

WEEK 7 REPORT

// 2020 LEGISLATIVE SESSION

+ MARINE INDUSTRIES ASSOCIATION OF FLORIDA

FEBRUARY 24-28, 2020



// WEEK 7 REPORT

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Environmental Resource Management

We are officially in the final two weeks of the 2020 Legislative Session. There are only a few committee meetings this week and the rest of the time will be spent on the House and Senate floor and, hopefully, budget conference.

As we enter the eighth week, we anticipate the House and Senate to agree on allocations so we can begin the budget conference process this week. The Legislature is constitutionally mandated to pass a balanced budget. Hopefully the public conference meetings will start this week so they can finish on time. As a reminder, the last day of the 2020 Legislative Session is March 13th.

Senate Bill 826 regarding Marina Evacuations contains a negotiated language by Boat US. The Senate bill is up in the Senate Rules Committee this week. The language is also in the Senate House and Senate Transportation package.

House Bill 395 regarding Transportation is still the bill to watch the next two weeks. This bill currently has the compromise Marina Evacuation language in it and now has the City of St. Petersburg/Vessel negotiated language from Senate Bill 1378 in HB 395. We continue to watch this bill for any and all amendments relating to boating as this bill is now a train for all boating amendments. The Senate companion for this bill appears to be SB 7054 regarding Transportation. The Senate Bill contains the Marina Evacuation negotiated language is currently included in the proposed committee substitute filed for the Senate Appropriations committee. We will continue to monitor for the St/Pete/Vessel language to be amended to the Senate Bill. The Senate Transportation Bill is scheduled to be heard in the last Senate Appropriations committee on Tuesday afternoon.

SB 606 regarding Anchoring Limitation Areas has not been heard since the first week of Session. The House companion, HB 417 has not been heard in its first committee of reference as of the writing of this report. We will continue to watch as the Senate language is available for amendments.

SB 1378 regarding Vessels by Senator Rouson still has two committees of reference. As explained earlier in the report, this language is now amended into House Bill 395.

The language is not currently in the Senate companion, so we will continue to watch closely as bills have to be identical to pass. As we stated earlier the Senate Bill has a proposed committee bill filed for Tuesday that does not contain this language. However, there is still time to file amendments for that committee meeting.

We are still waiting on budget allocations to be agreed upon so we can begin the budget conference process. Rumor in the halls is we could begin conference on Wednesday. Once the budget conference negotiations are complete, the budget must sit on the Legislators desks for seventy two hours before final passage.

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 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 1329 // 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

826/1329 RELATIONSHIP: *COMPARE*

826/395 RELATIONSHIP: *COMPARE*

CS/CS/Senate Bill 826: CS/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 CS 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”1 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 CS 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 CS 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.

Most Recent Action: On Committee agenda - Rules, 03/02/20, 12:00 pm

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

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

CS/House Bill 395: The bill amends various statutes relating to transportation. In part, the bill:

- Effective July 1, 2023, repeals the Florida Rail Enterprise and transfers its functions to the Department of Transportation (DOT). It also authorizes DOT to utilize documentary stamp tax revenues currently allocated to the Florida Rail Enterprise for rail safety.
- Increases the debt service cap on Right-of-Way Acquisition and Bridge Construction Bonds.
- Removes the expiration date for funding of the Intermodal Logistics Center Infrastructure Support Program.
- Revises the definition of autocycle to incorporate federal safety standards.
- Increases the allowable weight of personal delivery devices.
- Adds road and bridge maintenance or construction vehicles and postal vehicles to the Move Over Law.
- Authorizes portable radar speed display units to display flashing red and blue lights

under certain circumstances, and allows the use of flashing lights on vehicles during periods of extreme low visibility.

- Revises requirements governing the use of covers on vehicles hauling agricultural products.
- Increases the age at which a child must be secured in an approved child restraint device.
- Waives commercial driver license skill test requirements for qualifying veterans.
- Authorizes for-hire vehicles to be insured by certain non-admitted carriers and reduces the number of forhire vehicles required before an owner or lessee may self-insure.
- Provides that operating vessels in a certain manner near specified vessels constitutes careless operation of a vessel.
- Requires certain vessels to be removed from marinas located in deepwater seaports during hurricanes.
- Conforms specified airport zoning terminology and regulations to federal requirements.
- Revises qualification requirements for contractors desiring to bid on certain DOT contracts and requires the submission of specified financial statements.
- Authorizes airports to allow the same entity perform both design services and construction, engineering, and inspection services under certain circumstances.
- Requires DOT to provide the previous property owner the right of first refusal regarding the disposal of DOT property under certain circumstances.
- Requires permit applications for utility service on municipal or county rights-of-way to be acted upon in a specified period.
- Authorizes DOT to establish emergency staging areas along the Florida Turnpike system.
- Repeals the inactive Economic Development Transportation Fund.
- Increases the state's liability insurance cap for passenger rail to \$295 million.
- Extends the period the Jacksonville Transportation Authority may enter into leases.
- Requires DOT and specified bridge and expressway authorities to submit a report documenting their uncollected customer receivables.

The bill will have a fiscal impact on state and local governments. See Fiscal Analysis for details.

Most Recent Action: Favorable with CS by State Affairs Committee; 23 Yeas, 0 Nays

Attached documents: CS/CS/SB 826 + staff analysis; CS/CS/CS/HB 395 + staff analysis

// ENVIRONMENTAL ENFORCEMENT

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

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

HOUSE/SENATE BILL RELATIONSHIP: *SIMILAR*

CS/Senate Bill 1450: PCS/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.

The bill changes the duration that several penalties may run, so that each day during any portion of which certain violations occur constitutes a separate offense. For civil penalties imposed under chapter 403, Florida Statutes, the bill provides that, if the violation is an unauthorized discharge of domestic wastewater, each day the cause of the violation is not addressed constitutes a separate offense until the violation is resolved by order or judgement.

The bill would have an indeterminate positive impact on the various revenue streams impacted by the bill. See Section V.

The bill is effective July 1, 2020.

Most Recent Action: Favorable with CS by Appropriations; 17 Yeas, 0 Nays

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 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 certain violations, the bill specifies that each day during any portion of which the violation occurs constitutes a separate offense. The bill further specifies that each day the cause of an unauthorized discharge of domestic wastewater is not addressed constitutes a separate offense until the violation is resolved by order or judgment.

The bill may have a positive fiscal impact to state and local governments from increases in various statutory penalties for violations of environmental law.

Most Recent Action: Favorable with CS by State Affairs Committee; 23 Yeas, 0 Nays

Attached documents: PCS for CS/SB 1450 + staff analysis; CS/CS/HB1091 + 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: *COMPARE*

Senate Bill 1378: CS/SB 1378:

- Prohibits a vessel operating at slow speed, minimum wake from proceeding at a speed faster than is reasonable and prudent to avoid the creation of an excessive wake or other hazardous condition under the existing circumstances.
- Prohibits vessel operators from operating a vessel faster than slow speed, minimum wake upon approaching certain hazardous conditions, including approaching an emergency or construction vessel.
- Provides requirements for an orange flag displayed by a construction vessel or barge to indicate that it is actively engaged in construction operations.
- Prohibits an owner or responsible party of a vessel at risk of becoming derelict, who has been issued a citation for a second violation for the same vessel, from anchoring or mooring a vessel to, or within 20 feet of, a mangrove or upland vegetation on public lands. The bill authorizes the Fish and Wildlife Conservation Commission (FWC) and other officers to relocate or cause to be relocated at-risk vessels that violate this provision.
- Increases the civil penalties for a vessel deemed at risk of becoming derelict and increases the maximum civil penalties for anchoring or mooring in a prohibited area.
- Creates civil penalties for vessels creating special hazards as specified in 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, and vessels at risk of becoming derelict that are found to be anchored within 20 feet of a mangrove or upland vegetation on public lands.
- Provides specific procedures, including notice and hearing requirements, for lost or abandoned property that is a derelict vessel, a vessel at risk of becoming derelict, or a vessel anchored or moored in a prohibited area.

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

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: None

// 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: *IDENTICAL*

Senate Bill 1360: CS/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 the FWC determines, regardless of whether such species are declassified under the federal Endangered Species Act of 1973. The bill prohibits the FWC 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 four-year review of the Regulated Plant Index. The bill requires the DACS to continue to protect endangered or threatened plant species as the DACS determines, regardless of whether such species are declassified under the federal Endangered Species Act of 1973. The bill prohibits the DACS from considering the economic cost of protecting a plant species as a factor in designating it as endangered or threatened.

The bill has no fiscal impact on state funds and has an effective date of July 1, 2020.

Most Recent Action: Subcommittee Recommendation: Favorable by Appropriations

Subcommittee on Agriculture, Environment and General Government; 8 Yeas, 0 Nays

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: None

// 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: *SIMILAR*

CS/CS/CS/Senate Bill 1414: CS/CS/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, research, or eradication or control purposes. The bill authorizes the Fish and Wildlife Conservation Commission (FWC) to grandfather certain persons holding a valid captive wildlife Class III exhibition or sale license to continue dealing in green iguanas or tegus commercially, with limitations. The bill allows the sale of inventory of the species only outside of the state and prohibits import of the species into the state. The bill requires FWC to adopt rules to establish reporting requirements, biosecurity measures to prevent the escape of the species, and grandfathering provisions for persons that are currently in possession of green iguanas or tegus who do not qualify for the grandfathering provisions applicable to sale or exhibition.

Most Recent Action: Favorable with CS by Rules; 16 Yeas, 0 Nays

House Bill 777:Right to Hunt

Under current law, 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; or attempt to disturb fish, game, or nongame animals or attempt to affect their behavior with the intent to prevent their lawful taking by another.

The bill specifies that a person may not intentionally, within or on any public lands or waters, interfere with or attempt to prevent the lawful taking of fish, game, or nongame animals by another; or attempt to disturb fish, game, or nongame animals or attempt to affect their behavior with the intent to prevent their lawful taking by another.

Free Fishing Days

The Fish and Wildlife Conservation Commission (FWC) is authorized to designate up to four days per year as free freshwater fishing days and up to four days per year as free saltwater fishing days. For each free fishing day, any person may fish without a license or permit.

The bill increases the number of free freshwater fishing days that FWC may designate from four days per year to six days per year and the number of free saltwater fishing days that may be designated from four days per year to six days per year.

Conditional Species

Conditional species are nonnative species that pose a risk to native fish and wildlife or to the ecology of native wildlife communities. Species designated as conditional 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.

The bill adds the green iguana and the tegu lizard to the conditional nonnative snakes and lizards list.

The bill prohibits a person or entity from keeping, possessing, importing, selling, bartering, trading, or breeding a species listed as a conditional nonnative snake or lizard except for educational, research, eradication, or control purposes.

The bill specifies that a person or entity who had a documented inventory of green iguanas or tegus on an application for an exhibition or sale license in 2019 and held such license on January 1, 2020, may continue to exhibit or sell green iguanas and tegus commercially for as long as the license remains active.

The bill may have an indeterminate negative fiscal impact to the state.

Most Recent Action: Favorable by State Affairs Committee; 21 Yeas, 0 Nays

// 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: None

// WATER QUALITY IMPROVEMENTS

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

Government; Appropriations**House Bill 1343 // Rep. Blaise Ingoglia // Referred to: Agriculture & Natural Resources Subcommittee; Appropriations Committee; State Affairs Committee**HOUSE/SENATE BILL RELATIONSHIP: *COMPARE*

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

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

Regarding OSTDSs, the bill:

- Transfers the regulation of OSTDSs from the Department of Health (DOH) to the DEP.
- Directs the DEP to adopt rules to locate OSTDSs by July 1, 2022:
 - These rules will take into consideration conventional and advanced OSTDS designs, impaired water bodies, wastewater and drinking water infrastructure, potable water sources, nonpotable wells, stormwater infrastructure, OSTDS remediation plans, nutrient pollution, and the recommendations of an OSTDS technical advisory committee;
 - Once those rules are adopted, they will supersede the existing statutory requirements for setbacks.
- Deletes the DOH OSTDS technical advisory committee and creates a DEP OSTDS technical advisory committee that will expire on August 15, 2022, after making recommendations to the Governor and the Legislature regarding the regulation of OSTDSs.
- Requires local governments to develop OSTDS remediation plans within BMAPs if the DEP determines that OSTDSs contribute at least 20 percent of the nutrient pollution or if the DEP determines remediation is necessary to achieve the total maximum daily load. Such plans must be adopted as part of the BMAPs no later than July 1, 2025.

Regarding wastewater, the bill:

- Creates a wastewater grant program, subject to appropriation, within the DEP that requires a 50 percent local match of funds. Eligible projects include:

- Projects to upgrade OSTDSs.
- Projects to construct, upgrade, or expand facilities to provide advanced waste treatment.
- Projects to connect OSTDSs to central sewer facilities.
- Requires the DEP to submit an annual report to the Governor and the Legislature on the projects funded by the wastewater grant program.
- Provides incentives for wastewater projects that promote efficiency by coordinating wastewater infrastructure expansions with other infrastructure improvements.
- Gives priority in the state revolving loan fund for eligible wastewater projects that meet the additional requirements of the bill to prevent leakage, overflows, infiltration, and inflow.
- Requires the DEP to adopt rules to reasonably limit, reduce, and eliminate leaks, seepages, or inputs into the underground pipes of wastewater collection systems.
- Authorizes the DEP to require public utilities seeking a wastewater discharge permit to file reports and other data regarding utility costs:
 - Such reports may include data related to expenditures on pollution mitigation and prevention, including the prevention of sanitary sewer overflows, collection and transmission system pipe leakages, and inflow and infiltration.
 - The DEP is required to adopt rules related to these requirements.
- Requires local governments to develop wastewater treatment plans within BMAPs if the DEP determines that domestic wastewater facilities contribute at least 20 percent of the nutrient pollution or if the DEP determines remediation is necessary to achieve the total maximum daily load. Such plans must be adopted as part of the BMAPs no later than July 1, 2025.
- Adds to the DEP's penalty schedule a penalty of \$4,000 for failure to survey an adequate portion of a wastewater collection system and take steps to reduce sanitary sewer overflows, pipe leaks, and inflow and infiltration. Substantial compliance with certain bill requirements is evidence in mitigation for penalty assessment.
- Increases the cap on the DEP's administrative penalties from \$10,000 to \$50,000.
- Doubles the wastewater administrative penalties.
- Prohibits facilities for sanitary sewage disposal from disposing of waste into the Indian River Lagoon and its tributaries without providing advanced waste treatment.
- Requires facilities for sanitary sewage disposal to provide for a power outage contingency plan for collection systems and pump stations.
- Requires facilities for sanitary sewage to prevent sanitary sewer overflows or underground pipe leaks and ensure that collected wastewater reaches the facility for appropriate treatment.
 - The bill requires studies, plans, and reports related to this requirement (the action

plan).

- The DEP must adopt rules regarding the implementation of inflow and infiltration studies and leakage surveys.
- Authorizes certain facilities for sanitary sewage to receive 10-year permits if they are meeting the goals in their action plan for inflow, infiltration, and leakage prevention.
- Makes the following changes relating to water pollution operation permits:
 - The permit must require the investigation or surveying of the wastewater collection system to determine pipe integrity.
 - The permit must require an annual report to the DEP, which details facility revenues and expenditures in a manner prescribed by the DEP rule, including any deviation from annual expenditures related to their action plan.
- Requires the DEP to submit an annual report to the Governor and the Legislature that identifies all wastewater utilities that experienced a sanitary sewer overflow in the preceding calendar year. The DEP must include with this report certain utility-specific information for each utility that experienced an overflow.

Regarding stormwater, the bill:

- Requires the DEP and the Water Management Districts (WMDs), by January 1, 2021, to initiate rulemaking to update their stormwater rules.
- Requires the DEP, by January 1, 2021, to evaluate inspection data relating to entities that self-certify their stormwater permits and provide the Legislature with recommendations for improvements to the self-certification program.
- Directs the DEP and the Department of Economic Opportunity to include in their model stormwater management program ordinances that target nutrient reduction practices and use green infrastructure.

Regarding agriculture, the bill:

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

Regarding biosolids, the bill:

- Requires the DEP to adopt rules for biosolids management.

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

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

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

Most Recent Action: Placed on Calendar, on 2nd reading

CS/House Bill 1343: The federal Clean Water Act requires states to maintain the quality of their waters. In Florida, water quality is addressed through water quality standards, total maximum daily loads (TMDLs), basin management action plans (BMAPs), and permits. The bill addresses water quality impacts by:

- Transferring the Onsite Sewage Program from the Department of Health to the Department of Environmental Protection (DEP);
- Repealing certain onsite sewage treatment and disposal system (OSTDS) advisory committees;
- Creating an OSTDS technical advisory committee to make recommendations that increase the availability of nutrient-reducing OSTDSs and assist DEP in the development of setback distances;
- Requiring OSTDS remediation plans;
- Requiring DEP staff training to include field inspections of stormwater structural controls;
- Requiring DEP and the water management districts (WMDs) to update the stormwater regulations using the most recent science;
- Requiring the model stormwater management program to contain model ordinances targeting nutrient reduction;
- Requiring local governments to create wastewater treatment plans;
- Requiring sanitary sewage facilities to take steps to prevent sanitary sewer overflows;
- Requiring DEP to establish real-time water quality monitoring;
- Requiring advanced wastewater treatment for domestic wastewater discharges to the Indian River Lagoon;
- Prohibiting the land application of biosolids on certain sites, unless an exception applies;
- Requiring the Department of Agriculture and Consumer Services (DACS) to conduct inspections of producers enrolled in best management practices (BMPs);

- Requiring the University of Florida to develop research plans for developing new BMPs; and
- Creating grant programs for the funding of water quality projects.

The bill requires the Secretary of DEP to be appointed by the Governor with the concurrence of two or more, rather than three, members of the Cabinet.

The bill requires DEP to conduct a study on the bottled water industry in the state and prohibits DEP and the governing board of a WMD from approving certain consumptive use permits that authorize the use of water withdrawn from a spring for bottled water until June 30, 2022.

The bill prohibits a local government regulation 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 may have an indeterminate negative fiscal impact to the state and local governments. The proposed House of Representatives' Fiscal Year 2020-2021 General Appropriations Act appropriates funding within DEP and DACS for the increase in the number of required site visits, water quality improvement cost share grants, water quality monitoring, and TMDLs.

Most Recent Action: Favorable with CS by State Affairs Committee; 15 Yeas, 7 Nays

Attached documents: CS/CS/SB 712 + staff analysis; CS/HB 1343 + 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 Judiciary Committee; 13 Yeas, 2 Nays

Attached documents: None

// 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
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1809 SPECIAL CATEGORIES BOATING SAFETY EDUCATION PROGRAM

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

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

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

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

1737 SPECIAL CATEGORIES FLORIDA RESILIENT COASTLINE INITIATIVE

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

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

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

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

// ANCHORING LIMITATION AREAS

No attachments

// MARINA EVACUATION

CS/CS/SB 826 + Staff Analysis

CS/CS/CS/HB 395 + Staff Analysis

// ENVIRONMENTAL ENFORCEMENT

PCS for CS/SB 1450 + Staff Analysis

CS/CS/HB 1091 + Staff Analysis

// VESSELS

No attachments

// FLORIDA ENDANGERED & THREATENED SPECIES ACT

No attachments

// FISH AND WILDLIFE ACTIVITIES

CS/CS/CS/SB 1414 + Staff Analysis

CS/HB 777 + Staff Analysis

// VESSEL SAFETY

No attachments

// BOATING-RESTRICTED AREAS

No attachments

// ENVIRONMENTAL PROTECTION

No attachments

// WATER QUALITY IMPROVEMENTS

CS/CS/SB 712 + Staff Analysis

// ENVIRONMENTAL RESOURCE MANAGEMENT

No attachments

// CURRENT BILL TRACKING LIST

By the Committees on Infrastructure and Security; and
Environment and Natural Resources; and Senator Mayfield

596-03774-20

2020826c2

A bill to be entitled
An act relating to marina evacuations; amending s.
327.59, F.S.; prohibiting vessels under a specified
weight from remaining in certain marinas that have
been deemed unsuitable for refuge during a hurricane
after the issuance of a hurricane watch; requiring a
marina owner, operator, employee, or agent to remove
specified vessels under certain circumstances;
providing that such owner, operator, employee, or
agent may charge the vessel owner a reasonable fee for
such removal and may not be held liable for any
damages as a result of such removal; providing
construction; providing that the owners or operators
of certain vessels may be subject to a fine that the
deepwater seaport issuing an evacuation order is
required to impose and collect; providing an effective
date.

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

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

327.59 Marina evacuations.—

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

596-03774-20

2020826c2

of vessel owners is placed before interests of protecting property.

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

596-03774-20

2020826c2

59 removing the vessel from the waterway.

60 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.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 826

INTRODUCER: Infrastructure and Security Committee; Environment and Natural Resources Committee;
and Senator Mayfield

SUBJECT: Marina Evacuations

DATE: February 28, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	Fav/CS
2.	Proctor	Miller	IS	Fav/CS
3.	Anderson	Phelps	RC	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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 CS 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”¹ 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 CS 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 CS 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.

¹ Gale force winds are predicted to arrive within 24 hours, and the port is closed to inbound traffic and vessel traffic control measures are in effect on vessel movements within the port.

The CS 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 a fine, in an amount not exceeding three times the cost associated with removing the vessel from the waterway.

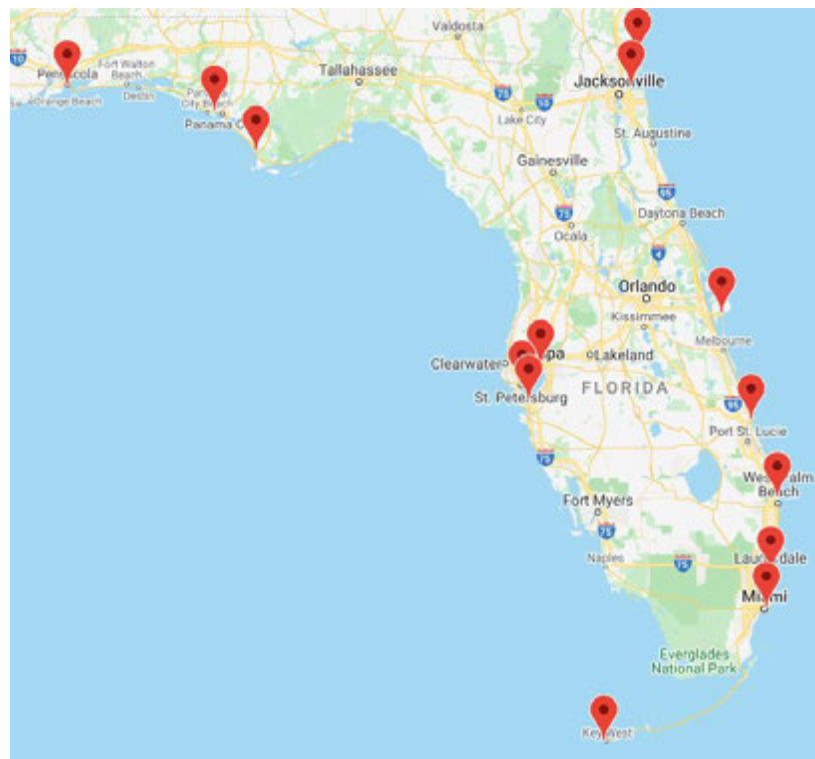
The CS has an effective date of July 1, 2020.

II. Present Situation:

Deepwater Ports in Florida

Under Florida law, a “port” means a port authority or district.² 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.³

There are 14 deepwater seaports in Florida, indicated in the map below:⁴



² 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.

³ Section 313.23, F.S.

⁴ Florida Ports Council, *Seaports*, <https://flaports.org/seaports/> (last visited February 12, 2020).

Port Canaveral

One example of a deepwater seaport impacted by the CS is Port Canaveral, which was dedicated on November 4, 1953.⁵ It is a gateway for Central Florida and the world's second busiest cruise port.⁶ Annually, Port Canaveral moves nearly 4 million tons of cargo and sees 4 million cruise passengers.⁷ It also houses United States Army, Navy, and Air Force facilities.⁸ 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.⁹ Additionally, 200 small businesses ranging from marinas, restaurants, retail, and charter boats currently lease and operate at Port Canaveral.¹⁰

In fiscal year 2018, Port Canaveral reported \$103.8 million in revenues, the highest in its history.¹¹

Canaveral Port Authority

The Canaveral Port District (Port District) was created by the Legislature by special act in 1953, as amended in 2014.¹² It is an independent special taxing district and political subdivision of the state.¹³ 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.¹⁴ 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.¹⁵

The Port Canaveral Tariff No. 16 provides the current rates, rules, and regulations governing its marine and port services.¹⁶ Anyone who uses the waterways and facilities under the jurisdiction of the Port Authority consents to the terms and conditions of the tariff.¹⁷ According to the tariff, Port Canaveral is not a suitable refuge during hurricanes or tropical storms. All Port Canaveral

⁵ Port Canaveral, *History*, <https://www.portcanaveral.com/About/History> (last visited February 12, 2020).

⁶ Port Canaveral, *Port and Cruise Facts*, <https://www.portcanaveral.com/Cruise/Port-Cruise-Facts> (last visited February 12, 2020).

⁷ *Supra*, note 5.

⁸ Port Canaveral, *About Us*, <https://www.portcanaveral.com/About/> (last visited February 12, 2020).

⁹ 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>.

¹⁰ *Supra*, note 8.

¹¹ Florida Ports Council, *Port Canaveral*, <https://flaports.org/ports/port-canaveral/> (last visited February 12, 2020).

¹² 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.

¹³ 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."

¹⁴ Art. IV, s. 9 of the Canaveral Port Authority Charter, as amended by Ch. 2014-241, Laws of Fla.

¹⁵ Art. IV, s. 10 of the Canaveral Port Authority Charter, as amended by Ch. 2014-241, Laws of Fla.

¹⁶ 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).

¹⁷ *Id.*, Rule 100.

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.¹⁸

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 discussion below of Hurricane Season Port Conditions and Categories).¹⁹ 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).²⁰

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.²¹

Ports are authorized to establish fees and compensation for the services regulating vessel movements provided by the port.²²

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.²³

Marinas

A marina is a licensed commercial facility that provides secured public moorings or dry storage for vessels on a leased basis.²⁴ There are five marinas within Port Canaveral, with approximately 260 wet slips hosted on Port property for recreational vessels under 500 gross tons.²⁵ This

¹⁸ *Id.*, Rule 520.

¹⁹ *Id.*

²⁰ Section 313.22(3), F.S.

²¹ Section 313.22(1), F.S.

²² Section 313.22(2), F.S.

²³ *Supra*, note 20.

²⁴ Section 327.02(25), F.S.

²⁵ Email from Caitlin Lewis, Government Relations Manager, Canaveral Port Authority, to Senate Environment and Natural Resources Committee (Jan. 22, 2020), available at http://www.flsenate.gov/Committees/Show/EN/MeetingPacket/4857/8671_MeetingPacket_4857.03.20.pdf on page 218-219 (last visited February 12, 2020).

number does not include boats in marina storage within Port property. The map below shows Port Canaveral, including its marina district.²⁶



Marina Evacuations

Storm Condition Effects on Vessels and Marinas

Hurricanes and storm conditions can include high winds, storm surges, wave action, and heavy rainfall.²⁷ 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.²⁸ 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.²⁹

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.³⁰ 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

²⁶ *Supra*, note 6.

²⁷ UF/IFAS, *Hurricane Manual for Marine Interest*, available at [https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-\(2\).pdf](https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-(2).pdf) (last visited February 12, 2020).

²⁸ *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 February 12, 2020).

²⁹ *Id.*

³⁰ *Supra*, note 27.

comply with this requirement, according to the clauses, will result in the boat owner being liable for all damage to docks, piers, other vessels, or any other property damage directly caused by the owner's vessel or resulting from its presence in the marina.³¹

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.³² 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.³³

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.³⁴ The owner or operator may charge a reasonable fee for such services.³⁵ A marina owner may include this in a contractual agreement with a vessel owner.³⁶ 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.³⁷

Burklow & Associates, Inc. v. Belcher is the only Florida state court decision that specifically mentions Florida's marina evacuation statute.³⁸ 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.³⁹ 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.⁴⁰ 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.⁴¹

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.⁴² "Gale force winds" mean winds of 34 knots or 39 miles per hour.

³¹ Mercante, James, *Hurricanes and Act of God: When the Best Defense is a Good Offense*, 18 U.S.F. MAR. L.J. (2006).

³² Ch. 93-211, s. 22, Laws of Fla. (creating s. 327.59, F.S.).

³³ Section 327.59(1), F.S.

³⁴ Ch. 2006-309, s. 2, Laws of Fla. (creating s. 327.59(2), F.S., effective Jul. 1, 2006).

³⁵ *Id.*

³⁶ Ch. 2006-309, s. 2, Laws of Fla. (creating s. 327.59(3), F.S., effective Jul. 1, 2006).

³⁷ Ch. 2006-309, s. 2, Laws of Fla. (creating s. 327.59(4), F.S., effective Jul. 1, 2006).

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

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² 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> (last visited February 12, 2020).

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 CS 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 CS 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 CS 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 CS 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 CS 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 a fine, which must be imposed and collected by the deepwater seaport that issued the evacuation order. The amount of the fine may not exceed three times the cost associated with removing the vessel from the waterway.

The CS provides the bill will take effect July 1, 2020.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

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 CS substantially amends the following section of the Florida Statutes: 327.59

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 Infrastructure and Security Committee on February 17, 2020:

- Provides that the fine imposed on the vessel owner is limited to three times the removal costs and must be imposed by the deepwater seaport issuing the evacuation order.

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; and
- 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. 20.23,
3 F.S.; revising the organization of the Department of
4 Transportation; revising and providing for the
5 delegation of certain responsibilities; revising
6 provisions relating to the operation of a rail
7 enterprise; amending s. 201.15, F.S.; revising uses
8 for distributions made under the State Transportation
9 Trust Fund in specified fiscal years; providing for
10 the expiration of a specified provision; beginning in
11 a specified fiscal year, requiring the allocation of a
12 certain of amount of funds to the State Transportation
13 Trust Fund to be used for rail safety; amending s.
14 206.46, F.S.; revising a limitation on an annual
15 transfer from the State Transportation Trust Fund to
16 the Right-of-Way Acquisition and Bridge Construction
17 Trust Fund; amending ss. 206.606, 206.608, and
18 212.0501, F.S.; removing a requirement for deduction
19 of certain service charges before the distribution of
20 certain moneys; amending s. 288.0656, F.S.; conforming
21 provisions to changes made by the act; amending s.
22 311.101, F.S.; deleting the scheduled expiration of
23 funding for the Intermodal Logistics Center
24 Infrastructure Support Program; amending s. 316.003,
25 F.S.; revising definitions; amending s. 316.126, F.S.;

26 requiring the operator of a motor vehicle to take
27 certain actions under certain circumstances when
28 certain vehicles are on the roadside; amending s.
29 316.2397, F.S.; authorizing certain vehicles to show
30 or display certain lights under certain circumstances;
31 amending s. 316.520, F.S.; revising application of
32 agricultural load securing requirements; amending s.
33 316.613, F.S.; increasing the age of children for whom
34 operators of motor vehicles must provide protection by
35 using a crash-tested, federally approved child
36 restraint device; increasing the age of children for
37 whom a separate carrier, an integrated child seat, or
38 a child booster seat may be used; amending s. 319.32,
39 F.S.; removing a requirement for deduction of certain
40 service charges before depositing certain fees into
41 the State Transportation Trust Fund; amending s.
42 322.12, F.S.; authorizing the Department of Highway
43 Safety and Motor Vehicles to waive certain commercial
44 motor vehicle testing requirements for specified
45 persons under certain circumstances; amending ss.
46 324.031 and 324.032, F.S.; revising the manner of
47 providing financial responsibility for owners,
48 operators, or lessees of certain for-hire passenger
49 transportation vehicles; amending s. 327.33, F.S.;
50 specifying the operation of a vessel at slow speed,

51 minimum wake in certain circumstances; providing
52 requirements for flags displayed from vessels and
53 barges actively engaged in construction operations;
54 defining the term "slow speed, minimum wake"; amending
55 s. 327.4107, F.S.; prohibiting the anchoring or
56 mooring of certain vessels in specified locations;
57 authorizing law enforcement to relocate specified
58 vessels if certain conditions exist; amending s.
59 327.59, F.S.; prohibiting certain vessels from
60 remaining in certain marinas that have been deemed
61 unsuitable for refuge during a hurricane; authorizing
62 removal of such vessels under certain circumstances;
63 limiting liability for certain damages; providing
64 construction; providing for penalties; amending s.
65 333.03, F.S.; requiring airport protection zoning
66 regulations to require certain permit applicants to
67 submit a final valid determination from the Federal
68 Aviation Administration; amending s. 337.14, F.S.;
69 requiring certain contractors to be certified by the
70 Department of Transportation as qualified; revising
71 the financial statements required to accompany an
72 application for certification; prohibiting the
73 department from considering certain financial
74 information; requiring the contractor to submit
75 interim financial statements under certain

76 | circumstances; providing requirements for such
77 | statements; authorizing a single entity to provide
78 | certain contracted services for airport projects
79 | wholly or partially funded by the department; amending
80 | s. 337.25, F.S.; requiring the department to afford a
81 | right of first refusal to certain individuals under
82 | specified circumstances; providing requirements and
83 | procedures for the right of first refusal; amending s.
84 | 337.401, F.S.; specifying permit application
85 | timeframes required for the installation, location, or
86 | relocation of utilities within rights-of-way; creating
87 | s. 338.236, F.S.; authorizing the department to plan,
88 | design, and construct staging areas as part of the
89 | turnpike system for the intended purpose of staging
90 | supplies for prompt provision of assistance to the
91 | public in a declared state of emergency; requiring the
92 | department, in consultation with the Division of
93 | Emergency Management, to select sites for such areas;
94 | providing factors to be considered in selecting sites;
95 | requiring the department to give priority
96 | consideration to placement of such staging areas in
97 | specified counties; authorizing the department to
98 | acquire property necessary for such staging areas;
99 | authorizing the department to authorize certain other
100 | uses of staging areas; requiring staging area projects

101 to be included in the department's work program;
102 amending ss. 339.08 and 339.135, F.S.; conforming
103 provisions to changes made by the act; amending s.
104 339.175, F.S.; revising the date by which a
105 metropolitan planning organization must submit a list
106 of project priorities to the appropriate department
107 district; repealing s. 339.2821, F.S., relating to
108 economic development transportation projects; amending
109 s. 341.302, F.S.; revising the maximum amount of
110 liability insurance the department may purchase;
111 revising department responsibilities regarding rail
112 systems; amending s. 341.303, F.S.; revising
113 department funding authority regarding rail systems;
114 conforming provisions to changes made by the act;
115 repealing s. 341.8201, F.S., relating to the "Florida
116 Rail Enterprise Act" short title; amending s.
117 341.8203, F.S.; revising definitions; amending s.
118 341.822, F.S.; requiring the department, rather than
119 the Florida Rail Enterprise, to locate, plan, design,
120 finance, construct, maintain, own, operate,
121 administer, and manage the high-speed rail system in
122 the state; amending ss. 341.825, 341.836, 341.838,
123 341.839, 341.840, and 343.58, F.S.; conforming
124 provisions to changes made by the act; amending s.
125 349.04, F.S.; increasing the authorized duration of a

126 lease by the Jacksonville Transportation Authority;
127 amending s. 377.809, F.S.; conforming provisions to
128 changes made by the act; reenacting s. 327.73(1)(h)
129 and (aa), F.S., relating to careless operation of
130 vessels and at-risk vessels, respectively, to
131 incorporate amendments made by the act; requiring
132 reports to the Governor and Legislature from the
133 department and various authorities regarding toll
134 collections; providing a declaration of important
135 state interest; providing effective dates.

136
137 Be It Enacted by the Legislature of the State of Florida:

138
139 Section 1. Effective July 1, 2023, paragraphs (a) and (f)
140 of subsection (4) of section 20.23, Florida Statutes, are
141 amended to read:

142 20.23 Department of Transportation.—There is created a
143 Department of Transportation which shall be a decentralized
144 agency.

145 (4)(a) The operations of the department shall be organized
146 into seven districts, each headed by a district secretary, and a
147 turnpike enterprise ~~and a rail enterprise, each enterprise~~
148 headed by an executive director. The district secretaries and
149 the executive director ~~directors~~ shall be registered
150 professional engineers in accordance with ~~the provisions of~~

chapter 471 or the laws of another state, or, in lieu of professional engineer registration, a district secretary or the executive director may hold an advanced degree in an appropriate related discipline, such as a Master of Business Administration. The headquarters of the districts shall be located in Polk, Columbia, Washington, Broward, Volusia, Miami-Dade, and Hillsborough Counties. The headquarters of the turnpike enterprise shall be located in Orange County. ~~The headquarters of the rail enterprise shall be located in Leon County.~~ In order to provide for efficient operations and to expedite the decisionmaking process, the department shall provide for maximum decentralization to the districts.

(f)~~1.~~ The responsibility for developing and operating the high-speed and passenger rail systems established in chapter 341, directing funding for passenger rail systems under s. 341.303, ensuring general rail safety, coordinating efforts to enhance passenger rail safety in the state, and coordinating publicly funded passenger rail operations in the state, including freight rail interoperability issues, shall be delegated to a departmental entity to be named by the secretary ~~to the executive director of the rail enterprise, who shall serve at the pleasure of the secretary. The executive director shall report directly to the secretary, and the rail enterprise shall operate pursuant to ss. 341.8201-341.842.~~

~~2. To facilitate the most efficient and effective~~

~~management of the rail enterprise, including the use of best business practices employed by the private sector, the rail enterprise, except as provided in s. 287.055, shall be exempt from departmental policies, procedures, and standards, subject to the secretary having the authority to apply any such policies, procedures, and standards to the rail enterprise from time to time as deemed appropriate.~~

Section 2. Paragraph (a) of subsection (4) of section 201.15, Florida Statutes, is amended to read:

201.15 Distribution of taxes collected.—All taxes collected under this chapter are hereby pledged and shall be first made available to make payments when due on bonds issued pursuant to s. 215.618 or s. 215.619, or any other bonds authorized to be issued on a parity basis with such bonds. Such pledge and availability for the payment of these bonds shall have priority over any requirement for the payment of service charges or costs of collection and enforcement under this section. All taxes collected under this chapter, except taxes distributed to the Land Acquisition Trust Fund pursuant to subsections (1) and (2), are subject to the service charge imposed in s. 215.20(1). Before distribution pursuant to this section, the Department of Revenue shall deduct amounts necessary to pay the costs of the collection and enforcement of the tax levied by this chapter. The costs and service charge may not be levied against any portion of taxes pledged to debt

201 service on bonds to the extent that the costs and service charge
202 are required to pay any amounts relating to the bonds. All of
203 the costs of the collection and enforcement of the tax levied by
204 this chapter and the service charge shall be available and
205 transferred to the extent necessary to pay debt service and any
206 other amounts payable with respect to bonds authorized before
207 January 1, 2017, secured by revenues distributed pursuant to
208 this section. All taxes remaining after deduction of costs shall
209 be distributed as follows:

210 (4) After the required distributions to the Land
211 Acquisition Trust Fund pursuant to subsections (1) and (2) and
212 deduction of the service charge imposed pursuant to s.
213 215.20(1), the remainder shall be distributed as follows:

214 (a) The lesser of 24.18442 percent of the remainder or
215 \$541.75 million in each fiscal year shall be paid into the State
216 Treasury to the credit of the State Transportation Trust Fund.
217 Of such funds, \$75 million for each fiscal year shall be
218 transferred to the General Revenue Fund. Notwithstanding any
219 other law, the remaining amount credited to the State
220 Transportation Trust Fund shall be used for:

221 1. Capital funding for the New Starts Transit Program,
222 authorized by Title 49, U.S.C. s. 5309 and specified in s.
223 341.051, in the amount of 10 percent of the funds;

224 2. The Small County Outreach Program specified in s.
225 339.2818, in the amount of 10 percent of the funds;

226 3. The Strategic Intermodal System specified in ss.
227 339.61, 339.62, 339.63, and 339.64, in the amount of 75 percent
228 of the funds after deduction of the payments required pursuant
229 to subparagraphs 1. and 2.; and

230 4.a. The Transportation Regional Incentive Program
231 specified in s. 339.2819, in the amount of 25 percent of the
232 funds after deduction of the payments required pursuant to
233 subparagraphs 1. and 2.

234 b. In fiscal years 2020-2021, 2020-2022, and 2022-2023,
235 the first \$60 million of the funds allocated pursuant to this
236 subparagraph must ~~shall~~ be allocated annually to the Florida
237 Rail Enterprise for the purposes established in s. 341.303(5).
238 This sub-subparagraph expires July 1, 2023.

239 c. Beginning in the 2023-2024 fiscal year, the first \$60
240 million of the funds allocated pursuant to this subparagraph
241 must be allocated annually to the State Transportation Trust
242 Fund to be used for rail projects and rail safety improvements
243 as provided in s. 341.303(5).

244 Section 3. Subsection (2) of section 206.46, Florida
245 Statutes, is amended to read:

246 206.46 State Transportation Trust Fund.—

247 (2) Notwithstanding any other provision ~~provisions~~ of law,
248 from the revenues deposited into the State Transportation Trust
249 Fund a maximum of 7 percent in each fiscal year shall be
250 transferred into the Right-of-Way Acquisition and Bridge

Construction Trust Fund created in s. 215.605~~7~~ as needed to meet the requirements of the documents authorizing the bonds issued or proposed to be issued under ss. 215.605 and 337.276 or at a minimum amount sufficient to pay for the debt service coverage requirements of outstanding bonds. Notwithstanding the 7 percent annual transfer authorized in this subsection, the annual amount transferred under this subsection shall not exceed an amount necessary to provide the required debt service coverage levels for a maximum debt service not to exceed \$350 ~~\$275~~ million. Such transfer shall be payable primarily from the motor and diesel fuel taxes transferred to the State Transportation Trust Fund from the Fuel Tax Collection Trust Fund.

Section 4. Subsection (1) of section 206.606, Florida Statutes, is amended to read:

206.606 Distribution of certain proceeds.—

(1) Moneys collected pursuant to ss. 206.41(1)(g) and 206.87(1)(e) shall be deposited in the Fuel Tax Collection Trust Fund. Such moneys, after deducting ~~the service charges imposed by s. 215.207~~, the refunds granted pursuant to s. 206.41~~7~~ and the administrative costs incurred by the department in collecting, administering, enforcing, and distributing the tax, which administrative costs may not exceed 2 percent of collections, shall be distributed monthly to the State Transportation Trust Fund, except that:

(a) Each fiscal year, \$6.3 ~~\$6.30~~ million shall be

276 transferred to the Fish and Wildlife Conservation Commission ~~in~~
277 ~~each fiscal year~~ and deposited in the Invasive Plant Control
278 Trust Fund to be used for aquatic plant management, including
279 nonchemical control of aquatic weeds, research into nonchemical
280 controls, and enforcement activities. The commission shall
281 allocate at least \$1 million of such funds to the eradication of
282 melaleuca.

283 (b) Annually, \$2.5 million shall be transferred to the
284 State Game Trust Fund in the Fish and Wildlife Conservation
285 Commission and used for recreational boating activities and
286 freshwater fisheries management and research. The transfers must
287 be made in equal monthly amounts beginning on July 1 of each
288 fiscal year. The commission shall annually determine where unmet
289 needs exist for boating-related activities, and may fund such
290 activities in counties where, due to the number of vessel
291 registrations, sufficient financial resources are unavailable.

292 1. A minimum of \$1.25 million shall be used to fund local
293 projects to provide recreational channel marking and other
294 uniform waterway markers, public boat ramps, lifts, and hoists,
295 marine railways, and other public launching facilities, derelict
296 vessel removal, and other local boating-related activities. In
297 funding the projects, the commission shall give priority
298 consideration to:

299 a. Unmet needs in counties having populations of 100,000
300 or fewer.

301 b. Unmet needs in coastal counties having a high level of
302 boating-related activities from individuals residing in other
303 counties.

304 2. The remaining \$1.25 million may be used for
305 recreational boating activities and freshwater fisheries
306 management and research.

307 3. The commission may adopt rules to administer a Florida
308 Boating Improvement Program.

309
310 The commission shall prepare and make available on its ~~Internet~~
311 website an annual report outlining the status of its Florida
312 Boating Improvement Program, including the projects funded, and
313 a list of counties the whose needs of which are unmet due to
314 insufficient financial resources from vessel registration fees.

315 (c) ~~0.65 percent~~ Of the moneys collected pursuant to s.
316 206.41(1)(g), 0.65 percent shall be transferred to the
317 Agricultural Emergency Eradication Trust Fund.

318 (d) Each fiscal year, \$13.4 million ~~in fiscal year 2007-~~
319 ~~2008 and each fiscal year thereafter~~ of the moneys attributable
320 to the sale of motor and diesel fuel at marinas shall be
321 transferred from the Fuel Tax Collection Trust Fund to the
322 Marine Resources Conservation Trust Fund in the Fish and
323 Wildlife Conservation Commission.

324 Section 5. Section 206.608, Florida Statutes, is amended
325 to read:

206.608 State Comprehensive Enhanced Transportation System Tax; deposit of proceeds; distribution.—Moneys received pursuant to ss. 206.41(1)(f) and 206.87(1)(d) shall be deposited in the Fuel Tax Collection Trust Fund~~7~~ and, after deducting the ~~service charge imposed in chapter 215 and~~ administrative costs incurred by the department in collecting, administering, enforcing, and distributing the tax, which administrative costs may not exceed 2 percent of collections, shall be distributed as follows:

(1) ~~0.65 percent~~ Of the proceeds of the tax levied pursuant to s. 206.41(1)(f), 0.65 percent shall be transferred to the Agricultural Emergency Eradication Trust Fund.

(2) The remaining proceeds of the tax levied pursuant to s. 206.41(1)(f) and all of the proceeds from the tax imposed by s. 206.87(1)(d) shall be transferred into the State Transportation Trust Fund~~7~~ and may be used only for projects in the adopted work program in the district in which the tax proceeds are collected~~7~~, and to the maximum extent feasible, such moneys shall be programmed for use in the county where collected. However, ~~no~~ revenue from the taxes imposed pursuant to ss. 206.41(1)(f) and 206.87(1)(d) in a county may not ~~shall~~ be expended unless the projects funded with such revenues have been included in the work program adopted pursuant to s. 339.135.

Section 6. Subsection (6) of section 212.0501, Florida Statutes, is amended to read:

212.0501 Tax on diesel fuel for business purposes;
purchase, storage, and use.—

(6) All taxes required to be paid on fuel used in self-propelled off-road equipment shall be deposited in the Fuel Tax Collection Trust Fund, to be distributed, ~~after deduction of the general revenue service charge pursuant to s. 215.20,~~ to the State Transportation Trust Fund. The department shall, each month, make a transfer, from general revenue collections, equal to such use tax reported on dealers' sales and use tax returns.

Section 7. Paragraph (a) of subsection (7) of section 288.0656, Florida Statutes, is amended to read:

288.0656 Rural Economic Development Initiative.—

(7)(a) REDI may recommend to the Governor up to three rural areas of opportunity. The Governor may by executive order designate up to three rural areas of opportunity which will establish these areas as priority assignments for REDI as well as to allow the Governor, acting through REDI, to waive criteria, requirements, or similar provisions of any economic development incentive. Such incentives shall include, but are not limited to, the Qualified Target Industry Tax Refund Program under s. 288.106, the Quick Response Training Program under s. 288.047, the Quick Response Training Program for participants in the welfare transition program under s. 288.047(8), ~~transportation projects under s. 339.2821,~~ the brownfield redevelopment bonus refund under s. 288.107, and the rural job

376 tax credit program under ss. 212.098 and 220.1895.

377 Section 8. Subsection (7) of section 311.101, Florida
378 Statutes, is amended to read:

379 311.101 Intermodal Logistics Center Infrastructure Support
380 Program.—

381 (7) ~~Beginning in fiscal year 2014-2015,~~ At least \$5
382 million per fiscal year shall be made available from the State
383 Transportation Trust Fund for the program. The Department of
384 Transportation shall include projects proposed to be funded
385 under this section in the tentative work program developed
386 pursuant to s. 339.135(4). ~~This subsection expires on July 1,~~
387 ~~2020.~~

388 Section 9. Subsection (2) and paragraph (b) of subsection
389 (55) of section 316.003, Florida Statutes, are amended to read:

390 316.003 Definitions.—The following words and phrases, when
391 used in this chapter, shall have the meanings respectively
392 ascribed to them in this section, except where the context
393 otherwise requires:

394 (2) AUTOCYCLE.—A three-wheeled motorcycle that has two
395 wheels in the front and one wheel in the back; is equipped with
396 a roll cage or roll hoops, a seat belt for each occupant,
397 ~~antilock~~ brakes meeting Federal Motor Vehicle Safety Standard
398 No. 122, a steering mechanism ~~wheel~~, and seating that does not
399 require the operator to straddle or sit astride it; and is
400 manufactured in accordance with the applicable federal

motorcycle safety standards in 49 C.F.R. part 571 by a manufacturer registered with the National Highway Traffic Safety Administration.

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

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

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

Section 10. Paragraph (b) of subsection (1) of section 316.126, Florida Statutes, is amended to read:

316.126 Operation of vehicles and actions of pedestrians on approach of an authorized emergency, sanitation, or utility service vehicle.—

(1)

(b) If an authorized emergency vehicle displaying any visual signals is parked on the roadside, a sanitation vehicle is performing a task related to the provision of sanitation services on the roadside, a utility service vehicle is performing a task related to the provision of utility services on the roadside, ~~or~~ a wrecker displaying amber rotating or flashing lights is performing a recovery or loading on the roadside, a road and bridge maintenance or construction vehicle displaying warning lights as authorized in s. 316.2397(4) or (5)

426 is on the roadside without advance signs and channelizing
427 devices, or a vehicle delivering the United States mail is
428 displaying warning lights, the driver of every other vehicle, as
429 soon as it is safe:

430 1. Shall vacate the lane closest to the emergency vehicle,
431 sanitation vehicle, utility service vehicle, ~~or~~ wrecker, road
432 and bridge maintenance or construction vehicle, or vehicle
433 delivering the United States mail when driving on an interstate
434 highway or other highway with two or more lanes traveling in the
435 direction of the emergency vehicle, sanitation vehicle, utility
436 service vehicle, ~~or~~ wrecker, road and bridge maintenance or
437 construction vehicle, or vehicle delivering the United States
438 mail, except when otherwise directed by a law enforcement
439 officer. If such movement cannot be safely accomplished, the
440 driver shall reduce speed as provided in subparagraph 2.

441 2. Shall slow to a speed that is 20 miles per hour less
442 than the posted speed limit when the posted speed limit is 25
443 miles per hour or greater; or travel at 5 miles per hour when
444 the posted speed limit is 20 miles per hour or less, when
445 driving on a two-lane road, except when otherwise directed by a
446 law enforcement officer.

447 Section 11. Subsections (2) and (7) of section 316.2397,
448 Florida Statutes, are amended to read:

449 316.2397 Certain lights prohibited; exceptions.—

450 (2) It is expressly prohibited for any vehicle or

451 equipment, ~~except police vehicles,~~ to show or display blue
452 lights, except that:

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

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

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

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

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

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

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

470 (d)(e) For the lamps authorized under subsections ~~(1)~~,
471 (2), (3), (4), (5), and (9), s. 316.2065, or s. 316.235(6) which
472 may flash.

473 Section 12. Subsection (4) of section 316.520, Florida
474 Statutes, is amended to read:

475 316.520 Loads on vehicles.—

476 (4) The provision of subsection (2) requiring covering and
477 securing the load with a close-fitting tarpaulin or other
478 appropriate cover does not apply to vehicles carrying
479 agricultural products locally from a harvest site or to or from
480 a farm on roads where the posted speed limit is 65 miles per
481 hour or less ~~and the distance driven on public roads is less~~
482 ~~than 20 miles.~~

483 Section 13. Paragraph (a) of subsection (1) of section
484 316.613, Florida Statutes, is amended to read:

485 316.613 Child restraint requirements.—

486 (1)(a) Every operator of a motor vehicle as defined in
487 this section, while transporting a child in a motor vehicle
488 operated on the roadways, streets, or highways of this state,
489 shall, if the child is 6 ~~5~~ years of age or younger, provide for
490 protection of the child by properly using a crash-tested,
491 federally approved child restraint device.

492 1. For children aged through 3 years, such restraint
493 device must be a separate carrier or a vehicle manufacturer's
494 integrated child seat.

495 2. For children aged 4 through 6 ~~5~~ years, a separate
496 carrier, an integrated child seat, or a child booster seat may
497 be used. However, the requirement to use a child restraint
498 device under this subparagraph does not apply when a safety belt
499 is used as required in s. 316.614(4)(a) and the child:

500 a. Is being transported gratuitously by an operator who is

not a member of the child's immediate family;

b. Is being transported in a medical emergency situation involving the child; or

c. Has a medical condition that necessitates an exception as evidenced by appropriate documentation from a health care professional.

Section 14. Subsection (5) of section 319.32, Florida Statutes, is amended to read:

319.32 Fees; service charges; disposition.—

(5)(a) Forty-seven dollars of each fee collected, except for fees charged on a certificate of title for a motor vehicle for hire registered under s. 320.08(6), for each applicable original certificate of title and each applicable duplicate copy of a certificate of title, ~~after deducting the service charges imposed by s. 215.20,~~ shall be deposited into the State Transportation Trust Fund. Deposits to the State Transportation Trust Fund pursuant to this paragraph may not exceed \$200 million in any fiscal year, and any collections in excess of that amount during the fiscal year shall be paid into the General Revenue Fund.

(b) All fees collected pursuant to subsection (3) shall be paid into the Nongame Wildlife Trust Fund. Twenty-one dollars of each fee, except for fees charged on a certificate of title for a motor vehicle for hire registered under s. 320.08(6), for each applicable original certificate of title and each applicable

526 duplicate copy of a certificate of title, ~~after deducting the~~
527 ~~service charges imposed by s. 215.20,~~ shall be deposited into
528 the State Transportation Trust Fund. All other fees collected by
529 the department under this chapter shall be paid into the General
530 Revenue Fund.

531 Section 15. Paragraph (c) is added to subsection (4) of
532 section 322.12, Florida Statutes, to read:

533 322.12 Examination of applicants.—

534 (4) The examination for an applicant for a commercial
535 driver license shall include a test of the applicant's eyesight
536 given by a driver license examiner designated by the department
537 or by a licensed ophthalmologist, optometrist, or physician and
538 a test of the applicant's hearing given by a driver license
539 examiner or a licensed physician. The examination shall also
540 include a test of the applicant's ability to read and understand
541 highway signs regulating, warning, and directing traffic; his or
542 her knowledge of the traffic laws of this state pertaining to
543 the class of motor vehicle which he or she is applying to be
544 licensed to operate, including laws regulating driving under the
545 influence of alcohol or controlled substances, driving with an
546 unlawful blood-alcohol level, and driving while intoxicated; his
547 or her knowledge of the effects of alcohol and controlled
548 substances and the dangers of driving a motor vehicle after
549 having consumed alcohol or controlled substances; and his or her
550 knowledge of any special skills, requirements, or precautions

551 necessary for the safe operation of the class of vehicle which
552 he or she is applying to be licensed to operate. In addition,
553 the examination shall include an actual demonstration of the
554 applicant's ability to exercise ordinary and reasonable control
555 in the safe operation of a motor vehicle or combination of
556 vehicles of the type covered by the license classification which
557 the applicant is seeking, including an examination of the
558 applicant's ability to perform an inspection of his or her
559 vehicle.

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

567 Section 16. Section 324.031, Florida Statutes, is amended
568 to read:

569 324.031 Manner of proving financial responsibility.—The
570 owner or operator of a taxicab, limousine, jitney, or any other
571 for-hire passenger transportation vehicle may prove financial
572 responsibility by providing satisfactory evidence of holding a
573 motor vehicle liability policy as defined in s. 324.021(8) or s.
574 324.151, which policy is provided by an insurer authorized to do
575 business in this state ~~issued by an insurance carrier~~ which is a

576 member of the Florida Insurance Guaranty Association or an
577 eligible nonadmitted insurer that has a superior, excellent,
578 exceptional, or equivalent financial strength rating by a rating
579 agency acceptable to the Office of Insurance Regulation of the
580 Financial Services Commission. The operator or owner of any
581 other vehicle may prove his or her financial responsibility by:

582 (1) Furnishing satisfactory evidence of holding a motor
583 vehicle liability policy as defined in ss. 324.021(8) and
584 324.151;

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

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

589
590 Any person, including any firm, partnership, association,
591 corporation, or other person, other than a natural person,
592 electing to use the method of proof specified in subsection (2)
593 shall furnish a certificate of deposit equal to the number of
594 vehicles owned times \$30,000, to a maximum of \$120,000; in
595 addition, any such person, other than a natural person, shall
596 maintain insurance providing coverage in excess of limits of
597 \$10,000/20,000/10,000 or \$30,000 combined single limits, and
598 such excess insurance shall provide minimum limits of
599 \$125,000/250,000/50,000 or \$300,000 combined single limits.
600 These increased limits shall not affect the requirements for

601 proving financial responsibility under s. 324.032(1).

602 Section 17. Subsection (2) of section 324.032, Florida
603 Statutes, is amended to read:

604 324.032 Manner of proving financial responsibility; for-
605 hire passenger transportation vehicles.—Notwithstanding the
606 provisions of s. 324.031:

607 (2) An owner or a lessee who is required to maintain
608 insurance under s. 324.021(9)(b) and who operates at least 150
609 ~~300~~ taxicabs, limousines, jitneys, or any other for-hire
610 passenger transportation vehicles may provide financial
611 responsibility by complying with ~~the provisions of~~ s. 324.171,
612 such compliance to be demonstrated by maintaining at its
613 principal place of business an audited financial statement,
614 prepared in accordance with generally accepted accounting
615 principles, and providing to the department a certification
616 issued by a certified public accountant that the applicant's net
617 worth is at least equal to the requirements of s. 324.171 as
618 determined by the Office of Insurance Regulation of the
619 Financial Services Commission, including claims liabilities in
620 an amount certified as adequate by a Fellow of the Casualty
621 Actuarial Society.

622
623 Upon request by the department, the applicant must provide the
624 department at the applicant's principal place of business in
625 this state access to the applicant's underlying financial

information and financial statements that provide the basis of the certified public accountant's certification. The applicant shall reimburse the requesting department for all reasonable costs incurred by it in reviewing the supporting information. The maximum amount of self-insurance permissible under this subsection is \$300,000 and must be stated on a per-occurrence basis, and the applicant shall maintain adequate excess insurance issued by an authorized or eligible insurer licensed or approved by the Office of Insurance Regulation. All risks self-insured shall remain with the owner or lessee providing it, and the risks are not transferable to any other person, unless a policy complying with subsection (1) is obtained.

Section 18. Subsection (2) of section 327.33, Florida Statutes, is amended to read:

327.33 Reckless or careless operation of vessel.—

(2) A person who operates any vessel upon the waters of this state shall 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 to endanger the life, limb, or property of another person due to vessel overloading or excessive speed. The failure to operate a vessel in a manner described in this subsection constitutes careless operation. However, vessel wake and shoreline wash resulting from the reasonable and prudent

operation of a vessel, absent negligence, does not constitute damage or endangerment to property. A person who violates this subsection commits a noncriminal violation as defined in s. 775.08.

(a) If an individual operates a vessel at a speed greater than slow speed, minimum wake, upon approaching within 300 feet of any emergency vessel, including, but not limited to, a law enforcement vessel, United States Coast Guard vessel, or firefighting vessel, when the emergency vessel's emergency lights are activated, he or she commits careless operation. Law enforcement vessels, firefighting vessels, and rescue vessels owned or operated by a governmental entity are not subject to this paragraph.

(b) If an individual operates a vessel at a speed greater than slow speed, minimum wake, upon approaching within 300 feet of any construction vessel or barge when the vessel or barge is displaying an orange flag indicating the vessel is actively engaged in construction operations, he or she commits careless operation. Law enforcement vessels, firefighting vessels, and rescue vessels owned or operated by a governmental entity are not subject to this paragraph. The flag required in this paragraph shall only be sufficient to invoke this paragraph if the flag:

1. Is at least 2 feet by 3 feet in size;
2. Is displayed from a pole extending at least 10 feet

676 above the tallest portion of the vessel or barge or at least 5
677 feet above any superstructure permanently installed upon the
678 vessel or barge;

679 3. Has a wire or other stiffener or is otherwise
680 constructed to ensure that the flag remains fully unfurled and
681 extended in the absence of a wind or breeze;

682 4. Is displayed so that the visibility of the flag is not
683 obscured in any direction; and

684 5. Is, during periods of low visibility, including any
685 time between one-half hour after sunset and one-half hour before
686 sunrise, illuminated such that it is visible from a distance of
687 at least 2 nautical miles.

