

# WEEK 4 REPORT

// 2020 LEGISLATIVE SESSION

+ MARINE INDUSTRIES ASSOCIATION OF FLORIDA

FEBRUARY 3-7, 2020



# // WEEK 4 REPORT

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We have completed four weeks of the 2020 Legislative Session. We are almost to the halfway mark, and tensions are starting to build. We are quickly approaching the time where bills begin to die in committees because there simply is not enough time on the calendar to get them through all their committee references. However, this is the time of year we must pay close attention to the amendatory process, as language can be added to vehicles in committees or the floor. Things are just starting to heat up, and we will do our best to keep you posted as issues arise.

Marina evacuations is a bill we will continue to watch closely. The language MIAF championed is still in statute 327.59. The language proposed has been negotiated by the sponsor and Boat US. We anticipate negotiated amendments to the Senate Bill and to the House Transportation package that contains the marina evacuation language. As of the writing of this report, the Senate bill is not on an agenda and an amendment has not been filed yet to the Senate Transportation bill up in the Senate Committee this week. However, House Bill 395 regarding Transportation is up in the House this week in committee and is filed. The language filed is the final negotiated language by Boat US.

Another bill of interest we are following is House Bill 1199, relating to Environmental Protection. This bill prohibits local governments from granting legal rights to natural environments. HB 1199 passed in committee this week 12-0. The bill is not in the last committee stop. The Senate companion, CS/SB 1382 has passed one committee and has two more to pass before it hits the floor for final passage. The Senate bill is comparable to the House bill.

SB 606 regarding Anchoring Limitation Areas did not make the Senate Community Affairs agenda this week. The House companion, HB 417 has not been heard in its first committee of reference as of the writing of this report.

As reported last week, SB 1378 regarding Vessels by Senator Rouson is scheduled to be heard in the Senate Environment and Natural Resources meeting. The bill has a strike everything amendment. We anticipate more changes to the amendment as it moves through the process. The House companion has yet to be heard.

in the first committee of reference as of the writing of this report. However, the bill will be available to be amended on another package in the Senate if it passes its first committee of reference.

Finally, the Senate and House debated their proposed budget in their respective Appropriations Committees this week. Several amendments were adopted to each respective budget. None of the marine/boating line items were amended.

The Senate and the Florida House of Representatives will be taking up their budget proposals this week on the floor. We anticipate more amendments and debate to set up the impending budget conference. Remember, Florida is required to pass a balanced budget every year.

As a reminder, a few of the budget items we are watching for MIAF are included at the end of the report.

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!

A handwritten signature in dark blue ink, appearing to read 'Margaret Timmins', with a large, stylized flourish extending to the right.

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**

**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:** CS/SB 826 prohibits, upon the issuance of a hurricane watch 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 requires that vessel owners promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport.

If the Coast Guard Captain of the Port sets the port condition to “Yankee” and a vessel owner has failed to remove his or her vessel from the waterway, a marina owner, operator, employee, or agent, is required to remove the vessel, if reasonable, from its slip. The marina owner may charge the vessel owner a reasonable fee for the service of removing the vessel.

The bill provides that a marina owner, operator, employee, or agent may not be held liable for any damage incurred to the vessel from a hurricane and is held harmless from removing the vessel from the waterways. However, the bill does not provide immunity to the marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence when removing a vessel.

The bill provides that after a watch 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:** Favorable with CS by Environment and Natural Resources; 5 Yeas, 0 Nays

**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:** On Committee agenda - Transportation & Tourism Appropriations Subcommittee, 02/10/20, 1:30 pm

*Attached documents: CS/SB 826 + staff analysis; CS/HB 395 + staff analysis + 2 filed amendments*

## // 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:** Favorable with CS by Agriculture & Natural Resources Subcommittee; 11 Yeas, 0 Nays; On Committee agenda - Agriculture & Natural Resources Appropriations Subcommittee, 02/11/20, 1:30 pm

*Attached documents: CS/HB 1091 + 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:** SB 1378 prohibits vessel operators from operating a vessel faster than slow speed with minimum wake upon approaching certain hazardous conditions, including approaching an emergency or construction vessel. The bill provides that a vessel operator found in violation of this requirement is guilty of a noncriminal infraction. The bill includes requirements for a construction vessel or barge that displays an orange flag to indicate that it is actively engaged in construction operations.

The bill prohibits an owner or operator of a vessel from anchoring or mooring a vessel to, or

within 20 feet of, a mangrove or vegetation upon, or within 20 feet of, public lands, unless certain conditions exist, including mechanical failure, weather that poses an unreasonable risk, or if the anchoring or mooring is within a state or locally permitted or designated dockage, mooring, or other anchorage area.

The bill increases several of the civil penalties for a vessel deemed at risk of becoming derelict and increases several of the maximum civil penalties for anchoring or mooring in a prohibited area. The bill also creates civil penalties for vessels that fail to reduce speed for special hazards as specified in the bill. The bill adds to the list of violations resulting in a noncriminal infraction the display of an orange flag when the vessel or barge is not actively engaged in construction operations.

The bill provides an appropriation of \$250,000 in nonrecurring funds from the General Revenue Fund to FWC to conduct a study of the impacts of long-term stored vessels on local communities and the state pursuant to existing law. The appropriation would begin in fiscal year 2020-2021 and would be awarded annually for four years through fiscal year 2023-2024.

**Most Recent Action:** On Committee agenda - Environment and Natural Resources, 02/10/20, 4:00 pm

**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

*Attached documents: SB 1378 (as filed) + 1 amendment + staff analysis*

## // 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:** SB 1360 revises the definitions of “endangered species” and “threatened species” in the Florida Endangered and Threatened Species Act to include the impact of climate



change as a factor that may jeopardize the survival of certain species of fish and wildlife. The bill requires the Fish and Wildlife Conservation Commission (FWC) to continue to protect endangered or threatened fish and wildlife species as FWC determines, regardless of whether such species are declassified under the federal Endangered Species Act of 1973. The bill prohibits FWC and the Department of Environmental Protection (DEP) from considering the economic cost of protecting a fish or wildlife species as a factor in designating it as endangered or threatened.

The bill requires the Department of Agriculture and Consumer Services (DACS) to consider the impacts of climate change on plant species as part of its 4-year review of the Regulated Plant Index. The bill requires DACS to continue to protect endangered or threatened plant species as DACS determines, regardless of whether such species are declassified under the federal Endangered Species Act of 1973. The bill prohibits DACS from considering the economic cost of protecting a plant species as a factor in designating it as endangered or threatened.

**Most Recent Action:** On Committee agenda - Environment and Natural Resources, 02/10/20, 4:00 pm

**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

*Attached documents: SB 1360 (as filed) + 1 amendment + staff analysis*

## // 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*

**CS/Senate Bill 1414:** CS/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:** Favorable with CS by Environment and Natural Resources; 5 Yeas, 0 Nays; On Committee agenda - Agriculture, 02/11/20, 10:00 am

**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: CS/SB 1414 + staff analysis*

## // 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**

**CS/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:

- A minimum of \$236 million for Everglades projects in accordance with the Land Acquisition Trust Fund (LATF).
- \$64 million for the Everglades Agricultural Area reservoir project in accordance with LATF.
- \$50 million for springs restoration in accordance with LATF.
- A minimum of \$40 million for alternative water supplies or water conservation.
- A minimum of \$25 million for projects within the watersheds of the St. Johns, Suwannee, and Apalachicola rivers.
- A minimum of \$10 million for the Florida Resilient Coastline Initiative.
- A minimum of \$50 million to the South Florida Water Management District for the design, engineering, and construction of aquifer storage and recovery wells.
- A minimum of \$4 million as delineated in the 2020-2021 GAA 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.
- Coral reef protection and restoration.
- Projects within the watersheds of the Indian River Lagoon.

The bill revises the distribution of funds for Everglades projects under the Land Acquisition Trust Fund to allocate \$236 million for those projects. The bill provides that this revision expires on June 30, 2023, when the statutory text reverts to the current language.

**Most Recent Action:** Favorable with CS by Environment and Natural Resources; 5 Yeas, 0 Nays;

*Attached documents: CS/SB 1878 (as filed) + staff analysis*

## // 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.<sup>1</sup> 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:** Meeting Cancelled - Appropriations, 02/06/20, 9:00 am;  
Temporarily Postponed by Appropriations

*Attached documents: PCS for CS/SB 712 + amendment to the amendment + 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:** Favorable by Agriculture & Natural Resources Subcommittee; 12 Yeas, 0 Nays

*Attached documents: 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	
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	
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

**House Budget - APC 1**

1641 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

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

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 . . . . . 3,496,800

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

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 . . . . .		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

**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

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## // ANCHORING LIMITATION AREAS

No attachments

## // MARINA EVACUATION

CS/SB 826 + Staff Analysis

CS/HB 395 + Staff Analysis + 2 Amendments

## // ENVIRONMENTAL ENFORCEMENT

CS/HB 1091 + Staff Analysis

## // VESSELS

SB 1378 (as filed) + Staff Analysis

## // FLORIDA ENDANGERED & THREATENED SPECIES ACT

SB 1360 (as filed) + Staff Analysis + 1 Amendment

## // FISH AND WILDLIFE ACTIVITIES

CS/SB 1414 + Staff Analysis

## // VESSEL SAFETY

No attachments

## // BOATING-RESTRICTED AREAS

No attachments

## // ENVIRONMENTAL PROTECTION

CS/SB 1878 + Staff Analysis

## // WATER QUALITY IMPROVEMENTS

PCS for CS/SB 712 + Staff Analysis + 1 Amendment to the amendment

## // ENVIRONMENTAL RESOURCE MANAGEMENT

HB 1199 + Staff Analysis

## // CURRENT BILL TRACKING LIST

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

592-03060-20

2020826c1

1 A bill to be entitled

2 An act relating to marina evacuations; amending s.  
3 327.59, F.S.; prohibiting vessels under a specified  
4 weight from remaining in certain marinas that have  
5 been deemed unsuitable for refuge during a hurricane  
6 after the issuance of a hurricane watch; requiring a  
7 marina owner, operator, employee, or agent to remove  
8 specified vessels under certain circumstances;  
9 providing that such owner, operator, employee, or  
10 agent may charge the vessel owner a reasonable fee for  
11 such removal and may not be held liable for any  
12 damages as a result of such removal; providing  
13 construction; authorizing certain penalty fees;  
14 providing an effective date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18 Section 1. Subsection (1) of section 327.59, Florida  
19 Statutes, is amended, and subsection (5) is added to that  
20 section, to read:

21 327.59 Marina evacuations.—

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

29 (5) Upon the issuance of a hurricane watch affecting the

592-03060-20

2020826c1

30 waters of marinas located in a deepwater seaport, vessels under  
31 500 gross tons may not remain in the waters of such marinas that  
32 have been deemed not suitable for refuge during a hurricane.  
33 Vessel owners shall promptly remove their vessels from the  
34 waterways upon issuance of an evacuation order by the deepwater  
35 seaport. If the United States Coast Guard captain of the port  
36 sets the port condition to "Yankee" and a vessel owner has  
37 failed to remove a vessel from the waterway, the marina owner,  
38 operator, employee, or agent, regardless of any existing  
39 contractual provisions between the marina owner and the vessel  
40 owner, shall remove the vessel, or cause the vessel to be  
41 removed, if reasonable, from its slip and may charge the vessel  
42 owner a reasonable fee for any such services rendered. A marina  
43 owner, operator, employee, or agent may not be held liable for  
44 any damage incurred to a vessel from a hurricane and is held  
45 harmless as a result of such actions to remove the vessel from  
46 the waterways. Nothing in this section may be construed to  
47 provide immunity to a marina owner, operator, employee, or agent  
48 for any damage caused by intentional acts or negligence when  
49 removing a vessel pursuant to this section. After the hurricane  
50 watch has been issued, the owner or operator of any vessel that  
51 has not been removed from the waterway of the marina, pursuant  
52 to an order from the deepwater seaport, may be subject to the  
53 penalties under s. 313.22(3).

54 Section 2. 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.)

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

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BILL: CS/SB 826

INTRODUCER: Environment and Natural Resources Committee and Senator Mayfield

SUBJECT: Marina Evacuations

DATE: February 3, 2020      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	Fav/CS
2.			IS	
3.			RC	

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**Please see Section IX. for Additional Information:**  
COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 826 prohibits, upon the issuance of a hurricane watch 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 requires that vessel owners promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport.

If the Coast Guard Captain of the Port sets the port condition to “Yankee” and a vessel owner has failed to remove his or her vessel from the waterway, a marina owner, operator, employee, or agent, is required to remove the vessel, if reasonable, from its slip. The marina owner may charge the vessel owner a reasonable fee for the service of removing the vessel.

The bill provides that a marina owner, operator, employee, or agent may not be held liable for any damage incurred to the vessel from a hurricane and is held harmless from removing the vessel from the waterways. However, the bill does not provide immunity to the marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence when removing a vessel.

The bill provides that after a watch 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.

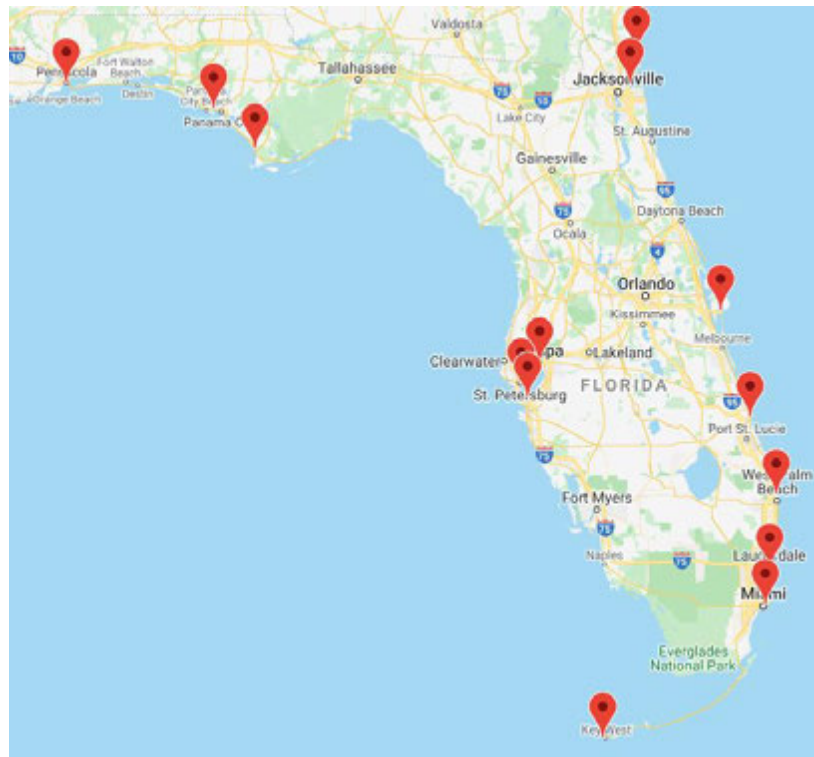


## II. Present Situation:

### Deepwater Ports in Florida

Under Florida law, a “port” means a port authority or district.<sup>1</sup> 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.<sup>2</sup>

There are 14 deepwater seaports in Florida, indicated in the map below:<sup>3</sup>



### Port Canaveral

Port Canaveral was dedicated on November 4, 1953.<sup>4</sup> It is a gateway for Central Florida and the world’s second busiest cruise port.<sup>5</sup> Annually, Port Canaveral moves nearly 4 million tons of

<sup>1</sup> 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.

<sup>2</sup> Section 313.23, F.S.

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

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

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

cargo and sees 4 million cruise passengers.<sup>6</sup> It also houses United States Army, Navy, and Air Force facilities.<sup>7</sup> 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.<sup>8</sup> Additionally, 200 small businesses ranging from marinas, restaurants, retail, and charter boats currently lease and operate at Port Canaveral.<sup>9</sup>

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

### ***Canaveral Port Authority***

The Canaveral Port District (Port District) was created by the Legislature by special act in 1953, as amended in 2014.<sup>11</sup> It is an independent special taxing district and political subdivision of the state.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

The Port Canaveral Tariff No. 16 provides the current rates, rules, and regulations governing its marine and port services.<sup>15</sup> Anyone who uses the waterways and facilities under the jurisdiction of the Port Authority consents to the terms and conditions of the tariff.<sup>16</sup> 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 Coast Guard, the Brevard County Sheriff's Office, and Canaveral Fire Rescue.<sup>17</sup>

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 Coast Guard (see

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

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

<sup>8</sup> 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>.

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

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

<sup>11</sup> 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.

<sup>12</sup> 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."

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

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

<sup>15</sup> 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).

<sup>16</sup> *Id.*, Rule 100.

<sup>17</sup> *Id.*, Rule 520.

discussion below of Hurricane Season Port Conditions and Categories).<sup>18</sup> 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).<sup>19</sup>

### **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.
- Assigning berths at wharves for arriving vessels.<sup>20</sup>

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

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.<sup>22</sup>

### **Marinas**

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

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<sup>18</sup> *Id.*

<sup>19</sup> Section 313.22(3), F.S.

<sup>20</sup> Section 313.22(1), F.S.

<sup>21</sup> Section 313.22(2), F.S.

<sup>22</sup> Section 313.22(3), F.S.

<sup>23</sup> Section 327.02(25), F.S.

<sup>24</sup> 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).

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



**Marina Evacuations**

*Storm Condition Effects on Vessels and Marinas*

Hurricanes and storm conditions can include high winds, storm surges, wave action, and heavy rainfall.<sup>26</sup> These conditions can cause catastrophic damage to marinas and vessels. Vessels that 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.<sup>27</sup> 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.<sup>28</sup>

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.<sup>29</sup> 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

<sup>26</sup> 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).

<sup>27</sup> *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).

<sup>28</sup> *Id.*

<sup>29</sup> 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).

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.<sup>30</sup>

### ***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.<sup>31</sup> 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.<sup>32</sup>

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.<sup>33</sup> The owner or operator may charge a reasonable fee for such services.<sup>34</sup> A marina owner may include this in a contractual agreement with a vessel owner.<sup>35</sup> 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.<sup>36</sup>

*Burklow & Associates, Inc. v. Belcher* is the only Florida state court decision that specifically mentions Florida's marina evacuation statute.<sup>37</sup> 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.<sup>38</sup> 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.<sup>39</sup> 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.<sup>40</sup>

### **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.<sup>41</sup> "Gale force winds" mean winds of 34 knots or 39 miles per hour.

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

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

<sup>32</sup> Section 327.59(1), F.S.

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

<sup>34</sup> *Id.*

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

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

<sup>37</sup> 719 So.2d 31 (Fla. Dist. Ct. App. 1998).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> 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>.

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

**III. Effect of Proposed Changes:**

The bill amends s. 327.59, F.S., to prohibit, upon the issuance of a hurricane watch 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 requires that vessel owners promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport. If the Coast Guard Captain of the Port sets the port condition to “Yankee” and a vessel owner has failed to remove his or her vessel from the waterway, a marina owner, operator, employee, or agent, regardless of any existing contractual provisions between the marina owner and vessel owner, is required to remove the vessel, or cause the vessel to be removed, if reasonable, from its slip. The marina owner may charge the vessel owner a reasonable fee for the service of removing the vessel.

The bill provides that a marina owner, operator, employee, or agent may not be held liable for any damage incurred to the vessel from a hurricane and is held harmless from removing the vessel from the waterways. However, the bill does not provide immunity to the marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence when removing a vessel.

The bill provides that after a hurricane watch 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, from fees charged by a marina owner for the service of moving a vessel, 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 Substantial Changes:**

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

**CS by Environment and Natural Resources Committee on February 3, 2020:**

- Requires that owners of vessels under 500 gross tons remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport.
- Requires a marina owner, operator, employee, or agent to remove a vessel from its slip if the Coast Guard Captain of the Port sets the port condition to “Yankee” and the vessel owner has not removed the vessel from the waterway as required.
- Authorizes the marina owner, operator, employee, or agent to charge the vessel owner a reasonable fee for the service of moving the vessel.
- Clarifies that a marina owner, operator, employee, or agent may not be held liable for any damage incurred to the vessel from a hurricane or from removing the vessel as required under this section; however, the amendment does not provide immunity to the marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence.

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

251 department proposes to let must first be certified by the  
252 department as qualified pursuant to this section and rules of  
253 the department. The rules of the department must address the  
254 qualification of contractors to bid on construction contracts in  
255 excess of \$250,000 and must include requirements with respect to  
256 the equipment, past record, experience, financial resources, and  
257 organizational personnel of the applying contractor which are  
258 necessary to perform the specific class of work for which the  
259 contractor seeks certification. Any contractor who desires to  
260 bid on contracts in excess of \$50 million and is not qualified  
261 and in good standing with the department as of January 1, 2019,  
262 must first be certified by the department as qualified and  
263 ~~desires to bid on contracts in excess of \$50 million~~ must have  
264 satisfactorily completed two projects, each in excess of \$15  
265 million, for the department or for any other state department of  
266 transportation. The department may limit the dollar amount of  
267 any contract upon which a contractor is qualified to bid or the  
268 aggregate total dollar volume of contracts such contractor is  
269 allowed to have under contract at any one time. Each applying  
270 contractor seeking qualification to bid on construction  
271 contracts in excess of \$250,000 shall furnish the department a  
272 statement under oath, on such forms as the department may  
273 prescribe, setting forth detailed information as required on the  
274 application. Each application for certification must be  
275 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~~

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

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

326 added to that section, to read:

327 627.748 Transportation network companies.—

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

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

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

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

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

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

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

363  
 364 Notwithstanding any other provision of law, a vehicle that is  
 365 let or rented to another for consideration may be used as a TNC  
 366 vehicle.

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

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

375 (b) The following automobile insurance requirements apply

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

378 1. Automobile insurance that provides:

379 a. A primary automobile liability coverage of at least  
 380 \$50,000 for death and bodily injury per person, \$100,000 for  
 381 death and bodily injury per incident, and \$25,000 for property  
 382 damage;

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

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

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

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

392 b. Automobile insurance maintained by the TNC; or

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

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

396 1. Automobile insurance that provides:

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

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



401 627.730-627.7405; and

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

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

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

408 b. Automobile insurance maintained by the TNC; or

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

410 (15) DISABILITY-ACCESSIBLE TRANSPORTATION NETWORK  
411 COMPANIES.-

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

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

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

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

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

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

424 1. Comply with all of the requirements of this section  
425 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.

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>    </u>	(Y/N)
ADOPTED AS AMENDED	<u>    </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>    </u>	(Y/N)
FAILED TO ADOPT	<u>    </u>	(Y/N)
WITHDRAWN	<u>    </u>	(Y/N)
OTHER	<u>      </u>	

Committee/Subcommittee hearing bill: Transportation & Tourism  
Appropriations Subcommittee

Representative Andrade offered the following:

**Amendment (with title amendment)**

Remove lines 322-468 and insert:

Section 9. Paragraph (b) of subsection (15) of section  
320.01, Florida Statutes, is amended to read:

320.01 Definitions, general.—As used in the Florida  
Statutes, except as otherwise provided, the term:

(15)

(b) The following are not included in the term "for-hire  
vehicle": a motor vehicle used for transporting school children  
to and from school under contract with school officials; a  
hearse or ambulance when operated by a licensed embalmer or  
mortician or his or her agent or employee in this state; a motor

Amendment No. 2

17 | vehicle used in the transportation of agricultural or  
18 | horticultural products or in transporting agricultural or  
19 | horticultural supplies direct to growers or the consumers of  
20 | such supplies or to associations of such growers or consumers; a  
21 | motor vehicle temporarily used by a farmer for the  
22 | transportation of agricultural or horticultural products from  
23 | any farm or grove to a packinghouse or to a point of shipment by  
24 | a transportation company; or a motor vehicle not exceeding 1 1/2  
25 | tons under contract with the Government of the United States to  
26 | carry United States mail, provided such vehicle is not used for  
27 | commercial purposes; or an ADA compliant motor vehicle owned and  
28 | used by a company that uses a digital network to facilitate  
29 | prearranged rides to people with disabilities, for compensation.  
30 |  
31 |

32 | -----  
33 | **T I T L E   A M E N D M E N T**

34 | Remove lines 30-39 and insert:  
35 | statements; amending s. 320.01, F.S.; revising definitions;  
36 | providing an effective date.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>    </u>	(Y/N)
ADOPTED AS AMENDED	<u>    </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>    </u>	(Y/N)
FAILED TO ADOPT	<u>    </u>	(Y/N)
WITHDRAWN	<u>    </u>	(Y/N)
OTHER	<u>      </u>	

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1 Committee/Subcommittee hearing bill: Transportation & Tourism  
2 Appropriations Subcommittee

3 Representative Andrade offered the following:

4  
5 **Amendment (with directory amendment)**

6 Remove lines 220-244 and insert:

7 (2) Nothing in this section may be construed to restrict  
8 the ability of an owner of a vessel or the owner's authorized  
9 representative to remove a vessel voluntarily from a marina at  
10 any time or to restrict a marina owner from dictating the kind  
11 of cleats, ropes, fenders, and other measures that must be used  
12 on vessels as a condition of use of a marina. Except as provided  
13 in subsection (5), after~~After~~ a tropical storm or hurricane  
14 watch has been issued, a marina owner or operator, or an  
15 employee or agent of such owner or operator, may take reasonable  
16 actions to further secure any vessel within the marina to

Amendment No. 1

17 minimize damage to a vessel and to protect marina property,  
18 private property, and the environment and may charge a  
19 reasonable fee for such services.

20 (5) Upon the issuance of a hurricane watch affecting the  
21 waters of a marina located in a deepwater seaport, a vessel that  
22 weighs less than 500 gross tons may not remain in the waters of  
23 such a marina that has been deemed not suitable for refuge  
24 during a hurricane. The owner of such a vessel shall promptly  
25 remove the vessel from the waterway upon issuance of an  
26 evacuation order by the deepwater seaport. If the United States  
27 Coast Guard Captain of the Port sets the deepwater seaport  
28 condition to Yankee and a vessel owner has failed to remove a  
29 vessel from the waterway, the marina owner or operator, or an  
30 employee or agent thereof, regardless of existing contractual  
31 provisions between the marina owner and vessel owner, shall  
32 remove the vessel, or cause it to be removed, if reasonable,  
33 from its slip and may charge the vessel owner a reasonable fee  
34 for such removal. A marina owner, operator, employee, or agent  
35 is not liable for any damage incurred by a vessel as the result  
36 of a hurricane and is held harmless as a result of such actions  
37 to remove the vessel from the waterway. This section does not  
38 provide immunity to a marina owner, operator, employee, or agent  
39 for any damage caused by intentional acts or negligence when  
40 removing a vessel under this subsection. After a hurricane watch  
41 has been issued, the owner or operator of a vessel that has not

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Amendment No. 1

42 | been removed from the waterway of the marina pursuant to an  
43 | evacuation order by the deepwater seaport may be subject to a  
44 | fine in an amount not exceeding three times the cost associated  
45 | with removing the vessel from the waterway. Such fine, if  
46 | assessed, shall be imposed and collected by the deepwater  
47 | seaport issuing the evacuation order.

48 | -----

49 | **D I R E C T O R Y   A M E N D M E N T**

50 | Remove line 209 and insert:

51 | Section 7. Subsections (1) and (2) of section 327.59,  
52 | Florida



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 395 Transportation

**SPONSOR(S):** Transportation & Infrastructure Subcommittee, Andrade

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

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		Hicks	Davis
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 (DHSMV) 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 (DOT) 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 an indeterminate negative fiscal impact on state and local governments. See Fiscal Analysis for details.

The bill provides an effective date of July 1, 2020.

# 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.<sup>1</sup> Autocycle drivers are not required to hold a motorcycle endorsement on his or her driver license.<sup>2</sup>

Federal Motor Vehicle Safety Standard No. 122,<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup>

##### Effect of the Bill

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

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<sup>1</sup> Section 316.003(2), F.S.

<sup>2</sup> Sections 322.03(4) and 322.12, F.S.

<sup>3</sup> 49 C.F.R. 571.122

<sup>4</sup> Section 316.003(55), F.S.

<sup>5</sup> Section 316.2071(1), F.S.

<sup>6</sup> Section 316.0271(2), F.S.

<sup>7</sup> 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 (DOC) or any county correctional agency when responding to emergencies.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

### 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.<sup>11</sup>

With the exception of funeral processions,<sup>12</sup> Florida law does not expressly authorize the use of hazard lights on 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.<sup>13</sup>

### 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.<sup>14</sup>

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<sup>8</sup> Section 316.2397(2), F.S.

<sup>9</sup> Section 316.2397(4), F.S.

<sup>10</sup> Section 316.2397(5), F.S.

<sup>11</sup> Section 316.2397(7), F.S.

<sup>12</sup> Section 316.1974(3)(c), F.S.

<sup>13</sup> 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).

<sup>14</sup> 49 C.F.R. 393.100

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.<sup>15</sup>

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.<sup>16</sup>

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.<sup>17</sup>

#### 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.<sup>18</sup>

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.<sup>19</sup>

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.<sup>20</sup>

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.<sup>21</sup>

#### 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.

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<sup>15</sup> Section 316.520(1), F.S.

<sup>16</sup> Section 316.520(2), F.S.

<sup>17</sup> Section 316.520(4), F.S.

<sup>18</sup> Section 322.12(1), F.S.

<sup>19</sup> Section 322.12(4), F.S.

<sup>20</sup> 49 C.F.R. 383.77

<sup>21</sup> Rule 15A-7.018, F.A.C.

## **For-hire Passenger Vehicle Insurance**

### Current Situation

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).<sup>22</sup> 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.<sup>23</sup>

### 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.<sup>24</sup>

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.<sup>25</sup>

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.<sup>26</sup>

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.

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<sup>22</sup> The Florida Insurance Guaranty Association is created in s. 631.55, F.S.

<sup>23</sup> 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.

<sup>24</sup> Section 327.59(2), F.S.

<sup>25</sup> Section 327.59(3), F.S.

<sup>26</sup> Section 327.59(4), F.S.

### Effect of the Bill

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 Yankee<sup>27</sup> 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.<sup>28</sup>

### **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.<sup>29, 30</sup>

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.<sup>31</sup>

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.<sup>32</sup>

#### Effect of the Bill

The bill clarifies that any contractor who desires to bid on contracts in excess of \$50 million, 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

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<sup>27</sup> 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

<sup>28</sup> Section 313.22, F.S., relates to vessel movements and interference with such movements.

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

<sup>30</sup> Section 337.14(1), F.S.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

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 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 rider<sup>33</sup> 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.<sup>34</sup>

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.<sup>35</sup>

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 network<sup>36</sup> 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 hail<sup>37</sup> service and does not include ridesharing,<sup>38</sup> carpool,<sup>39</sup> 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.<sup>40</sup>

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.<sup>41</sup>

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<sup>33</sup> 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.

<sup>34</sup> Section 627.748(1)(e), F.S.

<sup>35</sup> Section 627.748(1)(g), F.S.

<sup>36</sup> 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.

<sup>37</sup> 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.

<sup>38</sup> 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.

<sup>39</sup> 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.

<sup>40</sup> Section 627.748(1)(b), F.S.

<sup>41</sup> 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.<sup>42</sup>

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.<sup>43, 44</sup>

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.<sup>45</sup>

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.<sup>46</sup>

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.<sup>47</sup>

### *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”.<sup>48</sup>

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<sup>42</sup> Section 627.748(2), F.S.

<sup>43</sup> 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.

<sup>44</sup> Section 627.748(7)(b), F.S.

<sup>45</sup> Section 627.748(7)(c), F.S.

<sup>46</sup> Section 627.748(7)(b) & (c), F.S.

<sup>47</sup> Section 627.748(15), F.S.

<sup>48</sup> Section 320.01(15)(a), F.S.



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 \$125,000 per person for bodily injury, \$250,000 per incident for bodily injury, and \$50,000 for property damage.<sup>49</sup> 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.<sup>50</sup>

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.<sup>51</sup>

### *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.<sup>52</sup>

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

### 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-accessible 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 chapter 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

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<sup>49</sup> Section 324.032(1), F.S.

<sup>50</sup> Section 324.031, F.S.

<sup>51</sup> Section 125.01(1)(n), F.S.

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

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

<sup>54</sup> 59 C.F.R. part 38

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.

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 loads on vehicles.

**Section 4:** Amends s. 316.520, F.S., relating to the examination of applicants.

**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 authorizes an entity to operate as a disability-accessible TNC and preempts to the state the regulatory responsibilities. To the extent an entity elects to be regulated by DFS as a disability-accessible TNC, there may be an indeterminate, negative fiscal impact on the department's workload, which can be absorbed within their existing resources.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

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 negative fiscal impact as a result of not being able to continue to impose those fees.

2. Expenditures:

This bill does not appear to impact local government expenditures.

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.

The CDL skill test is administered by third party vendors. According to DHSMV, a waiver of the skill test requirements could result in either the vendor absorbing the cost to waive the skill test for veterans who qualify or possibly increasing the cost of the skill test for non-military candidates.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill 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.

1                   A bill to be entitled  
2           An act relating to environmental enforcement; amending  
3           s. 161.054, F.S.; revising administrative penalties  
4           for violations of certain provisions relating to beach  
5           and shore construction and activities; providing that  
6           each day that certain violations occur or are not  
7           remediated constitutes a separate offense until such  
8           violations are resolved by order or judgment; making  
9           technical changes; amending ss. 258.397, 258.46,  
10          373.129, 376.16, 376.25, 377.37, 378.211, and 403.141,  
11          F.S.; revising civil penalties for violations of  
12          certain provisions relating to the Biscayne Bay  
13          Aquatic Preserve, aquatic preserves, water resources,  
14          the Pollutant Discharge Prevention and Control Act,  
15          the Clean Ocean Act, regulation of oil and gas  
16          resources, the Phosphate Land Reclamation Act, and  
17          other provisions relating to pollution and the  
18          environment, respectively; providing that each day  
19          that certain violations occur or are not remediated  
20          constitutes a separate offense until such violations  
21          are resolved by order or judgment; making technical  
22          changes; amending ss. 373.209, 376.065, 376.071,  
23          403.086, 403.413, 403.7234, and 403.93345, F.S.;  
24          revising civil penalties for violations of certain  
25          provisions relating to artesian wells, terminal

26 facilities, discharge contingency plans for vessels,  
27 sewage disposal facilities, dumping litter, small  
28 quantity generators, and coral reef protection,  
29 respectively; making technical changes; amending ss.  
30 373.430 and 403.161, F.S.; revising criminal penalties  
31 for violations of certain provisions relating to  
32 pollution and the environment; making technical  
33 changes; amending s. 403.121, F.S.; revising civil and  
34 administrative penalties for violations of certain  
35 provisions relating to pollution and the environment;  
36 providing that each day that certain violations occur  
37 or are not remediated constitutes a separate offense  
38 until such violations are resolved by order or  
39 judgment; increasing the amount of penalties that can  
40 be assessed administratively; making technical  
41 changes; amending ss. 403.726 and 403.727, F.S.;  
42 revising civil penalties for violations of certain  
43 provisions relating to hazardous waste for each day  
44 that certain violations occur and are not resolved by  
45 order or judgment; making technical changes;  
46 reenacting s. 823.11(5), F.S., to incorporate the  
47 amendment made to s. 376.16, F.S., in a reference  
48 thereto; reenacting ss. 403.077(5), 403.131(2),  
49 403.4154(3)(d), and 403.860(5), F.S., to incorporate  
50 the amendment made to s. 403.121, F.S., in a reference

51 thereto; reenacting ss. 403.708(10), 403.7191(7), and  
 52 403.811, F.S., to incorporate the amendment made to s.  
 53 403.141, F.S., in a reference thereto; reenacting s.  
 54 403.7255(2), F.S., to incorporate the amendment made  
 55 to s. 403.161, F.S., in a reference thereto;  
 56 reenacting s. 403.7186(8), F.S., to incorporate the  
 57 amendment made to ss. 403.141 and 403.161, F.S., in  
 58 references thereto; providing an effective date.  
 59

60 Be It Enacted by the Legislature of the State of Florida:  
 61

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

64 161.054 Administrative fines; liability for damage;  
 65 liens.—

66 (1) In addition to the penalties provided for in ss.  
 67 161.052, 161.053, and 161.121, any person, firm, corporation, or  
 68 governmental agency, or agent thereof, refusing to comply with  
 69 or willfully violating ~~any of the provisions of~~ s. 161.041, s.  
 70 161.052, or s. 161.053, or any rule or order prescribed by the  
 71 department thereunder, shall incur a fine for each offense in an  
 72 amount up to \$15,000 ~~\$10,000~~ to be fixed, imposed, and collected  
 73 by the department. Until a violation is resolved by order or  
 74 judgment, each day during any portion of which such violation  
 75 occurs or is not remediated constitutes a separate offense.

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

78 258.397 Biscayne Bay Aquatic Preserve.—

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

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

94 258.46 Enforcement; violations; penalty.—~~The provisions of~~  
 95 This act may be enforced by the Board of Trustees of the  
 96 Internal Improvement Trust Fund or in accordance with ~~the~~  
 97 ~~provisions of~~ s. 403.412. However, any violation by any person,  
 98 natural or corporate, of ~~the provisions of~~ this act or any rule  
 99 or regulation issued hereunder is ~~shall be~~ further punishable by  
 100 a civil penalty of not less than \$750 ~~\$500~~ per day or more than



101 \$7,500 ~~\$5,000~~ per day of such violation. Until a violation is  
 102 resolved by order or judgment, each day during any portion of  
 103 which such violation occurs or is not remediated constitutes a  
 104 separate offense.

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

107 373.129 Maintenance of actions.—The department, the  
 108 governing board of any water management district, any local  
 109 board, or a local government to which authority has been  
 110 delegated pursuant to s. 373.103(8), is authorized to commence  
 111 and maintain proper and necessary actions and proceedings in any  
 112 court of competent jurisdiction for any of the following  
 113 purposes:

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

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

125 (b) A local government that is delegated authority

126 | pursuant to s. 373.103(8) may deposit a civil penalty recovered  
 127 | pursuant to this subsection into a local water pollution control  
 128 | program trust fund, notwithstanding ~~the provisions of~~ paragraph  
 129 | (a). However, civil penalties that are deposited in a local  
 130 | water pollution control program trust fund and that are  
 131 | recovered for violations of state water quality standards may be  
 132 | used only to restore water quality in the area that was the  
 133 | subject of the action, and civil penalties that are deposited in  
 134 | a local water pollution control program trust fund and that are  
 135 | recovered for violation of requirements relating to water  
 136 | quantity may be used only to purchase lands and make capital  
 137 | improvements associated with surface water management, or other  
 138 | purposes consistent with the requirements of this chapter for  
 139 | the management and storage of surface water.

140 |       (7) To enforce ~~the provisions of~~ part IV of this chapter  
 141 | in the same manner and to the same extent as provided in ss.  
 142 | 373.430, 403.121(1) and (2), 403.131, 403.141, and 403.161.

143 |       Section 5. Subsection (3) of section 373.209, Florida  
 144 | Statutes, is amended to read:

145 |       373.209 Artesian wells; penalties for violation.—

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

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

149 |       (b) A civil penalty of \$150 ~~\$100~~ a day for each and every  
 150 | day of such violation and for each and every act of violation.

151 The civil penalty may be recovered by the water management board  
 152 of the water management district in which the well is located or  
 153 by the department in a suit in a court of competent jurisdiction  
 154 in the county where the defendant resides, in the county of  
 155 residence of any defendant if there is more than one defendant,  
 156 or in the county where the violation took place. The place of  
 157 suit shall be selected by the board or department, and the suit,  
 158 by direction of the board or department, shall be instituted and  
 159 conducted in the name of the board or department by appropriate  
 160 counsel. The payment of any such damages does not impair or  
 161 abridge any cause of action which any person may have against  
 162 the person violating ~~any provision of~~ this section.

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

165 373.430 Prohibitions, violation, penalty, intent.—

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

169 (3) A ~~Any~~ person who willfully commits a violation  
 170 specified in paragraph (1)(a) commits ~~is guilty of~~ a felony of  
 171 the third degree, punishable as provided in ss. 775.082(3)(e)  
 172 and 775.083(1)(g), by a fine of not more than \$50,000 or by  
 173 imprisonment for 5 years, or by both, for each offense. Each day  
 174 during any portion of which such violation occurs constitutes a  
 175 separate offense.

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

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

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

190 376.065 Operation of terminal facility without discharge  
 191 prevention and response certificate prohibited; penalty.—

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

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

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

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

204 376.071 Discharge contingency plan for vessels.—

205 (2) (a) A master of a vessel that violates subsection (1)  
 206 commits a noncriminal infraction and shall be cited for such  
 207 infraction. The civil penalty for such an infraction shall be  
 208 \$7,500 ~~\$5,000~~, except as otherwise provided in this subsection.

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

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

217 376.16 Enforcement and penalties.—

218 (1) It is unlawful for any person to violate ~~any provision~~  
 219 ~~of~~ ss. 376.011-376.21 or any rule or order of the department  
 220 made pursuant to this act. A violation is ~~shall be~~ punishable by  
 221 a civil penalty of up to \$75,000 ~~\$50,000~~ per violation per day  
 222 to be assessed by the department. Until a violation is resolved  
 223 by order or judgment, each day during any portion of which the  
 224 violation occurs or is not remediated constitutes a separate  
 225 offense. The penalty provisions of this subsection do ~~shall~~ not

226 | apply to any discharge promptly reported and removed by a person  
 227 | responsible, in accordance with the rules and orders of the  
 228 | department, or to any discharge of pollutants equal to or less  
 229 | than 5 gallons.

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

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

241 |         (b) For discharges of any pollutant other than gasoline or  
 242 | diesel, the civil penalty for a second discharge shall be \$3,750  
 243 | ~~\$2,500~~ and the civil penalty for each subsequent discharge  
 244 | within a 12-month period shall be \$7,500 ~~\$5,000~~, except as  
 245 | otherwise provided in this section.

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

250 |         (a) For discharges of gasoline or diesel equal to or less

251 than 5 gallons, the civil penalty shall be \$75 ~~\$50~~ for each  
252 discharge subsequent to the first.

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

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

258 (a) Pay the civil penalty;

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

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

263  
264 The department employee authorized to issue these citations may  
265 indicate on the citation the time and location of the scheduled  
266 hearing and shall indicate the applicable civil penalty.

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

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

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

275 (b) If the person has posted bond, forfeit the bond by not

276 | appearing at the designated time and location.

277 |

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

283 |         (7) Any person who elects to appear before the county  
 284 | court or who is required to appear waives the limitations of the  
 285 | civil penalties specified in subsection (2). The court, after a  
 286 | hearing, shall make a determination as to whether an infraction  
 287 | has been committed. If the commission of an infraction is  
 288 | proved, the court may impose a civil penalty up to, but not  
 289 | exceeding, \$750 ~~\$500~~ for the second discharge of gasoline or  
 290 | diesel and a civil penalty up to, but not exceeding, \$1,500  
 291 | ~~\$1,000~~ for each subsequent discharge of gasoline or diesel  
 292 | within a 12-month period.

293 |         (8) Any person who elects to appear before the county  
 294 | court or who is required to appear waives the limitations of the  
 295 | civil penalties specified in subsection (2) or subsection (3).  
 296 | The court, after a hearing, shall make a determination as to  
 297 | whether an infraction has been committed. If the commission of  
 298 | an infraction is proved, the court may impose a civil penalty up  
 299 | to, but not exceeding, \$7,500 ~~\$5,000~~ for the second discharge of  
 300 | pollutants other than gasoline or diesel and a civil penalty up



301 to, but not exceeding, \$15,000 ~~\$10,000~~ for each subsequent  
 302 discharge of pollutants other than gasoline or diesel within a  
 303 12-month period.

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

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

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

315 (12) Any person who makes or causes to be made a false  
 316 statement that ~~which~~ the person does not believe to be true in  
 317 response to requirements of ~~the provisions of~~ ss. 376.011-376.21  
 318 commits a felony of the second degree, punishable as provided in  
 319 s. 775.082, s. 775.083, or s. 775.084.

320 Section 10. Paragraph (a) of subsection (6) of section  
 321 376.25, Florida Statutes, is amended to read:

322 376.25 Gambling vessels; registration; required and  
 323 prohibited releases.—

324 (6) PENALTIES.—

325 (a) A person who violates this section is subject to a

326 civil penalty of not more than \$75,000 ~~\$50,000~~ for each  
327 violation. Until a violation is resolved by order or judgment,  
328 each day during any portion of which such violation occurs or is  
329 not remediated constitutes a separate offense.

330 Section 11. Paragraph (a) of subsection (1) of section  
331 377.37, Florida Statutes, is amended to read:

332 377.37 Penalties.—

333 (1) (a) Any person who violates ~~any provision of~~ this law  
334 or any rule, regulation, or order of the division made under  
335 this chapter or who violates the terms of any permit to drill  
336 for or produce oil, gas, or other petroleum products referred to  
337 in s. 377.242(1) or to store gas in a natural gas storage  
338 facility, or any lessee, permitholder, or operator of equipment  
339 or facilities used in the exploration for, drilling for, or  
340 production of oil, gas, or other petroleum products, or storage  
341 of gas in a natural gas storage facility, who refuses inspection  
342 by the division as provided in this chapter, is liable to the  
343 state for any damage caused to the air, waters, or property,  
344 including animal, plant, or aquatic life, of the state and for  
345 reasonable costs and expenses of the state in tracing the source  
346 of the discharge, in controlling and abating the source and the  
347 pollutants, and in restoring the air, waters, and property,  
348 including animal, plant, and aquatic life, of the state.  
349 Furthermore, such person, lessee, permitholder, or operator is  
350 subject to the judicial imposition of a civil penalty in an

351 amount of not more than \$15,000 ~~\$10,000~~ for each offense.  
 352 However, the court may receive evidence in mitigation. Until a  
 353 violation is resolved by order or judgment, each day during any  
 354 portion of which such violation occurs or is not remediated  
 355 constitutes a separate offense. This section does not ~~Nothing~~  
 356 ~~herein shall~~ give the department the right to bring an action on  
 357 behalf of any private person.

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

360 378.211 Violations; damages; penalties.—

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

367 (a) For violations of a minor or technical nature, \$150  
 368 ~~\$100~~ per violation.

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

372 (c) For major violations not covered by paragraph (b),  
 373 \$7,500 ~~\$5,000~~ per violation.

374  
 375 Subject to ~~the provisions of~~ subsection (4), until a violation

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

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

381 |           403.086 Sewage disposal facilities; advanced and secondary  
 382 | waste treatment.—

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

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

392 |           403.121 Enforcement; procedure; remedies.—The department  
 393 | shall have the following judicial and administrative remedies  
 394 | available to it for violations of this chapter, as specified in  
 395 | s. 403.161(1).

396 |       (1) Judicial remedies:

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

401 by any violation.

402 (b) The department may institute a civil action in a court  
 403 of competent jurisdiction to impose and to recover a civil  
 404 penalty for each violation in an amount of not more than \$15,000  
 405 ~~\$10,000~~ per offense. However, the court may receive evidence in  
 406 mitigation. Until a violation is resolved by order or judgment,  
 407 each day during any portion of which such violation occurs or is  
 408 not remediated constitutes a separate offense.

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

416 (2) Administrative remedies:

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

425 (b) If the department has reason to believe a violation

426 has occurred, it may institute an administrative proceeding to  
427 order the prevention, abatement, or control of the conditions  
428 creating the violation or other appropriate corrective action.  
429 Except for violations involving hazardous wastes, asbestos, or  
430 underground injection, the department shall proceed  
431 administratively in all cases in which the department seeks  
432 administrative penalties that do not exceed \$50,000 ~~\$10,000~~ per  
433 assessment as calculated in accordance with subsections (3),  
434 (4), (5), (6), and (7). Pursuant to 42 U.S.C. s. 300g-2, the  
435 administrative penalty assessed pursuant to subsection (3),  
436 subsection (4), or subsection (5) against a public water system  
437 serving a population of more than 10,000 shall be not less than  
438 \$1,000 per day per violation. The department may ~~shall~~ not  
439 impose administrative penalties in excess of \$50,000 ~~\$10,000~~ in  
440 a notice of violation. The department may ~~shall~~ not have more  
441 than one notice of violation seeking administrative penalties  
442 pending against the same party at the same time unless the  
443 violations occurred at a different site or the violations were  
444 discovered by the department subsequent to the filing of a  
445 previous notice of violation.

446 (c) An administrative proceeding shall be instituted by  
447 the department's serving of a written notice of violation upon  
448 the alleged violator by certified mail. If the department is  
449 unable to effect service by certified mail, the notice of  
450 violation may be hand delivered or personally served in

451 accordance with chapter 48. The notice shall specify the  
452 ~~provision of the~~ law, rule, regulation, permit, certification,  
453 or order of the department alleged to be violated and the facts  
454 alleged to constitute a violation thereof. An order for  
455 corrective action, penalty assessment, or damages may be  
456 included with the notice. When the department is seeking to  
457 impose an administrative penalty for any violation by issuing a  
458 notice of violation, any corrective action needed to correct the  
459 violation or damages caused by the violation must be pursued in  
460 the notice of violation or they are waived. However, an ~~no~~ order  
461 is not ~~shall become~~ effective until after service and an  
462 administrative hearing, if requested within 20 days after  
463 service. Failure to request an administrative hearing within  
464 this time period constitutes ~~shall constitute~~ a waiver thereof,  
465 unless the respondent files a written notice with the department  
466 within this time period opting out of the administrative process  
467 initiated by the department to impose administrative penalties.  
468 Any respondent choosing to opt out of the administrative process  
469 initiated by the department in an action that seeks the  
470 imposition of administrative penalties must file a written  
471 notice with the department within 20 days after service of the  
472 notice of violation opting out of the administrative process. A  
473 respondent's decision to opt out of the administrative process  
474 does not preclude the department from initiating a state court  
475 action seeking injunctive relief, damages, and the judicial

476 imposition of civil penalties.

477 (d) If a person timely files a petition challenging a  
 478 notice of violation, that person will thereafter be referred to  
 479 as the respondent. The hearing requested by the respondent shall  
 480 be held within 180 days after the department has referred the  
 481 initial petition to the Division of Administrative Hearings  
 482 unless the parties agree to a later date. The department has the  
 483 burden of proving with the preponderance of the evidence that  
 484 the respondent is responsible for the violation. ~~No~~  
 485 Administrative penalties should not be imposed unless the  
 486 department satisfies that burden. Following the close of the  
 487 hearing, the administrative law judge shall issue a final order  
 488 on all matters, including the imposition of an administrative  
 489 penalty. When the department seeks to enforce that portion of a  
 490 final order imposing administrative penalties pursuant to s.  
 491 120.69, the respondent may ~~shall~~ not assert as a defense the  
 492 inappropriateness of the administrative remedy. The department  
 493 retains its final-order authority in all administrative actions  
 494 that do not request the imposition of administrative penalties.

495 (e) After filing a petition requesting a formal hearing in  
 496 response to a notice of violation in which the department  
 497 imposes an administrative penalty, a respondent may request that  
 498 a private mediator be appointed to mediate the dispute by  
 499 contacting the Florida Conflict Resolution Consortium within 10  
 500 days after receipt of the initial order from the administrative



501 law judge. The Florida Conflict Resolution Consortium shall pay  
502 all of the costs of the mediator and for up to 8 hours of the  
503 mediator's time per case at \$150 per hour. Upon notice from the  
504 respondent, the Florida Conflict Resolution Consortium shall  
505 provide to the respondent a panel of possible mediators from the  
506 area in which the hearing on the petition would be heard. The  
507 respondent shall select the mediator and notify the Florida  
508 Conflict Resolution Consortium of the selection within 15 days  
509 of receipt of the proposed panel of mediators. The Florida  
510 Conflict Resolution Consortium shall provide all of the  
511 administrative support for the mediation process. The mediation  
512 must be completed at least 15 days before the final hearing date  
513 set by the administrative law judge.

514 (f) In any administrative proceeding brought by the  
515 department, the prevailing party shall recover all costs as  
516 provided in ss. 57.041 and 57.071. The costs must be included in  
517 the final order. The respondent is the prevailing party when an  
518 order is entered awarding no penalties to the department and  
519 such order has not been reversed on appeal or the time for  
520 seeking judicial review has expired. The respondent is ~~shall be~~  
521 entitled to an award of attorney's fees if the administrative  
522 law judge determines that the notice of violation issued by the  
523 department seeking the imposition of administrative penalties  
524 was not substantially justified as defined in s. 57.111(3)(e).  
525 An ~~No~~ award of attorney's fees as provided by this subsection

526 may not ~~shall~~ exceed \$15,000.

527 (g) Nothing herein shall be construed as preventing any  
528 other legal or administrative action in accordance with law.  
529 Nothing in this subsection shall limit the department's  
530 authority provided in ss. 403.131, 403.141, and this section to  
531 judicially pursue injunctive relief. When the department  
532 exercises its authority to judicially pursue injunctive relief,  
533 penalties in any amount up to the statutory maximum sought by  
534 the department must be pursued as part of the state court action  
535 and not by initiating a separate administrative proceeding. The  
536 department retains the authority to judicially pursue penalties  
537 in excess of \$50,000 ~~\$10,000~~ for violations not specifically  
538 included in the administrative penalty schedule, or for multiple  
539 or multiday violations alleged to exceed a total of \$50,000  
540 ~~\$10,000~~. The department also retains the authority provided in  
541 ss. 403.131, 403.141, and this section to judicially pursue  
542 injunctive relief and damages, if a notice of violation seeking  
543 the imposition of administrative penalties has not been issued.  
544 The department has the authority to enter into a settlement,  
545 either before or after initiating a notice of violation, and the  
546 settlement may include a penalty amount different from the  
547 administrative penalty schedule. Any case filed in state court  
548 because it is alleged to exceed a total of \$50,000 ~~\$10,000~~ in  
549 penalties may be settled in the court action for less than  
550 \$50,000 ~~\$10,000~~.

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

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

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

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

576 unpermitted or unauthorized discharge or effluent-limitation  
 577 exceedance that resulted in a surface water or groundwater  
 578 quality violation, the department shall assess a penalty of  
 579 \$7,500 ~~\$5,000~~.

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

601 filling activities, stormwater construction activities or  
602 failure of a stormwater treatment facility. For stormwater  
603 management systems serving less than 5 acres, the department  
604 shall assess a penalty of \$3,000 ~~\$2,000~~ for the failure to  
605 properly or timely construct a stormwater management system. In  
606 addition to the penalties authorized in this subsection, the  
607 department shall assess a penalty of \$7,500 ~~\$5,000~~ per violation  
608 against the contractor or agent of the owner or tenant that  
609 conducts unpermitted or unauthorized dredging or filling. For  
610 purposes of this paragraph, the preparation or signing of a  
611 permit application by a person currently licensed under chapter  
612 471 to practice as a professional engineer does ~~shall~~ not make  
613 that person an agent of the owner or tenant.

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

623 (e) For solid waste violations, the department shall  
624 assess a penalty of \$3,000 ~~\$2,000~~ for the unpermitted or  
625 unauthorized disposal or storage of solid waste; plus \$1,000 if

626 the solid waste is Class I or Class III (excluding yard trash)  
 627 or if the solid waste is construction and demolition debris in  
 628 excess of 20 cubic yards, plus \$1,500 ~~\$1,000~~ if the waste is  
 629 disposed of or stored in any natural or artificial body of water  
 630 or within 500 feet of a potable water well, plus \$1,500 ~~\$1,000~~  
 631 if the waste contains PCB at a concentration of 50 parts per  
 632 million or greater; untreated biomedical waste; friable asbestos  
 633 greater than 1 cubic meter which is not wetted, bagged, and  
 634 covered; used oil greater than 25 gallons; or 10 or more lead  
 635 acid batteries. The department shall assess a penalty of \$4,500  
 636 ~~\$3,000~~ for failure to properly maintain leachate control;  
 637 unauthorized burning; failure to have a trained spotter on duty  
 638 at the working face when accepting waste; or failure to provide  
 639 access control for three consecutive inspections. The department  
 640 shall assess a penalty of \$3,000 ~~\$2,000~~ for failure to construct  
 641 or maintain a required stormwater management system.

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

650 (g) For storage tank system and petroleum contamination

651 violations, the department shall assess a penalty of \$7,500  
652 ~~\$5,000~~ for failure to empty a damaged storage system as  
653 necessary to ensure that a release does not occur until repairs  
654 to the storage system are completed; when a release has occurred  
655 from that storage tank system; for failure to timely recover  
656 free product; or for failure to conduct remediation or  
657 monitoring activities until a no-further-action or site-  
658 rehabilitation completion order has been issued. The department  
659 shall assess a penalty of \$4,500 ~~\$3,000~~ for failure to timely  
660 upgrade a storage tank system. The department shall assess a  
661 penalty of \$3,000 ~~\$2,000~~ for failure to conduct or maintain  
662 required release detection; failure to timely investigate a  
663 suspected release from a storage system; depositing motor fuel  
664 into an unregistered storage tank system; failure to timely  
665 assess or remediate petroleum contamination; or failure to  
666 properly install a storage tank system. The department shall  
667 assess a penalty of \$1,500 ~~\$1,000~~ for failure to properly  
668 operate, maintain, or close a storage tank system.

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

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

675 (b) For failure to install, maintain, or use a required

676 pollution control system or device, \$6,000 ~~\$4,000~~.

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

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

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

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

692 (5) Except as provided in subsection (2) with respect to  
693 public water systems serving a population of more than 10,000,  
694 for failure to comply with any other departmental regulatory  
695 statute or rule requirement not otherwise identified in this  
696 section, the department may assess a penalty of \$1,000 ~~\$500~~.

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



701 (7) The history of noncompliance of the violator for any  
702 previous violation resulting in an executed consent order, but  
703 not including a consent order entered into without a finding of  
704 violation, or resulting in a final order or judgment after the  
705 effective date of this law involving the imposition of \$3,000  
706 ~~\$2,000~~ or more in penalties shall be taken into consideration in  
707 the following manner:

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

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

716 (c) Three or more previous such violations within 5 years  
717 prior to the filing of the notice of violation will result in a  
718 100-percent per day increase in the scheduled administrative  
719 penalty.

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

726 administrative penalty, may ~~shall~~ not exceed \$15,000 ~~\$10,000~~.

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

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

746 (11) Penalties collected pursuant to this section shall be  
 747 deposited into the Water Quality Assurance Trust Fund or other  
 748 trust fund designated by statute and shall be used to fund the  
 749 restoration of ecosystems, or polluted areas of the state, as  
 750 defined by the department, to their condition before pollution

751 occurred. The Florida Conflict Resolution Consortium may use a  
 752 portion of the fund to administer the mediation process provided  
 753 in paragraph (2)(e) and to contract with private mediators for  
 754 administrative penalty cases.

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

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

766 403.141 Civil liability; joint and several liability.—

767 (1) A person who ~~Whoever~~ commits a violation specified in  
 768 s. 403.161(1) is liable to the state for any damage caused to  
 769 the air, waters, or property, including animal, plant, or  
 770 aquatic life, of the state and for reasonable costs and expenses  
 771 of the state in tracing the source of the discharge, in  
 772 controlling and abating the source and the pollutants, and in  
 773 restoring the air, waters, and property, including animal,  
 774 plant, and aquatic life, of the state to their former condition,  
 775 and furthermore is subject to the judicial imposition of a civil

776 penalty for each offense in an amount of not more than \$15,000  
 777 ~~\$10,000~~ per offense. However, the court may receive evidence in  
 778 mitigation. Until a violation is resolved by order or judgment,  
 779 each day during any portion of which such violation occurs or is  
 780 not remediated constitutes a separate offense. Nothing herein  
 781 gives ~~shall give~~ the department the right to bring an action on  
 782 behalf of any private person.

