requiring, as a condition of operation in this state, that trains used in connection with the movement of freight and passengers have a crew that consists of at least two individuals; providing exceptions; authorizing the Secretary of Transportation to exempt certain railroad carriers from specified provisions of law under certain conditions; authorizing the Department of Transportation to assess civil penalties against a person or an entity for a specified violation, subject to certain requirements, etc. Effective Date: 7/1/2020

Actions

01/13/2020 SENATE Referred to Infrastructure and Security; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Appropriations

SB 1744 Personal Watercraft by Torres, Jr.

Personal Watercraft; Providing requirements for persons operating, riding on, and being towed behind personal watercraft; increasing the age requirement for operation of a personal watercraft; prohibiting the owner of, or a person having charge of or control over, any leased, hired, or rented personal watercraft

from authorizing or knowingly allowing the watercraft to be operated by certain persons; requiring companies that provide personal watercraft for lease, hire, or rent to maintain specified liability insurance coverage, etc. Effective Date: 7/1/2020

Actions

01/17/2020 SENATE Referred to Environment and Natural Resources; Banking and Insurance; Rules

SB 1786

Vessel Safety by Stewart

Vessel Safety; Prohibiting a vessel operator from endangering the life, limb, or property of another person by allowing passengers to ride on the bow of the vessel; providing that careless operation includes causing wake to law enforcement vessels under certain circumstances, etc. Effective Date: 7/1/2020

Actions

01/17/2020 SENATE Referred to Environment and Natural Resources; Criminal Justice; Rules

SB 1788

Boating-restricted Areas by Stewart

Boating-restricted Areas; Authorizing municipalities and counties to establish certain boating-restricted areas by ordinance for areas within a specified distance of any shoreline, etc. Effective Date: 7/1/2020

Actions

01/17/2020 SENATE Referred to Community Affairs; Environment and Natural Resources; Rules

SB 1822

Verification of Employment Eligibility by Gruters

Verification of Employment Eligibility; Requiring public employers, contractors, and subcontractors to register with and use the E-Verify system; prohibiting such entities from entering into a contract unless each party to the contract registers with and uses the E-Verify system; requiring private employers to verify the employment eligibility of newly hired employees, beginning on a specified date; providing acceptable methods for verifying employment eligibility, etc. Effective Date: 7/1/2020

Actions

01/17/2020 SENATE Referred to Judiciary; Commerce and Tourism; Rules

SB 1878

Environmental Protection by Bradley

Environmental Protection; Requiring a minimum annual appropriation for Everglades restoration and the protection of water resources in this state beginning in a specified fiscal year; providing requirements for the allocation of such funding; providing for future repeal of the appropriation unless reviewed and saved from repeal through reenactment by the Legislature, etc. Effective Date: 7/1/2020

Actions

01/29/2020 SENATE On Committee agenda - Environment and Natural Resources, 02/03/20, 4:00 pm, 37 S

HB 6019

Development Orders by Casello

Development Orders: Removes provision allowing prevailing party in certain development order challenges to recover specified fees & costs. Effective Date: July 1, 2020

Actions

09/23/2019 HOUSE Now in Commerce Committee

HB 7001

OGSR/E-mail Addresses/Department of Highway Safety and Motor Vehicles by Oversight, Transparency & Public Management Subcommittee

OGSR/E-mail Addresses/Department of Highway Safety and Motor Vehicles: Removes scheduled repeal of public records exemption for certain e-mail addresses collected by DHSMV. Effective Date: October 1, 2020

Actions

01/29/2020 HOUSE Read Second Time; Read Third Time; Passed (Vote: 118 Yeas / 0 Nays)

SB 7016**Statewide Office of Resiliency** by Infrastructure and Security

Statewide Office of Resiliency; Establishing the office within the Executive Office of the Governor; creating the Statewide Sea-Level Rise Task Force within the office; authorizing the Department of Environmental Protection to contract for specified services, upon request of the task force; requiring the Environmental Regulation Commission to take certain action on the task force's recommendations, etc.

APPROPRIATION: \$500,000 Effective Date: 7/1/2020

Actions

01/31/2020 SENATE On Committee agenda - Appropriations, 02/05/20, 1:00 pm, 412 K

HB 9027**UF/IFAS Algal Bloom Research & Mitigation** by Eagle

UF/IFAS Algal Bloom Research & Mitigation: Provides an appropriation for the UF/IFAS Algal Bloom Research & Mitigation. Effective Date: July 1, 2020

Actions

01/15/2020 HOUSE Now in Appropriations Committee