688 (c) As used in this subsection, the term "slow speed,
689 minimum wake" means the vessel is fully off plane and completely
690 settled into the water. A vessel operating at slow speed,
691 minimum wake may not proceed at a speed greater than that speed
692 which is reasonable and prudent to avoid the creation of an
693 excessive wake or other hazardous condition under the existing
694 circumstances. A vessel that is:

695 1. Operating on a plane is not proceeding at slow speed,
696 minimum wake.

697 2. In the process of coming off plane and settling into
698 the water or coming up onto plane is not proceeding at slow
699 speed, minimum wake.

700 3. Operating at a speed that creates a wake which

701 unreasonably or unnecessarily endangers other vessels is not
702 proceeding at slow speed, minimum wake.

703 4. Completely off plane and which has fully settled into
704 the water and is proceeding without wake or with minimum wake is
705 proceeding at slow speed, minimum wake.

706 Section 19. Subsections (4) and (5) of section 327.4107,
707 Florida Statutes, are renumbered as subsections (5) and (6),
708 respectively, present subsection (4) is amended, and a new
709 subsection (4) is added to that section, to read:

710 327.4107 Vessels at risk of becoming derelict on waters of
711 this state.—

712 (4) (a) An owner or responsible party who has been issued a
713 citation for a second violation of this section for the same
714 vessel may not anchor or moor such vessel or allow the vessel to
715 remain anchored or moored within 20 feet of a mangrove or to
716 upland vegetation upon public lands. This distance shall be
717 measured in a straight line from the point of the vessel closest
718 to the outermost branches of the mangrove or vegetation. An
719 owner or responsible party in violation of this subsection
720 commits a noncriminal infraction, punishable as provided in s.
721 327.73.

722 (b) The commission, officers of the commission, and any
723 law enforcement agency or officer specified in s. 327.70 may
724 relocate or cause to be relocated an at-risk vessel found to be
725 in violation of this subsection to a distance greater than 20

726 feet from a mangrove or upland vegetation. The commission,
727 officers of the commission, or any other law enforcement agency
728 or officer acting under this subsection to relocate or cause to
729 be relocated an at-risk vessel, upon state waters, away from
730 mangroves or upland vegetation shall be held harmless for all
731 damages to the at-risk vessel resulting from such relocation
732 unless the damage results from gross negligence or willful
733 misconduct.

734 (5)-(4) The penalties ~~penalty~~ under this section are ~~is~~ in
735 addition to other penalties provided by law.

736 Section 20. Subsections (1) and (2) of section 327.59,
737 Florida Statutes, are amended, and subsection (5) is added to
738 that section, to read:

739 327.59 Marina evacuations.—

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

747 (2) ~~Nothing in~~ This section does not ~~may be construed to~~
748 restrict the ability of an owner of a vessel or the owner's
749 authorized representative to remove a vessel voluntarily from a
750 marina at any time or ~~to~~ restrict a marina owner from dictating

751 the kind of cleats, ropes, fenders, and other measures that must
752 be used on vessels as a condition of use of a marina. Except as
753 provided in subsection (5), after a tropical storm or hurricane
754 watch has been issued, a marina owner or operator, or an
755 employee or agent of such owner or operator, may take reasonable
756 actions to further secure any vessel within the marina to
757 minimize damage to a vessel and to protect marina property,
758 private property, and the environment and may charge a
759 reasonable fee for such services.

760 (5) Upon the issuance of a hurricane watch affecting the
761 waters of a marina located in a deepwater seaport, a vessel that
762 weighs less than 500 gross tons may not remain in the waters of
763 such a marina that has been deemed not suitable for refuge
764 during a hurricane. The owner of such a vessel shall promptly
765 remove the vessel from the waterway upon issuance of an
766 evacuation order by the deepwater seaport. If the United States
767 Coast Guard Captain of the Port sets the deepwater seaport
768 condition to Yankee and a vessel owner has failed to remove a
769 vessel from the waterway, the marina owner or operator, or an
770 employee or agent thereof, regardless of existing contractual
771 provisions between the marina owner and vessel owner, shall
772 remove the vessel, or cause it to be removed, if reasonable,
773 from its slip and may charge the vessel owner a reasonable fee
774 for such removal. A marina owner, operator, employee, or agent
775 is not liable for any damage incurred by a vessel as the result

776 of a hurricane and is held harmless as a result of such actions
777 to remove the vessel from the waterway. This section does not
778 provide immunity to a marina owner, operator, employee, or agent
779 for any damage caused by intentional acts or negligence when
780 removing a vessel under this subsection. After a hurricane watch
781 has been issued, the owner or operator of a vessel that has not
782 been removed from the waterway of the marina pursuant to an
783 evacuation order by the deepwater seaport may be subject to a
784 fine not exceeding three times the cost associated with removing
785 the vessel from the waterway. Such fine, if assessed, shall be
786 imposed and collected by the deepwater seaport issuing the
787 evacuation order.

788 Section 21. Paragraph (c) of subsection (1) of section
789 333.03, Florida Statutes, is amended to read:

790 333.03 Requirement to adopt airport zoning regulations.—

791 (1)

792 (c) Airport protection zoning regulations adopted under
793 paragraph (a) must, at a minimum, require:

794 1. A permit for the construction or alteration of any
795 obstruction.~~†~~

796 2. Obstruction marking and lighting for obstructions.~~†~~

797 3. Documentation showing compliance with the federal
798 requirement for notification of proposed construction or
799 alteration of structures and a final valid determination from
800 the Federal Aviation Administration ~~aeronautical study~~ submitted

801 by each person applying for a permit.~~+~~

802 4. Consideration of the criteria in s. 333.025(6)~~+~~ when
803 determining whether to issue or deny a permit.~~+~~~~and~~

804 5. That approval of a permit not be based solely on the
805 determination by the Federal Aviation Administration that the
806 proposed structure is not an airport hazard.

807 Section 22. Subsections (1) and (7) of section 337.14,
808 Florida Statutes, are amended to read:

809 337.14 Application for qualification; certificate of
810 qualification; restrictions; request for hearing.—

811 (1) Any contractor desiring to bid for the performance of
812 any construction contract in excess of \$250,000 which the
813 department proposes to let must first be certified by the
814 department as qualified pursuant to this section and rules of
815 the department. The rules of the department must address the
816 qualification of contractors to bid on construction contracts in
817 excess of \$250,000 and must include requirements with respect to
818 the equipment, past record, experience, financial resources, and
819 organizational personnel of the applying contractor which are
820 necessary to perform the specific class of work for which the
821 contractor seeks certification. Any contractor who desires to
822 bid on contracts in excess of \$50 million and is not qualified
823 and in good standing with the department as of January 1, 2019,
824 must first be certified by the department as qualified and
825 ~~desires to bid on contracts in excess of \$50 million~~ must have

826 satisfactorily completed two projects, each in excess of \$15
827 million, for the department or for any other state department of
828 transportation. The department may limit the dollar amount of
829 any contract upon which a contractor is qualified to bid or the
830 aggregate total dollar volume of contracts such contractor is
831 allowed to have under contract at any one time. Each applying
832 contractor seeking qualification to bid on construction
833 contracts in excess of \$250,000 shall furnish the department a
834 statement under oath, on such forms as the department may
835 prescribe, setting forth detailed information as required on the
836 application. Each application for certification must be
837 accompanied by audited financial statements prepared in
838 accordance with United States generally accepted accounting
839 principles and United States generally accepted auditing
840 standards by a certified public accountant licensed by this
841 state or another state ~~the latest annual financial statement of~~
842 ~~the applying contractor completed within the last 12 months. The~~
843 audited financial statements must be for the applying contractor
844 specifically and must have been prepared within the immediately
845 preceding 12 months. The department may not consider any
846 financial information relating to the parent entity of the
847 applying contractor, if any. The department shall not certify as
848 qualified any applying contractor that fails to submit the
849 audited financial statements required by this subsection. If the
850 application or the annual financial statement shows the

851 financial condition of the applying contractor more than 4
852 months before ~~prior to~~ the date on which the application is
853 received by the department, the applying contractor must also
854 submit interim audited financial statements prepared in
855 accordance with United States generally accepted accounting
856 principles and United States generally accepted auditing
857 standards by a certified public accountant licensed by this
858 state or another state ~~an interim financial statement and an~~
859 ~~updated application must be submitted.~~ The interim financial
860 statements ~~statement~~ must cover the period from the end date of
861 the annual statement and must show the financial condition of
862 the applying contractor no more than 4 months before ~~prior to~~
863 the date that the interim financial statements are ~~statement is~~
864 received by the department. However, upon the request of the
865 applying contractor, an application and accompanying annual or
866 interim financial statements ~~statement~~ received by the
867 department within 15 days after either 4-month period under this
868 subsection shall be considered timely. ~~Each required annual or~~
869 ~~interim financial statement must be audited and accompanied by~~
870 ~~the opinion of a certified public accountant.~~ An applying
871 contractor desiring to bid exclusively for the performance of
872 construction contracts with proposed budget estimates of less
873 than \$1 million may submit reviewed annual or reviewed interim
874 financial statements prepared by a certified public accountant.
875 The information required by this subsection is confidential and

876 exempt from s. 119.07(1). The department shall act upon the
877 application for qualification within 30 days after the
878 department determines that the application is complete. The
879 department may waive the requirements of this subsection for
880 projects having a contract price of \$500,000 or less if the
881 department determines that the project is of a noncritical
882 nature and the waiver will not endanger public health, safety,
883 or property.

884 (7) A "contractor" as defined in s. 337.165(1)(d) or his
885 or her "affiliate" as defined in s. 337.165(1)(a) qualified with
886 the department under this section may not also qualify under s.
887 287.055 or s. 337.105 to provide testing services, construction,
888 engineering, and inspection services to the department. This
889 limitation does not apply to any design-build prequalification
890 under s. 337.11(7) and does not apply when the department
891 otherwise determines by written order entered at least 30 days
892 before advertisement that the limitation is not in the best
893 interests of the public with respect to a particular contract
894 for testing services, construction, engineering, and inspection
895 services. This subsection does not authorize a contractor to
896 provide testing services, or provide construction, engineering,
897 and inspection services, to the department in connection with a
898 construction contract under which the contractor is performing
899 any work. Notwithstanding any other provision of law to the
900 contrary, for a project that is wholly or partially funded by

the department and administered by a local governmental entity, except for a seaport listed in s. 311.09 or an airport as defined in s. 332.004, the entity performing design and construction, engineering, and inspection services may not be the same entity.

Section 23. Subsection (4) of section 337.25, Florida Statutes, is amended to read:

337.25 Acquisition, lease, and disposal of real and personal property.—

(4) The department may convey, in the name of the state, any land, building, or other property, real or personal, which was acquired under subsection (1) and which the department has determined is not needed for the construction, operation, and maintenance of a transportation facility. When such a determination has been made, property may be disposed of through negotiations, sealed competitive bids, auctions, or any other means the department deems to be in its best interest, with due advertisement for property valued by the department at greater than \$10,000. A sale may not occur at a price less than the department's current estimate of value, except as provided in paragraphs (a)–(d). The department may afford a right of first refusal to the local government or other political subdivision in the jurisdiction in which the parcel is situated, except in a conveyance transacted under paragraph (a), paragraph (c), or paragraph (e). Notwithstanding any provision of this section to

926 the contrary, before any conveyance under this subsection may be
927 made, except a conveyance under paragraph (a) or paragraph (c),
928 the department shall first afford a right of first refusal to
929 the previous property owner for the department's current
930 estimate of value of the property. The right of first refusal
931 must be made in writing and sent to the previous owner via
932 certified mail or hand delivery, effective upon receipt. The
933 right of first refusal must provide the previous owner with at
934 least 30 days to exercise the right in writing and must be sent
935 to the originator of the offer by certified mail or hand
936 delivery, effective upon dispatch. If the previous owner
937 exercises his or her right of first refusal, the previous owner
938 has at least 90 days to close on the property.

939 (a) If the property has been donated to the state for
940 transportation purposes and a transportation facility has not
941 been constructed for at least 5 years, plans have not been
942 prepared for the construction of such facility, and the property
943 is not located in a transportation corridor, the governmental
944 entity may authorize reconveyance of the donated property for no
945 consideration to the original donor or the donor's heirs,
946 successors, assigns, or representatives.

947 (b) If the property is to be used for a public purpose,
948 the property may be conveyed without consideration to a
949 governmental entity.

950 (c) If the property was originally acquired specifically

951 to provide replacement housing for persons displaced by
952 transportation projects, the department may negotiate for the
953 sale of such property as replacement housing. As compensation,
954 the state shall receive at least its investment in such property
955 or the department's current estimate of value, whichever is
956 lower. It is expressly intended that this benefit be extended
957 only to persons actually displaced by the project. Dispositions
958 to any other person must be for at least the department's
959 current estimate of value.

960 (d) If the department determines that the property
961 requires significant costs to be incurred or that continued
962 ownership of the property exposes the department to significant
963 liability risks, the department may use the projected
964 maintenance costs over the next 10 years to offset the
965 property's value in establishing a value for disposal of the
966 property, even if that value is zero.

967 (e) If, at the discretion of the department, a sale to a
968 person other than an abutting property owner would be
969 inequitable, the property may be sold to the abutting owner for
970 the department's current estimate of value.

971 Section 24. Subsection (2) of section 337.401, Florida
972 Statutes, is amended to read:

973 337.401 Use of right-of-way for utilities subject to
974 regulation; permit; fees.—

975 (2) The authority may grant to any person who is a

976 resident of this state, or to any corporation that ~~which~~ is
977 organized under the laws of this state or licensed to do
978 business within this state, the use of a right-of-way for the
979 utility in accordance with such rules or regulations as the
980 authority may adopt. A ~~No~~ utility may not ~~shall~~ be installed,
981 located, or relocated unless authorized by a written permit
982 issued by the authority. However, for public roads or publicly
983 owned rail corridors under the jurisdiction of the department, a
984 utility relocation schedule and relocation agreement may be
985 executed in lieu of a written permit. The permit must ~~shall~~
986 require the permitholder to be responsible for any damage
987 resulting from the issuance of such permit. The authority may
988 initiate injunctive proceedings as provided in s. 120.69 to
989 enforce provisions of this subsection or any rule or order
990 issued or entered into pursuant thereto. A permit application
991 required under this subsection by a county or municipality
992 having jurisdiction and control of the right-of-way of any
993 public road must be processed and acted upon in accordance with
994 the timeframes provided in subparagraphs (7)(d)7., 8., and 9.

995 Section 25. Section 338.236, Florida Statutes, is created
996 to read:

997 338.236 Staging areas for emergencies.—The Department of
998 Transportation may plan, design, and construct staging areas to
999 be activated during a declared state of emergency at key
1000 geographic locations on the turnpike system. Such staging areas

1001 must be used for the staging of emergency supplies, such as
1002 water, fuel, generators, vehicles, equipment, and other related
1003 materials, to facilitate the prompt provision of emergency
1004 assistance to the public, and to otherwise facilitate emergency
1005 response and assistance, including evacuations, deployment of
1006 emergency-related supplies and personnel, and restoration of
1007 essential services.

1008 (1) In selecting a proposed site for a designated staging
1009 area under this section, the department, in consultation with
1010 the Division of Emergency Management, must consider the extent
1011 to which such site:

1012 (a) Is located in a geographic area that best facilitates
1013 the wide dissemination of emergency-related supplies and
1014 equipment;

1015 (b) Provides ease of access to major highways and other
1016 transportation facilities;

1017 (c) Is sufficiently large to accommodate the staging of a
1018 significant amount of emergency-related supplies and equipment;

1019 (d) Provides space in support of emergency preparedness
1020 and evacuation activities, such as fuel reserve capacity;

1021 (e) Could be used during nonemergency periods for
1022 commercial motor vehicle parking and for other uses; and

1023 (f) Is consistent with other state and local emergency
1024 management considerations.

1026 The department must give priority consideration to placement of
1027 such staging areas in counties with a population of 200,000 or
1028 fewer, as determined by the most recent official estimate
1029 pursuant to s. 186.901, in which a multi-use corridor of
1030 regional economic significance, as provided in s. 338.2278, is
1031 located.

1032 (2) The department may acquire property and property
1033 rights necessary for such staging areas as provided in s.
1034 338.04.

1035 (3) The department may authorize other uses of a staging
1036 area as provided in the Florida Transportation Code, including,
1037 but not limited to, for commercial motor vehicle parking to
1038 comply with federal hours-of-service off-duty requirements or
1039 sleeper berth requirements and for other vehicular parking to
1040 provide rest for drivers.

1041 (4) Staging area projects must be included in the work
1042 program developed by the department pursuant to s. 339.135.

1043 Section 26. Paragraph (f) of subsection (1) of section
1044 339.08, Florida Statutes, is amended to read:

1045 339.08 Use of moneys in State Transportation Trust Fund.—

1046 (1) The department shall expend moneys in the State
1047 Transportation Trust Fund accruing to the department, in
1048 accordance with its annual budget. The use of such moneys shall
1049 be restricted to the following purposes:

1050 ~~(f) To pay the cost of economic development transportation~~

1051 ~~projects in accordance with s. 339.2821.~~

1052 Section 27. Paragraph (c) of subsection (4) of section
1053 339.135, Florida Statutes, is amended to read:

1054 339.135 Work program; legislative budget request;
1055 definitions; preparation, adoption, execution, and amendment.—

1056 (4) FUNDING AND DEVELOPING A TENTATIVE WORK PROGRAM.—

1057 (c)1. For purposes of this section, the board of county
1058 commissioners shall serve as the metropolitan planning
1059 organization in those counties that ~~which~~ are not located in a
1060 metropolitan planning organization and shall be involved in the
1061 development of the district work program to the same extent as a
1062 metropolitan planning organization.

1063 2. The district work program shall be developed
1064 cooperatively from the outset with the various metropolitan
1065 planning organizations of the state and include, to the maximum
1066 extent feasible, the project priorities of metropolitan planning
1067 organizations which have been submitted to the district by
1068 August ~~October~~ 1 of each year pursuant to s. 339.175(8)(b);
1069 however, the department and a metropolitan planning organization
1070 may, in writing, cooperatively agree to vary this submittal
1071 date. To assist the metropolitan planning organizations in
1072 developing their lists of project priorities, the district shall
1073 disclose to each metropolitan planning organization any
1074 anticipated changes in the allocation or programming of state
1075 and federal funds which may affect the inclusion of metropolitan

1076 planning organization project priorities in the district work
1077 program.

1078 3. Before ~~Prior to~~ submittal of the district work program
1079 to the central office, the district shall provide the affected
1080 metropolitan planning organization with written justification
1081 for any project proposed to be rescheduled or deleted from the
1082 district work program which project is part of the metropolitan
1083 planning organization's transportation improvement program and
1084 is contained in the last 4 years of the previous adopted work
1085 program. By no later than 14 days after submittal of the
1086 district work program to the central office, the affected
1087 metropolitan planning organization may file an objection to such
1088 rescheduling or deletion. When an objection is filed with the
1089 secretary, the rescheduling or deletion may not be included in
1090 the district work program unless the inclusion of such
1091 rescheduling or deletion is specifically approved by the
1092 secretary. The Florida Transportation Commission shall include
1093 such objections in its evaluation of the tentative work program
1094 only when the secretary has approved the rescheduling or
1095 deletion.

1096 Section 28. Paragraph (b) of subsection (8) of section
1097 339.175, Florida Statutes, is amended to read:

1098 339.175 Metropolitan planning organization.—

1099 (8) TRANSPORTATION IMPROVEMENT PROGRAM.—Each M.P.O. shall,
1100 in cooperation with the state and affected public transportation

1101 operators, develop a transportation improvement program for the
1102 area within the jurisdiction of the M.P.O. In the development of
1103 the transportation improvement program, each M.P.O. must provide
1104 the public, affected public agencies, representatives of
1105 transportation agency employees, freight shippers, providers of
1106 freight transportation services, private providers of
1107 transportation, representatives of users of public transit, and
1108 other interested parties with a reasonable opportunity to
1109 comment on the proposed transportation improvement program.

1110 (b) Each M.P.O. annually shall prepare a list of project
1111 priorities and shall submit the list to the appropriate district
1112 of the department by August ~~October~~ 1 of each year; however, the
1113 department and a metropolitan planning organization may, in
1114 writing, agree to vary this submittal date. Where more than one
1115 M.P.O. exists in an urbanized area, the M.P.O.'s shall
1116 coordinate in the development of regionally significant project
1117 priorities. The list of project priorities must be formally
1118 reviewed by the technical and citizens' advisory committees, and
1119 approved by the M.P.O., before it is transmitted to the
1120 district. The approved list of project priorities must be used
1121 by the district in developing the district work program and must
1122 be used by the M.P.O. in developing its transportation
1123 improvement program. The annual list of project priorities must
1124 be based upon project selection criteria that, at a minimum,
1125 consider the following:

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1126 1. The approved M.P.O. long-range transportation plan.~~†~~
1127 2. The Strategic Intermodal System Plan developed under s.
1128 339.64.
1129 3. The priorities developed pursuant to s. 339.2819(4).
1130 4. The results of the transportation management systems.~~†~~
1131 ~~and~~
1132 5. The M.P.O.'s public-involvement procedures.
1133 Section 29. Section 339.2821, Florida Statutes, is
1134 repealed.
1135 Section 30. Paragraph (b) of subsection (17) of section
1136 341.302, Florida Statutes, is amended to read:
1137 341.302 Rail program; duties and responsibilities of the
1138 department.—The department, in conjunction with other
1139 governmental entities, including the rail enterprise and the
1140 private sector, shall develop and implement a rail program of
1141 statewide application designed to ensure the proper maintenance,
1142 safety, revitalization, and expansion of the rail system to
1143 assure its continued and increased availability to respond to
1144 statewide mobility needs. Within the resources provided pursuant
1145 to chapter 216, and as authorized under federal law, the
1146 department shall:
1147 (17) In conjunction with the acquisition, ownership,
1148 construction, operation, maintenance, and management of a rail
1149 corridor, have the authority to:
1150 (b) Purchase liability insurance, which amount shall not

1151 exceed \$295 ~~\$200~~ million, and establish a self-insurance
1152 retention fund for the purpose of paying the deductible limit
1153 established in the insurance policies it may obtain, including
1154 coverage for the department, any freight rail operator as
1155 described in paragraph (a), National Railroad Passenger
1156 Corporation, commuter rail service providers, governmental
1157 entities, or any ancillary development, which self-insurance
1158 retention fund or deductible shall not exceed \$10 million. The
1159 insureds shall pay a reasonable monetary contribution to the
1160 cost of such liability coverage for the sole benefit of the
1161 insured. Such insurance and self-insurance retention fund may
1162 provide coverage for all damages, including, but not limited to,
1163 compensatory, special, and exemplary, and be maintained to
1164 provide an adequate fund to cover claims and liabilities for
1165 loss, injury, or damage arising out of or connected with the
1166 ownership, operation, maintenance, and management of a rail
1167 corridor.

1168
1169 Neither the assumption by contract to protect, defend,
1170 indemnify, and hold harmless; the purchase of insurance; nor the
1171 establishment of a self-insurance retention fund shall be deemed
1172 to be a waiver of any defense of sovereign immunity for torts
1173 nor deemed to increase the limits of the department's or the
1174 governmental entity's liability for torts as provided in s.
1175 768.28. The requirements of s. 287.022(1) shall not apply to the

1176 purchase of any insurance under this subsection. The provisions
1177 of this subsection shall apply and inure fully as to any other
1178 governmental entity providing commuter rail service and
1179 constructing, operating, maintaining, or managing a rail
1180 corridor on publicly owned right-of-way under contract by the
1181 governmental entity with the department or a governmental entity
1182 designated by the department. Notwithstanding any law to the
1183 contrary, procurement for the construction, operation,
1184 maintenance, and management of any rail corridor described in
1185 this subsection, whether by the department, a governmental
1186 entity under contract with the department, or a governmental
1187 entity designated by the department, shall be pursuant to s.
1188 287.057 and shall include, but not be limited to, criteria for
1189 the consideration of qualifications, technical aspects of the
1190 proposal, and price. Further, any such contract for design-build
1191 shall be procured pursuant to the criteria in s. 337.11(7).

1192 Section 31. Effective July 1, 2023, section 341.302,
1193 Florida Statutes, as amended by this act, is amended to read:

1194 341.302 Rail program; duties and responsibilities of the
1195 department.—The department, in conjunction with other
1196 governmental entities, ~~including the rail enterprise~~ and the
1197 private sector, shall develop and implement a rail program of
1198 statewide application designed to ensure the proper maintenance,
1199 safety, revitalization, and expansion of the rail system to
1200 assure its continued and increased availability to respond to

1201 statewide mobility needs. Within the resources provided pursuant
1202 to chapter 216, and as authorized under federal law, the
1203 department shall:

1204 (1) Provide the overall leadership, coordination, and
1205 financial and technical assistance necessary to ensure ~~assure~~
1206 the effective responses of the state's rail system to current
1207 and anticipated mobility needs.

1208 (2) Coordinate the development, general rail safety, and
1209 operation of publicly funded passenger ~~Promote and facilitate~~
1210 ~~the implementation of advanced rail systems in this state,~~
1211 ~~including high-speed rail and magnetic levitation systems.~~

1212 (3) Develop and periodically update the rail system plan,
1213 on the basis of an analysis of statewide transportation needs.

1214 (a) The plan may contain detailed regional components,
1215 consistent with regional transportation plans, as needed to
1216 ensure connectivity within the state's regions, and it shall be
1217 consistent with the Florida Transportation Plan developed
1218 pursuant to s. 339.155. The rail system plan shall include an
1219 identification of priorities, programs, and funding levels
1220 required to meet statewide and regional needs. The rail system
1221 plan shall be developed in a manner that will ensure ~~assure~~ the
1222 maximum use of existing facilities and the optimum integration
1223 and coordination of the various modes of transportation, public
1224 and private, in the most cost-effective manner possible. The
1225 rail system plan shall be updated no later than January 1, 2011,

1226 and at least every 5 years thereafter, and include plans for
1227 both passenger rail service and freight rail service,
1228 accompanied by a report to the Legislature regarding the status
1229 of the plan.

1230 (b) In recognition of the department's role in the
1231 enhancement of the state's rail system to improve freight and
1232 passenger mobility, the department shall:

1233 1. Work closely with all affected communities along an
1234 impacted freight rail corridor to identify and address
1235 anticipated impacts associated with an increase in freight rail
1236 traffic due to implementation of passenger rail.

1237 2. In coordination with the affected local governments and
1238 CSX Transportation, Inc., finalize all viable alternatives from
1239 the department's Rail Traffic Evaluation Study to identify and
1240 develop an alternative route for through freight rail traffic
1241 moving through Central Florida, including the counties of Polk
1242 and Hillsborough, which would address, to the extent
1243 practicable, the effects of commuter rail.

1244 3. Provide technical assistance to a coalition of local
1245 governments in Central Florida, including the counties of
1246 Brevard, Citrus, Hernando, Hillsborough, Lake, Marion, Orange,
1247 Osceola, Pasco, Pinellas, Polk, Manatee, Sarasota, Seminole,
1248 Sumter, and Volusia, and the municipalities within those
1249 counties, to develop a regional rail system plan that addresses
1250 passenger and freight opportunities in the region, is consistent

1251 with the Florida Rail System Plan, and incorporates appropriate
1252 elements of the Tampa Bay Area Regional Authority Master Plan,
1253 the Metroplan Orlando Regional Transit System Concept Plan,
1254 including the SunRail project, and the Florida Department of
1255 Transportation Alternate Rail Traffic Evaluation.

1256 (4) As part of the work program of the department,
1257 formulate a specific program of projects and financing to
1258 respond to identified railroad needs.

1259 (5) Provide technical and financial assistance to units of
1260 local government to address identified rail transportation
1261 needs.

1262 (6) Secure and administer federal grants, loans, and
1263 apportionments for rail projects within this state when
1264 necessary to further the statewide program.

1265 (7) Develop and administer state standards concerning the
1266 safety and performance of rail systems, hazardous material
1267 handling, and operations. Such standards shall be developed
1268 jointly with representatives of affected rail systems, with full
1269 consideration given to nationwide industry norms, and shall
1270 define the minimum acceptable standards for safety and
1271 performance.

1272 (8) Conduct, at a minimum, inspections of track and
1273 rolling stock; train signals and related equipment; hazardous
1274 materials transportation, including the loading, unloading, and
1275 labeling of hazardous materials at shippers', receivers', and

1276 transfer points; and train operating practices to determine
1277 adherence to state and federal standards. Department personnel
1278 may enforce any safety regulation issued under the Federal
1279 Government's preemptive authority over interstate commerce.

1280 (9) Assess penalties, in accordance with the applicable
1281 federal regulations, for the failure to adhere to the state
1282 standards.

1283 (10) Administer rail operating and construction programs,
1284 which programs shall include the regulation of maximum ~~maxi-mum~~
1285 train operating speeds, the opening and closing of public grade
1286 crossings, the construction and rehabilitation of public grade
1287 crossings, and the installation of traffic control devices at
1288 public grade crossings, the administering of the programs by the
1289 department including participation in the cost of the programs.

1290 (11) Coordinate and facilitate the relocation of railroads
1291 from congested urban areas to nonurban areas when relocation has
1292 been determined feasible and desirable from the standpoint of
1293 safety, operational efficiency, and economics.

1294 (12) Implement a program of branch line continuance
1295 projects when an analysis of the industrial and economic
1296 potential of the line indicates that public involvement is
1297 required to preserve essential rail service and facilities.

1298 (13) Provide new rail service and equipment when:

1299 (a) Pursuant to the transportation planning process, a
1300 public need has been determined to exist;

(b) The cost of providing such service does not exceed the sum of revenues from fares charged to users, services purchased by other public agencies, local fund participation, and specific legislative appropriation for this purpose; and

(c) Service cannot be reasonably provided by other governmental or privately owned rail systems.

The department may own, lease, and otherwise encumber facilities, equipment, and appurtenances thereto, ~~as necessary~~ to provide new rail services, or the department may provide such service by contracts with privately owned service providers.

(14) Furnish required emergency rail transportation service if no other private or public rail transportation operation is available to supply the required service and such service is clearly in the best interest of the people in the communities being served. Such emergency service may be furnished through contractual arrangement, actual operation of state-owned equipment and facilities, or any other means determined appropriate by the secretary.

(15) Assist in the development and implementation of marketing programs for rail services and of information systems directed toward assisting rail systems users.

(16) Conduct research into innovative or potentially effective rail technologies and methods and maintain expertise

1326 in state-of-the-art rail developments.

1327 (17) In conjunction with the acquisition, ownership,
1328 construction, operation, maintenance, and management of a rail
1329 corridor, have the authority to:

1330 (a) Assume obligations pursuant to the following:

1331 1.a. The department may assume the obligation by contract
1332 to forever protect, defend, indemnify, and hold harmless the
1333 freight rail operator, or its successors, from whom the
1334 department has acquired a real property interest in the rail
1335 corridor, and that freight rail operator's officers, agents, and
1336 employees, from and against any liability, cost, and expense,
1337 including, but not limited to, commuter rail passengers and rail
1338 corridor invitees in the rail corridor, regardless of whether
1339 the loss, damage, destruction, injury, or death giving rise to
1340 any such liability, cost, or expense is caused in whole or in
1341 part, and to whatever nature or degree, by the fault, failure,
1342 negligence, misconduct, nonfeasance, or misfeasance of such
1343 freight rail operator, its successors, or its officers, agents,
1344 and employees, or any other person or persons whomsoever; or

1345 b. The department may assume the obligation by contract to
1346 forever protect, defend, indemnify, and hold harmless National
1347 Railroad Passenger Corporation, or its successors, and officers,
1348 agents, and employees of National Railroad Passenger
1349 Corporation, from and against any liability, cost, and expense,
1350 including, but not limited to, commuter rail passengers and rail

1351 corridor invitees in the rail corridor, regardless of whether
1352 the loss, damage, destruction, injury, or death giving rise to
1353 any such liability, cost, or expense is caused in whole or in
1354 part, and to whatever nature or degree, by the fault, failure,
1355 negligence, misconduct, nonfeasance, or misfeasance of National
1356 Railroad Passenger Corporation, its successors, or its officers,
1357 agents, and employees, or any other person or persons
1358 whomsoever.

1359 2. The assumption of liability of the department by
1360 contract pursuant to sub-subparagraph 1.a. or sub-subparagraph
1361 1.b. may not in any instance exceed the following parameters of
1362 allocation of risk:

1363 a. The department may be solely responsible for any loss,
1364 injury, or damage to commuter rail passengers, ~~or~~ rail corridor
1365 invitees, or trespassers, regardless of circumstances or cause,
1366 subject to sub-subparagraph b. and subparagraphs 3., 4., 5., and
1367 6.

1368 b.(I) In the event of a limited covered accident, the
1369 authority of the department to protect, defend, and indemnify
1370 the freight operator for all liability, cost, and expense,
1371 including punitive or exemplary damages, in excess of the
1372 deductible or self-insurance retention fund established under
1373 paragraph (b) and actually in force at the time of the limited
1374 covered accident exists only if the freight operator agrees,
1375 with respect to the limited covered accident, to protect,

1376 defend, and indemnify the department for the amount of the
1377 deductible or self-insurance retention fund established under
1378 paragraph (b) and actually in force at the time of the limited
1379 covered accident.

1380 (II) In the event of a limited covered accident, the
1381 authority of the department to protect, defend, and indemnify
1382 National Railroad Passenger Corporation for all liability, cost,
1383 and expense, including punitive or exemplary damages, in excess
1384 of the deductible or self-insurance retention fund established
1385 under paragraph (b) and actually in force at the time of the
1386 limited covered accident exists only if National Railroad
1387 Passenger Corporation agrees, with respect to the limited
1388 covered accident, to protect, defend, and indemnify the
1389 department for the amount of the deductible or self-insurance
1390 retention fund established under paragraph (b) and actually in
1391 force at the time of the limited covered accident.

1392 3. When only one train is involved in an incident, the
1393 department may be solely responsible for any loss, injury, or
1394 damage if the train is a department train or other train
1395 pursuant to subparagraph 4., but only if:

1396 a. When an incident occurs with only a freight train
1397 involved, including incidents with trespassers or at grade
1398 crossings, the freight rail operator is solely responsible for
1399 any loss, injury, or damage, except for commuter rail passengers
1400 and rail corridor invitees; or

1401 b. When an incident occurs with only a National Railroad
1402 Passenger Corporation train involved, including incidents with
1403 trespassers or at grade crossings, National Railroad Passenger
1404 Corporation is solely responsible for any loss, injury, or
1405 damage, except for commuter rail passengers and rail corridor
1406 invitees.

1407 4. For the purposes of this subsection:

1408 a. Any train involved in an incident that is neither the
1409 department's train nor the freight rail operator's train,
1410 hereinafter referred to in this subsection as an "other train,"
1411 may be treated as a department train, solely for purposes of any
1412 allocation of liability between the department and the freight
1413 rail operator only, but only if the department and the freight
1414 rail operator share responsibility equally as to third parties
1415 outside the rail corridor who incur loss, injury, or damage as a
1416 result of any incident involving both a department train and a
1417 freight rail operator train, and the allocation as between the
1418 department and the freight rail operator, regardless of whether
1419 the other train is treated as a department train, shall remain
1420 one-half each as to third parties outside the rail corridor who
1421 incur loss, injury, or damage as a result of the incident. The
1422 involvement of any other train shall not alter the sharing of
1423 equal responsibility as to third parties outside the rail
1424 corridor who incur loss, injury, or damage as a result of the
1425 incident; or

b. Any train involved in an incident that is neither the department's train nor the National Railroad Passenger Corporation's train, hereinafter referred to in this subsection as an "other train," may be treated as a department train, solely for purposes of any allocation of liability between the department and National Railroad Passenger Corporation only, but only if the department and National Railroad Passenger Corporation share responsibility equally as to third parties outside the rail corridor who incur loss, injury, or damage as a result of any incident involving both a department train and a National Railroad Passenger Corporation train, and the allocation as between the department and National Railroad Passenger Corporation, regardless of whether the other train is treated as a department train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident. The involvement of any other train shall not alter the sharing of equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

5. When more than one train is involved in an incident:

a.(I) If only a department train and freight rail operator's train, or only an other train as described in sub-subparagraph 4.a. and a freight rail operator's train, are involved in an incident, the department may be responsible for its property and all of its people, all commuter rail

passengers, and rail corridor invitees, but only if the freight rail operator is responsible for its property and all of its people, and the department and the freight rail operator each share one-half responsibility as to trespassers or third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident; or

(II) If only a department train and a National Railroad Passenger Corporation train, or only an other train as described in sub-subparagraph 4.b. and a National Railroad Passenger Corporation train, are involved in an incident, the department may be responsible for its property and all of its people, all commuter rail passengers, and rail corridor invitees, but only if National Railroad Passenger Corporation is responsible for its property and all of its people, all National Railroad Passenger Corporation's rail passengers, and the department and National Railroad Passenger Corporation each share one-half responsibility as to trespassers or third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

b.(I) If a department train, a freight rail operator train, and any other train are involved in an incident, the allocation of liability between the department and the freight rail operator, regardless of whether the other train is treated as a department train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or

1476 damage as a result of the incident; the involvement of any other
1477 train shall not alter the sharing of equal responsibility as to
1478 third parties outside the rail corridor who incur loss, injury,
1479 or damage as a result of the incident; and, if the owner,
1480 operator, or insurer of the other train makes any payment to
1481 injured third parties outside the rail corridor who incur loss,
1482 injury, or damage as a result of the incident, the allocation of
1483 credit between the department and the freight rail operator as
1484 to such payment shall not in any case reduce the freight rail
1485 operator's third-party-sharing allocation of one-half under this
1486 paragraph to less than one-third of the total third party
1487 liability; or

1488 (II) If a department train, a National Railroad Passenger
1489 Corporation train, and any other train are involved in an
1490 incident, the allocation of liability between the department and
1491 National Railroad Passenger Corporation, regardless of whether
1492 the other train is treated as a department train, shall remain
1493 one-half each as to third parties outside the rail corridor who
1494 incur loss, injury, or damage as a result of the incident; the
1495 involvement of any other train shall not alter the sharing of
1496 equal responsibility as to third parties outside the rail
1497 corridor who incur loss, injury, or damage as a result of the
1498 incident; and, if the owner, operator, or insurer of the other
1499 train makes any payment to injured third parties outside the
1500 rail corridor who incur loss, injury, or damage as a result of

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1501 the incident, the allocation of credit between the department
1502 and National Railroad Passenger Corporation as to such payment
1503 shall not in any case reduce National Railroad Passenger
1504 Corporation's third-party-sharing allocation of one-half under
1505 this sub-subparagraph to less than one-third of the total third
1506 party liability.

1507 6. Any such contractual duty to protect, defend,
1508 indemnify, and hold harmless such a freight rail operator or
1509 National Railroad Passenger Corporation shall expressly include
1510 a specific cap on the amount of the contractual duty, which
1511 amount shall not exceed \$200 million without prior legislative
1512 approval, and the department to purchase liability insurance and
1513 establish a self-insurance retention fund in the amount of the
1514 specific cap established under this subparagraph, provided that:

1515 a. No such contractual duty shall in any case be effective
1516 nor otherwise extend the department's liability in scope and
1517 effect beyond the contractual liability insurance and self-
1518 insurance retention fund required pursuant to this paragraph;
1519 and

1520 b.(I) The freight rail operator's compensation to the
1521 department for future use of the department's rail corridor
1522 shall include a monetary contribution to the cost of such
1523 liability coverage for the sole benefit of the freight rail
1524 operator.

1525 (II) National Railroad Passenger Corporation's

1526 compensation to the department for future use of the
1527 department's rail corridor shall include a monetary contribution
1528 to the cost of such liability coverage for the sole benefit of
1529 National Railroad Passenger Corporation.

1530 (b) Purchase liability insurance, which amount shall not
1531 exceed \$295 million, and establish a self-insurance retention
1532 fund for the purpose of paying the deductible limit established
1533 in the insurance policies it may obtain, including coverage for
1534 the department, any freight rail operator as described in
1535 paragraph (a), National Railroad Passenger Corporation, commuter
1536 rail service providers, governmental entities, or any ancillary
1537 development, which self-insurance retention fund or deductible
1538 shall not exceed \$10 million. The insureds shall pay a
1539 reasonable monetary contribution to the cost of such liability
1540 coverage for the sole benefit of the insured. Such insurance and
1541 self-insurance retention fund may provide coverage for all
1542 damages, including, but not limited to, compensatory, special,
1543 and exemplary, and be maintained to provide an adequate fund to
1544 cover claims and liabilities for loss, injury, or damage arising
1545 out of or connected with the ownership, operation, maintenance,
1546 and management of a rail corridor.

1547 (c) Incur expenses for the purchase of advertisements,
1548 marketing, and promotional items.

1549 (d) Without altering any of the rights granted to the
1550 department under this section, agree to assume the obligations

1551 to indemnify and insure, pursuant to s. 343.545, freight rail
1552 service, intercity passenger rail service, and commuter rail
1553 service on a department-owned rail corridor, whether ownership
1554 is in fee or by easement, or on a rail corridor where the
1555 department has the right to operate.

1556
1557 Neither the assumption by contract to protect, defend,
1558 indemnify, and hold harmless; the purchase of insurance; nor the
1559 establishment of a self-insurance retention fund shall be deemed
1560 to be a waiver of any defense of sovereign immunity for torts
1561 nor deemed to increase the limits of the department's or the
1562 governmental entity's liability for torts as provided in s.
1563 768.28. The requirements of s. 287.022(1) shall not apply to the
1564 purchase of any insurance under this subsection. ~~The provisions~~
1565 ~~of~~ This subsection shall apply and inure fully as to any other
1566 governmental entity providing commuter rail service and
1567 constructing, operating, maintaining, or managing a rail
1568 corridor on publicly owned right-of-way under contract by the
1569 governmental entity with the department or a governmental entity
1570 designated by the department. Notwithstanding any law to the
1571 contrary, procurement for the construction, operation,
1572 maintenance, and management of any rail corridor described in
1573 this subsection, whether by the department, a governmental
1574 entity under contract with the department, or a governmental
1575 entity designated by the department, shall be pursuant to s.

287.057 and shall include, but not be limited to, criteria for the consideration of qualifications, technical aspects of the proposal, and price. Further, any such contract for design-build shall be procured pursuant to the criteria in s. 337.11(7).

(18) Exercise such other functions, powers, and duties in connection with the rail system plan as are necessary to develop a safe, efficient, and effective statewide transportation system.

Section 32. Effective July 1, 2023, subsections (5) and (6) of section 341.303, Florida Statutes, are amended to read:

341.303 Funding authorization and appropriations; eligibility and participation.—

(5) ~~FUND PARTICIPATION; FLORIDA RAIL ENTERPRISE.—~~The department may, ~~through the Florida Rail Enterprise, is~~ ~~authorized to~~ use funds provided pursuant to s. 201.15(4)(a)4. to fund:

(a) Up to 50 percent of the nonfederal share of the costs of any eligible passenger rail capital improvement project.

(b) Up to 100 percent of planning and development costs related to the provision of a passenger rail system, including, but not limited to, preliminary engineering, revenue studies, environmental impact studies, financial advisory services, engineering design, and other appropriate professional services.

(c) The high-speed rail system.

(d) Projects necessary to identify or address anticipated

1601 impacts of increased freight rail traffic resulting from the
1602 implementation of passenger rail systems as provided in s.
1603 341.302 (3) (b) .

1604 (e) Projects necessary to identify or address needed or
1605 desirable safety improvements to passenger rail systems in this
1606 state.

1607 ~~(6) FLORIDA RAIL ENTERPRISE; BUDGET.~~

1608 ~~(a) The Florida Rail Enterprise shall be a single budget~~
1609 ~~entity and shall develop a budget pursuant to chapter 216. The~~
1610 ~~enterprise's budget shall be submitted to the Legislature along~~
1611 ~~with the department's budget. All passenger rail funding by the~~
1612 ~~department shall be included in this budget entity.~~

1613 ~~(b) Notwithstanding the provisions of s. 216.301 to the~~
1614 ~~contrary and in accordance with s. 216.351, the Executive Office~~
1615 ~~of the Governor shall, on July 1 of each year, certify forward~~
1616 ~~all unexpended funds appropriated or provided pursuant to this~~
1617 ~~section for the enterprise. Of the unexpended funds certified~~
1618 ~~forward, any unencumbered amounts shall be carried forward. Such~~
1619 ~~funds carried forward shall not exceed 5 percent of the original~~
1620 ~~approved operating budget of the enterprise pursuant to s.~~
1621 ~~216.181(1). Funds carried forward pursuant to this section may~~
1622 ~~be used for any lawful purpose, including, but not limited to,~~
1623 ~~promotional and market activities, technology, and training. Any~~
1624 ~~certified-forward funds remaining undisbursed on September 30 of~~
1625 ~~each year shall be carried forward.~~

1626 Section 33. Effective July 1, 2023, section 341.8201,
1627 Florida Statutes, is repealed.

1628 Section 34. Effective July 1, 2023, section 341.8203,
1629 Florida Statutes, is amended to read:

1630 341.8203 Definitions.—As used in ss. 341.822-341.842 ~~ss.~~
1631 ~~341.8201-341.842~~, unless the context clearly indicates
1632 otherwise, the term:

1633 (1) "Associated development" means property, equipment,
1634 buildings, or other related facilities which are built,
1635 installed, used, or established to provide financing, funding,
1636 or revenues for the planning, building, managing, and operation
1637 of a high-speed rail system and which are associated with or
1638 part of the rail stations. The term includes air and subsurface
1639 rights, services that provide local area network devices for
1640 transmitting data over wireless networks, parking facilities,
1641 retail establishments, restaurants, hotels, offices,
1642 advertising, or other commercial, civic, residential, or support
1643 facilities.

1644 (2) "Communication facilities" means the communication
1645 systems related to high-speed passenger rail operations,
1646 including those which are built, installed, used, or established
1647 for the planning, building, managing, and operating of a high-
1648 speed rail system. The term includes the land; structures;
1649 improvements; rights-of-way; easements; positive train control
1650 systems; wireless communication towers and facilities that are

designed to provide voice and data services for the safe and efficient operation of the high-speed rail system; voice, data, and wireless communication amenities made available to crew and passengers as part of a high-speed rail service; and any other facilities or equipment used for operation of, or the facilitation of communications for, a high-speed rail system. Owners of communication facilities may not offer voice or data service to any entity other than passengers, crew, or other persons involved in the operation of a high-speed rail system.

~~(3) "Enterprise" means the Florida Rail Enterprise.~~

(3)~~(4)~~ "High-speed rail system" means any high-speed fixed guideway system for transporting people or goods, which system is, by definition of the United States Department of Transportation, reasonably expected to reach speeds of at least 110 miles per hour, including, but not limited to, a monorail system, dual track rail system, suspended rail system, magnetic levitation system, pneumatic repulsion system, or other system approved by the department ~~enterprise~~. The term includes a corridor, associated intermodal connectors, and structures essential to the operation of the line, including the land, structures, improvements, rights-of-way, easements, rail lines, rail beds, guideway structures, switches, yards, parking facilities, power relays, switching houses, and rail stations and also includes facilities or equipment used exclusively for the purposes of design, construction, operation, maintenance, or

the financing of the high-speed rail system.

(4)~~(5)~~ "Joint development" means the planning, managing, financing, or constructing of projects adjacent to, functionally related to, or otherwise related to a high-speed rail system pursuant to agreements between any person, firm, corporation, association, organization, agency, or other entity, public or private.

(5)~~(6)~~ "Rail station," "station," or "high-speed rail station" means any structure or transportation facility that is part of a high-speed rail system designed to accommodate the movement of passengers from one mode of transportation to another at which passengers board or disembark from transportation conveyances and transfer from one mode of transportation to another.

(6)~~(7)~~ "Railroad company" means a person developing, or providing service on, a high-speed rail system.

(7)~~(8)~~ "Selected person or entity" means the person or entity to whom the department ~~enterprise~~ awards a contract to establish a high-speed rail system pursuant to ss. 341.822-341.842 ~~ss. 341.8201-341.842~~.

Section 35. Effective July 1, 2023, section 341.822, Florida Statutes, is amended to read:

341.822 Powers and duties.—

(1) The department ~~enterprise~~ shall locate, plan, design, finance, construct, maintain, own, operate, administer, and

1701 manage the high-speed rail system in the state.

1702 (2) (a) ~~In addition to the powers granted to~~ The
1703 department, ~~the enterprise~~ has full authority to exercise all
1704 powers granted to it under this chapter. Powers shall include,
1705 but are not limited to, the ability to plan, construct,
1706 maintain, repair, and operate a high-speed rail system, to
1707 acquire corridors, and to coordinate the development and
1708 operation of publicly funded passenger rail systems in the
1709 state.

1710 (b) It is the express intention of ss. 341.822-341.842 ~~ss.~~
1711 ~~341.8201-341.842~~ that the department ~~enterprise~~ be authorized to
1712 plan, develop, own, purchase, lease, or otherwise acquire,
1713 demolish, construct, improve, relocate, equip, repair, maintain,
1714 operate, and manage the high-speed rail system; to expend funds
1715 to publicize, advertise, and promote the advantages of using the
1716 high-speed rail system and its facilities; and to cooperate,
1717 coordinate, partner, and contract with other entities, public
1718 and private, to accomplish these purposes.

1719 (c) The department ~~enterprise~~ shall establish a process to
1720 issue permits to railroad companies for the construction of
1721 communication facilities within a new or existing public or
1722 private high-speed rail system. The department ~~enterprise~~ may
1723 adopt rules to administer such permits, including rules
1724 regarding the form, content, and necessary supporting
1725 documentation for permit applications; the process for

1726 submitting applications; and the application fee for a permit
1727 under s. 341.825. The department ~~enterprise~~ shall provide a copy
1728 of a completed permit application to municipalities and counties
1729 where the high-speed rail system will be located. The department
1730 ~~enterprise~~ shall allow each such municipality and county 30 days
1731 to provide comments to the department ~~enterprise~~ regarding the
1732 application, including any recommendations regarding conditions
1733 that may be placed on the permit.

1734 (3) The department ~~may enterprise shall have the authority~~
1735 ~~to employ procurement methods available to the department under~~
1736 ~~chapters 255, 287, 334, and 337, or otherwise in accordance with~~
1737 ~~law. The enterprise may also~~ solicit proposals and, with
1738 legislative approval as evidenced by approval of the project in
1739 the department's work program, enter into agreements with
1740 private entities, or consortia thereof, for the building,
1741 operation, ownership, or financing of the high-speed rail
1742 system.

1743 ~~(4) The executive director of the enterprise shall appoint~~
1744 ~~staff, who shall be exempt from part II of chapter 110.~~

1745 ~~(4)(5)~~ The powers conferred upon the department ~~enterprise~~
1746 under ss. 341.822-341.842 ~~ss. 341.8201-341.842 shall be in~~
1747 ~~addition and supplemental to the existing powers of the~~
1748 ~~department, and these powers~~ shall not be construed as repealing
1749 any provision of any other law, general or local, but shall
1750 supersede such other laws that are inconsistent with the

1751 exercise of the powers provided under ss. 341.822-341.842 ~~ss.~~
1752 ~~341.8201-341.842~~ and provide a complete method for the exercise
1753 of such powers granted.

1754 ~~(5)-(6)~~ Any proposed rail ~~enterprise~~ project or improvement
1755 shall be developed in accordance with the Florida Transportation
1756 Plan and the work program under s. 339.135.

1757 Section 36. Effective July 1, 2023, subsections (2) and
1758 (3), paragraph (b) of subsection (4), and subsection (5) of
1759 section 341.825, Florida Statutes, are amended to read:

1760 341.825 Communication facilities.—

1761 (2) APPLICATION SUBMISSION.—A railroad company may submit
1762 to the department ~~enterprise~~ an application to obtain a permit
1763 to construct communication facilities within a new or existing
1764 high-speed rail system. The application shall include an
1765 application fee limited to the amount needed to pay the
1766 anticipated cost of reviewing the application, not to exceed
1767 \$10,000, which shall be deposited into the State Transportation
1768 Trust Fund. The application must include the following
1769 information:

1770 (a) The location of the proposed communication facilities.

1771 (b) A description of the proposed communication
1772 facilities.

1773 (c) Any other information reasonably required by the
1774 department ~~enterprise~~.

1775 (3) APPLICATION REVIEW.—The department ~~enterprise~~ shall

1776 review each application for completeness within 30 days after
1777 receipt of the application.

1778 (a) If the department ~~enterprise~~ determines that an
1779 application is not complete, the department ~~enterprise~~ shall,
1780 within 30 days after the receipt of the initial application,
1781 notify the applicant in writing of any errors or omissions. An
1782 applicant shall have 30 days within which to correct the errors
1783 or omissions in the initial application.

1784 (b) If the department ~~enterprise~~ determines that an
1785 application is complete, the department ~~enterprise~~ shall act
1786 upon the permit application within 60 days after ~~of~~ the receipt
1787 of the completed application by approving in whole, approving
1788 with conditions as the department ~~enterprise~~ deems appropriate,
1789 or denying the application, and stating the reason for issuance
1790 or denial. In determining whether an application should be
1791 approved, approved with modifications or conditions, or denied,
1792 the department ~~enterprise~~ shall consider any comments or
1793 recommendations received from a municipality or county and the
1794 extent to which the proposed communication facilities:

1795 1. Are located in a manner that is appropriate for the
1796 communication technology specified by the applicant.

1797 2. Serve an existing or projected future need for
1798 communication facilities.

1799 3. Provide sufficient wireless voice and data coverage and
1800 capacity for the safe and efficient operation of the high-speed

1801 rail system and the safety, use, and efficiency of its crew and
1802 passengers.

1803 (c) The failure to adopt any recommendation or comment may
1804 not be a basis for challenging the issuance of a permit.

1805 (4) EFFECT OF PERMIT.—

1806 (b) A permit may include conditions that constitute
1807 variances and exemptions from rules of the department ~~enterprise~~
1808 or any other agency, which would otherwise be applicable to the
1809 communication facilities within the new or existing high-speed
1810 rail system.

1811 (5) MODIFICATION OF PERMIT.—A permit may be modified by
1812 the applicant after issuance upon the filing of a petition with
1813 the department ~~enterprise~~.

1814 (a) A petition for modification must set forth the
1815 proposed modification and the factual reasons asserted for the
1816 modification.

1817 (b) The department ~~enterprise~~ shall act upon the petition
1818 within 30 days by approving or denying the application, and
1819 stating the reason for issuance or denial.

1820 Section 37. Effective July 1, 2023, section 341.836,
1821 Florida Statutes, is amended to read:

1822 341.836 Associated development.—

1823 (1) The department ~~enterprise~~, alone or as part of a joint
1824 development, may undertake associated developments to be a
1825 source of revenue for the establishment, construction,

operation, or maintenance of the high-speed rail system. Such associated developments must be consistent, to the extent feasible, with applicable local government comprehensive plans and local land development regulations and otherwise be in compliance with ss. 341.822-341.842 ~~ss. 341.8201-341.842~~.

(2) Sections 341.822-341.842 ~~Sections 341.8201-341.842~~ do not prohibit the department ~~enterprise~~, the selected person or entity, or a party to a joint venture with the department ~~enterprise~~ or its selected person or entity from obtaining approval, pursuant to any other law, for any associated development that is reasonably related to the high-speed rail system.

Section 38. Effective July 1, 2023, section 341.838, Florida Statutes, is amended to read:

341.838 Fares, rates, rents, fees, and charges.—

(1) The department ~~enterprise~~ may establish, revise, charge, and collect fares, rates, rents, fees, charges, and revenues for the use of and for the services furnished, or to be furnished, by the system and ~~to~~ contract with any person, partnership, association, corporation, or other body, public or private, in respect thereof. Such fares, rates, rents, fees, and charges shall be reviewed annually by the department ~~enterprise~~ and may be adjusted as set forth in the contract setting such fares, rates, rents, fees, or charges. The funds collected pursuant to this section shall, with any other funds available,

1851 be used to pay the cost of designing, building, operating,
1852 financing, and maintaining the system and each and every portion
1853 thereof, to the extent that the payment of such cost has not
1854 otherwise been adequately provided for.

1855 (2) Fares, rates, rents, fees, and charges established,
1856 revised, charged, and collected by the department ~~enterprise~~
1857 pursuant to this section shall not be subject to supervision or
1858 regulation by any other department, commission, board, body,
1859 bureau, or agency of this state other than the department
1860 ~~enterprise~~.

1861 Section 39. Effective July 1, 2023, section 341.839,
1862 Florida Statutes, is amended to read:

1863 341.839 Alternate means.—Sections 341.822-341.842 ~~Sections~~
1864 ~~341.8201-341.842~~ provide an additional and alternative method
1865 for accomplishing the purposes authorized therein and are
1866 supplemental and additional to powers conferred by other laws.
1867 Except as otherwise expressly provided in ss. 341.822-341.842
1868 ~~ss. 341.8201-341.842~~, none of the powers granted to the
1869 department ~~enterprise~~ under ss. 341.822-341.842 ~~ss. 341.8201-~~
1870 ~~341.842~~ are subject to the supervision or require the approval
1871 or consent of any municipality or political subdivision or any
1872 commission, board, body, bureau, or official.

1873 Section 40. Effective July 1, 2023, section 341.840,
1874 Florida Statutes, is amended to read:

1875 341.840 Tax exemption.—

1876 (1) The exercise of the powers granted under ss. 341.822-
1877 341.842 ~~ss. 341.8201-341.842~~ will be in all respects for the
1878 benefit of the people of this state, for the increase of their
1879 commerce, welfare, and prosperity, and for the improvement of
1880 their health and living conditions. The design, construction,
1881 operation, maintenance, and financing of a high-speed rail
1882 system by the department ~~enterprise~~, its agent, or the owner or
1883 lessee thereof, as herein authorized, constitutes the
1884 performance of an essential public function.

1885 (2)(a) For the purposes of this section, the term
1886 "department" ~~"enterprise"~~ does not include agents of the
1887 department ~~enterprise~~ other than contractors who qualify as such
1888 pursuant to subsection (7).

1889 (b) For the purposes of this section, any item or property
1890 that is within the definition of the term "associated
1891 development" in s. 341.8203(1) may not be considered part of the
1892 high-speed rail system as defined in s. 341.8203(3) ~~s.~~
1893 ~~341.8203(4)~~.

1894 (3)(a) Purchases or leases of tangible personal property
1895 or real property by the department ~~enterprise~~, excluding agents
1896 of the department ~~enterprise~~, are exempt from taxes imposed by
1897 chapter 212 as provided in s. 212.08(6). Purchases or leases of
1898 tangible personal property that is incorporated into the high-
1899 speed rail system as a component part thereof, as determined by
1900 the department ~~enterprise~~, by agents of the department

1901 ~~enterprise~~ or the owner of the high-speed rail system are exempt
1902 from sales or use taxes imposed by chapter 212. Leases, rentals,
1903 or licenses to use real property granted to agents of the
1904 department ~~enterprise~~ or the owner of the high-speed rail system
1905 are exempt from taxes imposed by s. 212.031 if the real property
1906 becomes part of such system. The exemptions granted in this
1907 subsection do not apply to sales, leases, or licenses by the
1908 department ~~enterprise~~, agents of the department ~~enterprise~~, or
1909 the owner of the high-speed rail system.

1910 (b) The exemption granted in paragraph (a) to purchases or
1911 leases of tangible personal property by agents of the department
1912 ~~enterprise~~ or by the owner of the high-speed rail system applies
1913 only to property that becomes a component part of such system.
1914 It does not apply to items, including, but not limited to,
1915 cranes, bulldozers, forklifts, other machinery and equipment,
1916 tools and supplies, or other items of tangible personal property
1917 used in the construction, operation, or maintenance of the high-
1918 speed rail system when such items are not incorporated into the
1919 high-speed rail system as a component part thereof.

1920 (4) Any bonds or other security, and all notes, mortgages,
1921 security agreements, letters of credit, or other instruments
1922 that arise out of or are given to secure the repayment of bonds
1923 or other security, issued by the department ~~enterprise~~, or on
1924 behalf of the department ~~enterprise~~, their transfer, and the
1925 income therefrom, including any profit made on the sale thereof,

shall at all times be free from taxation of every kind by the state, the counties, and the municipalities and other political subdivisions in the state. This subsection, however, does not exempt from taxation or assessment the leasehold interest of a lessee in any project or any other property or interest owned by the lessee. The exemption granted by this subsection is not applicable to any tax imposed by chapter 220 on interest income or profits on the sale of debt obligations owned by corporations.

(5) When property of the department ~~enterprise~~ is leased to another person or entity, the property shall be exempt from ad valorem taxation only if the use by the lessee qualifies the property for exemption under s. 196.199.

(6) A leasehold interest held by the department ~~enterprise~~ is not subject to intangible tax. However, if a leasehold interest held by the department ~~enterprise~~ is subleased to a nongovernmental lessee, such subleasehold interest shall be deemed to be an interest described in s. 199.023(1)(d), Florida Statutes 2005, and is subject to the intangible tax.