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

785 403.161 Prohibitions, violation, penalty, intent.—

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

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

796 (4) A ~~Any~~ person who commits a violation specified in  
 797 paragraph (1)(a) or paragraph (1)(b) due to reckless  
 798 indifference or gross careless disregard commits ~~is guilty of~~ a  
 799 misdemeanor of the second degree, punishable as provided in ss.  
 800 775.082(4)(b) and 775.083(1)(g) by a fine of not more than

801 \$10,000 ~~\$5,000~~ or by 60 days in jail, or by both, for each  
 802 offense.

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

809 Section 17. Paragraph (a) of subsection (6) of section  
 810 403.413, Florida Statutes, is amended to read:

811 403.413 Florida Litter Law.—

812 (6) PENALTIES; ENFORCEMENT.—

813 (a) Any person who dumps litter in violation of subsection  
 814 (4) in an amount not exceeding 15 pounds in weight or 27 cubic  
 815 feet in volume and not for commercial purposes commits ~~is guilty~~  
 816 ~~of~~ a noncriminal infraction, punishable by a civil penalty of  
 817 \$150 ~~\$100~~, from which \$50 shall be deposited into the Solid  
 818 Waste Management Trust Fund to be used for the solid waste  
 819 management grant program pursuant to s. 403.7095. In addition,  
 820 the court may require the violator to pick up litter or perform  
 821 other labor commensurate with the offense committed.

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

824 403.7234 Small quantity generator notification and  
 825 verification program.—

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

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

839 403.726 Abatement of imminent hazard caused by hazardous  
 840 substance.—

841 (3) An imminent hazard exists if any hazardous substance  
 842 creates an immediate and substantial danger to human health,  
 843 safety, or welfare or to the environment. The department may  
 844 institute action in its own name, using the procedures and  
 845 remedies of s. 403.121 or s. 403.131, to abate an imminent  
 846 hazard. However, the department is authorized to recover a civil  
 847 penalty of not more than \$37,500 ~~\$25,000~~ for each day until a ~~of~~  
 848 ~~continued~~ violation is resolved by order or judgment. Whenever  
 849 serious harm to human health, safety, and welfare; the  
 850 environment; or private or public property may occur prior to

851 completion of an administrative hearing or other formal  
 852 proceeding that which might be initiated to abate the risk of  
 853 serious harm, the department may obtain, ex parte, an injunction  
 854 without paying filing and service fees prior to the filing and  
 855 service of process.

856 Section 20. Paragraph (a) of subsection (3) of section  
 857 403.727, Florida Statutes, is amended to read:

858 403.727 Violations; defenses, penalties, and remedies.—

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

861 (a) Any person who violates ~~the provisions of~~ this act,  
 862 the rules or orders of the department, or the conditions of a  
 863 permit is liable to the state for any damages specified in s.  
 864 403.141 and for a civil penalty of not more than \$75,000 ~~\$50,000~~  
 865 for each day of continued violation or until a violation is  
 866 resolved by order or judgment, except as otherwise provided  
 867 herein. The department may revoke any permit issued to the  
 868 violator. In any action by the department against a small  
 869 hazardous waste generator for the improper disposal of hazardous  
 870 wastes, a rebuttable presumption of improper disposal shall be  
 871 created if the generator was notified pursuant to s. 403.7234;  
 872 the generator shall then have the burden of proving that the  
 873 disposal was proper. If the generator was not so notified, the  
 874 burden of proving improper disposal shall be placed upon the  
 875 department.

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

878 403.93345 Coral reef protection.—

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

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

891 (b) For damage totaling more than an area of 1 square  
 892 meter but less than or equal to an area of 10 square meters,  
 893 \$450 ~~\$300~~ per square meter; with aggravating circumstances, an  
 894 additional \$450 ~~\$300~~ per square meter; occurring within a state  
 895 park or aquatic preserve, an additional \$450 ~~\$300~~ per square  
 896 meter.

897 (c) For damage exceeding an area of 10 square meters,  
 898 \$1,500 ~~\$1,000~~ per square meter; with aggravating circumstances,  
 899 an additional \$1,500 ~~\$1,000~~ per square meter; occurring within a  
 900 state park or aquatic preserve, an additional \$1,500 ~~\$1,000~~ per



901 square meter.

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

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

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

908 (g) The total of penalties levied may not exceed \$375,000  
909 ~~\$250,000~~ per occurrence.

910 Section 22. For the purpose of incorporating the amendment  
911 made by this act to s. 376.16, Florida Statutes, in a reference  
912 thereto, subsection (5) of s. 823.11, Florida Statutes, is  
913 reenacted to read:

914 823.11 Derelict vessels; relocation or removal; penalty.—

915 (5) A person, firm, or corporation violating this section  
916 commits a misdemeanor of the first degree and shall be punished  
917 as provided by law. A conviction under this section does not bar  
918 the assessment and collection of the civil penalty provided in  
919 s. 376.16 for violation of s. 376.15. The court having  
920 jurisdiction over the criminal offense, notwithstanding any  
921 jurisdictional limitations on the amount in controversy, may  
922 order the imposition of such civil penalty in addition to any  
923 sentence imposed for the first criminal offense.

924 Section 23. For the purpose of incorporating the amendment  
925 made by this act to section 403.121, Florida Statutes, in a

926 reference thereto, subsection (5) of section 403.077, Florida  
 927 Statutes, is reenacted to read:

928 403.077 Public notification of pollution.—

929 (5) VIOLATIONS.—Failure to provide the notification  
 930 required by subsection (2) shall subject the owner or operator  
 931 to the civil penalties specified in s. 403.121.

932 Section 24. For the purpose of incorporating the amendment  
 933 made by this act to section 403.121, Florida Statutes, in a  
 934 reference thereto, subsection (2) of section 403.131, Florida  
 935 Statutes, is reenacted to read:

936 403.131 Injunctive relief, remedies.—

937 (2) All the judicial and administrative remedies to  
 938 recover damages and penalties in this section and s. 403.121 are  
 939 alternative and mutually exclusive.

940 Section 25. For the purpose of incorporating the amendment  
 941 made by this act to section 403.121, Florida Statutes, in a  
 942 reference thereto, paragraph (d) of subsection (3) of section  
 943 403.4154, Florida Statutes, is reenacted to read:

944 403.4154 Phosphogypsum management program.—

945 (3) ABATEMENT OF IMMINENT HAZARD.—

946 (d) If the department determines that the failure of an  
 947 owner or operator to comply with department rules requiring  
 948 demonstration of financial responsibility or that the physical  
 949 condition, maintenance, operation, or closure of a phosphogypsum  
 950 stack system poses an imminent hazard, the department shall

951 request access to the property on which such stack system is  
952 located from the owner or operator of the stack system for the  
953 purposes of taking action to abate or substantially reduce the  
954 imminent hazard. If the department, after reasonable effort, is  
955 unable to timely obtain the necessary access to abate or  
956 substantially reduce the imminent hazard, the department may  
957 institute action in its own name, using the procedures and  
958 remedies of s. 403.121 or s. 403.131, to abate or substantially  
959 reduce an imminent hazard. Whenever serious harm to human  
960 health, safety, or welfare, to the environment, or to private or  
961 public property may occur prior to completion of an  
962 administrative hearing or other formal proceeding that might be  
963 initiated to abate the risk of serious harm, the department may  
964 obtain from the court, ex parte, an injunction without paying  
965 filing and service fees prior to the filing and service of  
966 process.

967 Section 26. For the purpose of incorporating the amendment  
968 made by this act to section 403.121, Florida Statutes, in a  
969 reference thereto, subsection (5) of section 403.860, Florida  
970 Statutes, is reenacted to read:

971 403.860 Penalties and remedies.—

972 (5) In addition to any judicial or administrative remedy  
973 authorized by this part, the department or a county health  
974 department that has received approval by the department pursuant  
975 to s. 403.862(1)(c) shall assess administrative penalties for

976 | violations of this section in accordance with s. 403.121.

977 |       Section 27. For the purpose of incorporating the amendment  
 978 | made by this act to section 403.141, Florida Statutes, in a  
 979 | reference thereto, subsection (10) of section 403.708, Florida  
 980 | Statutes, is reenacted to read:

981 |       403.708 Prohibition; penalty.—

982 |       (10) Violations of this part or rules, regulations,  
 983 | permits, or orders issued thereunder by the department and  
 984 | violations of approved local programs of counties or  
 985 | municipalities or rules, regulations, or orders issued  
 986 | thereunder are punishable by a civil penalty as provided in s.  
 987 | 403.141.

988 |       Section 28. For the purpose of incorporating the amendment  
 989 | made by this act to section 403.141, Florida Statutes, in a  
 990 | reference thereto, subsection (7) of section 403.7191, Florida  
 991 | Statutes, is reenacted to read:

992 |       403.7191 Toxics in packaging.—

993 |       (7) ENFORCEMENT.—It is unlawful for any person to:

994 |       (a) Violate any provision of this section or any rule  
 995 | adopted or order issued thereunder by the department.

996 |       (b) Tender for sale to a purchaser any package, packaging  
 997 | component, or packaged product in violation of this section or  
 998 | any rule adopted or order issued thereunder.

999 (c) Furnish a certificate of compliance with respect to  
 1000 any package or packaging component which does not comply with  
 1001 the provisions of subsection (3).

1002 (d) Provide a certificate of compliance that contains  
 1003 false information.

1004  
 1005 Violations shall be punishable by a civil penalty as provided in  
 1006 s. 403.141.

1007 Section 29. For the purpose of incorporating the amendment  
 1008 made by this act to section 403.141, Florida Statutes, in a  
 1009 reference thereto, section 403.811, Florida Statutes, is  
 1010 reenacted to read:

1011 403.811 Dredge and fill permits issued pursuant to this  
 1012 chapter and s. 373.414.—Permits or other orders addressing  
 1013 dredging and filling in, on, or over waters of the state issued  
 1014 pursuant to this chapter or s. 373.414(9) before the effective  
 1015 date of rules adopted under s. 373.414(9) and permits or other  
 1016 orders issued in accordance with s. 373.414(13), (14), (15), or  
 1017 (16) shall remain valid through the duration specified in the  
 1018 permit or order, unless revoked by the agency issuing the  
 1019 permit. The agency issuing the permit or other order may seek to  
 1020 enjoin the violation of, or to enforce compliance with, the  
 1021 permit or other order as provided in ss. 403.121, 403.131,  
 1022 403.141, and 403.161. A violation of a permit or other order  
 1023 addressing dredging or filling issued pursuant to this chapter

1024 is punishable by a civil penalty as provided in s. 403.141 or a  
 1025 criminal penalty as provided in s. 403.161.

1026 Section 30. For the purpose of incorporating the  
 1027 amendments made by this act to sections 403.141 and 403.161,  
 1028 Florida Statutes, in references thereto, subsection (8) of  
 1029 section 403.7186, Florida Statutes, is reenacted to read:

1030 403.7186 Environmentally sound management of mercury-  
 1031 containing devices and lamps.—

1032 (8) CIVIL PENALTY.—A person who engages in any act or  
 1033 practice declared in this section to be prohibited or unlawful,  
 1034 or who violates any of the rules of the department promulgated  
 1035 under this section, is liable to the state for any damage caused  
 1036 and for civil penalties in accordance with s. 403.141. The  
 1037 provisions of s. 403.161 are not applicable to this section. The  
 1038 penalty may be waived if the person previously has taken  
 1039 appropriate corrective action to remedy the actual damages, if  
 1040 any, caused by the unlawful act or practice or rule violation. A  
 1041 civil penalty so collected shall accrue to the state and shall  
 1042 be deposited as received into the Solid Waste Management Trust  
 1043 Fund for the purposes specified in paragraph (5) (a).

1044 Section 31. For the purpose of incorporating the amendment  
 1045 made by this act to section 403.161, Florida Statutes, in a  
 1046 reference thereto, subsection (2) of section 403.7255, Florida  
 1047 Statutes, is reenacted to read:

1048 403.7255 Placement of signs.—

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1049           (2) Violations of this act are punishable as provided in  
1050 s. 403.161(4).  
1051           Section 32. This act shall take effect July 1, 2020.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1091 Environmental Enforcement  
**SPONSOR(S):** Agriculture & Natural Resources Subcommittee, Fine  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1450

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	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.<sup>1</sup> In accordance with the state's numerous environmental laws, DEP's responsibilities include compliance and enforcement.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

##### *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.<sup>6</sup> In environmental enforcement, penalties should create incentives to bring immediate compliance and curb future violations.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> In most administrative proceedings, DEP has the final decision.<sup>10</sup> 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.<sup>11</sup> Compared to the judicial process, the administrative process is generally considered less expensive, faster, and more conducive to negotiated settlement.<sup>12</sup> 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.<sup>13</sup>

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<sup>1</sup> DEP, *About DEP*, available at <https://floridadep.gov/about-dep> (last visited Jan. 27, 2020); s. 20.255, F.S.

<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> See s. 403.121, F.S.

<sup>5</sup> See ss. 403.121 and 403.141, F.S.

<sup>6</sup> See BLACK'S LAW DICTIONARY 1247 (9th ed. 2009).

<sup>7</sup> 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).

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

<sup>9</sup> DEP, *Enforcement Manual: The Administrative Process and Remedies* (2014), 58, available at [https://floridadep.gov/sites/default/files/chapter5\\_0.pdf](https://floridadep.gov/sites/default/files/chapter5_0.pdf) (last visited Jan. 27, 2020).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 58-59, 66-70; ch. 2001-258, Laws of Fla.

<sup>12</sup> DEP, *Enforcement Manual: The Administrative Process and Remedies* (2014), 59, available at [https://floridadep.gov/sites/default/files/chapter5\\_0.pdf](https://floridadep.gov/sites/default/files/chapter5_0.pdf) (last visited Jan. 27, 2020).

<sup>13</sup> *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.<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup>

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.<sup>17</sup> Under both actions, DEP may seek injunctive relief, civil penalties, damages, and costs and expenses.<sup>18</sup> 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.<sup>19</sup>

A court or an administrative law judge may receive evidence in mitigation, which may result in the decrease or elimination of penalties.<sup>20</sup>

Criminal penalties can include jail/prison time, a criminal fine, or both. Florida law imposes criminal penalties for certain violations of environmental law.<sup>21</sup> Punishments for such violations may vary based on standards of intent, such as willful, reckless indifference, or gross careless disregard.<sup>22</sup>

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.<sup>23</sup>

### 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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<sup>14</sup> 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](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.

<sup>15</sup> *Id.*

<sup>16</sup> Section 403.121, F.S.

<sup>17</sup> 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).

<sup>18</sup> *Id.*

<sup>19</sup> Section 403.121(1)(b), F.S.

<sup>20</sup> Section 403.121, F.S.

<sup>21</sup> Section 403.161, F.S.

<sup>22</sup> *Id.*

<sup>23</sup> 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 <sup>nd</sup> discharge: \$500 Subsequent discharges: \$1,000	2 <sup>nd</sup> 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 <sup>nd</sup> discharge: \$2,500 Subsequent discharges: \$5,000	2 <sup>nd</sup> 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 <sup>nd</sup> discharge: Up to \$500  Subsequent discharges: Up to \$1,000	2 <sup>nd</sup> 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 <sup>nd</sup> discharge: Up to \$5,000  Subsequent discharges: Up to \$10,000	2 <sup>nd</sup> discharge: Up to \$7,500  Subsequent discharges: Up to \$15,000
<b>376.25</b>	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
<b>377.37</b>	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
<b>378.211</b>	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
<b>403.086</b>	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
<b>403.121</b>	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:  <ul style="list-style-type: none"> <li>If the violation occurs in a certain waterbody</li> <li>If the violation occurs in an area of a certain size</li> </ul>	\$1,000  plus \$2,000  plus \$1,000	\$1,500  plus \$3,000  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:  <ul style="list-style-type: none"> <li>The emission was from a major source and the source was major for the pollutant in violation</li> <li>The emission was more than 150% of the allowable level</li> </ul>	\$1,000  \$3,000  \$1,000	\$1,500  \$4,500  \$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
<b>403.141</b>	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
<b>403.161</b>	Any person who fails to obtain a permit due to reckless indifference commits a 2 <sup>nd</sup> 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
<b>403.413</b>	A law enforcement officer is required to assess a civil penalty for dumping litter.	\$100	\$150
<b>403.7234</b>	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
<b>403.726</b>	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
<b>403.727</b>	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 make technical changes.
- 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 make technical changes.
- 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 s. 403.077, F.S., to incorporate amendments made by the bill.
- Section 24. Reenacts s. 403.131, F.S., to incorporate amendments made by the bill.
- Section 25. Reenacts s. 403.4154, F.S., to incorporate amendments made by the bill.
- Section 26. Reenacts s. 403.860, F.S., to incorporate amendments made by the bill.
- Section 27. Reenacts s. 403.708, F.S., to incorporate amendments made by the bill.
- Section 28. Reenacts s. 403.7191, F.S., to incorporate amendments made by the bill.
- Section 29. Reenacts s. 403.811, F.S., to incorporate amendments made by the bill.
- Section 30. Reenacts s. 403.7186, F.S., to incorporate amendments made by the bill.
- Section 31. Reenacts s. 403.7255, F.S., to incorporate amendments made by the bill.
- Section 32. 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:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 4, 2020, the Agriculture & Natural Resources Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment revised provisions related to determining the time period during which a violation is subject to separate penalties for certain criminal violations.

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

By Senator Rouson

19-01886-20

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1 A bill to be entitled  
2 An act relating to vessels; creating s. 327.332, F.S.;  
3 specifying operation of a vessel at slow speed,  
4 minimum wake; prohibiting the operation of vessels at  
5 speeds faster than slow speed, minimum wake in certain  
6 situations; providing requirements for flags displayed  
7 from vessels and barges actively engaged in  
8 construction operations; providing noncriminal  
9 penalties; amending s. 327.4109, F.S.; prohibiting the  
10 anchoring or mooring of a vessel to, or within a  
11 specified distance of, a mangrove or to vegetation  
12 upon, or within a specified distance of, public lands;  
13 providing exceptions; amending s. 327.73, F.S.;  
14 revising civil penalties relating to certain at-risk  
15 vessels and prohibited anchoring or mooring; providing  
16 civil penalties relating to vessels that fail to  
17 reduce speed for special hazards and the display of  
18 specified flags by construction vessels or barges not  
19 actively engaged in construction operations; providing  
20 an appropriation; providing an effective date.

21  
22  
23 Be It Enacted by the Legislature of the State of Florida:

24  
25 Section 1. Section 327.332, Florida Statutes, is created to  
26 read:

27 327.332 Special hazards.-

28 (1) For purposes of this section, a vessel is operating at  
29 slow speed, minimum wake only if it is fully off plane and

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30 completely settled into the water.

31 (2) A person may not operate a vessel faster than slow  
32 speed, minimum wake upon approaching within 300 feet of any  
33 emergency vessel, including, but not limited to, a law  
34 enforcement vessel, United States Coast Guard vessel or  
35 auxiliary vessel, fire vessel, or tow vessel, with its emergency  
36 lights activated.

37 (3) (a) A person may not operate a vessel faster than slow  
38 speed, minimum wake upon approaching within 300 feet of any  
39 construction vessel or barge when the vessel or barge is  
40 displaying an orange flag from a pole extending:

41 1. At least 10 feet above the tallest portion of the vessel  
42 or barge, indicating the vessel or barge is actively engaged in  
43 construction operations; or

44 2. At least 5 feet above any superstructure permanently  
45 installed upon the vessel or barge, indicating that the vessel  
46 or barge is actively engaged in construction operations.

47 (b) A flag displayed pursuant to this subsection must:

48 1. Be at least 2 feet by 3 feet in size.

49 2. Have a wire or other stiffener or be otherwise  
50 constructed to ensure that the flag remains fully unfurled and  
51 extended in the absence of a wind or breeze.

52 3. Displayed so that the visibility of the flag is not  
53 obscured in any direction.

54 (c) In periods of low visibility, including 1 hour before  
55 sunset and 1 hour after sunrise, a person may not be cited for a  
56 violation of this subsection unless the orange flag is  
57 illuminated and visible from a distance of at least 2 nautical  
58 miles.

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59       (4) (a) A person operating a vessel in violation of this  
60 section commits a noncriminal infraction, punishable as provided  
61 in s. 327.73.

62       (b) The owner of, or party responsible for, a construction  
63 vessel or barge who displays an orange flag on the vessel or  
64 barge when it is not actively engaged in operations commits a  
65 noncriminal infraction, punishable as provided in s. 327.73.

66       Section 2. Subsections (5) and (6) of section 327.4109,  
67 Florida Statutes, are redesignated as subsections (6) and (7),  
68 respectively, and a new subsection (5) is added to that section,  
69 to read:

70       327.4109 Anchoring or mooring prohibited; exceptions;  
71 penalties.—

72       (5) (a) Except as provided in paragraph (b), the owner or  
73 operator of a vessel may not anchor or moor a vessel to, or  
74 within 20 feet of, a mangrove as defined in s. 403.9325 or to  
75 vegetation upon, or within 20 feet of, public lands. Such  
76 distance must be measured in a straight line from the point of  
77 the vessel closest to the outermost branches of the mangrove or  
78 from the outermost line of vegetation upon the public lands.

79       (b) The owner or operator of a vessel may anchor or moor  
80 to, or within 20 feet of, a mangrove as defined in s. 403.9325  
81 or to vegetation upon, or within 20 feet of, public lands under  
82 the following conditions:

83       1. The vessel suffers a mechanical failure that poses an  
84 unreasonable risk of harm to the vessel or the persons onboard  
85 unless the vessel anchors. The vessel may anchor for 3 business  
86 days or until the vessel is repaired, whichever occurs first.

87       2. Imminent or existing weather conditions in the vicinity

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88 of the vessel pose an unreasonable risk of harm to the vessel or  
89 the persons onboard unless the vessel anchors. The vessel may  
90 anchor until weather conditions no longer pose such risk. During  
91 a hurricane or tropical storm, weather conditions are deemed to  
92 no longer pose an unreasonable risk of harm when the hurricane  
93 or tropical storm warning affecting the area has expired.

94 3. The vessel is within a state or locally permitted or  
95 designated dockage, mooring, or other anchorage area.

96 Section 3. Paragraphs (aa) and (bb) of subsection (1) of  
97 section 327.73, Florida Statutes, are amended, and paragraphs  
98 (cc) and (dd) are added to that subsection, to read:

99 327.73 Noncriminal infractions.—

100 (1) Violations of the following provisions of the vessel  
101 laws of this state are noncriminal infractions:

102 (aa) Section 327.4107, relating to vessels at risk of  
103 becoming derelict on waters of this state, for which the civil  
104 penalty is:

105 1. For a first offense, \$100 ~~\$50~~.

106 2. For a second offense occurring 30 days or more after a  
107 first offense, \$250 ~~\$100~~.

108 3. For a third or subsequent offense occurring 30 days or  
109 more after a previous offense, \$500 ~~\$250~~. A vessel which is the  
110 subject of more than three violations within 12 months which  
111 resulted in dispositions other than acquittal or dismissal shall  
112 be declared to be a public nuisance and subject to the  
113 provisions of ss. 705.103 and 823.11.

114 (bb) Section 327.4109, relating to anchoring or mooring in  
115 a prohibited area, for which the penalty is:

116 1. For a first offense, up to a maximum of \$100 ~~\$50~~.

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117 2. For a second offense, up to a maximum of \$250 ~~\$100~~.

118 3. For a third or subsequent offense, up to a maximum of  
119 \$500 ~~\$250~~. A vessel which is the subject of more than three  
120 violations within 12 months which resulted in dispositions other  
121 than acquittal or dismissal shall be declared to be a public  
122 nuisance and subject to the provisions of ss. 705.103 and  
123 823.11.

124 (cc) Section 327.332(2) and (3), relating to vessels  
125 creating special hazards, for which the penalty is:

126 1. For a first offense, \$50.

127 2. For a second offense occurring within 12 months after a  
128 prior offense, \$250.

129 3. For a third offense occurring within 36 months after a  
130 prior offense, \$500.

131 (dd) Section 327.332(4), relating to the display of an  
132 orange flag on a vessel or barge when the vessel or barge is not  
133 actively engaged in construction operations.

134  
135 Any person cited for a violation of any provision of this  
136 subsection shall be deemed to be charged with a noncriminal  
137 infraction, shall be cited for such an infraction, and shall be  
138 cited to appear before the county court. The civil penalty for  
139 any such infraction is \$50, except as otherwise provided in this  
140 section. Any person who fails to appear or otherwise properly  
141 respond to a uniform boating citation shall, in addition to the  
142 charge relating to the violation of the boating laws of this  
143 state, be charged with the offense of failing to respond to such  
144 citation and, upon conviction, be guilty of a misdemeanor of the  
145 second degree, punishable as provided in s. 775.082 or s.

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146 775.083. A written warning to this effect shall be provided at  
147 the time such uniform boating citation is issued.

148       Section 4. Beginning in fiscal year 2020-2021 and each year  
149 thereafter through fiscal year 2023-2024, the sum of \$250,000 in  
150 nonrecurring funds is appropriated from the General Revenue Fund  
151 to the Fish and Wildlife Conservation Commission for the purpose  
152 of conducting a study of the impacts of long-term stored vessels  
153 on local communities and the state pursuant to s. 327.4109,  
154 Florida Statutes.

155       Section 5. 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.)

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

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BILL: SB 1378

INTRODUCER: Senator Rouson

SUBJECT: Vessels

DATE: February 7, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	<b>Pre-meeting</b>
2.			JU	
3.			RC	

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**I. Summary:**

SB 1378 prohibits vessel operators from operating a vessel faster than slow speed with minimum wake upon approaching certain hazardous conditions, including approaching an emergency or construction vessel. The bill provides that a vessel operator found in violation of this requirement is guilty of a noncriminal infraction. The bill includes requirements for a construction vessel or barge that displays an orange flag to indicate that it is actively engaged in construction operations.

The bill prohibits an owner or operator of a vessel from anchoring or mooring a vessel to, or within 20 feet of, a mangrove or vegetation upon, or within 20 feet of, public lands, unless certain conditions exist, including mechanical failure, weather that poses an unreasonable risk, or if the anchoring or mooring is within a state or locally permitted or designated dockage, mooring, or other anchorage area.

The bill increases several of the civil penalties for a vessel deemed at risk of becoming derelict and increases several of the maximum civil penalties for anchoring or mooring in a prohibited area. The bill also creates civil penalties for vessels that fail to reduce speed for special hazards as specified in the bill. The bill adds to the list of violations resulting in a noncriminal infraction the display of an orange flag when the vessel or barge is not actively engaged in construction operations.

The bill provides an appropriation of \$250,000 in nonrecurring funds from the General Revenue Fund to FWC to conduct a study of the impacts of long-term stored vessels on local communities and the state pursuant to existing law. The appropriation would begin in fiscal year 2020-2021 and would be awarded annually for four years through fiscal year 2023-2024.



## II. Present Situation:

### Boating Speed Safety Regulations

An operator of a vessel in Florida must operate the vessel in a reasonable and prudent manner, having regard for other waterborne traffic, posted speed and wake restrictions, and all other attendant circumstances so as not to endanger the life, limb, or property of another person outside the vessel or due to vessel overloading or excessive speed.<sup>1</sup> A person operating a vessel in excess of a posted speed limit is guilty of a civil infraction.<sup>2</sup>

### Anchoring or Mooring

Anchoring or mooring refers to a boater's practice of seeking and using a safe harbor on the public waterway system for an undefined duration. Anchoring is accomplished using an anchor carried on the vessel.<sup>3</sup> Mooring is accomplished through the use of moorings permanently affixed to the bottom of the water body. Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated or managed for that purpose or not. Mooring fields are areas designated and used for a system of properly spaced moorings.<sup>4</sup>

The anchoring of vessels has created conflicts in some areas of the state related to the use and enjoyment of the waters for many years. These issues include, but are not limited to:

- The locations where anchored vessels accumulate;
- Unattended vessels;
- Anchored vessels that are dragging anchor or not showing proper lighting;
- Vessels that are not maintained properly;
- Vessels that become derelict;
- Interpretation of state laws leading to inconsistent regulation of anchoring on state waters and confusion among the boating community; and
- Questions about local governmental authority to regulate anchoring.<sup>5</sup>

### State Regulation of the Anchoring or Mooring of Vessels

The Board of Trustees of the Internal Improvement Trust Fund (BOT) is authorized to adopt rules governing all uses of sovereignty submerged lands including rules for anchoring, mooring, or otherwise attaching to the bottom, the establishment of anchorages, the discharge of sewage, pump-out requirements, and facilities associated with anchorages.<sup>6</sup> Such rules must control the

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<sup>1</sup> Section 327.33, F.S.

<sup>2</sup> Section 327.73(h), F.S.

<sup>3</sup> Section 327.02, F.S., defines the term "vessel" to include every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

<sup>4</sup> Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2 (Rev. May 2012), available at [https://www.law.ufl.edu/\\_pdf/academics/centers-clinics/clinics/conservation/resources/anchaway.pdf](https://www.law.ufl.edu/_pdf/academics/centers-clinics/clinics/conservation/resources/anchaway.pdf).

<sup>5</sup> Fish and Wildlife Conservation Commission (FWC), *Anchoring and Mooring Pilot Program Report of Findings and Recommendations*, 6 (Dec. 31, 2016), available at <http://www.boatus.com/gov/assets/pdf/fwc-2016-anchoring-and-mooring-report.pdf>.

<sup>6</sup> Section 253.03(7), F.S.

use of sovereignty submerged lands as a place of business or residence but are prohibited from interfering with commerce or the transitory operation of vessels through navigable water.<sup>7</sup>

State law prohibits a person from anchoring a vessel, except in case of emergency, in a manner which unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel.<sup>8</sup> Anchoring under bridges or in or adjacent to heavily traveled channels constitutes interference, if unreasonable under the prevailing circumstances.<sup>9</sup> Interference with navigation is a noncriminal infraction and punishable by a fine of \$50.<sup>10</sup>

The owner or operator of a vessel or floating structure may not anchor or moor such that the nearest approach of the anchored or moored vessel or floating structure is:

- Within 150 feet of any marina, boat ramp, boatyard, or vessel launching or loading facility;
- Within 300 feet of a superyacht repair facility (a facility that services or repairs a yacht with a water line of 120 feet or more in length); or
- Within 100 feet outward from the marked boundary of a public mooring field or a lesser distance if approved by the local government within which the mooring field is located.<sup>11</sup>

Exceptions from these restrictions apply for:

- A vessel owned or operated by a governmental entity.
- A construction or dredging vessel on an active job site.
- A commercial fishing vessel actively engaged in commercial fishing.
- A vessel actively engaged in recreational fishing if the persons onboard are actively tending hook and line fishing gear or nets.<sup>12</sup>

An owner or operator of a vessel may anchor or moor within 150 feet of any marina, boat ramp, boatyard, or other vessel launching or loading facility; within 300 feet of a superyacht repair facility; or within 100 feet outward from the marked boundary of a public mooring field if:

- The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor for 5 business days or until the vessel is repaired, whichever occurs first.
- Imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor until weather conditions no longer pose such risk.<sup>13</sup>

The owner or operator of a vessel or floating structure may not anchor or moor within the marked boundary of a public mooring field unless the owner or operator has a lawful right to do so by contractual agreement or other business arrangement.<sup>14</sup>

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<sup>7</sup> *Id.*; see Fla. Admin. Code ch. 18-21.

<sup>8</sup> Section 327.44, F.S.

<sup>9</sup> Section 327.44(2), F.S.

<sup>10</sup> Section 327.73, F.S.

<sup>11</sup> Section 327.4109(1)(a), F.S.

<sup>12</sup> Section 327.4109(1)(b), F.S.

<sup>13</sup> Section 327.4109(2), F.S.

<sup>14</sup> Section 327.4109(3), F.S.

A vessel or floating structure may not be anchored, moored, or affixed to an unpermitted, unauthorized, or otherwise unlawful object that is on or affixed to the bottom of the waters of this state. This does not apply to a private mooring owned by the owner of privately owned submerged lands.<sup>15</sup>

## **Mangroves**

Mangroves are tropical plants that are adapted to loose, wet soils, salt water, and periodic submersion by tides.<sup>16</sup> There are more than 50 species of mangroves found throughout the world. Florida law defines a mangrove as a specimen of the species *Laguncularia racemosa* (white mangrove), *Rhizophora mangle* (red mangrove), or *Avicennia germinans* (black mangrove).<sup>17</sup>

There are over 555,000 acres of mangroves now existing in the coastal areas of Central and South Florida. Of this total, over 80 percent are under some form of government or private ownership or control and are expressly set aside for preservation or conservation purposes.<sup>18</sup> Mangroves provide protected nursery areas for fishes, crustaceans, and shellfish. They also provide food for a multitude of marine species. Many animals find shelter either in the roots or branches of mangroves. Mangrove branches are rookeries, or nesting areas, for coastal birds such as brown pelicans and roseate spoonbills.<sup>19</sup> Mangroves also stabilize the shoreline and help prevent storm surge and erosion damage to coastal property.<sup>20</sup> They help maintain water quality and clarity by trapping sediments, absorbing nutrients, and removing pollutants from land that would otherwise harm the coastal ocean.<sup>21</sup>

Mangroves can be damaged and destroyed by natural causes, but human activities such as coastal development are responsible for destroying more mangrove forests worldwide than any other type of coastal habitat.<sup>22</sup> The loss of mangrove habitat has been severe in Florida's three largest estuaries since the 1900s. Tampa Bay has lost nearly 50 percent of its mangrove forests and Charlotte Harbor estuary has lost nearly 60 percent. On Florida's East coast, the construction of mosquito ditches and impoundments has caused nearly 85 percent of the mangroves in the Indian River Lagoon to be inaccessible and unusable as nursery habitat for local fisheries.<sup>23</sup>

Currently, there are not any state regulations for anchoring or mooring near mangroves, although the trimming of mangroves is regulated under the Mangrove Trimming and Preservation Act.<sup>24</sup> Through the Mangrove Trimming and Preservation Act, the Legislature intends to protect and

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<sup>15</sup> Section 327.4019(4), F.S.

<sup>16</sup> DEP, *What is a mangrove?*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/what-mangrove> (last visited Jan. 31, 2020).

<sup>17</sup> *Id.*

<sup>18</sup> Section 403.9322, F.S.

<sup>19</sup> DEP, *Florida's Mangroves*, <https://floridadep.gov/rcp/rcp/content/floridas-mangroves> (last visited Jan. 31, 2020).

<sup>20</sup> FWC, *Mangrove Forests*, <https://myfwc.com/research/habitat/coastal-wetlands/information/mangroves/> (last visited Jan. 31, 2020).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Section 403.9321-403.9333, F.S.

preserve mangrove resources valuable to our environment and economy from unregulated removal, defoliation, and destruction.<sup>25</sup>

### **Lease of Sovereignty Submerged Lands for Private Residential Docks and Piers**

The BOT is responsible for the administration and disposition of the state's sovereignty submerged lands.<sup>26</sup> Waterfront landowners must receive the BOT's authorization to build docks and related structures on sovereignty submerged lands. The Department of Environmental Protection (DEP) administers all staff functions on the BOT's behalf.<sup>27</sup>

Florida recognizes riparian rights for landowners with waterfront property bordering navigable waters, which include the rights of ingress, egress, boating, bathing, fishing, and others as defined by law.<sup>28</sup> Riparian landowners must obtain a sovereignty submerged lands authorization in the form of a letter of consent, consent by rule, or a lease prior to installation and maintenance of docks, piers, and boat ramps on sovereignty submerged land.<sup>29</sup>

A lease agreement between the state and the property owner transfers the use, possession, and control of sovereignty submerged lands to the property owner for up to 10 years.<sup>30</sup> A lease is renewable for successive terms of up to 10 years if the parties agree and the lessee complies with all terms of the lease and all applicable laws and rules.<sup>31</sup> Structures that were built on sovereignty submerged lands before the BOT adopted regulations were "grandfathered" into a lease or easement without having to meet current regulations.<sup>32</sup>

### **Derelict Vessels and Vessels at Risk of Becoming Derelict**

A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public waters of this state; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent of the owner of the property.<sup>33</sup>

In 2016, the Legislature prohibited neglected vessels or those in deteriorating conditions from anchoring, mooring, or occupying the waters of the state.<sup>34</sup> Section 327.4107(2), F.S., provides that a vessel is at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on or has taken on water without an effective means to dewater;
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time;
- The vessel has broken loose or is in danger of breaking loose from its anchor;

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<sup>25</sup> Section 403.9323, F.S.

<sup>26</sup> Section 253.03(8)(b), F.S., defines submerged lands as publicly owned lands below the ordinary high-water mark of fresh waters and below the mean high-water line of salt waters extending seaward to the outer jurisdiction of the state.

<sup>27</sup> Section 253.03, F.S.

<sup>28</sup> Section 253.141(1), F.S.

<sup>29</sup> Fla. Admin. Code R. 18-21.005.

<sup>30</sup> Section 253.0347, F.S.

<sup>31</sup> *Id.*

<sup>32</sup> Former r. 18-21.00405, F.A.C. and r. 18-21.0081, F.A.C.

<sup>33</sup> Section 823.11(1)(b), F.S.

<sup>34</sup> Ch. 2016-108, s. 1, Laws of Fla. (creating s. 327.4107, F.S., effective Jul. 1, 2016).

- The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, or is listing due to water intrusion, or is sunk or partially sunk; or
- The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic or written notice stating such from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair.<sup>35</sup>

***Penalties for Prohibited Acts Relating to Derelict Vessels and Anchoring and Mooring***

It is a first degree misdemeanor to store, leave, or abandon a derelict vessel in Florida.<sup>36</sup> Further, such violation is punishable by a civil penalty of up to \$50,000 per violation per day.<sup>37</sup> Each day during any portion of which the violation occurs constitutes a separate offense.<sup>38</sup>

Section 327.4107(3), F.S., provides that a person who anchors or moors a vessel at risk of becoming derelict on the waters of this state or allows such a vessel to occupy such waters commits a noncriminal infraction,<sup>39</sup> punishable as provided in s. 327.73, F.S.<sup>40</sup>

Section 327.73(1)(aa), F.S., provides that an owner or operator of a vessel at risk of becoming derelict on waters of the state in violation of s. 327.4107, F.S., is subject to a uniform boating citation and civil penalty. The civil penalty provided is:

- \$50 for a first offense;
- \$100 for a second offense occurring 30 days or more after a first offense; and
- \$250 for a third offense occurring 30 days or more after a previous offense.

Section 327.73(1)(bb), F.S., provides that an owner or operator who anchors or moors in a prohibited area in violation of s. 327.4109, F.S., is subject to a uniform boating citation and civil penalty. The civil penalty provided is up to a maximum of:

- \$50 for a first offense;
- \$100 for a second offense; and
- \$250 for a third offense.<sup>41</sup>

Finally, s. 327.73(1) F.S., provides that any person who fails to appear or otherwise properly respond to a uniform boating citation must, in addition to the charge relating to the violation of the boating laws of this state, be charged with a second degree misdemeanor.<sup>42</sup>

<sup>35</sup> Section 327.4107, F.S., does not apply to a vessel that is moored to a private dock or wet slip with the consent of the owner for the purpose of receiving repairs. Section 327.4107(5), F.S.

<sup>36</sup> Sections 376.15(2) and 823.11(2) and (5), F.S. A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

<sup>37</sup> Sections 376.15(2) and 376.16(1), F.S.

<sup>38</sup> Section 376.16(1), F.S.

<sup>39</sup> Section 775.082(5), F.S., provides that any person who has been convicted of a noncriminal violation may not be sentenced to a term of imprisonment nor to any other punishment more severe than a fine, forfeiture, or other civil penalty, except as provided in ch. 316, F.S., or by ordinance of any city or county.

<sup>40</sup> The penalty under s. 327.4107, F.S., is in addition to any other penalties provided by law. Section 327.4107(4), F.S.

<sup>41</sup> Section 327.73(1)(bb), F.S.

<sup>42</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

### ***Removal of Derelict Vessels***

The Division of Law Enforcement of the FWC and its officers, and the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officers, have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.<sup>43</sup>

Both state and local law enforcement are authorized and empowered to relocate or remove a derelict vessel from public waters if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons.<sup>44</sup> The costs incurred for relocating or removing a derelict vessel are recoverable against the vessel owner.<sup>45</sup> A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by disposal of the vessel, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.<sup>46</sup>

### **Long-term Study on Stored Vessels**

In 2019, the Legislature required FWC, contingent upon appropriation, to conduct, for no longer than two years, a study of the impacts of long-term stored vessels on local communities and the state.<sup>47</sup> FWC is required to submit a report of its findings to the Governor and the Legislature within six months after the date the study is completed.<sup>48</sup> The bill clarifies that the subsection governing the study expires January 1, 2024. The study must include:

- An investigation of whether, and to what extent, long-term stored vessels and vessels anchored or moored outside of public mooring fields for more than 30 days contribute to the number of derelict and abandoned vessels on the waters of the state;
- An investigation of the impacts of long-term stored vessels, vessels anchored or moored outside of public mooring fields for more than 30 days, and vessels anchored within public mooring fields on the local and state economies, public safety, and the environment during and after a significant tropical storm or hurricane event; and
- Recommendations for appropriate management options for long-term stored vessels and vessels anchored or moored outside of public mooring fields for more than 30 days to mitigate any identified negative impacts.<sup>49</sup>

There was not an appropriation made in the 2019-2020 fiscal year for the long-term study.<sup>50</sup>

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<sup>43</sup> Section 327.70 F.S.; *see* section 943.10(1), F.S., which defines “law enforcement officer” as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

<sup>44</sup> Section 327.44(3), F.S.; section 823.11(3), F.S.

<sup>45</sup> Section 327.44(5), F.S.; section 823.11(3)(b), F.S.

<sup>46</sup> Section 705.103(4), F.S.

<sup>47</sup> Ch. 2019-54, s. 2, Laws of Fla.

<sup>48</sup> Section 327.4109(6)(d), F.S.

<sup>49</sup> Section 327.4109(6)(c), F.S.

<sup>50</sup> SB 2500 (2019).

### III. Effect of Proposed Changes:

**Section 1** of the bill creates s. 327.332, F.S., relating to special hazards requiring slow speeds by vessel operators. The bill specifies that a vessel is operating at slow speed, minimum wake only if it is fully off plane and completely settled into the water.

The new section prohibits vessel operators from operating a vessel faster than slow speed with minimum wake upon approaching certain hazardous conditions and provides that a vessel operator found in violation of this requirement is guilty of a noncriminal infraction. The hazardous conditions are:

- Approaching within 300 feet of any emergency vessel, including but not limited to, a law enforcement vessel, a United States Coast Guard vessel or auxiliary vessel, fire vessel, or tow vessel, with its emergency lights activated; and
- Approaching within 300 feet of any construction vessel or barge displaying an orange flag indicating that the vessel or barge is actively engaged in construction operations.
  - The flag must be displayed from a pole that extends at least 10 feet above the tallest portion of the vessel or barge, or at least 5 feet above any superstructure permanently installed upon the vessel or barge.
  - The flag must meet certain requirements, including:
    - Be a size of at least 2 feet by 3 feet.
    - Include a wire or other stiffener or be otherwise constructed to ensure that the flag remains fully unfurled and extended in the absence of a wind or breeze.
    - Be displayed so the visibility of the flag is not obscured in any direction.

The bill specifies that a person may not be cited for a violation during periods of low visibility, including one hour before sunset and one hour after sunrise, unless the orange flag is illuminated and visible from a distance of at least 2 nautical miles.

The bill also provides that an owner of or responsible party for a construction vessel or barge that displays an orange flag when it is not actively engaged in operations is guilty of a noncriminal infraction.

**Section 2** of the bill amends s. 327.4109, F.S., relating to prohibited anchoring and mooring. The bill prohibits an owner or operator of a vessel from anchoring or mooring a vessel to, or within 20 feet of, a mangrove or vegetation upon, or within 20 feet of, public lands, unless certain conditions exist. The 20 foot distance is to be measured in a straight line from the point of the vessel closest to the outermost branches of the mangrove or from the outermost line of vegetation upon the public lands.

The conditions under which it would be allowed for an owner or operator of a vessel from anchoring or mooring to or near mangroves or vegetation upon public lands include if:

- The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or persons onboard the vessel unless the vessel anchors. If this condition exists, the vessel may anchor for 3 business days or until the vessel is repaired, whichever occurs first.
- Imminent or existing weather conditions in the vicinity pose an unreasonable risk of harm to the vessel or persons onboard the vessel unless the vessel anchors. If this condition exists, the vessel may anchor until weather conditions no longer pose such a risk. During a hurricane or

tropical storm, this is deemed to be when the hurricane or tropical storm warning affecting the area has expired.

- The vessel is within a state or locally permitted or designated dockage, mooring, or other anchorage area.

**Section 3** of the bill amends s. 327.73, F.S., relating to civil penalties for violations of specified vessel laws. The bill increases civil penalties for a violation of s. 327.4107, F.S., relating to vessels at risk of becoming derelict on waters of the state, from:

- \$50 to \$100 for a first offense;
- \$100 to \$250 for a second offense occurring 30 days or more after a previous offense; and
- \$250 to \$500 for a third or subsequent offense occurring 30 days or more after a previous offense.

The bill provides that a vessel which is the subject of three or more violations within 12 months which resulted in dispositions other than acquittal or dismissal shall be declared to be a public nuisance and are subject to relocation or removal.

The bill increases the maximum civil penalty for a violation of s. 327.4109, F.S., relating to anchoring or mooring in a prohibited area, from:

- \$50 to \$100 for a first offense;
- \$100 to \$250 for a second offense; and
- \$250 to \$500 for a third or subsequent offense.

The bill provides that a vessel which is the subject of three or more violations within 12 months which resulted in dispositions other than acquittal or dismissal shall be declared to be a public nuisance and are subject to relocation or removal.

The bill creates civil penalties for a violation of s. 327.332, F.S., the new section relating to vessels failing to reduce speed for special hazards:

- \$50 for a first offense;
- \$250 for a second offense occurring within 12 months after a prior offense; and
- \$500 for a third offense occurring within 36 months after a prior offense.

The bill adds to the list of violations resulting in a noncriminal infraction the display of an orange flag when the vessel or barge is not actively engaged in construction operations. The violation would result in a civil penalty of \$50 pursuant to existing law.

**Section 4** of the bill provides an appropriation of \$250,000 in nonrecurring funds from the General Revenue Fund to FWC to conduct the study of the impacts of long-term stored vessels on local communities and the state that is required under existing law. The appropriation would begin in fiscal year 2020-2021 and would be awarded annually for four years through fiscal year 2023-2024.

The bill is effective 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:

There may be a positive fiscal impact to FWC due to the new and increased civil penalties provided under the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The appropriation in Section 4 of the bill is for four years for a study that is to be completed in no longer than two years. It is unclear why the appropriation would be for a longer time period than current law requires for the study to be completed.

**VIII. Statutes Affected:**

This bill creates section 327.332 of the Florida Statutes.

This bill substantially amends sections 327.4109 and 327.73 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.

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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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LEGISLATIVE ACTION

Senate

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House

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 327.332, Florida Statutes, is created to  
read:

327.332 Special hazards.—

(1) For purposes of this section, a vessel:

(a) Is operating at slow speed, minimum wake only if it is:

1. Fully off plane and completely settled into the water;



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11 and

12 2. Proceeding without wake or with minimum wake.

13

14 A vessel that is operating at slow speed, minimum wake may not  
15 proceed at a speed greater than a speed that is reasonable and  
16 prudent to avoid the creation of an excessive wake or other  
17 hazardous condition under the existing circumstances.

18 (b) Is not proceeding at slow speed, minimum wake if it is:

19 1. Operating on plane;

20 2. In the process of coming off plane and settling into the  
21 water or getting on plane; or

22 3. Operating at a speed that creates a wake which  
23 unreasonably or unnecessarily endangers other vessels.

24 (2) A person may not operate a vessel faster than slow  
25 speed, minimum wake upon approaching within 300 feet of any  
26 emergency vessel, including, but not limited to, a law  
27 enforcement vessel, United States Coast Guard vessel, or  
28 firefighting vessel, when such emergency vessel has its  
29 emergency lights activated.

30 (3) (a) A person may not operate a vessel faster than slow  
31 speed, minimum wake upon approaching within 300 feet of any  
32 construction vessel or barge when the vessel or barge is  
33 displaying an orange flag from a pole extending:

34 1. At least 10 feet above the tallest portion of the vessel  
35 or barge, indicating that the vessel or barge is actively  
36 engaged in construction operations; or

37 2. At least 5 feet above any superstructure permanently  
38 installed upon the vessel or barge, indicating that the vessel  
39 or barge is actively engaged in construction operations.



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40       (b) A flag displayed on a vessel or barge pursuant to this  
41 subsection must:

42       1. Be at least 2 feet by 3 feet in size;

43       2. Have a wire or other stiffener or be otherwise  
44 constructed to ensure that the flag remains fully unfurled and  
45 extended in the absence of a wind or breeze; and

46       3. Be displayed so that the visibility of the flag is not  
47 obscured in any direction.

48       (c) In periods of low visibility, including any time  
49 between the hours from 30 minutes after sunset and 30 minutes  
50 before sunrise, a person may not be cited for a violation of  
51 this subsection unless the orange flag is illuminated and  
52 visible from a distance of at least 2 nautical miles.

53       (4) (a) A person operating a vessel in violation of this  
54 section commits a noncriminal infraction, punishable as provided  
55 in s. 327.73.

56       (b) The owner of, or party who is responsible for, a  
57 construction vessel or barge who displays an orange flag on the  
58 vessel or barge when it is not actively engaged in construction  
59 operations commits a noncriminal infraction, punishable as  
60 provided in s. 327.73.

61       (5) The speed and penalty provisions of this section do not  
62 apply to a law enforcement, firefighting, or rescue vessel that  
63 is owned or operated by a governmental entity.

64       Section 2. Present subsections (4) and (5) of section  
65 327.4107, Florida Statutes, are redesignated as subsections (5)  
66 and (6), respectively, a new subsection (4) is added to that  
67 section, and present subsection (4) is amended, to read:

68       327.4107 Vessels at risk of becoming derelict on waters of



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69 this state.-

70 (4) (a) Any owner or responsible party who has been issued a  
71 citation for a second violation of this section for the same  
72 vessel may not anchor or moor such vessel or allow the vessel to  
73 remain anchored or moored within 20 feet of a mangrove or to  
74 upland vegetation upon public lands. This distance shall be  
75 measured in a straight line from the point of the vessel closest  
76 to the outermost branches of the mangrove or vegetation. An  
77 owner or responsible party who violates this subsection commits  
78 a noncriminal infraction, punishable as provided in s. 327.73.

79 (b) The commission, officers of the commission, and any law  
80 enforcement agency or officer specified in s. 327.70 are  
81 authorized and empowered to relocate or cause to be relocated an  
82 at-risk vessel found to be in violation of this subsection to a  
83 distance greater than 20 feet from any mangrove or upland  
84 vegetation. The commission, officers of the commission, or any  
85 other law enforcement agency or officer acting under this  
86 subsection to relocate or cause to be relocated an at-risk  
87 vessel, upon state waters, away from mangroves or upland  
88 vegetation shall be held harmless for all damages to the at-risk  
89 vessel resulting from such relocation unless the damage results  
90 from gross negligence or willful misconduct.

91 (5) ~~(4)~~ The penalties ~~penalty~~ under this section are ~~is~~ in  
92 addition to other penalties provided by law.

93 Section 3. Paragraphs (aa) and (bb) of subsection (1) of  
94 section 327.73, Florida Statutes, are amended, and paragraphs  
95 (cc), (dd), and (ee) are added to that subsection, to read:

96 327.73 Noncriminal infractions.-

97 (1) Violations of the following provisions of the vessel



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98 laws of this state are noncriminal infractions:

99 (aa) Section 327.4107, relating to vessels at risk of  
100 becoming derelict on waters of this state, for which the civil  
101 penalty is:

102 1. For a first offense, \$100 ~~\$50~~.

103 2. For a second offense occurring 30 days or more after a  
104 first offense, \$250 ~~\$100~~.

105 3. For a third or subsequent offense occurring 30 days or  
106 more after a previous offense, \$500 ~~\$250~~. A vessel that is the  
107 subject of three or more violations issued pursuant to the same  
108 paragraph of s. 327.4107(2) within a 12-month period which  
109 resulted in dispositions other than acquittal or dismissal shall  
110 be declared to be a public nuisance and subject to the abandoned  
111 property provisions specific to derelict vessels in s. 705.103  
112 and the derelict vessel removal and relocation provisions in s.  
113 823.11.

114 (bb) Section 327.4109, relating to anchoring or mooring in  
115 a prohibited area, for which the penalty is:

116 1. For a first offense, up to a maximum of \$100 ~~\$50~~.

117 2. For a second offense, up to a maximum of \$250 ~~\$100~~.

118 3. For a third or subsequent offense, up to a maximum of  
119 \$500 ~~\$250~~. A vessel that is the subject of three or more  
120 violations of the same subparagraph of s. 327.4109(1) (a) within  
121 a 12-month timeframe which resulted in dispositions other than  
122 acquittal or dismissal shall be declared to be a public nuisance  
123 and subject to the abandoned property provisions specific to  
124 derelict vessels in s. 705.103 and the derelict vessel removal  
125 and relocation provisions in s. 823.11.

126 (cc) Section 327.332, relating to vessels creating special



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127 hazards, for which the penalty is:

128 1. For a first offense, \$50.

129 2. For a second offense occurring within 12 months after a  
130 prior offense, \$250.

131 3. For a third offense occurring within 36 months after a  
132 prior offense, \$500.

133 (dd) Section 327.332, relating to the display of an orange  
134 flag on a vessel or barge when the vessel or barge is not  
135 actively engaged in construction operations.

136 (ee) Section 327.4107(4), relating to vessels at risk of  
137 becoming derelict found to be anchored within 20 feet of a  
138 mangrove or upland vegetation upon public lands, for which the  
139 civil penalty is \$250.

140

141 Any person cited for a violation of any provision of this  
142 subsection shall be deemed to be charged with a noncriminal  
143 infraction, shall be cited for such an infraction, and shall be  
144 cited to appear before the county court. The civil penalty for  
145 any such infraction is \$50, except as otherwise provided in this  
146 section. Any person who fails to appear or otherwise properly  
147 respond to a uniform boating citation shall, in addition to the  
148 charge relating to the violation of the boating laws of this  
149 state, be charged with the offense of failing to respond to such  
150 citation and, upon conviction, be guilty of a misdemeanor of the  
151 second degree, punishable as provided in s. 775.082 or s.  
152 775.083. A written warning to this effect shall be provided at  
153 the time such uniform boating citation is issued.

154 Section 4. Subsections (2) and (4) of section 705.103,  
155 Florida Statutes, are amended to read:





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156 705.103 Procedure for abandoned or lost property.—  
157 (2) (a)1. Whenever a law enforcement officer ascertains  
158 that:  
159 a. An article of lost or abandoned property other than a  
160 derelict vessel or vessel declared a public nuisance pursuant to  
161 s. 327.73(1)(aa)3. or s. 327.73(1)(bb)3. is present on public  
162 property and is of such nature that it cannot be easily removed,  
163 the officer shall cause a notice to be placed upon such article  
164 in substantially the following form:

165  
166 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED  
167 PROPERTY. This property, to wit: ...(setting forth brief  
168 description)... is unlawfully upon public property known as  
169 ...(setting forth brief description of location)... and must be  
170 removed within 5 days; otherwise, it will be removed and  
171 disposed of pursuant to chapter 705, Florida Statutes. The owner  
172 will be liable for the costs of removal, storage, and  
173 publication of notice. Dated this: ...(setting forth the date of  
174 posting of notice)..., signed: ...(setting forth name, title,  
175 address, and telephone number of law enforcement officer)....

176  
177 b. A derelict vessel or a vessel designated in ss.  
178 327.73(1)(aa)3. and (bb)3. is present on the waters of the  
179 state, the officer shall cause a notice to be placed upon the  
180 vessel in substantially the following form:

181  
182 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED  
183 VESSEL. This vessel, to wit: ...(setting forth brief  
184 description)... is unlawfully upon waters of the state



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185 ...(setting forth brief description of location)... and must be  
186 removed within 21 days; otherwise, it will be removed and  
187 disposed of pursuant to chapter 705, Florida Statutes. The owner  
188 and other interested parties may have the right to a hearing to  
189 challenge the determination that this vessel is derelict or  
190 otherwise in violation of the law. Please contact ... (contact  
191 information for person who can arrange for a hearing in  
192 accordance with this section) .... The owner will be liable for  
193 the costs of removal, storage, and publication of notice if this  
194 vessel is not removed by the owner. Dated this: ... (setting  
195 forth the date of posting of notice) ..., signed: ... (setting  
196 forth name, title, address, and telephone number of law  
197 enforcement officer) ....

198 2. The notices required under subparagraph 1. may ~~Such~~  
199 ~~notice shall be~~ not be less than 8 inches by 10 inches and must  
200 ~~shall~~ be sufficiently weatherproof to withstand normal exposure  
201 to the elements. In addition to posting, the law enforcement  
202 officer shall make a reasonable effort to ascertain the name and  
203 address of the owner. If such is reasonably available to the  
204 officer, she or he shall mail a copy of such notice to the owner  
205 on or before the date of posting. If the property is a motor  
206 vehicle as defined in s. 320.01(1) or a vessel as defined in s.  
207 327.02, the law enforcement agency shall contact the Department  
208 of Highway Safety and Motor Vehicles in order to determine the  
209 name and address of the owner and any person who has filed a  
210 lien on the vehicle or vessel as provided in s. 319.27(2) or (3)  
211 or s. 328.15(1). On receipt of this information, the law  
212 enforcement agency shall mail a copy of the notice by certified  
213 mail, return receipt requested, to the owner and to the



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214 lienholder, if any, except that a law enforcement officer who  
215 has issued a citation for a violation of s. 823.11 to the owner  
216 of a derelict vessel is not required to mail a copy of the  
217 notice by certified mail, return receipt requested, to the  
218 owner. For a derelict vessel or a vessel designated in ss.  
219 327.73(1)(aa)3. and (bb)3., the mailed notice shall inform the  
220 owner or responsible party that he or she has a right to a  
221 hearing to dispute the determination that the vessel is derelict  
222 or otherwise in violation of the law. If a request for a hearing  
223 is made, a state agency shall follow the processes set forth in  
224 s. 120.569. Local government entities shall follow the processes  
225 set forth in s. 120.569, with the exception that a local judge,  
226 magistrate, or code enforcement officer may be designated to  
227 conduct such hearings. If, at the end of 5 days, or 21 days for  
228 a derelict vessel or a vessel designated in ss. 327.73(1)(aa)3.  
229 and (bb)3., after posting the notice and mailing such notice, if  
230 required, the owner or any person interested in the lost or  
231 abandoned article or articles described has not removed the  
232 article or articles from public property or shown reasonable  
233 cause for failure to do so, and, in the case of a derelict  
234 vessel or a vessel designated in ss. 327.73(1)(aa)3. and (bb)3.,  
235 has not requested a hearing in accordance with this section, the  
236 following shall apply:

237       ~~a.~~ (a) For abandoned property other than a derelict vessel  
238 or a vessel designated in ss. 327.73(1)(aa)3. and (bb)3., the  
239 law enforcement agency may retain any or all of the property for  
240 its own use or for use by the state or unit of local government,  
241 trade such property to another unit of local government or state  
242 agency, donate the property to a charitable organization, sell



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243 the property, or notify the appropriate refuse removal service.

244 b. For a derelict vessel or a vessel designated in ss.  
245 327.73(1)(aa)3. and (bb)3., the law enforcement agency or its  
246 designee shall remove the vessel from the waters of the state  
247 and destroy and dispose of the vessel or authorize another  
248 governmental entity or its designee to do so. A law enforcement  
249 agency or its designee shall remove a vessel from the waters of  
250 the state and destroy and dispose of the vessel or authorize  
251 another governmental entity or its designee to do so if,  
252 following a hearing pursuant to this section, the judge,  
253 magistrate, administrative law judge, or hearing officer has  
254 determined the vessel to be derelict as provided in s. 823.11 or  
255 otherwise in violation of the law in accordance with s.  
256 327.73(1)(aa)3. or s. 327.73(1)(bb)3.

257 (b) For lost property, the officer shall take custody and  
258 the agency shall retain custody of the property for 90 days. The  
259 agency shall publish notice of the intended disposition of the  
260 property, as provided in this section, during the first 45 days  
261 of this time period.

262 1. If the agency elects to retain the property for use by  
263 the unit of government, donate the property to a charitable  
264 organization, surrender such property to the finder, sell the  
265 property, or trade the property to another unit of local  
266 government or state agency, notice of such election shall be  
267 given by an advertisement published once a week for 2  
268 consecutive weeks in a newspaper of general circulation in the  
269 county where the property was found if the value of the property  
270 is more than \$100. If the value of the property is \$100 or less,  
271 notice shall be given by posting a description of the property



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272 at the law enforcement agency where the property was turned in.  
273 The notice must be posted for not less than 2 consecutive weeks  
274 in a public place designated by the law enforcement agency. The  
275 notice must describe the property in a manner reasonably  
276 adequate to permit the rightful owner of the property to claim  
277 it.

278         2. If the agency elects to sell the property, it must do so  
279 at public sale by competitive bidding. Notice of the time and  
280 place of the sale shall be given by an advertisement of the sale  
281 published once a week for 2 consecutive weeks in a newspaper of  
282 general circulation in the county where the sale is to be held.  
283 The notice shall include a statement that the sale shall be  
284 subject to any and all liens. The sale must be held at the  
285 nearest suitable place to that where the lost or abandoned  
286 property is held or stored. The advertisement must include a  
287 description of the goods and the time and place of the sale. The  
288 sale may take place no earlier than 10 days after the final  
289 publication. If there is no newspaper of general circulation in  
290 the county where the sale is to be held, the advertisement shall  
291 be posted at the door of the courthouse and at three other  
292 public places in the county at least 10 days prior to sale.  
293 Notice of the agency's intended disposition shall describe the  
294 property in a manner reasonably adequate to permit the rightful  
295 owner of the property to identify it.

296         (4) The owner of any abandoned or lost property who, after  
297 notice as provided in this section, does not remove such  
298 property within the specified period shall be liable to the law  
299 enforcement agency, other governmental entity, or their designee  
300 for all costs of removal, storage, and destruction of such



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301 property, less any salvage value obtained by disposal of the  
302 property. Upon final disposition of the property, the law  
303 enforcement officer or representative of the law enforcement  
304 agency or other governmental entity shall notify the owner, if  
305 known, of the amount owed. In the case of an abandoned vessel or  
306 motor vehicle, any person who neglects or refuses to pay such  
307 amount is not entitled to be issued a certificate of  
308 registration for such vessel or motor vehicle, or any other  
309 vessel or motor vehicle, until such costs have been paid. The  
310 law enforcement officer shall supply the Department of Highway  
311 Safety and Motor Vehicles with a list of persons whose vessel  
312 registration privileges or whose motor vehicle privileges have  
313 been revoked under this subsection. Neither the department nor  
314 any other person acting as agent thereof shall issue a  
315 certificate of registration to a person whose vessel or motor  
316 vehicle registration privileges have been revoked, as provided  
317 by this subsection, until such costs have been paid.

318 Section 5. This act shall take effect July 1, 2020.

319  
320 ===== T I T L E A M E N D M E N T =====

321 And the title is amended as follows:

322 Delete everything before the enacting clause  
323 and insert:

324 A bill to be entitled  
325 An act relating to vessels; creating s. 327.332, F.S.;  
326 specifying the conditions under which a vessel is and  
327 is not considered to be operating at slow speed,  
328 minimum wake; prohibiting the operation of vessels at  
329 speeds faster than slow speed, minimum wake in certain



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330 emergency and hazardous situations; providing  
331 requirements for flags displayed from vessels and  
332 barges actively engaged in construction operations;  
333 providing civil penalties; providing applicability;  
334 amending s. 327.4107, F.S.; prohibiting certain  
335 parties within certain waterbodies from anchoring or  
336 mooring a vessel within a specified distance of a  
337 mangrove or to upland vegetation upon public lands;  
338 providing civil penalties; authorizing certain  
339 individuals to relocate or cause to be relocated  
340 certain vessels; providing liability protection for  
341 the individuals under certain circumstances; providing  
342 that penalties are assessed in addition to other  
343 available penalties; amending s. 327.73, F.S.;  
344 revising civil penalties relating to certain at-risk  
345 vessels and prohibited anchoring or mooring; requiring  
346 a vessel to be declared a public nuisance and subject  
347 to certain provisions after a specified number of  
348 violations within a specified timeframe; providing  
349 civil penalties relating to vessels that fail to  
350 reduce speed for special hazards and the display of  
351 specified flags by construction vessels or barges not  
352 actively engaged in construction operations; providing  
353 civil penalties relating to vessels at risk of  
354 becoming derelict and anchored within a specified  
355 distance of a mangrove or to vegetation upon public  
356 grounds; amending s. 705.103, F.S.; providing  
357 procedures for abandoned or lost property relating to  
358 certain vessels; providing notice and hearing



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359

requirements; providing an effective date.



By Senator Rodriguez

37-01306-20

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1                                   A bill to be entitled  
2       An act relating to the Florida Endangered and  
3       Threatened Species Act; amending s. 379.2291, F.S.;  
4       revising legislative intent; revising definitions;  
5       directing the Fish and Wildlife Conservation  
6       Commission to protect certain declassified species;  
7       prohibiting the commission and the Department of  
8       Environmental Protection from considering certain  
9       costs when designating a species as endangered or  
10      threatened; amending s. 581.185, F.S.; revising  
11      criteria for placement of species on the Regulated  
12      Plant Index by the Department of Agriculture and  
13      Consumer Services; directing the department, in  
14      consultation with the Endangered Plant Advisory  
15      Council, to protect certain declassified species;  
16      prohibiting the department from considering certain  
17      costs when designating a species as endangered or  
18      threatened; providing an effective date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

21  
22       Section 1. Subsections (2), (3), and (4) of section  
23       379.2291, Florida Statutes, are amended to read:

24       379.2291 Endangered and Threatened Species Act.—

25       (2) DECLARATION OF POLICY.—The Legislature recognizes that  
26       the State of Florida harbors a wide diversity of fish and  
27       wildlife and that it is the policy of this state to conserve and  
28       wisely manage these resources, with particular attention to  
29       those species designated ~~defined~~ by the Fish and Wildlife

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30 Conservation Commission, the Department of Environmental  
31 Protection, or the United States Department of Interior, or  
32 successor agencies, as being endangered or threatened. As  
33 Florida has more endangered and threatened species than any  
34 other continental state, it is the intent of the Legislature to  
35 provide for research and management to conserve and protect  
36 these species as a natural resource.

37 (3) DEFINITIONS.—As used in this section:

38 (a) "Fish and wildlife" means any member of the animal  
39 kingdom, including, but not limited to, any mammal, fish, bird,  
40 amphibian, reptile, mollusk, crustacean, arthropod, or other  
41 invertebrate.

42 (b) "Endangered species" means any species of fish and  
43 wildlife naturally occurring in Florida, whose prospects of  
44 survival are in jeopardy due to modification or loss of habitat;  
45 overuse ~~overutilization~~ for commercial, sporting, scientific, or  
46 educational purposes; disease; predation; inadequacy of  
47 regulatory mechanisms; or other natural or manmade factors  
48 affecting its continued existence, including climate change.

49 (c) "Threatened species" means any species of fish and  
50 wildlife naturally occurring in Florida which may not be in  
51 immediate danger of extinction, but which exists in such small  
52 populations as to become endangered if it is subjected to  
53 increased stress as a result of further modification of its  
54 environment, including climate change.

55 (4) INTERAGENCY COORDINATION.—

56 (a) The commission shall be responsible for research and  
57 management of freshwater and upland species and for research and  
58 management of marine species.

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59 (b) Recognizing that citizen awareness is a key element in  
60 the success of this plan, the commission and the Department of  
61 Education are encouraged to work together to develop a public  
62 education program with emphasis on, but not limited to, both  
63 public and private schools.

64 (c) The commission, in consultation with the Department of  
65 Agriculture and Consumer Services, the Department of Economic  
66 Opportunity, or the Department of Transportation, may establish  
67 reduced speed zones along roads, streets, and highways to  
68 protect endangered and threatened species ~~or threatened species~~.

69 (d) Notwithstanding declassification under the federal  
70 Endangered Species Act of 1973, the commission shall continue to  
71 protect species that meet the definition of endangered or  
72 threatened under subsection (3), as determined by the  
73 commission.

74 (e) The commission and the Department of Environmental  
75 Protection may not consider the economic cost of protecting a  
76 species as a factor in designating the species as endangered or  
77 threatened.

78 Section 2. Subsection (5) of section 581.185, Florida  
79 Statutes, is amended to read:

80 581.185 Preservation of native flora of Florida.—

81 (5) REVIEW.—

82 (a) Beginning in 1984, and every 4 years thereafter, the  
83 department and the Endangered Plant Advisory Council shall  
84 conduct a comprehensive review of this section and of the  
85 Regulated Plant Index, as provided in rules of the department,  
86 ~~shall be made by the department and the Endangered Plant~~  
87 ~~Advisory Council at 4-year intervals.~~

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88 (b) The department shall consider any species of plant that  
89 should be placed on the Regulated Plant Index which is in danger  
90 of disappearing from its native habitat within the foreseeable  
91 future throughout all or a significant portion of the range of  
92 the species because of:

93 1. Present or threatened destruction, modification, or  
94 curtailment of the range of the species.

95 2. Overuse ~~Overutilization~~ of the species for commercial,  
96 scientific, or educational purposes.

97 3. Disease or predation.

98 4. Any other natural or manmade factor affecting the  
99 continued existence of the species, including climate change.

100 (c) In carrying out reviews and arriving at recommendations  
101 under paragraphs (a) and (b), the department and the advisory  
102 council shall use the best scientific and commercial data  
103 available and shall consult with interested persons and  
104 organizations.

105 (d) Notwithstanding declassification under the federal  
106 Endangered Species Act of 1973, the department shall continue to  
107 protect species that meet the definition of endangered or  
108 threatened under subsection (2), as determined by the department  
109 in consultation with the advisory council.

110 (e) The department may not consider the economic cost of  
111 protecting a species as a factor in designating the species as  
112 endangered or threatened.

113 Section 3. 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.)

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

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BILL: SB 1360

INTRODUCER: Senator Rodriguez

SUBJECT: Florida Endangered and Threatened Species Act

DATE: February 7, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	<b>Pre-meeting</b>
2.			AEG	
3.			AP	

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## I. Summary:

SB 1360 revises the definitions of “endangered species” and “threatened species” in the Florida Endangered and Threatened Species Act to include the impact of climate change as a factor that may jeopardize the survival of certain species of fish and wildlife. The bill requires the Fish and Wildlife Conservation Commission (FWC) to continue to protect endangered or threatened fish and wildlife species as FWC determines, regardless of whether such species are declassified under the federal Endangered Species Act of 1973. The bill prohibits FWC and the Department of Environmental Protection (DEP) from considering the economic cost of protecting a fish or wildlife species as a factor in designating it as endangered or threatened.

The bill requires the Department of Agriculture and Consumer Services (DACS) to consider the impacts of climate change on plant species as part of its 4-year review of the Regulated Plant Index. The bill requires DACS to continue to protect endangered or threatened plant species as DACS determines, regardless of whether such species are declassified under the federal Endangered Species Act of 1973. The bill prohibits DACS from considering the economic cost of protecting a plant species as a factor in designating it as endangered or threatened.

## II. Present Situation:

### Endangered Species Act of 1973 (Federal)<sup>1</sup>

The Endangered Species Act (ESA), enacted in 1973 and amended in 1996, designates that species of fish, (including marine mammals), wildlife, and plants, which are so depleted they are in danger of or threatened with extinction must be conserved.<sup>2</sup> The ESA is overseen by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS). The ESA provides for the conservation of threatened and endangered species of fish, wildlife, and

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<sup>1</sup> 16 U.S.C. s. 1531-1544.

<sup>2</sup> 16 U.S.C. s. 1531.

plants by federal action and by encouraging state conservation programs.<sup>3</sup> The objective of ESA is to enable listed species not merely to survive, but to recover from their endangered or threatened status.<sup>4</sup> The act authorizes the determination and listing of endangered and threatened species and their habitats.

### ***Delisting/Declassification***

When a species is able to survive on its own in the wild, the species is considered to be recovered, and protection of the ESA is no longer necessary. At least once every five years, USFWS conducts a review of all listed species to determine whether any species should be removed from the list, changed in status from endangered to threatened, or changed in status from threatened to endangered.<sup>5</sup> When USFWS removes a species from the federal list of Endangered and Threatened Wildlife and Plants, the species is “delisted.” To delist a species, USFWS must determine that threats have been eliminated or controlled, based on several factors including population size and trends and the stability of habitat quality and quantity.<sup>6</sup>

USFWS reviews five factors in its determination of whether a species still needs protection under the ESA:

- Is there a present or threatened destruction, modification, or curtailment of the species’ habitat or range?
- Is the species subject to over-utilization for commercial, recreational, scientific, or educational purposes?
- Is disease or predation a factor?
- Are there adequate existing regulatory mechanisms in place, taking into account the initiatives by states and other organizations, to protect the species or habitat?
- Are other natural or manmade factors affecting the species’ continued existence?<sup>7</sup>

During this process, USFWS works with species experts; federal, state, and local agencies; tribes; nongovernmental organizations; the academic community; and other stakeholders to achieve success in population assessments, recovery, and eliminating or reducing threats. Species are generally delisted for the following reasons: recovery, extinction, or evidence of additional populations. After a species is delisted, it is still monitored for at least five years according to a post-delisting monitoring plan.<sup>8</sup>

### ***Economic Costs***

Historically, economics has not been a factor in the decision of whether or not to list a species under the ESA. However, economic costs are considered in the designation of critical habitat,<sup>9</sup> even when the impacts are attributable to other causes, including listing.<sup>10</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*; *Sierra Club v. U.S. Fish and Wildlife Service*, 245 F. 3d 434 (2001).

<sup>5</sup> 16 U.S.C. s. 1533.

<sup>6</sup> USFWS, *Delisting a Species, Section 4 of the Endangered Species Act*, available at <https://www.fws.gov/endangered/esa-library/pdf/delisting.pdf>.

<sup>7</sup> *Id.*

<sup>8</sup> 16 U.S.C. s. 1533.

<sup>9</sup> 50 C.F.R. s. 424.12.

<sup>10</sup> *New Mexico Cattle Growers Ass'n v. United States Fish & Wildlife Serv.*, 248 F.3d 1277, 1285 (10th Cir. 2001).

The ESA states that listing decisions are to be made “solely on the basis of the best scientific and commercial data available.”<sup>11</sup> The 1978 regulations expanded on this prohibition by adding “without reference to possible economic or other impacts of such determination.”<sup>12</sup> The revised regulations, effective September 26, 2019 removed this language<sup>13</sup> to clarify that it is not prohibited for USFWS to compile economic information that is not used to influence a listing decision.<sup>14</sup> When first proposing the rule, the USFWS and NMFS indicated that there may be circumstances where referencing economic or other impacts may be informative to the public.<sup>15</sup>

### ***State Programs***

Section 6 of the ESA provides funding for the development of state programs for the management of threatened and endangered species by state wildlife agencies.<sup>16</sup> Additionally, each state has state endangered species lists containing species that are endangered in the state but are not a federally-listed species. The Secretary of the Interior must enter into a cooperative agreement with a state which establishes and maintains an adequate and active program for the conservation of endangered and threatened species if the program meets certain standards under the ESA.<sup>17</sup> If a cooperative agreement exists, a state may receive federal funds under the ESA to implement the program, though normally states are expected to contribute a minimum matching amount.<sup>18</sup>

### **Fish and Wildlife Conservation Commission**

Pursuant to s. 9, Art. IV of the State Constitution, the Florida Fish and Wildlife Conservation Commission (FWC) exercises the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life.<sup>19</sup> While the USFWS has primary responsibility for Florida species that are federally endangered or threatened, FWC works in partnership with USFWS to help conserve these species and maintains a list of state endangered and threatened species.

### ***Florida Endangered and Threatened Species Act***<sup>20</sup>

The Florida Endangered and Threatened Species Act of 1977 provides for research and management to conserve and protect threatened and endangered species as a natural resource.<sup>21</sup> Responsibility for the research and management of upland, freshwater, and marine species is

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<sup>11</sup> 50 C.F.R. s. 424.11(b) (2019).

<sup>12</sup> 50 C.F.R. s. 424.11(b) (1984).

<sup>13</sup> 50 C.F.R. s. 424.11(b) (2019).

<sup>14</sup> Endangered and Threatened Wildlife and Plants, Revision of the Regulations for Listing Species and Designating Critical Habitat, 84 Fed. Reg. 45020, 45024 (Aug. 27, 2019) (to be codified at 50 C.F.R. s. 424.11).

<sup>15</sup> Endangered and Threatened Wildlife and Plants, Revision of the Regulations for Listing Species and Designating Critical Habitat, 84 Fed. Reg. 35194-35195 (Jul. 25, 2018) (to be codified at 50 C.F.R. s. 424.11).

<sup>16</sup> 16 U.S.C. § 1535.

<sup>17</sup> 16 U.S.C. § 1535(c).

<sup>18</sup> 16 U.S.C. § 1535(d)(2).

<sup>19</sup> Fla. Const. Art. IV, s. 9.

<sup>20</sup> Ch. 77-375, ss. 1-6, Laws of Fla. (creating s. 379.2291).

<sup>21</sup> Section 379.2291(2), F.S.

given to FWC.<sup>22</sup> The act also encourages FWC to develop a public education program dealing with endangered and threatened species. Annually, the FWC director submits a revised plan for management and conservation of endangered and threatened species to the Governor, Cabinet, and Legislature.<sup>23</sup>

Endangered and threatened species can be listed as state-designated or federally-designated endangered or threatened species. State-designated threatened species are species that are native to Florida and are classified as threatened as determined by:

- A reduction in population size;
- Decline in geographic range;
- A population size estimated to be under 10,000 mature individuals with a continuing decline;
- A population size estimated to be under 1,000 mature individuals or with a very restricted area of occupancy; or
- A quantitative analysis showing the probability of extinction in the wild is at least 10% within 100 years.<sup>24</sup>

Federally-designated endangered and threatened species are species of fish or wild animal life that are native to Florida and are classified as endangered or threatened by their federal designation as endangered or threatened under the ESA.<sup>25</sup>

Pursuant to FWC rule, if a species native to Florida is reclassified under the ESA and is a species within FWC's constitutional authority, the species must also be reclassified under the Florida Endangered and Threatened Species list.<sup>26</sup> However, if a species is removed from ESA protection, or delisted, the species must receive a biological status review to determine if it warrants listing as a state-listed species.<sup>27</sup> FWC must consider the biological status report, independent scientific reviews received, and public comments regarding biological status when making a final determination regarding a change in listing status.<sup>28</sup>

Before any species is removed from the state-endangered and threatened species lists, FWC must develop a management plan that is intended to maintain or enhance the conservation of that species.<sup>29</sup> FWC also developed the Imperiled Species Management Plan to address the needs of state-listed species that did not already have a management plan or specific program in place.<sup>30</sup>

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<sup>22</sup> Section 379.2291(4), F.S.

<sup>23</sup> Section 379.2291(5), F.S.; see FWC, *Endangered and Threatened Species Management and Conservation Plan, Progress Report, Fiscal Year 2018-2019* (Nov. 19, 2019), available at <https://myfwc.com/media/22264/2018-19-legislative-report.pdf>.

<sup>24</sup> Fla. Admin. Code R. 68A-27.001(3).

<sup>25</sup> Fla. Admin. Code R. 68A-27.001(2).

<sup>26</sup> Fla. Admin. Code R. 68A-27.0012(1).

<sup>27</sup> *Id.*

<sup>28</sup> Fla. Admin. Code R. 68A-27.0012(c)2.e.

<sup>29</sup> Fla. Admin. Code R. 68A-27.0012(1).

<sup>30</sup> FWC, *Imperiled Species Management Plan*, available at <https://myfwc.com/media/2030/imperiled-species-management-plan.pdf>.



### *Climate Change Effects on Fish and Wildlife*

FWC is Florida's lead agency on addressing the impacts of climate change on fish and wildlife, including adaptation strategies for Florida's coastal ecosystems.<sup>31</sup> Projections indicate that few other states will be impacted by climate change as severely as Florida.<sup>32</sup> Some of the climatic changes that may affect Florida include: sea-level rise and changes in precipitation, air temperature, extreme events, and carbon dioxide.<sup>33</sup>

Many species of fish and wildlife in Florida could be threatened by climatic shifts. Species with narrow tolerance ranges, those occupying habitats in areas where migration or relocation is challenging due to physical barriers or unsuitable habitat, those with limited ability to disperse, or those with specialized habitat requirements, small populations, or low genetic diversity are expected to be most at risk.<sup>34</sup>

### **Regulated Plant Index**

The Division of Plant Industry within the Department of Agriculture and Consumer Services (DACS) protects plant species native to the state that are endangered, threatened, or commercially exploited.<sup>35</sup> The policy of the state is to provide recognition of these plant species; protect them from unlawful harvesting on both public and privately owned lands; and provide an orderly and controlled procedure for restricted harvesting from the wild.<sup>36</sup> The state also encourages the propagation of endangered species and provides information necessary to legally collect these species for propagation.<sup>37</sup>

Florida's native plant species in need of conservation efforts are listed in the Regulated Plant Index and are classified as endangered, threatened, or commercially exploited.<sup>38</sup> The list includes 448 endangered, 118 threatened, and nine commercially exploited species. Fifty-four of these species are on the federal list of endangered plant species and 14 are on the federal list of threatened species.<sup>39</sup>

DACS has adopted rules relating to the listing, delisting, and changing the listing of plants on the Regulated Plant Index.<sup>40</sup> Every 4 years, DACS and the Endangered Plant Advisory Council review the Regulated Plant Index and consider any species of plant which is in danger of disappearing from its native habitat within the foreseeable future throughout all or a significant portion of the range of the species because of:

- Present or threatened destruction, modification, or curtailment of the range of the species.

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<sup>31</sup> FWC, *What FWC is Doing*, <https://myfwc.com/conservation/special-initiatives/climate-change/fwc/> (last visited Feb. 4, 2020); FWC, *A Guide to Climate Change Adaptation for Conservation*, 6-81-6-108, 9-35-9-51 (2016), available at <https://myfwc.com/media/5864/adaptation-guide.pdf>.

<sup>32</sup> *Id.* at 4-1.

<sup>33</sup> *Id.* at 4-2.

<sup>34</sup> *Id.* at 5-1.

<sup>35</sup> Section 581.185(3), F.S.

<sup>36</sup> Section 581.185(1), F.S.

<sup>37</sup> *Id.*

<sup>38</sup> Fla. Admin. Code R. 5B-40.0055.

<sup>39</sup> DACS, *Florida's Endangered Plants*, <https://www.fdacs.gov/Divisions-Offices/Plant-Industry/Bureaus-and-Services/Entomology-Nematology-Plant-Pathology/Botany/Florida-s-Endangered-Plants> (last visited Feb. 4, 2020).

<sup>40</sup> Fla. Admin. Code Ch. 5B-40.

- Overutilization of the species for commercial, scientific, or educational purposes.
- Disease or predation.
- Any other natural or manmade factor affecting the continued existence of the species.<sup>41</sup>

Any changes to the Regulated Plant Index must consider the recommendation of the Endangered Plant Advisory Council and the best environmental and commercial data available.<sup>42</sup> DACS must also consider the recommendations of the general public.<sup>43</sup> The Endangered Plant Advisory Council meets at least once a year.<sup>44</sup>

### III. Effect of Proposed Changes:

#### Section 1 (Fish and Wildlife)

The bill revises the legislative policy of the Florida Endangered or Threatened Species Act to conserve and manage resources, with particular attention to species “designated,” rather than “defined” by the Fish and Wildlife Conservation Commission (FWC), the Department of Environmental Protection (DEP), or the United States Department of the Interior or its successor agencies, as being endangered or threatened.

The bill revises the definitions of “endangered species” and “threatened species” to include the impact of climate change as a factor that may jeopardize the survival of certain species of fish and wildlife.

The bill revises the requirement that FWC, in consultation with several agencies, establish reduced speed zones along roads, streets, and highways to protect endangered and threatened species, rather than endangered or threatened species.

The bill requires FWC to continue to protect endangered or threatened fish and wildlife species as FWC determines, regardless of whether such species are declassified under the federal Endangered Species Act of 1973. The bill prohibits FWC and DEP from considering the economic cost of protecting a fish or wildlife species as a factor in designating it as endangered or threatened.

#### Section 2 (Plants)

The bill requires the Department of Agriculture and Consumer Services (DACs) and the Endangered Plant Advisory Council to consider the impacts of climate change on plant species as part of its 4-year review of the Regulated Plant Index.

The bill requires DACs to continue to protect endangered or threatened plant species as DACs determines, regardless of whether such species are declassified under the federal Endangered Species Act of 1973. The bill prohibits DACs from considering the economic cost of protecting a plant species as a factor in designating it as endangered or threatened.

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<sup>41</sup> Section 581.185(5), F.S.

<sup>42</sup> Section 581.185(4), F.S.

<sup>43</sup> *Id.*, Fla. Admin. Code R. 5B-40.0056(1).

<sup>44</sup> Fla. Admin. Code R. 5B-40.0056(2).

**Section 3**

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:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The title of the bill is “an act relating to the Florida Endangered and Threatened Species Act.” However, the bill amends the Florida Endangered and Threatened Species Act as well as a

section of law relating to the preservation of endangered and threatened plant species which are not covered under the Florida Endangered and Threatened Species Act.

On lines 74-75, proposed new language in s. 379.2294(4)(e), F.S., incorrectly includes DEP. The reference to DEP should be removed as constitutional authority for the management of fish and wildlife resides in FWC and not DEP.

**VIII. Statutes Affected:**

This bill substantially amends sections 379.2291 and 581.185 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.



217556

LEGISLATIVE ACTION

Senate

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. .  
. .  
. .  
. .

House

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

**Senate Amendment (with title amendment)**

Delete lines 74 - 75

and insert:

(e) The commission may not consider the economic cost of protecting a

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

And the title is amended as follows:

Delete lines 2 - 8



217556

11 and insert:

12       An act relating to endangered and threatened species;  
13       amending s. 379.2291, F.S.; revising legislative  
14       intent of the Florida Endangered and Threatened  
15       Species Act; revising definitions; directing the Fish  
16       and Wildlife Conservation Commission to protect  
17       certain declassified species; prohibiting the  
18       commission from considering certain

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

592-03062-20

20201414c1

1 A bill to be entitled  
 2 An act relating to fish and wildlife activities;  
 3 amending s. 379.105, F.S.; prohibiting certain  
 4 harassment of hunters, trappers, and fishers within or  
 5 on public lands or publicly or privately owned  
 6 wildlife and fish management areas, or in or on public  
 7 waters; amending s. 379.354, F.S.; authorizing the  
 8 Fish and Wildlife Conservation Commission to designate  
 9 additional annual free freshwater and saltwater  
 10 fishing days; amending s. 379.372, F.S.; prohibiting  
 11 the keeping, possessing, importing, selling,  
 12 bartering, trading, or breeding of certain species  
 13 except for educational or research purposes; including  
 14 green iguanas and species of the genera *Salvator* and  
 15 *Tupinambis* in such prohibition; reenacting s.  
 16 379.2311(1), F.S., relating to the definition of the  
 17 term "priority invasive species," to incorporate the  
 18 amendment made to s. 379.372, F.S., in a reference  
 19 thereto; providing an effective date.

20  
 21 Be It Enacted by the Legislature of the State of Florida:

22  
 23 Section 1. Subsection (1) of section 379.105, Florida  
 24 Statutes, is amended to read:

25 379.105 Harassment of hunters, trappers, or fishers.—

26 (1) A person may not intentionally, within or on any public  
 27 lands or a publicly or privately owned wildlife management and  
 28 ~~or~~ fish management areas, ~~area~~ or in or on any public waters  
 29 ~~state-owned water body~~:

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30 (a) Interfere with or attempt to prevent the lawful taking  
31 of fish, game, or nongame animals by another within or on such  
32 lands or areas, or in or on such waters.

33 (b) Attempt to disturb fish, game, or nongame animals or  
34 attempt to affect their behavior with the intent to prevent  
35 their lawful taking by another within or on such lands or areas,  
36 or in or on such waters.

37 Section 2. Subsection (15) of section 379.354, Florida  
38 Statutes, is amended to read:

39 379.354 Recreational licenses, permits, and authorization  
40 numbers; fees established.—

41 (15) FREE FISHING DAYS.—The commission may designate by  
42 rule no more than 6 4 consecutive or nonconsecutive days in each  
43 year as free freshwater fishing days and no more than 6 4  
44 consecutive or nonconsecutive days in each year as free  
45 saltwater fishing days. Notwithstanding any other provision of  
46 this chapter, a ~~any~~ person may take freshwater fish for  
47 noncommercial purposes on a free freshwater fishing day and may  
48 take saltwater fish for noncommercial purposes on a free  
49 saltwater fishing day, without obtaining or possessing a license  
50 or permit or paying a license or permit fee as set forth  
51 ~~prescribed~~ in this section. A person who takes freshwater or  
52 saltwater fish on a free fishing day must comply with all laws,  
53 rules, and regulations governing the holders of a fishing  
54 license or permit and all other conditions and limitations  
55 regulating the taking of freshwater or saltwater fish as are  
56 imposed by law or rule.

57 Section 3. Paragraph (a) of subsection (2) of section  
58 379.372, Florida Statutes, is amended to read:



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59 379.372 Capturing, keeping, possessing, transporting, or  
60 exhibiting venomous reptiles, reptiles of concern, conditional  
61 reptiles, or prohibited reptiles; license required.—

62 (2) (a) A ~~No~~ person, party, firm, association, or  
63 corporation may not shall keep, possess, import into the state,  
64 sell, barter, trade, or breed the following species except for  
65 educational or research purposes ~~personal use or for sale for~~  
66 ~~personal use~~:

- 67 1. Burmese or Indian python (*Python molurus*).
- 68 2. Reticulated python (*Python reticulatus*).
- 69 3. Northern African python (*Python sebae*).
- 70 4. Southern African python (*Python natalensis*).
- 71 5. Amethystine or scrub python (*Morelia amethystinus*).
- 72 6. Green Anaconda (*Eunectes murinus*).
- 73 7. Nile monitor (*Varanus niloticus*).
- 74 8. Green iguana (*Iguana iguana*).
- 75 9. Tegu lizard (any species of the genera *Salvator* or

76 *Tupinambis*).

77 10. Any other reptile designated as a conditional or  
78 prohibited species by the commission.

79 Section 4. For the purpose of incorporating the amendment  
80 made by this act to section 379.372, Florida Statutes, in a  
81 reference thereto, subsection (1) of section 379.2311, Florida  
82 Statutes, is reenacted to read:

83 379.2311 Nonnative animal management.—

84 (1) As used in this section, the term "priority invasive  
85 species" means the following:

86 (a) Lizards of the genus *Tupinambis*, also known as tegu  
87 lizards;

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- 88 (b) Species identified in s. 379.372(2)(a);  
89 (c) *Pterois volitans*, also known as red lionfish; and  
90 (d) *Pterois miles*, also known as the common lionfish or  
91 devil firefish.  
92 Section 5. 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.)

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Prepared By: The Professional Staff of the Committee on Agriculture

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BILL: CS/SB 1414

INTRODUCER: Environment and Natural Resources Committee and Senator Mayfield

SUBJECT: Fish and Wildlife Activities

DATE: February 7, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Rogers</u>	<u>Rogers</u>	<u>EN</u>	<u>Fav/CS</u>
2.	<u>Akhavein</u>	<u>Becker</u>	<u>AG</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/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.<sup>1</sup>

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<sup>1</sup> FLA. CONST. art. IV, s. 9.

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.

The penalties for Level Two violations are as follows:

<b>Level Two Violation</b>	<b>Type of Infraction</b>	<b>Civil Penalty or Jail Time</b>	<b>License Restrictions</b>
First offense	2 <sup>nd</sup> Degree Misdemeanor <sup>2</sup>	Max: \$500 or Max: 60 days	None
Second offense within three years of previous Level Two violation (or higher)	1 <sup>st</sup> Degree Misdemeanor <sup>3</sup>	Min: \$250; Max: \$1,000 Max: one year	None
Third offense within five years of two previous Level Two violations (or higher)	1 <sup>st</sup> Degree Misdemeanor <sup>4</sup>	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 <sup>st</sup> Degree Misdemeanor <sup>5</sup>	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.<sup>6</sup> 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.<sup>7</sup>

***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.<sup>8</sup> The following lists are freshwater and saltwater fees for fishing licenses set out in statute, though there can be additional fees for specialized permits.

<sup>2</sup> Section 379.401(2)(b)1., F.S.

<sup>3</sup> Section 379.401(2)(b)2., F.S.

<sup>4</sup> Section 379.401(2)(b)3., F.S.

<sup>5</sup> Section 379.401(2)(b)4., F.S.

<sup>6</sup> Section 379.104, F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 379.354(1), F.S.

For residents:

- An annual freshwater or saltwater fishing license costs \$15.50.<sup>9</sup>
- A 5-year freshwater or saltwater fishing license costs \$77.50.<sup>10</sup>
- A lifetime freshwater or saltwater fishing license costs:<sup>11</sup>
  - \$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.<sup>12</sup>

FWC also charges \$1.50 for the cost of issuing the permit.<sup>13</sup> Exemptions from the fishing license requirement exist for those under the age of 16 or over the age of 65.<sup>14</sup>

### ***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.<sup>15</sup> 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.<sup>16</sup>

### ***Harassment of Hunters, Trappers, or Fishers***

Under s. 79.105, 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).

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<sup>9</sup> Section 379.354(4), F.S.

<sup>10</sup> Section 379.354(9), F.S.

<sup>11</sup> Section 379.354(11), F.S.

<sup>12</sup> Section 379.354(5), F.S.

<sup>13</sup> Section 379.352(5), F.S.

<sup>14</sup> Section 379.353, F.S.

<sup>15</sup> Section 379.354(15), F.S.; Fla. Amin. 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. Amin. 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.

<sup>16</sup> Section 379.354(15), F.S.

## Nonnative Species

FWC is responsible for the control and management of nonnative species.<sup>17</sup> Nonnative species are animals living outside captivity and which are not historically present in the state.<sup>18</sup> More than 500 fish and wildlife nonnative species have been documented in Florida.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup>

### *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.<sup>22</sup>

Conditional species<sup>23</sup> 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.<sup>24</sup> Specifically, the following nonnative snakes and lizards are prohibited from being kept, possessed, or 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.<sup>25</sup>

A reptile dealer, researcher, or public exhibitor providing educational exhibits may apply for a permit to import or possess conditional nonnative snakes and lizards.<sup>26</sup> Conditional nonnative snakes and lizards must be kept indoors or in outdoor enclosures with a fixed roof and must be

<sup>17</sup> Fla. Admin. Code Ch. 68-5.

<sup>18</sup> Fish and Wildlife Conservation Commission (FWC), *What is a nonnative species?*

<https://myfwc.com/wildlifehabitats/nonnatives/exotic-information/> (last visited February 6, 2020).

<sup>19</sup> FWC, *Florida's Exotic Fish and Wildlife*, <http://myfwc.com/wildlifehabitats/nonnatives/> (last visited on February 6, 2020).

<sup>20</sup> *Id.*

<sup>21</sup> Section 379.231, F.S.

<sup>22</sup> Section 379.372, F.S.; see Fla. Admin. Code R. 68-5.003 for a complete list of prohibited species.

<sup>23</sup> 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 February 6, 2020);

s. 379.372(b), F.S.

<sup>24</sup> FWC, *Conditional Snakes and Lizards*, <http://myfwc.com/wildlifehabitats/nonnatives/regulations/snakes-and-lizards/> (last visited February 6, 2020).

<sup>25</sup> Section 379.372(2)(a), F.S.

<sup>26</sup> 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 February 6, 2020).

permanently identified with a passive integrated transponder (PIT) tag, also known as a microchip.<sup>27</sup> Owners of such species must submit a Captive Wildlife Disaster and Critical Incident Plan to FWC and must maintain records of their inventory.<sup>28</sup>

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.<sup>29</sup>

### ***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.<sup>30</sup> Tegus are not innately aggressive but have sharp teeth, strong jaws, and sharp claws, which they will use to defend themselves if threatened.<sup>31</sup> Tegus are an invasive species and have known breeding populations in Miami-Dade and Hillsborough counties<sup>32</sup> and an emerging population in Charlotte County.<sup>33</sup> 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.<sup>34</sup>

The tegu is not designated as a conditional or prohibited species.<sup>35</sup> However, a person must possess a license from FWC to sell a tegu or for public exhibition.<sup>36</sup> A November 2019 survey of

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<sup>27</sup> Fla. Admin. Code R. 68-5.005(5).

<sup>28</sup> *Id.*

<sup>29</sup> Section 379.2311, F.S.

<sup>30</sup> FWC, *Argentine black and white tegu*, <https://myfwc.com/wildlifehabitats/nonnatives/reptiles/whiptails-and-wall-lizards/tegu/> (last visited February 6, 2020).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> FWC, *Senate Bill 1414 Agency Bill Analysis*, 2 (Dec. 19, 2019) (on file with the Senate Agriculture Committee).

<sup>34</sup> FWC, *Argentine black and white tegu*, <https://myfwc.com/wildlifehabitats/nonnatives/reptiles/whiptails-and-wall-lizards/tegu/> (last visited February 6, 2020).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*; see s. 379.3761, F.S.

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.<sup>37</sup> FWC developed a trapping removal program and works with other agencies and organizations to assess the tegu's threat and develop management strategies.<sup>38</sup> The goal of the program is to minimize the impact of tegus on native wildlife and natural areas.<sup>39</sup> A limited number of commercial wildlife operators trap and remove tegus for homeowners or on other private lands.<sup>40</sup>

Members of the public may also remove and kill tegus from 22 FWC managed public lands without a license or permit.<sup>41</sup> 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.<sup>42</sup>

### ***Green Iguanas***

Green iguanas (*Iguana iguana*) are large, typically green lizards, though they can sometimes be brown or almost black in color.<sup>43</sup> 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.<sup>44</sup>

Green iguanas are a nonnative, invasive species in Florida.<sup>45</sup> 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.<sup>46</sup>

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.<sup>47</sup> However, a person must possess a license from the FWC to sell a green iguana or for public exhibition.<sup>48</sup> A November

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<sup>37</sup> FWC, *Senate Bill 1414 Agency Bill Analysis*, 2 (Dec. 19, 2019) (on file with the Senate Agriculture Committee).

<sup>38</sup> *Id.* (under Frequently Asked Questions).

<sup>39</sup> *Id.*

<sup>40</sup> FWC, *Senate Bill 230 Agency Bill Analysis*, 2 (Feb. 17, 2017) (on file with the Senate Agriculture Committee).

<sup>41</sup> FWC, EO 17-11 (Mar. 31, 2017), available at <https://myfwc.com/media/3682/eo-17-11.pdf> (last visited February 6, 2020).

<sup>42</sup> FWC, *Senate Bill 1414 Agency Bill Analysis*, 2 (Dec. 19, 2019) (on file with the Senate Agriculture Committee).

<sup>43</sup> FWC, *Invasive Green Iguana*, <https://myfwc.com/wildlifehabitats/profiles/reptiles/green-iguana/> (last visited February 6, 2020).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *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.<sup>49</sup>

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.<sup>50</sup> 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.<sup>51</sup> In 2018, FWC initiated removal efforts on public conservation lands, resulting in nearly 5,000 iguanas being removed.<sup>52</sup>

### 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*).
- Tegu Lizard (any species of the genera *Salvator* or *Tupinambis*).
- Any other reptile designated as a conditional or prohibited species by FWC.

This adds the green iguana and the tegu lizard 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.”

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<sup>49</sup> FWC, *Senate Bill 1414 Agency Bill Analysis*, 3 (Dec. 19, 2019) (on file with the Senate Agriculture Committee).

<sup>50</sup> FWC, EO 17-11 (Mar. 31, 2017), available at <https://myfwc.com/media/3682/EO-17-11.pdf> (last visited February 6, 2020).

<sup>51</sup> FWC, *Nonnative Species Public Workshops*, <https://myfwc.com/wildlifehabitats/nonnatives/public-workshops/> (last visited February 6, 2020).

<sup>52</sup> FWC, *Senate Bill 1414 Agency Bill Analysis*, 2 (Dec. 19, 2019) (on file with the Senate Agriculture Committee).

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 identified.

**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:**

None.

**VIII. Statutes Affected:**

This committee substitute substantially amends the following sections of the Florida Statutes: 379.105, 379.354, and 379.372.

This committee substitute reenacts s. 379.2311(1) 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 on February 3, 2020:**

The prohibition on tegus is expanded to include any species of the genera *Salvator* or *Tupinambis*.

- B. **Amendments:**

None.

**By** the Committee on Environment and Natural Resources; and  
Senators Bradley and Mayfield

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1                                   A bill to be entitled  
2       An act relating to environmental protection; creating  
3       s. 373.477, F.S.; requiring a minimum annual  
4       appropriation for Everglades restoration and the  
5       protection of water resources in this state beginning  
6       in a specified fiscal year; specifying requirements  
7       for the allocation of such funding; providing for  
8       future repeal of the appropriation unless reviewed and  
9       saved from repeal through reenactment by the  
10      Legislature; amending s. 375.041, F.S.; revising the  
11      minimum annual appropriation for certain  
12      appropriations from the Land Acquisition Trust Fund;  
13      providing that such revisions expire on a specified  
14      date; providing an effective date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18       Section 1. Section 373.477, Florida Statutes, is created to  
19      read:

20       373.477 Everglades restoration and protection of water  
21 resources.—For fiscal year 2020-2021, and annually thereafter, a  
22 minimum of \$625 million shall be appropriated as provided in  
23 this section for the purposes of Everglades restoration and the  
24 protection of water resources in this state. The funding must be  
25 used for a science-based process to identify projects that are  
26 needed to achieve such restoration and protection.

27       (1) For fiscal year 2020-2021, and annually thereafter, a  
28 minimum of \$625 million shall be appropriated in the following  
29 distributions as delineated in the 2020-2021 General

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30 Appropriations Act:

31 (a) A minimum of \$236 million for Everglades projects in  
32 accordance with the provisions of s. 375.041(3)(b)1.

33 (b) The sum of \$64 million in accordance with s.  
34 375.041(3)(b)4., for the Everglades Agricultural Area reservoir  
35 project.

36 (c) The sum of \$50 million for springs restoration in  
37 accordance with s. 375.041(3)(b)2.

38 (d) A minimum of \$40 million for alternative water supplies  
39 or water conservation.

40 (e) A minimum of \$25 million as delineated in the 2020-2021  
41 General Appropriations Act for projects within the watersheds of  
42 the St. Johns River, the Suwannee River, and the Apalachicola  
43 River.

44 (f) A minimum of \$10 million for the Florida Resilient  
45 Coastline Initiative.

46 (g) A minimum of \$50 million to the South Florida Water  
47 Management District for the design, engineering, and  
48 construction of aquifer storage and recovery wells.

49 (h) A minimum of \$4 million as delineated in the 2020-2021  
50 General Appropriations Act for red tide research.

51 (2) Any remaining balance after the distributions indicated  
52 in subsection (1) shall be allocated to fund any of the  
53 following:

54 (a) Targeted water quality improvements.

55 (b) Alternative water supplies or water conservation.

56 (c) Water quality enhancements and accountability,  
57 innovative technologies, and harmful algal bloom prevention and  
58 mitigation.

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59 (d) Land acquisition or easement acquisition, including,  
60 but not limited to, lands or easements purchased pursuant to the  
61 Florida Forever program or the Rural and Family Lands Protection  
62 Program.

63 (e) Coral reef protection and restoration.

64 (f) Projects within the watersheds of the Indian River  
65 Lagoon.

66 (3) This section is repealed on June 30, 2023, unless  
67 reviewed and saved from repeal through reenactment by the  
68 Legislature.

69 Section 2. Paragraph (b) of subsection (3) of section  
70 375.041, Florida Statutes, is amended to read:

71 375.041 Land Acquisition Trust Fund.—

72 (3) Funds distributed into the Land Acquisition Trust Fund  
73 pursuant to s. 201.15 shall be applied:

74 (b) Of the funds remaining after the payments required  
75 under paragraph (a), but before funds may be appropriated,  
76 pledged, or dedicated for other uses:

77 1. A minimum of \$236 million ~~the lesser of 25 percent or~~  
78 ~~\$200 million~~ shall be appropriated annually for Everglades  
79 projects that implement the Comprehensive Everglades Restoration  
80 Plan as set forth in s. 373.470, including the Central  
81 Everglades Planning Project subject to Congressional  
82 authorization; the Long-Term Plan as defined in s. 373.4592(2);  
83 and the Northern Everglades and Estuaries Protection Program as  
84 set forth in s. 373.4595. From these funds, \$32 million shall be  
85 distributed each fiscal year through the 2023-2024 fiscal year  
86 to the South Florida Water Management District for the Long-Term  
87 Plan as defined in s. 373.4592(2). After deducting the \$32

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88 million distributed under this subparagraph, from the funds  
89 remaining, a minimum of the lesser of 76.5 percent or \$100  
90 million shall be appropriated each fiscal year through the 2025-  
91 2026 fiscal year for the planning, design, engineering, and  
92 construction of the Comprehensive Everglades Restoration Plan as  
93 set forth in s. 373.470, including the Central Everglades  
94 Planning Project, the Everglades Agricultural Area Storage  
95 Reservoir Project, the Lake Okeechobee Watershed Project, the C-  
96 43 West Basin Storage Reservoir Project, the Indian River  
97 Lagoon-South Project, the Western Everglades Restoration  
98 Project, and the Picayune Strand Restoration Project. The  
99 Department of Environmental Protection and the South Florida  
100 Water Management District shall give preference to those  
101 Everglades restoration projects that reduce harmful discharges  
102 of water from Lake Okeechobee to the St. Lucie or Caloosahatchee  
103 estuaries in a timely manner. For the purpose of performing the  
104 calculation provided in this subparagraph, the amount of debt  
105 service paid pursuant to paragraph (a) for bonds issued after  
106 July 1, 2016, for the purposes set forth under paragraph (b)  
107 shall be added to the amount remaining after the payments  
108 required under paragraph (a). The amount of the distribution  
109 calculated shall then be reduced by an amount equal to the debt  
110 service paid pursuant to paragraph (a) on bonds issued after  
111 July 1, 2016, for the purposes set forth under this  
112 subparagraph.

113 2. A minimum of the lesser of 7.6 percent or \$50 million  
114 shall be appropriated annually for spring restoration,  
115 protection, and management projects. For the purpose of  
116 performing the calculation provided in this subparagraph, the

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117 amount of debt service paid pursuant to paragraph (a) for bonds  
118 issued after July 1, 2016, for the purposes set forth under  
119 paragraph (b) shall be added to the amount remaining after the  
120 payments required under paragraph (a). The amount of the  
121 distribution calculated shall then be reduced by an amount equal  
122 to the debt service paid pursuant to paragraph (a) on bonds  
123 issued after July 1, 2016, for the purposes set forth under this  
124 subparagraph.

125 3. The sum of \$5 million shall be appropriated annually  
126 each fiscal year through the 2025-2026 fiscal year to the St.  
127 Johns River Water Management District for projects dedicated to  
128 the restoration of Lake Apopka. This distribution shall be  
129 reduced by an amount equal to the debt service paid pursuant to  
130 paragraph (a) on bonds issued after July 1, 2016, for the  
131 purposes set forth in this subparagraph.

132 4. The sum of \$64 million is appropriated and shall be  
133 transferred to the Everglades Trust Fund for the 2018-2019  
134 fiscal year, and each fiscal year thereafter, for the EAA  
135 reservoir project pursuant to s. 373.4598. Any funds remaining  
136 in any fiscal year shall be made available only for Phase II of  
137 the C-51 reservoir project or projects identified in  
138 subparagraph 1. and must be used in accordance with laws  
139 relating to such projects. Any funds made available for such  
140 purposes in a fiscal year are in addition to the amount  
141 appropriated under subparagraph 1. This distribution shall be  
142 reduced by an amount equal to the debt service paid pursuant to  
143 paragraph (a) on bonds issued after July 1, 2017, for the  
144 purposes set forth in this subparagraph.

145 5. Notwithstanding subparagraph 3., for the 2019-2020



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146 fiscal year, funds shall be appropriated as provided in the  
147 General Appropriations Act. This subparagraph expires July 1,  
148 2020.

149 Section 3. The amendment made to s. 375.041(3)(b), Florida  
150 Statutes, by this act expires June 30, 2023, and the text of  
151 that paragraph shall revert to that in existence on June 30,  
152 2020, except that any amendments to such text enacted other than  
153 by this act shall be preserved and continue to operate to the  
154 extent that such amendments are not dependent upon the portions  
155 of text which expire pursuant to this section.

156 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.)

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

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BILL: CS/SB 1878

INTRODUCER: Environment and Natural Resources Committee and Senators Bradley and Mayfield

SUBJECT: Environmental Protection

DATE: February 3, 2020

REVISED: \_\_\_\_\_

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

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/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 must be made in the following distributions as delineated in the 2020-2021 General Appropriations Act (GAA):

- A minimum of \$236 million for Everglades projects in accordance with the Land Acquisition Trust Fund (LATF).
- \$64 million for the Everglades Agricultural Area reservoir project in accordance with LATF.
- \$50 million for springs restoration in accordance with LATF.
- A minimum of \$40 million for alternative water supplies or water conservation.
- A minimum of \$25 million for projects within the watersheds of the St. Johns, Suwannee, and Apalachicola rivers.
- A minimum of \$10 million for the Florida Resilient Coastline Initiative.
- A minimum of \$50 million to the South Florida Water Management District for the design, engineering, and construction of aquifer storage and recovery wells.
- A minimum of \$4 million as delineated in the 2020-2021 GAA 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.
- Coral reef protection and restoration.
- Projects within the watersheds of the Indian River Lagoon.

The bill revises the distribution of funds for Everglades projects under the Land Acquisition Trust Fund to allocate \$236 million for those projects. The bill provides that this revision expires on June 30, 2023, when the statutory text reverts to the current language.

## 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).<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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<sup>1</sup> 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](https://www.flgov.com/wp-content/uploads/orders/2019/EO_19-12.pdf).

<sup>2</sup> Department of Environmental Protection (DEP), *Protecting Florida Together*, <https://protectingfloridatogether.gov/> (last visited Jan. 30, 2020).

<sup>3</sup> DEP, *Office of Environmental Accountability and Transparency*, <https://floridadep.gov/oeat> (last visited Jan. 30, 2020).

<sup>4</sup> *Id.*

### ***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.<sup>5</sup> 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.<sup>6</sup> 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.

### ***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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

### **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.<sup>11</sup> 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.<sup>12</sup> Over time, the construction of canals and water control structures along with urban and agricultural expansion contributed to unintended consequences.<sup>13</sup>

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<sup>5</sup> 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).

<sup>6</sup> 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](https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf).

<sup>7</sup> Section 379.2271, F.S.

<sup>8</sup> FWC, *Harmful Algal Bloom/Red Tide Task Force*, <https://myfwc.com/research/redtide/taskforce/> (last visited Jan. 31, 2020).

<sup>9</sup> *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).

<sup>10</sup> EO 19-12, at 3.

<sup>11</sup> SFWMD, *Everglades*, <https://www.sfwmd.gov/our-work/everglades> (last visited Jan. 30, 2020).

<sup>12</sup> *Id.*

<sup>13</sup> See SFWMD, *Everglades Restoration Progress*, 1 (2017), available at [https://www.sfwmd.gov/sites/default/files/documents/spl\\_everglades\\_progress.pdf](https://www.sfwmd.gov/sites/default/files/documents/spl_everglades_progress.pdf).

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.<sup>14</sup> The consent decree, as implemented by the Everglades Forever Act in 1994,<sup>15</sup> 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.<sup>16</sup> The plan originally consisted of the construction of four STAs covering 35,000 acres, but by 2006, the need for additional STA acreage became clear.<sup>17</sup> By 2010, approximately 57,000 acres of STAs were built and operating.<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup> 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.<sup>21</sup>

### ***Comprehensive Everglades Restoration Plan (CERP)***

The aforementioned programs work in cooperation with the multi-billion-dollar, multi-decade Comprehensive Everglades Restoration Plan (CERP).<sup>22</sup> CERP was submitted to Congress in 1999 and received congressional authorization in 2000.<sup>23</sup> 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.<sup>24</sup>

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<sup>14</sup> 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](https://www.sfwmd.gov/sites/default/files/documents/rs_scienceplan_060713_final.pdf) (last visited Jan. 31, 2020).

<sup>15</sup> Section 373.4592, F.S.

<sup>16</sup> 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).

<sup>17</sup> *Science Plan* at 2.

<sup>18</sup> *Id.*

<sup>19</sup> 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](https://www.sfwmd.gov/sites/default/files/documents/spl_restoration_strategies.pdf).

<sup>20</sup> 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](https://www.sfwmd.gov/sites/default/files/documents/infographic_everglades_wq.pdf).

<sup>21</sup> *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).

<sup>22</sup> SFWMD, *CERP Project Planning*, <https://www.sfwmd.gov/our-work/cerp-project-planning> (last visited Jan. 18, 2020).

<sup>23</sup> Water Resources Development Act of 2000, P.L. 106-541, Dec. 11, 2000.

<sup>24</sup> 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).

CERP is composed of a series of projects designed to address four major characteristics of water flow: quantity, quality, timing, and distribution.<sup>25</sup> 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.<sup>26</sup> 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, storage of water in existing quarries, reuse of wastewater, and the improvement of water flows to Florida Bay.<sup>27</sup>

The Integrated Delivery Schedule (IDS) is the timeline of Everglades restoration projects cost shared by the state and federal governments.<sup>28</sup> The IDS provides the sequencing strategy for planning, designing, and constructing projects based on ecosystem needs, benefits, costs, and available funding.<sup>29</sup> 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.<sup>30</sup> The IDS was most recently updated in October of 2019.<sup>31</sup>

### ***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.<sup>32</sup> 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.<sup>33</sup> The injected fresh water replaces brackish water to form a “freshwater bubble.”<sup>34</sup> 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

<sup>25</sup> 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).

<sup>26</sup> See USACE, *Comprehensive Everglades Restoration (CERP) Overview* (Jul. 2018), <https://usace.contentdm.oclc.org/digital/api/collection/p16021coll11/id/2570/download>.

<sup>27</sup> 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](https://www.sfwmd.gov/sites/default/files/documents/CENTRAL_AND_SOUTHERN_FLORIDA_PROJECT_COMPREHENSIVE_REVIEW_STUDY.pdf).

<sup>28</sup> 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).

<sup>29</sup> SFWMD, *CERP Planning*, <https://www.sfwmd.gov/our-work/cerp-project-planning> (Jan. 30, 2020).

<sup>30</sup> *Id.*

<sup>31</sup> USACE, *Integrated Delivery Schedule - A South Florida Ecosystem Restoration program Snapshot Through 2030*, <https://usace.contentdm.oclc.org/utills/getfile/collection/p16021coll11/id/4143> (last visited Jan. 30, 2020).

<sup>32</sup> USACE, *Aquifer Storage and Recovery (ASR), Regional Study* (2018), <http://cdm16021.contentdm.oclc.org/utills/getfile/collection/p16021coll11/id/1994> (last visited Jan. 30, 2020).

<sup>33</sup> *Id.*

<sup>34</sup> SFWMD, *Aquifer Storage and Recovery*, <https://www.sfwmd.gov/our-work/alternative-water-supply/asr> (Jan. 30, 2020).

number of ASR wells to 131, to avoid adverse effects to the aquifer, groundwater, and existing users.<sup>35</sup>

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, would require successive cycles over a few years to achieve a target of 70 percent recovery.<sup>36</sup> Water injected into ASR wells must meet Florida's drinking water quality standards.<sup>37</sup>

### ***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.<sup>38</sup> 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.<sup>39</sup> In 2018, the U.S. Congress provided the required federal authorization and approved a plan developed by the South Florida Water Management District.<sup>40</sup> 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.<sup>41</sup>

The project includes a combination of canals, STAs, and a storage reservoir—all intended to improve water quality in the Everglades.<sup>42</sup> The reservoir is anticipated to hold 240,000 acre-feet of water and include a new STA.<sup>43</sup> 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.<sup>44</sup>

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<sup>35</sup> 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](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/utills/getfile/collection/p16021coll11/id/1994> (last visited Jan. 30, 2020).

<sup>36</sup> USACE and SFWMD, *Final Technical Data Report, Aquifer Storage and Recovery Regional Study*, xxix (May 2015).

<sup>37</sup> DEP, *UIC Wells Classification*, <https://floridadep.gov/water/aquifer-protection/content/uic-wells-classification> (last visited Jan. 30, 2020).

<sup>38</sup> The Water Resources Development Act of 2000 (P.L. 106-541, Dec. 11, 2000).

<sup>39</sup> Chapter 2017-10, Laws of Fla.

<sup>40</sup> SFWMD, *Everglades Agricultural Area Storage Reservoir Project*, <https://www.sfwmd.gov/our-work/cerp-project-planning/aaa-reservoir> (last visited Jan. 30, 2020).

<sup>41</sup> *EO 19-12*, at 2, available at [https://www.flgov.com/wp-content/uploads/orders/2019/EO\\_19-12.pdf](https://www.flgov.com/wp-content/uploads/orders/2019/EO_19-12.pdf).

<sup>42</sup> SFWMD, *Everglades Agricultural Area Storage Reservoir Project*, <https://www.sfwmd.gov/our-work/cerp-project-planning/aaa-reservoir> (last visited Jan. 30, 2020).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*



## Outstanding Florida Springs

Florida's springs are unique and beautiful resources that form when groundwater is forced out through natural openings in the ground.<sup>45</sup> 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.<sup>46</sup> 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.<sup>47</sup> First magnitude springs are those that discharge 100 cubic feet of water per second or greater. 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.<sup>48</sup>

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.<sup>49</sup> 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.<sup>50</sup> Additionally, the Springs and Aquifer Protection Act includes the development of onsite sewage treatment and disposal system (OSTDS) remediation plans.<sup>51</sup>

## 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.<sup>52</sup> As water use

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<sup>45</sup> 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>.

<sup>46</sup> *Id.* at 3-1.