(7)(a) In order to be considered an agent of the department ~~enterprise~~ for purposes of the exemption from sales and use tax granted by subsection (3) for tangible personal property incorporated into the high-speed rail system, a contractor of the department ~~enterprise~~ that purchases or fabricates such tangible personal property must be certified by

1951 the department ~~enterprise~~ as provided in this subsection.

1952 (b)1. A contractor must apply for a renewal of the
1953 exemption not later than December 1 of each calendar year.

1954 2. A contractor must apply to the department ~~enterprise~~ on
1955 the application form adopted by the department ~~enterprise~~, which
1956 shall develop the form in consultation with the Department of
1957 Revenue.

1958 3. The department ~~enterprise~~ shall review each submitted
1959 application and determine whether it is complete. The department
1960 ~~enterprise~~ shall notify the applicant of any deficiencies in the
1961 application within 30 days. Upon receipt of a completed
1962 application, the department ~~enterprise~~ shall evaluate the
1963 application for exemption under this subsection and issue a
1964 certification that the contractor is qualified to act as an
1965 agent of the department ~~enterprise~~ for purposes of this section
1966 or a denial of such certification within 30 days. The department
1967 ~~enterprise~~ shall provide the Department of Revenue with a copy
1968 of each certification issued upon approval of an application.
1969 Upon receipt of a certification from the department ~~enterprise~~,
1970 the Department of Revenue shall issue an exemption permit to the
1971 contractor.

1972 (c)1. The contractor may extend a copy of its exemption
1973 permit to its vendors in lieu of paying sales tax on purchases
1974 of tangible personal property qualifying for exemption under
1975 this section. Possession of a copy of the exemption permit

relieves the seller of the responsibility of collecting tax on the sale, and the Department of Revenue shall look solely to the contractor for recovery of tax upon a determination that the contractor was not entitled to the exemption.

2. The contractor may extend a copy of its exemption permit to real property subcontractors supplying and installing tangible personal property that is exempt under subsection (3). Any such subcontractor may extend a copy of the permit to the subcontractor's vendors in order to purchase qualifying tangible personal property tax-exempt. If the subcontractor uses the exemption permit to purchase tangible personal property that is determined not to qualify for exemption under subsection (3), the Department of Revenue may assess and collect any tax, penalties, and interest that are due from either the contractor holding the exemption permit or the subcontractor that extended the exemption permit to the seller.

(d) Any contractor authorized to act as an agent of the department ~~enterprise~~ under this section shall maintain the necessary books and records to document the exempt status of purchases and fabrication costs made or incurred under the permit. In addition, an authorized contractor extending its exemption permit to its subcontractors shall maintain a copy of the subcontractor's books, records, and invoices indicating all purchases made by the subcontractor under the authorized contractor's permit. If, in an audit conducted by the Department

of Revenue, it is determined that tangible personal property purchased or fabricated claiming exemption under this section does not meet the criteria for exemption, the amount of taxes not paid at the time of purchase or fabrication shall be immediately due and payable to the Department of Revenue, together with the appropriate interest and penalty, computed from the date of purchase, in the manner prescribed by chapter 212.

(e) If a contractor fails to apply for a high-speed rail system exemption permit, or if a contractor initially determined by the department ~~enterprise~~ to not qualify for exemption is subsequently determined to be eligible, the contractor shall receive the benefit of the exemption in this subsection through a refund of previously paid taxes for transactions that otherwise would have been exempt. A refund may not be made for such taxes without the issuance of a certification by the department ~~enterprise~~ that the contractor was authorized to make purchases tax-exempt and a determination by the Department of Revenue that the purchases qualified for the exemption.

(f) The department ~~enterprise~~ may adopt rules governing the application process for exemption of a contractor as an authorized agent of the department ~~enterprise~~.

(g) The Department of Revenue may adopt rules governing the issuance and form of high-speed rail system exemption permits, the audit of contractors and subcontractors using such

permits, the recapture of taxes on nonqualified purchases, and the manner and form of refund applications.

Section 41. Effective July 1, 2023, paragraph (b) of subsection (4) of section 343.58, Florida Statutes, is amended to read:

343.58 County funding for the South Florida Regional Transportation Authority.—

(4) Notwithstanding any other provision of law to the contrary and effective July 1, 2010, until as provided in paragraph (d), the department shall transfer annually from the State Transportation Trust Fund to the South Florida Regional Transportation Authority the amounts specified in subparagraph (a)1. or subparagraph (a)2.

(b) Funding required by this subsection may not be provided from the funds dedicated to the State Transportation Trust Fund ~~Florida Rail Enterprise~~ pursuant to s. 201.15(4)(a)4.

Section 42. Paragraph (d) of subsection (2) of section 349.04, Florida Statutes, is amended to read:

349.04 Purposes and powers.—

(2) The authority is hereby granted, and shall have and may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of the aforesaid purposes, including, but without being limited to, the right and power:

(d) To enter into and make leases for terms not exceeding 99 ~~40~~ years, as either lessee or lessor, in order to carry out

the right to lease as set forth in this chapter.

Section 43. Paragraph (a) of subsection (4) of section 377.809, Florida Statutes, is amended to read:

377.809 Energy Economic Zone Pilot Program.—

(4)(a) Beginning July 1, 2012, all the incentives and benefits provided for enterprise zones pursuant to state law shall be available to the energy economic zones designated pursuant to this section on or before July 1, 2010. In order to provide incentives, by March 1, 2012, each local governing body that has jurisdiction over an energy economic zone must, by local ordinance, establish the boundary of the energy economic zone, specify applicable energy-efficiency standards, and determine eligibility criteria for the application of state and local incentives and benefits in the energy economic zone. However, in order to receive benefits provided under s. 288.106, a business must be a qualified target industry business under s. 288.106 for state purposes. An energy economic zone's boundary may be revised by local ordinance. Such incentives and benefits include those in ss. 212.08, 212.096, 220.181, 220.182, 220.183, 288.106, and 624.5105 and the public utility discounts provided in s. 290.007(8). The exemption provided in s. 212.08(5)(c) shall be for renewable energy as defined in s. 377.803. For purposes of this section, any applicable requirements for employee residency for higher refund or credit thresholds must be based on employee residency in the energy economic zone or an

enterprise zone. A business in an energy economic zone may also be eligible for funding under ss. 288.047 and 445.003, ~~and a transportation project in an energy economic zone shall be provided priority in funding under s. 339.2821.~~ Other projects shall be given priority ranking to the extent practicable for grants administered under state energy programs.

Section 44. For the purpose of incorporating the amendments made by this act to sections 327.33 and 327.4107, Florida Statutes, in references thereto, paragraphs (h) and (aa) of subsection (1) of section 327.73, Florida Statutes, are reenacted to read:

327.73 Noncriminal infractions.—

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

(h) Section 327.33(2), relating to careless operation.

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

1. For a first offense, \$50.

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

3. For a third or subsequent offense occurring 30 days or more after a previous offense, \$250.

Any person cited for a violation of any provision of this

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

Section 45. By October 1, 2020, the Department of Transportation, each expressway and bridge authority created pursuant to chapter 348, Florida Statutes, and the Mid-Bay Bridge Authority re-created pursuant to chapter 2000-411, Laws of Florida, shall each submit a report documenting its uncollected customer receivables to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Each report must include an aged summary of customer receivables for electronic toll collection as well as toll-by-plate as of June 30, 2020. Additionally, each report must include a schedule by year of customer receivables written off, sold to a collection agency, or assigned to a collection agency. Each report must include a detailed discussion by each entity from

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2126 its independent certified public accountant describing the
2127 accounting methodology used within the entity's audited
2128 financial statements to record revenue and bad debt.

2129 Section 46. The Legislature finds and declares that this
2130 act fulfills an important state interest.

2131 Section 47. Except as otherwise expressly provided in this
2132 act, this act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

SPONSOR(S): State Affairs Committee, Transportation & Tourism Appropriations Subcommittee, Transportation & Infrastructure Subcommittee, Andrade

TIED BILLS: **IDEN./SIM. BILLS:** SB 7054

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	11 Y, 0 N, As CS	Hicks	Davis
3) State Affairs Committee	23 Y, 0 N, As CS	Johnson	Williamson

SUMMARY ANALYSIS

The bill amends various statutes relating to transportation. In part, the bill:

- Effective July 1, 2023, repeals the Florida Rail Enterprise and transfers its functions to the Department of Transportation (DOT). It also authorizes DOT to utilize documentary stamp tax revenues currently allocated to the Florida Rail Enterprise for rail safety.
- Increases the debt service cap on Right-of-Way Acquisition and Bridge Construction Bonds.
- Removes the expiration date for funding of the Intermodal Logistics Center Infrastructure Support Program.
- Revises the definition of autocycle to incorporate federal safety standards.
- Increases the allowable weight of personal delivery devices.
- Adds road and bridge maintenance or construction vehicles and postal vehicles to the Move Over Law.
- Authorizes portable radar speed display units to display flashing red and blue lights under certain circumstances, and allows the use of flashing lights on vehicles during periods of extreme low visibility.
- Revises requirements governing the use of covers on vehicles hauling agricultural products.
- Increases the age at which a child must be secured in an approved child restraint device.
- Waives commercial driver license skill test requirements for qualifying veterans.
- 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.
- Provides that operating vessels in a certain manner near specified vessels constitutes careless operation of a vessel.
- Requires certain vessels to be removed from marinas located in deepwater seaports during hurricanes.
- Conforms specified airport zoning terminology and regulations to federal requirements.
- Revises qualification requirements for contractors desiring to bid on certain DOT contracts and requires the submission of specified financial statements.
- Authorizes airports to allow the same entity perform both design services and construction, engineering, and inspection services under certain circumstances.
- Requires DOT to provide the previous property owner the right of first refusal regarding the disposal of DOT property under certain circumstances.
- Requires permit applications for utility service on municipal or county rights-of-way to be acted upon in a specified period.
- Authorizes DOT to establish emergency staging areas along the Florida Turnpike system.
- Repeals the inactive Economic Development Transportation Fund.
- Increases the state's liability insurance cap for passenger rail to \$295 million.
- Extends the period the Jacksonville Transportation Authority may enter into leases.
- Requires DOT and specified bridge and expressway authorities to submit a report documenting their uncollected customer receivables.

The bill will have a fiscal impact on state and local governments. See Fiscal Analysis for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Transportation Rail Program/Florida Rail Enterprise

Present Situation

The Department of Transportation (DOT) is a decentralized agency headed by the Secretary of Transportation (secretary).¹ DOT is organized into seven geographic districts headed by district secretaries, as well as a turnpike enterprise and a rail enterprise, each of which are headed by an executive director. The Florida Rail Enterprise (FRE) executive director reports directly to the Secretary, and the FRE headquarters is in Leon County.²

DOT must develop and implement a rail program designed to ensure its proper maintenance, safety, revitalization, and expansion to assure its continued and increased availability, and to respond to statewide mobility needs. DOT's statutory rail requirements include:

- Providing the overall leadership, coordination, and financial and technical assistance necessary to assure the effective responses of the state's rail system to mobility needs.
- Promoting and facilitating the implementation of advanced rail systems.
- Developing and administering state standards concerning the safety and performance of rail systems.³

In 2009, the Legislature created the FRE within DOT.⁴ The FRE was modeled after the Florida Turnpike Enterprise. The secretary must delegate the responsibility for developing and operating the high-speed and passenger rail systems, direct funding for passenger rail systems, and coordinate publicly funded passenger rail operations, including freight rail interoperability issues to the FRE executive director.

DOT, through the FRE, is authorized to use funds allocated to the FRE from documentary stamp collections to fund:

- Up to 50 percent of the nonfederal share of the costs of any eligible passenger rail capital improvement project;
- Up to 100 percent of planning and development costs related to the provision of a passenger rail system;
- The high-speed rail system; and
- Projects necessary to identify or address anticipated impacts of increased freight rail traffic resulting from the implementation of passenger rail systems.⁵

The Florida Rail Enterprise Act,⁶ among other powers and duties, requires the FRE to "locate, plan, design, finance, construct, maintain, own, operate, and manage the high-speed rail system in this state."⁷ DOT is the only governmental entity authorized to acquire, construct, maintain, or operate the high-speed rail system, except upon specific authorization of the Legislature.⁸

To facilitate the most efficient and effective management of the rail enterprise, including the use of best business practices employed by the private sector, the FRE is exempt from DOT's policies, procedures, and standards, except as provided in the Consultants' Competitive Negotiation Act.⁹

¹ Section 20.23, F.S.

² Section 20.23(4), F.S.

³ Section 341.302, F.S.

⁴ Chapter 2009-271, L.O.F.

⁵ Section 341.303(5), F.S.

⁶ Sections 341.8201-341.842, F.S., are cited as the "Florida Rail Enterprise Act."

⁷ Section 341.822, F.S.

⁸ Section 341.8225, F.S.

⁹ Section 287.055, F.S.

The FRE, a single budget entity, submits its budget to the Legislature along with DOT's budget. All passenger rail funding is included in the FRE budget.¹⁰ The FRE is authorized to carry forward any unexpended funds appropriated to it to be used for any lawful purpose.¹¹ For fiscal year (FY) 2019-2020, the FRE was authorized one position and appropriated \$267 million.¹²

Rail Safety

In December 2019, due to the number of rail-related incidents in this state, the secretary directed DOT to implement a number of rail safety measures and to launch a statewide education initiative. The goal of the directive is to prevent additional fatalities on or near rail crossings on state roads and state owned land crossings. The directive included the following actions:

- Implementing dynamic envelopes¹³ at every existing DOT roadway and state-owned land rail crossing.
- Requiring the inclusion of a dynamic envelope in the standard design of any future railroad crossings on DOT roadways or state-owned land rail crossings.
- Launching a data-driven statewide rail safety education initiative in conjunction with rail partners.
- Partnering with state and local law enforcement agencies to help enforce rail safety laws.
- Continuing to partner with local and private rail partners by sharing DOT rail safety design standards and framework and encouraging their participation and implementation of the safety and engineering efforts.¹⁴

Documentary Stamp Tax

Chapter 201, F.S., provides for the levy of a documentary stamp tax on certain documents, such as deeds, bonds, notes and written obligations to pay money and mortgages, liens, and other evidence of indebtedness. After required distributions to the Land Acquisition Trust Fund¹⁵ and deducting the General Revenue service charge,¹⁶ the lesser of 24.18442 percent of the remainder of the tax proceeds or \$541.75 million in each fiscal year is deposited in the State Transportation Trust Fund (STTF).¹⁷ From that amount, \$75 million must be deposited into the General Revenue Fund. The remaining amount credited to the STTF must be used for:

- Capital funding for the New Starts Transit Program¹⁸ in the amount of 10 percent;
- The Small County Outreach Program¹⁹ in the amount of 10 percent;
- The Strategic Intermodal System²⁰ in the amount of 75 percent after deducting the payments for New Starts and Small County Outreach Program; and
- The Transportation Regional Incentive Program²¹ in the amount of 25 percent after deducting the payments for New Starts and Small County Outreach Program.

Currently, the first \$60 million of the funds allocated to the Transportation Regional Incentive Program are redirected annually to the FRE for the purposes established in s. 341.303(5), F.S.²²

¹⁰ Section 341.303(6)(a), F.S.

¹¹ Section 341.303(6)(b), F.S.

¹² Chapter 201-115, L.O.F. Specific appropriations 1953-1961.

¹³ A dynamic envelope is the area a vehicle should never stop in when it is crossing railroad tracks. Pavement markings and signage are provided around a rail crossing to emphasize the area and make drivers aware of the area they should never stop in. Email from John Kotyk, Deputy Director Legislative Affairs, DOT, RE: HB 1315-Rail Safety, Jan. 24, 2020 (Copy on file with Transportation & Infrastructure Subcommittee).

¹⁴ DOT, Press Release: *FDOT Secretary Directs Unprecedented Rail Safety Measures, Launches Statewide Education Statewide Education Initiative*, Dec. 5, 2019, available at https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/info/co/news/newsreleases/12052019-rail-safety.pdf?sfvrsn=f58dd329_2 (last visited Jan. 23, 2020).

¹⁵ Section 201.15(1) and (2), F.S.

¹⁶ Section 215.20, F.S.

¹⁷ Section 201.15(4), F.S.

¹⁸ See 49 U.S.C. s. 5309 and s. 341.051, F.S.

¹⁹ Section 339.2818, F.S.

²⁰ Sections 339.61-339.64, F.S.

²¹ Section 339.2819, F.S.

²² Section 201.15(4)(a)4., F.S.

Effect of the Bill

Florida Rail Enterprise

The bill repeals the FRE and transfers its functions and responsibilities to DOT, effective July 1, 2023. Effective July 1, 2023, the bill:

- Removes the statutory reference to the FRE within DOT's organization, as well as references to an FRE executive director, its headquarters, and its exemption from DOT policies, procedures, and standards. Rather than delegating responsibility for rail systems, passenger rail funding, and publicly funded passenger rail operations to the FRE executive director, the bill authorizes the secretary to delegate those responsibilities, including responsibility for rail safety, to a departmental entity to be named by the secretary.
- Removes DOT's duty to promote and facilitate the implementation of advanced rail systems, including high-speed rail and magnetic levitation systems,²³ and replaces it with the duty to coordinate the development, general rail safety, and operation of publicly funded passenger rail systems in this state. Responsibility for the high-speed rail system remains with DOT.
- Revises various sections of the Florida Rail Enterprise Act relating to high-speed rail to conform to the repeal of the FRE and the revised documentary stamp tax funding. The bill replaces the term "enterprise" with "department" and conforms cross-references.

Effective July 1, 2023, the bill amends s. 343.58(4), F.S., relating to DOT's funding of the South Florida Regional Transportation Authority, to prohibit such funding from documentary stamp tax funds dedicated to the STTF, rather than to the FRE.

Documentary Stamp Tax

The bill continues the current allocation to the FRE of the first \$60 million of funds allocated to the Transportation Regional Incentive Program for three fiscal years (FYs), 2020-2021, 2021-2022, and 2022-2023. This allocation to the FRE expires on July 1, 2023. Beginning in the FY 2023-2024, the bill annually transfers the same \$60 million to the STTF to be used for rail projects and rail safety improvements as provided in s. 341.303(5), F.S.

Rail Funding and FRE Budget

Effective July 1, 2023, the bill amends DOT's authorized uses of the documentary stamp tax allocation projects necessary to identify or address needed or desirable safety improvements to passenger rail systems in this state. The bill also removes the designation of the FRE as a single budget entity and other provisions relating to the FRE budget.

Right-of-Way Acquisition and Bridge Construction Bonds Debt Service Cap

Present Situation

DOT is authorized to issue Right-of-Way Acquisition and Bridge Construction bonds to finance or refinance the cost of acquiring real property for state roads, or to finance or refinance the cost of state bridge construction. Except for bonds issued to refinance previously issued bonds, bonds must be authorized by the Legislature and must be issued pursuant to the State Bond Act.²⁴

Section 206.46, F.S., authorizes DOT to transfer up to 7 percent of the revenues deposited into the STTF in each fiscal year to the Right-of-Way Acquisition and Bridge Construction Trust Fund, to meet the requirements to meet outstanding or proposed bond obligations. However, notwithstanding this authorized annual transfer, the annual amount transferred may not exceed an amount necessary to provide the required debt service coverage levels for a maximum debt service of \$275 million.²⁵

Section 339.139, F.S., requires DOT to manage all levels of debt to ensure that no more than 20 percent of total projected available state and federal revenues from the STTF, together with any local

²³ Section 341.301(2), F.S.

²⁴ Sections 215.57-215.83, F.S.

²⁵ Section 206.46(2), F.S.

funds committed to DOT projects, are committed to certain obligations in any year. Right-of-Way Acquisition and Bridge Construction Bonds are included in DOT's overall debt assessment.²⁶

According to DOT, the Right-of-Way Acquisition and Bridge Construction Bond program's debt service limit has not been adjusted since 2007. Based on DOT's most recent bond sale and Revenue Estimating Conference projections, the limit on debt service based on the 7 percent of revenues threshold would have been \$286.9 million in FY 2018-2019, and will increase to \$350 million in FY 2027-2028.²⁷

Effect of the Bill

The bill increases DOT's maximum debt service coverage level from \$275 million to \$350 million. Thus, under the bill, debt service could not exceed 7 percent of the revenues deposited into the STTF or \$350 million, whichever is less. The increase of the debt service cap will provide DOT with additional bonding capacity, offering it more flexibility in financing certain projects.

Obsolete General Revenue Surcharge References

Present Situation

Section 215.20(1), F.S., establishes an 8 percent service charge to the General Revenue Fund from all revenues deposited into most state trust funds,²⁸ representing the estimated pro rata share of the cost of general government.

Section 215.211, F.S., eliminates or reduces the general revenue service charge for specified proceeds. Effective July 1, 2002, the service charge for taxes distributed under s. 206.606(1), F.S., relating to the distribution of motor fuel taxes, s. 212.0501(6), F.S., relating to taxes on diesel fuel for business purposes, and s. 319.32(5), F.S., providing for the disposition of fees from certificate of title transactions, were eliminated.²⁹ Additionally, the service charge was eliminated, beginning July 1, 2001, on taxes distributed under s. 206.608, F.S., relating to the State Comprehensive Enhanced Transportation System Tax.³⁰ While the service charge was eliminated, references to the service charge remain in statute creating each of the above taxes or fees.³¹

Effect of the Bill

The bill removes obsolete references to the general revenue service charge in ss. 206.606(1), 206.608, 212.0501(6) and 319.32(5), F.S.

Intermodal Logistics Center Infrastructure Support Program

Present Situation

An intermodal logistics center is a facility serving as a point of intermodal transfer of freight in a specific area physically separated from a seaport where activities relating to transport, logistics, goods distribution, consolidation, or value-added activities are carried out, and whose activities and services are designed to support or be supported by conveyance or shipping through one or more seaports.³²

DOT's Intermodal Logistics Center Infrastructure Support Program provides funds for roads, rail facilities, or other means for the conveyance or shipment of goods through a seaport. DOT may provide funds to assist with local government projects or projects performed by private entities that meet the

²⁶ DOT Legislative Concepts, Change the Right-of-Way Acquisition and Bridge Construction Bonds Debt Service Cap (Copy on file with Transportation & Infrastructure Subcommittee).

²⁷ *Id.*

²⁸ Exceptions are enumerated in s. 215.22, F.S.

²⁹ Section 215.211(1), F.S.

³⁰ Section 215.211(2), F.S.

³¹ DOT Legislative Proposal, Remove Obsolete Language Relating to Service Charge (Copy on file with Transportation & Infrastructure Subcommittee).

³² Section 311.101(2), F.S.

public purpose of enhancing transportation facilities for the conveyance or shipment of goods through a seaport,³³ and may provide up to 50 percent of project costs for eligible projects.³⁴

When evaluating projects, DOT must consider the ability for a project to serve a strategic state interest, the ability of the project to facilitate the cost effective and efficient movement of goods, the extent the project contributes to economic activity, and certain financial and business commitments related to the project.³⁵

At least \$5 million per year must be made available from the STTF for the Intermodal Logistics Center and Infrastructure Support Program. This minimum funding requirement expires on July 1, 2020.³⁶ According to DOT, this program has leveraged local and private funding to complete 12 unique, geographically distributed projects across the state.³⁷

Effect of the Bill

The bill removes the July 1, 2020, expiration date for the \$5 million minimum annual funding for the Intermodal Logistics Center Infrastructure Support Program.

Autocycles

Present Situation

An “autocycle” is 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. An autocycle must be manufactured in accordance with the applicable federal motorcycle safety standards by a manufacturer registered with the National Highway Traffic Safety Administration.³⁸ Autocycle drivers are not required to hold a motorcycle endorsement on his or her driver license.³⁹

Federal Motor Vehicle Safety Standard No. 122⁴⁰ 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 requires an autocycle to have brakes meeting federal safety standards for motorcycle brakes, rather than specifying antilock brakes.

Personal Delivery Devices

Present Situation

A personal delivery device (PDD) is an 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.⁴¹

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.⁴²

³³ Section 311.101(1), F.S.

³⁴ Section 311.101(6), F.S.

³⁵ Section 311.101(3), F.S.

³⁶ Section 311.101(7), F.S.

³⁷ DOT Legislative Proposal, Intermodal Logistics Center Support Program (Copy on file with Transportation & Infrastructure Subcommittee).

³⁸ Section 316.003(2), F.S.

³⁹ Sections 322.03(4) and 322.12, F.S.

⁴⁰ 49 C.F.R. 571.122

⁴¹ Section 316.003(55), F.S.

⁴² Section 316.2071(1), F.S.

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.⁴³ A PDD 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.⁴⁴

Effect of the Bill

The bill increases the statutory weight limit of a PDD from 80 pounds to 150 pounds.

Move Over Law

Present Situation

Under Florida's Move Over Law, if an emergency vehicle, a sanitation vehicle, a utility service vehicle, or a wrecker is working along the side of the road, every other driver must vacate the lane closest to the vehicle when driving on a highway with two or more lanes traveling in the direction of the vehicle. If such movement cannot be safely accomplished, the driver must reduce his or her speed to a speed that is 20 miles per hour less than the posted speed limit when the posted speed limit is 25 miles per hour or greater, or travel at 5 miles per hour when the posted speed limit is 20 miles per hour or less, when driving on a two-lane road.⁴⁵ The purpose of the Move Over Law is to protect workers stopped along the road performing their jobs.⁴⁶

A violation of the Move Over Law is a noncriminal traffic infraction, punishable as a moving violation.⁴⁷ The statutory base fine for a moving violation is \$60, but with additional fees assessed by the state and local governments, the total fine increases to \$158.⁴⁸

According to DOT, for the safety of both workers and the public, temporary traffic control⁴⁹ is required for maintenance and construction activities. However, due to the risks associated with setting up traffic controls for short duration work activities, such as fence repair, ditch repair, or tree trimming, such controls may be omitted. This places road and bridge maintenance or construction vehicles in situations similar to vehicles identified in the Move Over Law,⁵⁰ where they are working along the road without any protection from adjacent traffic.

Section 316.2397, F.S., prohibits certain lights on vehicles and provides certain exceptions. With regard to road and bridge construction or maintenance vehicles, the statute provides that:

- Road or street maintenance equipment, road or street maintenance vehicles, road service vehicles, refuse collection vehicles, petroleum tankers, and mail carrier vehicles may show or display amber lights when in operation or a hazard exists.
- 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.⁵¹

Effect of the Bill

⁴³ Section 316.0271(2), F.S.

⁴⁴ Section 316.2071(3), F.S.

⁴⁵ Section 316.126(1)(b), F.S.

⁴⁶ Florida Driver Handbook, 2019, p. 44, available at <https://www3.flhsmv.gov/handbooks/englishdriverhandbook.pdf> (last visited Jan. 31, 2020).

⁴⁷ Section 316.126(6), F.S.

⁴⁸ Florida Court Clerks and Comptrollers Association, *2019 Distribution of Court Related Filing Fees, Service Charges, and Fines*, available at https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/advisories/advisories_2019/19bull053_Attach_1_2019_Dist.pdf (last visited Jan. 13, 2019).

⁴⁹ Temporary traffic control is considered the devices and personnel that change road conditions for a work zone or following an incident. Email from John Kotyk, Deputy Director Legislative Affairs, DOT, Questions, January 31, 2020 (Copy on file with Transportation & Infrastructure Subcommittee).

⁵⁰ DOT Legislative Proposal, Move Over Law (Copy on file with Transportation & Infrastructure Subcommittee).

⁵¹ Section 316.2397(4) and (5), F.S.

The bill adds road and bridge maintenance or construction vehicles displaying warning lights consistent with s. 316.2397, F.S., operating on the roadside without advance signs and channelizing devices (such as traffic cones or barricades) and vehicles delivering the United States mail to the list of vehicles subject to the Move Over Law. This will require drivers to move over to a different lane or decrease their speed when road and bridge maintenance or construction vehicles or mail delivery vehicles are displaying warning lights on the roadside.

Flashing Red and Blue Lights on Portable Radar Speed Display Units

Present Situation

Florida law prohibits blue lights on any vehicle or equipment, except police vehicles and vehicles of the Department of Corrections or any county correctional agency when responding to emergencies.⁵²

Road or street maintenance equipment, road or street maintenance vehicles, road service vehicles, refuse collection vehicles, petroleum tankers, and mail carrier vehicles may display amber lights when in operation or a hazard exists.⁵³ 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.⁵⁴

The Manual on Uniform Traffic Control Devices (MUTCD), adopted by DOT pursuant s. 316.0745, F.S., describes portable, changeable message signs as temporary traffic control devices installed for temporary use with the flexibility to display a variety of messages, including warning messages where traffic speed is expected to drop substantially.⁵⁵ Warning lights used in a temporary traffic control zone, in either a steady burn or a flashing mode, are yellow in color as required by the MUTCD.⁵⁶ In addition, the MUTCD provides that “[i]f a changeable message sign displaying approach speeds is installed, the legend YOUR SPEED XX MPH or such similar legend should be displayed. The color of the changeable message legend should be a yellow legend on a black background or the reverse of these colors.”⁵⁷

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.⁵⁸

With the exception of funeral processions,⁵⁹ Florida law does not expressly authorize the use of hazard lights on moving vehicles. The Florida Driver Handbook indicates that a driver *should not* use

⁵² Section 316.2397(2), F.S.

⁵³ Section 316.2397(4), F.S.

⁵⁴ Section 316.2397(5), F.S.

⁵⁵ MUTCD, Section 6F.60, available at <https://mutcd.fhwa.dot.gov/pdfs/2009r1r2/mutcd2009r1r2edition.pdf> (last visited Feb. 12, 2020).

⁵⁶ MUTCD, Section 1A.13, definition of “warning light.”

⁵⁷ MUTCD, Section 2B.13.

⁵⁸ Section 316.2397(7), F.S.

⁵⁹ Section 316.1974(3)(c), F.S.

emergency flashers in instances of low visibility or rain, and may only use emergency flashers when a vehicle is disabled or stopped on the side of the road.⁶⁰

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 miles per hour or more, effectively authorizing the use of hazard lights on moving vehicles under specified circumstances.

Agricultural Loads on Vehicles

Present Situation

Federal rules require 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.⁶¹

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.⁶²

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, 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.⁶³ 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.⁶⁴

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 on roads where the posted speed limit is 65 miles per hour or less to travel an unlimited distance without covering the load.

Child Restraint Requirements

Present Situation

Motor vehicle injuries are a leading cause of death among children in the United States.⁶⁵ However, use of a car seat reduces the risk of death to children by 71 to 82 percent, when compared with seat belt use alone.⁶⁶ Additionally, the use of a booster seat reduces the risk of serious injury by 45 percent for children aged 4-8 years.⁶⁷

The National Highway Traffic Safety Administration, the Center for Disease Control Prevention, and the American Academy of Pediatrics have produced guidelines for parents and caregivers to make sure children are secured appropriately for their age, height, and weight. For instance, the American Academy of Pediatrics' guidelines provide:

- All infants and toddlers should ride in a rear-facing car safety seat (CSS) until they are two years of age or until they reach the highest weight or height allowed by the manufacturer of their CSS.

⁶⁰ 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).

⁶¹ 49 C.F.R. 393.100

⁶² Section 316.520(1), F.S.

⁶³ Section 316.520(2), F.S.

⁶⁴ Section 316.520(4), F.S.

⁶⁵ Centers for Disease Control and Prevention, *Child Passenger Safety: Get the Facts*, available at http://www.cdc.gov/motorvehiclesafety/child_passenger_safety/cps-factsheet.html (last visited Oct. 16, 2019).

⁶⁶ *Id.*

⁶⁷ *Id.*

- All children two years of age or older, or those younger than two years of age who have outgrown the rear-facing weight or height limit for their CSS, should use a forward-facing CSS with a harness for as long as possible, up to the highest weight or height allowed by the manufacturer of their CSS.
- All children whose weight or height is above the forward-facing limit for their CSS should use a belt-positioning booster seat until the vehicle lap-and-shoulder seat belt fits properly, typically when they have reached 4 feet 9 inches in height and are between eight and 12 years of age.
- When children are old enough and large enough to use the vehicle seat belt alone, they should always use lap-and-shoulder seat belts for optimal protection.
- All children younger than 13 years of age should be restrained in the rear seats of vehicles for optimal protection.⁶⁸

All 50 states and the District of Columbia have laws requiring some type of child restraint seat for children under a certain age, height, or weight. The majority of states require child restraint seats until age six or seven.⁶⁹ Additionally, many states require a rear facing CSS for children under a certain age and weight.⁷⁰

Florida law requires every operator of a motor vehicle operated on its roadways, streets, or highways to provide for protection of a child who is five years of age or younger by properly using a crash-tested, federally approved child restraint device:

- For children from birth through three years of age, the device must be a separate carrier or a vehicle manufacturer's integrated child seat.
- For children aged four through five years of age, a separate carrier, an integrated child seat, or a child booster seat may be used. However, the requirement does not apply when a safety belt is used and the child:
 - Is being transported gratuitously by an operator who is not a member of the child's immediate family;
 - Is being transported in a medical emergency situation involving the child; or
 - Has a medical condition that necessitates an exception as evidenced by appropriate documentation from a health care professional.⁷¹

A person who violates Florida's child restraint requirements commits a moving violation punishable by a penalty of \$60 plus any applicable local court costs.⁷² In addition, the violator will have three points assessed against his or her driver license.⁷³ In lieu of the monetary penalty and the assessment of points, a violator may elect to participate in a child restraint safety program, with the approval of the court with jurisdiction over the violation. After completing the program, the court may waive the monetary penalty and must waive the assessment of points.⁷⁴ In 2019, there were 8,394 child restraint device violations.⁷⁵

Effect of the Bill

The bill increases the age for requiring a crash-tested, federally approved child restraint device from five years of age or younger, to six years of age or younger. The bill conforms the provision to provide that from age four through six years of age, a separate carrier, an integrated child seat, or a child booster seat may be used. As a result, children being transported in a child restraint device in compliance with the current provisions of s. 316.613(1) and (1)(a)2., F.S., must be kept in that (or another) compliant device for one additional year if the child is younger than six years old.

⁶⁸ American Academy of Pediatrics, *Child Passenger Safety*, April 2011, available at <https://pediatrics.aappublications.org/content/127/4/788> (last visited Oct. 18, 2019).

⁶⁹ AAA Digest of Motor Laws, *Child Passenger Safety*, available at <https://drivinglaws.aaa.com/tag/child-passenger-safety/> (last visited Oct. 21, 2019).

⁷⁰ *Id.*

⁷¹ Section 316.613, F.S.

⁷² Section 318.18(3)(a), F.S.

⁷³ Section 322.27(3)(d)7., F.S.

⁷⁴ Section 316.613(5), F.S.

⁷⁵ Email from Kevin Jacobs, Deputy Legislative Affairs Director, DHSMV, February 4, 2020 (Copy on file with Transportation & Infrastructure Subcommittee).

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.⁷⁶

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 the applicant is seeking, including his or her ability to perform a vehicle inspection.⁷⁷

Under Federal Motor Carrier Safety Administration rules, states may waive knowledge and skill test requirements for CDLs 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.⁷⁸

Under DHSMV's rules, applicants seeking a waiver of CDL skill testing due to military experience must pass all written knowledge exams for the appropriate 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.⁷⁹

Effect of the Bill

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

For-hire 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.⁸⁰ However, a motor vehicle owner or lessee required to maintain insurance, including lessors of motor vehicles and owners who operate at least 300 for-hire passenger vehicles, may prove financial responsibility through self-insurance.⁸¹

Effect of the Bill

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 who is a member of the Florida Insurance Guarantee Association, 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-insurance to 150 vehicles, from 300 vehicles.

⁷⁶ Section 322.12(1), F.S.

⁷⁷ Section 322.12(4), F.S.

⁷⁸ 49 C.F.R. 383.77

⁷⁹ Rule 15A-7.018, F.A.C.

⁸⁰ The Florida Insurance Guaranty Association is created in s. 631.55, F.S.

⁸¹ 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.

Vessel Regulation

Present Situation

Boating Speed Safety Regulations

In Florida, a vessel⁸² must be operated 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.⁸³ A person operating a vessel in excess of a posted speed limit is guilty of a civil infraction.⁸⁴

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. Mooring is accomplished using 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.⁸⁵

State Regulation of the Anchoring or Mooring of Vessels

Florida law prohibits a person from anchoring a vessel, except in case of emergency, in a manner that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel.⁸⁶ Anchoring under bridges or in or adjacent to heavily traveled channels constitutes interference, if unreasonable under the prevailing circumstances.⁸⁷ Interference with navigation is a noncriminal infraction and punishable by a fine of \$50.⁸⁸

With certain exceptions, 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; 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.⁸⁹

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 five business days or until the vessel is repaired, whichever occurs first; or
- 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.⁹⁰

⁸² 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.

⁸³ Section 327.33, F.S.

⁸⁴ Section 327.73(h), F.S.

⁸⁵ 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 (last visited Feb. 23, 2020).

⁸⁶ Section 327.44, F.S.

⁸⁷ Section 327.44(2), F.S.

⁸⁸ Section 327.73, F.S.

⁸⁹ Section 327.4109(1), F.S.

⁹⁰ Section 327.4109(2), F.S.

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.⁹¹

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.⁹²

Effect of the Bill

Careless Operation of Vessels

The bill amends s. 327.33, F.S., relating to the reckless or careless operation of a vessel. The bill provides that if an individual operates a vessel at a speed greater than slow speed, minimum wake upon approaching within 300 feet of any emergency vessel, including but not limited to, a law enforcement vessel, a United States Coast Guard vessel, or firefighting vessel, when such emergency vessel has its emergency lights activated, he or she commits careless operation. This provision does not apply to law enforcement vessels, firefighting vessels, and rescue vessels owned or operated by a governmental entity.

A vessel is not considered to be operating at slow speed, minimum wake if it is:

- Operating on plane;
- In the process of coming off plane and settling into the water or getting on plane; or
- Operating at a speed that creates a wake that unreasonably or unnecessarily endangers other vessels.

The bill provides that if an individual operates a vessel at a speed greater than slow speed, minimum wake, upon approaching within 300 feet of any construction vessel or barge when the vessel or barge is displaying an orange flag indicating the vessel is actively engaged in construction operations, he or she commits careless operation. This provision does not apply to law enforcement vessels, firefighting vessels, and rescue vessels owned or operated by a governmental entity. The required flag is considered sufficient if it:

- Is at least 2 feet by 3 feet in size;
- Is displayed from a pole extending 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;
- Is constructed to ensure that the flag remains fully unfurled and extended in the absence of a wind or breeze;
- Is displayed so that the visibility of the flag is not obscured in any direction; and
- Is, during periods of low visibility, including any time between the hours from one-half hour after sunset and one-half hour before sunrise, illuminated such that it is visible from a distance of at least two nautical miles.

Vessels at Risk of Becoming Derelict

The bill prohibits an owner or responsible party of a vessel at risk of becoming derelict, who has been issued a citation for a second violation for the same vessel, from anchoring or mooring the vessel to, or within 20 feet of, a mangrove or upland vegetation on public lands. The 20-foot distance is measured in a straight line from the point of the vessel closest to the outermost branches of the mangrove or vegetation. The bill provides that a violation is a noncriminal infraction.

The bill authorizes the Florida Fish and Wildlife Conservation Commission (FWC) and its officers, county sheriffs and deputies, municipal police officers, and other municipal officers to relocate or cause to be relocated at-risk vessels in violation to a distance of greater than 20 feet from any mangrove or upland vegetation. FWC or any law enforcement officer that relocates an at-risk vessel upon state

⁹¹ Section 327.4109(3), F.S.

⁹² Section 327.4019(4), F.S.

waters is held harmless for any damages to the vessel resulting from relocation, unless the damage is the result of gross negligence or willful misconduct.

Marina Evacuations

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.⁹³

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, and such fees must be disclosed in the contract.⁹⁴

A marina owner is not liable for any damage incurred to a vessel from storms or hurricanes and is held harmless because 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.⁹⁵

Effect of the Bill

The bill provides that 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 United States Coast Guard Captain of the Port sets the deepwater seaport condition to Yankee⁹⁶ 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 because of such actions to remove the vessel from the waterways. The bill 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 evacuation order from the deepwater seaport, may be subject to a fine not exceeding three times the cost associated with removing the vessel from the waterway. The deepwater seaport issuing the evacuation order may impose and collect assessed fines.

⁹³ Section 327.59(2), F.S.

⁹⁴ Section 327.59(3), F.S.

⁹⁵ Section 327.59(4), F.S.

⁹⁶ Hurricane Port condition Yankee is 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.

Airport Zoning

Present Situation

Florida's airport zoning laws⁹⁷ require every political subdivision having an airport hazard area⁹⁸ within its territorial limits to adopt, administer, and enforce airport protection zoning regulations for such area. The statute contains minimum requirements for airport protection zoning regulations, including the requirement for documentation showing compliance with the federal requirement for notification of proposed construction or alteration of structures and a valid aeronautical study submitted by each person applying for a permit.⁹⁹

Effect of the Bill

The bill revises the minimum requirements for airport protection zoning regulations to require a final valid determination from the Federal Aviation Administration, instead of the currently required aeronautical study. This will conform state statutes to federal requirements.¹⁰⁰

DOT Application for Qualification

Present Situation

Any contractor desiring to bid for the performance of any DOT construction contract in excess of \$250,000 must first be certified by DOT as qualified.¹⁰¹

A contractor who is not already qualified and in good standing with DOT as of January 1, 2019, who 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.¹⁰²

Each application for certification must be accompanied by the 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 contractor's financial condition more than four months prior to the date on which DOT receives the application, the 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.¹⁰³

Effect of the Bill

The bill clarifies that a contractor must be certified by DOT as qualified before bidding on contracts in excess of \$50 million, in addition to having successfully completed two projects, each in excess of \$15 million for DOT or another state transportation department.

The bill requires each application for certification to be accompanied by audited financial statements prepared in accordance with United States generally accepted accounting principles and United States generally accepted auditing standards by a certified public accountant licensed in this state or another state. The 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 contractor's parent entity. DOT may not certify as qualified any contractor that fails to submit the required audited financial statements.

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

⁹⁷ Chapter 333, F.S.

⁹⁸ Section 333.03(1)(a), F.S. Section 333.01(4), F.S., defines the term "airport hazard area" as any area of land or water upon which an airport hazard might be established.

⁹⁹ Section 333.03(1)(c)3., F.S.

¹⁰⁰ DOT Legislative Proposal, Airport Determination Terminology (Copy on file with Transportation & Infrastructure Subcommittee).

¹⁰¹ Section 337.14(1), F.S. DOT's rules regarding qualifications to bid are contained in Ch. 14-22, F.A.C.

¹⁰² Section 337.14(1), F.S.

¹⁰³ *Id.*

Airport Construction Projects

Present Situation

Under current law, a contractor,¹⁰⁴ or his or her affiliate¹⁰⁵ qualified with DOT, may not also qualify to provide testing services, construction, engineering, and inspection (CEI) services to DOT.¹⁰⁶ This limitation does not apply to any design-build prequalification¹⁰⁷ and does not apply when DOT otherwise determines by written order at least 30 days before advertisement that the limitation is not in the public's best interests with respect to a particular contract for testing services and CEI services.

DOT has adopted procedures governing conflicts of interest involving professional services consultant contracts and design-build contracts. The procedures contain a set of matrixes illustrating the variety of scenarios encountered with prime or subcontractors and when DOT would consider the arrangement a conflict.¹⁰⁸

In 2019, the Legislature passed HB 905,¹⁰⁹ which provided that for a construction project wholly or partially funded by DOT and administered by a local governmental entity, the same entity may not perform both design services and CEI services. That bill exempted certain seaports from that provision.

Effect of the Bill

The bill provides airports with the same exemption for design services and CEI services afforded seaports in 2019.

DOT Disposal of Real Property

Present Situation

DOT is authorized to convey any land, building, or other real or personal property it acquired if DOT determines the property is not needed for a transportation facility.¹¹⁰ In such cases, DOT may dispose of the property through negotiations, sealed competitive bids, auctions, or any other means DOT deems to be in its best interest. DOT must advertise the disposal of property valued by DOT at greater than \$10,000.¹¹¹

A sale of unneeded property may not occur at a price less than DOT's current estimate of value except that:

- If donated for transportation purposes and a transportation facility has not been constructed for at least five years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor, a governmental entity in whose jurisdiction the property lies may authorize reconveyance of the donated property for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives.¹¹²

¹⁰⁴ Section 337.165(1)(d), F.S., defines the term "contractor" as any person who bids or applies to bid on work let by DOT or any counterpart agency of any other state or of the Federal Government or who provides professional services to DOT or other such agency. The term "contractor" includes the officers, directors, executives, shareholders active in management, employees, and agents of the contractor.

¹⁰⁵ Section 337.165(1)(a), F.S., defines the term "affiliate" as a predecessor or successor of a contractor under the same, or substantially the same, control or a group of business entities which are connected or associated so that one entity controls or has the power to control each of the other business entities. The term "affiliate" includes the officers, directors, executives, shareholders active in management, employees, and agents of the affiliate. The ownership by one business entity of a controlling interest in another business entity or a pooling of equipment or income among business entities must be prima facie evidence that one business entity is an affiliate of another.

¹⁰⁶ Section 337.14, F.S.

¹⁰⁷ Design-build prequalification is pursuant to s. 337.11(7), F.S.

¹⁰⁸ Topic No.: 375-030-006-c, Conflict of Interest Procedure for Department Contracts (Copy on file with Transportation & Infrastructure Subcommittee).

¹⁰⁹ Chapter 2019-153, L.O.F.

¹¹⁰ Section 337.25(1) and (4), F.S.

¹¹¹ Section 337.25(4), F.S.

¹¹² Section 337.25(4)(a), F.S.

- If the property is to be used for a public purpose, the property may be conveyed without consideration to a governmental entity.¹¹³
- If the property was originally acquired specifically to provide replacement housing for persons displaced by transportation projects, DOT may negotiate for the sale of such property as replacement housing.¹¹⁴

If DOT determines the property requires significant costs to be incurred or that continued ownership of the property exposes DOT to significant liability risks, DOT may use the projected maintenance costs over the next 10 years to offset the property's value in establishing a value for disposal of the property, even if that value is zero.¹¹⁵

If in DOT's discretion a sale to a person other than an abutting property owner would be inequitable, the property may be sold to the abutting owner for DOT's current estimate of value.¹¹⁶

In cases of property to be used for a public purpose, and in cases of property requiring significant costs to be incurred or exposing DOT to significant liability risks, as described above, DOT may, but is not required, to first offer the property ("right of first refusal") to the local government or other political subdivision in whose jurisdiction the property is situated.¹¹⁷

Effect of the Bill

The bill requires DOT, notwithstanding any provision of s. 337.25, F.S., to the contrary, to afford a right of first refusal to the previous property owner from whom DOT originally acquired the property for DOT's current estimate of value in cases of property to be used for a public purpose, in cases of property requiring significant costs to be incurred or exposing DOT to significant liability risks, and in cases in which DOT determines that a sale to any person other than an abutting property owner would be inequitable.

In cases of property to be used for a public purpose, and in cases of property requiring significant costs to be incurred or exposing DOT to significant liability risks, DOT must offer a right of first refusal to the previous property owner before being authorized to offer the property to the local government or other political subdivision in whose jurisdiction the property is located.

The bill requires DOT to offer the previous property owner the right of first refusal in writing, by certified mail or hand delivery, effective upon receipt of the property owner. The offer must provide the previous property owner at least 30 days to exercise the right of first refusal. If the previous property owner wants to purchase the property, the owner must send notice to DOT by certified mail or hand delivery, and such acceptance is effective upon dispatch. Once the right is exercised, the previous property owner has at least 90 days to close on the property.

Utility Right-of-Way Permits

Present Situation

Section 337.401, F.S., provides that the use of the right-of-way for utilities is subject to regulation. Authorities, defined as the DOT and local governmental entities,¹¹⁸ may prescribe and enforce

¹¹³ Section 337.25(4)(b), F.S.

¹¹⁴ Section 337.25(4)(c), F.S.

¹¹⁵ Section 337.25(4)(d), F.S.

¹¹⁶ Section 337.25(4)(e), F.S.

¹¹⁷ Section 337.25(4), F.S.

¹¹⁸ Section 334.03(13), F.S., defines the term "local governmental entity" as a unit of government with less than statewide jurisdiction, or any officially designated public agency or authority of such a unit of government, that has the responsibility for planning, construction, operation, or maintenance of, or jurisdiction over, a transportation facility; the term includes, but is not limited to, a county, an incorporated municipality, a metropolitan planning organization, an expressway or transportation authority, a road and bridge district, a special road and bridge district, and a regional governmental unit.

reasonable rules or regulations regarding the placing and maintaining of utilities within the right-of-way limits of any road or publicly owned rail corridors under their respective jurisdictions.¹¹⁹

An authority may grant to any person who is a Florida resident, or to any corporation organized under Florida law or licensed to do business within Florida, the use of a right-of-way for the utility in accordance with the authority's adopted rules or regulations. However, a utility may not be installed, located, or relocated unless authorized by a written permit issued by the authority. For roads or rail corridors under DOT's jurisdiction, a utility relocation schedule and relocation agreement may be executed in lieu of a written permit.¹²⁰

The Advanced Wireless Infrastructure Deployment Act (wireless act)¹²¹ authorizes the deployment of certain wireless facilities in the public right-of-way. The wireless act permits a local government¹²² to require a registration process and permit fees and provides requirements for processing and issuing such permits.¹²³

Under the wireless act, an authority must, within 14 days after receiving an application, determine and notify the applicant, by electronic mail, as to whether the application is complete. If it determines the application is incomplete, the authority must specifically identify the missing information. An application is deemed complete if the authority fails to notify the applicant within 14 days.¹²⁴

A complete application is deemed approved if an authority fails to approve or deny the application within 60 days after receipt of the application. If an authority does not use a 30-day negotiation period,¹²⁵ the parties may mutually agree to extend the 60-day application review period. The authority must grant or deny the application at the end of the extended review period.¹²⁶

The authority must notify the applicant of approval or denial by electronic mail.¹²⁷ An authority must approve a complete application unless it does not meet the authority's applicable codes.¹²⁸ If the application is denied, the authority must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the authority denies the application.¹²⁹ The applicant may cure the identified deficiencies and resubmit the application within 30 days after notice of the denial is sent to the applicant. The authority must approve or deny the revised application within 30 days after receipt or the application is deemed approved.¹³⁰

The review of a revised application is limited to the deficiencies cited in the denial. If an authority provides for administrative review of the denial of an application, the review must be complete and a written decision issued within 45 days after a written request for review is made. A denial must identify the specific code provisions on which the denial is based. If the administrative review is not complete

¹¹⁹ Section 337.401(1)(a), F.S. That paragraph defines the term "utility" as electric transmission, voice, telegraph, data, or other communications services lines or wireless facilities; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures.

¹²⁰ Section 337.401(2), F.S.

¹²¹ Section 337.401(7), F.S.

¹²² For purposes of the wireless act, s. 337.401(7)(b)5., F.S., provides that the term "authority" means a county or municipality having jurisdiction and control of the rights-of-way of any public road. The term does not include DOT. As such, DOT is excluded from expedited timeframes in the wireless act.

¹²³ Section 337.401(7)(d), F.S.

¹²⁴ Section 337.401(7)(d)7., F.S.

¹²⁵ The 30-day negotiation period is provided for in s. 337.401(7)(d)4., F.S.

¹²⁶ Section 337.401(7)(d)8., F.S. This subparagraph also requires applications to be processed on a nondiscriminatory basis.

¹²⁷ Section 337.401(7)(d)9., F.S.

¹²⁸ Section 337.401(7)(b)2., F.S., defines the term "applicable codes" as uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, and includes the National Electric Safety Code and the 2017 edition of DOT Utility Accommodation Manual.

¹²⁹ Section 337.401(7)(d)9., F.S.

¹³⁰ *Id.*

within 45 days, the authority waives any claim regarding failure to exhaust administrative remedies in any judicial review of the denial of an application.¹³¹

Effect of the Bill

The bill provides that a permit application relating to the use of the right-of-way for utilities required by a county or municipality under s. 337.401, F.S., must be acted on within the timeframes provided in the wireless act. Specifically, the bill requires the authority to determine whether an application is complete within 14 days after receiving the application and requires an application to be approved or denied within 60 days of receipt of the application. The bill also requires requests for reviews of denials of applications to be completed within 45 days of the request being made.

Emergency Staging Areas

Present Situation

Chapter 252, F.S., confers certain emergency powers upon the Governor, the Division of Emergency Management (DEM), and the governing bodies of each political subdivision of the state when an emergency or disaster occurs.¹³² Section 252.359, F.S., charges DEM with establishing “a statewide system to facilitate the transportation and distribution of essentials in commerce...to meet the needs of residents affected during a declared emergency and to ensure continuing economic resilience of communities impacted by disaster.”¹³³ Similarly, among other related authority, political subdivisions are authorized to obtain and distribute equipment, materials, and supplies for emergency management purposes.¹³⁴

DOT’s Florida Turnpike Enterprise operates the Florida Turnpike System, which includes the Turnpike Mainline, the Homestead Extension, Sawgrass Expressway, Seminole Expressway, Beachline Expressway, Southern Connector Extension, Veterans Expressway, Suncoast Parkway, Polk Parkway, Western Beltway, and the I-4 Connector.¹³⁵ In addition, any future multi-use corridor of regional significance (M-CORES) will be part of the turnpike system.¹³⁶ The following corridors comprise the M-CORES Program:

- Southwest-Central Florida Connector (Collier County to Polk County);
- Suncoast Connector (Citrus County to Jefferson County); and
- Northern Turnpike Connector (northern terminus of the Florida Turnpike northwest to the Suncoast Parkway).¹³⁷

Effect of the Bill

The bill authorizes DOT to plan, design, and construct staging areas for emergency response as part of the turnpike system. The sites are intended to be designated areas for the staging of emergency supplies, equipment, and personnel to facilitate the prompt provision of emergency assistance to the public in response to a declared state of emergency. The bill provides that emergency supplies, such as water, fuel, generators, vehicles, equipment, and other related materials, staged at key geographic points will aide in emergency response and assistance, including evacuations, deployment of emergency-related supplies and personnel, and restoration of essential services.

In selecting a proposed site, DOT, in consultation with DEM, must consider the extent to which a proposed site for a staging area:

- Is located in a geographic area that best facilitates wide dissemination of emergency-related supplies and equipment;

¹³¹ Section 337.401(7)(d)9., F.S.

¹³² Section 252.32(1)(b), F.S.

¹³³ Section 252.359, F.S., defines the term “essentials” to mean goods that are consumed or used as a direct result of a declared emergency, or that are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being.

¹³⁴ Section 252.38(3), F.S.

¹³⁵ For a map of the system, see Florida’s Turnpike, *About*, available at <http://www.floridasturnpike.com/about.html> (last visited Feb. 22, 2020).

¹³⁶ M-CORES is authorized pursuant to s. 338.2278, F.S.

¹³⁷ For additional detailed M-CORES information, see DOT’s M-CORES site, available at <https://floridamcores.com/#home> (last visited Feb. 22, 2020).

- Provides ease of access to major highways and other transportation facilities;
- Is sufficiently large to accommodate staging of a significant amount of emergency-related supplies and equipment;
- Provides space in support of emergency preparedness and evacuation activities, such as fuel reserve capacity;
- Could be used during non-emergency periods for commercial motor vehicle parking or other uses; and
- Is consistent with other state and local emergency management considerations.

DOT must give priority consideration to placement of emergency staging areas in counties with a population of 200,000 or less in which an M-CORES corridor is located.¹³⁸

The bill authorizes DOT to acquire property and property rights necessary for such staging areas,¹³⁹ through either negotiated sales or eminent domain. DOT may authorize other uses of a staging area, as provided in the Florida Transportation Code,¹⁴⁰ including, but not limited to, commercial motor vehicle parking to comply with federal hours of service off-duty and sleeper berth requirements and for other vehicular parking to provide rest for drivers. The bill requires that staging area projects be included in DOT's work program.¹⁴¹

The increased availability of staging areas may elevate the efficiency of response to emergencies, thereby facilitating faster recovery from such emergencies for both the public and private sectors, including, but not limited to, quicker resumption of market activity, such as tourism. Authorization for other appropriate uses of the proposed staging areas during non-emergency periods may result in other economic efficiencies.

Work Program Submission Deadline

Present Situation

As part of its budgeting process, DOT prepares a tentative work program, based on the district work programs.¹⁴² Each district's work program is developed cooperatively with the state's metropolitan planning organizations (MPOs)¹⁴³ and includes, to the maximum extent feasible, the project priorities of MPOs that have been submitted to the district by October 1 of each year.¹⁴⁴ However, DOT and a MPO may agree, in writing, to vary this submittal date.¹⁴⁵

Prior to submitting the district work program to the central office, each district holds public hearings and makes a presentation to each MPO to determine the necessity of making any changes to the district work program.¹⁴⁶ Following submission of each district's work program to the central office, DOT develops its tentative work program based on the district work programs.¹⁴⁷

DOT's central office submits a preliminary copy of its tentative work program to the Executive Office of the Governor, the legislative appropriations committees, the Florida Transportation Commission, and the Department of Economic Opportunity (DEO) at least 14 days prior to the convening of the regular legislative session.¹⁴⁸ Following a public hearing and evaluation by the Florida Transportation Commission, DOT submits the tentative work program to the Executive Office of the Governor and the

¹³⁸ The county population is as determined by the most recent official state estimate pursuant to s. 186.901, F.S.

¹³⁹ DOT is authorized to acquire property pursuant to s. 338.04, F.S.

¹⁴⁰ The Florida Transportation Code consists of chs. 334-339, 341, 348, and 349 and ss. 332.003-332.007, 351.35, 351.36, 351.37, and 861.011, F.S.

¹⁴¹ DOT's work program is developed pursuant to s. 339.175, F.S.

¹⁴² Section 339.135(4)(b)1, F.S.

¹⁴³ MPOs are federally-required regional transportation planning entities in urbanized areas with populations of 50,000 or more persons.

¹⁴⁴ This is pursuant to s. 339.175(8)(b), F.S.

¹⁴⁵ Section 339.135(4)(c)2., F.S.

¹⁴⁶ Section 339.135(4)(d), F.S.

¹⁴⁷ Section 339.135(4)(e), F.S.

¹⁴⁸ Section 339.135(4)(f), F.S.

legislative appropriations committees no later than 14 days after the regular legislative session begins.¹⁴⁹

According to DOT, since the Legislature meets in January in even-numbered years, the statutory period for DOT to complete its work program process has accelerated. In the past, DOT has requested that MPOs submit their project priorities lists by August 1 in order for DOT to have ample time to complete its required processes.¹⁵⁰

Effect of the Bill

The bill moves the deadline for when MPOs must submit their project priorities to DOT from October 1 to August 1. The change will provide DOT with additional time to complete its work program process prior to the beginning of the annual legislative session.

Economic Development Transportation Projects

Present Situation

The Economic Development Transportation Fund is an economic incentive program intended to encourage specific businesses to locate, expand, or remain in the state.¹⁵¹ Under this program, DOT in consultation with DEO and Enterprise Florida, Inc., may make and approve expenditures and contract with the appropriate governmental body¹⁵² for the direct costs of eligible transportation projects.¹⁵³

DOT, in consultation with DEO, reviews each transportation project for approval and funding. DOT must approve a project for it to be eligible for funding. DOT must consider the following criteria when reviewing projects: the cost per job created or retained, average wages for jobs created, capital investment by the business, local commitment, and local unemployment and poverty rates.¹⁵⁴

This program is appropriated on a non-recurring basis in the STTF.¹⁵⁵ According to DOT, this budget category has not been used for several years. In its work program, DOT has continued funding and financing the program; however, in recent years, the Legislature has utilized a unique budget category for local projects.¹⁵⁶

Effect of the Bill

The bill repeals the economic development transportation program. Repealing this program will release DOT from the requirement to include associated projects into its work program. Without appropriations, these projects have to be deferred or deleted, causing a disruption to DOT's work program.¹⁵⁷

The bill also makes conforming changes to s. 288.0656, F.S., relating to the Rural Economic Development Initiative, s. 339.18, F.S., relating to the use of moneys in the STTF, and s. 337.809, F.S., relating to the Energy Economic Zone Pilot Program.

¹⁴⁹ Section 339.135(4)(h), F.S.

¹⁵⁰ DOT Legislative Proposal, Advance MPO Deadline to Submit Project Priorities (Copy on file with Transportation & Infrastructure Subcommittee).

¹⁵¹ DOT Legislative Proposal, Deletion of Road Fund (Copy on file with Transportation & Infrastructure Subcommittee). Chapter 2012-128, L.O.F.

¹⁵² Section 339.2821(1)(b)1, F.S., defines the term "governmental body" as an instrumentality of the state or a county, municipality, district, authority, board, or commission, or an agency thereof, within which jurisdiction the transportation project is located and which is responsible to the department for the transportation project.