<sup>47</sup> Florida Geological Survey, *Springs of Florida Bulletin No. 66*, available at [http://publicfiles.dep.state.fl.us/FGS/WEB/springs/bulletin\\_66.pdf](http://publicfiles.dep.state.fl.us/FGS/WEB/springs/bulletin_66.pdf).

<sup>48</sup> *Id.*

<sup>49</sup> 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.

<sup>50</sup> Section 373.802(5), F.S.

<sup>51</sup> Commonly called a "septic remediation plan."

<sup>52</sup> DEP, *Alternative Water Supply*, <https://floridadep.gov/water-policy/water-policy/content/alternative-water-supply> (last visited Jan. 30, 2020).



continues to increase, one of the ways water demands can be met is through the development of alternative water supplies (AWSs).<sup>53</sup> Alternative water supplies include:<sup>54</sup>

- Salt water or brackish surface water and groundwater, which can be converted to fresh water through desalination;<sup>55</sup>
- Sources made available through increasing storage capacity for surface or groundwater; for example, through surface reservoirs or by injecting potable water into the aquifer;<sup>56</sup>
- 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.

Funding for the development of AWSs is a shared responsibility between water suppliers and users, the state, and WMDs.<sup>57</sup> Water suppliers and users have the primary responsibility for providing funding, while the state and WMDs have the responsibility to provide funding assistance.<sup>58</sup>

AWS development projects may receive state funding through specific appropriation or through the Water Protection and Sustainability Program (WPSP) if funded by the Legislature.<sup>59</sup> Applicants for projects that receive funding through the WPSP are required to pay at least 60 percent of the project's construction costs.<sup>60</sup> 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.<sup>61</sup>

### **St. Johns River**

The St. Johns River is the longest river that is entirely within the state.<sup>62</sup> 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.<sup>63</sup> Major tributaries that flow into the St. Johns River include the Wekiva River, the Econlockhatchee River, and the Ocklawaha River.<sup>64</sup> The river is home to many plant species and

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<sup>53</sup> Sections 373.707, F.S.

<sup>54</sup> Section 373.019(1), F.S.

<sup>55</sup> DEP, *Alternative Water Supply*, <https://floridadep.gov/water-policy/water-policy/content/alternative-water-supply> (last visited Jan. 30, 2020).

<sup>56</sup> *Id.*; see also DEP, *Water Supply*, <https://floridadep.gov/water-policy/water-policy/content/water-supply> (last visited Jan. 30, 2020).

<sup>57</sup> Section 373.707(2)(c), F.S.

<sup>58</sup> *Id.*

<sup>59</sup> Section 373.707(1)(d), and (6), F.S.

<sup>60</sup> Section 373.707(8)(e), F.S.

<sup>61</sup> *Id.*

<sup>62</sup> SJRWMD, *The St. Johns River*, <https://www.sjrwmd.com/waterways/st-johns-river/> (last visited Jan. 30, 2020).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

marine animals, including manatees, largemouth bass and many other species of fish, crabs, shrimp, river otters, waterfowl, blue herons, bald eagles, and alligators.<sup>65</sup>

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.<sup>66</sup> The largest contributor of pollution in the lower basin is treated wastewater, with additional significant sources of nutrient pollution coming from agricultural areas.<sup>67</sup> 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.<sup>68</sup>

### **Suwannee River**

The Suwannee River Watershed covers approximately 9,950 square miles in south Georgia and north Florida.<sup>69</sup> 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.<sup>70</sup> 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.<sup>71</sup> Many species of fish and wildlife depend on the watershed, including deer, raccoon, fox, egrets, herons, manatees, alligator snapping turtles, and black bears.<sup>72</sup> 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.<sup>73</sup>

### **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

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<sup>65</sup> *Id.*

<sup>66</sup> SJRWMD, *Lower St. Johns River Basin*, <https://www.sjrwmd.com/waterways/st-johns-river/lower/> (last visited Jan. 30, 2020).

<sup>67</sup> *Id.*

<sup>68</sup> SJRWMD, *Upper St. Johns River Basin*, <https://www.sjrwmd.com/waterways/st-johns-river/upper/> (last visited Jan. 30, 2020).

<sup>69</sup> 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](https://www.fws.gov/northflorida/Documents/NFL_Suwannee_factsheet.pdf).

<sup>70</sup> *Id.*

<sup>71</sup> DEP, *Suwannee River Basin Management Action Plan*, 12 (June 2018), available at <https://floridadep.gov/sites/default/files/Suwannee%20Final%202018.pdf>.

<sup>72</sup> 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](https://www.fws.gov/northflorida/Documents/NFL_Suwannee_factsheet.pdf).

<sup>73</sup> 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).

the Gulf.<sup>74</sup> 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.<sup>75</sup>

The area harbors one of the highest concentrations of threatened and endangered species in the United States.<sup>76</sup> 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.<sup>77</sup> The coastal systems within the Apalachicola River System are nationally recognized for their important environmental resources through designations such as State Aquatic Preserve,<sup>78</sup> Outstanding Florida Water,<sup>79</sup> and National Estuarine Research Reserve.<sup>80</sup>

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.<sup>81</sup>

### **Florida Resilient Coastlines Program**

DEP's Florida Resilient Coastlines Program helps prepare coastal communities and habitats for the effects of climate change and sea level rise by offering technical assistance and funding to communities dealing with coastal flooding, erosion, and ecosystem changes.<sup>82</sup> Resiliency is generally addressed at a local government level, and each local government may have unique goals, needs, and available resources. The Florida Resilient Coastlines Program provides financial assistance to local governments aimed at preparing coastal communities for the current and future effects of rising sea levels.<sup>83</sup> In 2019, DEP awarded funding for numerous projects providing assistance to coastal communities.<sup>84</sup> Priority areas include implementing statutory requirements and objectives, vulnerability assessments, adaptation plans, regional efforts, and environmental justice.<sup>85</sup>

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<sup>74</sup> 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).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> DEP, *Apalachicola Bay Aquatic Preserve*, <https://floridadep.gov/rcp/aquatic-preserve/locations/apalachicola-bay-aquatic-preserve> (last visited Jan. 30, 2020).

<sup>79</sup> Fla. Admin. Code R. 62-302.700.

<sup>80</sup> DEP, *National Estuarine Research Reserves – Apalachicola*, <https://floridadep.gov/RCP/NERR-Apalachicola> (last visited Jan. 30, 2020).

<sup>81</sup> 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).

<sup>82</sup> DEP, *Florida Resilient Coastlines Program*, <https://floridadep.gov/rcp/florida-resilient-coastlines-program> (last visited Feb. 3, 2020).

<sup>83</sup> DEP, *Funding Opportunities*, <https://floridadep.gov/rcp/florida-resilient-coastlines-program/content/funding-opportunities> (last visited Feb. 3, 2020).

<sup>84</sup> DEP, *Funded Projects*, <https://floridadep.gov/rcp/florida-resilient-coastlines-program/content/funded-projects> (last visited Feb. 3, 2020).

<sup>85</sup> DEP, *Resiliency Planning Grants, Fiscal Year 2020-2021, Grant Goals and Priorities*, available at <https://floridadep.gov/sites/default/files/RPG-FY-20-21-Goals-and-Priorities.pdf>.

## Indian River Lagoon

The Indian River Lagoon system (IRL) is a 156-mile-long estuary spanning approximately 40 percent of Florida's east coast.<sup>86</sup> There are six coastal counties in the IRL watershed: Volusia, Brevard, Indian River, St. Lucie, Martin, and Palm Beach.<sup>87</sup> There are three interconnected lagoons in the IRL basin: Mosquito Lagoon, Banana River Lagoon, and Indian River Lagoon.<sup>88</sup> The IRL is one of the most biologically diverse estuaries in North America.<sup>89</sup> 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.<sup>90</sup> 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.<sup>91</sup> Industry groups that are directly influenced by the IRL support nearly 72,000 jobs.<sup>92</sup>

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.<sup>93</sup> 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.<sup>94</sup> During the 2011 "Superbloom," intense algal blooms of phytoplankton occurred throughout most of the IRL, lasting for seven months and resulting in massive losses of seagrass that has yet to fully recover.<sup>95</sup> 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.<sup>96</sup> 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.<sup>97</sup> The St. Lucie Estuary is a major tributary to

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<sup>86</sup> IRLNEP, *About the Indian River Lagoon*, <http://www.irlcouncil.com/> (last visited Jan. 30, 2019).

<sup>87</sup> 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>.

<sup>88</sup> 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>.

<sup>89</sup> IRLNEP, *About the Indian River Lagoon*, <http://www.irlcouncil.com/> (last visited Jan. 30, 2020).

<sup>90</sup> *Id.*

<sup>91</sup> 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](http://tcrpc.org/special_projects/IRL_Econ_Valu/FinalReportIRL08_26_2016.pdf).

<sup>92</sup> *Id.* at ix.

<sup>93</sup> *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>.

<sup>94</sup> *Save Our Lagoon* at xii.

<sup>95</sup> IRL 2011 Consortium, *Indian River Lagoon 2011 Superbloom - Plan of Investigation*, 2-3 (2012), available at [http://www.irlcouncil.com/uploads/7/9/2/7/79276172/2011superbloom\\_investigationplan\\_june\\_2012.pdf](http://www.irlcouncil.com/uploads/7/9/2/7/79276172/2011superbloom_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](http://www.irlcouncil.com/uploads/7/9/2/7/79276172/2018annualrept_medred.pdf).

<sup>96</sup> *Save Our Lagoon* at xii.

<sup>97</sup> 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).

the southern IRL, so freshwater discharges from Lake Okeechobee, which can include toxic cyanobacteria, also impact the IRL.<sup>98</sup>

### **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.<sup>99</sup> 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.<sup>100</sup>

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.<sup>101</sup>

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.<sup>102</sup>

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.<sup>103</sup> DEP may require the responsible party to pay the cost of assessment and restoration, as well as pay a fine.<sup>104</sup>

### ***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.<sup>105</sup> The CRCP is a member of the U.S. Coral Reef Task Force and leads the

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<sup>98</sup> 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).

<sup>99</sup> 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](https://floridadep.gov/sites/default/files/CRCP_Strategic_Plan_2011-2016.pdf).

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> DEP, *Florida's Coral Reefs*, <https://floridadep.gov/rcp/rcp/content/floridas-coral-reefs> (last visited Jan. 30, 2020).

<sup>103</sup> Section 403.93345(5), F.S.

<sup>104</sup> Section 403.93345(6), (7), and (8), F.S.

<sup>105</sup> *Id.*

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.<sup>106</sup>

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.<sup>107</sup>

## 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.<sup>108</sup> These harmful algal blooms are known as “red tide,” and have been observed for centuries.<sup>109</sup> In the Gulf of Mexico and around Florida, the species that causes most red tide is *Karenia brevis* (*K. brevis*).<sup>110</sup> *K. brevis* is a single-celled algae that occurs in marine and estuarine waters in Florida.<sup>111</sup> *K. brevis* produces neurotoxins called brevetoxins that can sicken or kill fish, seabirds, turtles, and marine mammals.<sup>112</sup> 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.<sup>113</sup> The red tide toxins can also accumulate in animals such as oysters and clams, which can lead to Neurotoxic Shellfish Poisoning in people who consume contaminated shellfish.<sup>114</sup> Though this is less common, blooms of *K. brevis* can also contribute to fish kills by depleting the water of dissolved oxygen.<sup>115</sup> The algae causing red tide is different from the cyanobacteria (often called “blue-green algae”) found in freshwater systems such as Lake Okeechobee.<sup>116</sup>

In 2018, the Governor issued executive orders declaring a state of emergency in 14 counties for red tide algae blooms.<sup>117</sup> These harmful algal blooms can result in significant costs associated

<sup>106</sup> 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).

<sup>107</sup> FWC, *Coral Reef Evaluation and Monitoring Project (CREMP)*, <http://myfwc.com/research/habitat/coral/cremp/> (last visited Jan. 30, 2020).

<sup>108</sup> FWC, *Red Tide FAQ*, <https://myfwc.com/research/redtide/faq/> (last visited Jan. 31, 2020).

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> 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.

<sup>112</sup> FWC, *Karenia Brevis: Fact Sheet*.

<sup>113</sup> Mote Marine Laboratory, *Florida Red Tide FAQ's*, <https://mote.org/news/florida-red-tide> (last visited Jan. 31, 2020).

<sup>114</sup> FWC, *Karenia Brevis: Fact Sheet*, available at <https://myfwc.com/media/12422/karenia-brevis-factsheet.pdf>.

<sup>115</sup> *Id.*

<sup>116</sup> 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](https://floridadep.gov/sites/default/files/freshwater-algal-bloom-faqs_2019.pdf).

<sup>117</sup> 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](http://edr.state.fl.us/Content/natural-resources/LandandWaterAnnualAssessment_2019Edition.pdf).



with public health, recreation and tourism, and management and monitoring.<sup>118</sup> Red tides can last as little as a few weeks or longer than a year.<sup>119</sup> 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.<sup>120</sup> Florida's red tides develop 10-40 miles offshore, away from human-contributed nutrient sources.<sup>121</sup> Once red tides are transported to shore, they are capable of using human-caused nutrient pollution for their growth.<sup>122</sup> Currently, there is no practical and acceptable way to control or kill red tide blooms.<sup>123</sup>

In 2019, the Legislature established the Florida Red Tide Mitigation and Technology Development Initiative.<sup>124</sup> 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.<sup>125</sup> The 2019 legislation provides FWC an annual appropriation of \$3 million for six years to implement the initiative.<sup>126</sup> The initiative will work together with FWC's Harmful Algal Bloom Task Force, which also focuses on red tide issues.<sup>127</sup>

### 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.<sup>128</sup> 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.<sup>129</sup> 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.<sup>130</sup> The state has acquired more than 2.4 million acres since 1991 under the Preservation 2000 and Florida Forever programs.<sup>131</sup>

<sup>118</sup> *Id.* at 156.

<sup>119</sup> FWC, *Red Tide FAQ*, <https://myfwc.com/research/redtide/faq/> (last visited Jan. 30, 2020).

<sup>120</sup> *Id.*

<sup>121</sup> Mote Marine Laboratory, *Florida Red Tide FAQ's*, <https://mote.org/news/florida-red-tide> (last visited Jan. 30, 2020).

<sup>122</sup> *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).

<sup>123</sup> FWC, *Red Tide FAQ*, <https://myfwc.com/research/redtide/faq/> (last visited Jan. 30, 2020).

<sup>124</sup> Chapter 2019-114, Laws of Fla.; s. 379.2273, F.S.

<sup>125</sup> 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).

<sup>126</sup> Chapter 2019-114, s. 2, Laws of Fla.

<sup>127</sup> 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](http://edr.state.fl.us/Content/natural-resources/LandandWaterAnnualAssessment_2020Edition.pdf).

<sup>128</sup> Chapter 99-247, Laws of Fla.

<sup>129</sup> 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>.

<sup>130</sup> Section 259.105, F.S.

<sup>131</sup> 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*

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 improvements<sup>132</sup> 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.<sup>133</sup>

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.

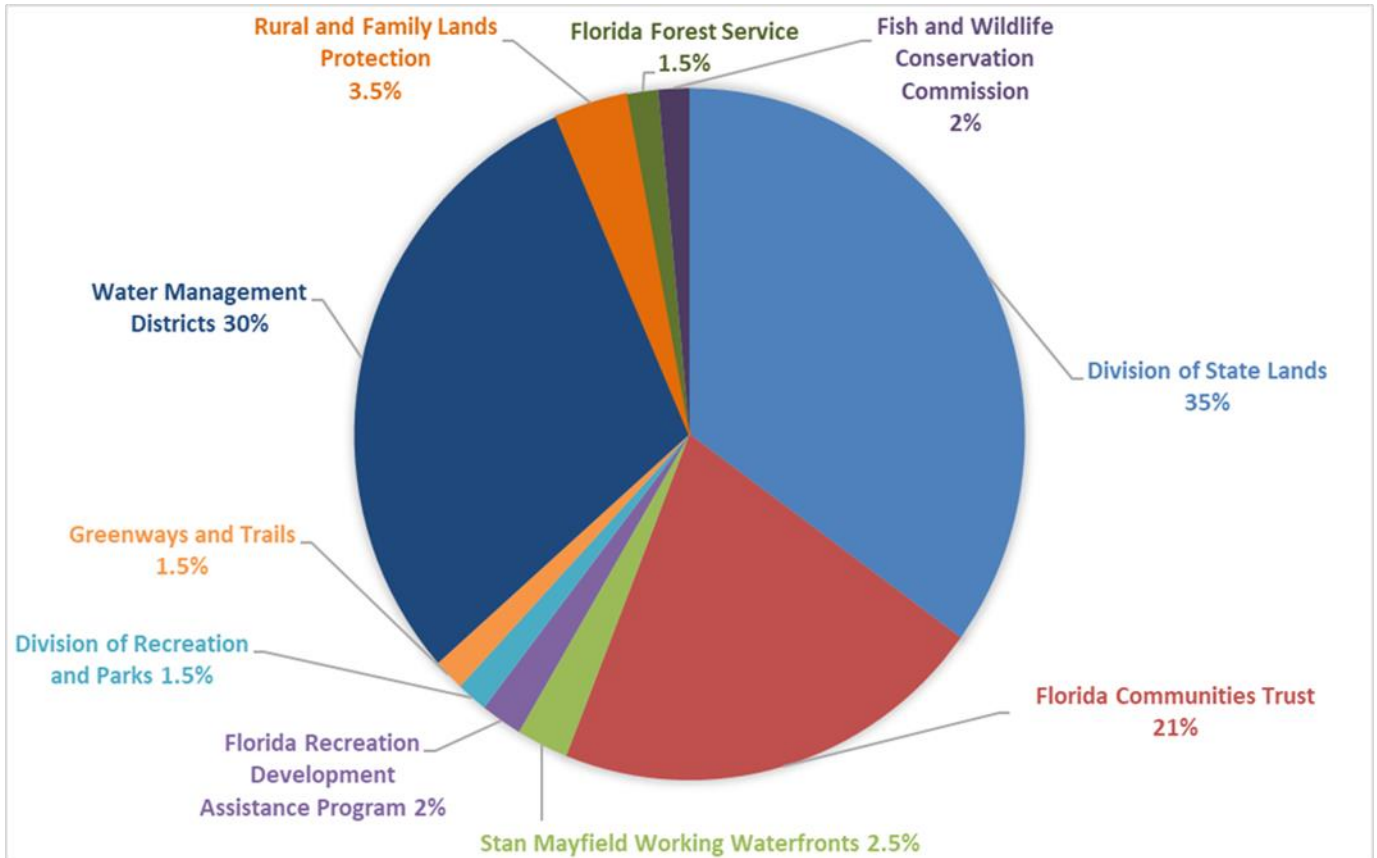
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*Conservation Lands* (Feb. 2019), available at [https://www.fnai.org/PDF/Maacres\\_201902\\_FCL\\_plus\\_LTF.pdf](https://www.fnai.org/PDF/Maacres_201902_FCL_plus_LTF.pdf) for a complete summary of the total amount of conservation lands in Florida.

<sup>132</sup> 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.”

<sup>133</sup> 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.<sup>134</sup> 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.<sup>135</sup> 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.<sup>136</sup> Preference must be given to ranch and timber lands that are managed using sustainable practices.<sup>137</sup>

<sup>134</sup> Department of Agriculture and Consumer Services (DACS), *Rural and Family Lands Protection Program*, <https://www.fdaes.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).

<sup>135</sup> Section 570.71, F.S.

<sup>136</sup> *Id.*; see Fla. Admin. Code Ch. 5I-7.

<sup>137</sup> 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.<sup>138</sup>

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.<sup>139</sup>

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.<sup>140</sup>

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.

<sup>138</sup> See ss. 201.02 and 201.08, F.S.

<sup>139</sup> FLA. CONST. art. X, s. 28(b)(1).

<sup>140</sup> 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.<sup>141</sup>

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.<sup>142</sup> 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.<sup>143</sup>

### 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.

<sup>141</sup> Section 375.041(3)-(4), F.S.

<sup>142</sup> 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>.

<sup>143</sup> *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 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 minimum of \$236 million for Everglades projects in accordance with the Land Acquisition Trust Fund (LATF).
- \$64 million for the Everglades Agricultural Area reservoir project in accordance with LATF.
- \$50 million for springs restoration in accordance with LATF.
- A minimum of \$40 million for alternative water supplies or water conservation.
- A minimum of \$25 million for projects within the watersheds of the St. Johns River, the Suwannee River, and the Apalachicola River.
- A minimum of \$10 million for the Florida Resilient Coastline Initiative.
- A minimum of \$50 million to the South Florida Water Management District for the design, engineering, and construction of aquifer storage and recovery wells.
- A minimum of \$4 million as delineated in the 2020-2021 General Appropriations Act 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.
- Coral reef protection and restoration.
- Projects within the watersheds of the Indian River Lagoon.

The bill revises the distribution of funds for certain Everglades projects under LATF to allocate \$236 million for those projects. Pursuant to the LATF statute, the appropriation is for Everglades projects that implement the Comprehensive Everglades Restoration Plan, including the Central Everglades Planning Project, the Long-Term Plan, and the Northern Everglades and Estuaries Protection Program. The bill provides that this revision expires on June 30, 2023, and the statutory text reverts to the text in existence on June 30, 2020, except for the preservation of other amendments to the same text.

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:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 373.477 of the Florida Statutes.

This bill substantially amends section 375.041 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 February 3, 2020:**

- Clarifies that a minimum of \$625 million shall be appropriated as delineated in the 2020-2021 General Appropriations Act.
- Removes the Department of Environmental Protection as the specified recipient of several appropriations.
- Separates the appropriations for Everglades projects and the Everglades Agricultural Area reservoir project into two appropriations, with \$236 million for Everglades projects and \$64 million for the Everglades Agricultural Area reservoir project.
- Clarifies that the appropriation for springs restoration in accordance with the Land Acquisition Trust Fund is in the amount of \$50 million.
- Increases the appropriation for projects within the watersheds of the St. Johns River, Suwannee River, and Apalachicola River to \$25 million.
- Deletes appropriations of \$10 million for coral reef protection and restoration and \$15 million for projects within the watersheds of the Indian River Lagoon.
- Adds an appropriation of \$10 million for the Florida Resilient Coastline Initiative.
- Revises the appropriation of \$4 million for red tide research to specify that funds are appropriated as delineated in the 2020-2021 General Appropriations Act rather than to the Fish and Wildlife Conservation Commission.
- Revises the projects allowable from the remaining balance of the appropriation after the specific distributions to include projects for coral reef protection and restoration and projects within the watersheds of the Indian River Lagoon.
- Revises the distribution of funds for Everglades projects under the Land Acquisition Trust Fund and clarifies that this revision expires on June 30, 2023 and the text of the paragraph shall revert.

**B. Amendments:**

None.



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Proposed Committee Substitute by the Committee on Appropriations  
(Appropriations Subcommittee on Agriculture, Environment, and  
General Government)

1                   A bill to be entitled  
2           An act relating to water quality improvements;  
3           providing a short title; requiring the Department of  
4           Health to provide a specified report to the Governor  
5           and the Legislature by a specified date; requiring the  
6           Department of Health and the Department of  
7           Environmental Protection to submit to the Governor and  
8           the Legislature, by a specified date, certain  
9           recommendations relating to the transfer of the Onsite  
10          Sewage Program; requiring the departments to enter  
11          into an interagency agreement that meets certain  
12          requirements by a specified date; transferring the  
13          Onsite Sewage Program within the Department of Health  
14          to the Department of Environmental Protection by a  
15          type two transfer by a specified date; providing that  
16          certain employees retain and transfer certain types of  
17          leave upon the transfer; amending s. 373.4131, F.S.;  
18          requiring the Department of Environmental Protection  
19          to include stormwater structural controls inspections  
20          as part of its regular staff training; requiring the  
21          department and the water management districts to adopt  
22          rules regarding stormwater design and operation by a  
23          specified date; amending s. 381.0065, F.S.; conforming  
24          provisions to changes made by the act; requiring the  
25          department to adopt rules for the location of onsite  
26          sewage treatment and disposal systems and complete



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27 such rulemaking by a specified date; requiring the  
28 department to evaluate certain data relating to the  
29 self-certification program and provide the Legislature  
30 with recommendations by a specified date; providing  
31 that certain provisions relating to existing setback  
32 requirements are applicable to permits only until the  
33 adoption of certain rules by the department; creating  
34 s. 381.00652, F.S.; creating an onsite sewage  
35 treatment and disposal systems technical advisory  
36 committee within the department; providing the duties  
37 and membership of the committee; requiring the  
38 committee to submit a report to the Governor and the  
39 Legislature by a specified date; providing for the  
40 expiration of the committee; repealing s. 381.0068,  
41 F.S., relating to a technical review and advisory  
42 panel; amending s. 403.061, F.S.; requiring the  
43 department to adopt rules relating to the underground  
44 pipes of wastewater collection systems; requiring  
45 public utilities or their affiliated companies that  
46 hold or are seeking a wastewater discharge permit to  
47 file certain reports and data with the department;  
48 creating s. 403.0616, F.S.; requiring the department,  
49 subject to legislative appropriation, to establish a  
50 real-time water quality monitoring program;  
51 encouraging the formation of public-private  
52 partnerships; amending s. 403.067, F.S.; requiring  
53 basin management action plans for nutrient total  
54 maximum daily loads to include wastewater treatment  
55 and onsite sewage treatment and disposal system





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56 remediation plans that meet certain requirements;  
57 requiring the Department of Agriculture and Consumer  
58 Services to collect fertilization and nutrient records  
59 from certain agricultural producers and provide the  
60 information to the department annually by a specified  
61 date; requiring the Department of Agriculture and  
62 Consumer Services to perform onsite inspections of the  
63 agricultural producers at specified intervals;  
64 authorizing certain entities to develop research plans  
65 and legislative budget requests relating to best  
66 management practices by a specified date; creating s.  
67 403.0673, F.S.; establishing a wastewater grant  
68 program within the Department of Environmental  
69 Protection; authorizing the department to distribute  
70 appropriated funds for certain projects; providing  
71 requirements for the distribution; requiring the  
72 department to coordinate with each water management  
73 district to identify grant recipients; requiring an  
74 annual report to the Governor and the Legislature by a  
75 specified date; creating s. 403.0855, F.S.; providing  
76 legislative findings regarding the regulation of  
77 biosolids management in this state; requiring the  
78 department to adopt rules for biosolids management;  
79 exempting the rules from a specified statutory  
80 requirement; amending s. 403.086, F.S.; prohibiting  
81 facilities for sanitary sewage disposal from disposing  
82 of any waste in the Indian River Lagoon beginning on a  
83 specified date without first providing advanced waste  
84 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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114 ss. 153.54, 153.73, 163.3180, 180.03, 311.105, 327.46,  
115 373.250, 373.414, 373.705, 373.707, 373.709, 373.807,  
116 376.307, 380.0552, 381.006, 381.0061, 381.0064,  
117 381.00651, 381.0101, 403.08601, 403.0871, 403.0872,  
118 403.707, 403.861, 489.551, and 590.02, F.S.;

119 conforming cross-references and provisions to changes  
120 made by the act; providing a directive to the Division  
121 of Law Revision upon the adoption of certain rules by  
122 the Department of Environmental Protection; providing  
123 effective dates.

124

125 WHEREAS, nutrients negatively impact groundwater and  
126 surface waters in this state and cause the proliferation of  
127 algal blooms, and

128 WHEREAS, onsite sewage treatment and disposal systems were  
129 designed to manage human waste and are permitted by the  
130 Department of Health for that purpose, and

131 WHEREAS, conventional onsite sewage treatment and disposal  
132 systems contribute nutrients to groundwater and surface waters  
133 across this state which can cause harmful blue-green algal  
134 blooms, and

135 WHEREAS, many stormwater systems are designed primarily to  
136 divert and control stormwater rather than to remove pollutants,  
137 and

138 WHEREAS, most existing stormwater system design criteria  
139 fail to consistently meet either the 80 percent or 95 percent  
140 target pollutant reduction goals established by the Department  
141 of Environmental Protection, and

142 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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172 implementation, alone, will alleviate downstream water quality  
173 impairments, NOW, THEREFORE,

174

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

176

177 Section 1. This act may be cited as the "Clean Waterways  
178 Act."

179 Section 2. (1) By July 1, 2020, the Department of Health  
180 must provide a report to the Governor, the President of the  
181 Senate, and the Speaker of the House of Representatives  
182 detailing the following information regarding the Onsite Sewage  
183 Program:

184 (a) The average number of permits issued each year;

185 (b) The number of department employees conducting work on  
186 or related to the program each year; and

187 (c) The program's costs and expenditures, including, but  
188 not limited to, salaries and benefits, equipment costs, and  
189 contracting costs.

190 (2) By December 31, 2020, the Department of Health and the  
191 Department of Environmental Protection shall submit  
192 recommendations to the Governor, the President of the Senate,  
193 and the Speaker of the House of Representatives regarding the  
194 transfer of the Onsite Sewage Program from the Department of  
195 Health to the Department of Environmental Protection. The  
196 recommendations must address all aspects of the transfer,  
197 including the continued role of the county health departments in  
198 the permitting, inspection, data management, and tracking of  
199 onsite sewage treatment and disposal systems under the direction  
200 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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230 pursuant to s. 216.292(4)(d), Florida Statutes, and are subject  
231 to s. 216.177, Florida Statutes. Subsequent adjustments between  
232 the Department of Health and the Department of Environmental  
233 Protection which are determined necessary by the respective  
234 agencies and approved by the Executive Office of the Governor  
235 are authorized and subject to s. 216.177, Florida Statutes. The  
236 appropriate substantive committees of the Senate and the House  
237 of Representatives must also be notified of the proposed  
238 revisions to ensure their consistency with legislative policy  
239 and intent.

240 (4) Effective July 1, 2021, all powers, duties, functions,  
241 records, offices, personnel, associated administrative support  
242 positions, property, pending issues, existing contracts,  
243 administrative authority, administrative rules, and unexpended  
244 balances of appropriations, allocations, and other funds for the  
245 regulation of onsite sewage treatment and disposal systems  
246 relating to the Onsite Sewage Program in the Department of  
247 Health are transferred by a type two transfer, as defined in s.  
248 20.06(2), Florida Statutes, to the Department of Environmental  
249 Protection.

250 (5) Notwithstanding chapter 60L-34, Florida Administrative  
251 Code, or any law to the contrary, employees who are transferred  
252 from the Department of Health to the Department of Environmental  
253 Protection to fill positions transferred by this act retain and  
254 transfer any accrued annual leave, sick leave, and regular and  
255 special compensatory leave balances.

256 Section 3. Subsection (5) of section 373.4131, Florida  
257 Statutes, is amended, and subsection (6) is added to that  
258 section, to read:



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259 373.4131 Statewide environmental resource permitting  
260 rules.—

261 (5) To ensure consistent implementation and interpretation  
262 of the rules adopted pursuant to this section, the department  
263 shall conduct or oversee regular assessment and training of its  
264 staff and the staffs of the water management districts and local  
265 governments delegated local pollution control program authority  
266 under s. 373.441. The training must include coordinating field  
267 inspections of publicly and privately owned stormwater  
268 structural controls, such as stormwater retention or detention  
269 ponds.

270 (6) By January 1, 2021:

271 (a) The department and the water management districts shall  
272 initiate rulemaking to update the stormwater design and  
273 operation regulations using the most recent scientific  
274 information available; and

275 (b) The department shall evaluate inspection data relating  
276 to compliance by those entities that self-certify under s.  
277 403.814(12) and provide the Legislature with recommendations for  
278 improvements to the self-certification program.

279 Section 4. Effective July 1, 2021, present paragraphs (d)  
280 through (q) of subsection (2) of section 381.0065, Florida  
281 Statutes, are redesignated as paragraphs (e) through (r),  
282 respectively, a new paragraph (d) is added to that subsection,  
283 and subsections (3) and (4) of that section are amended, to  
284 read:

285 381.0065 Onsite sewage treatment and disposal systems;  
286 regulation.—

287 (2) DEFINITIONS.—As used in ss. 381.0065-381.0067, the





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288 term:

289 (d) "Department" means the Department of Environmental  
290 Protection.

291 (3) DUTIES AND POWERS OF THE DEPARTMENT ~~OF HEALTH.~~—The  
292 department shall:

293 (a) Adopt rules to administer ss. 381.0065-381.0067,  
294 including definitions that are consistent with the definitions  
295 in this section, ~~decreases to setback requirements where no~~  
296 ~~health hazard exists,~~ increases for the lot-flow allowance for  
297 performance-based systems, requirements for separation from  
298 water table elevation during the wettest season, requirements  
299 for the design and construction of any component part of an  
300 onsite sewage treatment and disposal system, application and  
301 permit requirements for persons who maintain an onsite sewage  
302 treatment and disposal system, requirements for maintenance and  
303 service agreements for aerobic treatment units and performance-  
304 based treatment systems, and recommended standards, including  
305 disclosure requirements, for voluntary system inspections to be  
306 performed by individuals who are authorized by law to perform  
307 such inspections and who shall inform a person having ownership,  
308 control, or use of an onsite sewage treatment and disposal  
309 system of the inspection standards and of that person's  
310 authority to request an inspection based on all or part of the  
311 standards.

312 (b) Perform application reviews and site evaluations, issue  
313 permits, and conduct inspections and complaint investigations  
314 associated with the construction, installation, maintenance,  
315 modification, abandonment, operation, use, or repair of an  
316 onsite sewage treatment and disposal system for a residence or



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317 establishment with an estimated domestic sewage flow of 10,000  
318 gallons or less per day, or an estimated commercial sewage flow  
319 of 5,000 gallons or less per day, which is not currently  
320 regulated under chapter 403.

321 (c) Develop a comprehensive program to ensure that onsite  
322 sewage treatment and disposal systems regulated by the  
323 department are sized, designed, constructed, installed, sited,  
324 repaired, modified, abandoned, used, operated, and maintained in  
325 compliance with this section and rules adopted under this  
326 section to prevent groundwater contamination, including impacts  
327 from nutrient pollution, and surface water contamination and to  
328 preserve the public health. The department is the final  
329 administrative interpretive authority regarding rule  
330 interpretation. In the event of a conflict regarding rule  
331 interpretation, the secretary of the department ~~State Surgeon~~  
332 ~~General,~~ or his or her designee, shall timely assign a staff  
333 person to resolve the dispute.

334 (d) Grant variances in hardship cases under the conditions  
335 prescribed in this section and rules adopted under this section.

336 (e) Permit the use of a limited number of innovative  
337 systems for a specific period of time, when there is compelling  
338 evidence that the system will function properly and reliably to  
339 meet the requirements of this section and rules adopted under  
340 this section.

341 (f) Issue annual operating permits under this section.

342 (g) Establish and collect fees as established under s.  
343 381.0066 for services provided with respect to onsite sewage  
344 treatment and disposal systems.

345 (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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375 and advisory panel or the research review and advisory  
376 committee.

377 (k) Approve the installation of individual graywater  
378 disposal systems in which blackwater is treated by a central  
379 sewerage system.

380 (l) Regulate and permit the sanitation, handling,  
381 treatment, storage, reuse, and disposal of byproducts from any  
382 system regulated under this chapter and not regulated by the  
383 Department of Environmental Protection.

384 (m) Permit and inspect portable or temporary toilet  
385 services and holding tanks. The department shall review  
386 applications, perform site evaluations, and issue permits for  
387 the temporary use of holding tanks, privies, portable toilet  
388 services, or any other toilet facility that is intended for use  
389 on a permanent or nonpermanent basis, including facilities  
390 placed on construction sites when workers are present. The  
391 department may specify standards for the construction,  
392 maintenance, use, and operation of any such facility for  
393 temporary use.

394 (n) Regulate and permit maintenance entities for  
395 performance-based treatment systems and aerobic treatment unit  
396 systems. To ensure systems are maintained and operated according  
397 to manufacturer's specifications and designs, the department  
398 shall establish by rule minimum qualifying criteria for  
399 maintenance entities. The criteria shall include: training,  
400 access to approved spare parts and components, access to  
401 manufacturer's maintenance and operation manuals, and service  
402 response time. The maintenance entity shall employ a contractor  
403 licensed under s. 489.105(3)(m), or part III of chapter 489, or



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404 a state-licensed wastewater plant operator, who is responsible  
405 for maintenance and repair of all systems under contract.

406 (4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not  
407 construct, repair, modify, abandon, or operate an onsite sewage  
408 treatment and disposal system without first obtaining a permit  
409 approved by the department. The department may issue permits to  
410 carry out this section., ~~but shall not make the issuance of such~~  
411 ~~permits contingent upon prior approval by the Department of~~  
412 ~~Environmental Protection, except that~~ The issuance of a permit  
413 for work seaward of the coastal construction control line  
414 established under s. 161.053 shall be contingent upon receipt of  
415 any required coastal construction control line permit from the  
416 department ~~of Environmental Protection~~. A construction permit is  
417 valid for 18 months from the issuance date and may be extended  
418 by the department for one 90-day period under rules adopted by  
419 the department. A repair permit is valid for 90 days from the  
420 date of issuance. An operating permit must be obtained before  
421 ~~prior to~~ the use of any aerobic treatment unit or if the  
422 establishment generates commercial waste. Buildings or  
423 establishments that use an aerobic treatment unit or generate  
424 commercial waste shall be inspected by the department at least  
425 annually to assure compliance with the terms of the operating  
426 permit. The operating permit for a commercial wastewater system  
427 is valid for 1 year from the date of issuance and must be  
428 renewed annually. The operating permit for an aerobic treatment  
429 unit is valid for 2 years from the date of issuance and must be  
430 renewed every 2 years. If all information pertaining to the  
431 siting, location, and installation conditions or repair of an  
432 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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462 (a) Subdivisions and lots in which each lot has a minimum  
463 area of at least one-half acre and either a minimum dimension of  
464 100 feet or a mean of at least 100 feet of the side bordering  
465 the street and the distance formed by a line parallel to the  
466 side bordering the street drawn between the two most distant  
467 points of the remainder of the lot may be developed with a water  
468 system regulated under s. 381.0062 and onsite sewage treatment  
469 and disposal systems, provided the projected daily sewage flow  
470 does not exceed an average of 1,500 gallons per acre per day,  
471 and provided satisfactory drinking water can be obtained and all  
472 distance and setback, soil condition, water table elevation, and  
473 other related requirements of this section and rules adopted  
474 under this section can be met.

475 (b) Subdivisions and lots using a public water system as  
476 defined in s. 403.852 may use onsite sewage treatment and  
477 disposal systems, provided there are no more than four lots per  
478 acre, provided the projected daily sewage flow does not exceed  
479 an average of 2,500 gallons per acre per day, and provided that  
480 all distance and setback, soil condition, water table elevation,  
481 and other related requirements that are generally applicable to  
482 the use of onsite sewage treatment and disposal systems are met.

483 (c) Notwithstanding paragraphs (a) and (b), for  
484 subdivisions platted of record on or before October 1, 1991,  
485 when a developer or other appropriate entity has previously made  
486 or makes provisions, including financial assurances or other  
487 commitments, acceptable to the Department ~~of Health~~, that a  
488 central water system will be installed by a regulated public  
489 utility based on a density formula, private potable wells may be  
490 used with onsite sewage treatment and disposal systems until the



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491 agreed-upon densities are reached. In a subdivision regulated by  
492 this paragraph, the average daily sewage flow may not exceed  
493 2,500 gallons per acre per day. This section does not affect the  
494 validity of existing prior agreements. After October 1, 1991,  
495 the exception provided under this paragraph is not available to  
496 a developer or other appropriate entity.

497 (d) Paragraphs (a) and (b) do not apply to any proposed  
498 residential subdivision with more than 50 lots or to any  
499 proposed commercial subdivision with more than 5 lots where a  
500 publicly owned or investor-owned sewerage system is available.  
501 It is the intent of this paragraph not to allow development of  
502 additional proposed subdivisions in order to evade the  
503 requirements of this paragraph.

504 (e) The department shall adopt rules to locate onsite  
505 sewage treatment and disposal systems, including establishing  
506 setback distances, to prevent groundwater contamination and  
507 surface water contamination and to preserve the public health.  
508 The rulemaking process for such rules must be completed by July  
509 1, 2022, and the department shall notify the Division of Law  
510 Revision of the date such rules are adopted. The rules must  
511 consider conventional and enhanced nutrient-reducing onsite  
512 sewage treatment and disposal system designs, impaired or  
513 degraded water bodies, domestic wastewater and drinking water  
514 infrastructure, potable water sources, nonpotable wells,  
515 stormwater infrastructure, the onsite sewage treatment and  
516 disposal system remediation plans developed pursuant to s.  
517 403.067(7)(a)9.b., nutrient pollution, and the recommendations  
518 of the onsite sewage treatment and disposal systems technical  
519 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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578 treatment and disposal systems for lots platted before 1972 may  
579 not exceed:

580 a. Two thousand five hundred gallons per acre per day for  
581 lots served by public water systems as defined in s. 403.852.

582 b. One thousand five hundred gallons per acre per day for  
583 lots served by water systems regulated under s. 381.0062.

584 (h)1. The department may grant variances in hardship cases  
585 which may be less restrictive than ~~the provisions~~ specified in  
586 this section. If a variance is granted and the onsite sewage  
587 treatment and disposal system construction permit has been  
588 issued, the variance may be transferred with the system  
589 construction permit, if the transferee files, within 60 days  
590 after the transfer of ownership, an amended construction permit  
591 application providing all corrected information and proof of  
592 ownership of the property and if the same variance would have  
593 been required for the new owner of the property as was  
594 originally granted to the original applicant for the variance.  
595 There is no fee associated with the processing of this  
596 supplemental information. A variance may not be granted under  
597 this section until the department is satisfied that:

598 a. The hardship was not caused intentionally by the action  
599 of the applicant;

600 b. No reasonable alternative, taking into consideration  
601 factors such as cost, exists for the treatment of the sewage;  
602 and

603 c. The discharge from the onsite sewage treatment and  
604 disposal system will not adversely affect the health of the  
605 applicant or the public or significantly degrade the groundwater  
606 or surface waters.



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607  
608 Where soil conditions, water table elevation, and setback  
609 provisions are determined by the department to be satisfactory,  
610 special consideration must be given to those lots platted before  
611 1972.

612         2. The department shall appoint and staff a variance review  
613 and advisory committee, which shall meet monthly to recommend  
614 agency action on variance requests. The committee shall make its  
615 recommendations on variance requests at the meeting in which the  
616 application is scheduled for consideration, except for an  
617 extraordinary change in circumstances, the receipt of new  
618 information that raises new issues, or when the applicant  
619 requests an extension. The committee shall consider the criteria  
620 in subparagraph 1. in its recommended agency action on variance  
621 requests and shall also strive to allow property owners the full  
622 use of their land where possible. The committee consists of the  
623 following:

624         a. The Secretary of Environmental Protection ~~State Surgeon~~  
625 ~~General~~ or his or her designee.

626         b. A representative from the county health departments.

627         c. A representative from the home building industry  
628 recommended by the Florida Home Builders Association.

629         d. A representative from the septic tank industry  
630 recommended by the Florida Onsite Wastewater Association.

631         e. A representative from the Department of Health  
632 ~~Environmental Protection~~.

633         f. A representative from the real estate industry who is  
634 also a developer in this state who develops lots using onsite  
635 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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665 wastewater or toxic or hazardous chemicals.

666         2. Each person who owns or operates a business or facility  
667 in an area zoned or used for industrial or manufacturing  
668 purposes, or its equivalent, or who owns or operates a business  
669 that has the potential to generate toxic, hazardous, or  
670 industrial wastewater or toxic or hazardous chemicals, and uses  
671 an onsite sewage treatment and disposal system that is installed  
672 on or after July 5, 1989, must obtain an annual system operating  
673 permit from the department. A person who owns or operates a  
674 business that uses an onsite sewage treatment and disposal  
675 system that was installed and approved before July 5, 1989, need  
676 not obtain a system operating permit. However, upon change of  
677 ownership or tenancy, the new owner or operator must notify the  
678 department of the change, and the new owner or operator must  
679 obtain an annual system operating permit, regardless of the date  
680 that the system was installed or approved.

681         3. The department shall periodically review and evaluate  
682 the continued use of onsite sewage treatment and disposal  
683 systems in areas zoned or used for industrial or manufacturing  
684 purposes, or its equivalent, and may require the collection and  
685 analyses of samples from within and around such systems. If the  
686 department finds that toxic or hazardous chemicals or toxic,  
687 hazardous, or industrial wastewater have been or are being  
688 disposed of through an onsite sewage treatment and disposal  
689 system, the department shall initiate enforcement actions  
690 against the owner or tenant to ensure adequate cleanup,  
691 treatment, and disposal.

692         (j) An onsite sewage treatment and disposal system designed  
693 by a professional engineer registered in the state and certified



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694 by such engineer as complying with performance criteria adopted  
695 by the department must be approved by the department subject to  
696 the following:

697 1. The performance criteria applicable to engineer-designed  
698 systems must be limited to those necessary to ensure that such  
699 systems do not adversely affect the public health or  
700 significantly degrade the groundwater or surface water. Such  
701 performance criteria shall include consideration of the quality  
702 of system effluent, the proposed total sewage flow per acre,  
703 wastewater treatment capabilities of the natural or replaced  
704 soil, water quality classification of the potential surface-  
705 water-receiving body, and the structural and maintenance  
706 viability of the system for the treatment of domestic  
707 wastewater. However, performance criteria shall address only the  
708 performance of a system and not a system's design.

709 2. A person electing to utilize an engineer-designed system  
710 shall, upon completion of the system design, submit such design,  
711 certified by a registered professional engineer, to the county  
712 health department. The county health department may utilize an  
713 outside consultant to review the engineer-designed system, with  
714 the actual cost of such review to be borne by the applicant.  
715 Within 5 working days after receiving an engineer-designed  
716 system permit application, the county health department shall  
717 request additional information if the application is not  
718 complete. Within 15 working days after receiving a complete  
719 application for an engineer-designed system, the county health  
720 department either shall issue the permit or, if it determines  
721 that the system does not comply with the performance criteria,  
722 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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752 such periodic basis as the fee collected permits, and may  
753 collect system-effluent samples if appropriate to determine  
754 compliance with the performance criteria. The fee for the  
755 biennial operating permit shall be collected beginning with the  
756 second year of system operation.

757 6. If an engineer-designed system fails to properly  
758 function or fails to meet performance standards, the system  
759 shall be re-engineered, if necessary, to bring the system into  
760 compliance with ~~the provisions of~~ this section.

761 (k) An innovative system may be approved in conjunction  
762 with an engineer-designed site-specific system which is  
763 certified by the engineer to meet the performance-based criteria  
764 adopted by the department.

765 (l) For the Florida Keys, the department shall adopt a  
766 special rule for the construction, installation, modification,  
767 operation, repair, maintenance, and performance of onsite sewage  
768 treatment and disposal systems which considers the unique soil  
769 conditions and water table elevations, densities, and setback  
770 requirements. On lots where a setback distance of 75 feet from  
771 surface waters, saltmarsh, and buttonwood association habitat  
772 areas cannot be met, an injection well, approved and permitted  
773 by the department, may be used for disposal of effluent from  
774 onsite sewage treatment and disposal systems. The following  
775 additional requirements apply to onsite sewage treatment and  
776 disposal systems in Monroe County:

777 1. The county, each municipality, and those special  
778 districts established for the purpose of the collection,  
779 transmission, treatment, or disposal of sewage shall ensure, in  
780 accordance with the specific schedules adopted by the



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781 Administration Commission under s. 380.0552, the completion of  
782 onsite sewage treatment and disposal system upgrades to meet the  
783 requirements of this paragraph.

784 2. Onsite sewage treatment and disposal systems must cease  
785 discharge by December 31, 2015, or must comply with department  
786 rules and provide the level of treatment which, on a permitted  
787 annual average basis, produces an effluent that contains no more  
788 than the following concentrations:

789 a. Biochemical Oxygen Demand (CBOD5) of 10 mg/l.

790 b. Suspended Solids of 10 mg/l.

791 c. Total Nitrogen, expressed as N, of 10 mg/l or a  
792 reduction in nitrogen of at least 70 percent. A system that has  
793 been tested and certified to reduce nitrogen concentrations by  
794 at least 70 percent shall be deemed to be in compliance with  
795 this standard.

796 d. Total Phosphorus, expressed as P, of 1 mg/l.

797

798 In addition, onsite sewage treatment and disposal systems  
799 discharging to an injection well must provide basic disinfection  
800 as defined by department rule.

801 3. In areas not scheduled to be served by a central sewer,  
802 onsite sewage treatment and disposal systems must, by December  
803 31, 2015, comply with department rules and provide the level of  
804 treatment described in subparagraph 2.

805 4. In areas scheduled to be served by central sewer by  
806 December 31, 2015, if the property owner has paid a connection  
807 fee or assessment for connection to the central sewer system,  
808 the property owner may install a holding tank with a high water  
809 alarm or an onsite sewage treatment and disposal system that



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810 meets the following minimum standards:

811 a. The existing tanks must be pumped and inspected and  
812 certified as being watertight and free of defects in accordance  
813 with department rule; and

814 b. A sand-lined drainfield or injection well in accordance  
815 with department rule must be installed.

816 5. Onsite sewage treatment and disposal systems must be  
817 monitored for total nitrogen and total phosphorus concentrations  
818 as required by department rule.

819 6. The department shall enforce proper installation,  
820 operation, and maintenance of onsite sewage treatment and  
821 disposal systems pursuant to this chapter, including ensuring  
822 that the appropriate level of treatment described in  
823 subparagraph 2. is met.

824 7. The authority of a local government, including a special  
825 district, to mandate connection of an onsite sewage treatment  
826 and disposal system is governed by s. 4, chapter 99-395, Laws of  
827 Florida.

828 8. Notwithstanding any other ~~provision of~~ law, an onsite  
829 sewage treatment and disposal system installed after July 1,  
830 2010, in unincorporated Monroe County, excluding special  
831 wastewater districts, that complies with the standards in  
832 subparagraph 2. is not required to connect to a central sewer  
833 system until December 31, 2020.

834 (m) No product sold in the state for use in onsite sewage  
835 treatment and disposal systems may contain any substance in  
836 concentrations or amounts that would interfere with or prevent  
837 the successful operation of such system, or that would cause  
838 discharges from such systems to violate applicable water quality



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839 standards. The department shall publish criteria for products  
840 known or expected to meet the conditions of this paragraph. In  
841 the event a product does not meet such criteria, such product  
842 may be sold if the manufacturer satisfactorily demonstrates to  
843 the department that the conditions of this paragraph are met.

844 (n) Evaluations for determining the seasonal high-water  
845 table elevations or the suitability of soils for the use of a  
846 new onsite sewage treatment and disposal system shall be  
847 performed by department personnel, professional engineers  
848 registered in the state, or such other persons with expertise,  
849 as defined by rule, in making such evaluations. Evaluations for  
850 determining mean annual flood lines shall be performed by those  
851 persons identified in paragraph (2) (k) ~~(2) (j)~~. The department  
852 shall accept evaluations submitted by professional engineers and  
853 such other persons as meet the expertise established by this  
854 section or by rule unless the department has a reasonable  
855 scientific basis for questioning the accuracy or completeness of  
856 the evaluation.

857 (o) The department shall appoint a research review and  
858 advisory committee, which shall meet at least semiannually. The  
859 committee shall advise the department on directions for new  
860 research, review and rank proposals for research contracts, and  
861 review draft research reports and make comments. The committee  
862 is comprised of:

- 863 1. A representative of the Secretary of Environmental  
864 Protection ~~State Surgeon General~~, or his or her designee.
- 865 2. A representative from the septic tank industry.
- 866 3. A representative from the home building industry.
- 867 4. A representative from an environmental interest group.



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868           5. A representative from the State University System, from  
869 a department knowledgeable about onsite sewage treatment and  
870 disposal systems.

871           6. A professional engineer registered in this state who has  
872 work experience in onsite sewage treatment and disposal systems.

873           7. A representative from local government who is  
874 knowledgeable about domestic wastewater treatment.

875           8. A representative from the real estate profession.

876           9. A representative from the restaurant industry.

877           10. A consumer.

878

879 Members shall be appointed for a term of 3 years, with the  
880 appointments being staggered so that the terms of no more than  
881 four members expire in any one year. Members shall serve without  
882 remuneration, but are entitled to reimbursement for per diem and  
883 travel expenses as provided in s. 112.061.

884           (p) An application for an onsite sewage treatment and  
885 disposal system permit shall be completed in full, signed by the  
886 owner or the owner's authorized representative, or by a  
887 contractor licensed under chapter 489, and shall be accompanied  
888 by all required exhibits and fees. No specific documentation of  
889 property ownership shall be required as a prerequisite to the  
890 review of an application or the issuance of a permit. The  
891 issuance of a permit does not constitute determination by the  
892 department of property ownership.

893           (q) The department may not require any form of subdivision  
894 analysis of property by an owner, developer, or subdivider prior  
895 to submission of an application for an onsite sewage treatment  
896 and disposal system.



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897 (r) Nothing in this section limits the power of a  
898 municipality or county to enforce other laws for the protection  
899 of the public health and safety.

900 (s) In the siting of onsite sewage treatment and disposal  
901 systems, including drainfields, shoulders, and slopes, guttering  
902 ~~may shall~~ not be required on single-family residential dwelling  
903 units for systems located greater than 5 feet from the roof drip  
904 line of the house. If guttering is used on residential dwelling  
905 units, the downspouts shall be directed away from the  
906 drainfield.

907 (t) Notwithstanding ~~the provisions of~~ subparagraph (g)1.,  
908 onsite sewage treatment and disposal systems located in  
909 floodways of the Suwannee and Aucilla Rivers must adhere to the  
910 following requirements:

911 1. The absorption surface of the drainfield ~~may shall~~ not  
912 be subject to flooding based on 10-year flood elevations.  
913 Provided, however, for lots or parcels created by the  
914 subdivision of land in accordance with applicable local  
915 government regulations prior to January 17, 1990, if an  
916 applicant cannot construct a drainfield system with the  
917 absorption surface of the drainfield at an elevation equal to or  
918 above 10-year flood elevation, the department shall issue a  
919 permit for an onsite sewage treatment and disposal system within  
920 the 10-year floodplain of rivers, streams, and other bodies of  
921 flowing water if all of the following criteria are met:

- 922 a. The lot is at least one-half acre in size;  
923 b. The bottom of the drainfield is at least 36 inches above  
924 the 2-year flood elevation; and  
925 c. The applicant installs either: a waterless,



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926 incinerating, or organic waste composting toilet and a graywater  
927 system and drainfield in accordance with department rules; an  
928 aerobic treatment unit and drainfield in accordance with  
929 department rules; a system ~~approved by the State Health Office~~  
930 that is capable of reducing effluent nitrate by at least 50  
931 percent in accordance with department rules; or a system other  
932 than a system using alternative drainfield materials in  
933 accordance with department rules ~~approved by the county health~~  
934 ~~department pursuant to department rule other than a system using~~  
935 ~~alternative drainfield materials~~. The United States Department  
936 of Agriculture Soil Conservation Service soil maps, State of  
937 Florida Water Management District data, and Federal Emergency  
938 Management Agency Flood Insurance maps are resources that shall  
939 be used to identify flood-prone areas.

940 2. The use of fill or mounding to elevate a drainfield  
941 system out of the 10-year floodplain of rivers, streams, or  
942 other bodies of flowing water may ~~shall~~ not be permitted if such  
943 a system lies within a regulatory floodway of the Suwannee and  
944 Aucilla Rivers. In cases where the 10-year flood elevation does  
945 not coincide with the boundaries of the regulatory floodway, the  
946 regulatory floodway will be considered for the purposes of this  
947 subsection to extend at a minimum to the 10-year flood  
948 elevation.

949 (u)1. The owner of an aerobic treatment unit system shall  
950 maintain a current maintenance service agreement with an aerobic  
951 treatment unit maintenance entity permitted by the department.  
952 The maintenance entity shall inspect each aerobic treatment unit  
953 system at least twice each year and shall report quarterly to  
954 the department on the number of aerobic treatment unit systems



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955 inspected and serviced. The reports may be submitted  
956 electronically.

957         2. The property owner of an owner-occupied, single-family  
958 residence may be approved and permitted by the department as a  
959 maintenance entity for his or her own aerobic treatment unit  
960 system upon written certification from the system manufacturer's  
961 approved representative that the property owner has received  
962 training on the proper installation and service of the system.  
963 The maintenance entity service agreement must conspicuously  
964 disclose that the property owner has the right to maintain his  
965 or her own system and is exempt from contractor registration  
966 requirements for performing construction, maintenance, or  
967 repairs on the system but is subject to all permitting  
968 requirements.

969         3. A septic tank contractor licensed under part III of  
970 chapter 489, if approved by the manufacturer, may not be denied  
971 access by the manufacturer to aerobic treatment unit system  
972 training or spare parts for maintenance entities. After the  
973 original warranty period, component parts for an aerobic  
974 treatment unit system may be replaced with parts that meet  
975 manufacturer's specifications but are manufactured by others.  
976 The maintenance entity shall maintain documentation of the  
977 substitute part's equivalency for 2 years and shall provide such  
978 documentation to the department upon request.

979         4. The owner of an aerobic treatment unit system shall  
980 obtain a system operating permit from the department and allow  
981 the department to inspect during reasonable hours each aerobic  
982 treatment unit system at least annually, and such inspection may  
983 include collection and analysis of system-effluent samples for





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984 performance criteria established by rule of the department.

985 (v) The department may require the submission of detailed  
986 system construction plans that are prepared by a professional  
987 engineer registered in this state. The department shall  
988 establish by rule criteria for determining when such a  
989 submission is required.

990 (w) Any permit issued and approved by the department for  
991 the installation, modification, or repair of an onsite sewage  
992 treatment and disposal system shall transfer with the title to  
993 the property in a real estate transaction. A title may not be  
994 encumbered at the time of transfer by new permit requirements by  
995 a governmental entity for an onsite sewage treatment and  
996 disposal system which differ from the permitting requirements in  
997 effect at the time the system was permitted, modified, or  
998 repaired. An inspection of a system may not be mandated by a  
999 governmental entity at the point of sale in a real estate  
1000 transaction. This paragraph does not affect a septic tank phase-  
1001 out deferral program implemented by a consolidated government as  
1002 defined in s. 9, Art. VIII of the State Constitution (1885).

1003 (x) A governmental entity, including a municipality,  
1004 county, or statutorily created commission, may not require an  
1005 engineer-designed performance-based treatment system, excluding  
1006 a passive engineer-designed performance-based treatment system,  
1007 before the completion of the Florida Onsite Sewage Nitrogen  
1008 Reduction Strategies Project. This paragraph does not apply to a  
1009 governmental entity, including a municipality, county, or  
1010 statutorily created commission, which adopted a local law,  
1011 ordinance, or regulation on or before January 31, 2012.  
1012 Notwithstanding this paragraph, an engineer-designed



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1013 performance-based treatment system may be used to meet the  
1014 requirements of the variance review and advisory committee  
1015 recommendations.

1016 (y)1. An onsite sewage treatment and disposal system is not  
1017 considered abandoned if the system is disconnected from a  
1018 structure that was made unusable or destroyed following a  
1019 disaster and if the system was properly functioning at the time  
1020 of disconnection and was not adversely affected by the disaster.  
1021 The onsite sewage treatment and disposal system may be  
1022 reconnected to a rebuilt structure if:

1023 a. The reconnection of the system is to the same type of  
1024 structure which contains the same number of bedrooms or fewer,  
1025 if the square footage of the structure is less than or equal to  
1026 110 percent of the original square footage of the structure that  
1027 existed before the disaster;

1028 b. The system is not a sanitary nuisance; and

1029 c. The system has not been altered without prior  
1030 authorization.