¹⁵³ Section 339.2821(1)(b)2., F.S., defines the term "transportation project" as a transportation facility that DOT, in consultation with DEO, deems necessary to facilitate the economic development and growth of the state.

¹⁵⁴ Section 339.2821(2), F.S.

¹⁵⁵ DOT, Economic Development Transportation Fund Fact Sheet (Copy on file with Transportation & Infrastructure Subcommittee).

¹⁵⁶ DOT Legislative Proposal, Deletion of Road Fund (Copy on file with Transportation & Infrastructure Subcommittee).

¹⁵⁷ *Id.*

Passenger Rail Insurance Limits

Present Situation

Florida law authorizes DOT to purchase liability insurance for its passenger rail program, which amount may not exceed \$200 million. This liability insurance may include coverage for DOT, certain freight rail operators, the National Railroad Passenger Corporation,¹⁵⁸ commuter rail service providers, governmental entities, or any ancillary development.¹⁵⁹

In 1997, federal law set the limit on its passenger rail liability at \$200 million.¹⁶⁰ In 2015, the federal government required its liability cap to be adjusted to reflect changes to the consumer price index every five years.¹⁶¹ In 2016, the federal rail passenger liability cap was increased to \$294.3 million.¹⁶²

Effect of the Bill

The bill increases the liability insurance cap for DOT's passenger rail systems from \$200 to \$295 million, consistent with the current federal rail liability cap.

Jacksonville Transportation Authority Leases

Present Situation

Chapter 349, F.S., creates the Jacksonville Transportation Authority (JTA) as a body politic and corporate and an agency of the state.¹⁶³ Included in its purposes and powers is the power to enter into and make leases for terms not exceeding 40 years, as either lessee or lessor, in order to carry out the right to lease as set forth in chapter 349, F.S.¹⁶⁴ JTA designs and constructs bridges and highways and provides varied mass transit services, including express and regular bus service, a downtown Skyway monorail, the St. Johns River Ferry, the Gameday Xpress for various sporting events, paratransit for the disabled and elderly, and ride request on-demand services.¹⁶⁵

While JTA is authorized to enter into 40-year leases, the Central Florida Expressway Authority is authorized to enter into leases not exceeding 99 years.¹⁶⁶ Additionally, DOT is authorized to enter into 99-year leases for the use of DOT property, including rights-of-way, for certain purposes.¹⁶⁷

Effect of the Bill

The bill authorizes JTA to enter into 99-year leases, instead of the current 40 years authorized by law.

DOT and Toll Authority Receivables Report

Present Situation

Current law authorizes DOT, including the Florida Turnpike Enterprise and various expressway and bridge authorities, to assess tolls for the use of their facilities. Depending on the toll facility and the location of the toll collection point, toll payment methods include cash, electronic tolling utilizing a transponder attached to the vehicle, or toll-by-plate. With toll-by-plate, a camera takes a photograph of the vehicle's license plate and the vehicle owner is mailed a bill for the tolls, plus a service charge. Overdue toll-by-plate invoices (or receivables) may be referred to a collection agency.

¹⁵⁸ The National Railroad Passenger Corporation is also known as AMTRAK.

¹⁵⁹ Section 341.302(17)(b), F.S.

¹⁶⁰ 49 U.S.C. 28103.

¹⁶¹ Email from John Kotyk, Deputy Director of Legislative Affairs, DOT, Rail Liability Adjustment. Jan. 23, 2020 (Copy on file with Transportation & Infrastructure Subcommittee). See Pub. L. 114-94, div. A, title XI, s. 11415(b), Dec. 4, 2015.

¹⁶² Federal Register Document No. 2016-00301, filed Jan. 8, 2016, available at <https://www.federalregister.gov/documents/2016/01/11/2016-00301/adjustment-to-rail-passenger-transportation-liability-cap> (last visited Jan. 23, 2020).

¹⁶³ Section 349.03(1), F.S.

¹⁶⁴ Section 349.04(2)(d), F.S.

¹⁶⁵ JTA Website, <https://www.jtafla.com/about-jta/> (last visited Feb. 22, 2020).

¹⁶⁶ Section 348.754(1)(d), F.S.

¹⁶⁷ Section 337.251, F.S.

Effect of the Bill

The bill requires DOT, each expressway and bridge authority created pursuant to ch. 348, F.S.,¹⁶⁸ and the Mid-Bay Bridge Authority,¹⁶⁹ to submit a report documenting its uncollected customer receivables to the Governor, the President of the Senate and the Speaker of the House of Representatives by October 1, 2020. Each report must include an aged summary of customer receivables for electronic toll collection, as well as toll-by-plate, as of June 30, 2020. Additionally, each report must include a schedule by year of customer receivables written off, sold to a collection agency, or assigned to a collection agency. Each report must include a detailed discussion by each entity from its independent certified public accountant describing the accounting methodology utilized within the entity's audited financial statements to record revenue and bad debt.

B. SECTION DIRECTORY:

Section 1 amends s. 20.23, F.S., relating to the DOT, effective July 1, 2023.

Section 2 amends s. 201.15, F.S., relating to the distribution of taxes collected.

Section 3 amends s. 206.46, F.S., relating to the STTF.

Section 4 amends s. 206.606, F.S., relating to the distribution of certain proceeds.

Section 5 amends s. 206.608, F.S., relating to the State Comprehensive Transportation System Tax.

Section 6 amends s. 212.0501, F.S., relating to the tax on diesel fuel for business purposes.

Section 7 amends s. 288.0656, F.S., relating to the Rural Economic Development Initiative, to conform.

Section 8 amends s. 311.101, F.S., relating to the Intermodal Logistics Center Infrastructure Support Program.

Section 9 amends s. 316.003, F.S., defining terms.

Section 10 amends s. 316.126, F.S., relating to the operation of vehicles and actions of pedestrians on approach of an authorized emergency, sanitation, or utility service vehicle.

Section 11 amends s. 316.2397, F.S., relating to certain lights prohibited; exceptions.

Section 12 amends s. 316.520, F.S., relating to loads on vehicles.

Section 13 amends s. 316.613, F.S., relating to child restraint requirements.

Section 14 amends s. 319.32, F.S., relating to fees; service charges; disposition.

Section 15 amends s. 322.12, F.S., relating to the examination of applicants.

Section 16 amends s. 324.031, F.S., relating to the manner of providing financial responsibility.

Section 17 amends s. 324.032, F.S., relating to the manner of providing financial responsibility; for-hire passenger transportation vehicles.

Section 18 amends s. 327.33, F.S., relating to the reckless or careless operation of a vessel.

Section 19 amends s. 327.4107, F.S., relating to vessels at risk for becoming derelict on waters of this state.

¹⁶⁸ Chapter 348, F.S., creates the Greater Miami Expressway Agency, the Tampa-Hillsborough County Expressway Authority, the Central Florida Expressway Authority, and the Santa Rosa Bay Bridge Authority.

¹⁶⁹ The Mid-Bay Bridge Authority was recreated pursuant to ch. 2000-411, L.O.F.

Section 20 amends s. 327.59, F.S., relating to marina evacuations.

Section 21 amends s. 333.03, F.S., relating to requirements to adopt airport zoning regulations.

Section 22 amends s. 337.14, F.S., relating to applications for qualification.

Section 23 amends s. 337.25, F.S., relating to the acquisition, lease, and disposal of real and personal property.

Section 24 amends s. 337.401, F.S., relating to the use of the right-of-way for utilities subject to regulation.

Section 25 creates s. 338.236, F.S., relating to staging areas for emergencies.

Section 26 amends s. 339.08, F.S., relating to the use of moneys in the STTF, to conform.

Section 27 amend s. 339.135, F.S., relating to DOT's work program.

Section 28 amends s. 339.175, F.S., relating to metropolitan planning organizations.

Section 29 repeals s. 339.2821, F.S., relating to economic development transportation projects.

Section 30 amends s. 341.302, F.S., relating to the rail program; duties and responsibilities of DOT.

Section 31 amends s. 341.302, F.S., relating to the rail program; duties and responsibilities of DOT, effective July 1, 2023.

Section 32 amends s. 341.303, F.S., relating to funding authorization and appropriations, effective July 1, 2023.

Section 33 repeals s. 341.8201, F.S., providing a short title, effective July 1, 2023.

Section 34 amends s. 341.8203, F.S., providing definitions, effective July 1, 2023.

Section 35 amends s. 341.822, F.S., providing powers and duties of the FRE, effective July 1, 2023.

Section 36 amends s. 341.825, F.S., relating to communications facilities, effective July 1, 2023.

Section 37 amends s. 341.836, F.S., relating to associated development, effective July 1, 2023.

Section 86 amends s. 341.838, F.S., relating to fares, rates, rents, fees, and charges, effective July 1, 2023.

Section 39 amends s. 341.839, F.S., relating to alternative means, effective July 1, 2023.

Section 40 amends s. 341.840, F.S., providing a tax exemption, effective July 1, 2023.

Section 41 amends s. 343.58, F.S., relating to County Funding for the South Florida Regional Transportation Authority, effective July 1, 2023, to conform.

Section 42 amends s. 349.04, F.S., relating to the purposes and powers of the JTA.

Section 43 amends s. 377.809, F.S., relating to the Energy Economic Zone Pilot Program, to conform.

Section 44 reenacts s. 327.73, F.S., relating to noncriminal infractions.

Section 45 requires DOT and certain expressway and bridge authorities to submit a report.

Section 46 provides a declaration of important state interest.

Section 47 provides that except as otherwise expressly provided, this act takes effect July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Permanent funding of the Intermodal Logistics Center Infrastructure Support Program may provide for additional intermodal logistics center projects in the state.

The change in child safety restraint requirements may result in more motorists being assessed traffic fines, and may require motorists to purchase new child safety restraint seats.

Requiring specified timeframes for approving permits for utilities on rights-of-way may reduce costs for companies wishing to place utilities in such rights-of-way.

Increased availability of staging areas on the turnpike system may provide the public with earlier provision of essential emergency supplies during emergencies and may provide additional benefits, such as increased availability of parking on the turnpike system during non-emergency periods. The business community may experience a positive impact in that more efficient emergency response may allow for a faster return to normal market activity. DOT's maintenance and construction contractors may benefit from increased availability of staging areas during non-emergency periods.

D. FISCAL COMMENTS:

Increasing the \$275 million debt cap on Right-of-Way and Bridge Construction Bonds will give DOT the flexibility to utilize that program to meet future bridge replacement needs with minimal disruption to capacity projects in DOT's work program.¹⁷⁰

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

Including road and bridge construction or maintenance vehicles and postal vehicles to the list of vehicles subject to the Move Over Law may increase state and local revenues associated with

¹⁷⁰ DOT Legislative Proposal, Change in Right-of-Way Acquisition and Bridge Construction Bond Debt Service Cap.
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penalties for violations. However, the impact is indeterminate. DHSMV may incur expenditures associated with enforcement and public education regarding changes to the Move Over Law. The amount is indeterminate, but is likely to be insignificant.

To the extent there is an increase in the number of traffic citations issued due to the new child safety restraint requirements, the state and local governments may realize additional revenues. However, the fiscal impact cannot be quantified and is indeterminate.

DOT may incur administrative expenses associated with the removal of the FRE from DOT's organization and with the DOT secretary naming a departmental entity to oversee rail responsibilities. However, the amount of any such expenses should be insignificant, as DOT currently funds the expenditures of both the FRE and its Rail Office.

The fiscal impact of the emergency staging area provisions are indeterminate. DOT must first exercise the authority granted in the bill, select a site or sites, and estimate the costs to plan, design, and construct the staging areas, which costs are unknown at this time. However, having such staging areas in place may reduce costs associated with providing necessary staging areas for emergency response purposes, for both state and local governments, and may reduce costs incurred by DOT for the provision of other uses authorized by the bill during non-emergency periods.

DOT may incur indeterminate expenditures associated with purchasing additional rail liability insurance. However, the cost of any such additional insurance is unknown and, under current law, the costs to DOT would be shared with any covered freight rail operator, AMTRAK, commuter rail service providers, governmental entities, or ancillary development.

DOT and expressway and bridge authorities may incur expenditures associated with preparing its report on uncollectable toll receivables; however, the cost is expected to be insignificant.

Counties and municipalities may incur expenditures associated with complying with the specified timeframes to approve permits for utilities within their rights-of-way. However, the expenditures may be insignificant.

Local governments operating airports may see a reduction in expenditures due to the exemption from the construction engineering and inspection services requirements in the bill. However, the cost savings is associated with specific projects; therefore, this reduction in expenditures is indeterminate.

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 the bill requires counties and municipalities to act on applications for permits relating to the use of rights-of-way for utilities within a specified timeframe. However, an exemption may apply if the provisions are found to have an insignificant fiscal impact. In addition, an exception may apply if the bill is approved by a two-thirds vote of the membership of each house because it includes a finding that the bill fulfills an important state interest.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DOT may need to amend its rules regarding qualifications to bid on construction projects. DHSMV will need to amend its rules to authorize additional time for veterans to be exempt from CDL testing requirements. DOT and DHSMV appears to have sufficient rulemaking authority.

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 from 80 to 150 pounds;
- Authorized an exemption for commercial driver license skill test requirements for certain veterans;
- Expanded the distance that certain vehicles may 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 Transportation Network Companies and preempted their regulation to the state; and
- Removed provisions relating to the reinstatement of tolls after an emergency evacuation.

On February 10, 2020, the Transportation & Tourism Appropriations Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Clarified the fines that can be assessed by deepwater seaports when vessels are not removed in certain situations; and
- Removed the framework governing the operation of disability-accessible transportation network companies and revised the definition of the term “for-hire vehicle,” providing that disability-accessible vehicles meeting specified conditions are not for-hire vehicles.

On February 27, 2020, the State Affairs Committee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS removed a provision in the bill revising the definition of “for-hire vehicle,” and added the following provisions to the bill:

- Effective July 1, 2023, repealed the FRE and transferred its functions to DOT and authorized DOT to utilize documentary stamp tax revenues currently allocated to the FRE for rail safety;
- Increased the debt service cap on Right-of-Way Acquisition and Bridge Construction Bonds;
- Removed obsolete references to the general revenue service charge for transportation-related revenues;
- Removed the expiration date for funding of the Intermodal Logistics Center Infrastructure Support Program;
- Added road and bridge maintenance or construction vehicles and postal vehicles to the Move Over Law;
- Increased the age at which a child must be secured in a child restraint device;
- Required vessels to reduce speed in close proximity to emergency responders and marine construction workers;
- Prohibited certain derelict vessels from anchoring or mooring near mangroves and upland vegetation;
- Conformed specified airport zoning terminology and regulations to federal requirements;
- Authorized airports to allow the same entity to perform design services and construction, engineering, and inspection services under specified circumstances;
- Required DOT to provide the previous property owner the right of first refusal regarding the disposal of DOT property under certain circumstances;
- Required permit applications for utility services on municipal or county rights of way to be acted upon in a specified time frame;
- Authorized DOT to establish emergency staging areas along the Florida Turnpike system;

- Advanced the deadline for the MPOs to submit lists of project priorities to DOT;
- Repealed the inactive Economic Development Transportation Fund;
- Increased the state's liability insurance cap for passenger rail;
- Authorized the Jacksonville Transportation Authority to enter into 99 year leases; and
- Required DOT and certain expressway and bridge authorities to submit a report regarding uncollected toll revenues.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.



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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to environmental enforcement; amending s. 161.054, F.S.; revising administrative penalties for violations of certain provisions relating to beach and shore construction and activities; making technical changes; amending ss. 258.397, 258.46, and 376.25, F.S.; revising civil penalties for violations of certain provisions relating to the Biscayne Bay Aquatic Preserve, aquatic preserves, and the Clean Ocean Act, respectively; providing that each day that certain violations occur constitutes a separate offense; making technical changes; amending ss. 373.129, 373.209, 376.065, 376.071, 376.16, 377.37, 378.211, 403.086, 403.413, 403.7234, and 403.93345, F.S.; revising civil penalties for violations of certain provisions relating to water resources, artesian wells, terminal facilities, discharge contingency plans for vessels, the Pollutant Discharge Prevention and Control Act, regulation of oil and gas resources, the Phosphate Land Reclamation Act, sewage disposal facilities, dumping litter, small quantity generators, and coral reef protection, respectively; making technical changes; amending ss. 373.430 and 403.161, F.S.; revising criminal penalties for violations of certain provisions relating to pollution and the environment; making technical changes; amending s. 403.121, F.S.; revising civil and



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administrative penalties for violations of certain provisions relating to pollution and the environment; providing that each day that certain violations occur constitutes a separate offense; increasing the amount of penalties that can be assessed administratively; making technical changes; amending s. 403.141, F.S.; revising civil penalties for violations of certain provisions relating to pollution and the environment; providing that each day that the cause of unauthorized discharges of domestic wastewater is not addressed constitutes a separate offense until the violation is resolved by order or judgment; amending ss. 403.726 and 403.727, F.S.; revising civil penalties for violations of certain provisions relating to hazardous waste; making technical changes; creating ss. 125.569 and 166.0481, F.S.; defining the term "sanitary sewer lateral"; encouraging counties and municipalities, respectively, to establish a sanitary sewer lateral inspection program by a specified date; providing parameters for such a program; creating s. 689.301, F.S.; requiring a seller of real property to disclose any known defects in the property's sanitary sewer lateral; defining the term "sanitary sewer lateral"; reenacting s. 823.11(5), F.S., to incorporate the amendment made to s. 376.16, F.S., in a reference thereto; reenacting ss. 403.077(5), 403.131(2), 403.4154(3)(d), and 403.860(5), F.S., to incorporate the amendment made to s. 403.121, F.S., in references thereto; reenacting ss. 403.708(10), 403.7191(7), and



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403.811, F.S., to incorporate the amendment made to s.
403.141, F.S., in references thereto; reenacting s.
403.7255(2), F.S., to incorporate the amendment made
to s. 403.161, F.S., in a reference thereto;
reenacting s. 403.7186(8), F.S., to incorporate the
amendments made to ss. 403.141 and 403.161, F.S., in
references thereto; providing an effective date.

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

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

161.054 Administrative fines; liability for damage; liens.—

(1) In addition to the penalties provided for in ss.
161.052, 161.053, and 161.121, any person, firm, corporation, or
governmental agency, or agent thereof, refusing to comply with
or willfully violating ~~any of the provisions of~~ s. 161.041, s.
161.052, or s. 161.053, or any rule or order prescribed by the
department thereunder, shall incur a fine for each offense in an
amount up to \$15,000 ~~\$10,000~~ to be fixed, imposed, and collected
by the department. Each day during any portion of which such
violation occurs constitutes a separate offense.

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

258.397 Biscayne Bay Aquatic Preserve.—

(7) ENFORCEMENT. ~~The provisions of~~ This section may be
enforced in accordance with ~~the provisions of~~ s. 403.412. In
addition, the Department of Legal Affairs may ~~is authorized to~~
bring an action for civil penalties of \$7,500 ~~\$5,000~~ per day



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86 against any person, natural or corporate, who violates ~~the~~
87 ~~provisions of~~ this section or any rule or regulation issued
88 hereunder. Each day during any portion of which such violation
89 occurs constitutes a separate offense. Enforcement of applicable
90 state regulations shall be supplemented by the Miami-Dade County
91 Department of Environmental Resources Management through the
92 creation of a full-time enforcement presence along the Miami
93 River.

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

96 258.46 Enforcement; violations; penalty. ~~The provisions of~~
97 This act may be enforced by the Board of Trustees of the
98 Internal Improvement Trust Fund or in accordance with ~~the~~
99 ~~provisions of~~ s. 403.412. However, any violation by any person,
100 natural or corporate, of ~~the provisions of~~ this act or any rule
101 or regulation issued hereunder is shall be further punishable by
102 a civil penalty of not less than \$750 ~~\$500~~ per day or more than
103 \$7,500 ~~\$5,000~~ per day of such violation. Each day during any
104 portion of which such violation occurs constitutes a separate
105 offense.

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

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



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(5) To recover a civil penalty for each offense in an amount not to exceed \$15,000 ~~\$10,000~~ per offense. Each date during which such violation occurs constitutes a separate offense.

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

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

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

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



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Statutes, is amended to read:

373.209 Artesian wells; penalties for violation.—

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

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

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

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

373.430 Prohibitions, violation, penalty, intent.—

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

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



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imprisonment for 5 years, or by both, for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.

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

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

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

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

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

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



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

376.071 Discharge contingency plan for vessels.—

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

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

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

376.16 Enforcement and penalties.—

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

(2) In addition to the penalty provisions which may apply under subsection (1), a person responsible for two or more discharges of any pollutant reported pursuant to s. 376.12



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within a 12-month period at the same facility commits a noncriminal infraction and shall be cited by the department for such infraction.

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

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

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

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

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

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

(a) Pay the civil penalty;

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

(c) Sign and accept a citation indicating a promise to



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appear before the county court.

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

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

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

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

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

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

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



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~~\$1,000~~ for each subsequent discharge of gasoline or diesel within a 12-month period.

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

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

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

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

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



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

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

(6) PENALTIES.—

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

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

377.37 Penalties.—

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



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imposition of a civil penalty in an amount of not more than
\$15,000 ~~\$10,000~~ for each offense. However, the court may receive
evidence in mitigation. Each day during any portion of which
such violation occurs constitutes a separate offense. This
section does not ~~Nothing herein shall~~ give the department the
right to bring an action on behalf of any private person.

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

378.211 Violations; damages; penalties.—

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

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

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

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

~~Subject to the provisions of~~ subsection (4), each day or any
portion thereof in which the violation continues shall
constitute a separate violation.

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

403.086 Sewage disposal facilities; advanced and secondary



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waste treatment.—

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

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

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

(1) Judicial remedies:

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

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

(c) Except as provided in paragraph (2)(c), it is ~~shall~~ not be a defense to, or ground for dismissal of, these judicial remedies for damages and civil penalties that the department has



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failed to exhaust its administrative remedies, has failed to serve a notice of violation, or has failed to hold an administrative hearing prior to the institution of a civil action.

(2) Administrative remedies:

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

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



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one notice of violation seeking administrative penalties pending against the same party at the same time unless the violations occurred at a different site or the violations were discovered by the department subsequent to the filing of a previous notice of violation.

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



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

(d) If a person timely files a petition challenging a notice of violation, that person will thereafter be referred to as the respondent. The hearing requested by the respondent shall be held within 180 days after the department has referred the initial petition to the Division of Administrative Hearings unless the parties agree to a later date. The department has the burden of proving with the preponderance of the evidence that the respondent is responsible for the violation. ~~No~~

Administrative penalties should not be imposed unless the department satisfies that burden. Following the close of the hearing, the administrative law judge shall issue a final order on all matters, including the imposition of an administrative penalty. When the department seeks to enforce that portion of a final order imposing administrative penalties pursuant to s. 120.69, the respondent may ~~shall~~ not assert as a defense the inappropriateness of the administrative remedy. The department retains its final-order authority in all administrative actions that do not request the imposition of administrative penalties.

(e) After filing a petition requesting a formal hearing in response to a notice of violation in which the department imposes an administrative penalty, a respondent may request that a private mediator be appointed to mediate the dispute by



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contacting the Florida Conflict Resolution Consortium within 10 days after receipt of the initial order from the administrative law judge. The Florida Conflict Resolution Consortium shall pay all of the costs of the mediator and for up to 8 hours of the mediator's time per case at \$150 per hour. Upon notice from the respondent, the Florida Conflict Resolution Consortium shall provide to the respondent a panel of possible mediators from the area in which the hearing on the petition would be heard. The respondent shall select the mediator and notify the Florida Conflict Resolution Consortium of the selection within 15 days of receipt of the proposed panel of mediators. The Florida Conflict Resolution Consortium shall provide all of the administrative support for the mediation process. The mediation must be completed at least 15 days before the final hearing date set by the administrative law judge.

(f) In any administrative proceeding brought by the department, the prevailing party shall recover all costs as provided in ss. 57.041 and 57.071. The costs must be included in the final order. The respondent is the prevailing party when an order is entered awarding no penalties to the department and such order has not been reversed on appeal or the time for seeking judicial review has expired. The respondent is ~~shall be~~ entitled to an award of attorney's fees if the administrative law judge determines that the notice of violation issued by the department seeking the imposition of administrative penalties was not substantially justified as defined in s. 57.111(3)(e). An ~~No~~ award of attorney's fees as provided by this subsection may not ~~shall~~ exceed \$15,000.

(g) Nothing herein shall be construed as preventing any



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

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

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



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

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

(c) For a dredge and fill or stormwater violation, the department shall assess a penalty of \$1,500 ~~\$1,000~~ for unpermitted or unauthorized dredging or filling or unauthorized construction of a stormwater management system against the



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579 person or persons responsible for the illegal dredging or
580 filling, or unauthorized construction of a stormwater management
581 system plus \$3,000 ~~\$2,000~~ if the dredging or filling occurs in
582 an aquatic preserve, an Outstanding Florida Water, a
583 conservation easement, or a Class I or Class II surface water,
584 plus \$1,500 ~~\$1,000~~ if the area dredged or filled is greater than
585 one-quarter acre but less than or equal to one-half acre, and
586 plus \$1,500 ~~\$1,000~~ if the area dredged or filled is greater than
587 one-half acre but less than or equal to one acre. The
588 administrative penalty schedule does ~~shall~~ not apply to a dredge
589 and fill violation if the area dredged or filled exceeds one
590 acre. The department retains the authority to seek the judicial
591 imposition of civil penalties for all dredge and fill violations
592 involving more than one acre. The department shall assess a
593 penalty of \$4,500 ~~\$3,000~~ for the failure to complete required
594 mitigation, failure to record a required conservation easement,
595 or for a water quality violation resulting from dredging or
596 filling activities, stormwater construction activities or
597 failure of a stormwater treatment facility. For stormwater
598 management systems serving less than 5 acres, the department
599 shall assess a penalty of \$3,000 ~~\$2,000~~ for the failure to
600 properly or timely construct a stormwater management system. In
601 addition to the penalties authorized in this subsection, the
602 department shall assess a penalty of \$7,500 ~~\$5,000~~ per violation
603 against the contractor or agent of the owner or tenant that
604 conducts unpermitted or unauthorized dredging or filling. For
605 purposes of this paragraph, the preparation or signing of a
606 permit application by a person currently licensed under chapter
607 471 to practice as a professional engineer does ~~shall~~ not make



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that person an agent of the owner or tenant.

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

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



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

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

(4) In an administrative proceeding, in addition to the penalties that may be assessed under subsection (3), the



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department shall assess administrative penalties according to the following schedule:

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

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

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

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

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

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

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

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



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per violation.

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

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

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

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

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

(9) The administrative penalties assessed for any particular violation may ~~shall~~ not exceed \$7,500 ~~\$5,000~~ against any one violator, unless the violator has a history of



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

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

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

(12) The purpose of the administrative penalty schedule and process is to provide a more predictable and efficient manner for individuals and businesses to resolve relatively minor environmental disputes. Subsections (3)-(7) may ~~Subsection (3),~~



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~~subsection (4), subsection (5), subsection (6), or subsection (7) shall~~ not be construed as limiting a state court in the assessment of damages. The administrative penalty schedule does not apply to the judicial imposition of civil penalties in state court as provided in this section.

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

403.141 Civil liability; joint and several liability.—

(1) A person who ~~Whoever~~ commits a violation specified in s. 403.161(1) is liable to the state for any damage caused to the air, waters, or property, including animal, plant, or aquatic life, of the state and for reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including animal, plant, and aquatic life, of the state to their former condition, and furthermore is subject to the judicial imposition of a civil penalty for each offense in an amount of not more than \$15,000 ~~\$10,000~~ per offense. However, the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense. If a violation is an unauthorized discharge of domestic wastewater, each day the cause of the violation is not addressed constitutes a separate offense until the violation is resolved by order or judgment.

Nothing herein gives ~~shall give~~ the department the right to bring an action on behalf of any private person.

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

403.161 Prohibitions, violation, penalty, intent.—



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

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

792 (4) A ~~Any~~ person who commits a violation specified in
793 paragraph (1)(a) or paragraph (1)(b) due to reckless
794 indifference or gross careless disregard commits ~~is guilty of~~ a
795 misdemeanor of the second degree, punishable as provided in ss.
796 775.082(4)(b) and 775.083(1)(g) by a fine of not more than
797 \$10,000 ~~\$5,000~~ or by 60 days in jail, or by both, for each
798 offense.

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

805 Section 17. Paragraph (a) of subsection (6) of section
806 403.413, Florida Statutes, is amended to read:

807 403.413 Florida Litter Law.—

808 (6) PENALTIES; ENFORCEMENT.—

809 (a) Any person who dumps litter in violation of subsection
810 (4) in an amount not exceeding 15 pounds in weight or 27 cubic



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feet in volume and not for commercial purposes commits ~~is guilty~~
~~of~~ a noncriminal infraction, punishable by a civil penalty of
\$150 ~~\$100~~, from which \$50 shall be deposited into the Solid
Waste Management Trust Fund to be used for the solid waste
management grant program pursuant to s. 403.7095. In addition,
the court may require the violator to pick up litter or perform
other labor commensurate with the offense committed.

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

403.7234 Small quantity generator notification and
verification program.—

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

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

403.726 Abatement of imminent hazard caused by hazardous
substance.—

(3) An imminent hazard exists if any hazardous substance
creates an immediate and substantial danger to human health,
safety, or welfare or to the environment. The department may



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

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

403.727 Violations; defenses, penalties, and remedies.—

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

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



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department.

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

403.93345 Coral reef protection.—

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

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

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

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

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

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



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tripled.

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

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

Section 22. Section 125.569, Florida Statutes, is created to read:

125.569 Sanitary sewer lateral inspection program.—

(1) As used in this section, the term “sanitary sewer lateral” means a privately owned pipeline connecting a property to the main sewer line which is maintained and repaired by the property owner.

(2) By July 1, 2022, counties are encouraged to establish an evaluation and rehabilitation program for sanitary sewer laterals on residential and commercial properties within the county’s jurisdiction to identify and reduce extraneous flow from leaking sanitary sewer laterals. At a minimum, the program may do all of the following:

(a) Establish a system to identify defective, damaged, or deteriorated sanitary sewer laterals on residential and commercial properties within the jurisdiction of the county.

(b) Consider economical methods for a property owner to repair or replace a defective, damaged, or deteriorated sanitary sewer lateral.

(c) Establish and maintain a publicly accessible database to store information concerning properties where a defective, damaged, or deteriorated sanitary sewer lateral has been identified. For each property, the database must include, but is not limited to, the address of the property, the names of any



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persons the county notified concerning the faulty sanitary sewer lateral, and the date and method of such notification.

Section 23. Section 166.0481, Florida Statutes, is created to read:

166.0481 Sanitary sewer lateral inspection program.—

(1) As used in this section, the term "sanitary sewer lateral" means a privately owned pipeline connecting a property to the main sewer line which is maintained and repaired by the property owner.

(2) By July 1, 2022, municipalities are encouraged to establish an evaluation and rehabilitation program for sanitary sewer laterals on residential and commercial properties within the municipality's jurisdiction to identify and reduce extraneous flow from leaking sanitary sewer laterals. At a minimum, the program may do all of the following:

(a) Establish a system to identify defective, damaged, or deteriorated sanitary sewer laterals on residential and commercial properties within the jurisdiction of the municipality.

(b) Consider economical methods for a property owner to repair or replace a defective, damaged, or deteriorated sanitary sewer lateral.

(c) Establish and maintain a publicly accessible database to store information concerning properties where a defective, damaged, or deteriorated sanitary sewer lateral has been identified. For each property, the database must include, but is not limited to, the address of the property, the names of any persons the municipality notified concerning the faulty sanitary sewer lateral, and the date and method of such notification.



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Section 24. Section 689.301, Florida Statutes, is created to read:

689.301 Disclosure of known defects in sanitary sewer laterals to prospective purchaser.—Before executing a contract for sale, a seller of real property shall disclose to a prospective purchaser any defects in the property's sanitary sewer lateral which are known to the seller. As used in this section, the term "sanitary sewer lateral" means the privately owned pipeline connecting a property to the main sewer line.

Section 25. Subsection (5) of s. 823.11, Florida Statutes, is reenacted for the purpose of incorporating the amendment made by this act to s. 376.16, Florida Statutes, in a reference thereto.

Section 26. Subsection (5) of s. 403.077, subsection (2) of s. 403.131, paragraph (d) of subsection (3) of s. 403.4154, and subsection (5) of s. 403.860, Florida Statutes, are reenacted for the purpose of incorporating the amendment made by this act to s. 403.121, Florida Statutes, in references thereto.

Section 27. Subsection (10) of s. 403.708, subsection (7) of s. 403.7191, and s. 403.811, Florida Statutes, are reenacted for the purpose of incorporating the amendment made by this act to s. 403.141, Florida Statutes, in references thereto.

Section 28. Subsection (2) of s. 403.7255, Florida Statutes, is reenacted for the purpose of incorporating the amendment made by this act to s. 403.161, Florida Statutes, in a reference thereto.

Section 29. Subsection (8) of s. 403.7186, Florida Statutes, is reenacted for the purpose of incorporating the amendments made by this act to ss. 403.141 and 403.161, Florida



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985 Statutes, in references thereto.

986 Section 30. This act shall take effect July 1, 2020.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: PCS/CS/SB 1450 (594336)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Environment and Natural Resources Committee; and Senator Gruters

SUBJECT: Environmental Enforcement

DATE: February 26, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	Fav/CS
2.	Dale	Jameson	ACJ	Recommend: Fav/CS
3.	Dale	Kynoch	AP	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/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.

The bill changes the duration that several penalties may run, so that each day during any portion of which certain violations occur constitutes a separate offense. For civil penalties imposed under chapter 403, Florida Statutes., the bill provides that, if the violation is an unauthorized discharge of domestic wastewater, each day the cause of the violation is not addressed constitutes a separate offense until the violation is resolved by order or judgement.

The bill would have an indeterminate positive impact on the various revenue streams impacted by the bill. See Section V.

The bill is effective July 1, 2020.

II. Present Situation:

Environmental Violations

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

Damages

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

Penalties

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

Administrative penalties can be levied directly by the agency or in a proceeding in DOAH.⁸ The formal administrative enforcement process is typically initiated by serving a notice of violation, and is finalized through entry of a consent order or final order.⁹ In most administrative proceedings, the DEP has the final decision.¹⁰ An administrative law judge has the final decision for administrative proceedings involving the Environmental Litigation Reform Act, codified in s. 403.121, F.S., which is the primary statute addressing the DEP's administrative penalties.¹¹ Compared to the judicial process, the administrative process is generally considered less

¹ DEP, *About DEP*, <https://floridadep.gov/about-dep> (last visited February 10, 2020); s. 20.255, F.S.

² See DEP, *Enforcement Manual, Chapter One: DEP Regulatory Enforcement Organization* (2017), available at <https://floridadep.gov/sites/default/files/Chapter%201%20October%202017.pdf> (Last visited February 10, 2020).

³ DEP, *Enforcement Manual, Chapter 6: Judicial Process and Remedies, Collections, and Bankruptcies*, 89 (2014), available at <https://floridadep.gov/sites/default/files/chapter6.pdf> (Last visited February 10, 2020).

⁴ See s. 403.121, F.S.

⁵ See ss. 403.121 and 403.141, F.S.

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

⁷ DEP, *Enforcement Manual, Chapter 6: Judicial Process and Remedies, Collections, and Bankruptcies*, 89 (2014), available at <https://floridadep.gov/sites/default/files/chapter6.pdf> (Last visited February 10, 2020).

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

⁹ DEP, *Enforcement Manual, Chapter Five: The Administrative Process and Remedies*, 58 (2014), available at https://floridadep.gov/sites/default/files/chapter5_0.pdf (Last visited February 10, 2020).

¹⁰ *Id.*

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

expensive, faster and less time consuming, and more conducive to negotiated settlement.¹² However, if the DEP is seeking immediate injunctive relief, which compels a party to act or stop acting, an order must be obtained from a court.¹³

The DEP must proceed administratively in cases in which the DEP seeks administrative penalties that do not exceed \$10,000 per assessment.¹⁴ The DEP is prohibited from imposing administrative penalties in excess of \$10,000 in a notice of violation.¹⁵ The DEP may not have more than one notice of violation pending against a party unless the violations occurred at a different site or the violations were discovered by the DEP subsequent to the filing of a previous notice of violation.¹⁶

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

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

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

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

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

¹³ *Id.* at 59-60.

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

¹⁵ Section 403.121(2)(b), F.S.

¹⁶ *Id.*

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

¹⁸ DEP, *Enforcement Manual, Chapter Six: Judicial Process and Remedies, Collections, and Bankruptcies*, 86 (2014), available at <https://floridadep.gov/sites/default/files/chapter6.pdf> (Last visited February 10, 2020).

¹⁹ *Id.*

²⁰ Section 403.121(1)(b), F.S.

²¹ Section 403.121, F.S.

²² Section 403.161, F.S.

²³ *Id.*

against the government entity charged with enforcing environmental laws or the violator of the laws.²⁴

Dredge and Fill Permitting Program

In 2018, the Legislature authorized the DEP to assume responsibility for the federal dredge and fill permitting program under the Clean Water Act, to regulate the discharge of dredged or fill material into Florida's navigable waters.²⁵ Currently, in Florida, the program is jointly implemented by the United States Environmental Protection Agency (EPA) and the United States Army Corps of Engineers (USACE).²⁶ Assumption of the dredge and fill permitting program requires EPA approval. The DEP may adopt any federal requirements, criteria, or regulations necessary to obtain assumption.²⁷ Prior to assuming the program, the DEP must submit various materials to the EPA, including a complete program description, a memorandum of understanding between the state and EPA, a memorandum of understanding between the state and USACE, copies of all applicable statutes and regulations, and more.²⁸ The DEP is still in the process of developing the elements of the program for submission to the EPA.

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

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

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

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

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

²⁴ Section 403.412, F.S.

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

²⁶ 33 U.S.C. s. 1344(a) and (b).

²⁷ Section 373.4146(2) and (5), F.S.

²⁸ 40 C.F.R. ss. 233.10-233.16.

²⁹ 40 C.F.R. s. 233.41(a)(3)(iii).

³⁰ 40 C.F.R. s. 233.41(b)(1).

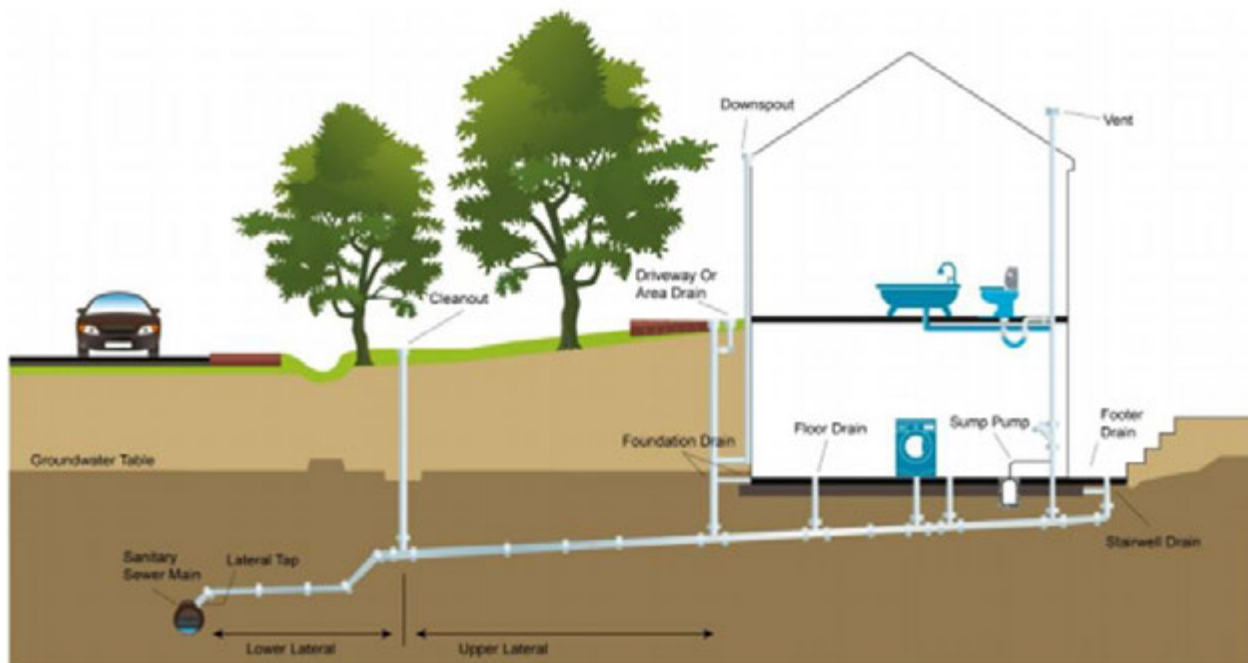
³¹ 40 C.F.R. s. 233.41(b)(2).

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

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

Sanitary Sewer Laterals

A sanitary sewer lateral is the portion of the sewer network connecting individual and private properties to the public sewer system.³⁵ The diagram below shows an example of a sanitary sewer lateral configuration.³⁶



Sanitary sewer laterals are often in poor condition and defects can occur due to aging systems, structural failure, lack of maintenance, or poor construction and design practices.³⁷ Problems in sanitary sewer laterals can have a significant impact on the performance of the sewer system and treatment plan. Private laterals are estimated to contribute to about 40 percent of a system’s infiltration and inflow to sanitary sewers.³⁸ Cracked or broken laterals can allow groundwater

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

³⁴ *Id.*

³⁵ U.S. Environmental Protection Agency, *Private Sewer Laterals* (June 2014), available at <https://www3.epa.gov/region1/sso/pdfs/PrivateSewerLaterals.pdf>.

³⁶ Water Environment Federation, *Sanitary Sewer Rehabilitation*, 2 (2016), available at <https://www.wef.org/globalassets/assets-wef/direct-download-library/public/03---resources/wsec-2017-fs-009---csc---sewer-rehabilitation---final---9.27.17.pdf>.

³⁷ *Id.* at 1-2.

³⁸ U.S. Environmental Protection Agency, *Private Sewer Laterals*, 2 (June 2014), available at <https://www3.epa.gov/region1/sso/pdfs/PrivateSewerLaterals.pdf>.

and infiltrating rainwater to enter into the sewer system which, at high levels, can cause problems at the treatment facility or overload the sewers and cause sanitary sewer overflows.³⁹

The Florida Building Code requires that every building in which plumbing fixtures are installed and premises having drainage piping be connected to a publicly owned or investor-owned sewage system, when available, or an approved onsite sewage treatment and disposal system in accordance with the standards for Onsite Sewage Treatment and Disposal Systems found in Chapter 64E-6, Florida Administrative Code.⁴⁰ A building that has plumbing fixtures installed and is intended for human habitation, occupancy, or use on premises abutting on a street, alley, or easement in which there is a public sewer is required to have a separate connection with the sewer.⁴¹

State law is silent on who is responsible for maintaining or replacing defective sanitary sewer laterals. However, certain municipalities, such as Orlando and Tarpon Springs, require that property owners be responsible for the maintenance, operation, or repair of sanitary sewer laterals in their city ordinances.⁴²

Most homeowners lack knowledge and awareness of potential structural issues with their sanitary sewer laterals.⁴³ Sanitary sewer lateral maintenance issues are the leading cause of backups and overflows into municipality-owned collection systems.⁴⁴ Some municipalities have enacted policies to address the matter. For example, the City of Gulfport has implemented rebate or replacement incentives to their citizens. The City of Gulfport's rebate program offers citizens 50 percent of the costs of the replacement up to \$3,500.⁴⁵ The City of St. Petersburg is also looking into a rebate program within a potential city ordinance addressing sanitary sewer laterals in response to the 2015-2016 sewage crisis that released up to one billion gallons of sewage, 200 million gallons of which ended up in Tampa Bay.⁴⁶

Required Disclosures for a Contract for Sale in Florida

Florida law requires sellers to disclose certain information as part of a sale to a prospective buyer before closing, including:

- A sinkhole claim;⁴⁷
- The potential for coastal erosion;⁴⁸

³⁹ *Id.* at 4.

⁴⁰ Ch. 7, s. 701.2 Florida Building Code – Plumbing, 6th edition (Jul. 2017).

⁴¹ Ch. 7, s. 701.3, Florida Building Code – Plumbing, 6th edition (Jul. 2017).

⁴² Ch. 30.02, s. 4.2(k), City of Orlando Code of Ordinances; Chapter 20, article IX, s. 20-110(d), City of Tarpon Springs Code of Ordinances.

⁴³ See U.S. Environmental Protection Agency, *Private Sewer Laterals* (June 2014), available at <https://www3.epa.gov/region1/sso/pdfs/PrivateSewerLaterals.pdf>.

⁴⁴ U.S. Environmental Protection Agency, *Do You Know the Condition of Your Sewer System* (Oct. 2013) available at <https://www3.epa.gov/region1/sso/pdfs/EPAConditionFactSheetOct2013.pdf>.

⁴⁵ City of Gulfport, *Private Sewer Lateral Replacement Rebate Program* (Apr. 2018), <https://mygulfport.us/lateralrebate/> (last visited Feb. 19, 2020).

⁴⁶ The Tampa Bay Times, *St. Petersburg to Homeowners: Fix Your Broken Sewer Pipes* (Oct.. 2019), <https://www.tampabay.com/news/st-petersburg/2019/10/08/st-petersburg-to-homeowners-fix-your-broken-sewer-pipes/> (last visited Oct. 8, 2019).

⁴⁷ Section 627.7073(2)(c), F.S.

⁴⁸ Section 161.57(2), F.S.

- Mandatory membership in a homeowner’s association;⁴⁹
- Radon gas having been found in buildings in Florida;⁵⁰
- That the buyer should not rely on the seller’s current property taxes;⁵¹ and
- Whether subsurface rights have been or will be severed or retained.⁵²

The Florida Statutes do not expressly require sellers of real property to disclose sewer lateral defects, although Florida tort law requires sellers to disclose to buyers known latent material defects that materially affect the property value.⁵³ Notably, sellers must only disclose defects actually known, but not those constructively known, i.e. those that could have been discovered through reasonable inspection.⁵⁴

In Florida, sellers can use the “Seller’s Property Disclosure Form”⁵⁵ created by the Florida Association of Realtors, but there is no statutory obligation requiring that the form be completed. Also, a seller is not required to retain a home inspector to discover problems that the seller may not be aware of.

III. Effect of Proposed Changes:

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

Several places in existing law impose a penalty for each offense, with each day during any portion of which a violation occurs constituting a separate offense. The bill adds this standard to certain sections, as shown below.

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

Florida Statutes	Violations	Existing Penalties	Changes in PCS/CS/SB 1450
161.054 (1), F.S.	Violating statutes, rules or orders regarding coastal construction or activities	An administrative fine for each offense of up to \$10,000.	An administrative fine for each offense of up to \$15,000.

⁴⁹ Section 720.401(1), F.S.

⁵⁰ Section 404.056(5), F.S.

⁵¹ Section 689.261, F.S.

⁵² Section 689.29, F.S.

⁵³ *Johnson v. Davis*, 480 So. 2d 625, 629 (Fla. 1985).

⁵⁴ *See id.*; *see also Jensen v. Bailey*, 76 So. 3d 980, 983-984 (Fla. 2d DCA 2011).

⁵⁵ Florida Realtors, *Seller’s Property Disclosure- Residential* (2016), available at <http://www.unlimitedmls.com/forms/Property-Disclosure-Form.pdf> (last visited Sept. 13, 2019).

Florida Statutes	Violations	Existing Penalties	Changes in PCS/CS/SB 1450
258.397 (7), F.S.	Violating a statute or rules regarding Biscayne Bay Aquatic Preserve	Authorizes the Department of Legal Affairs to bring an action for civil penalties of \$5,000 per day.	Authorizes the Department of Legal Affairs to bring an action for civil penalties of \$7,500 per day. Each day during any portion of which a violation occurs constitutes a separate offense.
258.46, F.S.	Violating the Florida Aquatic Preserve Act or related rules	A civil penalty of not less than \$500 per day and not more than \$5,000 per day of a violation.	A civil penalty of not less than \$750 per day and not more than \$7,500 per day of a violation. Each day during any portion of which a violation occurs constitutes a separate offense.
373.129 (5), F.S.	Violating ch. 373, F.S., relating to water resources	Authorizes the DEP, any water management district, any local board, or certain local governments ⁵⁶ to recover a civil penalty for each offense, in an amount not to exceed \$10,000 per offense.	Authorizes the DEP, any water management district, any local board, or certain local governments to recover a civil penalty for each offense, in an amount not to exceed \$15,000 per offense.
373.209 (3)(b), F.S.	Violating a statute regarding artesian wells	A civil penalty of \$100 per day for each day of a violation and each act of a violation.	A civil penalty of \$150 per day for each day of a violation and each act of a violation.
373.430 (4) and (5), F.S.	Violating statutes regarding surface waters by causing pollution due to reckless indifference or gross careless disregard	A fine of not more than \$5,000 or 60 days in jail, or both, for each offense: causing certain pollution. A fine of not more than \$10,000, 6 months in jail, or both for willfully committing the following violation: knowingly falsifying required documentation or falsifying, tampering with, or	A fine of not more than \$10,000 or 60 days in jail, or both, for each offense: causing certain pollution; failing to obtain any permit; or violating or failing to comply with any rule, regulation, order, or permit. A fine of not more than \$10,000, 6 months in jail, or both for committing the following violation: knowingly falsifying required documentation or falsifying, tampering with, or

⁵⁶ Section 373.103(8), F.S. Under certain circumstances, the DEP may authorize a water management district to delegate to a local government by rule or agreement the power and duty to administer and enforce any of the statutes, rules, or regulations relating to stormwater permitting or surface water management which the district is authorized or required to administer.

Florida Statutes	Violations	Existing Penalties	Changes in PCS/CS/SB 1450
		rendering inaccurate required monitoring devices or methods.	rendering inaccurate required monitoring devices or methods.
376.065 (5)(a) and (e), F.S.	Violating a statute regarding terminal facility certifications	A civil penalty of \$500 for any violation of the section or a certification. A civil penalty of \$500 imposed by a county court if commission of the infraction is proved.	A civil penalty of \$750 for any violation of the section or a certification. A civil penalty of \$750 imposed by a county court if commission of the infraction is proved.
376.071 (2)(a) and (e), F.S.	Violations regarding discharge contingency plans for vessels	A civil penalty of \$5,000 for each infraction. A civil penalty of \$5,000 imposed by a county court if commission of the infraction is proved.	A civil penalty of \$7,500 for each infraction. A civil penalty of \$7,500 imposed by a county court if commission of the infraction is proved.
376.16 (1), F.S.	Violating the Pollutant Discharge Prevention and Control Act or the DEP rules or orders	A civil penalty of up to \$50,000 per violation per day.	A civil penalty of up to \$75,000 per violation per day.
376.16 (2), (3), (7), and (8), F.S.	Violating the Pollutant Discharge Prevention and Control Act or the DEP rules or orders	In addition to the penalty in subsection (1), for persons responsible for two or more discharges within a 12-month period at the same facility, the statute provides the following penalties: <ul style="list-style-type: none"> Gasoline/diesel over 5 gallons - a civil penalty of \$500 for the second discharge and \$1,000 for each subsequent discharge within a 12-month period. Other pollutants - a civil penalty of \$2,500 for the second discharge and \$5,000 for each subsequent discharge within a 12-month period. For persons responsible for two or more discharges within a 12-month period at the same facility,	In addition to the penalty in subsection (1), for persons responsible for two or more discharges within a 12-month period at the same facility, the statute provides the following penalties: <ul style="list-style-type: none"> Gasoline/diesel over 5 gallons - a civil penalty of \$750 for the second discharge and \$1,500 for each subsequent discharge within a 12-month period. Other pollutants - a civil penalty of \$3,750 for the second discharge and \$7,500 for each subsequent discharge within a 12-month period. For persons responsible for two or more discharges within a 12-month period at the same facility,

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

Florida Statutes	Violations	Existing Penalties	Changes in PCS/CS/SB 1450
		previous years; and \$5,000 per major violation not otherwise covered.	previous years; and \$7,500 per major violation not otherwise covered.
403.086 (2), F.S.	Violating orders regarding sanitary sewage disposal	A civil penalty of \$500 for each 24-hour day or fraction thereof that the failure is allowed to continue.	A civil penalty of \$750 for each 24-hour day or fraction thereof that the failure is allowed to continue.
403.121 (1)(b), F.S.	Violating ch. 403, F.S., regarding environmental control	For judicial remedies - authorizes the DEP to judicially pursue and recover a civil penalty of not more than \$10,000 per offense.	For judicial remedies - authorizes the DEP to judicially pursue and recover a civil penalty of not more than \$15,000 per offense.
403.121 (2)(b) and (g) F.S.	Violating ch. 403, F.S., regarding environmental control	<p>For administrative remedies - (except for violations involving hazardous wastes, asbestos, or underground injection) the DEP must proceed administratively when seeking administrative penalties not exceeding \$10,000 per assessment.</p> <p>The DEP may not impose penalties in excess of \$10,000 in a notice of violation.</p> <p>The DEP retains the authority to judicially pursue penalties in excess of \$10,000 for violations not included in the penalty schedule, or for multiple or multiday violations alleged to exceed a total of \$10,000.</p> <p>Any case filed in state court because it is alleged to exceed a total of \$10,000 in penalties may be settled in the court action for less than \$10,000.</p>	<p>For administrative remedies - (except for violations involving hazardous wastes, asbestos, or underground injection) the DEP must proceed administratively when seeking administrative penalties not exceeding \$50,000 per assessment.</p> <p>The DEP may not impose penalties in excess of \$50,000 in a notice of violation.</p> <p>The DEP retains the authority to judicially pursue penalties in excess of \$50,000 for violations not included in the penalty schedule, or for multiple or multiday violations alleged to exceed a total of \$50,000.</p> <p>Any case filed in state court because it is alleged to exceed a total of \$50,000 in penalties may be settled in the court action for less than \$50,000.</p>
403.121	Administrative penalty schedule: violations regarding	\$2,000 for a Maximum Containment Level violation; plus \$1,000 for a primary, inorganic, organic, or radiological Maximum Contaminant Level or fecal	\$3,000 for a Maximum Containment Level violation; plus \$1,500 for a primary, inorganic, organic, or radiological Maximum Contaminant Level or fecal

Florida Statutes	Violations	Existing Penalties	Changes in PCS/CS/SB 1450
(3)(a), F.S. ⁵⁷	drinking water contamination	coliform bacteria violation; plus \$1,000 if the violation occurs at a community water system; plus \$1,000 if any Maximum Contaminant Level is exceeded by more than 100 percent. \$3,000 for failure to obtain a clearance letter before placing an ineligible drinking water system into service.	coliform bacteria violation; plus \$1,500 if the violation occurs at a community water system; plus \$1,500 if any Maximum Contaminant Level is exceeded by more than 100 percent. \$4,500 for failure to obtain a clearance letter before placing an ineligible drinking water system into service.
403.121 (3)(b), F.S.	Administrative penalty schedule: violations regarding wastewater	\$1,000 for failure to obtain a required wastewater permit (other than a permit for surface water discharge). \$2,000 for an unlawful discharge or exceedance resulting in a domestic or industrial wastewater violation (not involving a surface water or groundwater quality violation). \$5,000 for an unlawful discharge or exceedance resulting in a surface water or groundwater quality violation.	\$1,500 for failure to obtain a required wastewater permit (other than a permit for surface water discharge). \$3,000 for an unlawful discharge or exceedance resulting in a domestic or industrial wastewater violation (not involving a surface water or groundwater quality violation). \$7,500 for an unlawful discharge or exceedance resulting in a surface water or groundwater quality violation. Each day the cause of an unauthorized discharge of domestic wastewater is not addressed constitutes a separate offense.
403.121 (3)(c), F.S.	Administrative penalty schedule: violations regarding dredge and fill or stormwater	\$1,000 for an unlawful dredging, filling, or construction of a stormwater management system; plus \$2,000 if the dredging or filling occurs in an aquatic preserve, an Outstanding Florida water, a conservation easement, or a Class I or Class II surface water; plus \$1,000 if the area dredged or	\$1,500 for an unlawful dredging, filling, or construction of a stormwater management system; plus \$3,000 if the dredging or filling occurs in an aquatic preserve, an Outstanding Florida water, a conservation easement, or a Class I or Class II surface water; plus \$1,500 if the area dredged or

⁵⁷ Section 403.121(3), F.S. The administrative penalties in subsection (3) do not apply to hazardous waste, asbestos, or underground injection.

Florida Statutes	Violations	Existing Penalties	Changes in PCS/CS/SB 1450
		<p>filled is greater than .25 acres but less than or equal to .5 acres; plus \$1,000 if the area dredged or filled is greater than .5 acres but less than or equal to 1 acre.</p> <p>\$3,000 for failure to complete required mitigation, record a required conservation easement, or for a water quality violation resulting from dredging and filling activities, stormwater construction activities or failure of a stormwater treatment facility.</p> <p>\$2,000 (stormwater systems serving less than 5 acres) for failure to properly or timely construct a stormwater management system.</p> <p>\$5,000 per violation, in addition to the above penalties, for conducting unlawful dredging or filling.</p>	<p>filled is greater than .25 acres but less than or equal to .5 acres; plus \$1,500 if the area dredged or filled is greater than .5 acres but less than or equal to 1 acre.</p> <p>\$4,500 for failure to complete required mitigation, record a required conservation easement, or for a water quality violation resulting from dredging and filling activities, stormwater construction activities or failure of a stormwater treatment facility.</p> <p>\$3,000 (stormwater systems serving less than 5 acres) for failure to properly or timely construct a stormwater management system.</p> <p>\$7,500 per violation, in addition to the above penalties, for conducting unlawful dredging or filling.</p>
403.121 (3)(d), F.S.	Administrative penalty schedule: violations regarding mangrove trimming	\$5,000 per violation for conducting mangrove trimming or alterations without a permit.	\$7,500 per violation for conducting mangrove trimming or alterations without a permit.
403.121 (3)(e), F.S.	Administrative penalty schedule: violations regarding solid waste	\$2,000 for unlawful disposal or storage of solid waste; plus \$1,000 for Class I or III or construction and demolition debris in excess of 20 cubic yards; plus \$1,000 if the waste is disposed of or stored in a waterbody or within 500 feet of a potable water well; plus \$1,000 if the waste contains certain amounts of PCB, untreated biomedical waste, friable	\$3,000 for unlawful disposal or storage of solid waste; plus \$1,000 for Class I or III or construction and demolition debris in excess of 20 cubic yards; plus \$1,500 if the waste is disposed of or stored in a waterbody or within 500 feet of a potable water well; plus \$1,500 if the waste contains certain amounts of PCB, untreated biomedical waste, friable

Florida Statutes	Violations	Existing Penalties	Changes in PCS/CS/SB 1450
		<p>asbestos, used oil, or lead acid batteries.</p> <p>\$3,000 for failure to maintain leachate control, unauthorized burning, failure to have a trained spotter on duty, or failure to provide access control for three consecutive inspections.</p> <p>\$2,000 for failure to construct or maintain a required stormwater management system.</p>	<p>asbestos, used oil, or lead acid batteries.</p> <p>\$4,500 for failure to maintain leachate control, unauthorized burning, failure to have a trained spotter on duty, or failure to provide access control for three consecutive inspections.</p> <p>\$3,000 for failure to construct or maintain a required stormwater management system.</p>
403.121 (3)(f), F.S.	Administrative penalty schedule: violations regarding air emissions	\$1,000 for an unlawful air emission or exceedance; plus \$1,000 if the emission results in an air quality violation; plus \$3,000 for emissions from the major source of the violating pollutant; plus \$1,000 if over 150% of the allowable level.	\$1,500 for an unlawful air emission or exceedance; plus \$4,500 for emissions from the major source of the violating pollutant; plus \$1,500 if over 150% of the allowable level.
403.121 (3)(g), F.S.	Administrative penalty schedule: violations regarding storage tank system and petroleum contamination	<p>\$5,000 for failure to empty a damaged storage system as necessary to ensure a release does not occur until repairs are completed, when a release has occurred, failure to timely recover free product, or failure to conduct remediation or monitoring activities until a no-further-action or site-rehabilitation completion order has been issued.</p> <p>\$3,000 for failure to timely upgrade a storage tank system.</p> <p>\$2,000 for failure to conduct or maintain required release detection, failure to timely investigate a suspected release, depositing motor fuel into an unregistered storage tank system, failure to timely assess or</p>	<p>\$7,500 for failure to empty a damaged storage system as necessary to ensure a release does not occur until repairs are completed, when a release has occurred, failure to timely recover free product, or failure to conduct remediation or monitoring activities until a no-further-action or site-rehabilitation completion order has been issued.</p> <p>\$4,500 for failure to timely upgrade a storage tank system.</p> <p>\$3,000 for failure to conduct or maintain required release detection, failure to timely investigate a suspected release, depositing motor fuel into an unregistered storage tank system, failure to timely assess or</p>

Florida Statutes	Violations	Existing Penalties	Changes in PCS/CS/SB 1450
		<p>remediate petroleum contamination, or failure to properly install a storage tank system.</p> <p>\$1,000 for failure to properly operate, maintain, or close a storage tank system.</p>	<p>remediate petroleum contamination, or failure to properly install a storage tank system.</p> <p>\$1,500 for failure to properly operate, maintain, or close a storage tank system.</p>
403.121 (4), F.S.	Violating ch. 403, F.S., regarding environmental control	<p>In administrative proceedings, in addition to penalties assessed under subsection (3):</p> <ul style="list-style-type: none"> • \$5,000 for failure to satisfy financial responsibility requirements or for oil and gas pollution violations. • \$4,000 for failure to install, maintain, or use a required pollution control system or device. • \$3,000 for failure to obtain a required permit before construction or modification. • \$2,000 for failure to conduct required monitoring or testing, conduct required release detection, or construct in compliance with a permit. • \$1,000 for failure to maintain required staff to respond to emergencies, failure to conduct required training, failure to prepare, maintain, or update required contingency plans, failure to adequately respond to emergencies to bring an emergency situation under control, or failure to submit required notification to the DEP. • \$500 for failure to prepare, submit, maintain, or use required reports or documentation. 	<p>In administrative proceedings, in addition to penalties assessed under subsection (3):</p> <ul style="list-style-type: none"> • \$7,500 for failure to satisfy financial responsibility requirements or for oil and gas pollution violations. • \$6,000 for failure to install, maintain, or use a required pollution control system or device. • \$4,500 for failure to obtain a required permit before construction or modification. • \$3,000 for failure to conduct required monitoring or testing, conduct required release detection, or construct in compliance with a permit. • \$1,500 for failure to maintain required staff to respond to emergencies, failure to conduct required training, failure to prepare, maintain, or update required contingency plans, failure to adequately respond to emergencies to bring an emergency situation under control, or failure to submit required notification to the DEP. • \$750 for failure to prepare, submit, maintain, or use required reports or documentation.

Florida Statutes	Violations	Existing Penalties	Changes in PCS/CS/SB 1450
403.121 (5), (7), (8), and (9), F.S.	Violating ch. 403, F.S., regarding environmental control	<p>A penalty of \$500 for failure to comply with any other department regulatory statute or rule.</p> <p>A violator's history of noncompliance for any previous violation found in an executed consent order finding violation, or resulting in a final order or judgment involving the imposition of \$2,000 or more must be taken into consideration in a manner specified in statute.</p> <p>The total administrative penalty, including direct economic benefit gained by the violator that is added to the scheduled administrative penalty, may not exceed \$10,000.</p> <p>The administrative penalties for a particular violation that are assessed against any one violator may not exceed \$5,000, unless there is a history of noncompliance, the economic benefit exceeds \$5,000, or there are multiday violations. Total administrative penalties may not exceed \$10,000 per assessment for all violations attributable to a specific person in a notice of violation.</p>	<p>A penalty of \$1,000 for failure to comply with any other department regulatory statute or rule.</p> <p>A violator's history of noncompliance for any previous violation found in an executed consent order finding violation, or resulting in a final order or judgment involving the imposition of \$3,000 or more must be taken into consideration in a manner specified in statute.</p> <p>The total administrative penalty, including direct economic benefit gained by the violator that is added to the scheduled administrative penalty, may not exceed \$15,000.</p> <p>The administrative penalties for a particular violation that are assessed against any one violator may not exceed \$7,500, unless there is a history of noncompliance, the economic benefit exceeds \$7,500, or there are multiday violations. Total administrative penalties may not exceed \$50,000 per assessment for all violations attributable to a specific person in a notice of violation.</p>
403.141 (1), F.S.	Violating ch. 403, F.S., regarding environmental control, by committing prohibited acts	A civil penalty for each offense in an amount not to exceed \$10,000.	<p>A civil penalty for each offense in an amount not to exceed \$15,000.</p> <p>If a violation is an unauthorized discharge of domestic wastewater, each day the cause of the violation is not addressed constitutes a separate offense until the violation is resolved by order or judgement.</p>

Florida Statutes	Violations	Existing Penalties	Changes in PCS/CS/SB 1450
403.161 (4), F.S.	Violating ch. 403, F.S., regarding environmental control, by committing prohibited acts specified in the statute	A violation causing pollution due to reckless indifference or gross careless disregard is punishable by a fine of not more than \$5,000, 60 days in jail, or both, for each offense.	A violation causing pollution; failure to obtain a permit required under Ch. 403, F.S., or rules; or violating any rule, order, permit or certification adopted or issued by the DEP due to reckless indifference or gross careless disregard is punishable by a fine of not more than \$10,000, 60 days in jail, or both, for each offense.
403.161 (5), F.S.	Violating ch. 403, F.S., regarding environmental control, by willfully causing pollution	A fine of not more than \$10,000, 6 months in jail, or both for willfully committing the following violation: knowingly falsifying required documentation or falsifying, tampering with, or rendering inaccurate required monitoring devices or methods.	A fine of not more than \$10,000, 6 months in jail, or both for committing the following violation: knowingly falsifying required documentation or falsifying, tampering with, or rendering inaccurate required monitoring devices or methods.
403.413 (6)(a), F.S.	Dumping litter	A civil penalty of \$100 for dumping litter (not for commercial purposes) not exceeding 15 pounds or 27 cubic feet.	A civil penalty of \$150 for dumping litter (not for commercial purposes) not exceeding 15 pounds or 27 cubic feet.
403.7234 (5), F.S.	Violations involving small quantity generators	A fine of between \$50 and \$100 per day for a maximum of 100 days for a noncompliant small quantity generator.	A fine of between \$75 and \$150 per day for a maximum of 100 days for a noncompliant small quantity generator.
403.726 (3), F.S.	Violations regarding hazardous waste creating an imminent hazard	Authorizes the DEP to institute action to abate an imminent hazard and may recover a civil penalty of not more than \$25,000 for each day of continued violation.	Authorizes the DEP to institute action to abate an imminent hazard and may recover a civil penalty of not more than \$37,500 for each day of continued violation.
403.727 (3)(a), F.S.	Violations regarding hazardous waste	A civil penalty of not more than \$50,000 for each day of continued violation.	A civil penalty of not more than \$75,000 for each day of continued violation.
403.93345 (8)(a)-(c) and (g), F.S.	Civil penalty schedule: violating the Florida Coral Reef Protection Act	Damage to a coral reef less than or equal to 1 square meter: \$150; additional \$150 with aggravating circumstances; additional \$150 if occurring within a state park or aquatic preserve.	Damage to a coral reef less than or equal to 1 square meter: \$225; additional \$225 with aggravating circumstances; additional \$225 if occurring within a state park or aquatic preserve.

Florida Statutes	Violations	Existing Penalties	Changes in PCS/CS/SB 1450
		<p>Damage to a coral reef of more than 1 square meter but less than or equal to 10 square meters: \$300 per square meter; additional \$300 per square meter with aggravating circumstances; additional \$300 per square meter if occurring within a state park or aquatic preserve.</p> <p>Damage exceeding an area of 10 square meters: \$1,000 per square meter; additional \$1,000 per square meter with aggravating circumstances; additional \$1,000 per square meter if occurring within a state park or aquatic preserve.</p> <p>The total penalties levied may not exceed \$250,000 per occurrence.</p>	<p>Damage to a coral reef of more than 1 square meter but less than or equal to 10 square meters: \$450 per square meter; additional \$450 per square meter with aggravating circumstances; additional \$450 per square meter if occurring within a state park or aquatic preserve.</p> <p>Damage exceeding an area of 10 square meters: \$1,500 per square meter; additional \$1,500 per square meter with aggravating circumstances; additional \$1,500 per square meter if occurring within a state park or aquatic preserve.</p> <p>The total penalties levied may not exceed \$375,000 per occurrence.</p>

Section 22 creates s. 125.569, F.S., titled “Sanitary sewer lateral inspection program.”

The bill defines the term “sanitary sewer lateral,” as used in s. 125.569, F.S., to mean “a privately owned pipeline connecting a property to the main sewer line which is maintained and repaired by the property owner.”

The bill encourages counties, by July 1, 2022, to establish an evaluation and rehabilitation program for sanitary sewer laterals on residential and commercial properties within the county’s jurisdiction to identify and reduce extraneous flow from leaking sanitary sewer laterals. At a minimum, the program may do all of the following:

- Establish a system to identify defective, damaged, or deteriorated sanitary sewer laterals on residential and commercial properties within the jurisdiction of the county.
- Consider economical methods for a property owner to repair or replace a defective, damaged, or deteriorated sanitary sewer lateral.
- Establish and maintain a publicly accessible database to store information concerning properties where a defective, damaged, or deteriorated sanitary sewer lateral has been identified. For each property, the database must include, but is not limited to, the address of the property, the names of any persons the county notified concerning the faulty sanitary sewer lateral, and the date and method of such notification.

Section 23 creates s. 166.0481, F.S., titled “Sanitary sewer lateral inspection program.”

The bill defines the term “sanitary sewer lateral,” as used in s. 166.0481, F.S., to mean “a privately owned pipeline connecting a property to the main sewer line which is maintained and repaired by the property owner.”

The bill encourages municipalities, by July 1, 2022, to establish an evaluation and rehabilitation program for sanitary sewer laterals on residential and commercial properties within the municipality’s jurisdiction to identify and reduce extraneous flow from leaking sanitary sewer laterals. At a minimum, the program may do all of the following:

- Establish a system to identify defective, damaged, or deteriorated sanitary sewer laterals on residential and commercial properties within the jurisdiction of the municipality.
- Consider economical methods for a property owner to repair or replace a defective, damaged, or deteriorated sanitary sewer lateral.
- Establish and maintain a publicly accessible database to store information concerning properties where a defective, damaged, or deteriorated sanitary sewer lateral has been identified. For each property, the database must include, but is not limited to, the address of the property, the names of any persons the municipality notified concerning the faulty sanitary sewer lateral, and the date and method of such notification.

Section 24 creates s. 689.301, F.S., titled “Disclosure of known defects in sanitary sewer laterals to prospective purchaser.”

The bill defines the term “sanitary sewer lateral,” as used in s. 689.301, F.S., to mean “the privately owned pipeline connecting a property to the main sewer line.”

The bill requires a seller of real property, before executing a contract for sale, to disclose to a prospective purchaser any defects in the property’s sanitary sewer lateral which are known to the seller.

Sections 25 through 29 reenact ss. 823.11(5); 403.077(5); 403.131(2); 403.4154(3)(d); 403.860(5); 403.708(10); 403.7191(7); 403.811; 403.7255(2); and 403.7186(8), F.S. This reenactment is done for the purpose of incorporating certain amendments made by the bill, as the reenacted provisions reference sections of law that are amended by the bill.

Section 30 states that the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

The bill increases the amounts of numerous penalties. Such penalties may apply to government entities, such as local governments. The bill may cause government entities to be responsible for increased costs when they are required to pay such penalties.

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

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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

This bill creates the following sections of the Florida Statutes: 125.569, 166.0481, and 689.301.

This bill reenacts the following sections of the Florida Statutes: 403.077, 403.131, 403.4154, 403.708, 403.7186, 403.7191, 403.7255, 403.811, 403.86, and 823.11.

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

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

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on February 18, 2020:

The committee substitute:

- Removes the following language, or substantially similar language, from anywhere it appears in the bill: “[u]ntil a violation is resolved by order or judgement, each day during any portion of which such violation occurs or is not remediated constitutes a separate offense.”
- Returns what constitutes a separate offense to the existing “[e]ach during any portion of which such violation occurs constitutes a separate offense” in several sections, including those on the following topics: coastal construction and activities, water resources, regulation of oil and gas resources, phosphate land reclamation, hazardous waste, criminal penalties for discharges of pollutants, and civil and criminal penalties in ch. 403, F.S.
- Adds the standard “[e]ach day during any portion of which such violation occurs constitutes a separate offense” to sections on the following topics: Biscayne Bay Aquatic Preserve, aquatic preserves, and gambling vessels.
- Adds to the administrative penalties in s. 403.121, F.S., that each day the cause of an unauthorized discharge of domestic wastewater is not addressed constitutes a separate offense.
- Adds to civil penalties in s. 403.141, F.S., that each day the cause of an unauthorized discharge of domestic wastewater is not addressed constitutes a separate offense until the violation is resolved by order or judgement.

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

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

- Revises the title of the bill to more accurately describe the contents of the bill.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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; making
6 technical changes; amending ss. 258.397, 258.46,
7 373.129, 376.16, 376.25, 377.37, 378.211, and 403.141,
8 F.S.; revising civil penalties for violations of
9 certain provisions relating to the Biscayne Bay
10 Aquatic Preserve, aquatic preserves, water resources,
11 the Pollutant Discharge Prevention and Control Act,
12 the Clean Ocean Act, regulation of oil and gas
13 resources, the Phosphate Land Reclamation Act, and
14 other provisions relating to pollution and the
15 environment, respectively; providing that each day
16 that certain violations occur constitutes a separate
17 offense; making technical changes; amending ss.
18 373.209, 376.065, 376.071, 403.086, 403.413, 403.7234,
19 and 403.93345, F.S.; revising civil penalties for
20 violations of certain provisions relating to artesian
21 wells, terminal facilities, discharge contingency
22 plans for vessels, sewage disposal facilities, dumping
23 litter, small quantity generators, and coral reef
24 protection, respectively; making technical changes;
25 amending ss. 373.430 and 403.161, F.S.; revising

26 criminal penalties for violations of certain
27 provisions relating to pollution and the environment;
28 providing that each day that the cause of unauthorized
29 discharges of domestic wastewater is not addressed
30 constitutes a separate offense; making technical
31 changes; amending s. 403.121, F.S.; revising civil and
32 administrative penalties for violations of certain
33 provisions relating to pollution and the environment;
34 providing that each day that the cause of unauthorized
35 discharges of domestic wastewater is not addressed
36 constitutes a separate offense; increasing the amount
37 of penalties that can be assessed administratively;
38 making technical changes; amending ss. 403.726 and
39 403.727, F.S.; revising civil penalties for violations
40 of certain provisions relating to hazardous waste;
41 making technical changes; reenacting s. 823.11(5),
42 F.S., to incorporate the amendment made to s. 376.16,
43 F.S., in a reference thereto; reenacting ss.
44 403.077(5), 403.131(2), 403.4154(3)(d), and
45 403.860(5), F.S., to incorporate the amendment made to
46 s. 403.121, F.S., in a reference thereto; reenacting
47 ss. 403.708(10), 403.7191(7), and 403.811, F.S., to
48 incorporate the amendment made to s. 403.141, F.S., in
49 a reference thereto; reenacting s. 403.7186(8), F.S.,
50 to incorporate the amendment made to ss. 403.141 and

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403.161, F.S., in references thereto; reenacting s.
403.7255(2), F.S., to incorporate the amendment made
to s. 403.161, F.S., in a reference thereto; providing
an effective date.

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

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

161.054 Administrative fines; liability for damage;
liens.—

(1) In addition to the penalties provided for in ss.
161.052, 161.053, and 161.121, any person, firm, corporation, or
governmental agency, or agent thereof, refusing to comply with
or willfully violating ~~any of the provisions of~~ s. 161.041, s.
161.052, or s. 161.053, or any rule or order prescribed by the
department thereunder, shall incur a fine for each offense in an
amount up to \$15,000 ~~\$10,000~~ to be fixed, imposed, and collected
by the department. Each day during any portion of which such
violation occurs constitutes a separate offense.

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

258.397 Biscayne Bay Aquatic Preserve.—

(7) ENFORCEMENT.—~~The provisions of~~ This section may be
enforced in accordance with ~~the provisions of~~ s. 403.412. In

76 addition, the Department of Legal Affairs may ~~is authorized to~~
77 bring an action for civil penalties of \$7,500 ~~\$5,000~~ per day
78 against any person, natural or corporate, who violates ~~the~~
79 ~~provisions of~~ this section or any rule or regulation issued
80 hereunder. Each day during any portion of which such violation
81 occurs constitutes a separate offense. Enforcement of applicable
82 state regulations shall be supplemented by the Miami-Dade County
83 Department of Environmental Resources Management through the
84 creation of a full-time enforcement presence along the Miami
85 River.

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

88 258.46 Enforcement; violations; penalty. ~~The provisions of~~
89 This act may be enforced by the Board of Trustees of the
90 Internal Improvement Trust Fund or in accordance with ~~the~~
91 ~~provisions of~~ s. 403.412. However, any violation by any person,
92 natural or corporate, of ~~the provisions of~~ this act or any rule
93 or regulation issued hereunder is ~~shall be~~ further punishable by
94 a civil penalty of not less than \$750 ~~\$500~~ per day or more than
95 \$7,500 ~~\$5,000~~ per day of such violation. Each day during any
96 portion of which such violation occurs constitutes a separate
97 offense.

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

100 373.129 Maintenance of actions.—The department, the

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

(5) To recover a civil penalty for each offense in an amount not to exceed \$15,000 ~~\$10,000~~ per offense. Each date during which such violation occurs constitutes a separate offense.

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

(b) A local government that is delegated authority pursuant to s. 373.103(8) may deposit a civil penalty recovered pursuant to this subsection into a local water pollution control program trust fund, notwithstanding ~~the provisions of~~ paragraph (a). However, civil penalties that are deposited in a local water pollution control program trust fund and that are recovered for violations of state water quality standards may be used only to restore water quality in the area that was the subject of the action, and civil penalties that are deposited in

126 a local water pollution control program trust fund and that are
127 recovered for violation of requirements relating to water
128 quantity may be used only to purchase lands and make capital
129 improvements associated with surface water management, or other
130 purposes consistent with the requirements of this chapter for
131 the management and storage of surface water.

132 (7) To ~~enforce the provisions of~~ part IV of this chapter
133 in the same manner and to the same extent as provided in ss.
134 373.430, 403.121(1) and (2), 403.131, 403.141, and 403.161.

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

137 373.209 Artesian wells; penalties for violation.—

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

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

141 (b) A civil penalty of \$150 ~~\$100~~ a day for each and every
142 day of such violation and for each and every act of violation.
143 The civil penalty may be recovered by the water management board
144 of the water management district in which the well is located or
145 by the department in a suit in a court of competent jurisdiction
146 in the county where the defendant resides, in the county of
147 residence of any defendant if there is more than one defendant,
148 or in the county where the violation took place. The place of
149 suit shall be selected by the board or department, and the suit,
150 by direction of the board or department, shall be instituted and

151 conducted in the name of the board or department by appropriate
152 counsel. The payment of any such damages does not impair or
153 abridge any cause of action which any person may have against
154 the person violating ~~any provision of~~ this section.

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

157 373.430 Prohibitions, violation, penalty, intent.—

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

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

168 (4) A ~~Any~~ person who commits a violation specified in
169 paragraph (1)(a) or paragraph (1)(b) due to reckless
170 indifference or gross careless disregard commits ~~is guilty of~~ a
171 misdemeanor of the second degree, punishable as provided in ss.
172 775.082(4)(b) and 775.083(1)(g), by a fine of not more than
173 \$10,000 ~~\$5,000~~ or 60 days in jail, or by both, for each offense.

174 (5) A ~~Any~~ person who willfully commits a violation
175 specified in paragraph (1)(b) or who commits a violation

176 specified in paragraph (1)(c) commits ~~is guilty of~~ a misdemeanor
177 of the first degree, punishable as provided in ss. 775.082(4)(a)
178 and 775.083(1)(g), by a fine of not more than \$10,000 or by 6
179 months in jail, or by both, for each offense.

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

182 376.065 Operation of terminal facility without discharge
183 prevention and response certificate prohibited; penalty.—

184 (5)(a) A person who violates this section or the terms and
185 requirements of such certification commits a noncriminal
186 infraction. The civil penalty for any such infraction shall be
187 \$750 ~~\$500~~, except as otherwise provided in this section.

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

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

196 376.071 Discharge contingency plan for vessels.—

197 (2)(a) A master of a vessel that violates subsection (1)
198 commits a noncriminal infraction and shall be cited for such
199 infraction. The civil penalty for such an infraction shall be
200 \$7,500 ~~\$5,000~~, except as otherwise provided in this subsection.

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

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

376.16 Enforcement and penalties.—

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

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

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

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

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

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

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

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

(a) Pay the civil penalty;

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

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

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

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

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

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

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

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

(7) Any person who elects to appear before the county court or who is required to appear waives the limitations of the civil penalties specified in subsection (2). The court, after a

276 hearing, shall make a determination as to whether an infraction
277 has been committed. If the commission of an infraction is
278 proved, the court may impose a civil penalty up to, but not
279 exceeding, \$750 ~~\$500~~ for the second discharge of gasoline or
280 diesel and a civil penalty up to, but not exceeding, \$1,500
281 ~~\$1,000~~ for each subsequent discharge of gasoline or diesel
282 within a 12-month period.

283 (8) 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) or subsection (3).
286 The court, after a hearing, shall make a determination as to
287 whether an infraction has been committed. If the commission of
288 an infraction is proved, the court may impose a civil penalty up
289 to, but not exceeding, \$7,500 ~~\$5,000~~ for the second discharge of
290 pollutants other than gasoline or diesel and a civil penalty up
291 to, but not exceeding, \$15,000 ~~\$10,000~~ for each subsequent
292 discharge of pollutants other than gasoline or diesel within a
293 12-month period.

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

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

300 (11) Any person who has not posted bond and who neither

301 pays the applicable civil penalty, as specified in subsection
302 (2) or subsection (3) within 30 days of receipt of the citation
303 nor appears before the court commits a misdemeanor of the second
304 degree, punishable as provided in s. 775.082 or s. 775.083.

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

310 Section 10. Paragraph (a) of subsection (6) of section
311 376.25, Florida Statutes, is amended to read:

312 376.25 Gambling vessels; registration; required and
313 prohibited releases.—

314 (6) PENALTIES.—

315 (a) A person who violates this section is subject to a
316 civil penalty of not more than \$75,000 ~~\$50,000~~ for each
317 violation. Each day during any portion of which such violation
318 occurs constitutes a separate offense.

319 Section 11. Paragraph (a) of subsection (1) of section
320 377.37, Florida Statutes, is amended to read:

321 377.37 Penalties.—

322 (1)(a) Any person who violates ~~any provision of~~ this law
323 or any rule, regulation, or order of the division made under
324 this chapter or who violates the terms of any permit to drill
325 for or produce oil, gas, or other petroleum products referred to

in s. 377.242(1) or to store gas in a natural gas storage facility, or any lessee, permitholder, or operator of equipment or facilities used in the exploration for, drilling for, or production of oil, gas, or other petroleum products, or storage of gas in a natural gas storage facility, who refuses inspection by the division as provided in this chapter, is liable to the state for any damage caused to the air, waters, or property, including animal, plant, or aquatic life, of the state and for reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including animal, plant, and aquatic life, of the state. Furthermore, such person, lessee, permitholder, or operator is subject to the judicial imposition of a civil penalty in an amount of not more than \$15,000 ~~\$10,000~~ for each offense. However, the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense. This section does not ~~Nothing herein shall~~ give the department the right to bring an action on behalf of any private person.

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

378.211 Violations; damages; penalties.—

(2) The department may institute a civil action in a court of competent jurisdiction to impose and recover a civil penalty

for violation of this part or of any rule adopted or order issued pursuant to this part. The penalty may ~~shall~~ not exceed the following amounts, and the court shall consider evidence in mitigation:

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

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

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

Subject to ~~the provisions of~~ subsection (4), each day or any portion thereof in which the violation continues shall constitute a separate violation.

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

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

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

thereafter.

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

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

(1) Judicial remedies:

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

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

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

401 civil action.

402 (2) Administrative remedies:

403 (a) The department may institute an administrative
404 proceeding to establish liability and to recover damages for any
405 injury to the air, waters, or property, including animal, plant,
406 or aquatic life, of the state caused by any violation. The
407 department may order that the violator pay a specified sum as
408 damages to the state. Judgment for the amount of damages
409 determined by the department may be entered in any court having
410 jurisdiction thereof and may be enforced as any other judgment.

411 (b) If the department has reason to believe a violation
412 has occurred, it may institute an administrative proceeding to
413 order the prevention, abatement, or control of the conditions
414 creating the violation or other appropriate corrective action.
415 Except for violations involving hazardous wastes, asbestos, or
416 underground injection, the department shall proceed
417 administratively in all cases in which the department seeks
418 administrative penalties that do not exceed \$50,000 ~~\$10,000~~ per
419 assessment as calculated in accordance with subsections (3),
420 (4), (5), (6), and (7). Pursuant to 42 U.S.C. s. 300g-2, the
421 administrative penalty assessed pursuant to subsection (3),
422 subsection (4), or subsection (5) against a public water system
423 serving a population of more than 10,000 shall be not less than
424 \$1,000 per day per violation. The department may ~~shall~~ not
425 impose administrative penalties in excess of \$50,000 ~~\$10,000~~ in

426 a notice of violation. The department may ~~shall~~ not have more
427 than one notice of violation seeking administrative penalties
428 pending against the same party at the same time unless the
429 violations occurred at a different site or the violations were
430 discovered by the department subsequent to the filing of a
431 previous notice of violation.

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

451 unless the respondent files a written notice with the department
452 within this time period opting out of the administrative process
453 initiated by the department to impose administrative penalties.
454 Any respondent choosing to opt out of the administrative process
455 initiated by the department in an action that seeks the
456 imposition of administrative penalties must file a written
457 notice with the department within 20 days after service of the
458 notice of violation opting out of the administrative process. A
459 respondent's decision to opt out of the administrative process
460 does not preclude the department from initiating a state court
461 action seeking injunctive relief, damages, and the judicial
462 imposition of civil penalties.

463 (d) If a person timely files a petition challenging a
464 notice of violation, that person will thereafter be referred to
465 as the respondent. The hearing requested by the respondent shall
466 be held within 180 days after the department has referred the
467 initial petition to the Division of Administrative Hearings
468 unless the parties agree to a later date. The department has the
469 burden of proving with the preponderance of the evidence that
470 the respondent is responsible for the violation. ~~No~~
471 Administrative penalties should not be imposed unless the
472 department satisfies that burden. Following the close of the
473 hearing, the administrative law judge shall issue a final order
474 on all matters, including the imposition of an administrative
475 penalty. When the department seeks to enforce that portion of a

476 final order imposing administrative penalties pursuant to s.
477 120.69, the respondent may ~~shall~~ not assert as a defense the
478 inappropriateness of the administrative remedy. The department
479 retains its final-order authority in all administrative actions
480 that do not request the imposition of administrative penalties.

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

500 (f) In any administrative proceeding brought by the

department, the prevailing party shall recover all costs as provided in ss. 57.041 and 57.071. The costs must be included in the final order. The respondent is the prevailing party when an order is entered awarding no penalties to the department and such order has not been reversed on appeal or the time for seeking judicial review has expired. The respondent is ~~shall be~~ entitled to an award of attorney's fees if the administrative law judge determines that the notice of violation issued by the department seeking the imposition of administrative penalties was not substantially justified as defined in s. 57.111(3)(e). An ~~No~~ award of attorney's fees as provided by this subsection may not ~~shall~~ exceed \$15,000.

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

violations alleged to exceed a total of \$50,000 ~~\$10,000~~. The department also retains the authority provided in ss. 403.131, 403.141, and this section to judicially pursue injunctive relief and damages, if a notice of violation seeking the imposition of administrative penalties has not been issued. The department has the authority to enter into a settlement, either before or after initiating a notice of violation, and the settlement may include a penalty amount different from the administrative penalty schedule. Any case filed in state court because it is alleged to exceed a total of \$50,000 ~~\$10,000~~ in penalties may be settled in the court action for less than \$50,000 ~~\$10,000~~.

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

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

(a) For a drinking water contamination violation, the department shall assess a penalty of \$3,000 ~~\$2,000~~ for a Maximum Containment Level (MCL) violation; plus \$1,500 ~~\$1,000~~ if the violation is for a primary inorganic, organic, or radiological Maximum Contaminant Level or it is a fecal coliform bacteria violation; plus \$1,500 ~~\$1,000~~ if the violation occurs at a community water system; and plus \$1,500 ~~\$1,000~~ if any Maximum Contaminant Level is exceeded by more than 100 percent. For

551 failure to obtain a clearance letter before ~~prior to~~ placing a
552 drinking water system into service when the system would not
553 have been eligible for clearance, the department shall assess a
554 penalty of \$4,500 ~~\$3,000~~.

555 (b) For failure to obtain a required wastewater permit,
556 other than a permit required for surface water discharge, the
557 department shall assess a penalty of \$2,000 ~~\$1,000~~. For a
558 domestic or industrial wastewater violation not involving a
559 surface water or groundwater quality violation, the department
560 shall assess a penalty of \$4,000 ~~\$2,000~~ for an unpermitted or
561 unauthorized discharge or effluent-limitation exceedance. For an
562 unpermitted or unauthorized discharge or effluent-limitation
563 exceedance that resulted in a surface water or groundwater
564 quality violation, the department shall assess a penalty of
565 \$10,000 ~~\$5,000~~. Each day the cause of an unauthorized discharge
566 of domestic wastewater is not addressed constitutes a separate
567 offense.

568 (c) For a dredge and fill or stormwater violation, the
569 department shall assess a penalty of \$1,500 ~~\$1,000~~ for
570 unpermitted or unauthorized dredging or filling or unauthorized
571 construction of a stormwater management system against the
572 person or persons responsible for the illegal dredging or
573 filling, or unauthorized construction of a stormwater management
574 system plus \$3,000 ~~\$2,000~~ if the dredging or filling occurs in
575 an aquatic preserve, an Outstanding Florida Water, a

576 conservation easement, or a Class I or Class II surface water,
577 plus \$1,500 ~~\$1,000~~ if the area dredged or filled is greater than
578 one-quarter acre but less than or equal to one-half acre, and
579 plus \$1,500 ~~\$1,000~~ if the area dredged or filled is greater than
580 one-half acre but less than or equal to one acre. The
581 administrative penalty schedule does ~~shall~~ not apply to a dredge
582 and fill violation if the area dredged or filled exceeds one
583 acre. The department retains the authority to seek the judicial
584 imposition of civil penalties for all dredge and fill violations
585 involving more than one acre. The department shall assess a
586 penalty of \$4,500 ~~\$3,000~~ for the failure to complete required
587 mitigation, failure to record a required conservation easement,
588 or for a water quality violation resulting from dredging or
589 filling activities, stormwater construction activities or
590 failure of a stormwater treatment facility. For stormwater
591 management systems serving less than 5 acres, the department
592 shall assess a penalty of \$3,000 ~~\$2,000~~ for the failure to
593 properly or timely construct a stormwater management system. In
594 addition to the penalties authorized in this subsection, the
595 department shall assess a penalty of \$7,500 ~~\$5,000~~ per violation
596 against the contractor or agent of the owner or tenant that
597 conducts unpermitted or unauthorized dredging or filling. For
598 purposes of this paragraph, the preparation or signing of a
599 permit application by a person currently licensed under chapter
600 471 to practice as a professional engineer does ~~shall~~ not make

601 that person an agent of the owner or tenant.

602 (d) For mangrove trimming or alteration violations, the
603 department shall assess a penalty of \$7,500 ~~\$5,000~~ per violation
604 against the contractor or agent of the owner or tenant that
605 conducts mangrove trimming or alteration without a permit as
606 required by s. 403.9328. For purposes of this paragraph, the
607 preparation or signing of a permit application by a person
608 currently licensed under chapter 471 to practice as a
609 professional engineer does ~~shall~~ not make that person an agent
610 of the owner or tenant.

611 (e) For solid waste violations, the department shall
612 assess a penalty of \$3,000 ~~\$2,000~~ for the unpermitted or
613 unauthorized disposal or storage of solid waste; plus \$1,000 if
614 the solid waste is Class I or Class III (excluding yard trash)
615 or if the solid waste is construction and demolition debris in
616 excess of 20 cubic yards, plus \$1,500 ~~\$1,000~~ if the waste is
617 disposed of or stored in any natural or artificial body of water
618 or within 500 feet of a potable water well, plus \$1,500 ~~\$1,000~~
619 if the waste contains PCB at a concentration of 50 parts per
620 million or greater; untreated biomedical waste; friable asbestos
621 greater than 1 cubic meter which is not wetted, bagged, and
622 covered; used oil greater than 25 gallons; or 10 or more lead
623 acid batteries. The department shall assess a penalty of \$4,500
624 ~~\$3,000~~ for failure to properly maintain leachate control;
625 unauthorized burning; failure to have a trained spotter on duty

626 at the working face when accepting waste; or failure to provide
627 access control for three consecutive inspections. The department
628 shall assess a penalty of \$3,000 ~~\$2,000~~ for failure to construct
629 or maintain a required stormwater management system.

630 (f) For an air emission violation, the department shall
631 assess a penalty of \$1,500 ~~\$1,000~~ for an unpermitted or
632 unauthorized air emission or an air-emission-permit exceedance,
633 ~~plus \$1,000 if the emission results in an air quality violation,~~
634 plus \$4,500 ~~\$3,000~~ if the emission was from a major source and
635 the source was major for the pollutant in violation; plus \$1,500
636 ~~\$1,000~~ if the emission was more than 150 percent of the
637 allowable level.

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

651 suspected release from a storage system; depositing motor fuel
652 into an unregistered storage tank system; failure to timely
653 assess or remediate petroleum contamination; or failure to
654 properly install a storage tank system. The department shall
655 assess a penalty of \$1,500 ~~\$1,000~~ for failure to properly
656 operate, maintain, or close a storage tank system.

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

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

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

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

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

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

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

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

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

689 (7) The history of noncompliance of the violator for any
690 previous violation resulting in an executed consent order, but
691 not including a consent order entered into without a finding of
692 violation, or resulting in a final order or judgment after the
693 effective date of this law involving the imposition of \$3,000
694 ~~\$2,000~~ or more in penalties shall be taken into consideration in
695 the following manner:

696 (a) One previous such violation within 5 years before
697 ~~prior to~~ the filing of the notice of violation will result in a
698 25-percent per day increase in the scheduled administrative
699 penalty.

700 (b) Two previous such violations within 5 years before

701 ~~prior to~~ the filing of the notice of violation will result in a
702 50-percent per day increase in the scheduled administrative
703 penalty.

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

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

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

724 (10) The administrative law judge may receive evidence in
725 mitigation. The penalties identified in subsections ~~subsection~~

726 (3), ~~subsection~~ (4), and ~~subsection~~ (5) may be reduced up to 50
727 percent by the administrative law judge for mitigating
728 circumstances, including good faith efforts to comply before
729 ~~prior to~~ or after discovery of the violations by the department.
730 Upon an affirmative finding that the violation was caused by
731 circumstances beyond the reasonable control of the respondent
732 and could not have been prevented by respondent's due diligence,
733 the administrative law judge may further reduce the penalty.

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

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

penalties in state court as provided in this section.

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

403.141 Civil liability; joint and several liability.—

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

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

403.161 Prohibitions, violation, penalty, intent.—

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

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

786 (4) A ~~Any~~ person who commits a violation specified in
787 paragraph (1)(a) or paragraph (1)(b) due to reckless
788 indifference or gross careless disregard commits ~~is guilty of~~ a
789 misdemeanor of the second degree, punishable as provided in ss.
790 775.082(4)(b) and 775.083(1)(g) by a fine of not more than
791 \$10,000 ~~\$5,000~~ or by 60 days in jail, or by both, for each
792 offense.

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

799 Section 17. Paragraph (a) of subsection (6) of section
800 403.413, Florida Statutes, is amended to read:

403.413 Florida Litter Law.—

(6) PENALTIES; ENFORCEMENT.—

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

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

403.7234 Small quantity generator notification and verification program.—

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

used for hazardous and solid waste management purposes only.

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

403.726 Abatement of imminent hazard caused by hazardous substance.—

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

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

403.727 Violations; defenses, penalties, and remedies.—

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

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

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

403.93345 Coral reef protection.—

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

(a) For any anchoring of a vessel on a coral reef or for any other damage to a coral reef totaling less than or equal to an area of 1 square meter, \$225 ~~\$150~~, provided that a responsible party who has anchored a recreational vessel as defined in s. 327.02 which is lawfully registered or exempt from

876 registration pursuant to chapter 328 is issued, at least once, a
877 warning letter in lieu of penalty; with aggravating
878 circumstances, an additional \$225 ~~\$150~~; occurring within a state
879 park or aquatic preserve, an additional \$225 ~~\$150~~.

880 (b) For damage totaling more than an area of 1 square
881 meter but less than or equal to an area of 10 square meters,
882 \$450 ~~\$300~~ per square meter; with aggravating circumstances, an
883 additional \$450 ~~\$300~~ per square meter; occurring within a state
884 park or aquatic preserve, an additional \$450 ~~\$300~~ per square
885 meter.

886 (c) For damage exceeding an area of 10 square meters,
887 \$1,500 ~~\$1,000~~ per square meter; with aggravating circumstances,
888 an additional \$1,500 ~~\$1,000~~ per square meter; occurring within a
889 state park or aquatic preserve, an additional \$1,500 ~~\$1,000~~ per
890 square meter.

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

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

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

897 (g) The total of penalties levied may not exceed \$375,000
898 ~~\$250,000~~ per occurrence.

899 Section 22. For the purpose of incorporating the amendment
900 made by this act to s. 376.16, Florida Statutes, in a reference

thereto, subsection (5) of s. 823.11, Florida Statutes, is reenacted to read:

823.11 Derelict vessels; relocation or removal; penalty.—

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

Section 23. For the purpose of incorporating the amendment made by this act to section 403.121, Florida Statutes, in a reference thereto, subsection (5) of section 403.077, Florida Statutes, is reenacted to read:

403.077 Public notification of pollution.—

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

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

403.131 Injunctive relief, remedies.—

926 (2) All the judicial and administrative remedies to
927 recover damages and penalties in this section and s. 403.121 are
928 alternative and mutually exclusive.

929 Section 25. For the purpose of incorporating the amendment
930 made by this act to section 403.121, Florida Statutes, in a
931 reference thereto, paragraph (d) of subsection (3) of section
932 403.4154, Florida Statutes, is reenacted to read:

933 403.4154 Phosphogypsum management program.—

934 (3) ABATEMENT OF IMMINENT HAZARD.—

935 (d) If the department determines that the failure of an
936 owner or operator to comply with department rules requiring
937 demonstration of financial responsibility or that the physical
938 condition, maintenance, operation, or closure of a phosphogypsum
939 stack system poses an imminent hazard, the department shall
940 request access to the property on which such stack system is
941 located from the owner or operator of the stack system for the
942 purposes of taking action to abate or substantially reduce the
943 imminent hazard. If the department, after reasonable effort, is
944 unable to timely obtain the necessary access to abate or
945 substantially reduce the imminent hazard, the department may
946 institute action in its own name, using the procedures and
947 remedies of s. 403.121 or s. 403.131, to abate or substantially
948 reduce an imminent hazard. Whenever serious harm to human
949 health, safety, or welfare, to the environment, or to private or
950 public property may occur before ~~prior to~~ completion of an

951 administrative hearing or other formal proceeding that might be
952 initiated to abate the risk of serious harm, the department may
953 obtain from the court, *ex parte*, an injunction without paying
954 filing and service fees before ~~prior to~~ the filing and service
955 of process.

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

960 403.860 Penalties and remedies.—

961 (5) In addition to any judicial or administrative remedy
962 authorized by this part, the department or a county health
963 department that has received approval by the department pursuant
964 to s. 403.862(1)(c) shall assess administrative penalties for
965 violations of this section in accordance with s. 403.121.

966 Section 27. For the purpose of incorporating the amendment
967 made by this act to section 403.141, Florida Statutes, in a
968 reference thereto, subsection (10) of section 403.708, Florida
969 Statutes, is reenacted to read:

970 403.708 Prohibition; penalty.—

971 (10) Violations of this part or rules, regulations,
972 permits, or orders issued thereunder by the department and
973 violations of approved local programs of counties or
974 municipalities or rules, regulations, or orders issued
975 thereunder are punishable by a civil penalty as provided in s.

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976 403.141.

977 Section 28. For the purpose of incorporating the amendment
978 made by this act to section 403.141, Florida Statutes, in a
979 reference thereto, subsection (7) of section 403.7191, Florida
980 Statutes, is reenacted to read:

981 403.7191 Toxics in packaging.—

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

983 (a) Violate any provision of this section or any rule
984 adopted or order issued thereunder by the department.

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

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

991 (d) Provide a certificate of compliance that contains
992 false information.

993
994 Violations shall be punishable by a civil penalty as provided in
995 s. 403.141.

996 Section 29. For the purpose of incorporating the amendment
997 made by this act to section 403.141, Florida Statutes, in a
998 reference thereto, section 403.811, Florida Statutes, is
999 reenacted to read:

1000 403.811 Dredge and fill permits issued pursuant to this

chapter and s. 373.414.—Permits or other orders addressing dredging and filling in, on, or over waters of the state issued pursuant to this chapter or s. 373.414(9) before the effective date of rules adopted under s. 373.414(9) and permits or other orders issued in accordance with s. 373.414(13), (14), (15), or (16) shall remain valid through the duration specified in the permit or order, unless revoked by the agency issuing the permit. The agency issuing the permit or other order may seek to enjoin the violation of, or to enforce compliance with, the permit or other order as provided in ss. 403.121, 403.131, 403.141, and 403.161. A violation of a permit or other order addressing dredging or filling issued pursuant to this chapter is punishable by a civil penalty as provided in s. 403.141 or a criminal penalty as provided in s. 403.161.

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

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

(8) CIVIL PENALTY.—A person who engages in any act or practice declared in this section to be prohibited or unlawful, or who violates any of the rules of the department promulgated under this section, is liable to the state for any damage caused and for civil penalties in accordance with s. 403.141. The

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provisions of s. 403.161 are not applicable to this section. The penalty may be waived if the person previously has taken appropriate corrective action to remedy the actual damages, if any, caused by the unlawful act or practice or rule violation. A civil penalty so collected shall accrue to the state and shall be deposited as received into the Solid Waste Management Trust Fund for the purposes specified in paragraph (5)(a).

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

403.7255 Placement of signs.—

(2) Violations of this act are punishable as provided in s. 403.161(4).

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1091 Environmental Enforcement

SPONSOR(S): State Affairs Committee, Agriculture & Natural Resources Subcommittee, Fine and others

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	9 Y, 0 N	White	Pigott
3) State Affairs Committee	23 Y, 0 N, As CS	Melkun	Williamson

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 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 certain violations, the bill specifies that each day during any portion of which the violation occurs constitutes a separate offense. The bill further specifies that each day the cause of an unauthorized discharge of domestic wastewater is not addressed constitutes a separate offense until the violation is resolved by order or judgment.

The bill may have a positive fiscal impact to state and local governments from increases in various statutory penalties for violations of environmental law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Environmental Violations

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

Damages

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

Penalties

In addition to damages, a violator can be liable for penalties. Penalties differ from damages in that they are designed to punish the wrongdoer rather than to address the harm caused by the violation.⁶ In environmental enforcement, penalties should create incentives to bring immediate compliance and curb future violations.⁷ In current law, several types of violations impose a penalty for each offense, with each day during which a violation occurs constituting a separate offense.

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

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

² DEP, *Enforcement Manual: DEP Regulatory Enforcement Organization* (2017), available at <https://floridadep.gov/sites/default/files/Chapter%201%20October%202017.pdf> (last visited Jan. 27, 2020).

³ DEP, *Enforcement Manual: Judicial Process and Remedies, Collections, and Bankruptcies* (2014), 89, available at <https://floridadep.gov/sites/default/files/chapter6.pdf> (last visited Jan. 27, 2020).

⁴ See s. 403.121, F.S.

⁵ See ss. 403.121 and 403.141, F.S.

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

⁷ DEP, *Enforcement Manual: Judicial Process and Remedies, Collections, and Bankruptcies* (2014), 89, available at <https://floridadep.gov/sites/default/files/chapter6.pdf> (last visited Jan. 27, 2020).

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

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

¹⁰ *Id.*

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

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

¹³ *Id.* at 59-60.

DEP must proceed administratively when it seeks administrative penalties that do not exceed \$10,000 per assessment; DEP is prohibited from imposing administrative penalties in excess of \$10,000 in a single notice of violation.¹⁴ DEP also may not have more than one notice of violation pending against a party unless the additional violation occurred at a different site or was discovered subsequent to the filing of a previous notice of violation.¹⁵

Civil penalties are noncriminal fines that are generally levied by a court, but certain agencies may impose them under certain circumstances. The Reform Act allows DEP to seek civil penalties of up to \$10,000 through the administrative process for most environmental violations.¹⁶

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

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

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

In addition to DEP, the Department of Legal Affairs, any political subdivision or municipality of the state, and any citizen of the state also have the authority to bring an action for injunctive relief against violators of environmental laws.²³

Effect of the Bill

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

The table below outlines the increased penalties for certain environmental violations proposed by the bill. For certain violations, the bill specifies that each day during any portion of which the violation occurs constitutes a separate offense. The bill further specifies that each day the cause of an unauthorized discharge of domestic wastewater is not addressed constitutes a separate offense until the violation is resolved by order or judgment.

SECTION OF LAW	DESCRIPTION OF VIOLATION	CURRENT FINE/PENALTY	PROPOSED FINE/PENALTY
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¹⁴ Section 403.121(2)(b), F.S.; DEP, *Enforcement Manual: The Administrative Process and Remedies* (2014), 66-67, available at https://floridadep.gov/sites/default/files/chapter5_0.pdf (last visited Jan. 27, 2020). This requirement does not apply to underground injection, hazardous waste, or asbestos programs.

¹⁵ *Id.*

¹⁶ Section 403.121, F.S.

¹⁷ DEP, *Enforcement Manual: Judicial Process and Remedies, Collections, and Bankruptcies* (2014), 86, available at <https://floridadep.gov/sites/default/files/chapter6.pdf> (last visited Jan. 27, 2020).

¹⁸ *Id.*

¹⁹ Section 403.121(1)(b), F.S.

²⁰ Section 403.121, F.S.

²¹ Section 403.161, F.S.

²² *Id.*

²³ Section 403.412, F.S.

SECTION OF LAW	DESCRIPTION OF VIOLATION	CURRENT FINE/PENALTY	PROPOSED FINE/PENALTY
161.054	DEP is required to assess a civil penalty for refusing to comply with the requirements of a coastal construction; a reconstruction or change of existing structures; a construction or physical activity undertaken specifically for shore protection purposes; or certain other structures and physical activities.	Up to \$10,000 per day	Up to \$15,000 per day
258.397	The Department of Legal Affairs is authorized to bring a civil action for a violation of the requirements of the Biscayne Bay Aquatic Preserve.	\$5,000 per day	\$7,500 per day
258.46	The Board of Trustees of the Internal Improvement Trust Fund is required to charge a civil penalty for violations of regulations for all aquatic preserves.	Between \$500 and \$5,000 per day	Between \$750 and \$7,500 per day
373.129	DEP and the water management districts are authorized to bring actions and proceedings to enforce rules, regulations, and adopted or issued orders; enjoin or abate violations of law, rules, regulations, and adopted orders; protect and preserve the water resources of the state; defend all actions and proceedings involving their powers and duties pertaining to the water resources of the state; and recover a civil penalty for each offense.	\$10,000 per offense	\$15,000 per offense
373.209	DEP is required to assess a civil penalty for violations of regulations for artesian wells.	\$100 per day for each offense	\$150 per day for each offense
373.430	A person who causes pollution or fails to obtain a required permit commits a second degree misdemeanor.	\$5,000	\$10,000
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 five gallons of gasoline or diesel within 12 months of the first discharge.	2 nd discharge: \$500 Subsequent discharges: \$1,000	2 nd discharge: \$750 Subsequent discharges: \$1,500
	DEP is required to assess a civil penalty for a second or subsequent discharge of any pollutant other than gasoline or diesel within 12 months of the first discharge.	2 nd discharge: \$2,500 Subsequent discharges: \$5,000	2 nd discharge: \$3,750 Subsequent discharges: \$7,500
	DEP is required to assess a civil penalty for a subsequent discharge of gasoline or diesel equal to or less than five 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 five gallons within 12 months of the first discharge.	\$100	\$150

SECTION OF LAW	DESCRIPTION OF VIOLATION	CURRENT FINE/PENALTY	PROPOSED FINE/PENALTY
	A county court is authorized to impose a civil penalty if a violator elects to appear before the court and the court determines that an infraction has been committed for the discharge of gasoline or diesel.	2 nd discharge: Up to \$500 Subsequent discharges: Up to \$1,000	2 nd discharge: Up to \$750 Subsequent discharges: Up to \$1,500
	A county court is authorized to impose a civil penalty if a violator elects to appear before the court and the court determines that an infraction has been committed for the discharge of a pollutant other than gasoline or diesel.	2 nd discharge: Up to \$5,000 Subsequent discharges: Up to \$10,000	2 nd discharge: Up to \$7,500 Subsequent discharges: Up to \$15,000
376.25	DEP is required to assess a civil penalty for violations of regulations for gambling vessels.	Up to \$50,000 for each violation	Up to \$75,000 for each violation
377.37	DEP is required to assess a civil penalty for violations of the regulations of oil and gas resources.	Up to \$10,000 for each violation	Up to \$15,000 for each violation
378.211	DEP is authorized to impose a civil penalty for violations of a minor or technical nature of phosphate land reclamation regulations.	\$100 each day for each violation	\$150 each day for each violation
	DEP is authorized to impose a civil penalty for a major violation by an operator of phosphate land reclamation regulations of which a penalty has not been imposed within the last five years.	\$1,000 each day for each violation	\$1,500 each day for each violation
	DEP is authorized to impose a civil penalty for major violations not covered by the violations above for phosphate land reclamation regulations.	\$5,000 each day for each violation	\$7,500 each day for each violation
403.086	DEP is required to assess a civil penalty for failing to conform to regulations for sewage disposal facilities using advanced and secondary waste treatment.	\$500 per day	\$750 per day
403.121	DEP is authorized to impose a civil penalty for violations of pollution control regulations.	Up to \$10,000 per offense	Up to \$15,000 per offense
	DEP is authorized to seek administrative penalties to provide appropriate corrective action with respect to various environmental violations. The law specifies the maximum civil penalty DEP may seek.	Up to \$10,000 per assessment	Up to \$50,000 per assessment
	DEP is required to assess administrative penalties for a drinking water contamination violation related to maximum contaminant levels, with additional penalties under certain conditions.	\$2,000 plus \$1,000 per condition	\$3,000 plus \$1,500 per condition
	DEP is required to assess an administrative penalty for failing to obtain a clearance letter prior to placing a drinking water system into service when the system would not have been eligible for clearance.	\$3,000	\$4,500
	DEP is required to assess an administrative penalty for failing to obtain a wastewater permit other than a surface water discharge permit.	\$1,000	\$2,000
	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	\$4,000
	DEP is required to assess an administrative penalty for the unpermitted or unauthorized discharge that resulted in a water quality violation.	\$5,000	\$10,000

SECTION OF LAW	DESCRIPTION OF VIOLATION	CURRENT FINE/PENALTY	PROPOSED FINE/PENALTY
	DEP is required to assess an administrative penalty for a dredge and fill or stormwater violation with additional penalties under the following conditions:	\$1,000	\$1,500
	• If the violation occurs in a certain waterbody	plus \$2,000	plus \$3,000
	• If the violation occurs in an area of a certain size	plus \$1,000	plus \$1,500
	DEP is required to assess an administrative penalty for failing to complete required mitigation, record a conservation easement, or a water quality violation resulting from certain activities.	\$3,000	\$4,500
	DEP is required to assess an administrative penalty for failing to properly or timely construct a stormwater management system for systems serving less than 5 acres.	\$2,000	\$3,000
	DEP is required to assess an administrative penalty against a contractor that conducts unpermitted or unauthorized dredging or filling.	\$5,000	\$7,500
	DEP is required to assess an administrative penalty against a contractor for mangrove trimming or alteration violations.	\$5,000	\$7,500
	DEP is required to assess an administrative penalty for the unpermitted or unauthorized disposal of solid waste, with additional penalties for certain conditions.	\$2,000 plus \$1,000 per condition	\$3,000 plus \$1,500 per condition
	DEP is required to assess an administrative penalty for failure to properly maintain leachate control.	\$3,000	\$4,500
	DEP is required to assess an administrative penalty for failing to construct or maintain a required stormwater management system.	\$2,000	\$3,000
	DEP is required to assess an administrative penalty for an unpermitted or unauthorized air emission or air-emission-permit exceedance, with additional penalties if:	\$1,000	\$1,500
	• The emission was from a major source and the source was major for the pollutant in violation	\$3,000	\$4,500
	• The emission was more than 150 percent of the allowable level	\$1,000	\$1,500
	DEP is required to assess an administrative penalty for storage tank system and petroleum contamination violations.	\$5,000	\$7,500
	DEP is required to assess an administrative penalty for failing to timely upgrade a storage tank system.	\$3,000	\$4,500
	DEP is required to assess an administrative penalty for release violations of storage tank systems.	\$2,000	\$3,000
	DEP is required to assess an administrative penalty for failing to properly operate, maintain, or close a storage tank system.	\$1,000	\$1,500
	DEP is required to assess an administrative penalty for failure to satisfy financial responsibility requirements or pollution of land, water, wildlife, or property by drilling for oil, gas, or other petroleum products.	\$5,000	\$7,500

SECTION OF LAW	DESCRIPTION OF VIOLATION	CURRENT FINE/PENALTY	PROPOSED FINE/PENALTY
	DEP is required to assess an administrative penalty for failing to install, maintain, or use a required pollution control system or device.	\$4,000	\$6,000
	DEP is required to assess an administrative penalty for failing to obtain a required permit before construction or modification.	\$3,000	\$4,500
	DEP is required to assess an administrative penalty for failing to conduct regular monitoring or testing, to conduct required release detection, or to construct in compliance with a permit.	\$2,000	\$3,000
	DEP is required to assess an administrative penalty for failing to maintain and train staff; prepare and maintain contingency plans; adequately respond to emergencies; or submit required notification to DEP.	\$1,000	\$1,500
	DEP is required to assess an administrative penalty for failing to prepare, submit, maintain, or use required reports or other documentation.	\$500	\$750
	DEP is required to assess an administrative penalty for failing to comply with any departmental regulatory statute or rule not described above.	\$500	\$1,000
	When considering the economic benefit gained by a violator from a violation, the law specifies that the total administrative penalty may not exceed a certain amount.	\$10,000	\$15,000
	The law specifies that the administrative penalties assessed for any violation may not exceed a certain amount against any one violator unless the violator has a history of noncompliance or the economic benefit exceeds a certain amount.	\$5,000 per violator unless economic benefit exceeds \$5,000	\$10,000 per violator unless economic benefit exceeds \$10,000
	The law specifies that the total administrative penalties per assessment for all violations attributable to a specific person may not exceed a certain amount.	\$10,000 per assessment	\$50,000 per assessment
403.141	Any person who causes pollution, fails to obtain a permit, knowingly makes false statements, or fails to provide required notice is liable to the state for any damage to airs, waters, or properties (including wildlife) of the state and is subject to a civil penalty for each offense.	Up to \$10,000 per offense	Up to \$15,000 per offense
403.161	Any person who fails to obtain a permit due to reckless indifference commits a 2 nd degree misdemeanor punishable by 60 days in jail, a fine, or both for each offense.	Up to \$5,000 per offense	Up to \$10,000 per offense
403.413	A law enforcement officer is required to assess a civil penalty for dumping litter.	\$100	\$150
403.7234	DEP is required to assess a civil penalty for any small quantity generator who does not comply with the small quantity generator notification and verification program	Between \$50 and \$100 per day for up to 100 days	Between \$75 and \$150 for up to 100 days
403.726	DEP is authorized impose a civil penalty for a violation of hazardous substance regulations.	Up to \$25,000 per day	Up to \$37,500 per day
403.727	DEP is required to assess a civil penalty for a violation of hazardous waste regulations.	Up to \$50,000 per day	Up to \$75,000 per day

SECTION OF LAW	DESCRIPTION OF VIOLATION	CURRENT FINE/PENALTY	PROPOSED FINE/PENALTY
403.93345	DEP is authorized to impose a civil penalty for any anchoring of a vessel on a coral reef or any other damage to a coral reef totaling less than one square meter, if the responsible party has been previously issued at least one 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 one square meter but less than or equal to 10 square meters of a coral reef, with additional penalties for damage occurring under certain conditions.	\$300 plus \$300 per condition	\$450 plus \$450 per condition
	DEP is authorized to impose a civil penalty for damage totaling more than 10 square meters of a coral reef, with additional penalties for damage occurring under certain conditions.	\$1,000 plus \$1,000 per condition	\$1,500 plus \$1,500 per condition
	The law specifies that the total penalties DEP may impose for damage totaling more than 10 square meters of a coral reef may not exceed a certain amount per occurrence.	\$250,000	\$375,000

B. SECTION DIRECTORY:

Section 1. Amends s. 161.054, F.S., to increase penalties.

Section 2. Amends s. 258.397, F.S., to increase penalties.

Section 3. Amends s. 258.46, F.S., to increase penalties.

Section 4. Amends s. 373.129, F.S., to increase penalties.

Section 5. Amends s. 373.209, F.S., to increase penalties.

Section 6. Amends s. 373.430, F.S., to increase penalties.

Section 7. Amends s. 376.065, F.S., to increase penalties.

Section 8. Amends s. 376.071, F.S., to increase penalties.

Section 9. Amends s. 376.16, F.S., to increase penalties.

Section 10. Amends s. 376.25, F.S., to increase penalties.

Section 11. Amends s. 377.37, F.S., to increase penalties.

Section 12. Amends s. 378.211, F.S., to increase penalties.

Section 13. Amends s. 403.086, F.S., to increase penalties.

Section 14. Amends s. 403.121, F.S., to increase penalties.

Section 15. Amends s. 403.141, F.S., to increase penalties.

Section 16. Amends s. 403.161, F.S., to increase penalties.

Section 17. Amends s. 403.413, F.S., to increase penalties.

Section 18. Amends s. 403.7234, F.S., to increase penalties.

- Section 19. Amends s. 403.726, F.S., to increase penalties.
- Section 20. Amends s. 403.727, F.S., to increase penalties.
- Section 21. Amends s. 403.93345, F.S., to increase penalties.
- Section 22. Reenacts s. 823.11, F.S., to incorporate amendments made by the bill.
- Section 23. Reenacts 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, for unauthorized discharges of domestic wastewater, may increase the 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 period during which a violation is subject to separate penalties for certain criminal violations.

On February 27, 2020, the State Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment increased certain penalties, removed language specifying that each day certain violations occur or are not otherwise remediated constitute separate offenses until the violation is resolved by an order or judgment, and specified that, for unauthorized discharges of domestic wastewater, each day the cause of the discharge is not addressed constitutes a separate offense until the violation is resolved by an order or judgment.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.

By the Committees on Rules; Agriculture; and Environment and Natural Resources; and Senator Mayfield

595-04239-20

20201414c3

A bill to be entitled

An act relating to fish and wildlife activities; amending s. 379.105, F.S.; prohibiting certain harassment of hunters, trappers, and fishers within or on public lands or publicly or privately owned wildlife and fish management areas, or in or on public waters; amending s. 379.354, F.S.; authorizing the Fish and Wildlife Conservation Commission to designate additional annual free freshwater and saltwater fishing days; amending s. 379.372, F.S.; prohibiting the keeping, possessing, importing, selling, bartering, trading, or breeding of certain species except for educational, research, or eradication or control purposes; including green iguanas and species of the genera *Salvator* and *Tupinambis* in such prohibition; providing that certain persons, firms, or corporations may continue to deal in green iguanas or tegus commercially under certain circumstances; requiring such green iguanas or tegus to be sold outside of this state; prohibiting the import of green iguanas or tegus; requiring the commission to adopt rules that meet certain requirements; reenacting s. 379.2311(1), F.S., relating to the definition of the term "priority invasive species," to incorporate the amendment made to s. 379.372, F.S., in a reference thereto; providing an effective date.

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

595-04239-20

20201414c3

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

379.105 Harassment of hunters, trappers, or fishers.—

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

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

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

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

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

(15) FREE FISHING DAYS.—The commission may designate by rule no more than 6 ~~4~~ consecutive or nonconsecutive days in each year as free freshwater fishing days and no more than 6 ~~4~~ consecutive or nonconsecutive days in each year as free saltwater fishing days. Notwithstanding any other provision of this chapter, a ~~any~~ person may take freshwater fish for noncommercial purposes on a free freshwater fishing day and may take saltwater fish for noncommercial purposes on a free saltwater fishing day, without obtaining or possessing a license or permit or paying a license or permit fee as set forth ~~prescribed~~ in this section. A person who takes freshwater or

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59 saltwater fish on a free fishing day must comply with all laws,
60 rules, and regulations governing the holders of a fishing
61 license or permit and all other conditions and limitations
62 regulating the taking of freshwater or saltwater fish as are
63 imposed by law or rule.