1031 2. An onsite sewage treatment and disposal system that  
1032 serves a property that is foreclosed upon is not considered  
1033 abandoned.

1034 (z) If an onsite sewage treatment and disposal system  
1035 permittee receives, relies upon, and undertakes construction of  
1036 a system based upon a validly issued construction permit under  
1037 rules applicable at the time of construction but a change to a  
1038 rule occurs within 5 years after the approval of the system for  
1039 construction but before the final approval of the system, the  
1040 rules applicable and in effect at the time of construction  
1041 approval apply at the time of final approval if fundamental site



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1042 conditions have not changed between the time of construction  
1043 approval and final approval.

1044 (aa) An existing-system inspection or evaluation and  
1045 assessment, or a modification, replacement, or upgrade of an  
1046 onsite sewage treatment and disposal system is not required for  
1047 a remodeling addition or modification to a single-family home if  
1048 a bedroom is not added. However, a remodeling addition or  
1049 modification to a single-family home may not cover any part of  
1050 the existing system or encroach upon a required setback or the  
1051 unobstructed area. To determine if a setback or the unobstructed  
1052 area is impacted, the local health department shall review and  
1053 verify a floor plan and site plan of the proposed remodeling  
1054 addition or modification to the home submitted by a remodeler  
1055 which shows the location of the system, including the distance  
1056 of the remodeling addition or modification to the home from the  
1057 onsite sewage treatment and disposal system. The local health  
1058 department may visit the site or otherwise determine the best  
1059 means of verifying the information submitted. A verification of  
1060 the location of a system is not an inspection or evaluation and  
1061 assessment of the system. The review and verification must be  
1062 completed within 7 business days after receipt by the local  
1063 health department of a floor plan and site plan. If the review  
1064 and verification is not completed within such time, the  
1065 remodeling addition or modification to the single-family home,  
1066 for the purposes of this paragraph, is approved.

1067 Section 5. Section 381.00652, Florida Statutes, is created  
1068 to read:

1069 381.00652 Onsite sewage treatment and disposal systems  
1070 technical advisory committee.-



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1071 (1) An onsite sewage treatment and disposal systems  
1072 technical advisory committee, a committee as defined in s.  
1073 20.03(8), is created within the department. The committee shall:

1074 (a) Provide recommendations to increase the availability in  
1075 the marketplace of enhanced nutrient-reducing onsite sewage  
1076 treatment and disposal systems, including systems that are cost-  
1077 effective, low-maintenance, and reliable.

1078 (b) Consider and recommend regulatory options, such as  
1079 fast-track approval, prequalification, or expedited permitting,  
1080 to facilitate the introduction and use of enhanced nutrient-  
1081 reducing onsite sewage treatment and disposal systems that have  
1082 been reviewed and approved by a national agency or organization,  
1083 such as the American National Standards Institute 245 systems  
1084 approved by the NSF International.

1085 (c) Provide recommendations for appropriate setback  
1086 distances for onsite sewage treatment and disposal systems from  
1087 surface water, groundwater, and wells.

1088 (2) The department shall use existing and available  
1089 resources to administer and support the activities of the  
1090 committee.

1091 (3)(a) By August 1, 2021, the department, in consultation  
1092 with the Department of Health, shall appoint no more than nine  
1093 members to the committee, including, but not limited to, the  
1094 following:

- 1095 1. A professional engineer.
- 1096 2. A septic tank contractor.
- 1097 3. A representative from the home building industry.
- 1098 4. A representative from the real estate industry.
- 1099 5. A representative from the onsite sewage treatment and



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1100 disposal system industry.

1101 6. A representative from local government.

1102 7. Two representatives from the environmental community.

1103 8. A representative of the scientific and technical  
1104 community who has substantial expertise in the areas of the fate  
1105 and transport of water pollutants, toxicology, epidemiology,  
1106 geology, biology, or environmental sciences.

1107 (b) Members shall serve without compensation and are not  
1108 entitled to reimbursement for per diem or travel expenses.

1109 (4) By January 1, 2022, the committee shall submit its  
1110 recommendations to the Governor, the President of the Senate,  
1111 and the Speaker of the House of Representatives.

1112 (5) This section expires August 15, 2022.

1113 (6) For purposes of this section, the term "department"  
1114 means the Department of Environmental Protection.

1115 Section 6. Effective July 1, 2021, section 381.0068,  
1116 Florida Statutes, is repealed.

1117 Section 7. Present subsections (14) through (44) of section  
1118 403.061, Florida Statutes, are redesignated as subsections (15)  
1119 through (45), respectively, a new subsection (14) is added to  
1120 that section, and subsection (7) of that section is amended, to  
1121 read:

1122 403.061 Department; powers and duties.—The department shall  
1123 have the power and the duty to control and prohibit pollution of  
1124 air and water in accordance with the law and rules adopted and  
1125 promulgated by it and, for this purpose, to:

1126 (7) Adopt rules pursuant to ss. 120.536(1) and 120.54 to  
1127 implement ~~the provisions of~~ this act. Any rule adopted pursuant  
1128 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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1158       (14) In order to promote resilient utilities, require  
1159 public utilities or their affiliated companies holding, applying  
1160 for, or renewing a domestic wastewater discharge permit to file  
1161 annual reports and other data regarding transactions or  
1162 allocations of common costs and expenditures on pollution  
1163 mitigation and prevention among the utility's permitted systems,  
1164 including, but not limited to, the prevention of sanitary sewer  
1165 overflows, collection and transmission system pipe leakages, and  
1166 inflow and infiltration. The department shall adopt rules to  
1167 implement this subsection.

1168  
1169 The department shall implement such programs in conjunction with  
1170 its other powers and duties and shall place special emphasis on  
1171 reducing and eliminating contamination that presents a threat to  
1172 humans, animals or plants, or to the environment.

1173       Section 8. Section 403.0616, Florida Statutes, is created  
1174 to read:

1175       403.0616 Real-time water quality monitoring program.-

1176       (1) Subject to appropriation, the department shall  
1177 establish a real-time water quality monitoring program to assist  
1178 in the restoration, preservation, and enhancement of impaired  
1179 waterbodies and coastal resources.

1180       (2) In order to expedite the creation and implementation of  
1181 the program, the department is encouraged to form public-private  
1182 partnerships with established scientific entities that have  
1183 proven existing real-time water quality monitoring equipment and  
1184 experience in deploying the equipment.

1185       Section 9. Subsection (7) of section 403.067, Florida  
1186 Statutes, is amended to read:



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1187 403.067 Establishment and implementation of total maximum  
1188 daily loads.—

1189 (7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND  
1190 IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

1191 (a) *Basin management action plans.*—

1192 1. In developing and implementing the total maximum daily  
1193 load for a water body, the department, or the department in  
1194 conjunction with a water management district, may develop a  
1195 basin management action plan that addresses some or all of the  
1196 watersheds and basins tributary to the water body. Such plan  
1197 must integrate the appropriate management strategies available  
1198 to the state through existing water quality protection programs  
1199 to achieve the total maximum daily loads and may provide for  
1200 phased implementation of these management strategies to promote  
1201 timely, cost-effective actions as provided for in s. 403.151.  
1202 The plan must establish a schedule implementing the management  
1203 strategies, establish a basis for evaluating the plan's  
1204 effectiveness, and identify feasible funding strategies for  
1205 implementing the plan's management strategies. The management  
1206 strategies may include regional treatment systems or other  
1207 public works, where appropriate, and voluntary trading of water  
1208 quality credits to achieve the needed pollutant load reductions.

1209 2. A basin management action plan must equitably allocate,  
1210 pursuant to paragraph (6) (b), pollutant reductions to individual  
1211 basins, as a whole to all basins, or to each identified point  
1212 source or category of nonpoint sources, as appropriate. For  
1213 nonpoint sources for which best management practices have been  
1214 adopted, the initial requirement specified by the plan must be  
1215 those practices developed pursuant to paragraph (c). When ~~Where~~





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1216 appropriate, the plan may take into account the benefits of  
1217 pollutant load reduction achieved by point or nonpoint sources  
1218 that have implemented management strategies to reduce pollutant  
1219 loads, including best management practices, before the  
1220 development of the basin management action plan. The plan must  
1221 also identify the mechanisms that will address potential future  
1222 increases in pollutant loading.

1223 3. The basin management action planning process is intended  
1224 to involve the broadest possible range of interested parties,  
1225 with the objective of encouraging the greatest amount of  
1226 cooperation and consensus possible. In developing a basin  
1227 management action plan, the department shall assure that key  
1228 stakeholders, including, but not limited to, applicable local  
1229 governments, water management districts, the Department of  
1230 Agriculture and Consumer Services, other appropriate state  
1231 agencies, local soil and water conservation districts,  
1232 environmental groups, regulated interests, and affected  
1233 pollution sources, are invited to participate in the process.  
1234 The department shall hold at least one public meeting in the  
1235 vicinity of the watershed or basin to discuss and receive  
1236 comments during the planning process and shall otherwise  
1237 encourage public participation to the greatest practicable  
1238 extent. Notice of the public meeting must be published in a  
1239 newspaper of general circulation in each county in which the  
1240 watershed or basin lies at least not less than 5 days, but not  
1241 ~~not~~ more than 15 days, before the public meeting. A basin  
1242 management action plan does not supplant or otherwise alter any  
1243 assessment made under subsection (3) or subsection (4) or any  
1244 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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1274 the department in cooperation with basin stakeholders. Revisions  
1275 to the management strategies required for nonpoint sources must  
1276 follow the procedures set forth in subparagraph (c)4. Revised  
1277 basin management action plans must be adopted pursuant to  
1278 subparagraph 5.

1279 7. In accordance with procedures adopted by rule under  
1280 paragraph (9)(c), basin management action plans, and other  
1281 pollution control programs under local, state, or federal  
1282 authority as provided in subsection (4), may allow point or  
1283 nonpoint sources that will achieve greater pollutant reductions  
1284 than required by an adopted total maximum daily load or  
1285 wasteload allocation to generate, register, and trade water  
1286 quality credits for the excess reductions to enable other  
1287 sources to achieve their allocation; however, the generation of  
1288 water quality credits does not remove the obligation of a source  
1289 or activity to meet applicable technology requirements or  
1290 adopted best management practices. Such plans must allow trading  
1291 between NPDES permittees, and trading that may or may not  
1292 involve NPDES permittees, where the generation or use of the  
1293 credits involve an entity or activity not subject to department  
1294 water discharge permits whose owner voluntarily elects to obtain  
1295 department authorization for the generation and sale of credits.

1296 8. ~~The provisions of~~ The department's rule relating to the  
1297 equitable abatement of pollutants into surface waters do not  
1298 apply to water bodies or water body segments for which a basin  
1299 management plan that takes into account future new or expanded  
1300 activities or discharges has been adopted under this section.

1301 9. In order to promote resilient utilities, if the  
1302 department identifies domestic wastewater facilities or onsite



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1303 sewage treatment and disposal systems as contributors of at  
1304 least 20 percent of point source or nonpoint source nutrient  
1305 pollution or if the department determines remediation is  
1306 necessary to achieve the total maximum daily load, a basin  
1307 management action plan for a nutrient total maximum daily load  
1308 must include the following:

1309 a. A wastewater treatment plan that addresses domestic  
1310 wastewater developed by each local government in cooperation  
1311 with the department, the water management district, and the  
1312 public and private domestic wastewater facilities within the  
1313 jurisdiction of the local government. The wastewater treatment  
1314 plan must:

1315 (I) Provide for construction, expansion, or upgrades  
1316 necessary to achieve the total maximum daily load requirements  
1317 applicable to the domestic wastewater facility.

1318 (II) Include the permitted capacity in average annual  
1319 gallons per day for the domestic wastewater facility; the  
1320 average nutrient concentration and the estimated average  
1321 nutrient load of the domestic wastewater; a timeline of the  
1322 dates by which the construction of any facility improvements  
1323 will begin and be completed and the date by which operations of  
1324 the improved facility will begin; the estimated cost of the  
1325 improvements; and the identity of responsible parties.

1326  
1327 The wastewater treatment plan must be adopted as part of the  
1328 basin management action plan no later than July 1, 2025. A local  
1329 government that does not have a domestic wastewater treatment  
1330 facility in its jurisdiction is not required to develop a  
1331 wastewater treatment plan unless there is a demonstrated need to



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1332 establish a domestic wastewater treatment facility within its  
1333 jurisdiction to improve water quality necessary to achieve a  
1334 total maximum daily load. A local government is not responsible  
1335 for a private domestic wastewater facility's compliance with a  
1336 basin management action plan.

1337 b. An onsite sewage treatment and disposal system  
1338 remediation plan developed by each local government in  
1339 cooperation with the department, the Department of Health, water  
1340 management districts, and public and private domestic wastewater  
1341 facilities.

1342 (I) The onsite sewage treatment and disposal system  
1343 remediation plan must identify cost-effective and financially  
1344 feasible projects necessary to achieve the nutrient load  
1345 reductions required for onsite sewage treatment and disposal  
1346 systems. To identify cost-effective and financially feasible  
1347 projects for remediation of onsite sewage treatment and disposal  
1348 systems, the local government shall:

1349 (A) Include an inventory of onsite sewage treatment and  
1350 disposal systems based on the best information available;

1351 (B) Identify onsite sewage treatment and disposal systems  
1352 that would be eliminated through connection to existing or  
1353 future central domestic wastewater infrastructure in the  
1354 jurisdiction or domestic wastewater service area of the local  
1355 government, that would be replaced with or upgraded to enhanced  
1356 nutrient-reducing systems, or that would remain on conventional  
1357 onsite sewage treatment and disposal systems;

1358 (C) Estimate the costs of potential onsite sewage treatment  
1359 and disposal systems connections, upgrades, or replacements; and

1360 (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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- 1390           d. Trading of water quality credits or other equitable  
1391 economically based agreements;
- 1392           e. Public works including capital facilities; or  
1393           f. Land acquisition.
- 1394           2. For a basin management action plan adopted pursuant to  
1395 paragraph (a), any management strategies and pollutant reduction  
1396 requirements associated with a pollutant of concern for which a  
1397 total maximum daily load has been developed, including effluent  
1398 limits set forth for a discharger subject to NPDES permitting,  
1399 if any, must be included in a timely manner in subsequent NPDES  
1400 permits or permit modifications for that discharger. The  
1401 department may not impose limits or conditions implementing an  
1402 adopted total maximum daily load in an NPDES permit until the  
1403 permit expires, the discharge is modified, or the permit is  
1404 reopened pursuant to an adopted basin management action plan.
- 1405           a. Absent a detailed allocation, total maximum daily loads  
1406 must be implemented through NPDES permit conditions that provide  
1407 for a compliance schedule. In such instances, a facility's NPDES  
1408 permit must allow time for the issuance of an order adopting the  
1409 basin management action plan. The time allowed for the issuance  
1410 of an order adopting the plan may not exceed 5 years. Upon  
1411 issuance of an order adopting the plan, the permit must be  
1412 reopened or renewed, as necessary, and permit conditions  
1413 consistent with the plan must be established. Notwithstanding  
1414 the other provisions of this subparagraph, upon request by an  
1415 NPDES permittee, the department as part of a permit issuance,  
1416 renewal, or modification may establish individual allocations  
1417 before the adoption of a basin management action plan.
- 1418           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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1448 quality monitoring prescribed by the department or a water  
1449 management district. A nonpoint source discharger may, in  
1450 accordance with department rules, supplement the implementation  
1451 of best management practices with water quality credit trades in  
1452 order to demonstrate compliance with the pollutant reductions  
1453 established under subsection (6).

1454 h. A nonpoint source discharger included in a basin  
1455 management action plan may be subject to enforcement action by  
1456 the department or a water management district based upon a  
1457 failure to implement the responsibilities set forth in sub-  
1458 subparagraph g.

1459 i. A landowner, discharger, or other responsible person who  
1460 is implementing applicable management strategies specified in an  
1461 adopted basin management action plan may not be required by  
1462 permit, enforcement action, or otherwise to implement additional  
1463 management strategies, including water quality credit trading,  
1464 to reduce pollutant loads to attain the pollutant reductions  
1465 established pursuant to subsection (6) and shall be deemed to be  
1466 in compliance with this section. This subparagraph does not  
1467 limit the authority of the department to amend a basin  
1468 management action plan as specified in subparagraph (a)6.

1469 (c) *Best management practices.*—

1470 1. The department, in cooperation with the water management  
1471 districts and other interested parties, as appropriate, may  
1472 develop suitable interim measures, best management practices, or  
1473 other measures necessary to achieve the level of pollution  
1474 reduction established by the department for nonagricultural  
1475 nonpoint pollutant sources in allocations developed pursuant to  
1476 subsection (6) and this subsection. These practices and measures



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1477 may be adopted by rule by the department and the water  
1478 management districts and, where adopted by rule, shall be  
1479 implemented by those parties responsible for nonagricultural  
1480 nonpoint source pollution.

1481         2. The Department of Agriculture and Consumer Services may  
1482 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54  
1483 suitable interim measures, best management practices, or other  
1484 measures necessary to achieve the level of pollution reduction  
1485 established by the department for agricultural pollutant sources  
1486 in allocations developed pursuant to subsection (6) and this  
1487 subsection or for programs implemented pursuant to paragraph  
1488 (12) (b). These practices and measures may be implemented by  
1489 those parties responsible for agricultural pollutant sources and  
1490 the department, the water management districts, and the  
1491 Department of Agriculture and Consumer Services shall assist  
1492 with implementation. In the process of developing and adopting  
1493 rules for interim measures, best management practices, or other  
1494 measures, the Department of Agriculture and Consumer Services  
1495 shall consult with the department, the Department of Health, the  
1496 water management districts, representatives from affected  
1497 farming groups, and environmental group representatives. Such  
1498 rules must also incorporate provisions for a notice of intent to  
1499 implement the practices and a system to assure the  
1500 implementation of the practices, including site inspection and  
1501 recordkeeping requirements.

1502         3. Where interim measures, best management practices, or  
1503 other measures are adopted by rule, the effectiveness of such  
1504 practices in achieving the levels of pollution reduction  
1505 established in allocations developed by the department pursuant



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1506 to subsection (6) and this subsection or in programs implemented  
1507 pursuant to paragraph (12) (b) must be verified at representative  
1508 sites by the department. The department shall use best  
1509 professional judgment in making the initial verification that  
1510 the best management practices are reasonably expected to be  
1511 effective and, where applicable, must notify the appropriate  
1512 water management district or the Department of Agriculture and  
1513 Consumer Services of its initial verification before the  
1514 adoption of a rule proposed pursuant to this paragraph.  
1515 Implementation, in accordance with rules adopted under this  
1516 paragraph, of practices that have been initially verified to be  
1517 effective, or verified to be effective by monitoring at  
1518 representative sites, by the department, shall provide a  
1519 presumption of compliance with state water quality standards and  
1520 release from ~~the provisions of~~ s. 376.307(5) for those  
1521 pollutants addressed by the practices, and the department is not  
1522 authorized to institute proceedings against the owner of the  
1523 source of pollution to recover costs or damages associated with  
1524 the contamination of surface water or groundwater caused by  
1525 those pollutants. Research projects funded by the department, a  
1526 water management district, or the Department of Agriculture and  
1527 Consumer Services to develop or demonstrate interim measures or  
1528 best management practices shall be granted a presumption of  
1529 compliance with state water quality standards and a release from  
1530 ~~the provisions of~~ s. 376.307(5). The presumption of compliance  
1531 and release is limited to the research site and only for those  
1532 pollutants addressed by the interim measures or best management  
1533 practices. Eligibility for the presumption of compliance and  
1534 release is limited to research projects on sites where the owner



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1535 or operator of the research site and the department, a water  
1536 management district, or the Department of Agriculture and  
1537 Consumer Services have entered into a contract or other  
1538 agreement that, at a minimum, specifies the research objectives,  
1539 the cost-share responsibilities of the parties, and a schedule  
1540 that details the beginning and ending dates of the project.

1541 4. Where water quality problems are demonstrated, despite  
1542 the appropriate implementation, operation, and maintenance of  
1543 best management practices and other measures required by rules  
1544 adopted under this paragraph, the department, a water management  
1545 district, or the Department of Agriculture and Consumer  
1546 Services, in consultation with the department, shall institute a  
1547 reevaluation of the best management practice or other measure.  
1548 Should the reevaluation determine that the best management  
1549 practice or other measure requires modification, the department,  
1550 a water management district, or the Department of Agriculture  
1551 and Consumer Services, as appropriate, shall revise the rule to  
1552 require implementation of the modified practice within a  
1553 reasonable time period as specified in the rule.

1554 5. Subject to subparagraph 6., the Department of  
1555 Agriculture and Consumer Services shall provide to the  
1556 department information that it obtains pursuant to subparagraph  
1557 (d) 3.

1558 6. Agricultural records relating to processes or methods of  
1559 production, costs of production, profits, or other financial  
1560 information held by the Department of Agriculture and Consumer  
1561 Services pursuant to subparagraphs 3., ~~and~~ 4., and 5. or  
1562 pursuant to any rule adopted pursuant to subparagraph 2. are  
1563 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I



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1564 of the State Constitution. Upon request, records made  
1565 confidential and exempt pursuant to this subparagraph shall be  
1566 released to the department or any water management district  
1567 provided that the confidentiality specified by this subparagraph  
1568 for such records is maintained.

1569 ~~7.6. The provisions of~~ Subparagraphs 1. and 2. do not  
1570 preclude the department or water management district from  
1571 requiring compliance with water quality standards or with  
1572 current best management practice requirements set forth in any  
1573 applicable regulatory program authorized by law for the purpose  
1574 of protecting water quality. Additionally, subparagraphs 1. and  
1575 2. are applicable only to the extent that they do not conflict  
1576 with any rules adopted by the department that are necessary to  
1577 maintain a federally delegated or approved program.

1578 (d) *Enforcement and verification of basin management action*  
1579 *plans and management strategies.*—

1580 1. Basin management action plans are enforceable pursuant  
1581 to this section and ss. 403.121, 403.141, and 403.161.

1582 Management strategies, including best management practices and  
1583 water quality monitoring, are enforceable under this chapter.

1584 2. No later than January 1, 2017:

1585 a. The department, in consultation with the water  
1586 management districts and the Department of Agriculture and  
1587 Consumer Services, shall initiate rulemaking to adopt procedures  
1588 to verify implementation of water quality monitoring required in  
1589 lieu of implementation of best management practices or other  
1590 measures pursuant to sub-subparagraph (b)2.g.;

1591 b. The department, in consultation with the water  
1592 management districts and the Department of Agriculture and



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1593 Consumer Services, shall initiate rulemaking to adopt procedures  
1594 to verify implementation of nonagricultural interim measures,  
1595 best management practices, or other measures adopted by rule  
1596 pursuant to subparagraph (c)1.; and

1597 c. The Department of Agriculture and Consumer Services, in  
1598 consultation with the water management districts and the  
1599 department, shall initiate rulemaking to adopt procedures to  
1600 verify implementation of agricultural interim measures, best  
1601 management practices, or other measures adopted by rule pursuant  
1602 to subparagraph (c)2.

1603  
1604 The rules required under this subparagraph shall include  
1605 enforcement procedures applicable to the landowner, discharger,  
1606 or other responsible person required to implement applicable  
1607 management strategies, including best management practices or  
1608 water quality monitoring as a result of noncompliance.

1609 3. At least every 2 years, the Department of Agriculture  
1610 and Consumer Services shall perform onsite inspections of each  
1611 agricultural producer that enrolls in a best management practice  
1612 to ensure that such practice is being properly implemented. Such  
1613 verification must include a review of the best management  
1614 practice documentation required by rule adopted in accordance  
1615 with subparagraph (c)2., including, but not limited to, nitrogen  
1616 and phosphorous fertilizer application records, which must be  
1617 collected and retained pursuant to subparagraphs (c)3., 4., and  
1618 6.

1619 (e) Data collection and research.—

1620 1. The Department of Agriculture and Consumer Services, the  
1621 University of Florida Institute of Food and Agricultural



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1622 Sciences, and other state universities and Florida College  
1623 System institutions with agricultural research programs may  
1624 annually develop research plans and legislative budget requests  
1625 to:

1626 a. Evaluate and suggest enhancements to the existing  
1627 adopted agricultural best management practices to reduce  
1628 nutrients;

1629 b. Develop new best management practices that, if proven  
1630 effective, the Department of Agriculture and Consumer Services  
1631 may adopt by rule pursuant to paragraph (c); and

1632 c. Develop agricultural nutrient reduction projects that  
1633 willing participants could implement on a site-specific,  
1634 cooperative basis, in addition to best management practices. The  
1635 department may consider these projects for inclusion in a basin  
1636 management action plan. These nutrient reduction projects must  
1637 reduce the nutrient impacts from agricultural operations on  
1638 water quality when evaluated with the projects and management  
1639 strategies currently included in the basin management action  
1640 plan.

1641 2. To be considered for funding, the University of Florida  
1642 Institute of Food and Agricultural Sciences and other state  
1643 universities and Florida College System institutions that have  
1644 agricultural research programs must submit such plans to the  
1645 department and the Department of Agriculture and Consumer  
1646 Services by August 1 of each year.

1647 Section 10. Section 403.0673, Florida Statutes, is created  
1648 to read:

1649 403.0673 Wastewater grant program.—A wastewater grant  
1650 program is established within the Department of Environmental



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1651 Protection.

1652 (1) Subject to the appropriation of funds by the  
1653 Legislature, the department may provide grants for the following  
1654 projects within a basin management action plan, an alternative  
1655 restoration plan adopted by final order, or a rural area of  
1656 opportunity under s. 288.0656 which will individually or  
1657 collectively reduce excess nutrient pollution:

1658 (a) Projects to retrofit onsite sewage treatment and  
1659 disposal systems to upgrade them to enhanced nutrient-reducing  
1660 onsite sewage treatment and disposal systems.

1661 (b) Projects to construct, upgrade, or expand facilities to  
1662 provide advanced waste treatment, as defined in s. 403.086(4).

1663 (c) Projects to connect onsite sewage treatment and  
1664 disposal systems to central sewer facilities.

1665 (2) In allocating such funds, priority must be given to  
1666 projects that subsidize the connection of onsite sewage  
1667 treatment and disposal systems to wastewater treatment plants.  
1668 First priority must be given to subsidize connection to existing  
1669 infrastructure. Second priority must be given to any expansion  
1670 of a collection or transmission system that promotes efficiency  
1671 by planning the installation of wastewater transmission  
1672 facilities to be constructed concurrently with other  
1673 construction projects occurring within or along a transportation  
1674 facility right-of-way. Third priority must be given to all other  
1675 connection of onsite sewage treatment and disposal systems to a  
1676 wastewater treatment plants. The department shall consider the  
1677 estimated reduction in nutrient load per project; project  
1678 readiness; cost-effectiveness of the project; overall  
1679 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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1709 management. Rules adopted by the department pursuant to this  
1710 section before the 2021 regular legislative session are not  
1711 subject to s. 120.541(3). A municipality or county may enforce  
1712 or extend an ordinance, a regulation, a resolution, a rule, a  
1713 moratorium, or a policy, any of which was adopted before  
1714 November 1, 2019, relating to the land application of Class B  
1715 biosolids until the ordinance, regulation, resolution, rule,  
1716 moratorium, or policy is repealed by the municipality or county.

1717 Section 12. Present subsections (7) through (10) of section  
1718 403.086, Florida Statutes, are redesignated as subsections (8)  
1719 through (11), respectively, a new subsection (7) is added to  
1720 that section, and paragraph (c) of subsection (1) and subsection  
1721 (2) of that section are amended, to read:

1722 403.086 Sewage disposal facilities; advanced and secondary  
1723 waste treatment.—

1724 (1)

1725 (c) Notwithstanding any other provisions of this chapter or  
1726 chapter 373, facilities for sanitary sewage disposal may not  
1727 dispose of any wastes into Old Tampa Bay, Tampa Bay,  
1728 Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater  
1729 Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay,  
1730 or Charlotte Harbor Bay, Indian River Lagoon beginning July 1,  
1731 2025, or into any river, stream, channel, canal, bay, bayou,  
1732 sound, or other water tributary thereto, without providing  
1733 advanced waste treatment, as defined in subsection (4), approved  
1734 by the department. This paragraph shall not apply to facilities  
1735 which were permitted by February 1, 1987, and which discharge  
1736 secondary treated effluent, followed by water hyacinth  
1737 treatment, to tributaries of tributaries of the named waters; or



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1738 to facilities permitted to discharge to the nontidally  
1739 influenced portions of the Peace River.

1740 (2) Any facilities for sanitary sewage disposal shall  
1741 provide for secondary waste treatment, a power outage  
1742 contingency plan that mitigates the impacts of power outages on  
1743 the utility's collection system and pump stations, and, ~~in~~  
1744 addition thereto, advanced waste treatment as deemed necessary  
1745 and ordered by the Department of Environmental Protection.  
1746 Failure to conform is ~~shall be~~ punishable by a civil penalty of  
1747 \$500 for each 24-hour day or fraction thereof that such failure  
1748 is allowed to continue thereafter.

1749 (7) All facilities for sanitary sewage under subsection (2)  
1750 which control a collection or transmission system of pipes and  
1751 pumps to collect and transmit wastewater from domestic or  
1752 industrial sources to the facility shall take steps to prevent  
1753 sanitary sewer overflows or underground pipe leaks and ensure  
1754 that collected wastewater reaches the facility for appropriate  
1755 treatment. Facilities must use inflow and infiltration studies  
1756 and leakage surveys to develop pipe assessment, repair, and  
1757 replacement action plans that comply with department rule to  
1758 limit, reduce, and eliminate leaks, seepages, or inputs into  
1759 wastewater treatment systems' underground pipes. The pipe  
1760 assessment, repair, and replacement action plans must be  
1761 reported to the department. The facility action plan must  
1762 include information regarding the annual expenditures dedicated  
1763 to the inflow and infiltration studies and the required  
1764 replacement action plans, as well as expenditures that are  
1765 dedicated to pipe assessment, repair, and replacement. The  
1766 department shall adopt rules regarding the implementation of



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1767 inflow and infiltration studies and leakage surveys; however,  
1768 such department rules may not fix or revise utility rates or  
1769 budgets. Any entity subject to this subsection and s.  
1770 403.061(14) may submit one report to comply with both  
1771 provisions. Substantial compliance with this subsection is  
1772 evidence in mitigation for the purposes of assessing penalties  
1773 pursuant to ss. 403.121 and 403.141.

1774 Section 13. Present subsections (4) through (10) of section  
1775 403.087, Florida Statutes, are redesignated as subsections (5)  
1776 through (11), respectively, and a new subsection (4) is added to  
1777 that section, to read:

1778 403.087 Permits; general issuance; denial; revocation;  
1779 prohibition; penalty.-

1780 (4) The department shall issue an operation permit for a  
1781 domestic wastewater treatment facility other than a facility  
1782 regulated under the National Pollutant Discharge Elimination  
1783 System Program under s. 403.0885 for a term of up to 10 years if  
1784 the facility is meeting the stated goals in its action plan  
1785 adopted pursuant to s. 403.086(7).

1786 Section 14. Present subsections (3) and (4) of section  
1787 403.088, Florida Statutes, are redesignated as subsections (4)  
1788 and (5), respectively, a new subsection (3) is added to that  
1789 section, and paragraph (c) of subsection (2) of that section is  
1790 amended, to read:

1791 403.088 Water pollution operation permits; conditions.-

1792 (2)

1793 (c) A permit shall:

1794 1. Specify the manner, nature, volume, and frequency of the  
1795 discharge permitted;



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1796           2. Require proper operation and maintenance of any  
1797 pollution abatement facility by qualified personnel in  
1798 accordance with standards established by the department;

1799           3. Require a deliberate, proactive approach to  
1800 investigating or surveying a significant percentage of the  
1801 domestic wastewater collection system throughout the duration of  
1802 the permit to determine pipe integrity, which must be  
1803 accomplished in an economically feasible manner. The permittee  
1804 shall submit an annual report to the department which details  
1805 facility revenues and expenditures in a manner prescribed by  
1806 department rule. The report must detail any deviation of annual  
1807 expenditures from identified system needs related to inflow and  
1808 infiltration studies; model plans for pipe assessment, repair,  
1809 and replacement; and pipe assessment, repair, and replacement  
1810 required under s. 403.086(7). Substantial compliance with this  
1811 subsection is evidence in mitigation for the purposes of  
1812 assessing penalties pursuant to ss. 403.121 and 403.141;

1813           4. Contain such additional conditions, requirements, and  
1814 restrictions as the department deems necessary to preserve and  
1815 protect the quality of the receiving waters;

1816           ~~5.4.~~ Be valid for the period of time specified therein; and

1817           ~~6.5.~~ Constitute the state National Pollutant Discharge  
1818 Elimination System permit when issued pursuant to the authority  
1819 in s. 403.0885.

1820           (3) No later than March 1 of each year, the department  
1821 shall submit a report to the Governor, the President of the  
1822 Senate, and the Speaker of the House of Representatives which  
1823 identifies all domestic wastewater treatment facilities that  
1824 experienced a sanitary sewer overflow in the preceding calendar



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1825 year. The report must identify the utility name, operator,  
1826 permitted capacity in annual average gallons per day, the number  
1827 of overflows, and the total volume of sewage released, and, to  
1828 the extent known and available, the volume of sewage recovered,  
1829 the volume of sewage discharged to surface waters, and the cause  
1830 of the sanitary sewer overflow, including whether it was caused  
1831 by a third party. The department shall include with this report  
1832 the annual report specified under subparagraph (2)(c)3. for each  
1833 utility that experienced an overflow.

1834 Section 15. Subsection (6) of section 403.0891, Florida  
1835 Statutes, is amended to read:

1836 403.0891 State, regional, and local stormwater management  
1837 plans and programs.—The department, the water management  
1838 districts, and local governments shall have the responsibility  
1839 for the development of mutually compatible stormwater management  
1840 programs.

1841 (6) The department and the Department of Economic  
1842 Opportunity, in cooperation with local governments in the  
1843 coastal zone, shall develop a model stormwater management  
1844 program that could be adopted by local governments. The model  
1845 program must contain model ordinances that target nutrient  
1846 reduction practices and use green infrastructure. The model  
1847 program shall contain dedicated funding options, including a  
1848 stormwater utility fee system based upon an equitable unit cost  
1849 approach. Funding options shall be designed to generate capital  
1850 to retrofit existing stormwater management systems, build new  
1851 treatment systems, operate facilities, and maintain and service  
1852 debt.

1853 Section 16. Paragraphs (b) and (g) of subsection (2),



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1854 paragraph (b) of subsection (3), and subsections (8) and (9) of  
1855 section 403.121, Florida Statutes, are amended to read:

1856 403.121 Enforcement; procedure; remedies.—The department  
1857 shall have the following judicial and administrative remedies  
1858 available to it for violations of this chapter, as specified in  
1859 s. 403.161(1).

1860 (2) Administrative remedies:

1861 (b) If the department has reason to believe a violation has  
1862 occurred, it may institute an administrative proceeding to order  
1863 the prevention, abatement, or control of the conditions creating  
1864 the violation or other appropriate corrective action. Except for  
1865 violations involving hazardous wastes, asbestos, or underground  
1866 injection, the department shall proceed administratively in all  
1867 cases in which the department seeks administrative penalties  
1868 that do not exceed \$50,000 ~~\$10,000~~ per assessment as calculated  
1869 in accordance with subsections (3), (4), (5), (6), and (7).  
1870 Pursuant to 42 U.S.C. s. 300g-2, the administrative penalty  
1871 assessed pursuant to subsection (3), subsection (4), or  
1872 subsection (5) against a public water system serving a  
1873 population of more than 10,000 shall be not less than \$1,000 per  
1874 day per violation. The department shall not impose  
1875 administrative penalties in excess of \$50,000 ~~\$10,000~~ in a  
1876 notice of violation. The department shall not have more than one  
1877 notice of violation seeking administrative penalties pending  
1878 against the same party at the same time unless the violations  
1879 occurred at a different site or the violations were discovered  
1880 by the department subsequent to the filing of a previous notice  
1881 of violation.

1882 (g) Nothing herein shall be construed as preventing any



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1883 other legal or administrative action in accordance with law.  
1884 Nothing in this subsection shall limit the department's  
1885 authority provided in ss. 403.131, 403.141, and this section to  
1886 judicially pursue injunctive relief. When the department  
1887 exercises its authority to judicially pursue injunctive relief,  
1888 penalties in any amount up to the statutory maximum sought by  
1889 the department must be pursued as part of the state court action  
1890 and not by initiating a separate administrative proceeding. The  
1891 department retains the authority to judicially pursue penalties  
1892 in excess of \$50,000 ~~\$10,000~~ for violations not specifically  
1893 included in the administrative penalty schedule, or for multiple  
1894 or multiday violations alleged to exceed a total of \$50,000  
1895 ~~\$10,000~~. The department also retains the authority provided in  
1896 ss. 403.131, 403.141, and this section to judicially pursue  
1897 injunctive relief and damages, if a notice of violation seeking  
1898 the imposition of administrative penalties has not been issued.  
1899 The department has the authority to enter into a settlement,  
1900 either before or after initiating a notice of violation, and the  
1901 settlement may include a penalty amount different from the  
1902 administrative penalty schedule. Any case filed in state court  
1903 because it is alleged to exceed a total of \$50,000 ~~\$10,000~~ in  
1904 penalties may be settled in the court action for less than  
1905 \$50,000 ~~\$10,000~~.

1906 (3) Except for violations involving hazardous wastes,  
1907 asbestos, or underground injection, administrative penalties  
1908 must be calculated according to the following schedule:

1909 (b) For failure to obtain a required wastewater permit,  
1910 other than a permit required for surface water discharge, the  
1911 department shall assess a penalty of \$2,000 ~~\$1,000~~. For a





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1912 domestic or industrial wastewater violation not involving a  
1913 surface water or groundwater quality violation, the department  
1914 shall assess a penalty of \$4,000 ~~\$2,000~~ for an unpermitted or  
1915 unauthorized discharge or effluent-limitation exceedance or  
1916 failure to comply with s. 403.061(14) or s. 403.086(7) or rules  
1917 adopted thereunder. For an unpermitted or unauthorized discharge  
1918 or effluent-limitation exceedance that resulted in a surface  
1919 water or groundwater quality violation, the department shall  
1920 assess a penalty of \$10,000 ~~\$5,000~~.

1921 (8) The direct economic benefit gained by the violator from  
1922 the violation, where consideration of economic benefit is  
1923 provided by Florida law or required by federal law as part of a  
1924 federally delegated or approved program, shall be added to the  
1925 scheduled administrative penalty. The total administrative  
1926 penalty, including any economic benefit added to the scheduled  
1927 administrative penalty, shall not exceed \$20,000 ~~\$10,000~~.

1928 (9) The administrative penalties assessed for any  
1929 particular violation shall not exceed \$10,000 ~~\$5,000~~ against any  
1930 one violator, unless the violator has a history of  
1931 noncompliance, the economic benefit of the violation as  
1932 described in subsection (8) exceeds \$10,000 ~~\$5,000~~, or there are  
1933 multiday violations. The total administrative penalties shall  
1934 not exceed \$50,000 ~~\$10,000~~ per assessment for all violations  
1935 attributable to a specific person in the notice of violation.

1936 Section 17. Subsection (7) of section 403.1835, Florida  
1937 Statutes, is amended to read:

1938 403.1835 Water pollution control financial assistance.—

1939 (7) Eligible projects must be given priority according to  
1940 the extent each project is intended to remove, mitigate, or



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1941 prevent adverse effects on surface or ground water quality and  
1942 public health. The relative costs of achieving environmental and  
1943 public health benefits must be taken into consideration during  
1944 the department's assignment of project priorities. The  
1945 department shall adopt a priority system by rule. In developing  
1946 the priority system, the department shall give priority to  
1947 projects that:

1948 (a) Eliminate public health hazards;

1949 (b) Enable compliance with laws requiring the elimination  
1950 of discharges to specific water bodies, including the  
1951 requirements of s. 403.086(10) ~~s. 403.086(9)~~ regarding domestic  
1952 wastewater ocean outfalls;

1953 (c) Assist in the implementation of total maximum daily  
1954 loads adopted under s. 403.067;

1955 (d) Enable compliance with other pollution control  
1956 requirements, including, but not limited to, toxics control,  
1957 wastewater residuals management, and reduction of nutrients and  
1958 bacteria;

1959 (e) Assist in the implementation of surface water  
1960 improvement and management plans and pollutant load reduction  
1961 goals developed under state water policy;

1962 (f) Promote reclaimed water reuse;

1963 (g) Eliminate failing onsite sewage treatment and disposal  
1964 systems or those that are causing environmental damage; or

1965 (h) Reduce pollutants to and otherwise promote the  
1966 restoration of Florida's surface and ground waters.

1967 (i) Implement the requirements of ss. 403.086(7) and  
1968 403.088(2)(c).

1969 (j) Promote efficiency by planning for the installation of



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1970 wastewater transmission facilities to be constructed  
1971 concurrently with other construction projects occurring within  
1972 or along a transportation facility right-of-way.

1973 Section 18. Paragraph (b) of subsection (3) of section  
1974 403.1838, Florida Statutes, is amended to read:

1975 403.1838 Small Community Sewer Construction Assistance  
1976 Act.—

1977 (3)

1978 (b) The rules of the Environmental Regulation Commission  
1979 must:

1980 1. Require that projects to plan, design, construct,  
1981 upgrade, or replace wastewater collection, transmission,  
1982 treatment, disposal, and reuse facilities be cost-effective,  
1983 environmentally sound, permittable, and implementable.

1984 2. Require appropriate user charges, connection fees, and  
1985 other charges sufficient to ensure the long-term operation,  
1986 maintenance, and replacement of the facilities constructed under  
1987 each grant.

1988 3. Require grant applications to be submitted on  
1989 appropriate forms with appropriate supporting documentation, and  
1990 require records to be maintained.

1991 4. Establish a system to determine eligibility of grant  
1992 applications.

1993 5. Establish a system to determine the relative priority of  
1994 grant applications. The system must consider public health  
1995 protection and water pollution prevention or abatement and must  
1996 prioritize projects that plan for the installation of wastewater  
1997 transmission facilities to be constructed concurrently with  
1998 other construction projects occurring within or along a



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1999 transportation facility right-of-way.

2000 6. Establish requirements for competitive procurement of  
2001 engineering and construction services, materials, and equipment.

2002 7. Provide for termination of grants when program  
2003 requirements are not met.

2004 Section 19. The Legislature determines and declares that  
2005 this act fulfills an important state interest.

2006 Section 20. Effective July 1, 2021, subsection (5) of  
2007 section 153.54, Florida Statutes, is amended to read:

2008 153.54 Preliminary report by county commissioners with  
2009 respect to creation of proposed district.—Upon receipt of a  
2010 petition duly signed by not less than 25 qualified electors who  
2011 are also freeholders residing within an area proposed to be  
2012 incorporated into a water and sewer district pursuant to this  
2013 law and describing in general terms the proposed boundaries of  
2014 such proposed district, the board of county commissioners if it  
2015 shall deem it necessary and advisable to create and establish  
2016 such proposed district for the purpose of constructing,  
2017 establishing or acquiring a water system or a sewer system or  
2018 both in and for such district (herein called "improvements"),  
2019 shall first cause a preliminary report to be made which such  
2020 report together with any other relevant or pertinent matters,  
2021 shall include at least the following:

2022 (5) For the construction of a new proposed central sewerage  
2023 system or the extension of an existing sewerage system that was  
2024 not previously approved, the report shall include a study that  
2025 includes the available information from the Department of  
2026 Environmental Protection ~~Health~~ on the history of onsite sewage  
2027 treatment and disposal systems currently in use in the area and



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2028 a comparison of the projected costs to the owner of a typical  
2029 lot or parcel of connecting to and using the proposed sewerage  
2030 system versus installing, operating, and properly maintaining an  
2031 onsite sewage treatment and disposal system that is approved by  
2032 the Department of Environmental Protection ~~Health~~ and that  
2033 provides for the comparable level of environmental and health  
2034 protection as the proposed central sewerage system;  
2035 consideration of the local authority's obligations or reasonably  
2036 anticipated obligations for water body cleanup and protection  
2037 under state or federal programs, including requirements for  
2038 water bodies listed under s. 303(d) of the Clean Water Act, Pub.  
2039 L. No. 92-500, 33 U.S.C. ss. 1251 et seq.; and other factors  
2040 deemed relevant by the local authority.

2041  
2042 Such report shall be filed in the office of the clerk of the  
2043 circuit court and shall be open for the inspection of any  
2044 taxpayer, property owner, qualified elector or any other  
2045 interested or affected person.

2046 Section 21. Effective July 1, 2021, paragraph (c) of  
2047 subsection (2) of section 153.73, Florida Statutes, is amended  
2048 to read:

2049 153.73 Assessable improvements; levy and payment of special  
2050 assessments.—Any district may provide for the construction or  
2051 reconstruction of assessable improvements as defined in s.  
2052 153.52, and for the levying of special assessments upon  
2053 benefited property for the payment thereof, under ~~the provisions~~  
2054 ~~of~~ this section.

2055 (2)

2056 (c) For the construction of a new proposed central sewerage



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2057 system or the extension of an existing sewerage system that was  
2058 not previously approved, the report shall include a study that  
2059 includes the available information from the Department of  
2060 Environmental Protection ~~Health~~ on the history of onsite sewage  
2061 treatment and disposal systems currently in use in the area and  
2062 a comparison of the projected costs to the owner of a typical  
2063 lot or parcel of connecting to and using the proposed sewerage  
2064 system versus installing, operating, and properly maintaining an  
2065 onsite sewage treatment and disposal system that is approved by  
2066 the Department of Environmental Protection ~~Health~~ and that  
2067 provides for the comparable level of environmental and health  
2068 protection as the proposed central sewerage system;  
2069 consideration of the local authority's obligations or reasonably  
2070 anticipated obligations for water body cleanup and protection  
2071 under state or federal programs, including requirements for  
2072 water bodies listed under s. 303(d) of the Clean Water Act, Pub.  
2073 L. No. 92-500, 33 U.S.C. ss. 1251 et seq.; and other factors  
2074 deemed relevant by the local authority.

2075 Section 22. Effective July 1, 2021, subsection (2) of  
2076 section 163.3180, Florida Statutes, is amended to read:

2077 163.3180 Concurrency.—

2078 (2) Consistent with public health and safety, sanitary  
2079 sewer, solid waste, drainage, adequate water supplies, and  
2080 potable water facilities shall be in place and available to  
2081 serve new development no later than the issuance by the local  
2082 government of a certificate of occupancy or its functional  
2083 equivalent. Prior to approval of a building permit or its  
2084 functional equivalent, the local government shall consult with  
2085 the applicable water supplier to determine whether adequate



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2086 water supplies to serve the new development will be available no  
2087 later than the anticipated date of issuance by the local  
2088 government of a certificate of occupancy or its functional  
2089 equivalent. A local government may meet the concurrency  
2090 requirement for sanitary sewer through the use of onsite sewage  
2091 treatment and disposal systems approved by the Department of  
2092 Environmental Protection Health to serve new development.

2093 Section 23. Effective July 1, 2021, subsection (3) of  
2094 section 180.03, Florida Statutes, is amended to read:

2095 180.03 Resolution or ordinance proposing construction or  
2096 extension of utility; objections to same.-

2097 (3) For the construction of a new proposed central sewerage  
2098 system or the extension of an existing central sewerage system  
2099 that was not previously approved, the report shall include a  
2100 study that includes the available information from the  
2101 Department of Environmental Protection Health on the history of  
2102 onsite sewage treatment and disposal systems currently in use in  
2103 the area and a comparison of the projected costs to the owner of  
2104 a typical lot or parcel of connecting to and using the proposed  
2105 central sewerage system versus installing, operating, and  
2106 properly maintaining an onsite sewage treatment and disposal  
2107 system that is approved by the Department of Environmental  
2108 Protection Health and that provides for the comparable level of  
2109 environmental and health protection as the proposed central  
2110 sewerage system; consideration of the local authority's  
2111 obligations or reasonably anticipated obligations for water body  
2112 cleanup and protection under state or federal programs,  
2113 including requirements for water bodies listed under s. 303(d)  
2114 of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251



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2115 et seq.; and other factors deemed relevant by the local  
2116 authority. The results of such a study shall be included in the  
2117 resolution or ordinance required under subsection (1).

2118 Section 24. Subsections (2), (3), and (6) of section  
2119 311.105, Florida Statutes, are amended to read:

2120 311.105 Florida Seaport Environmental Management Committee;  
2121 permitting; mitigation.-

2122 (2) Each application for a permit authorized pursuant to s.  
2123 403.061(38) ~~s. 403.061(37)~~ must include:

2124 (a) A description of maintenance dredging activities to be  
2125 conducted and proposed methods of dredged-material management.

2126 (b) A characterization of the materials to be dredged and  
2127 the materials within dredged-material management sites.

2128 (c) A description of dredged-material management sites and  
2129 plans.

2130 (d) A description of measures to be undertaken, including  
2131 environmental compliance monitoring, to minimize adverse  
2132 environmental effects of maintenance dredging and dredged-  
2133 material management.

2134 (e) Such scheduling information as is required to  
2135 facilitate state supplementary funding of federal maintenance  
2136 dredging and dredged-material management programs consistent  
2137 with beach restoration criteria of the Department of  
2138 Environmental Protection.

2139 (3) Each application for a permit authorized pursuant to s.  
2140 403.061(39) ~~s. 403.061(38)~~ must include ~~the provisions of~~  
2141 paragraphs (2) (b)-(e) and the following:

2142 (a) A description of dredging and dredged-material  
2143 management and other related activities associated with port





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2144 development, including the expansion of navigation channels,  
2145 dredged-material management sites, port harbors, turning basins,  
2146 harbor berths, and associated facilities.

2147 (b) A discussion of environmental mitigation as is proposed  
2148 for dredging and dredged-material management for port  
2149 development, including the expansion of navigation channels,  
2150 dredged-material management sites, port harbors, turning basins,  
2151 harbor berths, and associated facilities.

2152 (6) Dredged-material management activities authorized  
2153 pursuant to s. 403.061(38) ~~s. 403.061(37)~~ or s. 403.061(39) ~~(38)~~  
2154 shall be incorporated into port master plans developed pursuant  
2155 to s. 163.3178(2)(k).

2156 Section 25. Paragraph (d) of subsection (1) of section  
2157 327.46, Florida Statutes, is amended to read:

2158 327.46 Boating-restricted areas.—

2159 (1) Boating-restricted areas, including, but not limited  
2160 to, restrictions of vessel speeds and vessel traffic, may be  
2161 established on the waters of this state for any purpose  
2162 necessary to protect the safety of the public if such  
2163 restrictions are necessary based on boating accidents,  
2164 visibility, hazardous currents or water levels, vessel traffic  
2165 congestion, or other navigational hazards or to protect  
2166 seagrasses on privately owned submerged lands.

2167 (d) Owners of private submerged lands that are adjacent to  
2168 Outstanding Florida Waters, as defined in s. 403.061(28) ~~s.~~  
2169 ~~403.061(27)~~, or an aquatic preserve established under ss.  
2170 258.39-258.399 may request that the commission establish  
2171 boating-restricted areas solely to protect any seagrass and  
2172 contiguous seagrass habitat within their private property



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2173 boundaries from seagrass scarring due to propeller dredging.  
2174 Owners making a request pursuant to this paragraph must  
2175 demonstrate to the commission clear ownership of the submerged  
2176 lands. The commission shall adopt rules to implement this  
2177 paragraph, including, but not limited to, establishing an  
2178 application process and criteria for meeting the requirements of  
2179 this paragraph. Each approved boating-restricted area shall be  
2180 established by commission rule. For marking boating-restricted  
2181 zones established pursuant to this paragraph, owners of  
2182 privately submerged lands shall apply to the commission for a  
2183 uniform waterway marker permit in accordance with ss. 327.40 and  
2184 327.41, and shall be responsible for marking the boating-  
2185 restricted zone in accordance with the terms of the permit.

2186 Section 26. Paragraph (d) of subsection (3) of section  
2187 373.250, Florida Statutes, is amended to read:

2188 373.250 Reuse of reclaimed water.-

2189 (3)

2190 (d) The South Florida Water Management District shall  
2191 require the use of reclaimed water made available by the  
2192 elimination of wastewater ocean outfall discharges as provided  
2193 for in s. 403.086(10) ~~s. 403.086(9)~~ in lieu of surface water or  
2194 groundwater when the use of reclaimed water is available; is  
2195 environmentally, economically, and technically feasible; and is  
2196 of such quality and reliability as is necessary to the user.  
2197 Such reclaimed water may also be required in lieu of other  
2198 alternative sources. In determining whether to require such  
2199 reclaimed water in lieu of other alternative sources, the water  
2200 management district shall consider existing infrastructure  
2201 investments in place or obligated to be constructed by an



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2202 executed contract or similar binding agreement as of July 1,  
2203 2011, for the development of other alternative sources.

2204 Section 27. Subsection (9) of section 373.414, Florida  
2205 Statutes, is amended to read:

2206 373.414 Additional criteria for activities in surface  
2207 waters and wetlands.—

2208 (9) The department and the governing boards, on or before  
2209 July 1, 1994, shall adopt rules to incorporate ~~the provisions of~~  
2210 this section, relying primarily on the existing rules of the  
2211 department and the water management districts, into the rules  
2212 governing the management and storage of surface waters. Such  
2213 rules shall seek to achieve a statewide, coordinated and  
2214 consistent permitting approach to activities regulated under  
2215 this part. Variations in permitting criteria in the rules of  
2216 individual water management districts or the department shall  
2217 only be provided to address differing physical or natural  
2218 characteristics. Such rules adopted pursuant to this subsection  
2219 shall include the special criteria adopted pursuant to s.  
2220 403.061(30) ~~s. 403.061(29)~~ and may include the special criteria  
2221 adopted pursuant to s. 403.061(35) ~~s. 403.061(34)~~. Such rules  
2222 shall include a provision requiring that a notice of intent to  
2223 deny or a permit denial based upon this section shall contain an  
2224 explanation of the reasons for such denial and an explanation,  
2225 in general terms, of what changes, if any, are necessary to  
2226 address such reasons for denial. Such rules may establish  
2227 exemptions and general permits, if such exemptions and general  
2228 permits do not allow significant adverse impacts to occur  
2229 individually or cumulatively. Such rules may require submission  
2230 of proof of financial responsibility which may include the



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2231 posting of a bond or other form of surety prior to the  
2232 commencement of construction to provide reasonable assurance  
2233 that any activity permitted pursuant to this section, including  
2234 any mitigation for such permitted activity, will be completed in  
2235 accordance with the terms and conditions of the permit once the  
2236 construction is commenced. Until rules adopted pursuant to this  
2237 subsection become effective, existing rules adopted under this  
2238 part and rules adopted pursuant to the authority of ss. 403.91-  
2239 403.929 shall be deemed authorized under this part and shall  
2240 remain in full force and effect. Neither the department nor the  
2241 governing boards are limited or prohibited from amending any  
2242 such rules.

2243 Section 28. Paragraph (b) of subsection (4) of section  
2244 373.705, Florida Statutes, is amended to read:

2245 373.705 Water resource development; water supply  
2246 development.—

2247 (4)

2248 (b) Water supply development projects that meet the  
2249 criteria in paragraph (a) and that meet one or more of the  
2250 following additional criteria shall be given first consideration  
2251 for state or water management district funding assistance:

2252 1. The project brings about replacement of existing sources  
2253 in order to help implement a minimum flow or minimum water  
2254 level;

2255 2. The project implements reuse that assists in the  
2256 elimination of domestic wastewater ocean outfalls as provided in  
2257 s. 403.086(10) ~~s. 403.086(9)~~; or

2258 3. The project reduces or eliminates the adverse effects of  
2259 competition between legal users and the natural system.



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2260 Section 29. Paragraph (f) of subsection (8) of section  
2261 373.707, Florida Statutes, is amended to read:

2262 373.707 Alternative water supply development.—

2263 (8)

2264 (f) The governing boards shall determine those projects  
2265 that will be selected for financial assistance. The governing  
2266 boards may establish factors to determine project funding;  
2267 however, significant weight shall be given to the following  
2268 factors:

2269 1. Whether the project provides substantial environmental  
2270 benefits by preventing or limiting adverse water resource  
2271 impacts.

2272 2. Whether the project reduces competition for water  
2273 supplies.

2274 3. Whether the project brings about replacement of  
2275 traditional sources in order to help implement a minimum flow or  
2276 level or a reservation.

2277 4. Whether the project will be implemented by a consumptive  
2278 use permittee that has achieved the targets contained in a goal-  
2279 based water conservation program approved pursuant to s.  
2280 373.227.

2281 5. The quantity of water supplied by the project as  
2282 compared to its cost.

2283 6. Projects in which the construction and delivery to end  
2284 users of reuse water is a major component.

2285 7. Whether the project will be implemented by a  
2286 multijurisdictional water supply entity or regional water supply  
2287 authority.

2288 8. Whether the project implements reuse that assists in the



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2289 elimination of domestic wastewater ocean outfalls as provided in  
2290 s. 403.086(10) ~~s. 403.086(9)~~.

2291 9. Whether the county or municipality, or the multiple  
2292 counties or municipalities, in which the project is located has  
2293 implemented a high-water recharge protection tax assessment  
2294 program as provided in s. 193.625.

2295 Section 30. Subsection (4) of section 373.709, Florida  
2296 Statutes, is amended to read:

2297 373.709 Regional water supply planning.—

2298 (4) The South Florida Water Management District shall  
2299 include in its regional water supply plan water resource and  
2300 water supply development projects that promote the elimination  
2301 of wastewater ocean outfalls as provided in s. 403.086(10) ~~s.~~  
2302 ~~403.086(9)~~.

2303 Section 31. Effective July 1, 2021, subsection (3) of  
2304 section 373.807, Florida Statutes, is amended to read:

2305 373.807 Protection of water quality in Outstanding Florida  
2306 Springs.—By July 1, 2016, the department shall initiate  
2307 assessment, pursuant to s. 403.067(3), of Outstanding Florida  
2308 Springs or spring systems for which an impairment determination  
2309 has not been made under the numeric nutrient standards in effect  
2310 for spring vents. Assessments must be completed by July 1, 2018.

2311 (3) As part of a basin management action plan that includes  
2312 an Outstanding Florida Spring, the department, ~~the Department of~~  
2313 ~~Health~~, relevant local governments, and relevant local public  
2314 and private wastewater utilities shall develop an onsite sewage  
2315 treatment and disposal system remediation plan for a spring if  
2316 the department determines onsite sewage treatment and disposal  
2317 systems within a priority focus area contribute at least 20



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2318 percent of nonpoint source nitrogen pollution or if the  
2319 department determines remediation is necessary to achieve the  
2320 total maximum daily load. The plan shall identify cost-effective  
2321 and financially feasible projects necessary to reduce the  
2322 nutrient impacts from onsite sewage treatment and disposal  
2323 systems and shall be completed and adopted as part of the basin  
2324 management action plan no later than the first 5-year milestone  
2325 required by subparagraph (1)(b)8. The department is the lead  
2326 agency in coordinating the preparation of and the adoption of  
2327 the plan. The department shall:

2328 (a) Collect and evaluate credible scientific information on  
2329 the effect of nutrients, particularly forms of nitrogen, on  
2330 springs and springs systems; and

2331 (b) Develop a public education plan to provide area  
2332 residents with reliable, understandable information about onsite  
2333 sewage treatment and disposal systems and springs.