64 Section 3. Present paragraphs (b) through (e) of subsection
65 (2) of section 379.372, Florida Statutes, are redesignated as
66 paragraphs (c) through (f), respectively, a new paragraph (b) is
67 added to that subsection, and paragraph (a) of that subsection
68 is amended, to read:

69 379.372 Capturing, keeping, possessing, transporting, or
70 exhibiting venomous reptiles, reptiles of concern, conditional
71 reptiles, or prohibited reptiles; license required.—

72 (2)(a) A ~~No~~ person, party, firm, association, or
73 corporation may not ~~shall~~ keep, possess, import into the state,
74 sell, barter, trade, or breed the following species except for
75 educational, research, or eradication or control purposes
76 ~~personal use or for sale for personal use:~~

- 77 1. Burmese or Indian python (*Python molurus*).
- 78 2. Reticulated python (*Python reticulatus*).
- 79 3. Northern African python (*Python sebae*).
- 80 4. Southern African python (*Python natalensis*).
- 81 5. Amethystine or scrub python (*Morelia amethystinus*).
- 82 6. Green Anaconda (*Eunectes murinus*).
- 83 7. Nile monitor (*Varanus niloticus*).
- 84 8. Green iguana (*Iguana iguana*).
- 85 9. Tegu lizard (any species of the genera *Salvator* or
86 *Tupinambis*).
- 87 10. Any other reptile designated as a conditional or

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prohibited species by the commission.

(b) If a person, firm, or corporation holds a valid captive wildlife class III exhibition or sale license on January 1, 2020, and documented an inventory of green iguanas or tegus on his or her or its 2019 application, the commission may grandfather that person, firm, or corporation so as to allow them to continue dealing in green iguanas or tegus commercially for as long as the license remains active. Such status is void upon any license transfer or lapse. The person, firm, or corporation may only sell such inventory of green iguanas or tegus outside of this state and may not import the species into this state. The commission shall adopt rules that address all of the following:

1. Reporting requirements.
2. Biosecurity measures to prevent escape of these species.
3. Any necessary grandfathering provisions for those persons presently in possession of either a green iguana or a tegu lizard who do not meet the grandfathering provisions of this paragraph.

Section 4. For the purpose of incorporating the amendment made by this act to section 379.372, Florida Statutes, in a reference thereto, subsection (1) of section 379.2311, Florida Statutes, is reenacted to read:

379.2311 Nonnative animal management.—

(1) As used in this section, the term "priority invasive species" means the following:

(a) Lizards of the genus *Tupinambis*, also known as tegu lizards;

(b) Species identified in s. 379.372(2)(a);

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20201414c3

117 (c) *Pterois volitans*, also known as red lionfish; and

118 (d) *Pterois miles*, also known as the common lionfish or

119 devil firefish.

120 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.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/CS/SB 1414

INTRODUCER: Rules Committee; Agriculture Committee; Environment and Natural Resources Committee; and Senator Mayfield

SUBJECT: Fish and Wildlife Activities

DATE: February 26, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Rogers</u>	<u>Rogers</u>	<u>EN</u>	Fav/CS
2.	<u>Akhavein</u>	<u>Becker</u>	<u>AG</u>	Fav/CS
3.	<u>Rogers</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/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, research, or eradication or control purposes. The bill authorizes the Fish and Wildlife Conservation Commission (FWC) to grandfather certain persons holding a valid captive wildlife Class III exhibition or sale license to continue dealing in green iguanas or tegus commercially, with limitations. The bill allows the sale of inventory of the species only outside of the state and prohibits import of the species into the state. The bill requires FWC to adopt rules to establish reporting requirements, biosecurity measures to prevent the escape of the species, and grandfathering provisions for persons that are currently in possession of green iguanas or tegus who do not qualify for the grandfathering provisions applicable to sale or exhibition.

II. Present Situation:

Penalties for Violations Pertaining to Fish and Wildlife

Under Art. IV, s. 9 of the Florida Constitution, the Fish and Wildlife Conservation Commission (FWC) is granted the authority to exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life. The Legislature may enact laws that aid FWC in its exercise of regulatory functions and executive powers in the areas of planning, budgeting, personnel management, and purchasing.¹

Section 379.401, F.S., details FWC's four-tier system for penalties and violations, civil penalties for noncriminal infractions, criminal penalties, and suspension and forfeiture of licenses and permits. Level One violations are considered the least serious while Level Four violations are considered the most serious.

The penalties for Level Two violations are as follows:

Level Two Violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
First offense	2 nd Degree Misdemeanor ²	Max: \$500 or Max: 60 days	None
Second offense within three years of previous Level Two violation (or higher)	1 st Degree Misdemeanor ³	Min: \$250; Max: \$1,000 Max: one year	None
Third offense within five years of two previous Level Two violations (or higher)	1 st Degree Misdemeanor ⁴	Min: \$500; Max: \$1,000 Max: one year	Suspension of license for one year
Fourth offense within 10 years of three previous Level Two violations (or higher)	1 st Degree Misdemeanor ⁵	Min: \$750; Max \$1,000 or Max: one year	Suspension of license for three years

Right to Hunt or Fish

The Legislature recognizes that hunting, fishing, and the taking of game are a valued part of the cultural heritage of Florida and should be forever preserved for Floridians.⁶ The Legislature further recognizes that these activities play an important part in the state's economy and in the conservation, preservation, and management of the state's natural areas and resources. Therefore, the Legislature intends that the citizens of Florida have a right to hunt, fish, and take game, subject to the regulations and restrictions prescribed by general law and by the FWC.⁷

¹ FLA. CONST. art. IV, s. 9.

² Section 379.401(2)(b)1., F.S.

³ Section 379.401(2)(b)2., F.S.

⁴ Section 379.401(2)(b)3., F.S.

⁵ Section 379.401(2)(b)4., F.S.

⁶ Section 379.104, F.S.

⁷ *Id.*

Fees for Freshwater or Saltwater Fishing Licenses

The law and FWC rules prohibit the taking of game, freshwater or saltwater fish, or fur-bearing animals within this state without having first obtained a license, permit, or authorization number and paid the associated fees.⁸ The following lists are freshwater and saltwater fees for fishing licenses set out in statute, though there can be additional fees for specialized permits.

For residents:

- An annual freshwater or saltwater fishing license costs \$15.50.⁹
- A 5-year freshwater or saltwater fishing license costs \$77.50.¹⁰
- A lifetime freshwater or saltwater fishing license costs:¹¹
 - \$125 for persons 4 years of age or younger.
 - \$225 for persons 5 years of age or older but under 13 years of age.
 - \$300 for persons 13 years of age or older.

For nonresidents:

- A freshwater or saltwater fishing license for 3 consecutive days costs \$15.50.
- A freshwater or saltwater fishing license for 7 consecutive days costs \$28.50.
- An annual freshwater or saltwater fishing license costs \$45.50.¹²

FWC also charges \$1.50 for the cost of issuing the permit.¹³ Exemptions from the fishing license requirement exist for those under the age of 16 or over the age of 65.¹⁴

Free Fishing Days

Florida law expressly authorizes FWC to designate by rule no more than 4 days a year as free freshwater fishing days and no more than 4 days a year as free saltwater fishing days.¹⁵ This means people can fish without a license or permit on those days. A person who takes freshwater or saltwater fish on a free fishing day must comply with all laws, rules, and regulations governing the holders of a fishing license or permit and all other conditions and limitations regulating the taking of freshwater or saltwater fish as are imposed by law or rule.¹⁶

Harassment of Hunters, Trappers, or Fishers

Under 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.

⁸ Section 379.354(1), F.S.

⁹ Section 379.354(4), F.S.

¹⁰ Section 379.354(9), F.S.

¹¹ Section 379.354(11), F.S.

¹² Section 379.354(5), F.S.

¹³ Section 379.352(5), F.S.

¹⁴ Section 379.353, F.S.

¹⁵ Section 379.354(15), F.S.; Fla. 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.

¹⁶ Section 379.354(15), F.S.

- Attempt to disturb fish, game, or nongame animals or attempt to affect their behavior with the intent to prevent their lawful taking by another.
- Anyone in violation of this provision is guilty of a Level Two violation (see above).

Nonnative Species

FWC is responsible for the control and management of nonnative species.¹⁷ Nonnative species are animals living outside captivity and which are not historically present in the state.¹⁸ More than 500 fish and wildlife nonnative species have been documented in Florida.¹⁹ Not all nonnative species pose a threat to Florida's ecology, but some nonnative species become invasive species by causing harm to native species, posing a threat to human health and safety, or causing economic damage.²⁰ To manage and minimize the impacts of nonnative species, it is unlawful to import for sale or use, or to release within the state, any species not native to Florida unless authorized by the FWC.²¹

Class III Wildlife

Any non-domesticated wildlife species that do not appear on the list of Class I²² or Class II²³ wildlife are considered Class III wildlife.²⁴ Examples of Class III species include, but are not limited to, parrots, finches, skunks, foxes, geckos, snakes, and frogs.²⁵ A permit is required for personal possession, exhibition, or sale of Class III wildlife; however, a permit is not required to possess certain Class III wildlife as a personal pet.²⁶ Permittees must meet various caging and transportation requirements pursuant to FWC rules.²⁷

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.²⁸

¹⁷ Fla. Admin. Code Ch. 68-5.

¹⁸ Fish and Wildlife Conservation Commission (FWC), *What is a nonnative species?* <https://myfwc.com/wildlifehabitats/nonnatives/exotic-information/> (last visited February 6, 2020).

¹⁹ FWC, *Florida's Exotic Fish and Wildlife*, <http://myfwc.com/wildlifehabitats/nonnatives/> (last visited on February 6, 020).

²⁰ *Id.*

²¹ Section 379.231, F.S.

²² Class I wildlife are those that pose a significant danger to people. Species include bears, cheetahs, baboons, crocodiles, elephants, gorillas, etc. FWC, *Captive Wildlife*, <https://myfwc.com/license/captive-wildlife/> (last visited Feb. 25, 2020). See Fla. Admin. Code R. 68A6.002(1)(a) for a list of Class I wildlife.

²³ Class II wildlife are those that can pose a danger to people. Species include alligators, badgers, bobcats, monkeys, ostrich, wolves, etc. FWC, *Captive Wildlife*, <https://myfwc.com/license/captive-wildlife/> (last visited Feb. 25, 2020). See Fla. Admin. Code R. 68A6.002(1)(b) for a list of Class II wildlife.

²⁴ Fla. Admin. Code R. 68A-6.002(1)(c); FWC, *Captive Wildlife*, <https://myfwc.com/license/captive-wildlife/> (last visited Feb. 25, 2020).

²⁵ FWC, *Captive Wildlife*, <https://myfwc.com/license/captive-wildlife/> (last visited Feb. 25, 2020).

²⁶ Fla. Admin. Code R. 68A-6.003; FWC, *Captive Wildlife*, <https://myfwc.com/license/captive-wildlife/> (last visited Feb. 25, 2020).

²⁷ Fla. Admin. Code R. 68A-6.011, 6.013-6.016.

²⁸ Section 379.372, F.S.; see Fla. Admin. Code R. 68-5.003 for a complete list of prohibited species.

Conditional species²⁹ 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.³⁰ 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.³¹

A reptile dealer, researcher, or public exhibitor providing educational exhibits may apply for a permit to import or possess conditional nonnative snakes and lizards.³² Conditional nonnative snakes and lizards must be kept indoors or in outdoor enclosures with a fixed roof and must be permanently identified with a passive integrated transponder (PIT) tag, also known as a microchip.³³ Owners of such species must submit a Captive Wildlife Disaster and Critical Incident Plan to FWC and must maintain records of their inventory.³⁴

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;

²⁹ 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.

³⁰ FWC, *Conditional Snakes and Lizards*, <http://myfwc.com/wildlifehabitats/nonnatives/regulations/snakes-and-lizards/> (last visited February 6, 2020).

³¹ Section 379.372(2)(a), F.S.

³² 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).

³³ Fla. Admin. Code R. 68-5.005(5).

³⁴ *Id.*

- *Pterois volitans*, also known as red lionfish; and
- *Pterois miles*, also known as the common lionfish or devil firefish.³⁵

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.³⁶ Tegus are not innately aggressive but have sharp teeth, strong jaws, and sharp claws, which they will use to defend themselves if threatened.³⁷ Tegus are an invasive species and have known breeding populations in Miami-Dade and Hillsborough counties³⁸ and an emerging population in Charlotte County.³⁹ 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.⁴⁰

The tegu is not designated as a conditional or prohibited species.⁴¹ However, a person must possess a license from FWC to sell a tegu or for public exhibition.⁴² A November 2019 survey of all Class III license holders allowing for the sale of reptiles found 106 license holders listed that may sell tegus with more than 1,245 in inventory.⁴³ FWC developed a trapping removal program and works with other agencies and organizations to assess the tegu's threat and develop management strategies.⁴⁴ The goal of the program is to minimize the impact of tegus on native wildlife and natural areas.⁴⁵ A limited number of commercial wildlife operators trap and remove tegus for homeowners or on other private lands.⁴⁶

Members of the public may also remove and kill tegus from 22 FWC managed public lands without a license or permit.⁴⁷ 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.⁴⁸

Green Iguanas

Green iguanas (*Iguana iguana*) are large, typically green lizards, though they can sometimes be brown or almost black in color.⁴⁹ Some adults can take on an orange or pink coloration during

³⁵ Section 379.2311, F.S.

³⁶ FWC, *Argentine black and white tegu*, <https://myfwc.com/wildlifehabitats/nonnatives/reptiles/whiptails-and-wall-lizards/tegu/> (last visited February 6, 2020).

³⁷ *Id.*

³⁸ *Id.*

³⁹ FWC, *Senate Bill 1414 Agency Bill Analysis*, 2 (Dec. 19, 2019) (on file with the Senate Agriculture Committee).

⁴⁰ FWC, *Argentine black and white tegu*, <https://myfwc.com/wildlifehabitats/nonnatives/reptiles/whiptails-and-wall-lizards/tegu/> (last visited February 6, 2020).

⁴¹ *Id.*

⁴² *Id.*; see s. 379.3761, F.S.

⁴³ FWC, *Senate Bill 1414 Agency Bill Analysis*, 2 (Dec. 19, 2019) (on file with the Senate Agriculture Committee).

⁴⁴ *Id.* (under Frequently Asked Questions).

⁴⁵ *Id.*

⁴⁶ FWC, *Senate Bill 230 Agency Bill Analysis*, 2 (Feb. 17, 2017) (on file with the Senate Agriculture Committee).

⁴⁷ FWC, EO 17-11 (Mar. 31, 2017), available at <https://myfwc.com/media/3682/EO-17-11.pdf> (last visited February 6, 2020).

⁴⁸ FWC, *Senate Bill 1414 Agency Bill Analysis*, 2 (Dec. 19, 2019) (on file with the Senate Agriculture Committee).

⁴⁹ FWC, *Invasive Green Iguana*, <https://myfwc.com/wildlifehabitats/profiles/reptiles/green-iguana/> (last visited February 6, 2020).

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.⁵⁰

Green iguanas are a nonnative, invasive species in Florida.⁵¹ 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.⁵²

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.⁵³ However, a person must possess a license from the FWC to sell a green iguana or for public exhibition.⁵⁴ A November 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.⁵⁵

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.⁵⁶ 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.⁵⁷ In 2018, FWC initiated removal efforts on public conservation lands, resulting in nearly 5,000 iguanas being removed.⁵⁸

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).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*; see s. 379.3761, F.S.

⁵⁵ FWC, *Senate Bill 1414 Agency Bill Analysis*, 3 (Dec. 19, 2019) (on file with the Senate Agriculture Committee).

⁵⁶ FWC, EO 17-11 (Mar. 31, 2017), available at <https://myfwc.com/media/3682/EO-17-11.pdf> (last visited February 6, 2020).

⁵⁷ FWC, *Nonnative Species Public Workshops*, <https://myfwc.com/wildlifehabitats/nonnatives/public-workshops/> (last visited February 6, 2020).

⁵⁸ FWC, *Senate Bill 1414 Agency Bill Analysis*, 2 (Dec. 19, 2019) (on file with the Senate Agriculture Committee).

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, research, or eradication or control 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.”

The bill specifies that FWC can allow a person, party, firm, association, or corporation who documented an inventory of green iguanas or tegus on their 2019 application for a Class III captive wildlife exhibition or sales license and held a valid license on January 1, 2020, to continue dealing in green iguanas or tegus commercially for as long as the license remains active. This grandfathering provision is void upon the transfer or lapse of the license.

The bill limits the sale of an existing inventory of green iguanas or tegus to sale outside of the state and prohibits the import of species into the state.

The bill requires FWC to adopt rules to establish reporting requirements, biosecurity measures to prevent the escape of the species, and grandfathering provisions for persons that are currently in possession of green iguanas or tegus who do not qualify for the grandfathering provisions applicable to sale or exhibition.

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 their remaining inventory of species within the state 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/CS/CS by Rules on February 26, 2020:**

- FWC is authorized to allow a person, party, firm, association, or corporation who documented an inventory of green iguanas or tegus on their 2019 application for a Class III captive wildlife exhibition or sales license and held a valid license on January 1, 2020, to continue dealing in green iguanas or tegus commercially for as long as the license is active. This grandfathering provision is void upon the transfer or lapse of the license.
- The sale of an existing inventory of green iguanas or tegus is limited to sale outside of the state and the import of the species into the state is prohibited.
- FWC is required to adopt rules to establish reporting requirements, biosecurity measures to prevent the escape of the species, and grandfathering provisions for persons that are currently in possession of green iguanas or tegus who do not qualify for the grandfathering provisions applicable to sale or exhibition.

CS/CS by Agriculture on February 11, 2020:

The exceptions to keeping, possessing, importing into the state, selling, bartering, trading, or breeding specified nonnative snakes and lizards has been expanded to include eradication or control purposes, as well as for educational and research.

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.

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 reptiles
13 except for educational, research, eradication, or
14 control purposes; designating green iguanas and tegu
15 lizards as prohibited reptiles; authorizing certain
16 persons and entities to exhibit, sell, or breed green
17 iguanas and tegu lizards commercially under specified
18 conditions; requiring the commission to adopt rules;
19 reenacting s. 379.2311(1), F.S., relating to the
20 definition of the term "priority invasive species," to
21 incorporate the amendment made to s. 379.372, F.S., in
22 a reference thereto; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:
25

26 Section 1. Subsection (1) of section 379.105, Florida
27 Statutes, is amended to read:

28 379.105 Harassment of hunters, trappers, or fishers.—

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

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

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

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

42 379.354 Recreational licenses, permits, and authorization
43 numbers; fees established.—

44 (15) FREE FISHING DAYS.—The commission may designate by
45 rule no more than 6 ~~4~~ consecutive or nonconsecutive days in each
46 year as free freshwater fishing days and no more than 6 ~~4~~
47 consecutive or nonconsecutive days in each year as free
48 saltwater fishing days. Notwithstanding any other provision of
49 this chapter, a ~~any~~ person may take freshwater fish for
50 noncommercial purposes on a free freshwater fishing day and may

51 take saltwater fish for noncommercial purposes on a free
52 saltwater fishing day, without obtaining or possessing a license
53 or permit or paying a license or permit fee as set forth
54 ~~prescribed~~ in this section. A person who takes freshwater or
55 saltwater fish on a free fishing day must comply with all laws,
56 rules, and regulations governing the holders of a fishing
57 license or permit and all other conditions and limitations
58 regulating the taking of freshwater or saltwater fish as are
59 imposed by law or rule.

60 Section 3. Paragraph (a) of subsection (2) of section
61 379.372, Florida Statutes, is amended to read:

62 379.372 Capturing, keeping, possessing, transporting, or
63 exhibiting venomous reptiles, reptiles of concern, conditional
64 reptiles, or prohibited reptiles; license required.—

65 (2)(a) A ~~No~~ person, party, firm, association, or
66 corporation may not ~~shall~~ keep, possess, import into the state,
67 sell, barter, trade, or breed the following species except for
68 educational, research, eradication, or control purposes ~~personal~~
69 ~~use or for sale for personal use~~:

- 70 1. Burmese or Indian python (*Python molurus*).
- 71 2. Reticulated python (*Python reticulatus*).
- 72 3. Northern African python (*Python sebae*).
- 73 4. Southern African python (*Python natalensis*).
- 74 5. Amethystine or scrub python (*Morelia amethystinus*).
- 75 6. Green Anaconda (*Eunectes murinus*).

76 7. Nile monitor (*Varanus niloticus*).

77 8. Green iguana (*Iguana iguana*).

78 9. Tegu lizard (any species of the genera *Salvator* or
79 *Tupinambis*).

80 ~~10.8.~~ Any other reptile designated as a conditional or
81 prohibited species by the commission.

82 (b)1. A person, party, firm, association, or corporation
83 who had a documented inventory of green iguanas or tegu lizards
84 on an application for a Class III captive wildlife exhibition or
85 sale license in 2019 and held such license on January 1, 2020,
86 may continue to exhibit, sell, or breed green iguanas and tegu
87 lizards commercially for as long as the license remains active.
88 Any inventory of green iguanas or tegu lizards must be sold
89 outside the state and a licensee may not import such species
90 into the state. The grandfather status under this paragraph is
91 void upon transfer or lapse of such license.

92 2. The commission shall adopt rules for the following:

93 a. Reporting requirements for the possession, exhibition,
94 and sale of green iguanas and tegu lizards;

95 b. Biosecurity measures to prevent the escape of green
96 iguanas or tegu lizards; and

97 c. Any necessary grandfather provisions for a person who
98 currently possesses a green iguana or tegu lizard but does not
99 meet the criteria of subparagraph (b)1.

100 Section 4. For the purpose of incorporating the amendment

101 made by this act to section 379.372, Florida Statutes, in a
102 reference thereto, subsection (1) of section 379.2311, Florida
103 Statutes, is reenacted to read:

104 379.2311 Nonnative animal management.—

105 (1) As used in this section, the term "priority invasive
106 species" means the following:

107 (a) Lizards of the genus *Tupinambis*, also known as tegu
108 lizards;

109 (b) Species identified in s. 379.372(2)(a);

110 (c) *Pterois volitans*, also known as red lionfish; and

111 (d) *Pterois miles*, also known as the common lionfish or
112 devil firefish.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 777 Fish and Wildlife Activities

SPONSOR(S): Agriculture & Natural Resources Subcommittee, Gregory and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1414

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	24 Y, 0 N, As CS	Melkun	Moore
2) State Affairs Committee	21 Y, 0 N	Melkun	Williamson

SUMMARY ANALYSIS

Right to Hunt

Under current law, 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; or attempt to disturb fish, game, or nongame animals or attempt to affect their behavior with the intent to prevent their lawful taking by another.

The bill specifies that a person may not intentionally, within or on any public lands or waters, interfere with or attempt to prevent the lawful taking of fish, game, or nongame animals by another; or attempt to disturb fish, game, or nongame animals or attempt to affect their behavior with the intent to prevent their lawful taking by another.

Free Fishing Days

The Fish and Wildlife Conservation Commission (FWC) is authorized to designate up to four days per year as free freshwater fishing days and up to four days per year as free saltwater fishing days. During each free fishing day, any person may fish without a license or permit.

The bill increases the number of free freshwater fishing days that FWC may designate from four days per year to six days per year and the number of free saltwater fishing days that may be designated from four days per year to six days per year.

Conditional Species

Conditional species are nonnative species that pose a risk to native fish and wildlife or to the ecology of native wildlife communities. Species designated as conditional 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.

The bill adds the green iguana and the tegu lizard to the conditional nonnative snakes and lizards list.

The bill prohibits a person or entity from keeping, possessing, importing, selling, bartering, trading, or breeding a species listed as a conditional nonnative snake or lizard except for educational, research, eradication, or control purposes.

The bill specifies that a person or entity who had a documented inventory of green iguanas or tegus on an application for an exhibition or sale license in 2019 and held such license on January 1, 2020, may continue to exhibit, sell, or breed green iguanas and tegus commercially for as long as the license remains active.

Fiscal Impact

The bill may have an indeterminate negative fiscal impact to the state.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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.¹ 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 Fish and Wildlife Conservation Commission (FWC).²

Harassment of Hunters, Trappers, or Fishers

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; or
- Attempt to disturb fish, game, or nongame animals or attempt to affect their behavior with the intent to prevent their lawful taking by another.³

Any person who violates this section commits a Level Two violation,⁴ punishable by the following:

Level Two Violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
First offense	2 nd Degree Misdemeanor ⁵	Max: \$500 or Max: 60 days	None
Second offense within three years of previous Level Two violation (or higher)	1 st Degree Misdemeanor ⁶	Min: \$250; Max: \$1,000 Max: one year	None
Third offense within five years of two previous Level Two violations (or higher)	1 st Degree Misdemeanor ⁷	Min: \$500; Max: \$1,000 Max: one year	Suspension of license for one year
Fourth offense within 10 years of three previous Level Two violations (or higher)	1 st Degree Misdemeanor ⁸	Min: \$750; Max: \$1,000 Max: one year	Suspension of license for three years

¹ Section 379.104, F.S.

² *Id.*

³ Section 379.105(1), F.S.

⁴ Section 379.105(2), F.S.

⁵ Section 379.401(2)(b)1., F.S.

⁶ Section 379.401(2)(b)2., F.S.

⁷ Section 379.401(2)(b)3., F.S.

⁸ Section 379.401(2)(b)4., F.S.

Freshwater and Saltwater Fishing Licenses

Current law prohibits the taking of game, freshwater or saltwater fish, or fur-bearing animals within the state without first obtaining a license, permit, or authorization number and paying the associated fees.⁹ Section 379.354, F.S., establishes freshwater and saltwater fishing license fees as follows:

For residents:

- An annual freshwater or saltwater fishing license costs \$15.50.¹⁰
- A five-year freshwater or saltwater fishing license costs \$77.50.¹¹
- A lifetime freshwater or saltwater fishing license costs:
 - \$125 for persons four years of age or younger.
 - \$225 for persons five years of age or older, but under 13 years of age.
 - \$300 for persons 13 years of age or older.¹²

For nonresidents:

- A freshwater or saltwater fishing license for three consecutive days costs \$15.50.¹³
- A freshwater or saltwater fishing license for seven consecutive days costs \$28.50.¹⁴
- An annual freshwater or saltwater fishing license costs \$45.50.¹⁵

FWC also charges \$1.50 for each issued permit to cover the administrative cost of issuing the permit.¹⁶

Free Fishing Days

FWC may designate up to four days per year as free freshwater fishing days and up to four days per year as free saltwater fishing days.¹⁷ During each free fishing day, any person may fish without a license or permit.¹⁸ 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 imposed by law or rule.¹⁹

Nonnative Species

Nonnative²⁰ species are animals or plants living in Florida outside captivity or human cultivation that were not historically present in the state.²¹ More than 500 fish and wildlife nonnative species have been documented in Florida.²² 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.²³ To manage and minimize the impacts of nonnative animal species, individuals may not import, introduce, or possess any nonnative animal species without a permit from FWC.²⁴

⁹ Section 379.354(1), F.S.

¹⁰ Sections 379.354(4)(a)-(b), F.S.

¹¹ Section 379.354(9)(a)1., F.S.

¹² Section 379.354(10)(a), F.S.

¹³ Sections 379.354(5)(a) and (c), F.S.

¹⁴ Sections 379.354(5)(b) and (d), F.S.

¹⁵ Sections 379.354(5)(e)-(f), F.S.

¹⁶ Section 379.352(5), F.S.

¹⁷ Section 379.354(15), F.S. Rule 68A-5.006, F.A.C., designates the first weekend in April as "Free-Freshwater Fishing Day-Spring," and the second weekend in June as "Free-Freshwater Fishing Day-Summer." Rule 68B-2.009, F.A.C., designates the first weekend in June, the first Saturday in September, and the Saturday following Thanksgiving as "License-Free Saltwater Fishing Days."

¹⁸ Section 379.354(15), F.S.

¹⁹ *Id.*

²⁰ The terms "nonnative" and "exotic" have the same meaning and are used interchangeably.

²¹ FWC, *Nonnative Species Information*, available at <https://myfwc.com/wildlifehabitats/nonnatives/exotic-information/> (last visited Jan. 7, 2020).

²² Nicole Dodds, Mary Miller, and Alexa Lamm, University of Florida Institute of Food and Agricultural Sciences, *Floridians' Perceptions of Invasive Species*, Feb. 2014, p. 1, available at <http://edis.ifas.ufl.edu/pdffiles/WC/WC18600.pdf> (last visited Feb. 18, 2020).

²³ FWC, *Nonnative Species Information*, available at <https://myfwc.com/wildlifehabitats/nonnatives/exotic-information/> (last visited Feb. 18, 2020).

²⁴ Section 379.231(1), F.S.

Class III Wildlife

Any non-domesticated wildlife species that do not appear on the list of Class I²⁵ or Class II²⁶ wildlife are considered Class III wildlife.²⁷ Therefore, there is no formal list of Class III species. Examples of Class III species include, but are not limited to, parrots, finches, skunks, foxes, geckos, snakes, and frogs.²⁸ A permit is required for personal possession, exhibition, or sale of Class III wildlife; however, a permit is not required to possess certain Class III wildlife as a personal pet.²⁹

Conditional Nonnative Snakes and Lizards

Conditional species are nonnative species that pose a risk to native fish and wildlife or to the ecology of native wildlife communities. Specifically, conditional 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. Current law identifies the following as conditional nonnative snakes and lizards:

- 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.³⁰

Permits to possess a conditional nonnative snake or lizard may only be issued to individuals or institutions engaged in research, commercial import or export businesses, public aquaria, public zoological parks, or public exhibitors providing educational exhibits.³¹ Conditional nonnative snakes and lizards must be kept indoors or in outdoor enclosures with a fixed roof and must be permanently identified with a passive integrated transponder tag, also known as a microchip.³² Owners of such species must also submit a Captive Wildlife Disaster and Critical Incident Plan to FWC and maintain records of their inventory.³³

Priority Invasive Species

In 2018, the Legislature directed FWC to create a pilot program to mitigate the impact of priority invasive species on the public lands or waters of the state.³⁴ 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 the state.³⁵

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

²⁵ Class I wildlife are those that pose a significant danger to people. Species include bears, cheetahs, baboons, crocodiles, elephants, gorillas, etc. FWC, *Captive Wildlife*, available at <https://myfwc.com/license/captive-wildlife/> (last visited Feb. 19, 2020). See r. 68A-6.002(1)(a), F.A.C., for a list of Class I wildlife.

²⁶ Class II wildlife are those that can pose a danger to people. Species include alligators, badgers, bobcats, monkeys, ostrich, wolves, etc. FWC, *Captive Wildlife*, available at <https://myfwc.com/license/captive-wildlife/> (last visited Feb. 19, 2020). See r. 68A-6.002(1)(b), F.A.C., for a list of Class II wildlife.

²⁷ Rule 68A-6.002(1)(c), F.A.C.; FWC, *Captive Wildlife*, available at <https://myfwc.com/license/captive-wildlife/> (last visited Feb. 19, 2020).

²⁸ FWC, *Captive Wildlife*, available at <https://myfwc.com/license/captive-wildlife/> (last visited Feb. 19, 2020).

²⁹ Rule 68A-6.003, F.A.C.; FWC, *Captive Wildlife*, available at <https://myfwc.com/license/captive-wildlife/> (last visited Feb. 19, 2020).

³⁰ Section 379.372(2)(a), F.S.

³¹ Rule 68-5.005(1), F.A.C.; see FWC, *Conditional Snakes and Lizards*, available at <http://myfwc.com/wildlifehabitats/nonnatives/regulations/snakes-and-lizards/> (last visited Feb. 18, 2020).

³² Rule 68-5.005(5), F.A.C.

³³ *Id.*

³⁴ Section 379.2311, F.S.

³⁵ Section 379.2311(2), F.S.

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 and the Legislature by January 1, 2021.³⁶

Priority invasive species include lizards of the genus *Tupinambis*, also known as tegu lizards; *Pterois volitans*, also known as red lionfish; *Pterois miles*, also known as the common lionfish or devil firefish; and the conditional nonnative lizard and snake species listed above.³⁷

Tegu Lizards

According to FWC, there are three types of nonnative tegu lizards that have been found in Florida: the Argentine Black and White Tegu (*Salvator merianae*); the Red Tegu (*Salvator rufescens*); and the Gold Tegu (*Tupinambis teguixin*).³⁸ Tegus are an invasive species that have established breeding populations in Miami-Dade and Hillsborough Counties³⁹ and an emerging population in Charlotte County.⁴⁰ The tegu causes harm to native species by disturbing alligator nests and consuming their eggs, utilizing gopher tortoise burrows, and consuming juvenile gopher tortoises.⁴¹

The tegu is listed as a priority invasive species, but is not designated as a conditional or prohibited species.⁴² A permit is not currently required to possess a tegu as a pet; however, a person must possess a license from FWC for any commercial use of a tegu, such as the sale or public exhibition.⁴³ According to a survey conducted by FWC in November 2019, 106 license holders are authorized to sell tegus, and they have more than 1,245 tegus in their combined inventory.⁴⁴

In response to the invasive populations, FWC developed a trapping removal program to minimize the impact of tegus on native wildlife and natural areas and works with other agencies and organizations to assess the tegu's threat as well as develop species management strategies.⁴⁵ Members of the public may also remove and kill tegus from 22 FWC-managed public lands without a license or permit.⁴⁶ Through these efforts, over 7,800 tegus have been reported as removed from the wild or found dead in Florida by FWC staff, partners, and the public since 2012, primarily in Miami-Dade County.⁴⁷

Green Iguanas

Green iguanas (*Iguana iguana*) are large, green lizards that can grow to over five feet in length and weigh up to 17 pounds. Green iguanas typically mate in October through November in their native range, and nesting occurs on riverbanks, beaches, and other sandy areas.⁴⁸ Green iguanas can live up to 10 years in the wild and 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.⁴⁹ Green iguana populations currently stretch along the Atlantic Coast in Broward, Martin, Miami-Dade, Monroe, and Palm Beach Counties and along the Gulf Coast in Collier and Lee Counties. There have also been reports as far north as Alachua, Highlands, Hillsborough, Indian River, and St. Lucie Counties; however, iguanas

³⁶ *Id.*

³⁷ Section 379.2311, F.S.

³⁸ FWC, *Nonnative Whiptails and Wall Lizards*, available at <https://myfwc.com/wildlifehabitats/nonnatives/reptiles/whiptails-and-wall-lizards/> (last visited Feb. 18, 2020).

³⁹ FWC, *Argentine black and white tegu*, available at <https://myfwc.com/wildlifehabitats/nonnatives/reptiles/whiptails-and-wall-lizards/tegu/> (last visited Feb. 18, 2020).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Rule 68-5.006, F.A.C.; see s. 379.3761, F.S.

⁴⁴ FWC, Agency Analysis of 2020 House Bill 777, 2 (Jan. 13, 2020) (on file with the Agriculture & Natural Resources Subcommittee).

⁴⁵ FWC, *Argentine black and white tegu*, available at <https://myfwc.com/wildlifehabitats/nonnatives/reptiles/whiptails-and-wall-lizards/tegu/> (last visited Feb. 18, 2020).

⁴⁶ FWC, *Executive Order 17-11* (Mar. 31, 2017), available at <https://myfwc.com/media/3682/eo-17-11.pdf> (last visited Feb. 18, 2020).

⁴⁷ FWC, Agency Analysis of 2020 House Bill 777, 2 (Jan. 13, 2020) (on file with the Agriculture & Natural Resources Subcommittee).

⁴⁸ FWC, *Green Iguana*, available at <https://myfwc.com/wildlifehabitats/profiles/reptiles/green-iguana/> (last visited Feb. 18, 2020).

⁴⁹ *Id.*

observed in more northern counties are likely escaped or released captive animals and are unlikely to establish populations, as iguanas are not cold hardy.⁵⁰

Green iguanas cause damage to residential and commercial landscape vegetation and are often considered a nuisance by property owners. Some green iguanas can 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. As is the case with other reptiles, green iguanas can also pose a health risk as they can transmit the infectious bacterium *Salmonella* to humans through contact with water or surfaces contaminated by their feces.⁵¹

Green iguanas are not designated as conditional or prohibited species or in any way protected in Florida except by anti-cruelty laws.⁵² A permit is also not currently required to possess a green iguana as a pet, however, a person must possess a license from FWC for any commercial use of a green iguana, such as the sale or public exhibition.⁵³ According to a survey conducted by FWC in November 2019, 382 license holders are authorized to sell iguanas, and they have more than 5,307 in their combined inventory.⁵⁴

FWC encourages the removal of green iguanas from private properties by landowners and allows members of the public to remove and kill iguanas from 22 FWC-managed public lands without a license or permit.⁵⁵ FWC also 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.⁵⁶ In 2018, FWC initiated removal efforts on public conservation lands, resulting in nearly 5,000 iguanas being removed.⁵⁷

Effect of the Bill

The bill specifies that a person may not intentionally, within or on any public lands or waters, interfere with or attempt to prevent the lawful taking of fish, game, or nongame animals by another; or attempt to disturb fish, game, or nongame animals or attempt to affect their behavior with the intent to prevent their lawful taking by another.

The bill increases the number of free freshwater fishing days that FWC may designate from four days per year to six days per year and the number of free saltwater fishing days that may be designated from four days per year to six days per year.

The bill adds the green iguana (*Iguana iguana*) and the tegu lizard (any species of the genera *Salvator* or *Tupinambis*) to the conditional nonnative snakes and lizards list.

The bill prohibits a person, party, firm, association, or corporation from keeping, possessing, importing, selling, bartering, trading, or breeding species listed as conditional nonnative snakes and lizards except for educational, research, eradication, or control purposes. The bill prohibits the possession of such snakes and lizards for personal use.

The bill specifies that a person, party, firm, association, or corporation who had a documented inventory of green iguanas or tegus on an application for a Class III captive wildlife exhibition or sale license in

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Rule 68-5.006, F.A.C.; see s. 379.3761, F.S.

⁵⁴ FWC, Agency Analysis of 2020 House Bill 777, 2 (Jan. 13, 2020) (on file with the Agriculture & Natural Resources Subcommittee).

⁵⁵ FWC, *Executive Order 17-11* (Mar. 31, 2017), available at <https://myfwc.com/media/3682/eo-17-11.pdf> (last visited Feb. 18, 2020).

⁵⁶ FWC, *Nonnative Species Public Workshops*, available at <https://myfwc.com/wildlifehabitats/nonnatives/public-workshops/> (last visited Feb. 18, 2020).

⁵⁷ FWC, Agency Analysis of 2020 House Bill 777, 3 (Jan. 13, 2020) (on file with the Agriculture & Natural Resources Subcommittee).

2019 and held such license on January 1, 2020, may continue to exhibit, sell, or breed green iguanas and tegus commercially for as long as the license remains active.

The bill requires any inventory of green iguanas or tegus to be sold outside of the state and prohibits licensees from importing such species into the state.

The bill requires FWC to adopt rules to establish reporting requirements for the possession, exhibition, and sale of green iguanas and tegus; biosecurity measures to prevent the escape of such species; and any necessary grandfathering provisions for those persons currently in possession of green iguanas or tegu lizards that do not qualify for the grandfathering provisions applicable to commercial sale or exhibition.

B. SECTION DIRECTORY:

- Section 1. Amends s. 379.105, F.S., relating to the harassment of hunters, trappers, or fishers.
- Section 2. Amends s. 379.354, F.S., relating to recreational licenses, permits, and authorization numbers.
- Section 3. Amends s. 379.372, F.S., relating to conditional nonnative snakes and lizards.
- Section 4. Reenacts s. 379.2311, F.S., relating to nonnative animal management.
- Section 5. 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 negative fiscal impact on FWC revenue because the bill increases the number of free fishing days available to the public, but such impact is likely insignificant.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on commercial owners and sellers of tegus and green iguanas because they will no longer be permitted to sell the species within the state. The bill may also have an indeterminate negative fiscal impact on commercial owners and sellers of species currently listed as conditional that will no longer be able to possess a prohibited species unless it is used for educational, research, eradication, or control purposes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires FWC to adopt rules to provide certain requirements for conditional nonnative snakes and lizards. FWC appears to have sufficient rulemaking authority to adopt such rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 25, 2020, the Agriculture & Natural Resources Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS removed provisions relating to a sales tax holiday and an associated appropriation, expanded the authorized purposes of conditional nonnative snakes and lizards, created a grandfathering process for entities currently in possession of green iguanas and tegus, and required FWC to adopt rules to implement the changes made by the PCS.

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

By the Committees on Appropriations; and Community Affairs; and
Senators Mayfield, Harrell, and Albritton

576-03987-20

2020712c2

A bill to be entitled

An act relating to environmental resource management; providing a short title; requiring the Department of Health to provide a specified report to the Governor and the Legislature by a specified date; requiring the Department of Health and the Department of Environmental Protection to submit to the Governor and the Legislature, by a specified date, certain recommendations relating to the transfer of the Onsite Sewage Program; requiring the departments to enter into an interagency agreement that meets certain requirements by a specified date; transferring the Onsite Sewage Program within the Department of Health to the Department of Environmental Protection by a type two transfer by a specified date; providing that certain employees retain and transfer certain types of leave upon the transfer; amending s. 20.255, F.S.; reducing the number of members of the Cabinet required concur with the Governor's appointment of the Secretary of Environmental Protection; amending s. 373.036, F.S.; requiring water management districts to submit consolidated annual reports to the Office of Economic and Demographic Research; requiring such reports to include connection and conversion projects for onsite sewage treatment and disposal systems; amending s. 373.223, F.S.; requiring a consumptive use permit to use water derived from a spring for bottled water to meet certain requirements before approval; providing for the expiration of such requirements;

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30 requiring the Department of Environmental Protection,
31 in coordination with the water management districts,
32 to conduct a study on the bottled water industry in
33 this state; providing requirements for the study;
34 requiring the department to submit a report containing
35 the findings of the study to the Governor, the
36 Legislature, and the Office of Economic and
37 Demographic Research by a specified date; defining the
38 terms "bottled water" and "water derived from a
39 spring"; amending s. 373.4131, F.S.; requiring the
40 Department of Environmental Protection to include
41 stormwater structural control inspections as part of
42 its regular staff training; requiring the department
43 and the water management districts to adopt rules
44 regarding stormwater design and operation by a
45 specified date; requiring the department to evaluate
46 data relating to self-certification and provide the
47 Legislature with recommendations; amending s.
48 381.0065, F.S.; conforming provisions to changes made
49 by the act; requiring the department to adopt rules
50 for the location of onsite sewage treatment and
51 disposal systems and complete such rulemaking by a
52 specified date; requiring the department to evaluate
53 certain data relating to the self-certification
54 program and provide the Legislature with
55 recommendations by a specified date; providing that
56 certain provisions relating to existing setback
57 requirements are applicable to permits only until the
58 adoption of certain rules by the department; removing

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provisions establishing a Department of Health onsite sewage treatment and disposal system research review and advisory committee; requiring the department to implement a specified approval process for the use of nutrient reducing onsite sewage treatment and disposal systems standards; creating s. 381.00652, F.S.; creating an onsite sewage treatment and disposal systems technical advisory committee within the department; providing the duties and membership of the committee; requiring the committee to submit recommendations to the Governor and the Legislature by a specified date; providing for the expiration of the committee; defining a term; repealing s. 381.0068, F.S., relating to a technical review and advisory panel; amending s. 403.061, F.S.; requiring the department to adopt rules relating to the underground pipes of wastewater collection systems; requiring public utilities or their affiliated companies that hold or are seeking a wastewater discharge permit to file certain reports and data with the department; creating s. 403.0616, F.S.; requiring the department, subject to legislative appropriation, to establish a real-time water quality monitoring program; encouraging the formation of public-private partnerships; amending s. 403.067, F.S.; requiring basin management action plans for nutrient total maximum daily loads to include wastewater treatment and onsite sewage treatment and disposal system remediation plans that meet certain requirements;

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88 requiring the Department of Agriculture and Consumer
89 Services to collect fertilization and nutrient records
90 from certain agricultural producers and provide the
91 information to the department annually by a specified
92 date; requiring the Department of Agriculture and
93 Consumer Services to perform onsite inspections of the
94 agricultural producers at specified intervals;
95 providing an additional management strategy for basin
96 management action plans to include cooperative
97 agricultural regional water quality improvement
98 elements; providing requirements for the Department of
99 Environmental Protection, the Department of
100 Agriculture and Consumer Services, and owners of
101 agricultural operations in developing and implementing
102 such elements; requiring certain entities to develop
103 research plans and legislative budget requests
104 relating to best management practices by a specified
105 date; creating s. 403.0671, F.S.; directing the
106 Department of Environmental Protection, in
107 coordination with the county health departments,
108 wastewater treatment facilities, and other
109 governmental entities, to submit a report on the costs
110 of certain wastewater projects to the Governor and
111 Legislature by a specified date; providing
112 requirements for such report; requiring the department
113 to submit a specified water quality monitoring
114 assessment report to the Governor and the Legislature
115 by a specified date; providing requirements for such
116 report; requiring the department to annually submit

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certain wastewater project cost estimates to the Office of Economic and Demographic Research beginning on a specified date; creating s. 403.0673, F.S.; establishing a wastewater grant program within the Department of Environmental Protection; authorizing the department to distribute appropriated funds for certain projects; providing requirements for the distribution; requiring the department to coordinate with each water management district to identify grant recipients; requiring an annual report to the Governor and the Legislature by a specified date; creating s. 403.0855, F.S.; providing legislative findings regarding the regulation of biosolids management in this state; requiring the Department of Environmental Protection to adopt rules for biosolids management; specifying requirements for certain existing permits and for permit renewals; requiring the permittee of a biosolids application site to establish a groundwater monitoring program under certain circumstances; prohibiting the land application of biosolids within a specified distance of the seasonal high-water table; defining the term "seasonal high water"; authorizing municipalities and counties to take certain actions with respect to regulation of the land application of specified biosolids; providing for a contingent repeal; amending s. 403.086, F.S.; prohibiting facilities for sanitary sewage disposal from disposing of any waste in the Indian River Lagoon beginning on a specified date without first providing advanced waste

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treatment; requiring the Department of Environmental Protection, in consultation with water management districts and sewage disposal facilities, to submit a report to the Governor and the Legislature on the status of certain facility upgrades; specifying requirements for the report; requiring facilities for sanitary sewage disposal to have a power outage contingency plan; requiring the facilities to take steps to prevent overflows and leaks and ensure that the water reaches the appropriate facility for treatment; requiring the facilities to provide the Department of Environmental Protection with certain information; requiring the department to adopt rules; amending s. 403.087, F.S.; requiring the department to issue operation permits for domestic wastewater treatment facilities to certain facilities under certain circumstances; amending s. 403.088, F.S.; revising the permit conditions for a water pollution operation permit; requiring the department to submit a report to the Governor and the Legislature by a specified date identifying all wastewater utilities that experienced sanitary sewer overflows within a specified timeframe; providing requirements for the report; amending s. 403.0891, F.S.; requiring model stormwater management programs to contain model ordinances for nutrient reduction practices and green infrastructure; amending s. 403.121, F.S.; increasing and providing administrative penalties; amending s. 403.1835, F.S.; conforming a cross-reference;

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175 requiring the department to give priority for water
176 pollution control financial assistance to projects
177 that implement certain provisions and that promote
178 efficiency; amending s. 403.1838, F.S.; revising
179 requirements for the prioritization of grant
180 applications within the Small Community Sewer
181 Construction Assistance Act; amending s. 403.412,
182 F.S.; prohibiting local governments from recognizing
183 or granting certain legal rights to the natural
184 environment or granting such rights relating to the
185 natural environment to a person or political
186 subdivision; providing construction; providing a
187 declaration of important state interest; amending ss.
188 153.54, 153.73, 163.3180, 180.03, 311.105, 327.46,
189 373.250, 373.414, 373.705, 373.707, 373.709, 373.807,
190 376.307, 380.0552, 381.006, 381.0061, 381.0064,
191 381.00651, 381.0101, 403.08601, 403.0871, 403.0872,
192 403.707, 403.861, 489.551, and 590.02, F.S.;
193 conforming cross-references and provisions to changes
194 made by the act; providing a directive to the Division
195 of Law Revision upon the adoption of certain rules by
196 the Department of Environmental Protection; providing
197 effective dates.

198
199 WHEREAS, nutrients negatively impact groundwater and
200 surface waters in this state and cause the proliferation of
201 algal blooms, and

202 WHEREAS, onsite sewage treatment and disposal systems were
203 designed to manage human waste and are permitted by the

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Department of Health for that purpose, and

WHEREAS, conventional onsite sewage treatment and disposal systems contribute nutrients to groundwater and surface waters across this state which can cause harmful blue-green algal blooms, and

WHEREAS, many stormwater systems are designed primarily to divert and control stormwater rather than to remove pollutants, and

WHEREAS, most existing stormwater system design criteria fail to consistently meet either the 80 percent or 95 percent target pollutant reduction goals established by the Department of Environmental Protection, and

WHEREAS, other significant pollutants often can be removed from stormwater more easily than nutrients and, as a result, design criteria that provide the desired removal efficiencies for nutrients will likely achieve equal or better removal efficiencies for other constituents, and

WHEREAS, the Department of Environmental Protection has found that the major causes of sanitary sewer overflows during storm events are infiltration, inflow, and acute power failures, and

WHEREAS, the Department of Environmental Protection lacks statutory authority to regulate infiltration and inflow or to require that all lift stations constructed prior to 2003 have emergency backup power, and

WHEREAS, sanitary sewer overflows and leaking infrastructure create both a human health concern and a nutrient pollution problem, and

WHEREAS, the agricultural sector is a significant

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contributor to the excess delivery of nutrients to surface waters throughout this state and has been identified as the dominant source of both phosphorus and nitrogen within the Lake Okeechobee watershed and a number of other basin management action plan areas, and

WHEREAS, only 75 percent of eligible agricultural parties within the Lake Okeechobee Basin Management Action Plan area are enrolled in an appropriate best management practice and enrollment numbers are considerably less in other basin management action plan areas, and

WHEREAS, although agricultural best management practices, by design, should be technically feasible and economically viable, that does not imply that their adoption and full implementation, alone, will alleviate downstream water quality impairments, NOW, THEREFORE,

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

Section 1. This act may be cited as the "Clean Waterways Act."

Section 2. (1) By July 1, 2020, the Department of Health must provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing the following information regarding the Onsite Sewage Program:

(a) The average number of permits issued each year;

(b) The number of department employees conducting work on or related to the program each year; and

(c) The program's costs and expenditures, including, but

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not limited to, salaries and benefits, equipment costs, and contracting costs.

(2) By December 31, 2020, the Department of Health and the Department of Environmental Protection shall submit recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding the transfer of the Onsite Sewage Program from the Department of Health to the Department of Environmental Protection. The recommendations must address all aspects of the transfer, including the continued role of the county health departments in the permitting, inspection, data management, and tracking of onsite sewage treatment and disposal systems under the direction of the Department of Environmental Protection.

(3) By June 30, 2021, the Department of Health and the Department of Environmental Protection shall enter into an interagency agreement based on the Department of Health report required under subsection (2) and on recommendations from a plan that must address all agency cooperation for a period not less than 5 years after the transfer, including:

(a) The continued role of the county health departments in the permitting, inspection, data management, and tracking of onsite sewage treatment and disposal systems under the direction of the Department of Environmental Protection.

(b) The appropriate proportionate number of administrative, auditing, inspector general, attorney, and operational support positions, and their related funding levels and sources and assigned property, to be transferred from the Office of General Counsel, the Office of Inspector General, and the Division of Administrative Services or other relevant offices or divisions

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291 within the Department of Health to the Department of
292 Environmental Protection.

293 (c) The development of a recommended plan to address the
294 transfer or shared use of buildings, regional offices, and other
295 facilities used or owned by the Department of Health.

296 (d) Any operating budget adjustments that are necessary to
297 implement the requirements of this act. Adjustments made to the
298 operating budgets of the agencies in the implementation of this
299 act must be made in consultation with the appropriate
300 substantive and fiscal committees of the Senate and the House of
301 Representatives. The revisions to the approved operating budgets
302 for the 2021-2022 fiscal year which are necessary to reflect the
303 organizational changes made by this act must be implemented
304 pursuant to s. 216.292(4)(d), Florida Statutes, and are subject
305 to s. 216.177, Florida Statutes. Subsequent adjustments between
306 the Department of Health and the Department of Environmental
307 Protection which are determined necessary by the respective
308 agencies and approved by the Executive Office of the Governor
309 are authorized and subject to s. 216.177, Florida Statutes. The
310 appropriate substantive committees of the Senate and the House
311 of Representatives must also be notified of the proposed
312 revisions to ensure their consistency with legislative policy
313 and intent.

314 (4) Effective July 1, 2021, all powers, duties, functions,
315 records, offices, personnel, associated administrative support
316 positions, property, pending issues, existing contracts,
317 administrative authority, administrative rules, and unexpended
318 balances of appropriations, allocations, and other funds for the
319 regulation of onsite sewage treatment and disposal systems

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relating to the Onsite Sewage Program in the Department of Health are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, to the Department of Environmental Protection.

(5) Notwithstanding chapter 60L-34, Florida Administrative Code, or any law to the contrary, employees who are transferred from the Department of Health to the Department of Environmental Protection to fill positions transferred by this act retain and transfer any accrued annual leave, sick leave, and regular and special compensatory leave balances.

Section 3. Subsection (1) of section 20.255, Florida Statutes, is amended to read:

20.255 Department of Environmental Protection.—There is created a Department of Environmental Protection.

(1) The head of the Department of Environmental Protection shall be a secretary, who shall be appointed by the Governor, with the concurrence of one member ~~three members~~ of the Cabinet. The secretary shall be confirmed by the Florida Senate. The secretary shall serve at the pleasure of the Governor.

Section 4. Paragraphs (a) and (b) of subsection (7) of section 373.036, Florida Statutes, are amended to read:

373.036 Florida water plan; district water management plans.—

(7) CONSOLIDATED WATER MANAGEMENT DISTRICT ANNUAL REPORT.—

(a) By March 1, annually, each water management district shall prepare and submit to the Office of Economic and Demographic Research, the department, the Governor, the President of the Senate, and the Speaker of the House of Representatives a consolidated water management district annual

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349 report on the management of water resources. In addition, copies
350 must be provided by the water management districts to the chairs
351 of all legislative committees having substantive or fiscal
352 jurisdiction over the districts and the governing board of each
353 county in the district having jurisdiction or deriving any funds
354 for operations of the district. Copies of the consolidated
355 annual report must be made available to the public, either in
356 printed or electronic format.

357 (b) The consolidated annual report shall contain the
358 following elements, as appropriate to that water management
359 district:

360 1. A district water management plan annual report or the
361 annual work plan report allowed in subparagraph (2)(e)4.

362 2. The department-approved minimum flows and minimum water
363 levels annual priority list and schedule required by s.
364 373.042(3).

365 3. The annual 5-year capital improvements plan required by
366 s. 373.536(6)(a)3.

367 4. The alternative water supplies annual report required by
368 s. 373.707(8)(n).

369 5. The final annual 5-year water resource development work
370 program required by s. 373.536(6)(a)4.

371 6. The Florida Forever Water Management District Work Plan
372 annual report required by s. 373.199(7).

373 7. The mitigation donation annual report required by s.
374 373.414(1)(b)2.

375 8. Information on all projects related to water quality or
376 water quantity as part of a 5-year work program, including:

377 a. A list of all specific projects identified to implement

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a basin management action plan, including any projects to connect onsite sewage treatment and disposal systems to central sewerage systems and convert onsite sewage treatment and disposal systems to enhanced nutrient reducing onsite sewage treatment and disposal systems, or a recovery or prevention strategy;

b. A priority ranking for each listed project for which state funding through the water resources development work program is requested, which must be made available to the public for comment at least 30 days before submission of the consolidated annual report;

c. The estimated cost for each listed project;

d. The estimated completion date for each listed project;

e. The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project; and

f. A quantitative estimate of each listed project's benefit to the watershed, water body, or water segment in which it is located.

9. A grade for each watershed, water body, or water segment in which a project listed under subparagraph 8. is located representing the level of impairment and violations of adopted minimum flow or minimum water levels. The grading system must reflect the severity of the impairment of the watershed, water body, or water segment.

Section 5. Subsections (7) and (8) are added to section 373.223, Florida Statutes, to read:

373.223 Conditions for a permit.—

(7) A consumptive use permit to use water derived from a

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spring for bottled water as defined in s. 500.03 may only be approved by unanimous vote by the governing board finding that the applicant meets the criteria in subsection (1). This subsection shall expire on June 30, 2022.

(8) The Department of Environmental Protection shall, in coordination with the water management districts, conduct a study on the bottled water industry in Florida.

(a) The study must do all of the following:

1. Identify all springs statewide that have an associated consumptive use permit for a bottled water facility producing its product with water derived from a spring as well as:

a. The magnitude of the spring;

b. Whether the spring has been identified as an Outstanding Florida Spring as defined in s. 373.802;

c. Any department or water management district adopted minimum flow or minimum water levels, the status of any adopted minimum flow or minimum water levels, and any associated recovery or prevention strategy;

d. The permitted and actual use associated with the consumptive use permits;

e. The reduction in flow associated with the permitted and actual use associated with the consumptive use permits;

f. The impact on springs of bottled water facilities as compared to other users; and

g. Types of water conservation measures employed at bottled water facilities permitted to derive water from a spring.

2. Identify the labeling and marketing regulations associated with the identification of bottled water as spring water, including whether these regulations incentivize the

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436 withdrawal of water from springs.

437 3. Evaluate the direct and indirect economic benefits to
438 the local communities resulting from bottled water facilities
439 that derive water from springs, including but not limited to tax
440 revenue, job creation and wages.

441 4. Evaluate the direct and indirect costs to the local
442 communities located in proximity to springs impacted by
443 withdrawals from bottled water production, including, but not
444 limited to, the decreased recreational value of the spring and
445 the cost to other users for the development of alternative water
446 supply or reductions in permit durations and allocations.

447 5. Include a cost-benefit analysis of withdrawing,
448 producing, marketing, selling, and consuming spring water as
449 compared to other sources of bottled water.

450 6. Evaluate how much bottled water derived from Florida
451 springs is sold in this state.

452 (b) The department shall submit a report containing the
453 findings of the study to the Governor, the President of the
454 Senate, the Speaker of the House of Representatives, and the
455 Office of Economic and Demographic Research by June 30, 2021.

456 (c) As used in this section, the term "bottled water" has
457 the same meaning as in s. 500.03 and the term "water derived
458 from a spring" means water derived from an underground formation
459 from which water flows naturally to the surface of the earth in
460 the manner described in 21 C.F.R. 165.110(a)(2)(vi).

461 Section 6. Subsection (5) of section 373.4131, Florida
462 Statutes, is amended, and subsection (6) is added to that
463 section, to read:

464 373.4131 Statewide environmental resource permitting

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rules.—

(5) To ensure consistent implementation and interpretation of the rules adopted pursuant to this section, the department shall conduct or oversee regular assessment and training of its staff and the staffs of the water management districts and local governments delegated local pollution control program authority under s. 373.441. The training must include field inspections of publicly and privately owned stormwater structural controls, such as stormwater retention or detention ponds.

(6) By January 1, 2021:

(a) The department and the water management districts shall initiate rulemaking, including updates to the Environmental Resource Permit Applicant's Handbooks, to update the stormwater design and operation regulations using the most recent scientific information available. As part of rule development, the department must consider and address low-impact design best management practices and design criteria that increase the removal of nutrients from stormwater discharges, and measures for consistent application of the net improvement performance standard to ensure significant reductions of any pollutant loadings to a waterbody; and

(b) The department shall evaluate inspection data relating to compliance by those entities that submit a self-certification under s. 403.814(12) and provide the Legislature with recommendations for improvements to the self-certification process.

Section 7. Effective July 1, 2021, present paragraphs (d) through (q) of subsection (2) of section 381.0065, Florida Statutes, are redesignated as paragraphs (e) through (r),

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respectively, a new paragraph (d) is added to subsection (2), and subsections (3) and (4) of that section are amended, to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(2) DEFINITIONS.—As used in ss. 381.0065-381.0067, the term:

(d) "Department" means the Department of Environmental Protection.

(3) DUTIES AND POWERS OF THE DEPARTMENT ~~OF HEALTH~~.—The department shall:

(a) Adopt rules to administer ss. 381.0065-381.0067, including definitions that are consistent with the definitions in this section, ~~decreases to setback requirements where no health hazard exists,~~ increases for the lot-flow allowance for performance-based systems, requirements for separation from water table elevation during the wettest season, requirements for the design and construction of any component part of an onsite sewage treatment and disposal system, application and permit requirements for persons who maintain an onsite sewage treatment and disposal system, requirements for maintenance and service agreements for aerobic treatment units and performance-based treatment systems, and recommended standards, including disclosure requirements, for voluntary system inspections to be performed by individuals who are authorized by law to perform such inspections and who shall inform a person having ownership, control, or use of an onsite sewage treatment and disposal system of the inspection standards and of that person's authority to request an inspection based on all or part of the

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standards.

(b) Perform application reviews and site evaluations, issue permits, and conduct inspections and complaint investigations associated with the construction, installation, maintenance, modification, abandonment, operation, use, or repair of an onsite sewage treatment and disposal system for a residence or establishment with an estimated domestic sewage flow of 10,000 gallons or less per day, or an estimated commercial sewage flow of 5,000 gallons or less per day, which is not currently regulated under chapter 403.

(c) Develop a comprehensive program to ensure that onsite sewage treatment and disposal systems regulated by the department are sized, designed, constructed, installed, sited, repaired, modified, abandoned, used, operated, and maintained in compliance with this section and rules adopted under this section to prevent groundwater contamination, including impacts from nutrient pollution, and surface water contamination and to preserve the public health. The department is the final administrative interpretive authority regarding rule interpretation. In the event of a conflict regarding rule interpretation, the secretary of the department ~~State Surgeon General~~, or his or her designee, shall timely assign a staff person to resolve the dispute.

(d) Grant variances in hardship cases under the conditions prescribed in this section and rules adopted under this section.

(e) Permit the use of a limited number of innovative systems for a specific period of time, when there is compelling evidence that the system will function properly and reliably to meet the requirements of this section and rules adopted under

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552 this section.

553 (f) Issue annual operating permits under this section.

554 (g) Establish and collect fees as established under s.
555 381.0066 for services provided with respect to onsite sewage
556 treatment and disposal systems.

557 (h) Conduct enforcement activities, including imposing
558 fines, issuing citations, suspensions, revocations, injunctions,
559 and emergency orders for violations of this section, part I of
560 chapter 386, or part III of chapter 489 or for a violation of
561 any rule adopted under this section, part I of chapter 386, or
562 part III of chapter 489.

563 (i) Provide or conduct education and training of department
564 personnel, service providers, and the public regarding onsite
565 sewage treatment and disposal systems.

566 (j) Supervise research on, demonstration of, and training
567 on the performance, environmental impact, and public health
568 impact of onsite sewage treatment and disposal systems within
569 this state. Research fees collected under s. 381.0066(2)(k) must
570 be used to develop and fund hands-on training centers designed
571 to provide practical information about onsite sewage treatment
572 and disposal systems to septic tank contractors, master septic
573 tank contractors, contractors, inspectors, engineers, and the
574 public and must also be used to fund research projects which
575 focus on improvements of onsite sewage treatment and disposal
576 systems, including use of performance-based standards and
577 reduction of environmental impact. Research projects shall be
578 initially approved by the technical review and advisory panel
579 and shall be applicable to and reflect the soil conditions
580 specific to Florida. Such projects shall be awarded through

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581 competitive negotiation, using the procedures provided in s.
582 287.055, to public or private entities that have experience in
583 onsite sewage treatment and disposal systems in Florida and that
584 are principally located in Florida. ~~Research projects shall not~~
585 ~~be awarded to firms or entities that employ or are associated~~
586 ~~with persons who serve on either the technical review and~~
587 ~~advisory panel or the research review and advisory committee.~~

588 (k) Approve the installation of individual graywater
589 disposal systems in which blackwater is treated by a central
590 sewerage system.

591 (l) Regulate and permit the sanitation, handling,
592 treatment, storage, reuse, and disposal of byproducts from any
593 system regulated under this chapter and not regulated by the
594 Department of Environmental Protection.

595 (m) Permit and inspect portable or temporary toilet
596 services and holding tanks. The department shall review
597 applications, perform site evaluations, and issue permits for
598 the temporary use of holding tanks, privies, portable toilet
599 services, or any other toilet facility that is intended for use
600 on a permanent or nonpermanent basis, including facilities
601 placed on construction sites when workers are present. The
602 department may specify standards for the construction,
603 maintenance, use, and operation of any such facility for
604 temporary use.

605 (n) Regulate and permit maintenance entities for
606 performance-based treatment systems and aerobic treatment unit
607 systems. To ensure systems are maintained and operated according
608 to manufacturer's specifications and designs, the department
609 shall establish by rule minimum qualifying criteria for

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610 maintenance entities. The criteria shall include: training,
611 access to approved spare parts and components, access to
612 manufacturer's maintenance and operation manuals, and service
613 response time. The maintenance entity shall employ a contractor
614 licensed under s. 489.105(3)(m), or part III of chapter 489, or
615 a state-licensed wastewater plant operator, who is responsible
616 for maintenance and repair of all systems under contract.

617 (4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not
618 construct, repair, modify, abandon, or operate an onsite sewage
619 treatment and disposal system without first obtaining a permit
620 approved by the department. The department may issue permits to
621 carry out this section., ~~but shall not make the issuance of such~~
622 ~~permits contingent upon prior approval by the Department of~~
623 ~~Environmental Protection, except that~~ The issuance of a permit
624 for work seaward of the coastal construction control line
625 established under s. 161.053 shall be contingent upon receipt of
626 any required coastal construction control line permit from the
627 department ~~of Environmental Protection~~. A construction permit is
628 valid for 18 months from the issuance date and may be extended
629 by the department for one 90-day period under rules adopted by
630 the department. A repair permit is valid for 90 days from the
631 date of issuance. An operating permit must be obtained before
632 ~~prior to~~ the use of any aerobic treatment unit or if the
633 establishment generates commercial waste. Buildings or
634 establishments that use an aerobic treatment unit or generate
635 commercial waste shall be inspected by the department at least
636 annually to assure compliance with the terms of the operating
637 permit. The operating permit for a commercial wastewater system
638 is valid for 1 year from the date of issuance and must be

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renewed annually. The operating permit for an aerobic treatment unit is valid for 2 years from the date of issuance and must be renewed every 2 years. If all information pertaining to the siting, location, and installation conditions or repair of an onsite sewage treatment and disposal system remains the same, a construction or repair permit for the onsite sewage treatment and disposal system may be transferred to another person, if the transferee files, within 60 days after the transfer of ownership, an amended application providing all corrected information and proof of ownership of the property. There is no fee associated with the processing of this supplemental information. A person may not contract to construct, modify, alter, repair, service, abandon, or maintain any portion of an onsite sewage treatment and disposal system without being registered under part III of chapter 489. A property owner who personally performs construction, maintenance, or repairs to a system serving his or her own owner-occupied single-family residence is exempt from registration requirements for performing such construction, maintenance, or repairs on that residence, but is subject to all permitting requirements. A municipality or political subdivision of the state may not issue a building or plumbing permit for any building that requires the use of an onsite sewage treatment and disposal system unless the owner or builder has received a construction permit for such system from the department. A building or structure may not be occupied and a municipality, political subdivision, or any state or federal agency may not authorize occupancy until the department approves the final installation of the onsite sewage treatment and disposal system. A municipality or political

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subdivision of the state may not approve any change in occupancy or tenancy of a building that uses an onsite sewage treatment and disposal system until the department has reviewed the use of the system with the proposed change, approved the change, and amended the operating permit.

(a) Subdivisions and lots in which each lot has a minimum area of at least one-half acre and either a minimum dimension of 100 feet or a mean of at least 100 feet of the side bordering the street and the distance formed by a line parallel to the side bordering the street drawn between the two most distant points of the remainder of the lot may be developed with a water system regulated under s. 381.0062 and onsite sewage treatment and disposal systems, provided the projected daily sewage flow does not exceed an average of 1,500 gallons per acre per day, and provided satisfactory drinking water can be obtained and all distance and setback, soil condition, water table elevation, and other related requirements of this section and rules adopted under this section can be met.

(b) Subdivisions and lots using a public water system as defined in s. 403.852 may use onsite sewage treatment and disposal systems, provided there are no more than four lots per acre, provided the projected daily sewage flow does not exceed an average of 2,500 gallons per acre per day, and provided that all distance and setback, soil condition, water table elevation, and other related requirements that are generally applicable to the use of onsite sewage treatment and disposal systems are met.

(c) Notwithstanding paragraphs (a) and (b), for subdivisions platted of record on or before October 1, 1991, when a developer or other appropriate entity has previously made

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697 or makes provisions, including financial assurances or other
698 commitments, acceptable to the Department ~~of Health~~, that a
699 central water system will be installed by a regulated public
700 utility based on a density formula, private potable wells may be
701 used with onsite sewage treatment and disposal systems until the
702 agreed-upon densities are reached. In a subdivision regulated by
703 this paragraph, the average daily sewage flow may not exceed
704 2,500 gallons per acre per day. This section does not affect the
705 validity of existing prior agreements. After October 1, 1991,
706 the exception provided under this paragraph is not available to
707 a developer or other appropriate entity.

708 (d) Paragraphs (a) and (b) do not apply to any proposed
709 residential subdivision with more than 50 lots or to any
710 proposed commercial subdivision with more than 5 lots where a
711 publicly owned or investor-owned sewerage system is available.
712 It is the intent of this paragraph not to allow development of
713 additional proposed subdivisions in order to evade the
714 requirements of this paragraph.

715 (e) The department shall adopt rules to locate onsite
716 sewage treatment and disposal systems, including establishing
717 setback distances, to prevent groundwater contamination and
718 surface water contamination and to preserve the public health.
719 The rulemaking process for such rules must be completed by July
720 1, 2022, and the department shall notify the Division of Law
721 Revision of the date such rules take effect. The rules must
722 consider conventional and enhanced nutrient-reducing onsite
723 sewage treatment and disposal system designs, impaired or
724 degraded water bodies, domestic wastewater and drinking water
725 infrastructure, potable water sources, nonpotable wells,

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726 stormwater infrastructure, the onsite sewage treatment and
727 disposal system remediation plans developed pursuant to s.
728 403.067(7)(a)9.b., nutrient pollution, and the recommendations
729 of the onsite sewage treatment and disposal systems technical
730 advisory committee established pursuant to s. 381.00652.

731 (f)~~(e)~~ Onsite sewage treatment and disposal systems that
732 are permitted before the rules identified in paragraph (e) take
733 effect may ~~must~~ not be placed closer than:

- 734 1. Seventy-five feet from a private potable well.
- 735 2. Two hundred feet from a public potable well serving a
736 residential or nonresidential establishment having a total
737 sewage flow of greater than 2,000 gallons per day.
- 738 3. One hundred feet from a public potable well serving a
739 residential or nonresidential establishment having a total
740 sewage flow of less than or equal to 2,000 gallons per day.
- 741 4. Fifty feet from any nonpotable well.
- 742 5. Ten feet from any storm sewer pipe, to the maximum
743 extent possible, but in no instance shall the setback be less
744 than 5 feet.
- 745 6. Seventy-five feet from the mean high-water line of a
746 tidally influenced surface water body.
- 747 7. Seventy-five feet from the mean annual flood line of a
748 permanent nontidal surface water body.
- 749 8. Fifteen feet from the design high-water line of
750 retention areas, detention areas, or swales designed to contain
751 standing or flowing water for less than 72 hours after a
752 rainfall or the design high-water level of normally dry drainage
753 ditches or normally dry individual lot stormwater retention
754 areas.

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~~(f) Except as provided under paragraphs (c) and (t), no limitations shall be imposed by rule, relating to the distance between an onsite disposal system and any area that either permanently or temporarily has visible surface water.~~

(g) All provisions of this section and rules adopted under this section relating to soil condition, water table elevation, distance, and other setback requirements must be equally applied to all lots, with the following exceptions:

1. Any residential lot that was platted and recorded on or after January 1, 1972, or that is part of a residential subdivision that was approved by the appropriate permitting agency on or after January 1, 1972, and that was eligible for an onsite sewage treatment and disposal system construction permit on the date of such platting and recording or approval shall be eligible for an onsite sewage treatment and disposal system construction permit, regardless of when the application for a permit is made. If rules in effect at the time the permit application is filed cannot be met, residential lots platted and recorded or approved on or after January 1, 1972, shall, to the maximum extent possible, comply with the rules in effect at the time the permit application is filed. At a minimum, however, those residential lots platted and recorded or approved on or after January 1, 1972, but before January 1, 1983, shall comply with those rules in effect on January 1, 1983, and those residential lots platted and recorded or approved on or after January 1, 1983, shall comply with those rules in effect at the time of such platting and recording or approval. In determining the maximum extent of compliance with current rules that is possible, the department shall allow structures and

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appurtenances thereto which were authorized at the time such lots were platted and recorded or approved.

2. Lots platted before 1972 are subject to a 50-foot minimum surface water setback and are not subject to lot size requirements. The projected daily flow for onsite sewage treatment and disposal systems for lots platted before 1972 may not exceed:

a. Two thousand five hundred gallons per acre per day for lots served by public water systems as defined in s. 403.852.

b. One thousand five hundred gallons per acre per day for lots served by water systems regulated under s. 381.0062.

(h)1. The department may grant variances in hardship cases which may be less restrictive than ~~the provisions~~ specified in this section. If a variance is granted and the onsite sewage treatment and disposal system construction permit has been issued, the variance may be transferred with the system construction permit, if the transferee files, within 60 days after the transfer of ownership, an amended construction permit application providing all corrected information and proof of ownership of the property and if the same variance would have been required for the new owner of the property as was originally granted to the original applicant for the variance. There is no fee associated with the processing of this supplemental information. A variance may not be granted under this section until the department is satisfied that:

a. The hardship was not caused intentionally by the action of the applicant;

b. No reasonable alternative, taking into consideration factors such as cost, exists for the treatment of the sewage;

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and

c. The discharge from the onsite sewage treatment and disposal system will not adversely affect the health of the applicant or the public or significantly degrade the groundwater or surface waters.

Where soil conditions, water table elevation, and setback provisions are determined by the department to be satisfactory, special consideration must be given to those lots platted before 1972.

2. The department shall appoint and staff a variance review and advisory committee, which shall meet monthly to recommend agency action on variance requests. The committee shall make its recommendations on variance requests at the meeting in which the application is scheduled for consideration, except for an extraordinary change in circumstances, the receipt of new information that raises new issues, or when the applicant requests an extension. The committee shall consider the criteria in subparagraph 1. in its recommended agency action on variance requests and shall also strive to allow property owners the full use of their land where possible. The committee consists of the following:

a. The Secretary of Environmental Protection ~~State Surgeon General~~ or his or her designee.

b. A representative from the county health departments.

c. A representative from the home building industry recommended by the Florida Home Builders Association.

d. A representative from the septic tank industry recommended by the Florida Onsite Wastewater Association.

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e. A representative from the Department of Health
~~Environmental Protection~~.

f. A representative from the real estate industry who is also a developer in this state who develops lots using onsite sewage treatment and disposal systems, recommended by the Florida Association of Realtors.

g. A representative from the engineering profession recommended by the Florida Engineering Society.

Members shall be appointed for a term of 3 years, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members shall serve without remuneration, but if requested, shall be reimbursed for per diem and travel expenses as provided in s. 112.061.

(i) A construction permit may not be issued for an onsite sewage treatment and disposal system in any area zoned or used for industrial or manufacturing purposes, or its equivalent, where a publicly owned or investor-owned sewage treatment system is available, or where a likelihood exists that the system will receive toxic, hazardous, or industrial waste. An existing onsite sewage treatment and disposal system may be repaired if a publicly owned or investor-owned sewerage system is not available within 500 feet of the building sewer stub-out and if system construction and operation standards can be met. This paragraph does not require publicly owned or investor-owned sewerage treatment systems to accept anything other than domestic wastewater.

1. A building located in an area zoned or used for industrial or manufacturing purposes, or its equivalent, when

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871 such building is served by an onsite sewage treatment and
872 disposal system, must not be occupied until the owner or tenant
873 has obtained written approval from the department. The
874 department may ~~shall~~ not grant approval when the proposed use of
875 the system is to dispose of toxic, hazardous, or industrial
876 wastewater or toxic or hazardous chemicals.

877 2. Each person who owns or operates a business or facility
878 in an area zoned or used for industrial or manufacturing
879 purposes, or its equivalent, or who owns or operates a business
880 that has the potential to generate toxic, hazardous, or
881 industrial wastewater or toxic or hazardous chemicals, and uses
882 an onsite sewage treatment and disposal system that is installed
883 on or after July 5, 1989, must obtain an annual system operating
884 permit from the department. A person who owns or operates a
885 business that uses an onsite sewage treatment and disposal
886 system that was installed and approved before July 5, 1989, need
887 not obtain a system operating permit. However, upon change of
888 ownership or tenancy, the new owner or operator must notify the
889 department of the change, and the new owner or operator must
890 obtain an annual system operating permit, regardless of the date
891 that the system was installed or approved.

892 3. The department shall periodically review and evaluate
893 the continued use of onsite sewage treatment and disposal
894 systems in areas zoned or used for industrial or manufacturing
895 purposes, or its equivalent, and may require the collection and
896 analyses of samples from within and around such systems. If the
897 department finds that toxic or hazardous chemicals or toxic,
898 hazardous, or industrial wastewater have been or are being
899 disposed of through an onsite sewage treatment and disposal

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900 system, the department shall initiate enforcement actions
901 against the owner or tenant to ensure adequate cleanup,
902 treatment, and disposal.

903 (j) An onsite sewage treatment and disposal system designed
904 by a professional engineer registered in the state and certified
905 by such engineer as complying with performance criteria adopted
906 by the department must be approved by the department subject to
907 the following:

908 1. The performance criteria applicable to engineer-designed
909 systems must be limited to those necessary to ensure that such
910 systems do not adversely affect the public health or
911 significantly degrade the groundwater or surface water. Such
912 performance criteria shall include consideration of the quality
913 of system effluent, the proposed total sewage flow per acre,
914 wastewater treatment capabilities of the natural or replaced
915 soil, water quality classification of the potential surface-
916 water-receiving body, and the structural and maintenance
917 viability of the system for the treatment of domestic
918 wastewater. However, performance criteria shall address only the
919 performance of a system and not a system's design.

920 2. A person electing to utilize an engineer-designed system
921 shall, upon completion of the system design, submit such design,
922 certified by a registered professional engineer, to the county
923 health department. The county health department may utilize an
924 outside consultant to review the engineer-designed system, with
925 the actual cost of such review to be borne by the applicant.
926 Within 5 working days after receiving an engineer-designed
927 system permit application, the county health department shall
928 request additional information if the application is not

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complete. Within 15 working days after receiving a complete application for an engineer-designed system, the county health department either shall issue the permit or, if it determines that the system does not comply with the performance criteria, shall notify the applicant of that determination and refer the application to the department for a determination as to whether the system should be approved, disapproved, or approved with modification. The department engineer's determination shall prevail over the action of the county health department. The applicant shall be notified in writing of the department's determination and of the applicant's rights to pursue a variance or seek review under ~~the provisions of~~ chapter 120.

3. The owner of an engineer-designed performance-based system must maintain a current maintenance service agreement with a maintenance entity permitted by the department. The maintenance entity shall inspect each system at least twice each year and shall report quarterly to the department on the number of systems inspected and serviced. The reports may be submitted electronically.

4. The property owner of an owner-occupied, single-family residence may be approved and permitted by the department as a maintenance entity for his or her own performance-based treatment system upon written certification from the system manufacturer's approved representative that the property owner has received training on the proper installation and service of the system. The maintenance service agreement must conspicuously disclose that the property owner has the right to maintain his or her own system and is exempt from contractor registration requirements for performing construction, maintenance, or

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repairs on the system but is subject to all permitting requirements.

5. The property owner shall obtain a biennial system operating permit from the department for each system. The department shall inspect the system at least annually, or on such periodic basis as the fee collected permits, and may collect system-effluent samples if appropriate to determine compliance with the performance criteria. The fee for the biennial operating permit shall be collected beginning with the second year of system operation.

6. If an engineer-designed system fails to properly function or fails to meet performance standards, the system shall be re-engineered, if necessary, to bring the system into compliance with ~~the provisions of~~ this section.

(k) An innovative system may be approved in conjunction with an engineer-designed site-specific system which is certified by the engineer to meet the performance-based criteria adopted by the department.

(l) For the Florida Keys, the department shall adopt a special rule for the construction, installation, modification, operation, repair, maintenance, and performance of onsite sewage treatment and disposal systems which considers the unique soil conditions and water table elevations, densities, and setback requirements. On lots where a setback distance of 75 feet from surface waters, saltmarsh, and buttonwood association habitat areas cannot be met, an injection well, approved and permitted by the department, may be used for disposal of effluent from onsite sewage treatment and disposal systems. The following additional requirements apply to onsite sewage treatment and

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disposal systems in Monroe County:

1. The county, each municipality, and those special districts established for the purpose of the collection, transmission, treatment, or disposal of sewage shall ensure, in accordance with the specific schedules adopted by the Administration Commission under s. 380.0552, the completion of onsite sewage treatment and disposal system upgrades to meet the requirements of this paragraph.

2. Onsite sewage treatment and disposal systems must cease discharge by December 31, 2015, or must comply with department rules and provide the level of treatment which, on a permitted annual average basis, produces an effluent that contains no more than the following concentrations:

a. Biochemical Oxygen Demand (CBOD5) of 10 mg/l.

b. Suspended Solids of 10 mg/l.

c. Total Nitrogen, expressed as N, of 10 mg/l or a reduction in nitrogen of at least 70 percent. A system that has been tested and certified to reduce nitrogen concentrations by at least 70 percent shall be deemed to be in compliance with this standard.

d. Total Phosphorus, expressed as P, of 1 mg/l.

In addition, onsite sewage treatment and disposal systems discharging to an injection well must provide basic disinfection as defined by department rule.

3. In areas not scheduled to be served by a central sewer, onsite sewage treatment and disposal systems must, by December 31, 2015, comply with department rules and provide the level of treatment described in subparagraph 2.

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1016 4. In areas scheduled to be served by central sewer by
1017 December 31, 2015, if the property owner has paid a connection
1018 fee or assessment for connection to the central sewer system,
1019 the property owner may install a holding tank with a high water
1020 alarm or an onsite sewage treatment and disposal system that
1021 meets the following minimum standards:

1022 a. The existing tanks must be pumped and inspected and
1023 certified as being watertight and free of defects in accordance
1024 with department rule; and

1025 b. A sand-lined drainfield or injection well in accordance
1026 with department rule must be installed.

1027 5. Onsite sewage treatment and disposal systems must be
1028 monitored for total nitrogen and total phosphorus concentrations
1029 as required by department rule.

1030 6. The department shall enforce proper installation,
1031 operation, and maintenance of onsite sewage treatment and
1032 disposal systems pursuant to this chapter, including ensuring
1033 that the appropriate level of treatment described in
1034 subparagraph 2. is met.

1035 7. The authority of a local government, including a special
1036 district, to mandate connection of an onsite sewage treatment
1037 and disposal system is governed by s. 4, chapter 99-395, Laws of
1038 Florida.

1039 8. Notwithstanding any other ~~provision of~~ law, an onsite
1040 sewage treatment and disposal system installed after July 1,
1041 2010, in unincorporated Monroe County, excluding special
1042 wastewater districts, that complies with the standards in
1043 subparagraph 2. is not required to connect to a central sewer
1044 system until December 31, 2020.

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(m) No product sold in the state for use in onsite sewage treatment and disposal systems may contain any substance in concentrations or amounts that would interfere with or prevent the successful operation of such system, or that would cause discharges from such systems to violate applicable water quality standards. The department shall publish criteria for products known or expected to meet the conditions of this paragraph. In the event a product does not meet such criteria, such product may be sold if the manufacturer satisfactorily demonstrates to the department that the conditions of this paragraph are met.

(n) Evaluations for determining the seasonal high-water table elevations or the suitability of soils for the use of a new onsite sewage treatment and disposal system shall be performed by department personnel, professional engineers registered in the state, or such other persons with expertise, as defined by rule, in making such evaluations. Evaluations for determining mean annual flood lines shall be performed by those persons identified in paragraph (2)(k) ~~(2)(j)~~. The department shall accept evaluations submitted by professional engineers and such other persons as meet the expertise established by this section or by rule unless the department has a reasonable scientific basis for questioning the accuracy or completeness of the evaluation.

~~(o) The department shall appoint a research review and advisory committee, which shall meet at least semiannually. The committee shall advise the department on directions for new research, review and rank proposals for research contracts, and review draft research reports and make comments. The committee is comprised of:~~

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1074 ~~1. A representative of the State Surgeon General, or his or~~
1075 ~~her designee.~~

1076 ~~2. A representative from the septic tank industry.~~

1077 ~~3. A representative from the home building industry.~~

1078 ~~4. A representative from an environmental interest group.~~

1079 ~~5. A representative from the State University System, from~~
1080 ~~a department knowledgeable about onsite sewage treatment and~~
1081 ~~disposal systems.~~

1082 ~~6. A professional engineer registered in this state who has~~
1083 ~~work experience in onsite sewage treatment and disposal systems.~~

1084 ~~7. A representative from local government who is~~
1085 ~~knowledgeable about domestic wastewater treatment.~~

1086 ~~8. A representative from the real estate profession.~~

1087 ~~9. A representative from the restaurant industry.~~

1088 ~~10. A consumer.~~

1089
1090 ~~Members shall be appointed for a term of 3 years, with the~~
1091 ~~appointments being staggered so that the terms of no more than~~
1092 ~~four members expire in any one year. Members shall serve without~~
1093 ~~remuneration, but are entitled to reimbursement for per diem and~~
1094 ~~travel expenses as provided in s. 112.061.~~

1095 (o) ~~(p)~~ An application for an onsite sewage treatment and
1096 disposal system permit shall be completed in full, signed by the
1097 owner or the owner's authorized representative, or by a
1098 contractor licensed under chapter 489, and shall be accompanied
1099 by all required exhibits and fees. No specific documentation of
1100 property ownership shall be required as a prerequisite to the
1101 review of an application or the issuance of a permit. The
1102 issuance of a permit does not constitute determination by the

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department of property ownership.

(p)~~(q)~~ The department may not require any form of subdivision analysis of property by an owner, developer, or subdivider prior to submission of an application for an onsite sewage treatment and disposal system.

(g)~~(r)~~ Nothing in this section limits the power of a municipality or county to enforce other laws for the protection of the public health and safety.

(r)~~(s)~~ In the siting of onsite sewage treatment and disposal systems, including drainfields, shoulders, and slopes, guttering may ~~shall~~ not be required on single-family residential dwelling units for systems located greater than 5 feet from the roof drip line of the house. If guttering is used on residential dwelling units, the downspouts shall be directed away from the drainfield.

(s)~~(t)~~ Notwithstanding ~~the provisions of~~ subparagraph (g)1., onsite sewage treatment and disposal systems located in floodways of the Suwannee and Aucilla Rivers must adhere to the following requirements:

1. The absorption surface of the drainfield may ~~shall~~ not be subject to flooding based on 10-year flood elevations. Provided, however, for lots or parcels created by the subdivision of land in accordance with applicable local government regulations prior to January 17, 1990, if an applicant cannot construct a drainfield system with the absorption surface of the drainfield at an elevation equal to or above 10-year flood elevation, the department shall issue a permit for an onsite sewage treatment and disposal system within the 10-year floodplain of rivers, streams, and other bodies of

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flowing water if all of the following criteria are met:

a. The lot is at least one-half acre in size;

b. The bottom of the drainfield is at least 36 inches above the 2-year flood elevation; and

c. The applicant installs either: a waterless, incinerating, or organic waste composting toilet and a graywater system and drainfield in accordance with department rules; an aerobic treatment unit and drainfield in accordance with department rules; a system ~~approved by the State Health Office~~ that is capable of reducing effluent nitrate by at least 50 percent in accordance with department rules; or a system other than a system using alternative drainfield materials in accordance with department rules ~~approved by the county health department pursuant to department rule other than a system using alternative drainfield materials~~. The United States Department of Agriculture Soil Conservation Service soil maps, State of Florida Water Management District data, and Federal Emergency Management Agency Flood Insurance maps are resources that shall be used to identify flood-prone areas.

2. The use of fill or mounding to elevate a drainfield system out of the 10-year floodplain of rivers, streams, or other bodies of flowing water may ~~shall~~ not be permitted if such a system lies within a regulatory floodway of the Suwannee and Aucilla Rivers. In cases where the 10-year flood elevation does not coincide with the boundaries of the regulatory floodway, the regulatory floodway will be considered for the purposes of this subsection to extend at a minimum to the 10-year flood elevation.

(t) ~~(u)~~ 1. The owner of an aerobic treatment unit system

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1161 shall maintain a current maintenance service agreement with an
1162 aerobic treatment unit maintenance entity permitted by the
1163 department. The maintenance entity shall inspect each aerobic
1164 treatment unit system at least twice each year and shall report
1165 quarterly to the department on the number of aerobic treatment
1166 unit systems inspected and serviced. The reports may be
1167 submitted electronically.

1168 2. The property owner of an owner-occupied, single-family
1169 residence may be approved and permitted by the department as a
1170 maintenance entity for his or her own aerobic treatment unit
1171 system upon written certification from the system manufacturer's
1172 approved representative that the property owner has received
1173 training on the proper installation and service of the system.
1174 The maintenance entity service agreement must conspicuously
1175 disclose that the property owner has the right to maintain his
1176 or her own system and is exempt from contractor registration
1177 requirements for performing construction, maintenance, or
1178 repairs on the system but is subject to all permitting
1179 requirements.

1180 3. A septic tank contractor licensed under part III of
1181 chapter 489, if approved by the manufacturer, may not be denied
1182 access by the manufacturer to aerobic treatment unit system
1183 training or spare parts for maintenance entities. After the
1184 original warranty period, component parts for an aerobic
1185 treatment unit system may be replaced with parts that meet
1186 manufacturer's specifications but are manufactured by others.
1187 The maintenance entity shall maintain documentation of the
1188 substitute part's equivalency for 2 years and shall provide such
1189 documentation to the department upon request.

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1190 4. The owner of an aerobic treatment unit system shall
1191 obtain a system operating permit from the department and allow
1192 the department to inspect during reasonable hours each aerobic
1193 treatment unit system at least annually, and such inspection may
1194 include collection and analysis of system-effluent samples for
1195 performance criteria established by rule of the department.

1196 (u)~~(v)~~ The department may require the submission of
1197 detailed system construction plans that are prepared by a
1198 professional engineer registered in this state. The department
1199 shall establish by rule criteria for determining when such a
1200 submission is required.

1201 (v)~~(w)~~ Any permit issued and approved by the department for
1202 the installation, modification, or repair of an onsite sewage
1203 treatment and disposal system shall transfer with the title to
1204 the property in a real estate transaction. A title may not be
1205 encumbered at the time of transfer by new permit requirements by
1206 a governmental entity for an onsite sewage treatment and
1207 disposal system which differ from the permitting requirements in
1208 effect at the time the system was permitted, modified, or
1209 repaired. An inspection of a system may not be mandated by a
1210 governmental entity at the point of sale in a real estate
1211 transaction. This paragraph does not affect a septic tank phase-
1212 out deferral program implemented by a consolidated government as
1213 defined in s. 9, Art. VIII of the State Constitution (1885).

1214 (w)~~(x)~~ A governmental entity, including a municipality,
1215 county, or statutorily created commission, may not require an
1216 engineer-designed performance-based treatment system, excluding
1217 a passive engineer-designed performance-based treatment system,
1218 before the completion of the Florida Onsite Sewage Nitrogen

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Reduction Strategies Project. This paragraph does not apply to a governmental entity, including a municipality, county, or statutorily created commission, which adopted a local law, ordinance, or regulation on or before January 31, 2012.

Notwithstanding this paragraph, an engineer-designed performance-based treatment system may be used to meet the requirements of the variance review and advisory committee recommendations.

(x)~~(y)~~1. An onsite sewage treatment and disposal system is not considered abandoned if the system is disconnected from a structure that was made unusable or destroyed following a disaster and if the system was properly functioning at the time of disconnection and was not adversely affected by the disaster. The onsite sewage treatment and disposal system may be reconnected to a rebuilt structure if:

a. The reconnection of the system is to the same type of structure which contains the same number of bedrooms or fewer, if the square footage of the structure is less than or equal to 110 percent of the original square footage of the structure that existed before the disaster;

b. The system is not a sanitary nuisance; and

c. The system has not been altered without prior authorization.

2. An onsite sewage treatment and disposal system that serves a property that is foreclosed upon is not considered abandoned.

(y)~~(z)~~ If an onsite sewage treatment and disposal system permittee receives, relies upon, and undertakes construction of a system based upon a validly issued construction permit under

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rules applicable at the time of construction but a change to a rule occurs within 5 years after the approval of the system for construction but before the final approval of the system, the rules applicable and in effect at the time of construction approval apply at the time of final approval if fundamental site conditions have not changed between the time of construction approval and final approval.

(z) ~~(aa)~~ An existing-system inspection or evaluation and assessment, or a modification, replacement, or upgrade of an onsite sewage treatment and disposal system is not required for a remodeling addition or modification to a single-family home if a bedroom is not added. However, a remodeling addition or modification to a single-family home may not cover any part of the existing system or encroach upon a required setback or the unobstructed area. To determine if a setback or the unobstructed area is impacted, the local health department shall review and verify a floor plan and site plan of the proposed remodeling addition or modification to the home submitted by a remodeler which shows the location of the system, including the distance of the remodeling addition or modification to the home from the onsite sewage treatment and disposal system. The local health department may visit the site or otherwise determine the best means of verifying the information submitted. A verification of the location of a system is not an inspection or evaluation and assessment of the system. The review and verification must be completed within 7 business days after receipt by the local health department of a floor plan and site plan. If the review and verification is not completed within such time, the remodeling addition or modification to the single-family home,

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for the purposes of this paragraph, is approved.

Section 8. Subsection (7) is added to section 381.0065, Florida Statutes, to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(7) USE OF NUTRIENT REDUCING ONSITE SEWAGE TREATMENT AND DISPOSAL SYSTEMS.—To meet the requirements of a total maximum daily load, the department shall implement a fast-track approval process for the use in this state of American National Standards Institute 245 systems approved by NSF International before July 1, 2020.

Section 9. Section 381.00652, Florida Statutes, is created to read:

381.00652 Onsite sewage treatment and disposal systems technical advisory committee.—

(1) An onsite sewage treatment and disposal systems technical advisory committee, a committee as defined in s. 20.03(8), is created within the department. The committee shall:

(a) Provide recommendations to increase the availability in the marketplace of enhanced nutrient-reducing onsite sewage treatment and disposal systems, including systems that are cost-effective, low-maintenance, and reliable.

(b) Consider and recommend regulatory options, such as fast-track approval, prequalification, or expedited permitting, to facilitate the introduction and use of enhanced nutrient-reducing onsite sewage treatment and disposal systems that have been reviewed and approved by a national agency or organization, such as the American National Standards Institute 245 systems approved by the NSF International.

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(c) Provide recommendations for appropriate setback distances for onsite sewage treatment and disposal systems from surface water, groundwater, and wells.

(2) The department shall use existing and available resources to administer and support the activities of the committee.

(3) (a) By August 1, 2021, the department, in consultation with the Department of Health, shall appoint no more than 10 members to the committee, including, but not limited to, the following:

1. A professional engineer.
2. A septic tank contractor.
3. Two representatives from the home building industry.
4. A representative from the real estate industry.
5. A representative from the onsite sewage treatment and disposal system industry.
6. A representative from local government.
7. Two representatives from the environmental community.
8. A representative of the scientific and technical community who has substantial expertise in the areas of the fate and transport of water pollutants, toxicology, epidemiology, geology, biology, or environmental sciences.

(b) Members shall serve without compensation and are not entitled to reimbursement for per diem or travel expenses.

(4) By January 1, 2022, the committee shall submit its recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(5) This section expires August 15, 2022.

(6) For purposes of this section, the term "department"

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1335 means the Department of Environmental Protection.

1336 Section 10. Effective July 1, 2021, section 381.0068,
1337 Florida Statutes, is repealed.

1338 Section 11. Present subsections (14) through (44) of
1339 section 403.061, Florida Statutes, are redesignated as
1340 subsections (15) through (45), respectively, a new subsection
1341 (14) is added to that section, and subsection (7) of that
1342 section is amended, to read:

1343 403.061 Department; powers and duties.—The department shall
1344 have the power and the duty to control and prohibit pollution of
1345 air and water in accordance with the law and rules adopted and
1346 promulgated by it and, for this purpose, to:

1347 (7) Adopt rules pursuant to ss. 120.536(1) and 120.54 to
1348 implement ~~the provisions of~~ this act. Any rule adopted pursuant
1349 to this act must ~~shall~~ be consistent with the provisions of
1350 federal law, if any, relating to control of emissions from motor
1351 vehicles, effluent limitations, pretreatment requirements, or
1352 standards of performance. A ~~No~~ county, municipality, or
1353 political subdivision may not ~~shall~~ adopt or enforce any local
1354 ordinance, special law, or local regulation requiring the
1355 installation of Stage II vapor recovery systems, as currently
1356 defined by department rule, unless such county, municipality, or
1357 political subdivision is or has been in the past designated by
1358 federal regulation as a moderate, serious, or severe ozone
1359 nonattainment area. Rules adopted pursuant to this act may ~~shall~~
1360 not require dischargers of waste into waters of the state to
1361 improve natural background conditions. The department shall
1362 adopt rules to reasonably limit, reduce, and eliminate domestic
1363 wastewater collection and transmission system pipe leakages and

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1364 inflow and infiltration. Discharges from steam electric
1365 generating plants existing or licensed under this chapter on
1366 July 1, 1984, may ~~shall~~ not be required to be treated to a
1367 greater extent than may be necessary to assure that the quality
1368 of nonthermal components of discharges from nonrecirculated
1369 cooling water systems is as high as the quality of the makeup
1370 waters; that the quality of nonthermal components of discharges
1371 from recirculated cooling water systems is no lower than is
1372 allowed for blowdown from such systems; or that the quality of
1373 noncooling system discharges which receive makeup water from a
1374 receiving body of water which does not meet applicable
1375 department water quality standards is as high as the quality of
1376 the receiving body of water. The department may not adopt
1377 standards more stringent than federal regulations, except as
1378 provided in s. 403.804.

1379 (14) In order to promote resilient utilities, require
1380 public utilities or their affiliated companies holding, applying
1381 for, or renewing a domestic wastewater discharge permit to file
1382 annual reports and other data regarding transactions or
1383 allocations of common costs and expenditures on pollution
1384 mitigation and prevention among the utility's permitted systems,
1385 including, but not limited to, the prevention of sanitary sewer
1386 overflows, collection and transmission system pipe leakages, and
1387 inflow and infiltration. The department shall adopt rules to
1388 implement this subsection.

1389
1390 The department shall implement such programs in conjunction with
1391 its other powers and duties and shall place special emphasis on
1392 reducing and eliminating contamination that presents a threat to

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humans, animals or plants, or to the environment.

Section 12. Section 403.0616, Florida Statutes, is created to read:

403.0616 Real-time water quality monitoring program.-

(1) Subject to appropriation, the department shall establish a real-time water quality monitoring program to assist in the restoration, preservation, and enhancement of impaired waterbodies and coastal resources.

(2) In order to expedite the creation and implementation of the program, the department is encouraged to form public-private partnerships with established scientific entities that have proven existing real-time water quality monitoring equipment and experience in deploying the equipment.

Section 13. Subsection (7) of section 403.067, Florida Statutes, is amended to read:

403.067 Establishment and implementation of total maximum daily loads.-

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.-

(a) *Basin management action plans.-*

1. In developing and implementing the total maximum daily load for a water body, the department, or the department in conjunction with a water management district, may develop a basin management action plan that addresses some or all of the watersheds and basins tributary to the water body. Such plan must integrate the appropriate management strategies available to the state through existing water quality protection programs to achieve the total maximum daily loads and may provide for phased implementation of these management strategies to promote

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timely, cost-effective actions as provided for in s. 403.151.
The plan must establish a schedule implementing the management strategies, establish a basis for evaluating the plan's effectiveness, and identify feasible funding strategies for implementing the plan's management strategies. The management strategies may include regional treatment systems or other public works, when ~~where~~ appropriate, and voluntary trading of water quality credits to achieve the needed pollutant load reductions.

2. A basin management action plan must equitably allocate, pursuant to paragraph (6)(b), pollutant reductions to individual basins, as a whole to all basins, or to each identified point source or category of nonpoint sources, as appropriate. For nonpoint sources for which best management practices have been adopted, the initial requirement specified by the plan must be those practices developed pursuant to paragraph (c). When ~~Where~~ appropriate, the plan may take into account the benefits of pollutant load reduction achieved by point or nonpoint sources that have implemented management strategies to reduce pollutant loads, including best management practices, before the development of the basin management action plan. The plan must also identify the mechanisms that will address potential future increases in pollutant loading.

3. The basin management action planning process is intended to involve the broadest possible range of interested parties, with the objective of encouraging the greatest amount of cooperation and consensus possible. In developing a basin management action plan, the department shall assure that key stakeholders, including, but not limited to, applicable local

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governments, water management districts, the Department of Agriculture and Consumer Services, other appropriate state agencies, local soil and water conservation districts, environmental groups, regulated interests, and affected pollution sources, are invited to participate in the process. The department shall hold at least one public meeting in the vicinity of the watershed or basin to discuss and receive comments during the planning process and shall otherwise encourage public participation to the greatest practicable extent. Notice of the public meeting must be published in a newspaper of general circulation in each county in which the watershed or basin lies at least ~~not less than~~ 5 days, but not ~~nor~~ more than 15 days, before the public meeting. A basin management action plan does not supplant or otherwise alter any assessment made under subsection (3) or subsection (4) or any calculation or initial allocation.

4. Each new or revised basin management action plan shall include:

a. The appropriate management strategies available through existing water quality protection programs to achieve total maximum daily loads, which may provide for phased implementation to promote timely, cost-effective actions as provided for in s. 403.151;

b. A description of best management practices adopted by rule;

c. A list of projects in priority ranking with a planning-level cost estimate and estimated date of completion for each listed project;

d. The source and amount of financial assistance to be made

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available by the department, a water management district, or other entity for each listed project, if applicable; ~~and~~

e. A planning-level estimate of each listed project's expected load reduction, if applicable; and.

f. An estimated allocation of the pollutant load reduction for each point source or category of point sources.

5. The department shall adopt all or any part of a basin management action plan and any amendment to such plan by secretarial order pursuant to chapter 120 to implement ~~the provisions of~~ this section.

6. The basin management action plan must include milestones for implementation and water quality improvement, and an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones shall be conducted every 5 years, and revisions to the plan shall be made as appropriate. Revisions to the basin management action plan shall be made by the department in cooperation with basin stakeholders. Revisions to the management strategies required for nonpoint sources must follow the procedures set forth in subparagraph (c)4. Revised basin management action plans must be adopted pursuant to subparagraph 5.

7. In accordance with procedures adopted by rule under paragraph (9)(c), basin management action plans, and other pollution control programs under local, state, or federal authority as provided in subsection (4), may allow point or nonpoint sources that will achieve greater pollutant reductions than required by an adopted total maximum daily load or

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1509 wasteload allocation to generate, register, and trade water
1510 quality credits for the excess reductions to enable other
1511 sources to achieve their allocation; however, the generation of
1512 water quality credits does not remove the obligation of a source
1513 or activity to meet applicable technology requirements or
1514 adopted best management practices. Such plans must allow trading
1515 between NPDES permittees, and trading that may or may not
1516 involve NPDES permittees, where the generation or use of the
1517 credits involve an entity or activity not subject to department
1518 water discharge permits whose owner voluntarily elects to obtain
1519 department authorization for the generation and sale of credits.

1520 8. ~~The provisions of~~ The department's rule relating to the
1521 equitable abatement of pollutants into surface waters do not
1522 apply to water bodies or water body segments for which a basin
1523 management plan that takes into account future new or expanded
1524 activities or discharges has been adopted under this section.

1525 9. In order to promote resilient wastewater utilities, if
1526 the department identifies domestic wastewater treatment
1527 facilities or onsite sewage treatment and disposal systems as
1528 contributors of at least 20 percent of point source or nonpoint
1529 source nutrient pollution or if the department determines
1530 remediation is necessary to achieve the total maximum daily
1531 load, a basin management action plan for a nutrient total
1532 maximum daily load must include the following:

1533 a. A wastewater treatment plan that addresses domestic
1534 wastewater developed by each local government in cooperation
1535 with the department, the water management district, and the
1536 public and private domestic wastewater treatment facilities
1537 within the jurisdiction of the local government. The wastewater

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1538 treatment plan must:

1539 (I) Provide for construction, expansion, or upgrades
1540 necessary to achieve the total maximum daily load requirements
1541 applicable to the domestic wastewater treatment facility.

1542 (II) Include the permitted capacity in average annual
1543 gallons per day for the domestic wastewater treatment facility;
1544 the average nutrient concentration and the estimated average
1545 nutrient load of the domestic wastewater; a timeline of the
1546 dates by which the construction of any facility improvements
1547 will begin and be completed and the date by which operations of
1548 the improved facility will begin; the estimated cost of the
1549 improvements; and the identity of responsible parties.

1550
1551 The wastewater treatment plan must be adopted as part of the
1552 basin management action plan no later than July 1, 2025. A local
1553 government that does not have a domestic wastewater treatment
1554 facility in its jurisdiction is not required to develop a
1555 wastewater treatment plan unless there is a demonstrated need to
1556 establish a domestic wastewater treatment facility within its
1557 jurisdiction to improve water quality necessary to achieve a
1558 total maximum daily load. A local government is not responsible
1559 for a private domestic wastewater facility's compliance with a
1560 basin management action plan unless such facility is operated
1561 through a public-private partnership to which the local
1562 government is a party.

1563 b. An onsite sewage treatment and disposal system
1564 remediation plan developed by each local government in
1565 cooperation with the department, the Department of Health, water
1566 management districts, and public and private domestic wastewater

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1567 treatment facilities.

1568 (I) The onsite sewage treatment and disposal system
1569 remediation plan must identify cost-effective and financially
1570 feasible projects necessary to achieve the nutrient load
1571 reductions required for onsite sewage treatment and disposal
1572 systems. To identify cost-effective and financially feasible
1573 projects for remediation of onsite sewage treatment and disposal
1574 systems, the local government shall:

1575 (A) Include an inventory of onsite sewage treatment and
1576 disposal systems based on the best information available;

1577 (B) Identify onsite sewage treatment and disposal systems
1578 that would be eliminated through connection to existing or
1579 future central domestic wastewater infrastructure in the
1580 jurisdiction or domestic wastewater service area of the local
1581 government, that would be replaced with or upgraded to enhanced
1582 nutrient-reducing systems, or that would remain on conventional
1583 onsite sewage treatment and disposal systems;

1584 (C) Estimate the costs of potential onsite sewage treatment
1585 and disposal systems connections, upgrades, or replacements; and

1586 (D) Identify deadlines and interim milestones for the
1587 planning, design, and construction of projects.

1588 (II) The department shall adopt the onsite sewage treatment
1589 and disposal system remediation plan as part of the basin
1590 management action plan no later than July 1, 2025, or as
1591 required for Outstanding Florida Springs under s. 373.807.

1592 10. When identifying wastewater projects in a basin
1593 management action plan, the department may not require the
1594 higher cost option if it achieves the same nutrient load
1595 reduction as a lower cost option. A regulated entity may choose

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a different cost option if it complies with the pollutant reduction requirements of an adopted total maximum daily load and provides additional benefits.

(b) *Total maximum daily load implementation.*—

1. The department shall be the lead agency in coordinating the implementation of the total maximum daily loads through existing water quality protection programs. Application of a total maximum daily load by a water management district must be consistent with this section and does not require the issuance of an order or a separate action pursuant to s. 120.536(1) or s. 120.54 for the adoption of the calculation and allocation previously established by the department. Such programs may include, but are not limited to:

a. Permitting and other existing regulatory programs, including water-quality-based effluent limitations;

b. Nonregulatory and incentive-based programs, including best management practices, cost sharing, waste minimization, pollution prevention, agreements established pursuant to s. 403.061(22) ~~s. 403.061(21)~~, and public education;

c. Other water quality management and restoration activities, for example surface water improvement and management plans approved by water management districts or basin management action plans developed pursuant to this subsection;

d. Trading of water quality credits or other equitable economically based agreements;

e. Public works including capital facilities; or

f. Land acquisition.

2. For a basin management action plan adopted pursuant to paragraph (a), any management strategies and pollutant reduction

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requirements associated with a pollutant of concern for which a total maximum daily load has been developed, including effluent limits set forth for a discharger subject to NPDES permitting, if any, must be included in a timely manner in subsequent NPDES permits or permit modifications for that discharger. The department may not impose limits or conditions implementing an adopted total maximum daily load in an NPDES permit until the permit expires, the discharge is modified, or the permit is reopened pursuant to an adopted basin management action plan.

a. Absent a detailed allocation, total maximum daily loads must be implemented through NPDES permit conditions that provide for a compliance schedule. In such instances, a facility's NPDES permit must allow time for the issuance of an order adopting the basin management action plan. The time allowed for the issuance of an order adopting the plan may not exceed 5 years. Upon issuance of an order adopting the plan, the permit must be reopened or renewed, as necessary, and permit conditions consistent with the plan must be established. Notwithstanding the other provisions of this subparagraph, upon request by an NPDES permittee, the department as part of a permit issuance, renewal, or modification may establish individual allocations before the adoption of a basin management action plan.

b. For holders of NPDES municipal separate storm sewer system permits and other stormwater sources, implementation of a total maximum daily load or basin management action plan must be achieved, to the maximum extent practicable, through the use of best management practices or other management measures.

c. The basin management action plan does not relieve the discharger from any requirement to obtain, renew, or modify an

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NPDES permit or to abide by other requirements of the permit.

d. Management strategies set forth in a basin management action plan to be implemented by a discharger subject to permitting by the department must be completed pursuant to the schedule set forth in the basin management action plan. This implementation schedule may extend beyond the 5-year term of an NPDES permit.

e. Management strategies and pollution reduction requirements set forth in a basin management action plan for a specific pollutant of concern are not subject to challenge under chapter 120 at the time they are incorporated, in an identical form, into a subsequent NPDES permit or permit modification.

f. For nonagricultural pollutant sources not subject to NPDES permitting but permitted pursuant to other state, regional, or local water quality programs, the pollutant reduction actions adopted in a basin management action plan must be implemented to the maximum extent practicable as part of those permitting programs.

g. A nonpoint source discharger included in a basin management action plan must demonstrate compliance with the pollutant reductions established under subsection (6) by implementing the appropriate best management practices established pursuant to paragraph (c) or conducting water quality monitoring prescribed by the department or a water management district. A nonpoint source discharger may, in accordance with department rules, supplement the implementation of best management practices with water quality credit trades in order to demonstrate compliance with the pollutant reductions established under subsection (6).

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h. A nonpoint source discharger included in a basin management action plan may be subject to enforcement action by the department or a water management district based upon a failure to implement the responsibilities set forth in sub-subparagraph g.

i. A landowner, discharger, or other responsible person who is implementing applicable management strategies specified in an adopted basin management action plan may not be required by permit, enforcement action, or otherwise to implement additional management strategies, including water quality credit trading, to reduce pollutant loads to attain the pollutant reductions established pursuant to subsection (6) and shall be deemed to be in compliance with this section. This subparagraph does not limit the authority of the department to amend a basin management action plan as specified in subparagraph (a)6.

(c) *Best management practices.*—

1. The department, in cooperation with the water management districts and other interested parties, as appropriate, may develop suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for nonagricultural nonpoint pollutant sources in allocations developed pursuant to subsection (6) and this subsection. These practices and measures may be adopted by rule by the department and the water management districts and, where adopted by rule, shall be implemented by those parties responsible for nonagricultural nonpoint source pollution.

2. The Department of Agriculture and Consumer Services may develop and adopt by rule pursuant to ss. 120.536(1) and 120.54

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1712 suitable interim measures, best management practices, or other
1713 measures necessary to achieve the level of pollution reduction
1714 established by the department for agricultural pollutant sources
1715 in allocations developed pursuant to subsection (6) and this
1716 subsection or for programs implemented pursuant to paragraph
1717 (12) (b). These practices and measures may be implemented by
1718 those parties responsible for agricultural pollutant sources and
1719 the department, the water management districts, and the
1720 Department of Agriculture and Consumer Services shall assist
1721 with implementation. In the process of developing and adopting
1722 rules for interim measures, best management practices, or other
1723 measures, the Department of Agriculture and Consumer Services
1724 shall consult with the department, the Department of Health, the
1725 water management districts, representatives from affected
1726 farming groups, and environmental group representatives. Such
1727 rules must also incorporate provisions for a notice of intent to
1728 implement the practices and a system to assure the
1729 implementation of the practices, including site inspection and
1730 recordkeeping requirements.

1731 3. Where interim measures, best management practices, or
1732 other measures are adopted by rule, the effectiveness of such
1733 practices in achieving the levels of pollution reduction
1734 established in allocations developed by the department pursuant
1735 to subsection (6) and this subsection or in programs implemented
1736 pursuant to paragraph (12) (b) must be verified at representative
1737 sites by the department. The department shall use best
1738 professional judgment in making the initial verification that
1739 the best management practices are reasonably expected to be
1740 effective and, where applicable, must notify the appropriate

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1741 water management district or the Department of Agriculture and
1742 Consumer Services of its initial verification before the
1743 adoption of a rule proposed pursuant to this paragraph.
1744 Implementation, in accordance with rules adopted under this
1745 paragraph, of practices that have been initially verified to be
1746 effective, or verified to be effective by monitoring at
1747 representative sites, by the department, shall provide a
1748 presumption of compliance with state water quality standards and
1749 release from ~~the provisions of~~ s. 376.307(5) for those
1750 pollutants addressed by the practices, and the department is not
1751 authorized to institute proceedings against the owner of the
1752 source of pollution to recover costs or damages associated with
1753 the contamination of surface water or groundwater caused by
1754 those pollutants. Research projects funded by the department, a
1755 water management district, or the Department of Agriculture and
1756 Consumer Services to develop or demonstrate interim measures or
1757 best management practices shall be granted a presumption of
1758 compliance with state water quality standards and a release from
1759 ~~the provisions of~~ s. 376.307(5). The presumption of compliance
1760 and release is limited to the research site and only for those
1761 pollutants addressed by the interim measures or best management
1762 practices. Eligibility for the presumption of compliance and
1763 release is limited to research projects on sites where the owner
1764 or operator of the research site and the department, a water
1765 management district, or the Department of Agriculture and
1766 Consumer Services have entered into a contract or other
1767 agreement that, at a minimum, specifies the research objectives,
1768 the cost-share responsibilities of the parties, and a schedule
1769 that details the beginning and ending dates of the project.

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1770 4. Where water quality problems are demonstrated, despite
1771 the appropriate implementation, operation, and maintenance of
1772 best management practices and other measures required by rules
1773 adopted under this paragraph, the department, a water management
1774 district, or the Department of Agriculture and Consumer
1775 Services, in consultation with the department, shall institute a
1776 reevaluation of the best management practice or other measure.
1777 Should the reevaluation determine that the best management
1778 practice or other measure requires modification, the department,
1779 a water management district, or the Department of Agriculture
1780 and Consumer Services, as appropriate, shall revise the rule to
1781 require implementation of the modified practice within a
1782 reasonable time period as specified in the rule.

1783 5. Subject to subparagraph 6., the Department of
1784 Agriculture and Consumer Services shall provide to the
1785 department information that it obtains pursuant to subparagraph
1786 (d) 3.

1787 6. Agricultural records relating to processes or methods of
1788 production, costs of production, profits, or other financial
1789 information held by the Department of Agriculture and Consumer
1790 Services pursuant to subparagraphs 3., ~~and 4., and 5.~~ or
1791 pursuant to any rule adopted pursuant to subparagraph 2. are
1792 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
1793 of the State Constitution. Upon request, records made
1794 confidential and exempt pursuant to this subparagraph shall be
1795 released to the department or any water management district
1796 provided that the confidentiality specified by this subparagraph
1797 for such records is maintained.

1798 ~~7.6. The provisions of Subparagraphs 1. and 2. do not~~

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preclude the department or water management district from requiring compliance with water quality standards or with current best management practice requirements set forth in any applicable regulatory program authorized by law for the purpose of protecting water quality. Additionally, subparagraphs 1. and 2. are applicable only to the extent that they do not conflict with any rules adopted by the department that are necessary to maintain a federally delegated or approved program.

(d) *Enforcement and verification of basin management action plans and management strategies.*—

1. Basin management action plans are enforceable pursuant to this section and ss. 403.121, 403.141, and 403.161. Management strategies, including best management practices and water quality monitoring, are enforceable under this chapter.

2. No later than January 1, 2017:

a. The department, in consultation with the water management districts and the Department of Agriculture and Consumer Services, shall initiate rulemaking to adopt procedures to verify implementation of water quality monitoring required in lieu of implementation of best management practices or other measures pursuant to sub-subparagraph (b)2.g.;

b. The department, in consultation with the water management districts and the Department of Agriculture and Consumer Services, shall initiate rulemaking to adopt procedures to verify implementation of nonagricultural interim measures, best management practices, or other measures adopted by rule pursuant to subparagraph (c)1.; and

c. The Department of Agriculture and Consumer Services, in consultation with the water management districts and the

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department, shall initiate rulemaking to adopt procedures to verify implementation of agricultural interim measures, best management practices, or other measures adopted by rule pursuant to subparagraph(c)2.

The rules required under this subparagraph shall include enforcement procedures applicable to the landowner, discharger, or other responsible person required to implement applicable management strategies, including best management practices or water quality monitoring as a result of noncompliance.

3. At least every 2 years, the Department of Agriculture and Consumer Services shall perform onsite inspections of each agricultural producer that enrolls in a best management practice to ensure that such practice is being properly implemented. Such verification must include a collection and review of the best management practice documentation from the previous 2 years required by rule adopted in accordance with subparagraph (c)2., including, but not limited to, nitrogen and phosphorous fertilizer application records, which must be collected and retained pursuant to subparagraphs (c)3., 4., and 6. The Department of Agriculture and Consumer Services shall initially prioritize the inspection of agricultural producers located in the basin management action plans for Lake Okeechobee, the Indian River Lagoon, the Caloosahatchee River and Estuary, and Silver Springs.

(e) Cooperative agricultural regional water quality improvement element.-

1. The department, the Department of Agriculture and Consumer Services, and owners of agricultural operations in the

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basin shall develop a cooperative agricultural regional water quality improvement element as part of a basin management action plan only if:

a. Agricultural measures have been adopted by the Department of Agriculture and Consumer Services pursuant to subparagraph (c)2. and have been implemented and the waterbody remains impaired;

b. Agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges; and

c. The department determines that additional measures, in combination with state-sponsored regional projects and other management strategies included in the basin management action plan, are necessary to achieve the total maximum daily load.

2. The element will be implemented through the use of cost-sharing projects. The element must include cost-effective and technically and financially practical cooperative regional agricultural nutrient reduction projects that can be implemented on private properties on a site-specific, cooperative basis. Such cooperative regional agricultural nutrient reduction projects may include land acquisition in fee or conservation easements on the lands of willing sellers and site-specific water quality improvement or dispersed water management projects on the lands of project participants.

3. To qualify for participation in the cooperative agricultural regional water quality improvement element, the participant must have already implemented the interim measures, best management practices, or other measures adopted by the Department of Agriculture and Consumer Services pursuant to subparagraph (c)2. The element may be included in the basin

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management action plan as a part of the next 5-year assessment under subparagraph (a)6.

4. The department may submit a legislative budget request to fund projects developed pursuant to this paragraph.

(f) Data collection and research.—

1. The Department of Agriculture and Consumer Services, in cooperation with the University of Florida Institute of Food and Agricultural Sciences and other state universities and Florida College System institutions with agricultural research programs, shall annually develop research plans and legislative budget requests to:

a. Evaluate and suggest enhancements to the existing adopted agricultural best management practices to reduce nutrient runoff;

b. Develop new best management practices that, if proven effective, the Department of Agriculture and Consumer Services may adopt by rule pursuant to subparagraph (c)2.; and

c. Develop agricultural nutrient runoff reduction projects that willing participants could implement on a site-specific, cooperative basis, in addition to best management practices. The department may consider these projects for inclusion in a basin management action plan. These nutrient runoff reduction projects must reduce the nutrient impacts from agricultural operations on water quality when evaluated with the projects and management strategies currently included in the basin management action plan.

2. To be considered for funding, the University of Florida Institute of Food and Agricultural Sciences and other state universities and Florida College System institutions that have

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agricultural research programs must submit such plans to the department and the Department of Agriculture and Consumer Services by August 1, 2020, for the 2021-2022 fiscal year, and by May 1 for each subsequent fiscal year.

3. The department shall work with the University of Florida Institute of Food and Agricultural Sciences and regulated entities to consider the adoption by rule of best management practices for nutrient impacts from golf courses. Such adopted best management practices are subject to the requirements of paragraph (c).

Section 14. Section 403.0671, Florida Statutes, is created to read:

403.0671 Basin management action plan wastewater reports.—

(1) By July 1, 2021, the department, in coordination with the county health departments, wastewater treatment facilities, and other governmental entities, shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives evaluating the costs of wastewater projects identified in the basin management action plans developed pursuant to ss. 373.807 and 403.067(7) and the onsite sewage treatment and disposal system remediation plans and other restoration plans developed to meet the total maximum daily loads required under s. 403.067. The report must include:

(a) Projects to:

1. Replace onsite sewage treatment and disposal systems with enhanced nutrient reducing onsite sewage treatment and disposal systems.