2334

2335 In addition to the requirements in s. 403.067, the plan shall  
2336 include options for repair, upgrade, replacement, drainfield  
2337 modification, addition of effective nitrogen reducing features,  
2338 connection to a central sewerage system, or other action for an  
2339 onsite sewage treatment and disposal system or group of systems  
2340 within a priority focus area that contribute at least 20 percent  
2341 of nonpoint source nitrogen pollution or if the department  
2342 determines remediation is necessary to achieve a total maximum  
2343 daily load. For these systems, the department shall include in  
2344 the plan a priority ranking for each system or group of systems  
2345 that requires remediation and shall award funds to implement the  
2346 remediation projects contingent on an appropriation in the



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2347 General Appropriations Act, which may include all or part of the  
2348 costs necessary for repair, upgrade, replacement, drainfield  
2349 modification, addition of effective nitrogen reducing features,  
2350 initial connection to a central sewerage system, or other  
2351 action. In awarding funds, the department may consider expected  
2352 nutrient reduction benefit per unit cost, size and scope of  
2353 project, relative local financial contribution to the project,  
2354 and the financial impact on property owners and the community.  
2355 The department may waive matching funding requirements for  
2356 proposed projects within an area designated as a rural area of  
2357 opportunity under s. 288.0656.

2358 Section 32. Paragraph (k) of subsection (1) of section  
2359 376.307, Florida Statutes, is amended to read:

2360 376.307 Water Quality Assurance Trust Fund.—

2361 (1) The Water Quality Assurance Trust Fund is intended to  
2362 serve as a broad-based fund for use in responding to incidents  
2363 of contamination that pose a serious danger to the quality of  
2364 groundwater and surface water resources or otherwise pose a  
2365 serious danger to the public health, safety, or welfare. Moneys  
2366 in this fund may be used:

2367 (k) For funding activities described in s. 403.086(10) ~~s.~~  
2368 ~~403.086(9)~~ which are authorized for implementation under the  
2369 Leah Schad Memorial Ocean Outfall Program.

2370 Section 33. Paragraph (i) of subsection (2), paragraph (b)  
2371 of subsection (4), paragraph (j) of subsection (7), and  
2372 paragraph (a) of subsection (9) of section 380.0552, Florida  
2373 Statutes, are amended to read:

2374 380.0552 Florida Keys Area; protection and designation as  
2375 area of critical state concern.—





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2376 (2) LEGISLATIVE INTENT.—It is the intent of the Legislature  
2377 to:

2378 (i) Protect and improve the nearshore water quality of the  
2379 Florida Keys through federal, state, and local funding of water  
2380 quality improvement projects, including the construction and  
2381 operation of wastewater management facilities that meet the  
2382 requirements of ss. 381.0065(4)(1) and 403.086(11) ~~403.086(10)~~,  
2383 as applicable.

2384 (4) REMOVAL OF DESIGNATION.—

2385 (b) Beginning November 30, 2010, the state land planning  
2386 agency shall annually submit a written report to the  
2387 Administration Commission describing the progress of the Florida  
2388 Keys Area toward completing the work program tasks specified in  
2389 commission rules. The land planning agency shall recommend  
2390 removing the Florida Keys Area from being designated as an area  
2391 of critical state concern to the commission if it determines  
2392 that:

2393 1. All of the work program tasks have been completed,  
2394 including construction of, operation of, and connection to  
2395 central wastewater management facilities pursuant to s.  
2396 403.086(11) ~~s. 403.086(10)~~ and upgrade of onsite sewage  
2397 treatment and disposal systems pursuant to s. 381.0065(4)(1);

2398 2. All local comprehensive plans and land development  
2399 regulations and the administration of such plans and regulations  
2400 are adequate to protect the Florida Keys Area, fulfill the  
2401 legislative intent specified in subsection (2), and are  
2402 consistent with and further the principles guiding development;  
2403 and

2404 3. A local government has adopted a resolution at a public



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2405 hearing recommending the removal of the designation.

2406 (7) PRINCIPLES FOR GUIDING DEVELOPMENT.—State, regional,  
2407 and local agencies and units of government in the Florida Keys  
2408 Area shall coordinate their plans and conduct their programs and  
2409 regulatory activities consistent with the principles for guiding  
2410 development as specified in chapter 27F-8, Florida  
2411 Administrative Code, as amended effective August 23, 1984, which  
2412 is adopted and incorporated herein by reference. For the  
2413 purposes of reviewing the consistency of the adopted plan, or  
2414 any amendments to that plan, with the principles for guiding  
2415 development, and any amendments to the principles, the  
2416 principles shall be construed as a whole and specific provisions  
2417 may not be construed or applied in isolation from the other  
2418 provisions. However, the principles for guiding development are  
2419 repealed 18 months from July 1, 1986. After repeal, any plan  
2420 amendments must be consistent with the following principles:

2421 (j) Ensuring the improvement of nearshore water quality by  
2422 requiring the construction and operation of wastewater  
2423 management facilities that meet the requirements of ss.  
2424 381.0065(4)(l) and s. 403.086(11) ~~403.086(10)~~, as applicable,  
2425 and by directing growth to areas served by central wastewater  
2426 treatment facilities through permit allocation systems.

2427 (9) MODIFICATION TO PLANS AND REGULATIONS.—

2428 (a) Any land development regulation or element of a local  
2429 comprehensive plan in the Florida Keys Area may be enacted,  
2430 amended, or rescinded by a local government, but the enactment,  
2431 amendment, or rescission becomes effective only upon approval by  
2432 the state land planning agency. The state land planning agency  
2433 shall review the proposed change to determine if it is in



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2434 compliance with the principles for guiding development specified  
2435 in chapter 27F-8, Florida Administrative Code, as amended  
2436 effective August 23, 1984, and must approve or reject the  
2437 requested changes within 60 days after receipt. Amendments to  
2438 local comprehensive plans in the Florida Keys Area must also be  
2439 reviewed for compliance with the following:

2440 1. Construction schedules and detailed capital financing  
2441 plans for wastewater management improvements in the annually  
2442 adopted capital improvements element, and standards for the  
2443 construction of wastewater treatment and disposal facilities or  
2444 collection systems that meet or exceed the criteria in s.  
2445 403.086(11) ~~s. 403.086(10)~~ for wastewater treatment and disposal  
2446 facilities or s. 381.0065(4)(l) for onsite sewage treatment and  
2447 disposal systems.

2448 2. Goals, objectives, and policies to protect public safety  
2449 and welfare in the event of a natural disaster by maintaining a  
2450 hurricane evacuation clearance time for permanent residents of  
2451 no more than 24 hours. The hurricane evacuation clearance time  
2452 shall be determined by a hurricane evacuation study conducted in  
2453 accordance with a professionally accepted methodology and  
2454 approved by the state land planning agency.

2455 Section 34. Effective July 1, 2021, subsections (7) and  
2456 (18) of section 381.006, Florida Statutes, are amended to read:

2457 381.006 Environmental health.—The department shall conduct  
2458 an environmental health program as part of fulfilling the  
2459 state's public health mission. The purpose of this program is to  
2460 detect and prevent disease caused by natural and manmade factors  
2461 in the environment. The environmental health program shall  
2462 include, but not be limited to:



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2463       ~~(7) An onsite sewage treatment and disposal function.~~  
2464       (17)~~(18)~~ A food service inspection function for domestic  
2465 violence centers that are certified by the Department of  
2466 Children and Families and monitored by the Florida Coalition  
2467 Against Domestic Violence under part XII of chapter 39 and group  
2468 care homes as described in subsection (15) ~~(16)~~, which shall be  
2469 conducted annually and be limited to the requirements in  
2470 department rule applicable to community-based residential  
2471 facilities with five or fewer residents.

2472  
2473 The department may adopt rules to carry out the provisions of  
2474 this section.

2475       Section 35. Effective July 1, 2021, subsection (1) of  
2476 section 381.0061, Florida Statutes, is amended to read:

2477       381.0061 Administrative fines.—

2478       (1) In addition to any administrative action authorized by  
2479 chapter 120 or by other law, the department may impose a fine,  
2480 which may ~~shall~~ not exceed \$500 for each violation, for a  
2481 violation of s. 381.006(15) ~~s. 381.006(16)~~, s. 381.0065, s.  
2482 381.0066, s. 381.0072, or part III of chapter 489, for a  
2483 violation of any rule adopted under this chapter, or for a  
2484 violation of ~~any of the provisions of~~ chapter 386. Notice of  
2485 intent to impose such fine shall be given by the department to  
2486 the alleged violator. Each day that a violation continues may  
2487 constitute a separate violation.

2488       Section 36. Effective July 1, 2021, subsection (1) of  
2489 section 381.0064, Florida Statutes, is amended to read:

2490       381.0064 Continuing education courses for persons  
2491 installing or servicing septic tanks.—



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2492 (1) The Department of Environmental Protection ~~Health~~ shall  
2493 establish a program for continuing education which meets the  
2494 purposes of ss. 381.0101 and 489.554 regarding the public health  
2495 and environmental effects of onsite sewage treatment and  
2496 disposal systems and any other matters the department determines  
2497 desirable for the safe installation and use of onsite sewage  
2498 treatment and disposal systems. The department may charge a fee  
2499 to cover the cost of such program.

2500 Section 37. Effective July 1, 2021, paragraph (d) of  
2501 subsection (7), subsection (8), and paragraphs (b), (c), and (d)  
2502 of subsection (9) of section 381.00651, Florida Statutes, are  
2503 amended to read:

2504 381.00651 Periodic evaluation and assessment of onsite  
2505 sewage treatment and disposal systems.-

2506 (7) The following procedures shall be used for conducting  
2507 evaluations:

2508 (d) *Assessment procedure.*-All evaluation procedures used by  
2509 a qualified contractor shall be documented in the environmental  
2510 health database of the Department of Environmental Protection  
2511 ~~Health~~. The qualified contractor shall provide a copy of a  
2512 written, signed evaluation report to the property owner upon  
2513 completion of the evaluation and to the county health department  
2514 within 30 days after the evaluation. The report must ~~shall~~  
2515 contain the name and license number of the company providing the  
2516 report. A copy of the evaluation report shall be retained by the  
2517 local county health department for a minimum of 5 years and  
2518 until a subsequent inspection report is filed. The front cover  
2519 of the report must identify any system failure and include a  
2520 clear and conspicuous notice to the owner that the owner has a



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2521 right to have any remediation of the failure performed by a  
2522 qualified contractor other than the contractor performing the  
2523 evaluation. The report must further identify any crack, leak,  
2524 improper fit, or other defect in the tank, manhole, or lid, and  
2525 any other damaged or missing component; any sewage or effluent  
2526 visible on the ground or discharging to a ditch or other surface  
2527 water body; any downspout, stormwater, or other source of water  
2528 directed onto or toward the system; and any other maintenance  
2529 need or condition of the system at the time of the evaluation  
2530 which, in the opinion of the qualified contractor, would  
2531 possibly interfere with or restrict any future repair or  
2532 modification to the existing system. The report shall conclude  
2533 with an overall assessment of the fundamental operational  
2534 condition of the system.

2535 (8) The county health department, in coordination with the  
2536 department, shall administer any evaluation program on behalf of  
2537 a county, or a municipality within the county, that has adopted  
2538 an evaluation program pursuant to this section. In order to  
2539 administer the evaluation program, the county or municipality,  
2540 in consultation with the county health department, may develop a  
2541 reasonable fee schedule to be used solely to pay for the costs  
2542 of administering the evaluation program. Such a fee schedule  
2543 shall be identified in the ordinance that adopts the evaluation  
2544 program. When arriving at a reasonable fee schedule, the  
2545 estimated annual revenues to be derived from fees may not exceed  
2546 reasonable estimated annual costs of the program. Fees shall be  
2547 assessed to the system owner during an inspection and separately  
2548 identified on the invoice of the qualified contractor. Fees  
2549 shall be remitted by the qualified contractor to the county



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2550 health department. The county health department's administrative  
2551 responsibilities include the following:

2552 (a) Providing a notice to the system owner at least 60 days  
2553 before the system is due for an evaluation. The notice may  
2554 include information on the proper maintenance of onsite sewage  
2555 treatment and disposal systems.

2556 (b) In consultation with the department ~~of Health,~~  
2557 providing uniform disciplinary procedures and penalties for  
2558 qualified contractors who do not comply with the requirements of  
2559 the adopted ordinance, including, but not limited to, failure to  
2560 provide the evaluation report as required in this subsection to  
2561 the system owner and the county health department. Only the  
2562 county health department may assess penalties against system  
2563 owners for failure to comply with the adopted ordinance,  
2564 consistent with existing requirements of law.

2565 (9)

2566 (b) Upon receipt of the notice under paragraph (a), the  
2567 department ~~of Environmental Protection~~ shall, within existing  
2568 resources, notify the county or municipality of the potential  
2569 use of, and access to, program funds under the Clean Water State  
2570 Revolving Fund or s. 319 of the Clean Water Act, provide  
2571 guidance in the application process to receive such moneys, and  
2572 provide advice and technical assistance to the county or  
2573 municipality on how to establish a low-interest revolving loan  
2574 program or how to model a revolving loan program after the low-  
2575 interest loan program of the Clean Water State Revolving Fund.  
2576 This paragraph does not obligate the department ~~of Environmental~~  
2577 ~~Protection~~ to provide any county or municipality with money to  
2578 fund such programs.



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2579 (c) The department ~~of Health~~ may not adopt any rule that  
2580 alters ~~the provisions of~~ this section.

2581 (d) The department ~~of Health~~ must allow county health  
2582 departments and qualified contractors access to the  
2583 environmental health database to track relevant information and  
2584 assimilate data from assessment and evaluation reports of the  
2585 overall condition of onsite sewage treatment and disposal  
2586 systems. The environmental health database must be used by  
2587 contractors to report each service and evaluation event and by a  
2588 county health department to notify owners of onsite sewage  
2589 treatment and disposal systems when evaluations are due. Data  
2590 and information must be recorded and updated as service and  
2591 evaluations are conducted and reported.

2592 Section 38. Effective July 1, 2021, paragraph (g) of  
2593 subsection (1) of section 381.0101, Florida Statutes, is amended  
2594 to read:

2595 381.0101 Environmental health professionals.—

2596 (1) DEFINITIONS.—As used in this section:

2597 (g) "Primary environmental health program" means those  
2598 programs determined by the department to be essential for  
2599 providing basic environmental and sanitary protection to the  
2600 public. At a minimum, these programs shall include food  
2601 protection program work ~~and onsite sewage treatment and disposal~~  
2602 ~~system evaluations.~~

2603 Section 39. Section 403.08601, Florida Statutes, is amended  
2604 to read:

2605 403.08601 Leah Schad Memorial Ocean Outfall Program.—The  
2606 Legislature declares that as funds become available the state  
2607 may assist the local governments and agencies responsible for





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2608 implementing the Leah Schad Memorial Ocean Outfall Program  
2609 pursuant to s. 403.086(10) ~~s. 403.086(9)~~. Funds received from  
2610 other sources provided for in law, the General Appropriations  
2611 Act, from gifts designated for implementation of the plan from  
2612 individuals, corporations, or other entities, or federal funds  
2613 appropriated by Congress for implementation of the plan, may be  
2614 deposited into an account of the Water Quality Assurance Trust  
2615 Fund.

2616 Section 40. Section 403.0871, Florida Statutes, is amended  
2617 to read:

2618 403.0871 Florida Permit Fee Trust Fund.—There is  
2619 established within the department a nonlapsing trust fund to be  
2620 known as the “Florida Permit Fee Trust Fund.” All funds received  
2621 from applicants for permits pursuant to ss. 161.041, 161.053,  
2622 161.0535, 403.087(7) ~~403.087(6)~~, and 403.861(7)(a) shall be  
2623 deposited in the Florida Permit Fee Trust Fund and shall be used  
2624 by the department with the advice and consent of the Legislature  
2625 to supplement appropriations and other funds received by the  
2626 department for the administration of its responsibilities under  
2627 this chapter and chapter 161. In no case shall funds from the  
2628 Florida Permit Fee Trust Fund be used for salary increases  
2629 without the approval of the Legislature.

2630 Section 41. Paragraph (a) of subsection (11) of section  
2631 403.0872, Florida Statutes, is amended to read:

2632 403.0872 Operation permits for major sources of air  
2633 pollution; annual operation license fee.—Provided that program  
2634 approval pursuant to 42 U.S.C. s. 7661a has been received from  
2635 the United States Environmental Protection Agency, beginning  
2636 January 2, 1995, each major source of air pollution, including



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2637 electrical power plants certified under s. 403.511, must obtain  
2638 from the department an operation permit for a major source of  
2639 air pollution under this section. This operation permit is the  
2640 only department operation permit for a major source of air  
2641 pollution required for such source; provided, at the applicant's  
2642 request, the department shall issue a separate acid rain permit  
2643 for a major source of air pollution that is an affected source  
2644 within the meaning of 42 U.S.C. s. 7651a(1). Operation permits  
2645 for major sources of air pollution, except general permits  
2646 issued pursuant to s. 403.814, must be issued in accordance with  
2647 the procedures contained in this section and in accordance with  
2648 chapter 120; however, to the extent that chapter 120 is  
2649 inconsistent with ~~the provisions of~~ this section, the procedures  
2650 contained in this section prevail.

2651 (11) Each major source of air pollution permitted to  
2652 operate in this state must pay between January 15 and April 1 of  
2653 each year, upon written notice from the department, an annual  
2654 operation license fee in an amount determined by department  
2655 rule. The annual operation license fee shall be terminated  
2656 immediately in the event the United States Environmental  
2657 Protection Agency imposes annual fees solely to implement and  
2658 administer the major source air-operation permit program in  
2659 Florida under 40 C.F.R. s. 70.10(d).

2660 (a) The annual fee must be assessed based upon the source's  
2661 previous year's emissions and must be calculated by multiplying  
2662 the applicable annual operation license fee factor times the  
2663 tons of each regulated air pollutant actually emitted, as  
2664 calculated in accordance with the department's emissions  
2665 computation and reporting rules. The annual fee shall only apply



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2666 to those regulated pollutants, except carbon monoxide and  
2667 greenhouse gases, for which an allowable numeric emission  
2668 limiting standard is specified in the source's most recent  
2669 construction or operation permit; provided, however, that:

2670 1. The license fee factor is \$25 or another amount  
2671 determined by department rule which ensures that the revenue  
2672 provided by each year's operation license fees is sufficient to  
2673 cover all reasonable direct and indirect costs of the major  
2674 stationary source air-operation permit program established by  
2675 this section. The license fee factor may be increased beyond \$25  
2676 only if the secretary of the department affirmatively finds that  
2677 a shortage of revenue for support of the major stationary source  
2678 air-operation permit program will occur in the absence of a fee  
2679 factor adjustment. The annual license fee factor may never  
2680 exceed \$35.

2681 2. The amount of each regulated air pollutant in excess of  
2682 4,000 tons per year emitted by any source, or group of sources  
2683 belonging to the same Major Group as described in the Standard  
2684 Industrial Classification Manual, 1987, may not be included in  
2685 the calculation of the fee. Any source, or group of sources,  
2686 which does not emit any regulated air pollutant in excess of  
2687 4,000 tons per year, is allowed a one-time credit not to exceed  
2688 25 percent of the first annual licensing fee for the prorated  
2689 portion of existing air-operation permit application fees  
2690 remaining upon commencement of the annual licensing fees.

2691 3. If the department has not received the fee by March 1 of  
2692 the calendar year, the permittee must be sent a written warning  
2693 of the consequences for failing to pay the fee by April 1. If  
2694 the fee is not postmarked by April 1 of the calendar year, the



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2695 department shall impose, in addition to the fee, a penalty of 50  
2696 percent of the amount of the fee, plus interest on such amount  
2697 computed in accordance with s. 220.807. The department may not  
2698 impose such penalty or interest on any amount underpaid,  
2699 provided that the permittee has timely remitted payment of at  
2700 least 90 percent of the amount determined to be due and remits  
2701 full payment within 60 days after receipt of notice of the  
2702 amount underpaid. The department may waive the collection of  
2703 underpayment and may ~~shall~~ not be required to refund overpayment  
2704 of the fee, if the amount due is less than 1 percent of the fee,  
2705 up to \$50. The department may revoke any major air pollution  
2706 source operation permit if it finds that the permitholder has  
2707 failed to timely pay any required annual operation license fee,  
2708 penalty, or interest.

2709 4. Notwithstanding the computational provisions of this  
2710 subsection, the annual operation license fee for any source  
2711 subject to this section may ~~shall~~ not be less than \$250, except  
2712 that the annual operation license fee for sources permitted  
2713 solely through general permits issued under s. 403.814 may ~~shall~~  
2714 not exceed \$50 per year.

2715 5. Notwithstanding s. 403.087(7)(a)5.a., which authorizes  
2716 ~~the provisions of s. 403.087(6)(a)5.a., authorizing air~~  
2717 pollution construction permit fees, the department may not  
2718 require such fees for changes or additions to a major source of  
2719 air pollution permitted pursuant to this section, unless the  
2720 activity triggers permitting requirements under Title I, Part C  
2721 or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-  
2722 7514a. Costs to issue and administer such permits shall be  
2723 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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2753 States Department of Labor, or similar inflation indicator,  
2754 since the original fee was established or most recently revised.

2755 (a) The department shall establish by rule the inflation  
2756 index to be used for this purpose. The department shall review  
2757 the drinking water permit application fees authorized under s.  
2758 403.087(7) ~~s. 403.087(6)~~ and this part at least once every 5  
2759 years and shall adjust the fees upward, as necessary, within the  
2760 established fee caps to reflect changes in the Consumer Price  
2761 Index or similar inflation indicator. In the event of deflation,  
2762 the department shall consult with the Executive Office of the  
2763 Governor and the Legislature to determine whether downward fee  
2764 adjustments are appropriate based on the current budget and  
2765 appropriation considerations. The department shall also review  
2766 the drinking water operation license fees established pursuant  
2767 to paragraph (7)(b) at least once every 5 years to adopt, as  
2768 necessary, the same inflationary adjustments provided for in  
2769 this subsection.

2770 (b) The minimum fee amount shall be the minimum fee  
2771 prescribed in this section, and such fee amount shall remain in  
2772 effect until the effective date of fees adopted by rule by the  
2773 department.

2774 (21)(a) Upon issuance of a construction permit to construct  
2775 a new public water system drinking water treatment facility to  
2776 provide potable water supply using a surface water that, at the  
2777 time of the permit application, is not being used as a potable  
2778 water supply, and the classification of which does not include  
2779 potable water supply as a designated use, the department shall  
2780 add treated potable water supply as a designated use of the  
2781 surface water segment in accordance with s. 403.061(30)(b) ~~s.~~



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2782 ~~403.061(29)(b).~~

2783 (b) For existing public water system drinking water  
2784 treatment facilities that use a surface water as a treated  
2785 potable water supply, which surface water classification does  
2786 not include potable water supply as a designated use, the  
2787 department shall add treated potable water supply as a  
2788 designated use of the surface water segment in accordance with  
2789 s. 403.061(30)(b) ~~s. 403.061(29)(b).~~

2790 Section 44. Effective July 1, 2021, subsection (1) of  
2791 section 489.551, Florida Statutes, is amended to read:

2792 489.551 Definitions.—As used in this part:

2793 (1) "Department" means the Department of Environmental  
2794 Protection Health.

2795 Section 45. Paragraph (b) of subsection (10) of section  
2796 590.02, Florida Statutes, is amended to read:

2797 590.02 Florida Forest Service; powers, authority, and  
2798 duties; liability; building structures; Withlacoochee Training  
2799 Center.—

2800 (10)

2801 (b) The Florida Forest Service may delegate to a county,  
2802 municipality, or special district its authority:

2803 1. As delegated by the Department of Environmental  
2804 Protection pursuant to ss. 403.061(29) ~~ss. 403.061(28)~~ and  
2805 403.081, to manage and enforce regulations pertaining to the  
2806 burning of yard trash in accordance with s. 590.125(6).

2807 2. To manage the open burning of land clearing debris in  
2808 accordance with s. 590.125.

2809 Section 46. The Division of Law Revision is directed to  
2810 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.





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LEGISLATIVE ACTION

Senate

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House

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The Committee on Appropriations (Mayfield) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 256 - 2003

and insert:

Section 3. Section 327.62, Florida Statutes, is created to read:

327.62 No-Discharge Zone.—

(1) The Legislature finds that the protection and enhancement of water quality in this state requires greater environmental protection than federal standards provide. The



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11 Legislature further finds that a prohibition against discharges  
12 from vessels into the waters of the state would assist in  
13 protecting and enhancing the waters of this state.

14 (2) The Department of Environmental Protection, in  
15 coordination with the commission, shall apply to the  
16 Administrator of the United States Environmental Protection  
17 Agency to establish no-discharge zones wherever adequate pumpout  
18 facilities are available with the ultimate goal of making all of  
19 the waterbodies of this state no-discharge zones pursuant to 40  
20 C.F.R. s. 1700.10.

21 (3) By January 2, 2021, and every 2 years thereafter, the  
22 Department of Environmental Protection shall submit a report to  
23 the Governor, the President of the Senate, and the Speaker of  
24 the House of Representatives on the status and effectiveness of  
25 the no-discharge zone designation. The Department of  
26 Environmental Protection shall identify in the report any  
27 specific impediments that prevent the entire state from  
28 achieving a no-discharge zone designation.

29 Section 4. Paragraphs (a) and (b) of subsection (7) of  
30 section 373.036, Florida Statutes, are amended to read:

31 373.036 Florida water plan; district water management  
32 plans.—

33 (7) CONSOLIDATED WATER MANAGEMENT DISTRICT ANNUAL REPORT.—

34 (a) By March 1, annually, each water management district  
35 shall prepare and submit to the Office of Economic and  
36 Demographic Research, the department, the Governor, the  
37 President of the Senate, and the Speaker of the House of  
38 Representatives a consolidated water management district annual  
39 report on the management of water resources. In addition, copies



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40 must be provided by the water management districts to the chairs  
41 of all legislative committees having substantive or fiscal  
42 jurisdiction over the districts and the governing board of each  
43 county in the district having jurisdiction or deriving any funds  
44 for operations of the district. Copies of the consolidated  
45 annual report must be made available to the public, either in  
46 printed or electronic format.

47 (b) The consolidated annual report shall contain the  
48 following elements, as appropriate to that water management  
49 district:

50 1. A district water management plan annual report or the  
51 annual work plan report allowed in subparagraph (2)(e)4.

52 2. The department-approved minimum flows and minimum water  
53 levels annual priority list and schedule required by s.  
54 373.042(3).

55 3. The annual 5-year capital improvements plan required by  
56 s. 373.536(6)(a)3.

57 4. The alternative water supplies annual report required by  
58 s. 373.707(8)(n).

59 5. The final annual 5-year water resource development work  
60 program required by s. 373.536(6)(a)4.

61 6. The Florida Forever Water Management District Work Plan  
62 annual report required by s. 373.199(7).

63 7. The mitigation donation annual report required by s.  
64 373.414(1)(b)2.

65 8. Information on all projects related to water quality or  
66 water quantity as part of a 5-year work program, including:

67 a. A list of all specific projects identified to implement  
68 a basin management action plan, including any projects to



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69 connect onsite sewage treatment and disposal systems to central  
70 sewerage systems and convert onsite sewage treatment and  
71 disposal systems to advanced nutrient removing onsite sewage  
72 treatment and disposal systems, or a recovery or prevention  
73 strategy;

74       b. A priority ranking for each listed project for which  
75 state funding through the water resources development work  
76 program is requested, which must be made available to the public  
77 for comment at least 30 days before submission of the  
78 consolidated annual report;

79       c. The estimated cost for each listed project;

80       d. The estimated completion date for each listed project;

81       e. The source and amount of financial assistance to be made  
82 available by the department, a water management district, or  
83 other entity for each listed project; and

84       f. A quantitative estimate of each listed project's benefit  
85 to the watershed, water body, or water segment in which it is  
86 located.

87       9. A grade for each watershed, water body, or water segment  
88 in which a project listed under subparagraph 8. is located  
89 representing the level of impairment and violations of adopted  
90 minimum flow or minimum water levels. The grading system must  
91 reflect the severity of the impairment of the watershed, water  
92 body, or water segment.

93       Section 5. Paragraph (a) of subsection (3) and subsection  
94 (5) of section 373.4131, Florida Statutes, are amended, and  
95 subsection (6) is added to that section, to read:

96       373.4131 Statewide environmental resource permitting  
97 rules.-



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98           (3) (a) The water management districts, with department  
99 oversight, shall ~~may continue to~~ adopt rules governing design  
100 and performance standards for stormwater quality and quantity,  
101 including design and performance standards that increase the  
102 removal of nutrients from stormwater discharges. ~~and~~ The  
103 department shall ~~may~~ incorporate the design and performance  
104 standards by reference for use within the geographic  
105 jurisdiction of each district to ensure that additional  
106 pollutant loadings are not discharged into impaired water  
107 bodies. By January 1, 2021, the department and water management  
108 districts shall amend the Environmental Resource Permit  
109 Applicant's Handbook to include revised best management  
110 practices design criteria and low-impact design best management  
111 practices and design criteria that increase the removal of  
112 nutrients from stormwater discharges, and measures for  
113 consistent application of the net improvement performance  
114 standard to ensure that additional pollutant loadings are not  
115 discharged into impaired water bodies. The level of nutrient  
116 treatment and the design criteria for stormwater best management  
117 practices must be consistent with best available scientific  
118 information.

119           (5) To ensure consistent implementation and interpretation  
120 of the rules adopted pursuant to this section, the department  
121 shall conduct or oversee regular assessment and training of its  
122 staff and the staffs of the water management districts and local  
123 governments delegated local pollution control program authority  
124 under s. 373.441. The training must include coordinating field  
125 inspections of publicly and privately owned stormwater  
126 structural controls, such as stormwater retention or detention



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127 ponds.

128 (6) By January 1, 2021, the department shall evaluate  
129 inspection data relating to compliance by those entities that  
130 self-certify under s. 403.814(12) and shall provide the  
131 Legislature with recommendations for improvements to the self-  
132 certification program.

133 Section 6. Effective July 1, 2021, present paragraphs (d)  
134 through (q) of subsection (2) of section 381.0065, Florida  
135 Statutes, are redesignated as paragraphs (e) through (r),  
136 respectively, a new paragraph (d) is added to that subsection,  
137 and subsections (3) and (4) of that section are amended, to  
138 read:

139 381.0065 Onsite sewage treatment and disposal systems;  
140 regulation.—

141 (2) DEFINITIONS.—As used in ss. 381.0065-381.0067, the  
142 term:

143 (d) "Department" means the Department of Environmental  
144 Protection.

145 (3) DUTIES AND POWERS OF THE DEPARTMENT ~~OF HEALTH~~.—The  
146 department shall:

147 (a) Adopt rules to administer ss. 381.0065-381.0067,  
148 including definitions that are consistent with the definitions  
149 in this section, ~~decreases to setback requirements where no~~  
150 ~~health hazard exists,~~ increases for the lot-flow allowance for  
151 performance-based systems, requirements for separation from  
152 water table elevation during the wettest season, requirements  
153 for the design and construction of any component part of an  
154 onsite sewage treatment and disposal system, application and  
155 permit requirements for persons who maintain an onsite sewage



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156 treatment and disposal system, requirements for maintenance and  
157 service agreements for aerobic treatment units and performance-  
158 based treatment systems, and recommended standards, including  
159 disclosure requirements, for voluntary system inspections to be  
160 performed by individuals who are authorized by law to perform  
161 such inspections and who shall inform a person having ownership,  
162 control, or use of an onsite sewage treatment and disposal  
163 system of the inspection standards and of that person's  
164 authority to request an inspection based on all or part of the  
165 standards.

166 (b) Perform application reviews and site evaluations, issue  
167 permits, and conduct inspections and complaint investigations  
168 associated with the construction, installation, maintenance,  
169 modification, abandonment, operation, use, or repair of an  
170 onsite sewage treatment and disposal system for a residence or  
171 establishment with an estimated domestic sewage flow of 10,000  
172 gallons or less per day, or an estimated commercial sewage flow  
173 of 5,000 gallons or less per day, which is not currently  
174 regulated under chapter 403.

175 (c) Develop a comprehensive program to ensure that onsite  
176 sewage treatment and disposal systems regulated by the  
177 department are sized, designed, constructed, installed, sited,  
178 repaired, modified, abandoned, used, operated, and maintained in  
179 compliance with this section and rules adopted under this  
180 section to prevent groundwater contamination, including impacts  
181 from nutrient pollution, and surface water contamination and to  
182 preserve the public health. The department is the final  
183 administrative interpretive authority regarding rule  
184 interpretation. In the event of a conflict regarding rule



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185 interpretation, the secretary of the department ~~State Surgeon~~  
186 ~~General~~, or his or her designee, shall timely assign a staff  
187 person to resolve the dispute.

188 (d) Grant variances in hardship cases under the conditions  
189 prescribed in this section and rules adopted under this section.

190 (e) Permit the use of a limited number of innovative  
191 systems for a specific period of time, when there is compelling  
192 evidence that the system will function properly and reliably to  
193 meet the requirements of this section and rules adopted under  
194 this section.

195 (f) Issue annual operating permits under this section.

196 (g) Establish and collect fees as established under s.  
197 381.0066 for services provided with respect to onsite sewage  
198 treatment and disposal systems.

199 (h) Conduct enforcement activities, including imposing  
200 fines, issuing citations, suspensions, revocations, injunctions,  
201 and emergency orders for violations of this section, part I of  
202 chapter 386, or part III of chapter 489 or for a violation of  
203 any rule adopted under this section, part I of chapter 386, or  
204 part III of chapter 489.

205 (i) Provide or conduct education and training of department  
206 personnel, service providers, and the public regarding onsite  
207 sewage treatment and disposal systems.

208 (j) Supervise research on, demonstration of, and training  
209 on the performance, environmental impact, and public health  
210 impact of onsite sewage treatment and disposal systems within  
211 this state. Research fees collected under s. 381.0066(2)(k) must  
212 be used to develop and fund hands-on training centers designed  
213 to provide practical information about onsite sewage treatment





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214 and disposal systems to septic tank contractors, master septic  
215 tank contractors, contractors, inspectors, engineers, and the  
216 public and must also be used to fund research projects which  
217 focus on improvements of onsite sewage treatment and disposal  
218 systems, including use of performance-based standards and  
219 reduction of environmental impact. Research projects shall be  
220 initially approved by the technical review and advisory panel  
221 and shall be applicable to and reflect the soil conditions  
222 specific to Florida. Such projects shall be awarded through  
223 competitive negotiation, using the procedures provided in s.  
224 287.055, to public or private entities that have experience in  
225 onsite sewage treatment and disposal systems in Florida and that  
226 are principally located in Florida. Research projects may ~~shall~~  
227 not be awarded to firms or entities that employ or are  
228 associated with persons who serve on either the technical review  
229 and advisory panel or the research review and advisory  
230 committee.

231 (k) Approve the installation of individual graywater  
232 disposal systems in which blackwater is treated by a central  
233 sewerage system.

234 (l) Regulate and permit the sanitation, handling,  
235 treatment, storage, reuse, and disposal of byproducts from any  
236 system regulated under this chapter and not regulated by the  
237 Department of Environmental Protection.

238 (m) Permit and inspect portable or temporary toilet  
239 services and holding tanks. The department shall review  
240 applications, perform site evaluations, and issue permits for  
241 the temporary use of holding tanks, privies, portable toilet  
242 services, or any other toilet facility that is intended for use



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243 on a permanent or nonpermanent basis, including facilities  
244 placed on construction sites when workers are present. The  
245 department may specify standards for the construction,  
246 maintenance, use, and operation of any such facility for  
247 temporary use.

248 (n) Regulate and permit maintenance entities for  
249 performance-based treatment systems and aerobic treatment unit  
250 systems. To ensure systems are maintained and operated according  
251 to manufacturer's specifications and designs, the department  
252 shall establish by rule minimum qualifying criteria for  
253 maintenance entities. The criteria shall include: training,  
254 access to approved spare parts and components, access to  
255 manufacturer's maintenance and operation manuals, and service  
256 response time. The maintenance entity shall employ a contractor  
257 licensed under s. 489.105(3)(m), or part III of chapter 489, or  
258 a state-licensed wastewater plant operator, who is responsible  
259 for maintenance and repair of all systems under contract.

260 (4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not  
261 construct, repair, modify, abandon, or operate an onsite sewage  
262 treatment and disposal system without first obtaining a permit  
263 approved by the department. The department may issue permits to  
264 carry out this section, ~~but shall not make the issuance of such~~  
265 ~~permits contingent upon prior approval by the Department of~~  
266 ~~Environmental Protection, except that~~ The issuance of a permit  
267 for work seaward of the coastal construction control line  
268 established under s. 161.053 shall be contingent upon receipt of  
269 any required coastal construction control line permit from the  
270 department ~~of Environmental Protection~~. A construction permit is  
271 valid for 18 months from the issuance date and may be extended



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272 by the department for one 90-day period under rules adopted by  
273 the department. A repair permit is valid for 90 days from the  
274 date of issuance. An operating permit must be obtained before  
275 ~~prior to~~ the use of any aerobic treatment unit or if the  
276 establishment generates commercial waste. Buildings or  
277 establishments that use an aerobic treatment unit or generate  
278 commercial waste shall be inspected by the department at least  
279 annually to assure compliance with the terms of the operating  
280 permit. The operating permit for a commercial wastewater system  
281 is valid for 1 year from the date of issuance and must be  
282 renewed annually. The operating permit for an aerobic treatment  
283 unit is valid for 2 years from the date of issuance and must be  
284 renewed every 2 years. If all information pertaining to the  
285 siting, location, and installation conditions or repair of an  
286 onsite sewage treatment and disposal system remains the same, a  
287 construction or repair permit for the onsite sewage treatment  
288 and disposal system may be transferred to another person, if the  
289 transferee files, within 60 days after the transfer of  
290 ownership, an amended application providing all corrected  
291 information and proof of ownership of the property. There is no  
292 fee associated with the processing of this supplemental  
293 information. A person may not contract to construct, modify,  
294 alter, repair, service, abandon, or maintain any portion of an  
295 onsite sewage treatment and disposal system without being  
296 registered under part III of chapter 489. A property owner who  
297 personally performs construction, maintenance, or repairs to a  
298 system serving his or her own owner-occupied single-family  
299 residence is exempt from registration requirements for  
300 performing such construction, maintenance, or repairs on that



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301 residence, but is subject to all permitting requirements. A  
302 municipality or political subdivision of the state may not issue  
303 a building or plumbing permit for any building that requires the  
304 use of an onsite sewage treatment and disposal system unless the  
305 owner or builder has received a construction permit for such  
306 system from the department. A building or structure may not be  
307 occupied and a municipality, political subdivision, or any state  
308 or federal agency may not authorize occupancy until the  
309 department approves the final installation of the onsite sewage  
310 treatment and disposal system. A municipality or political  
311 subdivision of the state may not approve any change in occupancy  
312 or tenancy of a building that uses an onsite sewage treatment  
313 and disposal system until the department has reviewed the use of  
314 the system with the proposed change, approved the change, and  
315 amended the operating permit.

316 (a) Subdivisions and lots in which each lot has a minimum  
317 area of at least one-half acre and either a minimum dimension of  
318 100 feet or a mean of at least 100 feet of the side bordering  
319 the street and the distance formed by a line parallel to the  
320 side bordering the street drawn between the two most distant  
321 points of the remainder of the lot may be developed with a water  
322 system regulated under s. 381.0062 and onsite sewage treatment  
323 and disposal systems, provided the projected daily sewage flow  
324 does not exceed an average of 1,500 gallons per acre per day,  
325 and provided satisfactory drinking water can be obtained and all  
326 distance and setback, soil condition, water table elevation, and  
327 other related requirements of this section and rules adopted  
328 under this section can be met.

329 (b) Subdivisions and lots using a public water system as



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330 defined in s. 403.852 may use onsite sewage treatment and  
331 disposal systems, provided there are no more than four lots per  
332 acre, provided the projected daily sewage flow does not exceed  
333 an average of 2,500 gallons per acre per day, and provided that  
334 all distance and setback, soil condition, water table elevation,  
335 and other related requirements that are generally applicable to  
336 the use of onsite sewage treatment and disposal systems are met.

337 (c) Notwithstanding paragraphs (a) and (b), for  
338 subdivisions platted of record on or before October 1, 1991,  
339 when a developer or other appropriate entity has previously made  
340 or makes provisions, including financial assurances or other  
341 commitments, acceptable to the Department ~~of Health~~, that a  
342 central water system will be installed by a regulated public  
343 utility based on a density formula, private potable wells may be  
344 used with onsite sewage treatment and disposal systems until the  
345 agreed-upon densities are reached. In a subdivision regulated by  
346 this paragraph, the average daily sewage flow may not exceed  
347 2,500 gallons per acre per day. This section does not affect the  
348 validity of existing prior agreements. After October 1, 1991,  
349 the exception provided under this paragraph is not available to  
350 a developer or other appropriate entity.

351 (d) Paragraphs (a) and (b) do not apply to any proposed  
352 residential subdivision with more than 50 lots or to any  
353 proposed commercial subdivision with more than 5 lots where a  
354 publicly owned or investor-owned sewerage system is available.  
355 It is the intent of this paragraph not to allow development of  
356 additional proposed subdivisions in order to evade the  
357 requirements of this paragraph.

358 (e) The department shall adopt rules to locate onsite



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359 sewage treatment and disposal systems, including establishing  
360 setback distances, to prevent groundwater contamination and  
361 surface water contamination and to preserve the public health.  
362 The rulemaking process for such rules must be completed by July  
363 1, 2022, and the department shall notify the Division of Law  
364 Revision of the date such rules are adopted. The rules must  
365 consider conventional and enhanced nutrient-reducing onsite  
366 sewage treatment and disposal system designs, impaired or  
367 degraded water bodies, domestic wastewater and drinking water  
368 infrastructure, potable water sources, nonpotable wells,  
369 stormwater infrastructure, the onsite sewage treatment and  
370 disposal system remediation plans developed pursuant to s.  
371 403.067(7)(a)9.b., nutrient pollution, and the recommendations  
372 of the onsite sewage treatment and disposal systems technical  
373 advisory committee established pursuant to s. 381.00652.

374 (f)~~(e)~~ Onsite sewage treatment and disposal systems that  
375 are permitted before the rules identified in paragraph (e) take  
376 effect may ~~must~~ not be placed closer than:

- 377 1. Seventy-five feet from a private potable well.
- 378 2. Two hundred feet from a public potable well serving a  
379 residential or nonresidential establishment having a total  
380 sewage flow of greater than 2,000 gallons per day.
- 381 3. One hundred feet from a public potable well serving a  
382 residential or nonresidential establishment having a total  
383 sewage flow of less than or equal to 2,000 gallons per day.
- 384 4. Fifty feet from any nonpotable well.
- 385 5. Ten feet from any storm sewer pipe, to the maximum  
386 extent possible, but in no instance shall the setback be less  
387 than 5 feet.



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388           6. Seventy-five feet from the mean high-water line of a  
389 tidally influenced surface water body.

390           7. Seventy-five feet from the mean annual flood line of a  
391 permanent nontidal surface water body.

392           8. Fifteen feet from the design high-water line of  
393 retention areas, detention areas, or swales designed to contain  
394 standing or flowing water for less than 72 hours after a  
395 rainfall or the design high-water level of normally dry drainage  
396 ditches or normally dry individual lot stormwater retention  
397 areas.

398           ~~(f) Except as provided under paragraphs (c) and (t), no~~  
399 ~~limitations shall be imposed by rule, relating to the distance~~  
400 ~~between an onsite disposal system and any area that either~~  
401 ~~permanently or temporarily has visible surface water.~~

402           (g) All provisions of this section and rules adopted under  
403 this section relating to soil condition, water table elevation,  
404 distance, and other setback requirements must be equally applied  
405 to all lots, with the following exceptions:

406           1. Any residential lot that was platted and recorded on or  
407 after January 1, 1972, or that is part of a residential  
408 subdivision that was approved by the appropriate permitting  
409 agency on or after January 1, 1972, and that was eligible for an  
410 onsite sewage treatment and disposal system construction permit  
411 on the date of such platting and recording or approval shall be  
412 eligible for an onsite sewage treatment and disposal system  
413 construction permit, regardless of when the application for a  
414 permit is made. If rules in effect at the time the permit  
415 application is filed cannot be met, residential lots platted and  
416 recorded or approved on or after January 1, 1972, shall, to the



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417 maximum extent possible, comply with the rules in effect at the  
418 time the permit application is filed. At a minimum, however,  
419 those residential lots platted and recorded or approved on or  
420 after January 1, 1972, but before January 1, 1983, shall comply  
421 with those rules in effect on January 1, 1983, and those  
422 residential lots platted and recorded or approved on or after  
423 January 1, 1983, shall comply with those rules in effect at the  
424 time of such platting and recording or approval. In determining  
425 the maximum extent of compliance with current rules that is  
426 possible, the department shall allow structures and  
427 appurtenances thereto which were authorized at the time such  
428 lots were platted and recorded or approved.

429         2. Lots platted before 1972 are subject to a 50-foot  
430 minimum surface water setback and are not subject to lot size  
431 requirements. The projected daily flow for onsite sewage  
432 treatment and disposal systems for lots platted before 1972 may  
433 not exceed:

434             a. Two thousand five hundred gallons per acre per day for  
435 lots served by public water systems as defined in s. 403.852.

436             b. One thousand five hundred gallons per acre per day for  
437 lots served by water systems regulated under s. 381.0062.

438             (h)1. The department may grant variances in hardship cases  
439 which may be less restrictive than ~~the provisions~~ specified in  
440 this section. If a variance is granted and the onsite sewage  
441 treatment and disposal system construction permit has been  
442 issued, the variance may be transferred with the system  
443 construction permit, if the transferee files, within 60 days  
444 after the transfer of ownership, an amended construction permit  
445 application providing all corrected information and proof of





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446 ownership of the property and if the same variance would have  
447 been required for the new owner of the property as was  
448 originally granted to the original applicant for the variance.  
449 There is no fee associated with the processing of this  
450 supplemental information. A variance may not be granted under  
451 this section until the department is satisfied that:

452 a. The hardship was not caused intentionally by the action  
453 of the applicant;

454 b. No reasonable alternative, taking into consideration  
455 factors such as cost, exists for the treatment of the sewage;  
456 and

457 c. The discharge from the onsite sewage treatment and  
458 disposal system will not adversely affect the health of the  
459 applicant or the public or significantly degrade the groundwater  
460 or surface waters.

461  
462 Where soil conditions, water table elevation, and setback  
463 provisions are determined by the department to be satisfactory,  
464 special consideration must be given to those lots platted before  
465 1972.

466 2. The department shall appoint and staff a variance review  
467 and advisory committee, which shall meet monthly to recommend  
468 agency action on variance requests. The committee shall make its  
469 recommendations on variance requests at the meeting in which the  
470 application is scheduled for consideration, except for an  
471 extraordinary change in circumstances, the receipt of new  
472 information that raises new issues, or when the applicant  
473 requests an extension. The committee shall consider the criteria  
474 in subparagraph 1. in its recommended agency action on variance



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475 requests and shall also strive to allow property owners the full  
476 use of their land where possible. The committee consists of the  
477 following:

478 a. The Secretary of Environmental Protection ~~State Surgeon~~  
479 ~~General~~ or his or her designee.

480 b. A representative from the county health departments.

481 c. A representative from the home building industry  
482 recommended by the Florida Home Builders Association.

483 d. A representative from the septic tank industry  
484 recommended by the Florida Onsite Wastewater Association.

485 e. A representative from the Department of Health  
486 ~~Environmental Protection~~.

487 f. A representative from the real estate industry who is  
488 also a developer in this state who develops lots using onsite  
489 sewage treatment and disposal systems, recommended by the  
490 Florida Association of Realtors.

491 g. A representative from the engineering profession  
492 recommended by the Florida Engineering Society.

493

494 Members shall be appointed for a term of 3 years, with such  
495 appointments being staggered so that the terms of no more than  
496 two members expire in any one year. Members shall serve without  
497 remuneration, but if requested, shall be reimbursed for per diem  
498 and travel expenses as provided in s. 112.061.

499 (i) A construction permit may not be issued for an onsite  
500 sewage treatment and disposal system in any area zoned or used  
501 for industrial or manufacturing purposes, or its equivalent,  
502 where a publicly owned or investor-owned sewage treatment system  
503 is available, or where a likelihood exists that the system will



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504 receive toxic, hazardous, or industrial waste. An existing  
505 onsite sewage treatment and disposal system may be repaired if a  
506 publicly owned or investor-owned sewerage system is not  
507 available within 500 feet of the building sewer stub-out and if  
508 system construction and operation standards can be met. This  
509 paragraph does not require publicly owned or investor-owned  
510 sewerage treatment systems to accept anything other than  
511 domestic wastewater.

512 1. A building located in an area zoned or used for  
513 industrial or manufacturing purposes, or its equivalent, when  
514 such building is served by an onsite sewage treatment and  
515 disposal system, must not be occupied until the owner or tenant  
516 has obtained written approval from the department. The  
517 department may ~~shall~~ not grant approval when the proposed use of  
518 the system is to dispose of toxic, hazardous, or industrial  
519 wastewater or toxic or hazardous chemicals.

520 2. Each person who owns or operates a business or facility  
521 in an area zoned or used for industrial or manufacturing  
522 purposes, or its equivalent, or who owns or operates a business  
523 that has the potential to generate toxic, hazardous, or  
524 industrial wastewater or toxic or hazardous chemicals, and uses  
525 an onsite sewage treatment and disposal system that is installed  
526 on or after July 5, 1989, must obtain an annual system operating  
527 permit from the department. A person who owns or operates a  
528 business that uses an onsite sewage treatment and disposal  
529 system that was installed and approved before July 5, 1989, need  
530 not obtain a system operating permit. However, upon change of  
531 ownership or tenancy, the new owner or operator must notify the  
532 department of the change, and the new owner or operator must



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533 obtain an annual system operating permit, regardless of the date  
534 that the system was installed or approved.

535         3. The department shall periodically review and evaluate  
536 the continued use of onsite sewage treatment and disposal  
537 systems in areas zoned or used for industrial or manufacturing  
538 purposes, or its equivalent, and may require the collection and  
539 analyses of samples from within and around such systems. If the  
540 department finds that toxic or hazardous chemicals or toxic,  
541 hazardous, or industrial wastewater have been or are being  
542 disposed of through an onsite sewage treatment and disposal  
543 system, the department shall initiate enforcement actions  
544 against the owner or tenant to ensure adequate cleanup,  
545 treatment, and disposal.

546         (j) An onsite sewage treatment and disposal system designed  
547 by a professional engineer registered in the state and certified  
548 by such engineer as complying with performance criteria adopted  
549 by the department must be approved by the department subject to  
550 the following:

551         1. The performance criteria applicable to engineer-designed  
552 systems must be limited to those necessary to ensure that such  
553 systems do not adversely affect the public health or  
554 significantly degrade the groundwater or surface water. Such  
555 performance criteria shall include consideration of the quality  
556 of system effluent, the proposed total sewage flow per acre,  
557 wastewater treatment capabilities of the natural or replaced  
558 soil, water quality classification of the potential surface-  
559 water-receiving body, and the structural and maintenance  
560 viability of the system for the treatment of domestic  
561 wastewater. However, performance criteria shall address only the



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562 performance of a system and not a system's design.

563         2. A person electing to utilize an engineer-designed system  
564 shall, upon completion of the system design, submit such design,  
565 certified by a registered professional engineer, to the county  
566 health department. The county health department may utilize an  
567 outside consultant to review the engineer-designed system, with  
568 the actual cost of such review to be borne by the applicant.  
569 Within 5 working days after receiving an engineer-designed  
570 system permit application, the county health department shall  
571 request additional information if the application is not  
572 complete. Within 15 working days after receiving a complete  
573 application for an engineer-designed system, the county health  
574 department either shall issue the permit or, if it determines  
575 that the system does not comply with the performance criteria,  
576 shall notify the applicant of that determination and refer the  
577 application to the department for a determination as to whether  
578 the system should be approved, disapproved, or approved with  
579 modification. The department engineer's determination shall  
580 prevail over the action of the county health department. The  
581 applicant shall be notified in writing of the department's  
582 determination and of the applicant's rights to pursue a variance  
583 or seek review under ~~the provisions of~~ chapter 120.

584         3. The owner of an engineer-designed performance-based  
585 system must maintain a current maintenance service agreement  
586 with a maintenance entity permitted by the department. The  
587 maintenance entity shall inspect each system at least twice each  
588 year and shall report quarterly to the department on the number  
589 of systems inspected and serviced. The reports may be submitted  
590 electronically.



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591           4. The property owner of an owner-occupied, single-family  
592 residence may be approved and permitted by the department as a  
593 maintenance entity for his or her own performance-based  
594 treatment system upon written certification from the system  
595 manufacturer's approved representative that the property owner  
596 has received training on the proper installation and service of  
597 the system. The maintenance service agreement must conspicuously  
598 disclose that the property owner has the right to maintain his  
599 or her own system and is exempt from contractor registration  
600 requirements for performing construction, maintenance, or  
601 repairs on the system but is subject to all permitting  
602 requirements.

603           5. The property owner shall obtain a biennial system  
604 operating permit from the department for each system. The  
605 department shall inspect the system at least annually, or on  
606 such periodic basis as the fee collected permits, and may  
607 collect system-effluent samples if appropriate to determine  
608 compliance with the performance criteria. The fee for the  
609 biennial operating permit shall be collected beginning with the  
610 second year of system operation.

611           6. If an engineer-designed system fails to properly  
612 function or fails to meet performance standards, the system  
613 shall be re-engineered, if necessary, to bring the system into  
614 compliance with ~~the provisions of~~ this section.

615           (k) An innovative system may be approved in conjunction  
616 with an engineer-designed site-specific system which is  
617 certified by the engineer to meet the performance-based criteria  
618 adopted by the department.

619           (l) For the Florida Keys, the department shall adopt a



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620 special rule for the construction, installation, modification,  
621 operation, repair, maintenance, and performance of onsite sewage  
622 treatment and disposal systems which considers the unique soil  
623 conditions and water table elevations, densities, and setback  
624 requirements. On lots where a setback distance of 75 feet from  
625 surface waters, saltmarsh, and buttonwood association habitat  
626 areas cannot be met, an injection well, approved and permitted  
627 by the department, may be used for disposal of effluent from  
628 onsite sewage treatment and disposal systems. The following  
629 additional requirements apply to onsite sewage treatment and  
630 disposal systems in Monroe County:

631 1. The county, each municipality, and those special  
632 districts established for the purpose of the collection,  
633 transmission, treatment, or disposal of sewage shall ensure, in  
634 accordance with the specific schedules adopted by the  
635 Administration Commission under s. 380.0552, the completion of  
636 onsite sewage treatment and disposal system upgrades to meet the  
637 requirements of this paragraph.

638 2. Onsite sewage treatment and disposal systems must cease  
639 discharge by December 31, 2015, or must comply with department  
640 rules and provide the level of treatment which, on a permitted  
641 annual average basis, produces an effluent that contains no more  
642 than the following concentrations:

- 643 a. Biochemical Oxygen Demand (CBOD5) of 10 mg/l.
- 644 b. Suspended Solids of 10 mg/l.
- 645 c. Total Nitrogen, expressed as N, of 10 mg/l or a  
646 reduction in nitrogen of at least 70 percent. A system that has  
647 been tested and certified to reduce nitrogen concentrations by  
648 at least 70 percent shall be deemed to be in compliance with



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649 this standard.

650 d. Total Phosphorus, expressed as P, of 1 mg/l.

651

652 In addition, onsite sewage treatment and disposal systems  
653 discharging to an injection well must provide basic disinfection  
654 as defined by department rule.

655 3. In areas not scheduled to be served by a central sewer,  
656 onsite sewage treatment and disposal systems must, by December  
657 31, 2015, comply with department rules and provide the level of  
658 treatment described in subparagraph 2.

659 4. In areas scheduled to be served by central sewer by  
660 December 31, 2015, if the property owner has paid a connection  
661 fee or assessment for connection to the central sewer system,  
662 the property owner may install a holding tank with a high water  
663 alarm or an onsite sewage treatment and disposal system that  
664 meets the following minimum standards:

665 a. The existing tanks must be pumped and inspected and  
666 certified as being watertight and free of defects in accordance  
667 with department rule; and

668 b. A sand-lined drainfield or injection well in accordance  
669 with department rule must be installed.

670 5. Onsite sewage treatment and disposal systems must be  
671 monitored for total nitrogen and total phosphorus concentrations  
672 as required by department rule.

673 6. The department shall enforce proper installation,  
674 operation, and maintenance of onsite sewage treatment and  
675 disposal systems pursuant to this chapter, including ensuring  
676 that the appropriate level of treatment described in  
677 subparagraph 2. is met.





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678           7. The authority of a local government, including a special  
679 district, to mandate connection of an onsite sewage treatment  
680 and disposal system is governed by s. 4, chapter 99-395, Laws of  
681 Florida.

682           8. Notwithstanding any other ~~provision of~~ law, an onsite  
683 sewage treatment and disposal system installed after July 1,  
684 2010, in unincorporated Monroe County, excluding special  
685 wastewater districts, that complies with the standards in  
686 subparagraph 2. is not required to connect to a central sewer  
687 system until December 31, 2020.

688           (m) No product sold in the state for use in onsite sewage  
689 treatment and disposal systems may contain any substance in  
690 concentrations or amounts that would interfere with or prevent  
691 the successful operation of such system, or that would cause  
692 discharges from such systems to violate applicable water quality  
693 standards. The department shall publish criteria for products  
694 known or expected to meet the conditions of this paragraph. In  
695 the event a product does not meet such criteria, such product  
696 may be sold if the manufacturer satisfactorily demonstrates to  
697 the department that the conditions of this paragraph are met.

698           (n) Evaluations for determining the seasonal high-water  
699 table elevations or the suitability of soils for the use of a  
700 new onsite sewage treatment and disposal system shall be  
701 performed by department personnel, professional engineers  
702 registered in the state, or such other persons with expertise,  
703 as defined by rule, in making such evaluations. Evaluations for  
704 determining mean annual flood lines shall be performed by those  
705 persons identified in paragraph (2) (k) ~~(2) (j)~~. The department  
706 shall accept evaluations submitted by professional engineers and



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707 such other persons as meet the expertise established by this  
708 section or by rule unless the department has a reasonable  
709 scientific basis for questioning the accuracy or completeness of  
710 the evaluation.

711 (o) The department shall appoint a research review and  
712 advisory committee, which shall meet at least semiannually. The  
713 committee shall advise the department on directions for new  
714 research, review and rank proposals for research contracts, and  
715 review draft research reports and make comments. The committee  
716 is comprised of:

717 1. A representative of the Secretary of Environmental  
718 Protection State Surgeon General, or his or her designee.

719 2. A representative from the septic tank industry.

720 3. A representative from the home building industry.

721 4. A representative from an environmental interest group.

722 5. A representative from the State University System, from  
723 a department knowledgeable about onsite sewage treatment and  
724 disposal systems.

725 6. A professional engineer registered in this state who has  
726 work experience in onsite sewage treatment and disposal systems.

727 7. A representative from local government who is  
728 knowledgeable about domestic wastewater treatment.

729 8. A representative from the real estate profession.

730 9. A representative from the restaurant industry.

731 10. A consumer.

732

733 Members shall be appointed for a term of 3 years, with the  
734 appointments being staggered so that the terms of no more than  
735 four members expire in any one year. Members shall serve without



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736 remuneration, but are entitled to reimbursement for per diem and  
737 travel expenses as provided in s. 112.061.

738 (p) An application for an onsite sewage treatment and  
739 disposal system permit shall be completed in full, signed by the  
740 owner or the owner's authorized representative, or by a  
741 contractor licensed under chapter 489, and shall be accompanied  
742 by all required exhibits and fees. No specific documentation of  
743 property ownership shall be required as a prerequisite to the  
744 review of an application or the issuance of a permit. The  
745 issuance of a permit does not constitute determination by the  
746 department of property ownership.

747 (q) The department may not require any form of subdivision  
748 analysis of property by an owner, developer, or subdivider prior  
749 to submission of an application for an onsite sewage treatment  
750 and disposal system.

751 (r) Nothing in this section limits the power of a  
752 municipality or county to enforce other laws for the protection  
753 of the public health and safety.

754 (s) In the siting of onsite sewage treatment and disposal  
755 systems, including drainfields, shoulders, and slopes, guttering  
756 ~~may shall~~ not be required on single-family residential dwelling  
757 units for systems located greater than 5 feet from the roof drip  
758 line of the house. If guttering is used on residential dwelling  
759 units, the downspouts shall be directed away from the  
760 drainfield.

761 (t) Notwithstanding ~~the provisions of~~ subparagraph (g)1.,  
762 onsite sewage treatment and disposal systems located in  
763 floodways of the Suwannee and Aucilla Rivers must adhere to the  
764 following requirements:



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765           1. The absorption surface of the drainfield may ~~shall~~ not  
766 be subject to flooding based on 10-year flood elevations.  
767 Provided, however, for lots or parcels created by the  
768 subdivision of land in accordance with applicable local  
769 government regulations prior to January 17, 1990, if an  
770 applicant cannot construct a drainfield system with the  
771 absorption surface of the drainfield at an elevation equal to or  
772 above 10-year flood elevation, the department shall issue a  
773 permit for an onsite sewage treatment and disposal system within  
774 the 10-year floodplain of rivers, streams, and other bodies of  
775 flowing water if all of the following criteria are met:  
776           a. The lot is at least one-half acre in size;  
777           b. The bottom of the drainfield is at least 36 inches above  
778 the 2-year flood elevation; and  
779           c. The applicant installs either: a waterless,  
780 incinerating, or organic waste composting toilet and a graywater  
781 system and drainfield in accordance with department rules; an  
782 aerobic treatment unit and drainfield in accordance with  
783 department rules; a system ~~approved by the State Health Office~~  
784 that is capable of reducing effluent nitrate by at least 50  
785 percent in accordance with department rules; or a system other  
786 than a system using alternative drainfield materials in  
787 accordance with department rules ~~approved by the county health~~  
788 ~~department pursuant to department rule other than a system using~~  
789 ~~alternative drainfield materials~~. The United States Department  
790 of Agriculture Soil Conservation Service soil maps, State of  
791 Florida Water Management District data, and Federal Emergency  
792 Management Agency Flood Insurance maps are resources that shall  
793 be used to identify flood-prone areas.



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794           2. The use of fill or mounding to elevate a drainfield  
795 system out of the 10-year floodplain of rivers, streams, or  
796 other bodies of flowing water may ~~shall~~ not be permitted if such  
797 a system lies within a regulatory floodway of the Suwannee and  
798 Aucilla Rivers. In cases where the 10-year flood elevation does  
799 not coincide with the boundaries of the regulatory floodway, the  
800 regulatory floodway will be considered for the purposes of this  
801 subsection to extend at a minimum to the 10-year flood  
802 elevation.

803           (u)1. The owner of an aerobic treatment unit system shall  
804 maintain a current maintenance service agreement with an aerobic  
805 treatment unit maintenance entity permitted by the department.  
806 The maintenance entity shall inspect each aerobic treatment unit  
807 system at least twice each year and shall report quarterly to  
808 the department on the number of aerobic treatment unit systems  
809 inspected and serviced. The reports may be submitted  
810 electronically.

811           2. The property owner of an owner-occupied, single-family  
812 residence may be approved and permitted by the department as a  
813 maintenance entity for his or her own aerobic treatment unit  
814 system upon written certification from the system manufacturer's  
815 approved representative that the property owner has received  
816 training on the proper installation and service of the system.  
817 The maintenance entity service agreement must conspicuously  
818 disclose that the property owner has the right to maintain his  
819 or her own system and is exempt from contractor registration  
820 requirements for performing construction, maintenance, or  
821 repairs on the system but is subject to all permitting  
822 requirements.



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823           3. A septic tank contractor licensed under part III of  
824 chapter 489, if approved by the manufacturer, may not be denied  
825 access by the manufacturer to aerobic treatment unit system  
826 training or spare parts for maintenance entities. After the  
827 original warranty period, component parts for an aerobic  
828 treatment unit system may be replaced with parts that meet  
829 manufacturer's specifications but are manufactured by others.  
830 The maintenance entity shall maintain documentation of the  
831 substitute part's equivalency for 2 years and shall provide such  
832 documentation to the department upon request.

833           4. The owner of an aerobic treatment unit system shall  
834 obtain a system operating permit from the department and allow  
835 the department to inspect during reasonable hours each aerobic  
836 treatment unit system at least annually, and such inspection may  
837 include collection and analysis of system-effluent samples for  
838 performance criteria established by rule of the department.

839           (v) The department may require the submission of detailed  
840 system construction plans that are prepared by a professional  
841 engineer registered in this state. The department shall  
842 establish by rule criteria for determining when such a  
843 submission is required.

844           (w) Any permit issued and approved by the department for  
845 the installation, modification, or repair of an onsite sewage  
846 treatment and disposal system shall transfer with the title to  
847 the property in a real estate transaction. A title may not be  
848 encumbered at the time of transfer by new permit requirements by  
849 a governmental entity for an onsite sewage treatment and  
850 disposal system which differ from the permitting requirements in  
851 effect at the time the system was permitted, modified, or



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852 repaired. An inspection of a system may not be mandated by a  
853 governmental entity at the point of sale in a real estate  
854 transaction. This paragraph does not affect a septic tank phase-  
855 out deferral program implemented by a consolidated government as  
856 defined in s. 9, Art. VIII of the State Constitution (1885).

857 (x) A governmental entity, including a municipality,  
858 county, or statutorily created commission, may not require an  
859 engineer-designed performance-based treatment system, excluding  
860 a passive engineer-designed performance-based treatment system,  
861 before the completion of the Florida Onsite Sewage Nitrogen  
862 Reduction Strategies Project. This paragraph does not apply to a  
863 governmental entity, including a municipality, county, or  
864 statutorily created commission, which adopted a local law,  
865 ordinance, or regulation on or before January 31, 2012.  
866 Notwithstanding this paragraph, an engineer-designed  
867 performance-based treatment system may be used to meet the  
868 requirements of the variance review and advisory committee  
869 recommendations.

870 (y)1. An onsite sewage treatment and disposal system is not  
871 considered abandoned if the system is disconnected from a  
872 structure that was made unusable or destroyed following a  
873 disaster and if the system was properly functioning at the time  
874 of disconnection and was not adversely affected by the disaster.  
875 The onsite sewage treatment and disposal system may be  
876 reconnected to a rebuilt structure if:

877 a. The reconnection of the system is to the same type of  
878 structure which contains the same number of bedrooms or fewer,  
879 if the square footage of the structure is less than or equal to  
880 110 percent of the original square footage of the structure that



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881 existed before the disaster;

882       b. The system is not a sanitary nuisance; and

883       c. The system has not been altered without prior  
884 authorization.

885       2. An onsite sewage treatment and disposal system that  
886 serves a property that is foreclosed upon is not considered  
887 abandoned.

888       (z) If an onsite sewage treatment and disposal system  
889 permittee receives, relies upon, and undertakes construction of  
890 a system based upon a validly issued construction permit under  
891 rules applicable at the time of construction but a change to a  
892 rule occurs within 5 years after the approval of the system for  
893 construction but before the final approval of the system, the  
894 rules applicable and in effect at the time of construction  
895 approval apply at the time of final approval if fundamental site  
896 conditions have not changed between the time of construction  
897 approval and final approval.

898       (aa) An existing-system inspection or evaluation and  
899 assessment, or a modification, replacement, or upgrade of an  
900 onsite sewage treatment and disposal system is not required for  
901 a remodeling addition or modification to a single-family home if  
902 a bedroom is not added. However, a remodeling addition or  
903 modification to a single-family home may not cover any part of  
904 the existing system or encroach upon a required setback or the  
905 unobstructed area. To determine if a setback or the unobstructed  
906 area is impacted, the local health department shall review and  
907 verify a floor plan and site plan of the proposed remodeling  
908 addition or modification to the home submitted by a remodeler  
909 which shows the location of the system, including the distance





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910 of the remodeling addition or modification to the home from the  
911 onsite sewage treatment and disposal system. The local health  
912 department may visit the site or otherwise determine the best  
913 means of verifying the information submitted. A verification of  
914 the location of a system is not an inspection or evaluation and  
915 assessment of the system. The review and verification must be  
916 completed within 7 business days after receipt by the local  
917 health department of a floor plan and site plan. If the review  
918 and verification is not completed within such time, the  
919 remodeling addition or modification to the single-family home,  
920 for the purposes of this paragraph, is approved.

921 Section 7. Section 381.00652, Florida Statutes, is created  
922 to read:

923 381.00652 Onsite sewage treatment and disposal systems  
924 technical advisory committee.—

925 (1) An onsite sewage treatment and disposal systems  
926 technical advisory committee, a committee as defined in s.  
927 20.03(8), is created within the department. The committee shall:

928 (a) Provide recommendations to increase the availability in  
929 the marketplace of enhanced nutrient-reducing onsite sewage  
930 treatment and disposal systems, including systems that are cost-  
931 effective, low-maintenance, and reliable.

932 (b) Consider and recommend regulatory options, such as  
933 fast-track approval, prequalification, or expedited permitting,  
934 to facilitate the introduction and use of enhanced nutrient-  
935 reducing onsite sewage treatment and disposal systems that have  
936 been reviewed and approved by a national agency or organization,  
937 such as the American National Standards Institute 245 systems  
938 approved by the NSF International.



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939 (c) Provide recommendations for appropriate setback  
940 distances for onsite sewage treatment and disposal systems from  
941 surface water, groundwater, and wells.

942 (2) The department shall use existing and available  
943 resources to administer and support the activities of the  
944 committee.

945 (3) (a) By August 1, 2021, the department, in consultation  
946 with the Department of Health, shall appoint no more than nine  
947 members to the committee, including, but not limited to, the  
948 following:

- 949 1. A professional engineer.  
950 2. A septic tank contractor.  
951 3. A representative from the home building industry.  
952 4. A representative from the real estate industry.  
953 5. A representative from the onsite sewage treatment and  
954 disposal system industry.  
955 6. A representative from local government.  
956 7. Two representatives from the environmental community.  
957 8. A representative of the scientific and technical  
958 community who has substantial expertise in the areas of the fate  
959 and transport of water pollutants, toxicology, epidemiology,  
960 geology, biology, or environmental sciences.

961 (b) Members shall serve without compensation and are not  
962 entitled to reimbursement for per diem or travel expenses.

963 (4) By January 1, 2022, the committee shall submit its  
964 recommendations to the Governor, the President of the Senate,  
965 and the Speaker of the House of Representatives.

966 (5) This section expires August 15, 2022.

967 (6) For purposes of this section, the term "department"



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968 means the Department of Environmental Protection.

969 Section 8. Effective July 1, 2021, section 381.0068,  
970 Florida Statutes, is repealed.

971 Section 9. Present subsections (14) through (44) of section  
972 403.061, Florida Statutes, are redesignated as subsections (15)  
973 through (45), respectively, a new subsection (14) is added to  
974 that section, and subsection (7) of that section is amended, to  
975 read:

976 403.061 Department; powers and duties.—The department shall  
977 have the power and the duty to control and prohibit pollution of  
978 air and water in accordance with the law and rules adopted and  
979 promulgated by it and, for this purpose, to:

980 (7) Adopt rules pursuant to ss. 120.536(1) and 120.54 to  
981 ~~implement the provisions of~~ this act. Any rule adopted pursuant  
982 to this act must ~~shall~~ be consistent with the provisions of  
983 federal law, if any, relating to control of emissions from motor  
984 vehicles, effluent limitations, pretreatment requirements, or  
985 standards of performance. A ~~No~~ county, municipality, or  
986 political subdivision may not ~~shall~~ adopt or enforce any local  
987 ordinance, special law, or local regulation requiring the  
988 installation of Stage II vapor recovery systems, as currently  
989 defined by department rule, unless such county, municipality, or  
990 political subdivision is or has been in the past designated by  
991 federal regulation as a moderate, serious, or severe ozone  
992 nonattainment area. Rules adopted pursuant to this act may ~~shall~~  
993 not require dischargers of waste into waters of the state to  
994 improve natural background conditions. The department shall  
995 adopt rules to reasonably limit, reduce, and eliminate domestic  
996 wastewater collection and transmission system pipe leakages and



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997 inflow and infiltration. Discharges from steam electric  
998 generating plants existing or licensed under this chapter on  
999 July 1, 1984, may ~~shall~~ not be required to be treated to a  
1000 greater extent than may be necessary to assure that the quality  
1001 of nonthermal components of discharges from nonrecirculated  
1002 cooling water systems is as high as the quality of the makeup  
1003 waters; that the quality of nonthermal components of discharges  
1004 from recirculated cooling water systems is no lower than is  
1005 allowed for blowdown from such systems; or that the quality of  
1006 noncooling system discharges which receive makeup water from a  
1007 receiving body of water which does not meet applicable  
1008 department water quality standards is as high as the quality of  
1009 the receiving body of water. The department may not adopt  
1010 standards more stringent than federal regulations, except as  
1011 provided in s. 403.804.

1012 (14) In order to promote resilient utilities, require  
1013 public utilities or their affiliated companies holding, applying  
1014 for, or renewing a domestic wastewater discharge permit to file  
1015 annual reports and other data regarding transactions or  
1016 allocations of common costs and expenditures on pollution  
1017 mitigation and prevention among the utility's permitted systems,  
1018 including, but not limited to, the prevention of sanitary sewer  
1019 overflows, collection and transmission system pipe leakages, and  
1020 inflow and infiltration. The department shall adopt rules to  
1021 implement this subsection.

1022  
1023 The department shall implement such programs in conjunction with  
1024 its other powers and duties and shall place special emphasis on  
1025 reducing and eliminating contamination that presents a threat to



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1026 humans, animals or plants, or to the environment.

1027 Section 10. Section 403.0616, Florida Statutes, is created  
1028 to read:

1029 403.0616 Real-time water quality monitoring program.-

1030 (1) Subject to appropriation, the department shall  
1031 establish a real-time water quality monitoring program to assist  
1032 in the restoration, preservation, and enhancement of impaired  
1033 waterbodies and coastal resources.

1034 (2) In order to expedite the creation and implementation of  
1035 the program, the department is encouraged to form public-private  
1036 partnerships with established scientific entities that have  
1037 proven existing real-time water quality monitoring equipment and  
1038 experience in deploying the equipment.

1039 Section 11. Subsection (7) of section 403.067, Florida  
1040 Statutes, is amended to read:

1041 403.067 Establishment and implementation of total maximum  
1042 daily loads.-

1043 (7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND  
1044 IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.-

1045 (a) *Basin management action plans.-*

1046 1. In developing and implementing the total maximum daily  
1047 load for a water body, the department, or the department in  
1048 conjunction with a water management district, may develop a  
1049 basin management action plan that addresses some or all of the  
1050 watersheds and basins tributary to the water body. Such plan  
1051 must integrate the appropriate management strategies available  
1052 to the state through existing water quality protection programs  
1053 to achieve the total maximum daily loads and may provide for  
1054 phased implementation of these management strategies to promote



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1055 timely, cost-effective actions as provided for in s. 403.151.  
1056 The plan must establish a schedule implementing the management  
1057 strategies, establish a basis for evaluating the plan's  
1058 effectiveness, and identify feasible funding strategies for  
1059 implementing the plan's management strategies. The management  
1060 strategies may include regional treatment systems or other  
1061 public works, where appropriate, and voluntary trading of water  
1062 quality credits to achieve the needed pollutant load reductions.

1063 2. A basin management action plan must equitably allocate,  
1064 pursuant to paragraph (6) (b), pollutant reductions to individual  
1065 basins, as a whole to all basins, or to each identified point  
1066 source or category of nonpoint sources, as appropriate. For  
1067 nonpoint sources for which best management practices have been  
1068 adopted, the initial requirement specified by the plan must be  
1069 those practices developed pursuant to paragraph (c). When ~~Where~~  
1070 appropriate, the plan may take into account the benefits of  
1071 pollutant load reduction achieved by point or nonpoint sources  
1072 that have implemented management strategies to reduce pollutant  
1073 loads, including best management practices, before the  
1074 development of the basin management action plan. The plan must  
1075 also identify the mechanisms that will address potential future  
1076 increases in pollutant loading.

1077 3. The basin management action planning process is intended  
1078 to involve the broadest possible range of interested parties,  
1079 with the objective of encouraging the greatest amount of  
1080 cooperation and consensus possible. In developing a basin  
1081 management action plan, the department shall assure that key  
1082 stakeholders, including, but not limited to, applicable local  
1083 governments, water management districts, the Department of



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1084 Agriculture and Consumer Services, other appropriate state  
1085 agencies, local soil and water conservation districts,  
1086 environmental groups, regulated interests, and affected  
1087 pollution sources, are invited to participate in the process.  
1088 The department shall hold at least one public meeting in the  
1089 vicinity of the watershed or basin to discuss and receive  
1090 comments during the planning process and shall otherwise  
1091 encourage public participation to the greatest practicable  
1092 extent. Notice of the public meeting must be published in a  
1093 newspaper of general circulation in each county in which the  
1094 watershed or basin lies at least not less than 5 days, but not  
1095 ~~not~~ more than 15 days, before the public meeting. A basin  
1096 management action plan does not supplant or otherwise alter any  
1097 assessment made under subsection (3) or subsection (4) or any  
1098 calculation or initial allocation.

1099 4. Each new or revised basin management action plan shall  
1100 include:

1101 a. The appropriate management strategies available through  
1102 existing water quality protection programs to achieve total  
1103 maximum daily loads, which may provide for phased implementation  
1104 to promote timely, cost-effective actions as provided for in s.  
1105 403.151;

1106 b. A description of best management practices adopted by  
1107 rule;

1108 c. A list of projects in priority ranking with a planning-  
1109 level cost estimate and estimated date of completion for each  
1110 listed project;

1111 d. The source and amount of financial assistance to be made  
1112 available by the department, a water management district, or



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1113 other entity for each listed project, if applicable; and  
1114 e. A planning-level estimate of each listed project's  
1115 expected load reduction, if applicable.  
1116 5. The department shall adopt all or any part of a basin  
1117 management action plan and any amendment to such plan by  
1118 secretarial order pursuant to chapter 120 to implement ~~the~~  
1119 ~~provisions of~~ this section.  
1120 6. The basin management action plan must include milestones  
1121 for implementation and water quality improvement, and an  
1122 associated water quality monitoring component sufficient to  
1123 evaluate whether reasonable progress in pollutant load  
1124 reductions is being achieved over time. An assessment of  
1125 progress toward these milestones shall be conducted every 5  
1126 years, and revisions to the plan shall be made as appropriate.  
1127 Revisions to the basin management action plan shall be made by  
1128 the department in cooperation with basin stakeholders. Revisions  
1129 to the management strategies required for nonpoint sources must  
1130 follow the procedures set forth in subparagraph (c)4. Revised  
1131 basin management action plans must be adopted pursuant to  
1132 subparagraph 5.  
1133 7. In accordance with procedures adopted by rule under  
1134 paragraph (9)(c), basin management action plans, and other  
1135 pollution control programs under local, state, or federal  
1136 authority as provided in subsection (4), may allow point or  
1137 nonpoint sources that will achieve greater pollutant reductions  
1138 than required by an adopted total maximum daily load or  
1139 wasteload allocation to generate, register, and trade water  
1140 quality credits for the excess reductions to enable other  
1141 sources to achieve their allocation; however, the generation of





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1142 water quality credits does not remove the obligation of a source  
1143 or activity to meet applicable technology requirements or  
1144 adopted best management practices. Such plans must allow trading  
1145 between NPDES permittees, and trading that may or may not  
1146 involve NPDES permittees, where the generation or use of the  
1147 credits involve an entity or activity not subject to department  
1148 water discharge permits whose owner voluntarily elects to obtain  
1149 department authorization for the generation and sale of credits.

1150 8. ~~The provisions of~~ The department's rule relating to the  
1151 equitable abatement of pollutants into surface waters do not  
1152 apply to water bodies or water body segments for which a basin  
1153 management plan that takes into account future new or expanded  
1154 activities or discharges has been adopted under this section.

1155 9. In order to promote resilient utilities, if the  
1156 department identifies domestic wastewater facilities or onsite  
1157 sewage treatment and disposal systems as contributors of at  
1158 least 20 percent of point source or nonpoint source nutrient  
1159 pollution or if the department determines remediation is  
1160 necessary to achieve the total maximum daily load, a basin  
1161 management action plan for a nutrient total maximum daily load  
1162 must include the following:

1163 a. A wastewater treatment plan that addresses domestic  
1164 wastewater developed by each local government in cooperation  
1165 with the department, the water management district, and the  
1166 public and private domestic wastewater facilities within the  
1167 jurisdiction of the local government. The wastewater treatment  
1168 plan must:

1169 (I) Provide for construction, expansion, or upgrades  
1170 necessary to achieve the total maximum daily load requirements



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1171 applicable to the domestic wastewater facility.

1172 (II) Include the permitted capacity in average annual  
1173 gallons per day for the domestic wastewater facility; the  
1174 average nutrient concentration and the estimated average  
1175 nutrient load of the domestic wastewater; a timeline of the  
1176 dates by which the construction of any facility improvements  
1177 will begin and be completed and the date by which operations of  
1178 the improved facility will begin; the estimated cost of the  
1179 improvements; and the identity of responsible parties.

1180  
1181 The wastewater treatment plan must be adopted as part of the  
1182 basin management action plan no later than July 1, 2025. A local  
1183 government that does not have a domestic wastewater treatment  
1184 facility in its jurisdiction is not required to develop a  
1185 wastewater treatment plan unless there is a demonstrated need to  
1186 establish a domestic wastewater treatment facility within its  
1187 jurisdiction to improve water quality necessary to achieve a  
1188 total maximum daily load. A local government is not responsible  
1189 for a private domestic wastewater facility's compliance with a  
1190 basin management action plan.

1191 b. An onsite sewage treatment and disposal system  
1192 remediation plan developed by each local government in  
1193 cooperation with the department, the Department of Health, water  
1194 management districts, and public and private domestic wastewater  
1195 facilities.

1196 (I) The onsite sewage treatment and disposal system  
1197 remediation plan must identify cost-effective and financially  
1198 feasible projects necessary to achieve the nutrient load  
1199 reductions required for onsite sewage treatment and disposal



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1200 systems. To identify cost-effective and financially feasible  
1201 projects for remediation of onsite sewage treatment and disposal  
1202 systems, the local government shall:

1203 (A) Include an inventory of onsite sewage treatment and  
1204 disposal systems based on the best information available;

1205 (B) Identify onsite sewage treatment and disposal systems  
1206 that would be eliminated through connection to existing or  
1207 future central domestic wastewater infrastructure in the  
1208 jurisdiction or domestic wastewater service area of the local  
1209 government, that would be replaced with or upgraded to enhanced  
1210 nutrient-reducing systems, or that would remain on conventional  
1211 onsite sewage treatment and disposal systems;

1212 (C) Estimate the costs of potential onsite sewage treatment  
1213 and disposal systems connections, upgrades, or replacements; and

1214 (D) Identify deadlines and interim milestones for the  
1215 planning, design, and construction of projects.

1216 (II) The department shall adopt the onsite sewage treatment  
1217 and disposal system remediation plan as part of the basin  
1218 management action plan no later than July 1, 2025, or as  
1219 required for Outstanding Florida Springs under s. 373.807.

1220 10. When identifying wastewater projects in a basin  
1221 management action plan, the department may not require the  
1222 higher cost option if it achieves the same nutrient load  
1223 reduction as a lower cost option.

1224 (b) Total maximum daily load implementation.-

1225 1. The department shall be the lead agency in coordinating  
1226 the implementation of the total maximum daily loads through  
1227 existing water quality protection programs. Application of a  
1228 total maximum daily load by a water management district must be



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1229 consistent with this section and does not require the issuance  
1230 of an order or a separate action pursuant to s. 120.536(1) or s.  
1231 120.54 for the adoption of the calculation and allocation  
1232 previously established by the department. Such programs may  
1233 include, but are not limited to:

1234 a. Permitting and other existing regulatory programs,  
1235 including water-quality-based effluent limitations;

1236 b. Nonregulatory and incentive-based programs, including  
1237 best management practices, cost sharing, waste minimization,  
1238 pollution prevention, agreements established pursuant to s.  
1239 403.061(22) ~~s. 403.061(21)~~, and public education;

1240 c. Other water quality management and restoration  
1241 activities, for example surface water improvement and management  
1242 plans approved by water management districts or basin management  
1243 action plans developed pursuant to this subsection;

1244 d. Trading of water quality credits or other equitable  
1245 economically based agreements;

1246 e. Public works including capital facilities; or

1247 f. Land acquisition.

1248 2. For a basin management action plan adopted pursuant to  
1249 paragraph (a), any management strategies and pollutant reduction  
1250 requirements associated with a pollutant of concern for which a  
1251 total maximum daily load has been developed, including effluent  
1252 limits set forth for a discharger subject to NPDES permitting,  
1253 if any, must be included in a timely manner in subsequent NPDES  
1254 permits or permit modifications for that discharger. The  
1255 department may not impose limits or conditions implementing an  
1256 adopted total maximum daily load in an NPDES permit until the  
1257 permit expires, the discharge is modified, or the permit is



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1258 reopened pursuant to an adopted basin management action plan.

1259       a. Absent a detailed allocation, total maximum daily loads  
1260 must be implemented through NPDES permit conditions that provide  
1261 for a compliance schedule. In such instances, a facility's NPDES  
1262 permit must allow time for the issuance of an order adopting the  
1263 basin management action plan. The time allowed for the issuance  
1264 of an order adopting the plan may not exceed 5 years. Upon  
1265 issuance of an order adopting the plan, the permit must be  
1266 reopened or renewed, as necessary, and permit conditions  
1267 consistent with the plan must be established. Notwithstanding  
1268 the other provisions of this subparagraph, upon request by an  
1269 NPDES permittee, the department as part of a permit issuance,  
1270 renewal, or modification may establish individual allocations  
1271 before the adoption of a basin management action plan.

1272       b. For holders of NPDES municipal separate storm sewer  
1273 system permits and other stormwater sources, implementation of a  
1274 total maximum daily load or basin management action plan must be  
1275 achieved, to the maximum extent practicable, through the use of  
1276 best management practices or other management measures.

1277       c. The basin management action plan does not relieve the  
1278 discharger from any requirement to obtain, renew, or modify an  
1279 NPDES permit or to abide by other requirements of the permit.

1280       d. Management strategies set forth in a basin management  
1281 action plan to be implemented by a discharger subject to  
1282 permitting by the department must be completed pursuant to the  
1283 schedule set forth in the basin management action plan. This  
1284 implementation schedule may extend beyond the 5-year term of an  
1285 NPDES permit.

1286       e. Management strategies and pollution reduction



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1287 requirements set forth in a basin management action plan for a  
1288 specific pollutant of concern are not subject to challenge under  
1289 chapter 120 at the time they are incorporated, in an identical  
1290 form, into a subsequent NPDES permit or permit modification.

1291 f. For nonagricultural pollutant sources not subject to  
1292 NPDES permitting but permitted pursuant to other state,  
1293 regional, or local water quality programs, the pollutant  
1294 reduction actions adopted in a basin management action plan must  
1295 be implemented to the maximum extent practicable as part of  
1296 those permitting programs.

1297 g. A nonpoint source discharger included in a basin  
1298 management action plan must demonstrate compliance with the  
1299 pollutant reductions established under subsection (6) by  
1300 implementing the appropriate best management practices  
1301 established pursuant to paragraph (c) or conducting water  
1302 quality monitoring prescribed by the department or a water  
1303 management district. A nonpoint source discharger may, in  
1304 accordance with department rules, supplement the implementation  
1305 of best management practices with water quality credit trades in  
1306 order to demonstrate compliance with the pollutant reductions  
1307 established under subsection (6).

1308 h. A nonpoint source discharger included in a basin  
1309 management action plan may be subject to enforcement action by  
1310 the department or a water management district based upon a  
1311 failure to implement the responsibilities set forth in sub-  
1312 subparagraph g.

1313 i. A landowner, discharger, or other responsible person who  
1314 is implementing applicable management strategies specified in an  
1315 adopted basin management action plan may not be required by



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1316 permit, enforcement action, or otherwise to implement additional  
1317 management strategies, including water quality credit trading,  
1318 to reduce pollutant loads to attain the pollutant reductions  
1319 established pursuant to subsection (6) and shall be deemed to be  
1320 in compliance with this section. This subparagraph does not  
1321 limit the authority of the department to amend a basin  
1322 management action plan as specified in subparagraph (a)6.

1323 (c) *Best management practices.*—

1324 1. The department, in cooperation with the water management  
1325 districts and other interested parties, as appropriate, may  
1326 develop suitable interim measures, best management practices, or  
1327 other measures necessary to achieve the level of pollution  
1328 reduction established by the department for nonagricultural  
1329 nonpoint pollutant sources in allocations developed pursuant to  
1330 subsection (6) and this subsection. These practices and measures  
1331 may be adopted by rule by the department and the water  
1332 management districts and, where adopted by rule, shall be  
1333 implemented by those parties responsible for nonagricultural  
1334 nonpoint source pollution.

1335 2. The Department of Agriculture and Consumer Services may  
1336 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54  
1337 suitable interim measures, best management practices, or other  
1338 measures necessary to achieve the level of pollution reduction  
1339 established by the department for agricultural pollutant sources  
1340 in allocations developed pursuant to subsection (6) and this  
1341 subsection or for programs implemented pursuant to paragraph  
1342 (12) (b). These practices and measures may be implemented by  
1343 those parties responsible for agricultural pollutant sources and  
1344 the department, the water management districts, and the



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1345 Department of Agriculture and Consumer Services shall assist  
1346 with implementation. In the process of developing and adopting  
1347 rules for interim measures, best management practices, or other  
1348 measures, the Department of Agriculture and Consumer Services  
1349 shall consult with the department, the Department of Health, the  
1350 water management districts, representatives from affected  
1351 farming groups, and environmental group representatives. Such  
1352 rules must also incorporate provisions for a notice of intent to  
1353 implement the practices and a system to assure the  
1354 implementation of the practices, including site inspection and  
1355 recordkeeping requirements.

1356         3. Where interim measures, best management practices, or  
1357 other measures are adopted by rule, the effectiveness of such  
1358 practices in achieving the levels of pollution reduction  
1359 established in allocations developed by the department pursuant  
1360 to subsection (6) and this subsection or in programs implemented  
1361 pursuant to paragraph (12)(b) must be verified at representative  
1362 sites by the department. The department shall use best  
1363 professional judgment in making the initial verification that  
1364 the best management practices are reasonably expected to be  
1365 effective and, where applicable, must notify the appropriate  
1366 water management district or the Department of Agriculture and  
1367 Consumer Services of its initial verification before the  
1368 adoption of a rule proposed pursuant to this paragraph.  
1369 Implementation, in accordance with rules adopted under this  
1370 paragraph, of practices that have been initially verified to be  
1371 effective, or verified to be effective by monitoring at  
1372 representative sites, by the department, shall provide a  
1373 presumption of compliance with state water quality standards and





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1374 release from ~~the provisions of~~ s. 376.307(5) for those  
1375 pollutants addressed by the practices, and the department is not  
1376 authorized to institute proceedings against the owner of the  
1377 source of pollution to recover costs or damages associated with  
1378 the contamination of surface water or groundwater caused by  
1379 those pollutants. Research projects funded by the department, a  
1380 water management district, or the Department of Agriculture and  
1381 Consumer Services to develop or demonstrate interim measures or  
1382 best management practices shall be granted a presumption of  
1383 compliance with state water quality standards and a release from  
1384 ~~the provisions of~~ s. 376.307(5). The presumption of compliance  
1385 and release is limited to the research site and only for those  
1386 pollutants addressed by the interim measures or best management  
1387 practices. Eligibility for the presumption of compliance and  
1388 release is limited to research projects on sites where the owner  
1389 or operator of the research site and the department, a water  
1390 management district, or the Department of Agriculture and  
1391 Consumer Services have entered into a contract or other  
1392 agreement that, at a minimum, specifies the research objectives,  
1393 the cost-share responsibilities of the parties, and a schedule  
1394 that details the beginning and ending dates of the project.

1395         4. Where water quality problems are demonstrated, despite  
1396 the appropriate implementation, operation, and maintenance of  
1397 best management practices and other measures required by rules  
1398 adopted under this paragraph, the department, a water management  
1399 district, or the Department of Agriculture and Consumer  
1400 Services, in consultation with the department, shall institute a  
1401 reevaluation of the best management practice or other measure.  
1402 Should the reevaluation determine that the best management



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1403 practice or other measure requires modification, the department,  
1404 a water management district, or the Department of Agriculture  
1405 and Consumer Services, as appropriate, shall revise the rule to  
1406 require implementation of the modified practice within a  
1407 reasonable time period as specified in the rule.

1408 5. Subject to subparagraph 6., the Department of  
1409 Agriculture and Consumer Services shall provide to the  
1410 department information that it obtains pursuant to subparagraph  
1411 (d)3.

1412 6. Agricultural records relating to processes or methods of  
1413 production, costs of production, profits, or other financial  
1414 information held by the Department of Agriculture and Consumer  
1415 Services pursuant to subparagraphs 3., and 4., and 5. or  
1416 pursuant to any rule adopted pursuant to subparagraph 2. are  
1417 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
1418 of the State Constitution. Upon request, records made  
1419 confidential and exempt pursuant to this subparagraph shall be  
1420 released to the department or any water management district  
1421 provided that the confidentiality specified by this subparagraph  
1422 for such records is maintained.

1423 ~~7.6. The provisions of Subparagraphs 1. and 2. do not~~  
1424 ~~preclude the department or water management district from~~  
1425 ~~requiring compliance with water quality standards or with~~  
1426 ~~current best management practice requirements set forth in any~~  
1427 ~~applicable regulatory program authorized by law for the purpose~~  
1428 ~~of protecting water quality. Additionally, subparagraphs 1. and~~  
1429 ~~2. are applicable only to the extent that they do not conflict~~  
1430 ~~with any rules adopted by the department that are necessary to~~  
1431 ~~maintain a federally delegated or approved program.~~



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1432           (d) *Enforcement and verification of basin management action*  
1433 *plans and management strategies.*—

1434           1. Basin management action plans are enforceable pursuant  
1435 to this section and ss. 403.121, 403.141, and 403.161.

1436 Management strategies, including best management practices and  
1437 water quality monitoring, are enforceable under this chapter.

1438           2. No later than January 1, 2017:

1439           a. The department, in consultation with the water  
1440 management districts and the Department of Agriculture and  
1441 Consumer Services, shall initiate rulemaking to adopt procedures  
1442 to verify implementation of water quality monitoring required in  
1443 lieu of implementation of best management practices or other  
1444 measures pursuant to sub-subparagraph (b)2.g.;

1445           b. The department, in consultation with the water  
1446 management districts and the Department of Agriculture and  
1447 Consumer Services, shall initiate rulemaking to adopt procedures  
1448 to verify implementation of nonagricultural interim measures,  
1449 best management practices, or other measures adopted by rule  
1450 pursuant to subparagraph (c)1.; and

1451           c. The Department of Agriculture and Consumer Services, in  
1452 consultation with the water management districts and the  
1453 department, shall initiate rulemaking to adopt procedures to  
1454 verify implementation of agricultural interim measures, best  
1455 management practices, or other measures adopted by rule pursuant  
1456 to subparagraph (c)2.

1457  
1458 The rules required under this subparagraph shall include  
1459 enforcement procedures applicable to the landowner, discharger,  
1460 or other responsible person required to implement applicable



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1461 management strategies, including best management practices or  
1462 water quality monitoring as a result of noncompliance.

1463 3. At least every 2 years, the Department of Agriculture  
1464 and Consumer Services shall perform onsite inspections of each  
1465 agricultural producer that enrolls in a best management practice  
1466 to ensure that such practice is being properly implemented. Such  
1467 verification must include a collection and review of the best  
1468 management practice documentation from the previous 2 years  
1469 required by rule adopted in accordance with subparagraph (c)2.,  
1470 including, but not limited to, nitrogen and phosphorous  
1471 fertilizer application records, which must be collected and  
1472 retained pursuant to subparagraphs (c)3., 4., and 6. The  
1473 Department of Agriculture and Consumer Services shall initially  
1474 prioritize the inspection of agricultural producers located in a  
1475 basin management action plan for Lake Okeechobee or the Indian  
1476 River Lagoon.

1477 (e) Data collection and research.-

1478 1. The Department of Agriculture and Consumer Services, the  
1479 University of Florida Institute of Food and Agricultural  
1480 Sciences, and other state universities and Florida College  
1481 System institutions with agricultural research programs shall  
1482 annually develop research plans and legislative budget requests  
1483 to:

1484 a. Evaluate and suggest enhancements to the existing  
1485 adopted agricultural best management practices to reduce  
1486 nutrients;

1487 b. Develop new best management practices that, if proven  
1488 effective, the Department of Agriculture and Consumer Services  
1489 may adopt by rule pursuant to paragraph (c); and



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1490 c. Develop agricultural nutrient reduction projects that  
1491 willing participants could implement on a site-specific,  
1492 cooperative basis, in addition to best management practices. The  
1493 department may consider these projects for inclusion in a basin  
1494 management action plan. These nutrient reduction projects must  
1495 reduce the nutrient impacts from agricultural operations on  
1496 water quality when evaluated with the projects and management  
1497 strategies currently included in the basin management action  
1498 plan.

1499 2. To be considered for funding, the University of Florida  
1500 Institute of Food and Agricultural Sciences and other state  
1501 universities and Florida College System institutions that have  
1502 agricultural research programs must submit such plans to the  
1503 department and the Department of Agriculture and Consumer  
1504 Services by August 1 of each year.

1505 Section 12. Section 403.0671, Florida Statutes, is created  
1506 to read:

1507 403.0671 Basin management action plan wastewater reports.-

1508 (1) By July 1, 2021, the department, in coordination with  
1509 the county health departments, wastewater treatment facilities,  
1510 and other governmental entities, shall submit a report to the  
1511 Governor, the President of the Senate, and the Speaker of the  
1512 House of Representatives evaluating the costs of wastewater  
1513 projects identified in the basin management action plans  
1514 developed pursuant to ss. 373.807 and 403.067(7) and the onsite  
1515 sewage treatment and disposal system remediation plans and other  
1516 restoration plans developed to meet the total maximum daily  
1517 loads required under s. 403.067. The report must include:

1518 (a) Projects to:



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1519           1. Replace onsite sewage treatment and disposal systems  
1520 with enhanced nutrient removing onsite sewage treatment and  
1521 disposal systems.

1522           2. Install or retrofit onsite sewage treatment and disposal  
1523 systems with enhanced nutrient removing technologies.

1524           3. Construct, upgrade, or expand domestic wastewater  
1525 treatment facilities to meet the wastewater treatment plan  
1526 required under s. 403.067(7) (a) 9.

1527           4. Connect onsite sewage treatment and disposal systems to  
1528 domestic wastewater treatment facilities;

1529           (b) The estimated costs, nutrient load reduction estimates,  
1530 and other benefits of each project;

1531           (c) The estimated implementation timeline for each project;

1532           (d) A proposed 5-year funding plan for each project and the  
1533 source and amount of financial assistance the department, a  
1534 water management district, or other project partner will make  
1535 available to fund the project; and

1536           (e) The projected costs of installing enhanced nutrient  
1537 removing onsite sewage treatment and disposal systems on  
1538 buildable lots in priority focus areas to comply with s.  
1539 373.811.

1540           (2) By July 1, 2021, the department shall submit a report  
1541 to the Governor, the President of the Senate, and the Speaker of  
1542 the House of Representatives that provides an assessment of the  
1543 water quality monitoring being conducted for each basin  
1544 management action plan implementing a nutrient total maximum  
1545 daily load. In developing the report, the department may  
1546 coordinate with water management districts and any applicable  
1547 university. The report must:



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1548 (a) Evaluate the water quality monitoring prescribed for  
1549 each basin management action plan to determine if it is  
1550 sufficient to detect changes in water quality caused by the  
1551 implementation of a project.

1552 (b) Identify gaps in water quality monitoring.

1553 (c) Recommend ways to address water quality monitoring  
1554 needs.

1555 (3) Beginning January 1, 2022, and each January 1  
1556 thereafter, the department shall submit to the Office of  
1557 Economic and Demographic Research the cost estimates for  
1558 projects required under s. 403.067(7)(a)9. The office shall  
1559 include the project cost estimates in its annual assessment  
1560 conducted pursuant to s. 403.928.

1561 Section 13. Section 403.0673, Florida Statutes, is created  
1562 to read:

1563 403.0673 Wastewater grant program.—A wastewater grant  
1564 program is established within the Department of Environmental  
1565 Protection.

1566 (1) Subject to the appropriation of funds by the  
1567 Legislature, the department may provide grants for the following  
1568 projects within a basin management action plan, an alternative  
1569 restoration plan adopted by final order, or a rural area of  
1570 opportunity under s. 288.0656 which will individually or  
1571 collectively reduce excess nutrient pollution:

1572 (a) Projects to retrofit onsite sewage treatment and  
1573 disposal systems to upgrade them to enhanced nutrient-reducing  
1574 onsite sewage treatment and disposal systems.

1575 (b) Projects to construct, upgrade, or expand facilities to  
1576 provide advanced waste treatment, as defined in s. 403.086(4).



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1577 (c) Projects to connect onsite sewage treatment and  
1578 disposal systems to central sewer facilities.

1579 (2) In allocating such funds, priority must be given to  
1580 projects that subsidize the connection of onsite sewage  
1581 treatment and disposal systems to wastewater treatment plants.  
1582 First priority must be given to subsidize connection to existing  
1583 infrastructure. Second priority must be given to any expansion  
1584 of a collection or transmission system that promotes efficiency  
1585 by planning the installation of wastewater transmission  
1586 facilities to be constructed concurrently with other  
1587 construction projects occurring within or along a transportation  
1588 facility right-of-way. Third priority must be given to all other  
1589 connection of onsite sewage treatment and disposal systems to a  
1590 wastewater treatment plants. The department shall consider the  
1591 estimated reduction in nutrient load per project; project  
1592 readiness; cost-effectiveness of the project; overall  
1593 environmental benefit of a project; the location of a project;  
1594 the availability of local matching funds; and projected water  
1595 savings or quantity improvements associated with a project.

1596 (3) Each grant for a project described in subsection (1)  
1597 must require a minimum of a 50 percent local match of funds.  
1598 However, the department may, at its discretion, waive, in whole  
1599 or in part, this consideration of the local contribution for  
1600 proposed projects within an area designated as a rural area of  
1601 opportunity under s. 288.0656.

1602 (4) The department shall coordinate with each water  
1603 management district, as necessary, to identify grant recipients  
1604 in each district.

1605 (5) Beginning January 1, 2021, and each January 1





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1606 thereafter, the department shall submit a report regarding the  
1607 projects funded pursuant to this section to the Governor, the  
1608 President of the Senate, and the Speaker of the House of  
1609 Representatives.

1610 Section 14. Section 403.0855, Florida Statutes, is created  
1611 to read:

1612 403.0855 Biosolids management.-

1613 (1) The Legislature finds that it is in the best interest  
1614 of this state to regulate biosolids management in order to  
1615 minimize the migration of nutrients that impair waterbodies. The  
1616 Legislature further finds that the expedited implementation of  
1617 the recommendations of the Biosolids Technical Advisory  
1618 Committee, including permitting according to site-specific  
1619 application conditions, an increased inspection rate,  
1620 groundwater and surface water monitoring protocols, and nutrient  
1621 management research, will improve biosolids management and  
1622 assist in protecting this state's water resources and water  
1623 quality.

1624 (2) The department shall adopt rules for biosolids  
1625 management.

1626 (3) Effective July 1, 2020, all biosolids application sites  
1627 must:

1628 (a) For any renewal application, meet department rules in  
1629 effect at the time of the renewal of the biosolids application  
1630 site permit or facility permit.

1631 (b) Be enrolled in the Department of Agriculture and  
1632 Consumer Service's Best Management Practices Program or be  
1633 within an agricultural operation enrolled in the program for the  
1634 applicable commodity type.



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1635 (4) The permittee of a biosolids land application site  
1636 shall:

1637 (a) Conduct the land application of biosolids in accordance  
1638 with basin management action plans adopted in accordance with  
1639 ss. 373.807 and 403.067(7).

1640 (b) Establish a groundwater monitoring program approved by  
1641 the department for land application sites when:

1642 1. The application rate in the nutrient management plan  
1643 exceeds more than 160,400 pounds per acre per year of total  
1644 plant available nitrogen or 40 pounds per acre per year of total  
1645 P2O5; or

1646 2. The soil capacity index is less than 0 mg/kg.

1647 (c) When soil fertility testing indicates the soil capacity  
1648 index has become less than 0 mg/kg, establish a groundwater  
1649 monitoring program in accordance with department rules within 1  
1650 year of the date of the sampling results.

1651 (d) When groundwater monitoring is not required, allow the  
1652 department to install groundwater monitoring wells at any time  
1653 during the effective period of the department-issued facility or  
1654 land application site permit and conduct monitoring.

1655 (e) Ensure a minimum unsaturated soil depth of 2 feet  
1656 between the depth of biosolids placement and the water table  
1657 level at the time the Class A or Class B biosolids are applied  
1658 to the soil. Biosolids may not be applied on soils that have a  
1659 seasonal high-water table less than 15 centimeters from the soil  
1660 surface or within 15 centimeters of the intended depth of  
1661 biosolids placement. As used in this section, the term "seasonal  
1662 high water" means the elevation to which the ground and surface  
1663 water may be expected to rise due to a normal wet season.



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1664           (5) A municipality or county may enforce or extend an  
1665 ordinance, a regulation, a resolution, a rule, a moratorium, or  
1666 a policy, any of which was adopted before November 1, 2019,  
1667 relating to the land application of Class B biosolids until the  
1668 ordinance, regulation, resolution, rule, moratorium, or policy  
1669 is repealed by the municipality or county.

1670           Section 15. Present subsections (7) through (10) of section  
1671 403.086, Florida Statutes, are redesignated as subsections (8)  
1672 through (11), respectively, a new subsection (7) is added to  
1673 that section, paragraph (c) of subsection (1) and subsection (2)  
1674 of that section are amended, and paragraph (d) is added to  
1675 subsection (1), to read:

1676           403.086 Sewage disposal facilities; advanced and secondary  
1677 waste treatment.—

1678           (1)

1679           (c) Notwithstanding ~~any other provisions of~~ this chapter or  
1680 chapter 373, facilities for sanitary sewage disposal may not  
1681 dispose of any wastes into Old Tampa Bay, Tampa Bay,  
1682 Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater  
1683 Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay,  
1684 ~~or~~ Charlotte Harbor Bay, or, beginning July 1, 2025, Indian  
1685 River Lagoon, or into any river, stream, channel, canal, bay,  
1686 bayou, sound, or other water tributary thereto, without  
1687 providing advanced waste treatment, as defined in subsection  
1688 (4), approved by the department. This paragraph does ~~shall~~ not  
1689 apply to facilities which were permitted by February 1, 1987,  
1690 and which discharge secondary treated effluent, followed by  
1691 water hyacinth treatment, to tributaries of tributaries of the  
1692 named waters; or to facilities permitted to discharge to the



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1693 nontidally influenced portions of the Peace River.

1694 (d) By December 31, 2020, the department, in consultation  
1695 with the water management districts and sewage disposal  
1696 facilities, shall submit to the Governor, the President of the  
1697 Senate, and the Speaker of the House of Representatives a  
1698 progress report on the status of upgrades made by each facility  
1699 to meet the advanced waste treatment requirements under  
1700 paragraph (c). The report must include a list of sewage disposal  
1701 facilities required to upgrade to advanced waste treatment, the  
1702 preliminary cost estimates for the upgrades, and a projected  
1703 timeline of the dates by which the upgrades will begin and be  
1704 completed and the date by which operations of the upgraded  
1705 facility will begin.

1706 (2) Any facilities for sanitary sewage disposal shall  
1707 provide for secondary waste treatment, a power outage  
1708 contingency plan that mitigates the impacts of power outages on  
1709 the utility's collection system and pump stations, and, ~~in~~  
1710 ~~addition thereto,~~ advanced waste treatment as deemed necessary  
1711 and ordered by the Department of Environmental Protection.  
1712 Failure to conform is ~~shall be~~ punishable by a civil penalty of  
1713 \$500 for each 24-hour day or fraction thereof that such failure  
1714 is allowed to continue thereafter.

1715 (7) All facilities for sanitary sewage under subsection (2)  
1716 which control a collection or transmission system of pipes and  
1717 pumps to collect and transmit wastewater from domestic or  
1718 industrial sources to the facility shall take steps to prevent  
1719 sanitary sewer overflows or underground pipe leaks and ensure  
1720 that collected wastewater reaches the facility for appropriate  
1721 treatment. Facilities must use inflow and infiltration studies



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1722 and leakage surveys to develop pipe assessment, repair, and  
1723 replacement action plans that comply with department rule to  
1724 limit, reduce, and eliminate leaks, seepages, or inputs into  
1725 wastewater treatment systems' underground pipes. The pipe  
1726 assessment, repair, and replacement action plans must be  
1727 reported to the department. The facility action plan must  
1728 include information regarding the annual expenditures dedicated  
1729 to the inflow and infiltration studies and the required  
1730 replacement action plans, as well as expenditures that are  
1731 dedicated to pipe assessment, repair, and replacement. The  
1732 department shall adopt rules regarding the implementation of  
1733 inflow and infiltration studies and leakage surveys; however,  
1734 such department rules may not fix or revise utility rates or  
1735 budgets. Any entity subject to this subsection and s.  
1736 403.061(14) may submit one report to comply with both  
1737 provisions. Substantial compliance with this subsection is  
1738 evidence in mitigation for the purposes of assessing penalties  
1739 pursuant to ss. 403.121 and 403.141.

1740 Section 16. Present subsections (4) through (10) of section  
1741 403.087, Florida Statutes, are redesignated as subsections (5)  
1742 through (11), respectively, and a new subsection (4) is added to  
1743 that section, to read:

1744 403.087 Permits; general issuance; denial; revocation;  
1745 prohibition; penalty.-

1746 (4) The department shall issue an operation permit for a  
1747 domestic wastewater treatment facility other than a facility  
1748 regulated under the National Pollutant Discharge Elimination  
1749 System Program under s. 403.0885 for a term of up to 10 years if  
1750 the facility is meeting the stated goals in its action plan



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1751 adopted pursuant to s. 403.086(7).

1752       Section 17. Present subsections (3) and (4) of section  
1753 403.088, Florida Statutes, are redesignated as subsections (4)  
1754 and (5), respectively, a new subsection (3) is added to that  
1755 section, and paragraph (c) of subsection (2) of that section is  
1756 amended, to read:

1757       403.088 Water pollution operation permits; conditions.—

1758       (2)

1759       (c) A permit shall:

1760       1. Specify the manner, nature, volume, and frequency of the  
1761 discharge permitted;

1762       2. Require proper operation and maintenance of any  
1763 pollution abatement facility by qualified personnel in  
1764 accordance with standards established by the department;

1765       3. Require a deliberate, proactive approach to  
1766 investigating or surveying a significant percentage of the  
1767 domestic wastewater collection system throughout the duration of  
1768 the permit to determine pipe integrity, which must be  
1769 accomplished in an economically feasible manner. The permittee  
1770 shall submit an annual report to the department which details  
1771 facility revenues and expenditures in a manner prescribed by  
1772 department rule. The report must detail any deviation of annual  
1773 expenditures from identified system needs related to inflow and  
1774 infiltration studies; model plans for pipe assessment, repair,  
1775 and replacement; and pipe assessment, repair, and replacement  
1776 required under s. 403.086(7). Substantial compliance with this  
1777 subsection is evidence in mitigation for the purposes of  
1778 assessing penalties pursuant to ss. 403.121 and 403.141;

1779       4. Contain such additional conditions, requirements, and



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1780 restrictions as the department deems necessary to preserve and  
1781 protect the quality of the receiving waters;

1782 ~~5.4.~~ Be valid for the period of time specified therein; and

1783 ~~6.5.~~ Constitute the state National Pollutant Discharge  
1784 Elimination System permit when issued pursuant to the authority  
1785 in s. 403.0885.

1786 (3) No later than March 1 of each year, the department  
1787 shall submit a report to the Governor, the President of the  
1788 Senate, and the Speaker of the House of Representatives which  
1789 identifies all domestic wastewater treatment facilities that  
1790 experienced a sanitary sewer overflow in the preceding calendar  
1791 year. The report must identify the utility name, operator,  
1792 permitted capacity in annual average gallons per day, the number  
1793 of overflows, and the total volume of sewage released, and, to  
1794 the extent known and available, the volume of sewage recovered,  
1795 the volume of sewage discharged to surface waters, and the cause  
1796 of the sanitary sewer overflow, including whether it was caused  
1797 by a third party. The department shall include with this report  
1798 the annual report specified under subparagraph (2)(c)3. for each  
1799 utility that experienced an overflow.

1800 Section 18. Subsection (6) of section 403.0891, Florida  
1801 Statutes, is amended to read:

1802 403.0891 State, regional, and local stormwater management  
1803 plans and programs.—The department, the water management  
1804 districts, and local governments shall have the responsibility  
1805 for the development of mutually compatible stormwater management  
1806 programs.

1807 (6) The department and the Department of Economic  
1808 Opportunity, in cooperation with local governments in the



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1809 coastal zone, shall develop a model stormwater management  
1810 program that could be adopted by local governments. The model  
1811 program must contain model ordinances that target nutrient  
1812 reduction practices and use green infrastructure. The model  
1813 program shall contain dedicated funding options, including a  
1814 stormwater utility fee system based upon an equitable unit cost  
1815 approach. Funding options shall be designed to generate capital  
1816 to retrofit existing stormwater management systems, build new  
1817 treatment systems, operate facilities, and maintain and service  
1818 debt.

1819 Section 19. Paragraphs (b) and (g) of subsection (2),  
1820 paragraph (b) of subsection (3), and subsections (8) and (9) of  
1821 section 403.121, Florida Statutes, are amended to read:

1822 403.121 Enforcement; procedure; remedies.—The department  
1823 shall have the following judicial and administrative remedies  
1824 available to it for violations of this chapter, as specified in  
1825 s. 403.161(1).

1826 (2) Administrative remedies:

1827 (b) If the department has reason to believe a violation has  
1828 occurred, it may institute an administrative proceeding to order  
1829 the prevention, abatement, or control of the conditions creating  
1830 the violation or other appropriate corrective action. Except for  
1831 violations involving hazardous wastes, asbestos, or underground  
1832 injection, the department shall proceed administratively in all  
1833 cases in which the department seeks administrative penalties  
1834 that do not exceed \$50,000 ~~\$10,000~~ per assessment as calculated  
1835 in accordance with subsections (3), (4), (5), (6), and (7).  
1836 Pursuant to 42 U.S.C. s. 300g-2, the administrative penalty  
1837 assessed pursuant to subsection (3), subsection (4), or





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1838 subsection (5) against a public water system serving a  
1839 population of more than 10,000 shall be not less than \$1,000 per  
1840 day per violation. The department shall not impose  
1841 administrative penalties in excess of \$50,000 ~~\$10,000~~ in a  
1842 notice of violation. The department shall not have more than one  
1843 notice of violation seeking administrative penalties pending  
1844 against the same party at the same time unless the violations  
1845 occurred at a different site or the violations were discovered  
1846 by the department subsequent to the filing of a previous notice  
1847 of violation.

1848 (g) Nothing herein shall be construed as preventing any  
1849 other legal or administrative action in accordance with law.  
1850 Nothing in this subsection shall limit the department's  
1851 authority provided in ss. 403.131, 403.141, and this section to  
1852 judicially pursue injunctive relief. When the department  
1853 exercises its authority to judicially pursue injunctive relief,  
1854 penalties in any amount up to the statutory maximum sought by  
1855 the department must be pursued as part of the state court action  
1856 and not by initiating a separate administrative proceeding. The  
1857 department retains the authority to judicially pursue penalties  
1858 in excess of \$50,000 ~~\$10,000~~ for violations not specifically  
1859 included in the administrative penalty schedule, or for multiple  
1860 or multiday violations alleged to exceed a total of \$50,000  
1861 ~~\$10,000~~. The department also retains the authority provided in  
1862 ss. 403.131, 403.141, and this section to judicially pursue  
1863 injunctive relief and damages, if a notice of violation seeking  
1864 the imposition of administrative penalties has not been issued.  
1865 The department has the authority to enter into a settlement,  
1866 either before or after initiating a notice of violation, and the



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1867 settlement may include a penalty amount different from the  
1868 administrative penalty schedule. Any case filed in state court  
1869 because it is alleged to exceed a total of \$50,000 ~~\$10,000~~ in  
1870 penalties may be settled in the court action for less than  
1871 \$50,000 ~~\$10,000~~.

1872 (3) Except for violations involving hazardous wastes,  
1873 asbestos, or underground injection, administrative penalties  
1874 must be calculated according to the following schedule:

1875 (b) For failure to obtain a required wastewater permit,  
1876 other than a permit required for surface water discharge, the  
1877 department shall assess a penalty of \$2,000 ~~\$1,000~~. For a  
1878 domestic or industrial wastewater violation not involving a  
1879 surface water or groundwater quality violation, the department  
1880 shall assess a penalty of \$4,000 ~~\$2,000~~ for an unpermitted or  
1881 unauthorized discharge or effluent-limitation exceedance or  
1882 failure to comply with s. 403.061(14) or s. 403.086(7) or rules  
1883 adopted thereunder. For an unpermitted or unauthorized discharge  
1884 or effluent-limitation exceedance that resulted in a surface  
1885 water or groundwater quality violation, the department shall  
1886 assess a penalty of \$10,000 ~~\$5,000~~.

1887 (8) The direct economic benefit gained by the violator from  
1888 the violation, where consideration of economic benefit is  
1889 provided by Florida law or required by federal law as part of a  
1890 federally delegated or approved program, shall be added to the  
1891 scheduled administrative penalty. The total administrative  
1892 penalty, including any economic benefit added to the scheduled  
1893 administrative penalty, shall not exceed \$10,000.

1894 (9) The administrative penalties assessed for any  
1895 particular violation shall not exceed \$10,000 ~~\$5,000~~ against any



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1896 one violator, unless the violator has a history of  
1897 noncompliance, the economic benefit of the violation as  
1898 described in subsection (8) exceeds \$10,000 ~~\$5,000~~, or there are  
1899 multiday violations. The total administrative penalties shall  
1900 not exceed \$50,000 ~~\$10,000~~ per assessment for all violations  
1901 attributable to a specific person in the notice of violation.

1902 Section 20. Subsection (7) of section 403.1835, Florida  
1903 Statutes, is amended to read:

1904 403.1835 Water pollution control financial assistance.—

1905 (7) Eligible projects must be given priority according to  
1906 the extent each project is intended to remove, mitigate, or  
1907 prevent adverse effects on surface or ground water quality and  
1908 public health. The relative costs of achieving environmental and  
1909 public health benefits must be taken into consideration during  
1910 the department's assignment of project priorities. The  
1911 department shall adopt a priority system by rule. In developing  
1912 the priority system, the department shall give priority to  
1913 projects that:

1914 (a) Eliminate public health hazards;

1915 (b) Enable compliance with laws requiring the elimination  
1916 of discharges to specific water bodies, including the  
1917 requirements of s. 403.086(10) ~~s. 403.086(9)~~ regarding domestic  
1918 wastewater ocean outfalls;

1919 (c) Assist in the implementation of total maximum daily  
1920 loads adopted under s. 403.067;

1921 (d) Enable compliance with other pollution control  
1922 requirements, including, but not limited to, toxics control,  
1923 wastewater residuals management, and reduction of nutrients and  
1924 bacteria;



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1925 (e) Assist in the implementation of surface water  
1926 improvement and management plans and pollutant load reduction  
1927 goals developed under state water policy;

1928 (f) Promote reclaimed water reuse;

1929 (g) Eliminate failing onsite sewage treatment and disposal  
1930 systems or those that are causing environmental damage; or

1931 (h) Reduce pollutants to and otherwise promote the  
1932 restoration of Florida's surface and ground waters.

1933 (i) Implement the requirements of ss. 403.086(7) and  
1934 403.088(2)(c).

1935 (j) Promote efficiency by planning for the installation of  
1936 wastewater transmission facilities to be constructed  
1937 concurrently with other construction projects occurring within  
1938 or along a transportation facility right-of-way.

1939 Section 21. Paragraph (b) of subsection (3) of section  
1940 403.1838, Florida Statutes, is amended to read:

1941 403.1838 Small Community Sewer Construction Assistance  
1942 Act.—

1943 (3)

1944 (b) The rules of the Environmental Regulation Commission  
1945 must:

1946 1. Require that projects to plan, design, construct,  
1947 upgrade, or replace wastewater collection, transmission,  
1948 treatment, disposal, and reuse facilities be cost-effective,  
1949 environmentally sound, permittable, and implementable.

1950 2. Require appropriate user charges, connection fees, and  
1951 other charges sufficient to ensure the long-term operation,  
1952 maintenance, and replacement of the facilities constructed under  
1953 each grant.



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1954           3. Require grant applications to be submitted on  
1955 appropriate forms with appropriate supporting documentation, and  
1956 require records to be maintained.

1957           4. Establish a system to determine eligibility of grant  
1958 applications.

1959           5. Establish a system to determine the relative priority of  
1960 grant applications. The system must consider public health  
1961 protection and water pollution prevention or abatement and must  
1962 prioritize projects that plan for the installation of wastewater  
1963 transmission facilities to be constructed concurrently with  
1964 other construction projects occurring within or along a  
1965 transportation facility right-of-way.

1966           6. Establish requirements for competitive procurement of  
1967 engineering and construction services, materials, and equipment.

1968           7. Provide for termination of grants when program  
1969 requirements are not met.

1970           Section 22. Subsection (12) of section 403.814, Florida  
1971 Statutes, is amended to read:

1972           403.814 General permits; delegation.-

1973           (12) A general permit is granted for the construction,  
1974 alteration, and maintenance of a stormwater management system  
1975 serving a total project area of up to 10 acres meeting the  
1976 criteria of this subsection. Such stormwater management systems  
1977 must be designed, operated, and maintained in accordance with  
1978 applicable rules adopted pursuant to part IV of chapter 373.  
1979 There is a rebuttable presumption that the discharge from such  
1980 systems complies with state water quality standards. The  
1981 construction of such a system may proceed without any further  
1982 agency action by the department or water management district if,



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1983 before construction begins, an electronic self-certification is  
1984 submitted to the department or water management district which  
1985 certifies that the proposed system was designed by a Florida  
1986 registered professional and that the registered professional has  
1987 certified that the proposed system will meet the following  
1988 additional requirements:

1989 (a) The total project area involves less than 10 acres and  
1990 less than 2 acres of impervious surface;

1991 (b) Activities will not impact wetlands or other surface  
1992 waters;

1993 (c) Activities are not conducted in, on, or over wetlands  
1994 or other surface waters;

1995 (d) Drainage facilities will not include pipes having  
1996 diameters greater than 24 inches, or the hydraulic equivalent,  
1997 and will not use pumps in any manner;

1998 (e) The project is not part of a larger common plan,  
1999 development, or sale; and

2000 (f) The project does not:

2001 1. Cause adverse water quantity or flooding impacts to  
2002 receiving water and adjacent lands;

2003 2. Cause adverse impacts to existing surface water storage  
2004 and conveyance capabilities;

2005 3. Cause or contribute to a violation of state water  
2006 quality standards; or

2007 4. Cause an adverse impact to the maintenance of surface or  
2008 ground water levels or surface water flows established pursuant  
2009 to s. 373.042 or a work of the district established pursuant to  
2010 s. 373.086.

2011



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2012 ===== T I T L E A M E N D M E N T =====

2013 And the title is amended as follows:

2014 Delete lines 17 - 112

2015 and insert:

2016 leave upon the transfer; creating s. 327.62, F.S.;

2017 providing legislative findings; requiring the

2018 Department of Environmental Protection, in

2019 coordination with the Fish and Wildlife Conservation

2020 Commission, to apply to the Administrator of the

2021 United States Environmental Protection Agency to

2022 establish no-discharge zones in specified areas of the

2023 state; requiring the department to submit a biennial

2024 report to the Governor and the Legislature; amending

2025 s. 373.036, F.S.; requiring water management districts

2026 to submit consolidated annual reports to the Office of

2027 Economic and Demographic Research; requiring such

2028 reports to include connection and conversion projects

2029 for onsite sewage treatment and disposal systems;

2030 amending s. 373.4131, F.S.; requiring the water

2031 management districts, with Department of Environmental

2032 Protection oversight, to adopt rules for stormwater

2033 design and performance standards; requiring the

2034 Department of Environmental Protection and water

2035 management districts to amend the Environmental

2036 Resource Permit Applicant's Handbook by a specified

2037 date; requiring the department to include stormwater

2038 structural controls inspections as part of its regular

2039 staff training; requiring the department and the water

2040 management districts to adopt rules regarding



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2041 stormwater design and operation by a specified date;  
2042 amending s. 381.0065, F.S.; conforming provisions to  
2043 changes made by the act; requiring the department to  
2044 adopt rules for the location of onsite sewage  
2045 treatment and disposal systems and complete such  
2046 rulemaking by a specified date; requiring the  
2047 department to evaluate certain data relating to the  
2048 self-certification program and provide the Legislature  
2049 with recommendations by a specified date; providing  
2050 that certain provisions relating to existing setback  
2051 requirements are applicable to permits only until the  
2052 adoption of certain rules by the department; creating  
2053 s. 381.00652, F.S.; creating an onsite sewage  
2054 treatment and disposal systems technical advisory  
2055 committee within the department; providing the duties  
2056 and membership of the committee; requiring the  
2057 committee to submit a report to the Governor and the  
2058 Legislature by a specified date; providing for the  
2059 expiration of the committee; repealing s. 381.0068,  
2060 F.S., relating to a technical review and advisory  
2061 panel; amending s. 403.061, F.S.; requiring the  
2062 department to adopt rules relating to the underground  
2063 pipes of wastewater collection systems; requiring  
2064 public utilities or their affiliated companies that  
2065 hold or are seeking a wastewater discharge permit to  
2066 file certain reports and data with the department;  
2067 creating s. 403.0616, F.S.; requiring the department,  
2068 subject to legislative appropriation, to establish a  
2069 real-time water quality monitoring program;





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2070 encouraging the formation of public-private  
2071 partnerships; amending s. 403.067, F.S.; requiring  
2072 basin management action plans for nutrient total  
2073 maximum daily loads to include wastewater treatment  
2074 and onsite sewage treatment and disposal system  
2075 remediation plans that meet certain requirements;  
2076 requiring the Department of Agriculture and Consumer  
2077 Services to collect fertilization and nutrient records  
2078 from certain agricultural producers and provide the  
2079 information to the department annually by a specified  
2080 date; requiring the Department of Agriculture and  
2081 Consumer Services to perform onsite inspections of the  
2082 agricultural producers at specified intervals;  
2083 requiring certain entities to develop research plans  
2084 and legislative budget requests relating to best  
2085 management practices by a specified date; creating s.  
2086 403.0671, F.S.; directing the Department of  
2087 Environmental Protection, in coordination with the  
2088 county health departments, wastewater treatment  
2089 facilities, and other governmental entities, to submit  
2090 a report on the costs of certain wastewater projects  
2091 to the Governor and Legislature by a specified date;  
2092 requiring the department to submit a specified water  
2093 quality monitoring assessment report to the Governor  
2094 and the Legislature by a specified date; requiring the  
2095 department to submit certain wastewater project cost  
2096 estimates to the Office of Economic and Demographic  
2097 Research; creating s. 403.0673, F.S.; establishing a  
2098 wastewater grant program within the Department of



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2099 Environmental Protection; authorizing the department  
2100 to distribute appropriated funds for certain projects;  
2101 providing requirements for the distribution; requiring  
2102 the department to coordinate with each water  
2103 management district to identify grant recipients;  
2104 requiring an annual report to the Governor and the  
2105 Legislature by a specified date; creating s. 403.0855,  
2106 F.S.; providing legislative findings regarding the  
2107 regulation of biosolids management in this state;  
2108 requiring the Department of Environmental Protection  
2109 to adopt rules for biosolids management; specifying  
2110 requirements for certain existing permits and for  
2111 permit renewals; requiring the permittee of a  
2112 biosolids application site to establish a groundwater  
2113 monitoring program under certain circumstances;  
2114 prohibiting the land application of biosolids within a  
2115 specified distance of the seasonal high-water table;  
2116 defining the term "seasonal high water"; authorizing  
2117 municipalities and counties to take certain actions  
2118 with respect to regulation of the land application of  
2119 specified biosolids; amending s. 403.086, F.S.;  
2120 prohibiting facilities for sanitary sewage disposal  
2121 from disposing of any waste in the Indian River Lagoon  
2122 beginning on a specified date without first providing  
2123 advanced waste treatment; requiring the Department of  
2124 Environmental Protection, in consultation with water  
2125 management districts and sewage disposal facilities,  
2126 to submit a report to the Governor and the Legislature  
2127 on the status of certain facility upgrades; specifying



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2128 requirements for the report; requiring facilities for  
2129 sanitary sewage disposal to have a power outage  
2130 contingency plan; requiring the facilities to take  
2131 steps to prevent overflows and leaks and ensure that  
2132 the water reaches the appropriate facility for  
2133 treatment; requiring the facilities to provide the  
2134 Department of Environmental Protection with certain  
2135 information; requiring the department to adopt rules;  
2136 amending s. 403.087, F.S.; requiring the department to  
2137 issue operation permits for domestic wastewater  
2138 treatment facilities to certain facilities under  
2139 certain circumstances; amending s. 403.088, F.S.;  
2140 revising the permit conditions for a water pollution  
2141 operation permit; requiring the department to submit a  
2142 report to the Governor and the Legislature by a  
2143 specified date identifying all wastewater utilities  
2144 that experienced sanitary sewer overflows within a  
2145 specified timeframe; amending s. 403.0891, F.S.;  
2146 requiring model stormwater management programs to  
2147 contain model ordinances for nutrient reduction  
2148 practices and green infrastructure; amending s.  
2149 403.121, F.S.; increasing and providing administrative  
2150 penalties; amending s. 403.1835, F.S.; conforming a  
2151 cross-reference; requiring the department to give  
2152 priority for water pollution control financial  
2153 assistance to projects that implement certain  
2154 provisions and that promote efficiency; amending s.  
2155 403.1838, F.S.; revising requirements for the  
2156 prioritization of grant applications within the Small



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2157 Community Sewer Construction Assistance Act; amending  
2158 s. 403.814, F.S.; revising the additional requirements  
2159 that a proposed stormwater management system must  
2160 meet; 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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 712

INTRODUCER: Community Affairs Committee; and Senators Mayfield, Harrell, and Albritton

SUBJECT: Water Quality Improvements

DATE: February 7, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Paglialonga/Rogers</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Reagan</u>	<u>Betta</u>	<u>AEG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Reagan</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/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.<sup>1</sup> 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:

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<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

### *Blue-Green Algae Task Force*

In January of 2019, Governor DeSantis issued the comprehensive Executive Order Number 19-12.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.

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<sup>2</sup> U.S. Environmental Protection Agency (EPA), *Sources and Solutions*, <https://www.epa.gov/nutrientpollution/sources-and-solutions> (last visited Dec. 2, 2019).

<sup>3</sup> EPA, *The Problem*, <https://www.epa.gov/nutrientpollution/problem> (last visited Dec. 2, 2019).

<sup>4</sup> 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](https://www.flgov.com/wp-content/uploads/orders/2019/EO_19-12.pdf).

<sup>5</sup> *Id.* at 2; DEP, *Blue-Green Algae Task Force*, <https://protectingfloridatogether.gov/state-action/blue-green-algae-task-force> (last visited Dec. 2, 2019).

<sup>6</sup> 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](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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

## Basin Management Action Plans and Best Management Practices

The DEP is the lead agency in coordinating the development and implementation of TMDLs.<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup> 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

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<sup>7</sup> 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).

<sup>8</sup> Section 403.067(1), F.S.

<sup>9</sup> Section 403.031(21), F.S.

<sup>10</sup> 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.

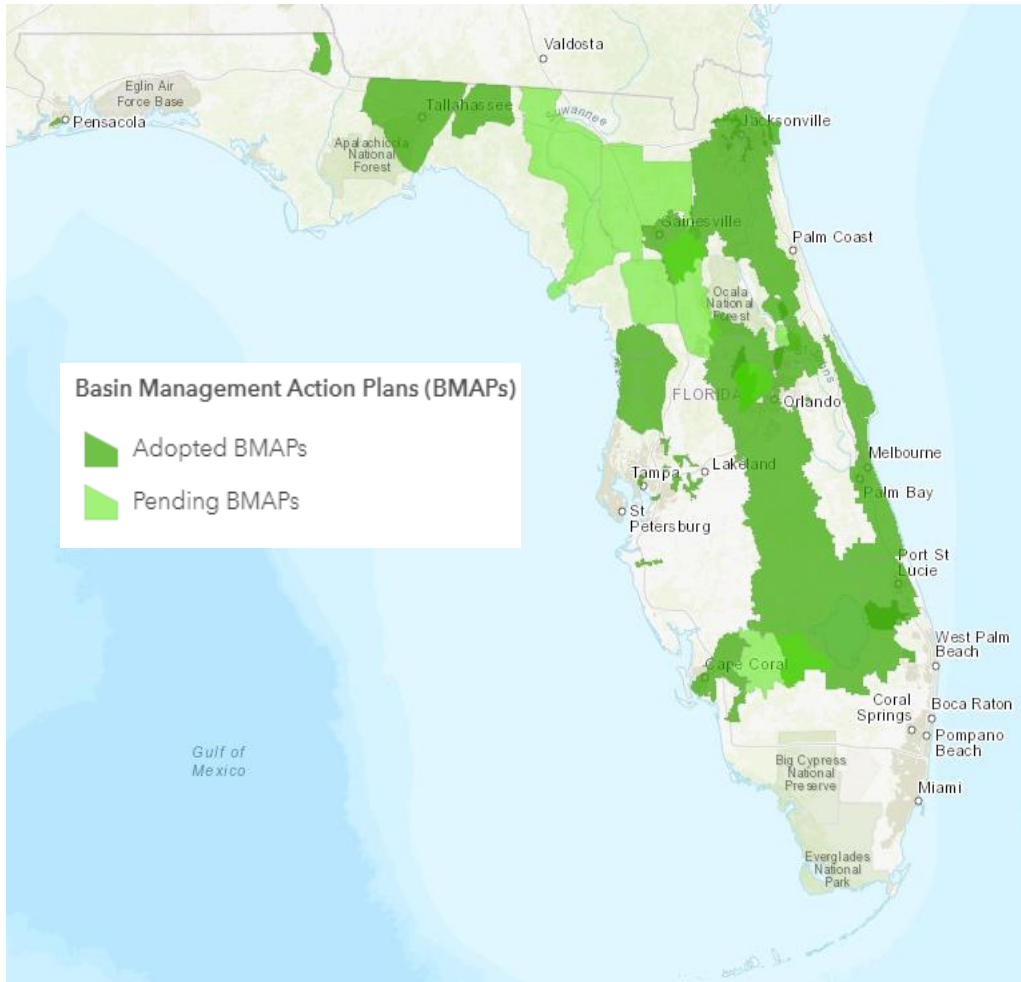
<sup>11</sup> Section 403.061, F.S. DEP has the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. Furthermore, s. 403.061(21), F.S., allows DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.

<sup>12</sup> Section 403.067(7), F.S.

<sup>13</sup> *Id.*

collectively determine and share water quality cleanup responsibilities collectively.<sup>14</sup> BMAPs are adopted by secretarial order.<sup>15</sup>

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.<sup>16</sup>



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.<sup>17</sup> 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

<sup>14</sup> DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Dec. 4, 2019).

<sup>15</sup> Section 403.067(7)(a)5., F.S.

<sup>16</sup> Section 403.067(7)(a)6., F.S.

<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup>

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.<sup>21</sup>

### ***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.<sup>22</sup> BMPs are implemented by the Department of Agriculture and Consumer Services (DACS). Since the BMP program was implemented in 1999,<sup>23</sup> 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.<sup>24</sup> Producers implementing BMPs receive a presumption of compliance with state water quality standards for the pollutants addressed by the BMPs<sup>25</sup> 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

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<sup>18</sup> Section 403.067(7)(b)2.h., F.S.

<sup>19</sup> DEP, *NPDES Stormwater Program*, <https://floridadep.gov/Water/Stormwater> (last visited Dec. 2, 2019).

<sup>20</sup> 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).

<sup>21</sup> 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](https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf).

<sup>22</sup> 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).

<sup>23</sup> 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.

<sup>24</sup> 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).

<sup>25</sup> 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.<sup>26</sup> Within a BMAP, management strategies, including BMPs and water quality monitoring, are enforceable.<sup>27</sup> 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,<sup>28</sup> conducts research to issue recommendations for improving BMPs,<sup>29</sup> and issues training certificates for BMPs that require licenses such as Green Industry BMPs.<sup>30</sup>

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.<sup>31</sup>

### **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.<sup>32</sup> 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;<sup>33</sup>
- The development of an onsite sewage treatment and disposal system (OSTDS) remediation plan<sup>34</sup> 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;<sup>35</sup> and

<sup>26</sup> 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).

<sup>27</sup> Section 403.067(7)(d), F.S.

<sup>28</sup> UF/IFAS, *BMP Resource*, available at <https://bmp.ifas.ufl.edu/> (last visited Dec. 5, 2019).

<sup>29</sup> 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).

<sup>30</sup> UF/IFAS Florida-Friendly Landscaping, *GI-BMP Training Program Overview*, available at [https://ffl.ifas.ufl.edu/professionals/BMP\\_overview.htm](https://ffl.ifas.ufl.edu/professionals/BMP_overview.htm) (last visited Dec. 5, 2019).

<sup>31</sup> *Id.*

<sup>32</sup> 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.

<sup>33</sup> Section 373.802(5), F.S.

<sup>34</sup> Commonly called a "septic remediation plan."

<sup>35</sup> 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.<sup>36</sup>

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.<sup>37</sup> The options must be cost-effective and financially feasible projects necessary to reduce the nutrient impacts from OSTDSs within the area.<sup>38</sup>

In June 2018, the DEP adopted 13 BMAPs, addressing all 24 nitrogen-impaired OFS.<sup>39</sup> Eight of these plans are currently effective, while five others are pending the outcome of legal challenges on various alleged deficiencies in the BMAPs.<sup>40</sup> 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.<sup>41</sup>

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.<sup>42</sup> 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.<sup>43</sup>

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

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<sup>36</sup> Section 373.811, F.S.

<sup>37</sup> Section 373.807(3), F.S.

<sup>38</sup> *Id.*

<sup>39</sup> DEP, *Springs*, <https://floridadep.gov/springs> (last visited Nov. 26, 2019).

<sup>40</sup> *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.

<sup>41</sup> 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).

<sup>42</sup> Section 403.087, F.S.

<sup>43</sup> DEP, *Wastewater Permitting*, <https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting> (last visited Dec. 2, 2019).



Pollution Discharge Elimination System (NPDES) permit.<sup>44</sup> 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.<sup>45</sup> 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.<sup>46</sup>

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.<sup>47</sup> 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.<sup>48</sup>

**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.<sup>49</sup> 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.<sup>50</sup> The standard also requires high-level disinfection.<sup>51</sup>

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.<sup>52</sup> 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

<sup>44</sup> 33 U.S.C. s. 1342.

<sup>45</sup> Sections 403.061 and 403.087, F.S.

<sup>46</sup> Section 403.087(3), F.S.

<sup>47</sup> 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](https://www.infrastructurereportcard.org/wp-content/uploads/2017/01/2016_RC_Final_screen.pdf).

<sup>48</sup> *Id.*

<sup>49</sup> Section 403.086(2), F.S.

<sup>50</sup> Section 403.086(4), F.S.

<sup>51</sup> Section 403.086(4)(b), F.S.; Fla. Admin. Code R. 62-600.440(6).

<sup>52</sup> 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.<sup>53</sup>

### ***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.<sup>54</sup> 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.<sup>55</sup> Each day during the period in which a violation occurs constitutes a separate offense.<sup>56</sup> However, administrative penalties are capped at \$10,000.<sup>57</sup>

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.<sup>58</sup>

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.<sup>59</sup>

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

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<sup>53</sup> 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](https://pubs.usgs.gov/circ/1348/pdf/Chapter%205_105-156.pdf) (internal citations omitted).

<sup>54</sup> DEP, *Sanitary Sewer Overflows (SSOs)*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last visited Dec. 4, 2019).

<sup>55</sup> Sections 403.121 and 403.141, F.S.

<sup>56</sup> *Id.*

<sup>57</sup> Section 403.121(2)(b),(8), and (9), F.S.

<sup>58</sup> DEP, *SSOs*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf>.

<sup>59</sup> *Id.*

wastewater.<sup>60</sup> 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.<sup>61</sup> 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.<sup>62</sup> 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.<sup>63</sup> Pump stations receiving flow from another station through a force main, or those discharging through pipes 12 inches or larger, must have emergency generators.<sup>64</sup> All other pump stations must have emergency pumping capability through one of three specified arrangements.<sup>65</sup> 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.<sup>66</sup>

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.<sup>67</sup>

### ***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.<sup>68</sup> 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.<sup>69</sup>

<sup>60</sup> City of St. Augustine, *Inflow & Infiltration Elimination Program*, <https://www.citystaug.com/549/Inflow-Infiltration-Elimination-Program> (last visited Dec. 6, 2019).

<sup>61</sup> 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](https://floridadep.gov/sites/default/files/Final%20Report_Evaluation%20of%20SSO%20and%20Unpermitted%20Discharges%2001_06_17.pdf).

<sup>62</sup> 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.”

<sup>63</sup> 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](https://floridadep.gov/sites/default/files/Final%20Report_Evaluation%20of%20SSO%20and%20Unpermitted%20Discharges%2001_06_17.pdf).

<sup>64</sup> Fla. Admin. Code R. 62-604.400.

<sup>65</sup> *Id.*

<sup>66</sup> Fla. Admin. Code R. 62-604.100.

<sup>67</sup> 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](https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf).

<sup>68</sup> 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).

<sup>69</sup> *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.<sup>70</sup> 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.<sup>71</sup> The United States Environmental Protection Agency (EPA) provides guidance and reference manuals for utilities to aid in developing asset management plans.<sup>72</sup>

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.<sup>73</sup> Florida's incentives include priority scoring,<sup>74</sup> reduction of interest rates,<sup>75</sup> principal forgiveness for financially disadvantaged small communities,<sup>76</sup> and eligibility for small community wastewater facilities grants.<sup>77</sup>

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.<sup>78</sup> 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.<sup>79</sup>

### **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.<sup>80</sup> The CWSRF is funded through money received from

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> EPA, *Asset Management: A Best Practices Guide* (2008), available at <https://nepis.epa.gov/Exec/QueryPDF.cgi/P1000LP0.PDF?Dockey=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](https://www.epa.gov/sites/production/files/2016-04/documents/am_tools_guide_may_2014.pdf).

<sup>73</sup> 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](https://www.epa.gov/sites/production/files/2016-04/documents/state_asset_management_initiatives_11-01-12.pdf).

<sup>74</sup> Fla. Admin. Code R. 62-503.300(e).

<sup>75</sup> Fla. Admin. Code R. 62-503.300(5)(b)1. and 62-503.700(7).

<sup>76</sup> Fla. Admin. Code R. 62-503.500(4).

<sup>77</sup> Fla. Admin. Code R. 62-505.300(d) and 62-505.350(5)(c).

<sup>78</sup> Fla. Admin. Code R. 25-30.444.

<sup>79</sup> Fla. Admin. Code R. 25-30.444(2)(e) and (m).

<sup>80</sup> 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.<sup>81</sup> 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.<sup>82</sup>

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.;

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<sup>81</sup> DEP, *State Revolving Fund*, <https://floridadep.gov/wra/srf> (last visited Feb. 11, 2019).

<sup>82</sup> 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.<sup>83</sup>

### **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.<sup>84</sup> Under the program, a financially disadvantaged small community is defined as a county, municipality, or special district<sup>85</sup> with a total population of 10,000 or less, and a per capita income less than the state average per capita income.<sup>86</sup> 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.<sup>87</sup>

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.<sup>88</sup> 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.<sup>89</sup>

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<sup>83</sup> Section 403.1835(7), F.S.

<sup>84</sup> Sections 403.1835(3)(d) and 403.1838, F.S.

<sup>85</sup> 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.

<sup>86</sup> Section 403.1838(2), F.S.

<sup>87</sup> Chapter 2016-55, Laws of Fla.

<sup>88</sup> Section 403.1838(3)(a), F.S.

<sup>89</sup> 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.<sup>90</sup> 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.<sup>91</sup>



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.<sup>92</sup> The DOH regulations focus on construction standards and setback distances. The regulations are primarily designed to protect the public from waterborne illnesses.<sup>93</sup> 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.<sup>94</sup>

The DOH and the DEP have an interagency agreement that standardizes procedures and clarifies responsibilities between them regarding the regulation of OSTDSs.<sup>95</sup> The DEP has jurisdiction

<sup>90</sup> 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).

<sup>91</sup> *Id.*

<sup>92</sup> Section 381.0065(3), F.S.

<sup>93</sup> DOH, *Overview of Onsite Sewage Treatment and Disposal Systems*, 5 (Aug. 1, 2019), <http://floridadep.gov/file/19018/download?token=6r94Bi2B>.

<sup>94</sup> Section 381.0065(3), F.S.

<sup>95</sup> *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](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).<sup>96</sup> 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.<sup>97</sup> In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.<sup>98</sup> 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.<sup>99</sup> The remainder of systems are generally serviced only when they fail, often leading to costly repairs that could have been avoided with routine maintenance.<sup>100</sup>

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.<sup>101</sup> This still leaves a significant amount of nitrogen to percolate into the groundwater, which makes nitrogen from OSTDSs a potential contaminant in groundwater.<sup>102</sup>

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).<sup>103</sup> The DOH publishes on its website approved products and resources on advanced systems.<sup>104</sup> 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.<sup>105</sup> Owners of an OSTDS in need of repair or modification must connect within 90 days of notification from the DOH.<sup>106</sup>

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<sup>96</sup> *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).

<sup>97</sup> DOH, *Onsite Sewage*, <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last visited Dec. 2, 2019).

<sup>98</sup> 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](http://www.floridahealth.gov/environmental-health/onsite-sewage/research/_documents/rrac/2008-11-06.pdf). The report begins on page 56 of the PDF.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> 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).

<sup>102</sup> 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>.

<sup>103</sup> 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](http://www.floridahealth.gov/environmental-health/onsite-sewage/products/_documents/bmap-n-reducing-tech-18-10-29.pdf).

<sup>104</sup> 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).

<sup>105</sup> Section 381.00655, F.S.

<sup>106</sup> *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.<sup>107</sup>

### ***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.<sup>108</sup> 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.<sup>109</sup>

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.<sup>110</sup>

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<sup>107</sup> 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](https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf).

<sup>108</sup> Section 381.0068, F.S.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*



## Stormwater Management

Stormwater is the flow of water resulting from, and immediately following, a rainfall event.<sup>111</sup> 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.<sup>112</sup> Stormwater pollution is a major source of water pollution in Florida.<sup>113</sup>

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 States<sup>114</sup> and the state Environmental Resource Permitting (ERP) Program that regulates activities involving the alteration of surface water flows.<sup>115</sup> The federal NPDES Stormwater Program regulates the following types of stormwater pollution:<sup>116</sup>

- Certain municipal storm sewer systems;
- Runoff from certain construction activities; and
- Runoff from industrial activities.<sup>117</sup>

Florida's ERP Program includes regulation of activities that create stormwater runoff, as well as dredging and filling in wetlands and other surface waters.<sup>118</sup> ERPs are designed to prevent flooding, protect wetlands and other surface waters, and protect Florida's water quality from stormwater pollution.<sup>119</sup> 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.<sup>120</sup>

<sup>111</sup> 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](https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Applicant_Hanbook_I_-_Combined.pdf).

<sup>112</sup> DEP, *Stormwater Management*, 1 (2016), available at [https://floridadep.gov/sites/default/files/stormwater-management\\_0.pdf](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.

<sup>113</sup> 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>.

<sup>114</sup> National Pollutant Discharge Elimination System (NPDES), 33 U.S.C. s. 1342 (2019); 40 C.F.R. pt. 122.

<sup>115</sup> Chapter 373, pt. IV, F.S.; Fla. Admin. Code Ch. 62-330.

<sup>116</sup> 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](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>.

<sup>117</sup> See generally EPA, *NPDES Stormwater Program*, <https://www.epa.gov/npdes/npdes-stormwater-program> (last visited Dec. 2, 2019).

<sup>118</sup> DEP, *DEP 101: Environmental Resource Permitting*, <https://floridadep.gov/comm/press-office/content/dep-101-environmental-resource-permitting> (last visited Dec 2, 2019).

<sup>119</sup> 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).

<sup>120</sup> 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](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;<sup>121</sup> and
- For the maintenance or operation of such structures.<sup>122</sup>

The DEP's stormwater rules are technology-based effluent limitations rather than water quality-based effluent limitations.<sup>123</sup> 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.<sup>124</sup> 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.<sup>125</sup> 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.<sup>126</sup> The images shown here depict six major types of surface water management systems:<sup>127</sup>

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<sup>121</sup> Section 373.413, F.S.; *see* s. 403.814(12), F.S.

<sup>122</sup> Section 373.416, F.S.

<sup>123</sup> DEP, *ERP Stormwater*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/erp-stormwater> (last visited Nov. 8, 2019).

<sup>124</sup> *See* generally, EPA, National Pollutant Discharge Elimination System (NPDES), [www.epa.gov/npdes/npdes-permit-limits](http://www.epa.gov/npdes/npdes-permit-limits) (last visited Dec. 2, 2019).

<sup>125</sup> Fla. Admin. Code R. 62-40.432(2).

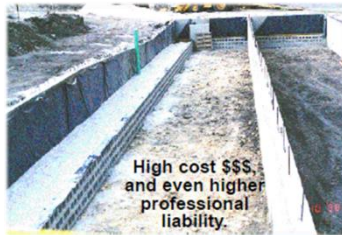
<sup>126</sup> Environmental Research & Design, Inc., *Evaluation of Current Stormwater Design Criteria Within the State of Florida*, 6-1 (2007), available at <https://www.sfwmd.gov/sites/default/files/documents/sw%20treatment%20report-final71907.pdf>. The report makes an exception for the St. John's River Water Management District's standards for on-line dry retention.

<sup>127</sup> 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.<sup>128</sup> 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.<sup>129</sup> 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.<sup>130</sup> 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.<sup>131</sup>

<sup>128</sup> 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.

<sup>129</sup> 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”).

<sup>130</sup> Section 373.4131(3)(c), F.S.

<sup>131</sup> 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.<sup>132</sup> 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.<sup>133</sup> 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."<sup>134</sup>

These rulemaking efforts produced a draft document called the "Environmental Resource Permit Stormwater Quality Applicant's Handbook: Design Requirements for Stormwater Treatment in Florida."<sup>135</sup> The 2010 draft handbook's stormwater quality permitting requirements:

- Provided for different stormwater treatment performance standards based on various classifications of water quality.<sup>136</sup>
- Included instructions for calculating a project's required nutrient load reduction based on comparing the predevelopment and post-development loadings.<sup>137</sup>
- Provided the required criteria for stormwater BMPs.
- Listed fifteen different types of stormwater treatment systems, including low impact design, pervious pavements, and stormwater harvesting.<sup>138</sup>

The new rule and revised handbook were expected to be adopted in 2011.<sup>139</sup> 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.<sup>140</sup>

<sup>132</sup> 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](https://www.sfwmd.gov/sites/default/files/documents/spl_stormwater_rule.pdf).

<sup>133</sup> 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>.

<sup>134</sup> *Id.*

<sup>135</sup> 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](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/content2/roadway/drainage/files/stormwaterqualityapphb-draft.pdf?sfvrsn=579bf184_0).

<sup>136</sup> *Id.* at 6-7.

<sup>137</sup> *Id.* at 8-11.

<sup>138</sup> *Id.* at 3.

<sup>139</sup> 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).

<sup>140</sup> 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](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.<sup>141</sup>

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.<sup>142</sup> 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.<sup>143</sup>

## Indian River Lagoon

The Indian River Lagoon (IRL) system is an estuary<sup>144</sup> that runs along 156 miles of Florida's east coast and borders Volusia, Brevard, Indian River, St. Lucie, and Martin counties.<sup>145</sup> The IRL system is composed of three main waterbodies: Mosquito Lagoon, Banana River, and the Indian River Lagoon.<sup>146</sup> Four BMAPs have been adopted for the IRL region.<sup>147</sup>

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.<sup>148</sup> The estimated economic value received from the IRL in 2014 was

<sup>141</sup> DEP, *Water Quality Assessment Program*, <https://floridadep.gov/dear/water-quality-assessment> (last visited Dec. 2, 2019).

<sup>142</sup> DEP, *Watershed Monitoring*, <https://floridadep.gov/dear/watershed-monitoring-section> (last visited Dec. 2, 2019).

<sup>143</sup> 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](https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf).

<sup>144</sup> 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).

<sup>145</sup> IRL National Estuary Program, *About the Indian River Lagoon*, <http://www.irlcouncil.com/> (last visited Dec. 2, 2019).

<sup>146</sup> *Id.*

<sup>147</sup> 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](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).

<sup>148</sup> IRL National Estuary Program, *About the Indian River Lagoon*, <http://www.irlcouncil.com/> (last visited Dec. 2, 2019).

approximately \$7.6 billion.<sup>149</sup> Industry groups that are directly influenced by the IRL support nearly 72,000 jobs.<sup>150</sup>

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.<sup>151</sup> 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.<sup>152</sup>

### **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.<sup>153</sup>

### **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.<sup>154</sup> 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.<sup>155</sup>

The currently designated RAOs are:<sup>156</sup>

- Northwestern RAO: Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and part of Walton County.

<sup>149</sup> 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](http://tcrpc.org/special_projects/IRL_Econ_Valu/FinalReportIRL08_26_2016.pdf).

<sup>150</sup> *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.

<sup>151</sup> 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>.

<sup>152</sup> *Id.*

<sup>153</sup> Section 20.06(2), F.S.

<sup>154</sup> Section 288.0656(2)(d), F.S.

<sup>155</sup> Section 288.0656(7), F.S.

<sup>156</sup> 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).<sup>157</sup> 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.<sup>158</sup>

### Biosolids

Approximately two-thirds of Florida's population is served by around 2,000 domestic wastewater facilities permitted by the DEP.<sup>159</sup> When domestic wastewater is treated, solid, semisolid, or liquid residue known as biosolids<sup>160</sup> accumulates in the wastewater treatment plant and must be removed periodically to keep the plant operating properly.<sup>161</sup> Biosolids also include products and treated material from biosolids treatment facilities and septage management facilities regulated by the DEP.<sup>162</sup> The collected residue is high in organic content and contains moderate amounts of nutrients.<sup>163</sup>

The DEP has stated that wastewater treatment facilities produce about 340,000 dry tons of biosolids each year.<sup>164</sup> 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

<sup>157</sup> Section 120.541, F.S.

<sup>158</sup> *Id.*

<sup>159</sup> 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).

<sup>160</sup> 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.

<sup>161</sup> DEP, *Domestic Wastewater Biosolids*, <https://floridadep.gov/water/domestic-wastewater/content/domestic-wastewater-biosolids> (last visited Dec. 9, 2019).

<sup>162</sup> Fla. Admin. Code R. 62-640.200(6).

<sup>163</sup> *Id.*

<sup>164</sup> 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](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.<sup>165</sup> About one-third of the total amount of biosolids produced is used for land application<sup>166</sup> and is subject to regulatory requirements established by the DEP to protect public health and the environment.<sup>167</sup>

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.<sup>168</sup> 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.<sup>169</sup> 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.<sup>170</sup> There are approximately 140 permitted land application sites in Florida, with waste haulers being the most common site permittees.<sup>171</sup>

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<sup>165</sup> *Id.* at 4.

<sup>166</sup> *Id.* at 5.

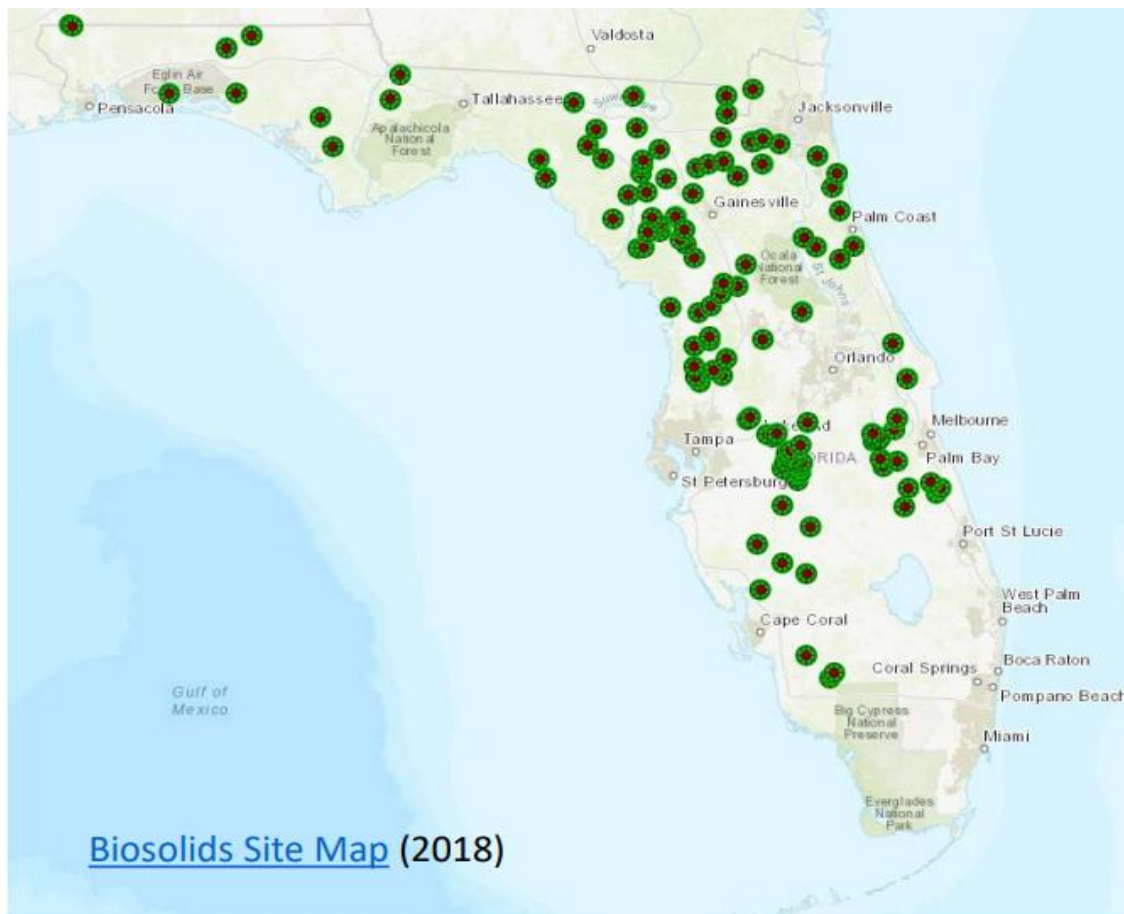
<sup>167</sup> Fla. Admin. Code R. 62-640.

<sup>168</sup> 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).

<sup>169</sup> *Id.* at 20.

<sup>170</sup> *Id.* at 9.

<sup>171</sup> 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](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.<sup>172</sup>

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.<sup>173</sup>

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.<sup>174</sup> Typically, Class B biosolids are used in land application.<sup>175</sup>

<sup>172</sup> *Id.* at 6.

<sup>173</sup> *Id.* at 7.

<sup>174</sup> *Id.* at 8.

<sup>175</sup> *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 distributors<sup>176</sup> and include permit requirements for both treatment facilities and biosolids application sites.<sup>177</sup>

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.<sup>178</sup> Biosolids may only be applied to land application sites that are permitted by the DEP and have a valid NMP.<sup>179</sup> 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.<sup>180</sup> 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.<sup>181</sup>

Once a facility or site is permitted, it is subject to monitoring, record-keeping, reporting, and notification requirements.<sup>182</sup> 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.<sup>183</sup>

### ***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.<sup>184</sup> 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.<sup>185</sup>

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<sup>176</sup> Fla. Admin. Code R. 62-640.100.

<sup>177</sup> Fla. Admin. Code R. 62-640.300.

<sup>178</sup> Fla. Admin. Code R. 62-640.500.

<sup>179</sup> *Id.*

<sup>180</sup> Fla. Admin. Code R. 62-640.700.

<sup>181</sup> 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](http://archives.waterinstitute.ufl.edu/symposium2018/abstract_detail.asp?AssignmentID=1719) (last visited Mar. 8, 2019).

<sup>182</sup> Fla. Admin. Code R. 62-640.650.

<sup>183</sup> *Id.*

<sup>184</sup> Chapter 2016-1, Laws of Florida; see s. 373.4595, F.S.

<sup>185</sup> *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.<sup>186</sup> 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.<sup>187</sup>

### ***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.<sup>188</sup> 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.<sup>189</sup> The County Commission voted in January 2019 to extend the moratorium for an additional six months.<sup>190</sup>

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.<sup>191</sup> In January 2019, the ordinance was extended for an additional 180 days.<sup>192</sup>

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.<sup>193</sup> 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.<sup>194</sup> 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.<sup>195</sup>

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<sup>186</sup> Section 373.811(4), F.S.

<sup>187</sup> *Id.*

<sup>188</sup> 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](http://ircgov.granicus.com/player/clip/183?view_id=1&meta_id=64650) (last visited Dec. 9, 2019).

<sup>189</sup> *Id.*

<sup>190</sup> 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](http://ircgov.granicus.com/player/clip/204?view_id=1&meta_id=77302) (last visited Dec. 9, 2019).

<sup>191</sup> Fellsmere City Council Meeting, *Agenda* (Aug. 16, 2018), available at [https://www.cityoffellsmere.org/sites/default/files/fileattachments/city\\_council/meeting/8301/co20180816agenda.pdf](https://www.cityoffellsmere.org/sites/default/files/fileattachments/city_council/meeting/8301/co20180816agenda.pdf).

<sup>192</sup> Fellsmere City Council Meeting, *Agenda* (Feb. 7, 2019), available at [https://www.cityoffellsmere.org/sites/default/files/fileattachments/city\\_council/meeting/14391/co20190221agenda.pdf](https://www.cityoffellsmere.org/sites/default/files/fileattachments/city_council/meeting/14391/co20190221agenda.pdf).

<sup>193</sup> 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>.

<sup>194</sup> 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>.

<sup>195</sup> *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.<sup>196</sup>

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.<sup>197</sup>

Based on recommendations of the TAC and public input, the DEP published a draft rule on October 29, 2019.<sup>198</sup> 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,<sup>199</sup> meaning that a permit applicant must publish notice of their application one time only within fourteen days after a complete application is filed.<sup>200</sup>
- 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.<sup>201</sup> The SERC makes the following statements:

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<sup>196</sup> 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.

<sup>197</sup> DEP, *DEP Biosolids Technical Advisory Committee*, <https://floridadep.gov/water/domestic-wastewater/content/dep-biosolids-technical-advisory-committee> (last visited Mar. 6, 2019).

<sup>198</sup> 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](https://www.flrules.org/gateway/View_Notice.asp?id=22546212) (last visited Dec. 5, 2019).

<sup>199</sup> Note: the draft rule uses the phrase “public interest” but the rule crossreferenced in the draft rule uses the phrase “public concern.”

<sup>200</sup> Fla. Admin. Code R. 62-110.106(6).

<sup>201</sup> 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](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.<sup>202</sup>

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.<sup>203</sup>

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<sup>202</sup> *Id.*

<sup>203</sup> *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.<sup>204</sup> The DEP is currently reviewing lower cost regulatory alternatives that have been submitted.<sup>205</sup> The next step will be a hearing before the Environmental Regulation Commission and adoption of the rule. Following rule adoption, legislative ratification is required.<sup>206</sup>

### ***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.<sup>207</sup> Civil actions and administrative proceedings have different procedures.<sup>208</sup> 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.<sup>209</sup>

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.<sup>210</sup>

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.<sup>211</sup>

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<sup>204</sup> *Id.*

<sup>205</sup> Email from Justin Wolfe, General Counsel, DEP, RE: Biosolids Rule (Dec. 2. 2019)(on file with the Environment and Natural Resources Committee).

<sup>206</sup> Section 120.541(3), F.S.

<sup>207</sup> Section 403.121, F.S.

<sup>208</sup> Sections 403.121 and 403.141, F.S.

<sup>209</sup> Section 403.121, F.S.

<sup>210</sup> *Id.*

<sup>211</sup> Section 403.121(3)(b), F.S.

A court or an administrative law judge may receive evidence in mitigation.<sup>212</sup> The DEP may also seek injunctive relief either judicially or administratively.<sup>213</sup> Additionally, criminal penalties are available for various types of violations of chapter 403, F.S.<sup>214</sup>

### 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.

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Section 403.121(3)(b),  
F.S.

<sup>214</sup> 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.*<sup>215</sup>

**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.*<sup>216</sup>

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<sup>215</sup> *Id.*

<sup>216</sup> *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.*<sup>217</sup>

**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

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<sup>217</sup> *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.<sup>218</sup>*

**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 that 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

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<sup>218</sup> *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.*<sup>219</sup>

**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.

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<sup>219</sup> *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:**

None.

**VII. 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.)**CS/CS by Appropriations on February 05, 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.

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

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	12 Y, 0 N	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:<sup>1</sup>

- 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 intervene<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup>

#### 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 worldwide<sup>6</sup> have authorized specific legal rights of nature authorizing a person to assert standing on behalf of natural resources.<sup>7</sup>

#### *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.<sup>8</sup> The Sierra Club (Club) argued that the ski development

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<sup>1</sup> S. 403.412(2), F.S.

<sup>2</sup> "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.

<sup>3</sup> S. 403.412(5), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> *Florida Wildlife Federation v. State Dept. of Environmental Regulation*, 390 So. 2d 64 (Fla. 1980).

<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> *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.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

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.”<sup>12</sup> 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.<sup>13</sup>

### *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.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

### *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.<sup>18</sup> 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.<sup>19</sup>

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.”<sup>20</sup> 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.<sup>21</sup>

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<sup>9</sup> *Id.* at 734.

<sup>10</sup> *Id.* at 735.

<sup>11</sup> *Id.* at 740.

<sup>12</sup> *Id.* at 741-42.

<sup>13</sup> *Id.* at 755-56.

<sup>14</sup> 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.

<sup>15</sup> *Id.* at 12.

<sup>16</sup> *Id.* at 2.

<sup>17</sup> Motion to Dismiss, No. 1:17-cv-02316-NYW (D. Colo. Oct. 17, 2017).

<sup>18</sup> *Swepi, LP v. Mora Cty.*, 81 F. Supp. 3d 1075, 1090 (D.N.M. 2015).

<sup>19</sup> *Swepi*, 81 F. Supp. 3d at 1088

<sup>20</sup> *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).

<sup>21</sup> *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.<sup>22</sup>

### 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 person<sup>23</sup> or political subdivision;<sup>24</sup> 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:

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<sup>22</sup> 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).

<sup>23</sup> 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.

<sup>24</sup> 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

<b>SB 0034</b>	<b>Prohibited Discrimination</b> 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
	<b>Actions</b>
	09/03/2019 SENATE Withdrawn prior to introduction
<b>HB 0073</b>	<b>Environmental Regulation</b> 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
	<b>Actions</b>
	02/05/2020 SENATE Received; Referred to Environment and Natural Resources; Community Affairs; Rules
<b>SB 0090</b>	<b>Discrimination in Labor and Employment</b> 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
	<b>Actions</b>
	08/16/2019 SENATE Referred to Commerce and Tourism; Judiciary; Rules
<b>SB 0112</b>	<b>Capital Relocation Study</b> 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
	<b>Actions</b>
	08/16/2019 SENATE Referred to Governmental Oversight and Accountability; Community Affairs; Rules
<b>HB 0133</b>	<b>Towing and Immobilizing Vehicles and Vessels</b> 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
	<b>Actions</b>
	02/03/2020 HOUSE Placed on Calendar, on 2nd reading
<b>SB 0142</b>	<b>Abolishing the Constitution Revision Commission</b> by Brandes
	Abolishing the Constitution Revision Commission; Proposing amendments to the State Constitution to

abolish the Constitution Revision Commission, etc.

**Actions**

02/06/2020 SENATE Placed on Special Order Calendar, 02/12/20

**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**

02/05/2020 SENATE Placed on Calendar, on 2nd reading

**SB 0230 Department of Health** by Harrell

Department of Health; Revising the purpose of patient care networks from serving patients with acquired immune deficiency syndrome to serving those with human immunodeficiency virus; 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; 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, etc. Effective Date: 7/1/2020

**Actions**

02/07/2020 SENATE Committee Substitute Text (C2) Filed

**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; 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**

02/06/2020 HOUSE Now in Judiciary Committee

**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: Revises amount at which specified entities must competitively award certain projects; 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**

02/04/2020 HOUSE Now in State Affairs Committee

**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**

02/05/2020 SENATE Placed on Calendar, on 2nd reading

**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 0378 Motor Vehicle Insurance** by Lee

Motor Vehicle Insurance; Repealing provisions which comprise the Florida Motor Vehicle No-Fault Law; revising the motor vehicle insurance coverages that an applicant must show to register certain vehicles with the Department of Highway Safety and Motor Vehicles; revising garage liability insurance requirements for motor vehicle dealer applicants; revising minimum liability coverage requirements for motor vehicle owners or operators, etc. CLAIM: \$83,651 Effective Date: Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect January 1, 2021

**Actions**

02/06/2020 SENATE On Committee agenda - Banking and Insurance, 02/11/20, 2:00 pm, 412 K

**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 0395 Transportation** by Andrade

Transportation: Authorizes certain vehicles to display certain lights; revises application of load securing requirements; authorizes DHSMV to waive certain commercial motor vehicle testing requirements; revises manner of providing financial responsibility for owners of for-hire vehicles; prohibits vessels from remaining in marinas deemed unsuitable for refuge during hurricane; authorizes removal of such vessels; revises provisions relating to TNCs, TNC vehicles, & TNC drivers. Effective Date: July 1, 2020

**Actions**

02/06/2020 HOUSE On Committee agenda - Transportation & Tourism Appropriations Subcommittee, 02/10/20, 1:30 pm, 404 H

**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**



**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**

02/06/2020 HOUSE Now in State Affairs Committee

**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**

02/03/2020 HOUSE Now in State Affairs Committee

**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**

02/06/2020 HOUSE Now in Appropriations Committee

**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**

02/06/2020 SENATE On Committee agenda - Judiciary, 02/11/20, 2:00 pm, 110

**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**

02/06/2020 SENATE Now in Commerce and Tourism

**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 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

02/07/2020 HOUSE Committee Substitute Text (C1) Filed

### **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

02/05/2020 SENATE Temporarily Postponed by Appropriations

### **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 0771 Motor Vehicle Insurance** by Grall

Motor Vehicle Insurance: Repeals provisions relating Florida Motor Vehicle No-Fault Law; revises garage liability insurance requirements; revises minimum coverage requirements for proof of financial responsibility for motor vehicles; revises amount of certificate of deposit required to elect certain method of proof of financial responsibility; revises excess liability coverage requirements; revises financial responsibility requirements for owners or lessees of for-hire passenger transportation vehicles; revises coverages of motor vehicle policy which are subject to stacking prohibition; revises insurance requirements for transportation network company drivers. Effective Date: January 1, 2021

## Actions

02/07/2020 HOUSE On Committee agenda - Government Operations & Technology Appropriations Subcommittee, 02/11/20, 1:30 pm, 306 H

### **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**

02/06/2020 SENATE Now in Rules

**SB 0826 Marina Evacuations** by Mayfield

Marina Evacuations; 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, etc. Effective Date: 7/1/2020

**Actions**

02/06/2020 SENATE Now in Infrastructure and Security

**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**

02/05/2020 SENATE On Committee agenda - Governmental Oversight and Accountability, 02/10/20, 1:30 pm, 301 S

**HB 1039 Transportation Network Companies** by Rommel

Transportation Network Companies: Removes for-hire vehicles from list of vehicles that are not considered TNC carriers or are not exempt from certain registration; revises automobile insurance coverage requirements for TNCs & TNC drivers; authorizes TNC drivers to contract for installment of TNC digital advertising devices; provides that TNC drivers & owners & operators of TNC digital advertising devices are immune from specified liabilities; authorizes entities to be regulated as luxury ground TNCs; provides that luxury ground TNCs, luxury ground TNC drivers, & luxury ground TNC vehicles are governed by state law. Effective Date: upon becoming a law

**Actions**

02/04/2020 HOUSE Now in State Affairs Committee

**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**

02/03/2020 SENATE Now in Rules

**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**

02/07/2020 HOUSE On Committee agenda - Agriculture & Natural Resources Appropriations Subcommittee, 02/11/20, 1:30 pm, 17 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**

02/07/2020 HOUSE On Committee agenda - Agriculture & Natural Resources Appropriations Subcommittee, 02/11/20, 1:30 pm, 17 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 1172 Transportation** by Albritton

Transportation; Revising requirements for determining the salaries of the secretary of the Department of Transportation and assistant secretaries; requiring certain contractors to be certified by the department as qualified; specifying conditions under which the limitation on liability of the department applies for personal injury, property damage, or death; authorizing the Governor to suspend payment of tolls when necessary to assist emergency evacuation, etc. Effective Date: 7/1/2020



## Actions

12/18/2019 SENATE Referred to Infrastructure and Security; Judiciary; Appropriations

### **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

02/04/2020 HOUSE Now in Judiciary Committee

### **HB 1219** **Electric Vehicles** by Toledo

Electric Vehicles: Requires DOT to establish Electric Vehicle Infrastructure Grant Program; provides for distribution of grants to certain entities to install electric vehicle charging infrastructure; provides grant requirements; provides requirements for equipment installed; requires DOT to review emerging research, policies, & standards; authorizes DOT to develop model plan for local governments; requires DOT to develop master plan for charging stations; provides appropriation. Effective Date: July 1, 2020

## Actions

01/17/2020 HOUSE Now in Transportation & Infrastructure Subcommittee

### **SB 1230** **Electric Vehicles** by Brandes

Electric Vehicles; Authorizing the Department of Transportation to adopt rules; requiring that certain funds be used for specified purposes relating to the Electric Vehicle Infrastructure Grant Program, beginning in

specified years; requiring the department to establish the Electric Vehicle Infrastructure Grant Program; providing for the distribution of grants to certain entities to install electric vehicle charging infrastructure; providing grant requirements, etc. Effective Date: Except as otherwise expressly provided in this act, this act shall take effect July 1, 2020

**Actions**

01/08/2020 SENATE Referred to Infrastructure and Security; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Appropriations

**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; 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**

02/06/2020 HOUSE Now in Transportation & Tourism Appropriations Subcommittee

**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**

02/05/2020 SENATE On Committee agenda - Infrastructure and Security, 02/10/20, 4:00 pm, 110 S

**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**

02/07/2020 HOUSE On Committee agenda - Appropriations Committee, 02/11/20, 4:00 pm, 212 K

**SB 1352 Transportation Companies** by Brandes

Transportation Companies; Defining the term "transportation network company digital advertising device"; deleting for-hire vehicles from the list of vehicles that are not considered transportation network company (TNC) carriers or are not exempt from certain registration; authorizing TNC drivers or their designees to contract with a company for the installment of TNC digital advertising devices; requiring companies operating such devices to allocate a specified percentage of advertisement inventory to certain organizations, etc. Effective Date: Upon becoming a law

**Actions**

02/05/2020 SENATE On Committee agenda - Innovation, Industry, and Technology, 02/10/20, 1:30 pm, 110 S

**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**

02/05/2020 SENATE On Committee agenda - Environment and Natural Resources, 02/10/20, 4:00 pm, 37 S

**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**

**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**

02/05/2020 SENATE On Committee agenda - Environment and Natural Resources, 02/10/20, 4:00 pm, 37 S

**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; including green iguanas and species of the genera Salvator and Tupinambis in such prohibition, etc. Effective Date: 7/1/2020

**Actions**

02/06/2020 SENATE On Committee agenda - Agriculture, 02/11/20, 10:00 am, 301 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**

02/07/2020 Bill to be Discussed During the Office of EDR's Criminal Justice Impact Conference, 02/10/20, 9:00 am, 117 K (No Votes Will Be Taken)

**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**

**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; specifying 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; revising the minimum annual appropriation for certain appropriations from the Land Acquisition Trust Fund, etc. APPROPRIATION: Indeterminate Effective Date: 7/1/2020

**Actions**

02/06/2020 SENATE Now in Appropriations Subcommittee on Agriculture, Environment, and General Government

**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**

02/06/2020 SENATE Received; Referred to Infrastructure and Security; Governmental Oversight and Accountability; Rules

**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**

02/06/2020 SENATE Placed on Calendar, on 2nd reading

**SB 7054 Transportation** by Infrastructure and Security

Transportation; Revising the organization of the Department of Transportation; revising uses for distributions made under the State Transportation Trust Fund in specified fiscal years; deleting the scheduled expiration of funding for the Intermodal Logistics Center Infrastructure Support Program; requiring airport protection zoning regulations to require certain permit applicants to submit a final valid determination from the Federal Aviation Administration, etc. Effective Date: Except as otherwise expressly provided in this act, this act shall take effect July 1, 2020

**Actions**

02/05/2020 SENATE On Committee agenda - Infrastructure and Security, 02/10/20, 4:00 pm, 110 S

**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**

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