2. Install or retrofit onsite sewage treatment and disposal systems with enhanced nutrient reducing technologies.

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1944 3. Construct, upgrade, or expand domestic wastewater
1945 treatment facilities to meet the wastewater treatment plan
1946 required under s. 403.067(7)(a)9.

1947 4. Connect onsite sewage treatment and disposal systems to
1948 domestic wastewater treatment facilities;

1949 (b) The estimated costs, nutrient load reduction estimates,
1950 and other benefits of each project;

1951 (c) The estimated implementation timeline for each project;

1952 (d) A proposed 5-year funding plan for each project and the
1953 source and amount of financial assistance the department, a
1954 water management district, or other project partner will make
1955 available to fund the project; and

1956 (e) The projected costs of installing enhanced nutrient
1957 reducing onsite sewage treatment and disposal systems on
1958 buildable lots in priority focus areas to comply with s.
1959 373.811.

1960 (2) By July 1, 2021, the department shall submit a report
1961 to the Governor, the President of the Senate, and the Speaker of
1962 the House of Representatives that provides an assessment of the
1963 water quality monitoring being conducted for each basin
1964 management action plan implementing a nutrient total maximum
1965 daily load. In developing the report, the department may
1966 coordinate with water management districts and any applicable
1967 university. The report must:

1968 (a) Evaluate the water quality monitoring prescribed for
1969 each basin management action plan to determine if it is
1970 sufficient to detect changes in water quality caused by the
1971 implementation of a project.

1972 (b) Identify gaps in water quality monitoring.

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1973 (c) Recommend ways to address water quality monitoring
1974 needs.

1975 (3) Beginning January 1, 2022, and each January 1
1976 thereafter, the department shall submit to the Office of
1977 Economic and Demographic Research the cost estimates for
1978 projects required under s. 403.067(7)(a)9. The office shall
1979 include the project cost estimates in its annual assessment
1980 conducted pursuant to s. 403.928.

1981 Section 15. Section 403.0673, Florida Statutes, is created
1982 to read:

1983 403.0673 Wastewater grant program.—A wastewater grant
1984 program is established within the Department of Environmental
1985 Protection.

1986 (1) Subject to the appropriation of funds by the
1987 Legislature, the department may provide grants for the following
1988 projects within a basin management action plan, an alternative
1989 restoration plan adopted by final order, or a rural area of
1990 opportunity under s. 288.0656 which will individually or
1991 collectively reduce excess nutrient pollution:

1992 (a) Projects to retrofit onsite sewage treatment and
1993 disposal systems to upgrade them to enhanced nutrient-reducing
1994 onsite sewage treatment and disposal systems.

1995 (b) Projects to construct, upgrade, or expand facilities to
1996 provide advanced waste treatment, as defined in s. 403.086(4).

1997 (c) Projects to connect onsite sewage treatment and
1998 disposal systems to central sewer facilities.

1999 (2) In allocating such funds, priority must be given to
2000 projects that subsidize the connection of onsite sewage
2001 treatment and disposal systems to wastewater treatment plants.

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First priority must be given to subsidize connection to existing infrastructure. Second priority must be given to any expansion of a collection or transmission system that promotes efficiency by planning the installation of wastewater transmission facilities to be constructed concurrently with other construction projects occurring within or along a transportation facility right-of-way. Third priority must be given to all other connection of onsite sewage treatment and disposal systems to wastewater treatment plants. The department shall consider the estimated reduction in nutrient load per project; project readiness; cost-effectiveness of the project; overall environmental benefit of a project; the location of a project; the availability of local matching funds; and projected water savings or quantity improvements associated with a project.

(3) Each grant for a project described in subsection (1) must require a minimum of a 50 percent local match of funds. However, the department may, at its discretion, 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 under s. 288.0656.

(4) The department shall coordinate with each water management district, as necessary, to identify grant recipients in each district.

(5) Beginning January 1, 2021, and each January 1 thereafter, the department shall submit a report regarding the projects funded pursuant to this section to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 16. Section 403.0855, Florida Statutes, is created

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to read:

403.0855 Biosolids management.—

(1) The Legislature finds that it is in the best interest of this state to regulate biosolids management in order to minimize the offsite migration of nutrients that impair waterbodies. The Legislature further finds that the expedited implementation of the recommendations of the Biosolids Technical Advisory Committee, including permitting according to site-specific application conditions, an increased inspection rate, groundwater and surface water monitoring protocols, and nutrient management research, will improve biosolids management and assist in protecting this state's water resources and water quality.

(2) The department shall adopt rules for biosolids management.

(3) Effective July 1, 2020, all biosolids application sites must meet department rules in effect at the time of the renewal of the biosolids application site permit or facility permit.

(4) A municipality or county may enforce or extend an ordinance, a regulation, a resolution, a rule, a moratorium, or a policy, any of which was adopted before November 1, 2019, relating to the land application of Class B biosolids until the ordinance, regulation, resolution, rule, moratorium, or policy is repealed by the municipality or county.

(5) The permittee of a biosolids land application site shall:

(a) Conduct the land application of biosolids in accordance with basin management action plans adopted in accordance with ss. 373.807 and 403.067(7).

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2060 (b) Establish a groundwater monitoring program approved by
2061 the department for land application sites when:

2062 1. The application rate in the nutrient management plan
2063 exceeds more than 160 pounds per acre per year of total plant
2064 available nitrogen or 40 pounds per acre per year of total P2O5;
2065 or

2066 2. The soil capacity index is less than 0 mg/kg.

2067 (c) When soil fertility testing indicates the soil capacity
2068 index has become less than 0 mg/kg, establish a groundwater
2069 monitoring program in accordance with department rules within 1
2070 year of the date of the sampling results.

2071 (d) When groundwater monitoring is not required, allow the
2072 department to install groundwater monitoring wells at any time
2073 during the effective period of the department-issued facility or
2074 land application site permit and conduct monitoring.

2075 (e) Ensure a minimum unsaturated soil depth of 2 feet
2076 between the depth of biosolids placement and the water table
2077 level at the time the Class A or Class B biosolids are applied
2078 to the soil. Biosolids may not be applied on soils that have a
2079 seasonal high-water table less than 15 centimeters from the soil
2080 surface or within 15 centimeters of the intended depth of
2081 biosolids placement. As used in this section, the term "seasonal
2082 high water" means the elevation to which the ground and surface
2083 water may be expected to rise due to a normal wet season.

2084 (f) Be enrolled in the Department of Agriculture and
2085 Consumer Service's Best Management Practices Program or be
2086 within an agricultural operation enrolled in the program for the
2087 applicable commodity type.

2088 (6) This subsection and subsection (5) are repealed upon

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the effective date of biosolids rules adopted by the department
after July 1, 2020.

Section 17. Present subsections (7) through (10) of section
403.086, Florida Statutes, are redesignated as subsections (8)
through (11), respectively, paragraph (d) is added to subsection
(1) of that section, a new subsection (7) is added to that
section, and paragraph (c) of subsection (1) and subsection (2)
of that section are amended, to read:

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

(1)

(c) Notwithstanding ~~any other provisions of~~ this chapter or
chapter 373, facilities for sanitary sewage disposal may not
dispose of any wastes into Old Tampa Bay, Tampa Bay,
Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater
Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay,
~~or~~ Charlotte Harbor Bay, or, beginning July 1, 2025, Indian
River Lagoon, or into any river, stream, channel, canal, bay,
bayou, sound, or other water tributary thereto, without
providing advanced waste treatment, as defined in subsection
(4), approved by the department. This paragraph does ~~shall~~ not
apply to facilities which were permitted by February 1, 1987,
and which discharge secondary treated effluent, followed by
water hyacinth treatment, to tributaries of tributaries of the
named waters; or to facilities permitted to discharge to the
nontidally influenced portions of the Peace River.

(d) By December 31, 2020, the department, in consultation
with the water management districts and sewage disposal
facilities, shall submit to the Governor, the President of the

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Senate, and the Speaker of the House of Representatives a progress report on the status of upgrades made by each facility to meet the advanced waste treatment requirements under paragraph (c). The report must include a list of sewage disposal facilities required to upgrade to advanced waste treatment, the preliminary cost estimates for the upgrades, and a projected timeline of the dates by which the upgrades will begin and be completed and the date by which operations of the upgraded facility will begin.

(2) Any facilities for sanitary sewage disposal shall provide for secondary waste treatment, a power outage contingency plan that mitigates the impacts of power outages on the utility's collection system and pump stations, and, in addition thereto, advanced waste treatment as deemed necessary and ordered by the Department of Environmental Protection. Failure to conform is ~~shall be~~ punishable by a civil penalty of \$500 for each 24-hour day or fraction thereof that such failure is allowed to continue thereafter.

(7) All facilities for sanitary sewage under subsection (2) which control a collection or transmission system of pipes and pumps to collect and transmit wastewater from domestic or industrial sources to the facility shall take steps to prevent sanitary sewer overflows or underground pipe leaks and ensure that collected wastewater reaches the facility for appropriate treatment. Facilities must use inflow and infiltration studies and leakage surveys to develop pipe assessment, repair, and replacement action plans with at least a 5-year planning horizon which comply with department rule to limit, reduce, and eliminate leaks, seepages, or inputs into wastewater treatment

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2147 systems' underground pipes. The pipe assessment, repair, and
2148 replacement action plans must be reported to the department. The
2149 facility action plan must include information regarding the
2150 annual expenditures dedicated to the inflow and infiltration
2151 studies and the required replacement action plans; expenditures
2152 that are dedicated to pipe assessment, repair, and replacement;
2153 and expenditures designed to limit the presence of fats, roots,
2154 oils, and grease in the utility's collection system. The
2155 department shall adopt rules regarding the implementation of
2156 inflow and infiltration studies and leakage surveys; however,
2157 such department rules may not fix or revise utility rates or
2158 budgets. Any entity subject to this subsection and s.
2159 403.061(14) may submit one report to comply with both
2160 provisions. Substantial compliance with this subsection is
2161 evidence in mitigation for the purposes of assessing penalties
2162 pursuant to ss. 403.121 and 403.141.

2163 Section 18. Present subsections (4) through (10) of section
2164 403.087, Florida Statutes, are redesignated as subsections (5)
2165 through (11), respectively, and a new subsection (4) is added to
2166 that section, to read:

2167 403.087 Permits; general issuance; denial; revocation;
2168 prohibition; penalty.—

2169 (4) The department shall issue an operation permit for a
2170 domestic wastewater treatment facility other than a facility
2171 regulated under the National Pollutant Discharge Elimination
2172 System Program under s. 403.0885 for a term of up to 10 years if
2173 the facility is meeting the stated goals in its action plan
2174 adopted pursuant to s. 403.086(7).

2175 Section 19. Present subsections (3) and (4) of section

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403.088, Florida Statutes, are redesignated as subsections (4) and (5), respectively, a new subsection (3) is added to that section, and paragraph (c) of subsection (2) of that section is amended, to read:

403.088 Water pollution operation permits; conditions.—

(2)

(c) A permit shall:

1. Specify the manner, nature, volume, and frequency of the discharge permitted;

2. Require proper operation and maintenance of any pollution abatement facility by qualified personnel in accordance with standards established by the department;

3. Require a deliberate, proactive approach to investigating or surveying a significant percentage of the domestic wastewater collection system throughout the duration of the permit to determine pipe integrity, which must be accomplished in an economically feasible manner. The permittee shall submit an annual report to the department which details facility revenues and expenditures in a manner prescribed by department rule. The report must detail any deviation of annual expenditures from identified system needs related to inflow and infiltration studies; model plans for pipe assessment, repair, and replacement; and pipe assessment, repair, and replacement required under s. 403.086(7). Substantial compliance with this subsection is evidence in mitigation for the purposes of assessing penalties pursuant to ss. 403.121 and 403.141;

4. Contain such additional conditions, requirements, and restrictions as the department deems necessary to preserve and protect the quality of the receiving waters;

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2205 ~~5.4.~~ Be valid for the period of time specified therein; and
2206 ~~6.5.~~ Constitute the state National Pollutant Discharge
2207 Elimination System permit when issued pursuant to the authority
2208 in s. 403.0885.

2209 (3) No later than March 1 of each year, the department
2210 shall submit a report to the Governor, the President of the
2211 Senate, and the Speaker of the House of Representatives which
2212 identifies all domestic wastewater treatment facilities that
2213 experienced a sanitary sewer overflow in the preceding calendar
2214 year. The report must identify the utility or responsible
2215 operating entity name, permitted capacity in annual average
2216 gallons per day, number of overflows, type of water discharged,
2217 and total volume of sewage released, and, to the extent known
2218 and available, volume of sewage recovered, volume of sewage
2219 discharged to surface waters, and cause of the sanitary sewer
2220 overflow, including whether caused by a third party. The
2221 department shall include with this report the annual report
2222 specified under subparagraph (2)(c)3. for each utility that
2223 experienced an overflow.

2224 Section 20. Subsection (6) of section 403.0891, Florida
2225 Statutes, is amended to read:

2226 403.0891 State, regional, and local stormwater management
2227 plans and programs.—The department, the water management
2228 districts, and local governments shall have the responsibility
2229 for the development of mutually compatible stormwater management
2230 programs.

2231 (6) The department and the Department of Economic
2232 Opportunity, in cooperation with local governments in the
2233 coastal zone, shall develop a model stormwater management

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2234 program that could be adopted by local governments. The model
2235 program must contain model ordinances that target nutrient
2236 reduction practices and use green infrastructure. The model
2237 program shall contain dedicated funding options, including a
2238 stormwater utility fee system based upon an equitable unit cost
2239 approach. Funding options shall be designed to generate capital
2240 to retrofit existing stormwater management systems, build new
2241 treatment systems, operate facilities, and maintain and service
2242 debt.

2243 Section 21. Paragraphs (b) and (g) of subsection (2),
2244 paragraph (b) of subsection (3), and subsection (9) of section
2245 403.121, Florida Statutes, are amended to read:

2246 403.121 Enforcement; procedure; remedies.—The department
2247 shall have the following judicial and administrative remedies
2248 available to it for violations of this chapter, as specified in
2249 s. 403.161(1).

2250 (2) Administrative remedies:

2251 (b) If the department has reason to believe a violation has
2252 occurred, it may institute an administrative proceeding to order
2253 the prevention, abatement, or control of the conditions creating
2254 the violation or other appropriate corrective action. Except for
2255 violations involving hazardous wastes, asbestos, or underground
2256 injection, the department shall proceed administratively in all
2257 cases in which the department seeks administrative penalties
2258 that do not exceed \$50,000 ~~\$10,000~~ per assessment as calculated
2259 in accordance with subsections (3), (4), (5), (6), and (7).
2260 Pursuant to 42 U.S.C. s. 300g-2, the administrative penalty
2261 assessed pursuant to subsection (3), subsection (4), or
2262 subsection (5) against a public water system serving a

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population of more than 10,000 shall be not less than \$1,000 per day per violation. The department shall not impose administrative penalties in excess of \$50,000 ~~\$10,000~~ in a notice of violation. The department shall not have more than one notice of violation seeking administrative penalties pending against the same party at the same time unless the violations occurred at a different site or the violations were discovered by the department subsequent to the filing of a previous notice of violation.

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

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administrative penalty schedule. Any case filed in state court because it is alleged to exceed a total of \$50,000 ~~\$10,000~~ in penalties may be settled in the court action for less than \$50,000 ~~\$10,000~~.

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

(b) For failure to obtain a required wastewater permit, other than a permit required for surface water discharge, the department shall assess a penalty of \$2,000 ~~\$1,000~~. For a domestic or industrial wastewater violation not involving a surface water or groundwater quality violation, the department shall assess a penalty of \$4,000 ~~\$2,000~~ for an unpermitted or unauthorized discharge or effluent-limitation exceedance or failure to comply with s. 403.061(14) or s. 403.086(7) or rules adopted thereunder. For an unpermitted or unauthorized discharge or effluent-limitation exceedance that resulted in a surface water or groundwater quality violation, the department shall assess a penalty of \$10,000 ~~\$5,000~~.

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

Section 22. Subsection (7) of section 403.1835, Florida Statutes, is amended to read:

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403.1835 Water pollution control financial assistance.—

(7) Eligible projects must be given priority according to the extent each project is intended to remove, mitigate, or prevent adverse effects on surface or ground water quality and public health. The relative costs of achieving environmental and public health benefits must be taken into consideration during the department's assignment of project priorities. The department shall adopt a priority system by rule. In developing the priority system, the department shall give priority to projects that:

(a) Eliminate public health hazards;

(b) Enable compliance with laws requiring the elimination of discharges to specific water bodies, including the requirements of s. 403.086(10) ~~s. 403.086(9)~~ regarding domestic wastewater ocean outfalls;

(c) Assist in the implementation of total maximum daily loads adopted under s. 403.067;

(d) Enable compliance with other pollution control requirements, including, but not limited to, toxics control, wastewater residuals management, and reduction of nutrients and bacteria;

(e) Assist in the implementation of surface water improvement and management plans and pollutant load reduction goals developed under state water policy;

(f) Promote reclaimed water reuse;

(g) Eliminate failing onsite sewage treatment and disposal systems or those that are causing environmental damage; ~~or~~

(h) Reduce pollutants to and otherwise promote the restoration of Florida's surface and ground waters;i—

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(i) Implement the requirements of s. 403.086(7) or s. 403.088(2) (c); or

(j) 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 23. Paragraph (b) of subsection (3) of section 403.1838, Florida Statutes, is amended to read:

403.1838 Small Community Sewer Construction Assistance Act.—

(3)

(b) The rules of the Environmental Regulation Commission must:

1. Require that projects to plan, design, construct, upgrade, or replace wastewater collection, transmission, treatment, disposal, and reuse facilities be cost-effective, environmentally sound, permittable, and implementable.

2. Require appropriate user charges, connection fees, and other charges sufficient to ensure the long-term operation, maintenance, and replacement of the facilities constructed under each grant.

3. Require grant applications to be submitted on appropriate forms with appropriate supporting documentation, and require records to be maintained.

4. Establish a system to determine eligibility of grant applications.

5. Establish a system to determine the relative priority of grant applications. The system must consider public health protection and water pollution prevention or abatement and must

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2379 prioritize projects that plan for the installation of wastewater
2380 transmission facilities to be constructed concurrently with
2381 other construction projects occurring within or along a
2382 transportation facility right-of-way.

2383 6. Establish requirements for competitive procurement of
2384 engineering and construction services, materials, and equipment.

2385 7. Provide for termination of grants when program
2386 requirements are not met.

2387 Section 24. Subsection (9) is added to section 403.412,
2388 Florida Statutes, to read:

2389 403.412 Environmental Protection Act.—

2390 (9) (a) A local government regulation, ordinance, code,
2391 rule, comprehensive plan, charter, or any other provision of law
2392 may not recognize or grant any legal rights to a plant, an
2393 animal, a body of water, or any other part of the natural
2394 environment that is not a person or political subdivision as
2395 defined in s. 1.01(8) or grant such person or political
2396 subdivision any specific rights relating to the natural
2397 environment not otherwise authorized in general law or
2398 specifically granted in the State Constitution.

2399 (b) This subsection does not limit the power of an
2400 adversely affected party to challenge the consistency of a
2401 development order with a comprehensive plan as provided in s.
2402 163.3215 or to file an action for injunctive relief to enforce
2403 the terms of a development agreement or challenge compliance of
2404 the agreement as provided in s. 163.3243.

2405 (c) This subsection does not limit the standing of the
2406 Department of Legal Affairs, a political subdivision or
2407 municipality of the state, or a citizen of the state to maintain

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an action for injunctive relief as provided in this section.

Section 25. The Legislature determines and declares that this act fulfills an important state interest.

Section 26. Effective July 1, 2021, subsection (5) of section 153.54, Florida Statutes, is amended to read:

153.54 Preliminary report by county commissioners with respect to creation of proposed district.—Upon receipt of a petition duly signed by not less than 25 qualified electors who are also freeholders residing within an area proposed to be incorporated into a water and sewer district pursuant to this law and describing in general terms the proposed boundaries of such proposed district, the board of county commissioners if it shall deem it necessary and advisable to create and establish such proposed district for the purpose of constructing, establishing or acquiring a water system or a sewer system or both in and for such district (herein called "improvements"), shall first cause a preliminary report to be made which such report together with any other relevant or pertinent matters, shall include at least the following:

(5) For the construction of a new proposed central sewerage system or the extension of an existing sewerage system that was not previously approved, the report shall include a study that includes the available information from the Department of Environmental Protection ~~Health~~ on the history of onsite sewage treatment and disposal systems currently in use in the area and a comparison of the projected costs to the owner of a typical lot or parcel of connecting to and using the proposed sewerage system versus installing, operating, and properly maintaining an onsite sewage treatment and disposal system that is approved by

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the Department of Environmental Protection ~~Health~~ and that provides for the comparable level of environmental and health protection as the proposed central sewerage system; consideration of the local authority's obligations or reasonably anticipated obligations for water body cleanup and protection under state or federal programs, including requirements for water bodies listed under s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq.; and other factors deemed relevant by the local authority.

Such report shall be filed in the office of the clerk of the circuit court and shall be open for the inspection of any taxpayer, property owner, qualified elector or any other interested or affected person.

Section 27. Effective July 1, 2021, paragraph (c) of subsection (2) of section 153.73, Florida Statutes, is amended to read:

153.73 Assessable improvements; levy and payment of special assessments.—Any district may provide for the construction or reconstruction of assessable improvements as defined in s. 153.52, and for the levying of special assessments upon benefited property for the payment thereof, under ~~the provisions of~~ this section.

(2)

(c) For the construction of a new proposed central sewerage system or the extension of an existing sewerage system that was not previously approved, the report shall include a study that includes the available information from the Department of Environmental Protection ~~Health~~ on the history of onsite sewage

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treatment and disposal systems currently in use in the area and a comparison of the projected costs to the owner of a typical lot or parcel of connecting to and using the proposed sewerage system versus installing, operating, and properly maintaining an onsite sewage treatment and disposal system that is approved by the Department of Environmental Protection ~~Health~~ and that provides for the comparable level of environmental and health protection as the proposed central sewerage system; consideration of the local authority's obligations or reasonably anticipated obligations for water body cleanup and protection under state or federal programs, including requirements for water bodies listed under s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq.; and other factors deemed relevant by the local authority.

Section 28. Effective July 1, 2021, subsection (2) of section 163.3180, Florida Statutes, is amended to read:

163.3180 Concurrency.—

(2) Consistent with public health and safety, sanitary sewer, solid waste, drainage, adequate water supplies, and potable water facilities shall be in place and available to serve new development no later than the issuance by the local government of a certificate of occupancy or its functional equivalent. Prior to approval of a building permit or its functional equivalent, the local government shall consult with the applicable water supplier to determine whether adequate water supplies to serve the new development will be available no later than the anticipated date of issuance by the local government of a certificate of occupancy or its functional equivalent. A local government may meet the concurrency

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requirement for sanitary sewer through the use of onsite sewage treatment and disposal systems approved by the Department of Environmental Protection ~~Health~~ to serve new development.

Section 29. Effective July 1, 2021, subsection (3) of section 180.03, Florida Statutes, is amended to read:

180.03 Resolution or ordinance proposing construction or extension of utility; objections to same.—

(3) For the construction of a new proposed central sewerage system or the extension of an existing central sewerage system that was not previously approved, the report shall include a study that includes the available information from the Department of Environmental Protection ~~Health~~ on the history of onsite sewage treatment and disposal systems currently in use in the area and a comparison of the projected costs to the owner of a typical lot or parcel of connecting to and using the proposed central sewerage system versus installing, operating, and properly maintaining an onsite sewage treatment and disposal system that is approved by the Department of Environmental Protection ~~Health~~ and that provides for the comparable level of environmental and health protection as the proposed central sewerage system; consideration of the local authority's obligations or reasonably anticipated obligations for water body cleanup and protection under state or federal programs, including requirements for water bodies listed under s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq.; and other factors deemed relevant by the local authority. The results of such a study shall be included in the resolution or ordinance required under subsection (1).

Section 30. Subsections (2), (3), and (6) of section

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311.105, Florida Statutes, are amended to read:

311.105 Florida Seaport Environmental Management Committee; permitting; mitigation.—

(2) Each application for a permit authorized pursuant to s. 403.061(38) ~~s. 403.061(37)~~ must include:

(a) A description of maintenance dredging activities to be conducted and proposed methods of dredged-material management.

(b) A characterization of the materials to be dredged and the materials within dredged-material management sites.

(c) A description of dredged-material management sites and plans.

(d) A description of measures to be undertaken, including environmental compliance monitoring, to minimize adverse environmental effects of maintenance dredging and dredged-material management.

(e) Such scheduling information as is required to facilitate state supplementary funding of federal maintenance dredging and dredged-material management programs consistent with beach restoration criteria of the Department of Environmental Protection.

(3) Each application for a permit authorized pursuant to s. 403.061(39) ~~s. 403.061(38)~~ must include ~~the provisions of~~ paragraphs (2)(b)-(e) and the following:

(a) A description of dredging and dredged-material management and other related activities associated with port development, including the expansion of navigation channels, dredged-material management sites, port harbors, turning basins, harbor berths, and associated facilities.

(b) A discussion of environmental mitigation as is proposed

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for dredging and dredged-material management for port development, including the expansion of navigation channels, dredged-material management sites, port harbors, turning basins, harbor berths, and associated facilities.

(6) Dredged-material management activities authorized pursuant to s. 403.061(38) ~~s. 403.061(37)~~ or s. 403.061(39) ~~(38)~~ shall be incorporated into port master plans developed pursuant to s. 163.3178(2)(k).

Section 31. Paragraph (d) of subsection (1) of section 327.46, Florida Statutes, is amended to read:

327.46 Boating-restricted areas.—

(1) Boating-restricted areas, including, but not limited to, restrictions of vessel speeds and vessel traffic, may be established on the waters of this state for any purpose necessary to protect the safety of the public if such restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards or to protect seagrasses on privately owned submerged lands.

(d) Owners of private submerged lands that are adjacent to Outstanding Florida Waters, as defined in s. 403.061(28) ~~s. 403.061(27)~~, or an aquatic preserve established under ss. 258.39-258.399 may request that the commission establish boating-restricted areas solely to protect any seagrass and contiguous seagrass habitat within their private property boundaries from seagrass scarring due to propeller dredging. Owners making a request pursuant to this paragraph must demonstrate to the commission clear ownership of the submerged lands. The commission shall adopt rules to implement this

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paragraph, including, but not limited to, establishing an application process and criteria for meeting the requirements of this paragraph. Each approved boating-restricted area shall be established by commission rule. For marking boating-restricted zones established pursuant to this paragraph, owners of privately submerged lands shall apply to the commission for a uniform waterway marker permit in accordance with ss. 327.40 and 327.41, and shall be responsible for marking the boating-restricted zone in accordance with the terms of the permit.

Section 32. Paragraph (d) of subsection (3) of section 373.250, Florida Statutes, is amended to read:

373.250 Reuse of reclaimed water.—

(3)

(d) The South Florida Water Management District shall require the use of reclaimed water made available by the elimination of wastewater ocean outfall discharges as provided for in s. 403.086(10) ~~s. 403.086(9)~~ in lieu of surface water or groundwater when the use of reclaimed water is available; is environmentally, economically, and technically feasible; and is of such quality and reliability as is necessary to the user. Such reclaimed water may also be required in lieu of other alternative sources. In determining whether to require such reclaimed water in lieu of other alternative sources, the water management district shall consider existing infrastructure investments in place or obligated to be constructed by an executed contract or similar binding agreement as of July 1, 2011, for the development of other alternative sources.

Section 33. Subsection (9) of section 373.414, Florida Statutes, is amended to read:

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373.414 Additional criteria for activities in surface waters and wetlands.—

(9) The department and the governing boards, on or before July 1, 1994, shall adopt rules to incorporate ~~the provisions of~~ this section, relying primarily on the existing rules of the department and the water management districts, into the rules governing the management and storage of surface waters. Such rules shall seek to achieve a statewide, coordinated and consistent permitting approach to activities regulated under this part. Variations in permitting criteria in the rules of individual water management districts or the department shall only be provided to address differing physical or natural characteristics. Such rules adopted pursuant to this subsection shall include the special criteria adopted pursuant to s. 403.061(30) ~~s. 403.061(29)~~ and may include the special criteria adopted pursuant to s. 403.061(35) ~~s. 403.061(34)~~. Such rules shall include a provision requiring that a notice of intent to deny or a permit denial based upon this section shall contain an explanation of the reasons for such denial and an explanation, in general terms, of what changes, if any, are necessary to address such reasons for denial. Such rules may establish exemptions and general permits, if such exemptions and general permits do not allow significant adverse impacts to occur individually or cumulatively. Such rules may require submission of proof of financial responsibility which may include the posting of a bond or other form of surety prior to the commencement of construction to provide reasonable assurance that any activity permitted pursuant to this section, including any mitigation for such permitted activity, will be completed in

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accordance with the terms and conditions of the permit once the construction is commenced. Until rules adopted pursuant to this subsection become effective, existing rules adopted under this part and rules adopted pursuant to the authority of ss. 403.91-403.929 shall be deemed authorized under this part and shall remain in full force and effect. Neither the department nor the governing boards are limited or prohibited from amending any such rules.

Section 34. Paragraph (b) of subsection (4) of section 373.705, Florida Statutes, is amended to read:

373.705 Water resource development; water supply development.—

(4)

(b) Water supply development projects that meet the criteria in paragraph (a) and that meet one or more of the following additional criteria shall be given first consideration for state or water management district funding assistance:

1. The project brings about replacement of existing sources in order to help implement a minimum flow or minimum water level;

2. The project implements reuse that assists in the elimination of domestic wastewater ocean outfalls as provided in s. 403.086(10) ~~s. 403.086(9)~~; or

3. The project reduces or eliminates the adverse effects of competition between legal users and the natural system.

Section 35. Paragraph (f) of subsection (8) of section 373.707, Florida Statutes, is amended to read:

373.707 Alternative water supply development.—

(8)

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(f) The governing boards shall determine those projects that will be selected for financial assistance. The governing boards may establish factors to determine project funding; however, significant weight shall be given to the following factors:

1. Whether the project provides substantial environmental benefits by preventing or limiting adverse water resource impacts.

2. Whether the project reduces competition for water supplies.

3. Whether the project brings about replacement of traditional sources in order to help implement a minimum flow or level or a reservation.

4. Whether the project will be implemented by a consumptive use permittee that has achieved the targets contained in a goal-based water conservation program approved pursuant to s. 373.227.

5. The quantity of water supplied by the project as compared to its cost.

6. Projects in which the construction and delivery to end users of reuse water is a major component.

7. Whether the project will be implemented by a multijurisdictional water supply entity or regional water supply authority.

8. Whether the project implements reuse that assists in the elimination of domestic wastewater ocean outfalls as provided in s. 403.086(10) ~~s. 403.086(9)~~.

9. Whether the county or municipality, or the multiple counties or municipalities, in which the project is located has

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implemented a high-water recharge protection tax assessment program as provided in s. 193.625.

Section 36. Subsection (4) of section 373.709, Florida Statutes, is amended to read:

373.709 Regional water supply planning.—

(4) The South Florida Water Management District shall include in its regional water supply plan water resource and water supply development projects that promote the elimination of wastewater ocean outfalls as provided in s. 403.086(10) ~~s. 403.086(9)~~.

Section 37. Effective July 1, 2021, subsection (3) of section 373.807, Florida Statutes, is amended to read:

373.807 Protection of water quality in Outstanding Florida Springs.—By July 1, 2016, the department shall initiate assessment, pursuant to s. 403.067(3), of Outstanding Florida Springs or spring systems for which an impairment determination has not been made under the numeric nutrient standards in effect for spring vents. Assessments must be completed by July 1, 2018.

(3) As part of a basin management action plan that includes an Outstanding Florida Spring, the department, ~~the Department of Health~~, relevant local governments, and relevant local public and private wastewater utilities shall develop an onsite sewage treatment and disposal system remediation plan for a spring if the department determines onsite sewage treatment and disposal systems within a priority focus area contribute at least 20 percent of nonpoint source nitrogen pollution or if the department determines remediation is necessary to achieve the total maximum daily load. The plan shall identify cost-effective and financially feasible projects necessary to reduce the

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2727 nutrient impacts from onsite sewage treatment and disposal
2728 systems and shall be completed and adopted as part of the basin
2729 management action plan no later than the first 5-year milestone
2730 required by subparagraph (1)(b)8. The department is the lead
2731 agency in coordinating the preparation of and the adoption of
2732 the plan. The department shall:

2733 (a) Collect and evaluate credible scientific information on
2734 the effect of nutrients, particularly forms of nitrogen, on
2735 springs and springs systems; and

2736 (b) Develop a public education plan to provide area
2737 residents with reliable, understandable information about onsite
2738 sewage treatment and disposal systems and springs.

2739
2740 In addition to the requirements in s. 403.067, the plan shall
2741 include options for repair, upgrade, replacement, drainfield
2742 modification, addition of effective nitrogen reducing features,
2743 connection to a central sewerage system, or other action for an
2744 onsite sewage treatment and disposal system or group of systems
2745 within a priority focus area that contribute at least 20 percent
2746 of nonpoint source nitrogen pollution or if the department
2747 determines remediation is necessary to achieve a total maximum
2748 daily load. For these systems, the department shall include in
2749 the plan a priority ranking for each system or group of systems
2750 that requires remediation and shall award funds to implement the
2751 remediation projects contingent on an appropriation in the
2752 General Appropriations Act, which may include all or part of the
2753 costs necessary for repair, upgrade, replacement, drainfield
2754 modification, addition of effective nitrogen reducing features,
2755 initial connection to a central sewerage system, or other

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2756 action. In awarding funds, the department may consider expected
2757 nutrient reduction benefit per unit cost, size and scope of
2758 project, relative local financial contribution to the project,
2759 and the financial impact on property owners and the community.
2760 The department may waive matching funding requirements for
2761 proposed projects within an area designated as a rural area of
2762 opportunity under s. 288.0656.

2763 Section 38. Paragraph (k) of subsection (1) of section
2764 376.307, Florida Statutes, is amended to read:

2765 376.307 Water Quality Assurance Trust Fund.—

2766 (1) The Water Quality Assurance Trust Fund is intended to
2767 serve as a broad-based fund for use in responding to incidents
2768 of contamination that pose a serious danger to the quality of
2769 groundwater and surface water resources or otherwise pose a
2770 serious danger to the public health, safety, or welfare. Moneys
2771 in this fund may be used:

2772 (k) For funding activities described in s. 403.086(10) ~~s.~~
2773 ~~403.086(9)~~ which are authorized for implementation under the
2774 Leah Schad Memorial Ocean Outfall Program.

2775 Section 39. Paragraph (i) of subsection (2), paragraph (b)
2776 of subsection (4), paragraph (j) of subsection (7), and
2777 paragraph (a) of subsection (9) of section 380.0552, Florida
2778 Statutes, are amended to read:

2779 380.0552 Florida Keys Area; protection and designation as
2780 area of critical state concern.—

2781 (2) LEGISLATIVE INTENT.—It is the intent of the Legislature
2782 to:

2783 (i) Protect and improve the nearshore water quality of the
2784 Florida Keys through federal, state, and local funding of water

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quality improvement projects, including the construction and operation of wastewater management facilities that meet the requirements of ss. 381.0065(4)(1) and 403.086(11) ~~403.086(10)~~, as applicable.

(4) REMOVAL OF DESIGNATION.—

(b) Beginning November 30, 2010, the state land planning agency shall annually submit a written report to the Administration Commission describing the progress of the Florida Keys Area toward completing the work program tasks specified in commission rules. The land planning agency shall recommend removing the Florida Keys Area from being designated as an area of critical state concern to the commission if it determines that:

1. All of the work program tasks have been completed, including construction of, operation of, and connection to central wastewater management facilities pursuant to s. 403.086(11) ~~s. 403.086(10)~~ and upgrade of onsite sewage treatment and disposal systems pursuant to s. 381.0065(4)(1);

2. All local comprehensive plans and land development regulations and the administration of such plans and regulations are adequate to protect the Florida Keys Area, fulfill the legislative intent specified in subsection (2), and are consistent with and further the principles guiding development; and

3. A local government has adopted a resolution at a public hearing recommending the removal of the designation.

(7) PRINCIPLES FOR GUIDING DEVELOPMENT.—State, regional, and local agencies and units of government in the Florida Keys Area shall coordinate their plans and conduct their programs and

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regulatory activities consistent with the principles for guiding development as specified in chapter 27F-8, Florida Administrative Code, as amended effective August 23, 1984, which is adopted and incorporated herein by reference. For the purposes of reviewing the consistency of the adopted plan, or any amendments to that plan, with the principles for guiding development, and any amendments to the principles, the principles shall be construed as a whole and specific provisions may not be construed or applied in isolation from the other provisions. However, the principles for guiding development are repealed 18 months from July 1, 1986. After repeal, any plan amendments must be consistent with the following principles:

(j) Ensuring the improvement of nearshore water quality by requiring the construction and operation of wastewater management facilities that meet the requirements of ss.

381.0065(4)(1) and s. 403.086(11) ~~403.086(10)~~, as applicable, and by directing growth to areas served by central wastewater treatment facilities through permit allocation systems.

(9) MODIFICATION TO PLANS AND REGULATIONS.—

(a) Any land development regulation or element of a local comprehensive plan in the Florida Keys Area may be enacted, amended, or rescinded by a local government, but the enactment, amendment, or rescission becomes effective only upon approval by the state land planning agency. The state land planning agency shall review the proposed change to determine if it is in compliance with the principles for guiding development specified in chapter 27F-8, Florida Administrative Code, as amended effective August 23, 1984, and must approve or reject the requested changes within 60 days after receipt. Amendments to

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local comprehensive plans in the Florida Keys Area must also be reviewed for compliance with the following:

1. Construction schedules and detailed capital financing plans for wastewater management improvements in the annually adopted capital improvements element, and standards for the construction of wastewater treatment and disposal facilities or collection systems that meet or exceed the criteria in s. 403.086(11) ~~s. 403.086(10)~~ for wastewater treatment and disposal facilities or s. 381.0065(4)(l) for onsite sewage treatment and disposal systems.

2. Goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours. The hurricane evacuation clearance time shall be determined by a hurricane evacuation study conducted in accordance with a professionally accepted methodology and approved by the state land planning agency.

Section 40. Effective July 1, 2021, subsections (7) and (18) of section 381.006, Florida Statutes, are amended to read:

381.006 Environmental health.—The department shall conduct an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. The environmental health program shall include, but not be limited to:

~~(7) An onsite sewage treatment and disposal function.~~

(17) ~~(18)~~ A food service inspection function for domestic violence centers that are certified by the Department of Children and Families and monitored by the Florida Coalition

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Against Domestic Violence under part XII of chapter 39 and group care homes as described in subsection (15) ~~(16)~~, which shall be conducted annually and be limited to the requirements in department rule applicable to community-based residential facilities with five or fewer residents.

The department may adopt rules to carry out the provisions of this section.

Section 41. Effective July 1, 2021, subsection (1) of section 381.0061, Florida Statutes, is amended to read:

381.0061 Administrative fines.—

(1) In addition to any administrative action authorized by chapter 120 or by other law, the department may impose a fine, which may ~~shall~~ not exceed \$500 for each violation, for a violation of s. 381.006(15) ~~s. 381.006(16)~~, s. 381.0065, s. 381.0066, s. 381.0072, or part III of chapter 489, for a violation of any rule adopted under this chapter, or for a violation of ~~any of the provisions of~~ chapter 386. Notice of intent to impose such fine shall be given by the department to the alleged violator. Each day that a violation continues may constitute a separate violation.

Section 42. Effective July 1, 2021, subsection (1) of section 381.0064, Florida Statutes, is amended to read:

381.0064 Continuing education courses for persons installing or servicing septic tanks.—

(1) The Department of Environmental Protection ~~Health~~ shall establish a program for continuing education which meets the purposes of ss. 381.0101 and 489.554 regarding the public health and environmental effects of onsite sewage treatment and

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disposal systems and any other matters the department determines desirable for the safe installation and use of onsite sewage treatment and disposal systems. The department may charge a fee to cover the cost of such program.

Section 43. Effective July 1, 2021, paragraph (d) of subsection (7), subsection (8), and paragraphs (b), (c), and (d) of subsection (9) of section 381.00651, Florida Statutes, are amended to read:

381.00651 Periodic evaluation and assessment of onsite sewage treatment and disposal systems.—

(7) The following procedures shall be used for conducting evaluations:

(d) *Assessment procedure.*—All evaluation procedures used by a qualified contractor shall be documented in the environmental health database of the Department of Environmental Protection ~~Health~~. The qualified contractor shall provide a copy of a written, signed evaluation report to the property owner upon completion of the evaluation and to the county health department within 30 days after the evaluation. The report must ~~shall~~ contain the name and license number of the company providing the report. A copy of the evaluation report shall be retained by the local county health department for a minimum of 5 years and until a subsequent inspection report is filed. The front cover of the report must identify any system failure and include a clear and conspicuous notice to the owner that the owner has a right to have any remediation of the failure performed by a qualified contractor other than the contractor performing the evaluation. The report must further identify any crack, leak, improper fit, or other defect in the tank, manhole, or lid, and

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any other damaged or missing component; any sewage or effluent visible on the ground or discharging to a ditch or other surface water body; any downspout, stormwater, or other source of water directed onto or toward the system; and any other maintenance need or condition of the system at the time of the evaluation which, in the opinion of the qualified contractor, would possibly interfere with or restrict any future repair or modification to the existing system. The report shall conclude with an overall assessment of the fundamental operational condition of the system.

(8) The county health department, in coordination with the department, shall administer any evaluation program on behalf of a county, or a municipality within the county, that has adopted an evaluation program pursuant to this section. In order to administer the evaluation program, the county or municipality, in consultation with the county health department, may develop a reasonable fee schedule to be used solely to pay for the costs of administering the evaluation program. Such a fee schedule shall be identified in the ordinance that adopts the evaluation program. When arriving at a reasonable fee schedule, the estimated annual revenues to be derived from fees may not exceed reasonable estimated annual costs of the program. Fees shall be assessed to the system owner during an inspection and separately identified on the invoice of the qualified contractor. Fees shall be remitted by the qualified contractor to the county health department. The county health department's administrative responsibilities include the following:

(a) Providing a notice to the system owner at least 60 days before the system is due for an evaluation. The notice may

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include information on the proper maintenance of onsite sewage treatment and disposal systems.

(b) In consultation with the department ~~of Health~~, providing uniform disciplinary procedures and penalties for qualified contractors who do not comply with the requirements of the adopted ordinance, including, but not limited to, failure to provide the evaluation report as required in this subsection to the system owner and the county health department. Only the county health department may assess penalties against system owners for failure to comply with the adopted ordinance, consistent with existing requirements of law.

(9)

(b) Upon receipt of the notice under paragraph (a), the department ~~of Environmental Protection~~ shall, within existing resources, notify the county or municipality of the potential use of, and access to, program funds under the Clean Water State Revolving Fund or s. 319 of the Clean Water Act, provide guidance in the application process to receive such moneys, and provide advice and technical assistance to the county or municipality on how to establish a low-interest revolving loan program or how to model a revolving loan program after the low-interest loan program of the Clean Water State Revolving Fund. This paragraph does not obligate the department ~~of Environmental Protection~~ to provide any county or municipality with money to fund such programs.

(c) The department ~~of Health~~ may not adopt any rule that alters ~~the provisions of~~ this section.

(d) The department ~~of Health~~ must allow county health departments and qualified contractors access to the

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environmental health database to track relevant information and assimilate data from assessment and evaluation reports of the overall condition of onsite sewage treatment and disposal systems. The environmental health database must be used by contractors to report each service and evaluation event and by a county health department to notify owners of onsite sewage treatment and disposal systems when evaluations are due. Data and information must be recorded and updated as service and evaluations are conducted and reported.

Section 44. Effective July 1, 2021, paragraph (g) of subsection (1) of section 381.0101, Florida Statutes, is amended to read:

381.0101 Environmental health professionals.—

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

(g) "Primary environmental health program" means those programs determined by the department to be essential for providing basic environmental and sanitary protection to the public. At a minimum, these programs shall include food protection program work ~~and onsite sewage treatment and disposal system evaluations.~~

Section 45. Section 403.08601, Florida Statutes, is amended to read:

403.08601 Leah Schad Memorial Ocean Outfall Program.—The Legislature declares that as funds become available the state may assist the local governments and agencies responsible for implementing the Leah Schad Memorial Ocean Outfall Program pursuant to s. 403.086(10) ~~s. 403.086(9)~~. Funds received from other sources provided for in law, the General Appropriations Act, from gifts designated for implementation of the plan from

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3017 individuals, corporations, or other entities, or federal funds
3018 appropriated by Congress for implementation of the plan, may be
3019 deposited into an account of the Water Quality Assurance Trust
3020 Fund.

3021 Section 46. Section 403.0871, Florida Statutes, is amended
3022 to read:

3023 403.0871 Florida Permit Fee Trust Fund.—There is
3024 established within the department a nonlapsing trust fund to be
3025 known as the "Florida Permit Fee Trust Fund." All funds received
3026 from applicants for permits pursuant to ss. 161.041, 161.053,
3027 161.0535, 403.087(7) ~~403.087(6)~~, and 403.861(7)(a) shall be
3028 deposited in the Florida Permit Fee Trust Fund and shall be used
3029 by the department with the advice and consent of the Legislature
3030 to supplement appropriations and other funds received by the
3031 department for the administration of its responsibilities under
3032 this chapter and chapter 161. In no case shall funds from the
3033 Florida Permit Fee Trust Fund be used for salary increases
3034 without the approval of the Legislature.

3035 Section 47. Paragraph (a) of subsection (11) of section
3036 403.0872, Florida Statutes, is amended to read:

3037 403.0872 Operation permits for major sources of air
3038 pollution; annual operation license fee.—Provided that program
3039 approval pursuant to 42 U.S.C. s. 7661a has been received from
3040 the United States Environmental Protection Agency, beginning
3041 January 2, 1995, each major source of air pollution, including
3042 electrical power plants certified under s. 403.511, must obtain
3043 from the department an operation permit for a major source of
3044 air pollution under this section. This operation permit is the
3045 only department operation permit for a major source of air

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pollution required for such source; provided, at the applicant's request, the department shall issue a separate acid rain permit for a major source of air pollution that is an affected source within the meaning of 42 U.S.C. s. 7651a(1). Operation permits for major sources of air pollution, except general permits issued pursuant to s. 403.814, must be issued in accordance with the procedures contained in this section and in accordance with chapter 120; however, to the extent that chapter 120 is inconsistent with ~~the provisions of~~ this section, the procedures contained in this section prevail.

(11) Each major source of air pollution permitted to operate in this state must pay between January 15 and April 1 of each year, upon written notice from the department, an annual operation license fee in an amount determined by department rule. The annual operation license fee shall be terminated immediately in the event the United States Environmental Protection Agency imposes annual fees solely to implement and administer the major source air-operation permit program in Florida under 40 C.F.R. s. 70.10(d).

(a) The annual fee must be assessed based upon the source's previous year's emissions and must be calculated by multiplying the applicable annual operation license fee factor times the tons of each regulated air pollutant actually emitted, as calculated in accordance with the department's emissions computation and reporting rules. The annual fee shall only apply to those regulated pollutants, except carbon monoxide and greenhouse gases, for which an allowable numeric emission limiting standard is specified in the source's most recent construction or operation permit; provided, however, that:

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1. The license fee factor is \$25 or another amount determined by department rule which ensures that the revenue provided by each year's operation license fees is sufficient to cover all reasonable direct and indirect costs of the major stationary source air-operation permit program established by this section. The license fee factor may be increased beyond \$25 only if the secretary of the department affirmatively finds that a shortage of revenue for support of the major stationary source air-operation permit program will occur in the absence of a fee factor adjustment. The annual license fee factor may never exceed \$35.

2. The amount of each regulated air pollutant in excess of 4,000 tons per year emitted by any source, or group of sources belonging to the same Major Group as described in the Standard Industrial Classification Manual, 1987, may not be included in the calculation of the fee. Any source, or group of sources, which does not emit any regulated air pollutant in excess of 4,000 tons per year, is allowed a one-time credit not to exceed 25 percent of the first annual licensing fee for the prorated portion of existing air-operation permit application fees remaining upon commencement of the annual licensing fees.

3. If the department has not received the fee by March 1 of the calendar year, the permittee must be sent a written warning of the consequences for failing to pay the fee by April 1. If the fee is not postmarked by April 1 of the calendar year, the department shall impose, in addition to the fee, a penalty of 50 percent of the amount of the fee, plus interest on such amount computed in accordance with s. 220.807. The department may not impose such penalty or interest on any amount underpaid,

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provided that the permittee has timely remitted payment of at least 90 percent of the amount determined to be due and remits full payment within 60 days after receipt of notice of the amount underpaid. The department may waive the collection of underpayment and may ~~shall~~ not be required to refund overpayment of the fee, if the amount due is less than 1 percent of the fee, up to \$50. The department may revoke any major air pollution source operation permit if it finds that the permitholder has failed to timely pay any required annual operation license fee, penalty, or interest.

4. Notwithstanding the computational provisions of this subsection, the annual operation license fee for any source subject to this section may ~~shall~~ not be less than \$250, except that the annual operation license fee for sources permitted solely through general permits issued under s. 403.814 may ~~shall~~ not exceed \$50 per year.

5. Notwithstanding s. 403.087(7)(a)5.a., which authorizes ~~the provisions of s. 403.087(6)(a)5.a., authorizing~~ air pollution construction permit fees, the department may not require such fees for changes or additions to a major source of air pollution permitted pursuant to this section, unless the activity triggers permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a. Costs to issue and administer such permits shall be considered direct and indirect costs of the major stationary source air-operation permit program under s. 403.0873. The department shall, however, require fees pursuant to s. 403.087(7)(a)5.a. ~~the provisions of s. 403.087(6)(a)5.a.~~ for the construction of a new major source of air pollution that will be

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subject to the permitting requirements of this section once constructed and for activities triggering permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a.

Section 48. Paragraph (d) of subsection (3) of section 403.707, Florida Statutes, is amended to read:

403.707 Permits.—

(3)

(d) The department may adopt rules to administer this subsection. However, the department is not required to submit such rules to the Environmental Regulation Commission for approval. Notwithstanding the limitations of s. 403.087(7)(a) ~~s. 403.087(6)(a)~~, permit fee caps for solid waste management facilities shall be prorated to reflect the extended permit term authorized by this subsection.

Section 49. Subsections (8) and (21) of section 403.861, Florida Statutes, are amended to read:

403.861 Department; powers and duties.—The department shall have the power and the duty to carry out the provisions and purposes of this act and, for this purpose, to:

(8) Initiate rulemaking to increase each drinking water permit application fee authorized under s. 403.087(7) ~~s. 403.087(6)~~ and this part and adopted by rule to ensure that such fees are increased to reflect, at a minimum, any upward adjustment in the Consumer Price Index compiled by the United States Department of Labor, or similar inflation indicator, since the original fee was established or most recently revised.

(a) The department shall establish by rule the inflation index to be used for this purpose. The department shall review

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the drinking water permit application fees authorized under s. 403.087(7) ~~s. 403.087(6)~~ and this part at least once every 5 years and shall adjust the fees upward, as necessary, within the established fee caps to reflect changes in the Consumer Price Index or similar inflation indicator. In the event of deflation, the department shall consult with the Executive Office of the Governor and the Legislature to determine whether downward fee adjustments are appropriate based on the current budget and appropriation considerations. The department shall also review the drinking water operation license fees established pursuant to paragraph (7)(b) at least once every 5 years to adopt, as necessary, the same inflationary adjustments provided for in this subsection.

(b) The minimum fee amount shall be the minimum fee prescribed in this section, and such fee amount shall remain in effect until the effective date of fees adopted by rule by the department.

(21)(a) Upon issuance of a construction permit to construct a new public water system drinking water treatment facility to provide potable water supply using a surface water that, at the time of the permit application, is not being used as a potable water supply, and the classification of which does not include potable water supply as a designated use, the department shall add treated potable water supply as a designated use of the surface water segment in accordance with s. 403.061(30)(b) ~~s. 403.061(29)(b)~~.

(b) For existing public water system drinking water treatment facilities that use a surface water as a treated potable water supply, which surface water classification does

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not include potable water supply as a designated use, the department shall add treated potable water supply as a designated use of the surface water segment in accordance with s. 403.061(30)(b) ~~s. 403.061(29)(b)~~.

Section 50. Effective July 1, 2021, subsection (1) of section 489.551, Florida Statutes, is amended to read:

489.551 Definitions.—As used in this part:

(1) "Department" means the Department of Environmental Protection ~~Health~~.

Section 51. Paragraph (b) of subsection (10) of section 590.02, Florida Statutes, is amended to read:

590.02 Florida Forest Service; powers, authority, and duties; liability; building structures; Withlacoochee Training Center.—

(10)

(b) The Florida Forest Service may delegate to a county, municipality, or special district its authority:

1. As delegated by the Department of Environmental Protection pursuant to ss. 403.061(29) ~~ss. 403.061(28)~~ and 403.081, to manage and enforce regulations pertaining to the burning of yard trash in accordance with s. 590.125(6).

2. To manage the open burning of land clearing debris in accordance with s. 590.125.

Section 52. The Division of Law Revision is directed to replace the phrase "before the rules identified in paragraph (e) take effect" as it is used in the amendment made by this act to s. 381.0065(4)(f), Florida Statutes, with the date such rules are adopted, as provided by the Department of Environmental Protection pursuant to s. 381.0065(4)(e), Florida Statutes, as

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3220 amended by this act.

3221 Section 53. Except as otherwise expressly provided in this
3222 act, this act shall take effect July 1, 2020.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 712

INTRODUCER: Appropriations Committee; Community Affairs Committee; and Senators Mayfield, Harrell, and Albritton

SUBJECT: Environmental Resource Management

DATE: February 24, 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>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

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.¹ Therefore, several of these provisions may not be fully effectuated without additional legislation. The bill also includes topics relating to the appointment of the Secretary of the DEP, bottled water, and the rights of nature; however, these topics do not require rulemaking.

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.

¹ Section 120.541(3), F.S.

- 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.
- To meet the requirements of a TMDL, the bill requires DEP to implement a fast-track approval process for the use in this state of American National Standards Institute 245 systems approved by NSF International before July 1, 2020.
- 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.
- 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 and allows a regulated entity to choose a different cost option if it complies with the pollutant reduction

requirements of an adopted total maximum daily load (TMDL) and provides additional benefits.

- 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.

Regarding stormwater, the bill:

- Requires the DEP and the Water Management Districts (WMDs), by January 1, 2021, to initiate rulemaking, including updates to the Environmental Resource Permit Applicant's Handbooks, to update their stormwater rules and includes criteria that the DEP must consider as part of rule development.
- 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 process.
- 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 a cooperative agricultural regional water quality improvement element as part of a BMAP in addition to existing strategies such as best management practices (BMPs). The element will be implemented through cost-sharing projects and authorizes legislative budget requests to fund the projects.
- 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 and requires the DACS to initially prioritize the inspection of agricultural producers located in the BMAPs for Lake Okeechobee, the Indian River Lagoon, the Caloosahatchee River and Estuary, and Silver Springs.
- 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 runoff reduction projects.

Regarding biosolids, the bill:

- Requires the DEP to adopt rules for biosolids management.
- Clarifies that local governments with biosolids ordinances may retain those ordinances until repealed.
- Requires that all biosolids application sites meet the DEP rules in effect at the time of the renewal of the biosolids application site permit or facility permit, effective July 1, 2020.
- Provides requirements for biosolids application site permittees to include a prohibition on the application of biosolids within 15 centimeters of the seasonal high-water table, adoption of agricultural BMPs, and increased monitoring requirements. Many of these requirements are repealed once the DEP rules go into effect.

The bill also requires the DEP to work with the University of Florida Institute of Food and Agricultural Sciences and regulated entities to consider the adoption by rule of BMPs for nutrient impacts from golf courses.

The bill requires the DEP to submit several annual reports to the Governor and the Legislature and to the Office of Economic and Demographic Research.

The bill revises the number of Cabinet members that are required to concur with the Governor to approve the secretary of the DEP from three members to one member.

The bill requires a unanimous vote by a WMD governing board to approve a consumptive use permit to use water derived from a spring for bottled water. This provision expires on June 30, 2022. The bill also requires the DEP, in coordination with the WMDs, to conduct a study on the bottled water industry in the state.

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

Finally, 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.

The effective date of the bill is July 1, 2020, except as otherwise expressly provided in this act.

II. Present Situation:

Water Quality and Nutrients

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

Phosphorus and nitrogen are derived from natural and human-made sources. Natural inputs include the atmosphere, soils, and the decay of plants and animals. Human-made sources include sewage disposal systems (wastewater treatment facilities and septic systems), overflows of storm and sanitary sewers (untreated sewage), agricultural production and irrigation practices, and stormwater runoff.²

Excessive nutrient loads may result in harmful algal blooms, nuisance aquatic weeds, and the alteration of the natural community of plants and animals. Dense, harmful algal blooms can also cause human health problems, fish kills, problems for water treatment plants, and impairment of the aesthetics and taste of waters. Growth of nuisance aquatic weeds tends to increase in nutrient-enriched waters, which can impact recreational activities.³

Blue-Green Algae Task Force

In January of 2019, Governor DeSantis issued the comprehensive Executive Order Number 19-12.⁴ The order directed the Department of Environmental Protection (DEP) to establish a Blue-Green Algae Task Force charged with expediting progress towards reducing nutrient pollution and the impacts of blue-green algae (cyanobacteria) blooms in the state.⁵ The task force's responsibilities include identifying priority projects for funding and making recommendations for regulatory changes. The five-person task force issued a consensus document on October 11, 2019.⁶ To the extent that the task force has issued recommendations on topics addressed in this Present Situation, those recommendations are included in the relevant section.

Total Maximum Daily Loads

A total maximum daily load (TMDL), which must be adopted by rule, is a scientific determination of the maximum amount of a given pollutant that can be absorbed by a waterbody and still meet water quality standards.⁷ Waterbodies or sections of waterbodies that do not meet the established water quality standards are deemed impaired. Pursuant to the federal Clean Water

² U.S. Environmental Protection Agency (EPA), *Sources and Solutions*, <https://www.epa.gov/nutrientpollution/sources-and-solutions> (last visited Dec. 2, 2019).

³ EPA, *The Problem*, <https://www.epa.gov/nutrientpollution/problem> (last visited Dec. 2, 2019).

⁴ State of Florida, Office of the Governor, *Executive Order Number 19-12* (2019), available at https://www.flgov.com/wp-content/uploads/orders/2019/EO_19-12.pdf.

⁵ *Id.* at 2; DEP, *Blue-Green Algae Task Force*, <https://protectingfloridatogether.gov/state-action/blue-green-algae-task-force> (last visited Dec. 2, 2019).

⁶ DEP, *Blue-Green Algae Task Force Consensus Document #1* (Dec. 2, 2019), available at https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf.

⁷ DEP, *Total Maximum Daily Loads Program*, <https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program> (last visited Dec. 2, 2019).

Act, the DEP is required to establish a TMDL for impaired waterbodies.⁸ A TMDL for an impaired waterbody is defined as the sum of the individual waste load allocations for point sources and the load allocations for nonpoint sources and natural background.⁹ Point sources are discernible, confined, and discrete conveyances including pipes, ditches, and tunnels. Nonpoint sources are unconfined sources that include runoff from agricultural lands or residential areas.¹⁰

Basin Management Action Plans and Best Management Practices

The DEP is the lead agency in coordinating the development and implementation of TMDLs.¹¹ Basin management action plans (BMAPs) are one of the primary mechanisms the DEP uses to achieve TMDLs. BMAPs are plans that address the entire pollution load, including point and nonpoint discharges, for a watershed. BMAPs generally include:

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Best management practices (BMPs) and non-regulatory and incentive-based programs, including cost-sharing, waste minimization, pollution prevention, agreements, and public education;
- Public works projects, including capital facilities; and
- Land acquisition.¹²

The DEP may establish a BMAP as part of the development and implementation of a TMDL for a specific waterbody. First, the BMAP equitably allocates pollutant reductions to individual basins, to all basins as a whole, or to each identified point source or category of nonpoint sources.¹³ Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations. The BMAP development process provides an opportunity for local stakeholders, local government and community leaders, and the public to collectively determine and share water quality cleanup responsibilities collectively.¹⁴ BMAPs are adopted by secretarial order.¹⁵

BMAPs must include milestones for implementation and water quality improvement. They must also include an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of

⁸ Section 403.067(1), F.S.

⁹ Section 403.031(21), F.S.

¹⁰ Fla. Admin. Code R. 62-620.200(37). “Point source” is defined as “any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.” Nonpoint sources of pollution are sources of pollution that are not point sources. Nonpoint sources can include runoff from agricultural lands or residential areas; oil, grease and toxic materials from urban runoff; and sediment from improperly managed construction sites.

¹¹ Section 403.061, F.S. DEP has the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. Furthermore, s. 403.061(21), F.S., allows DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.

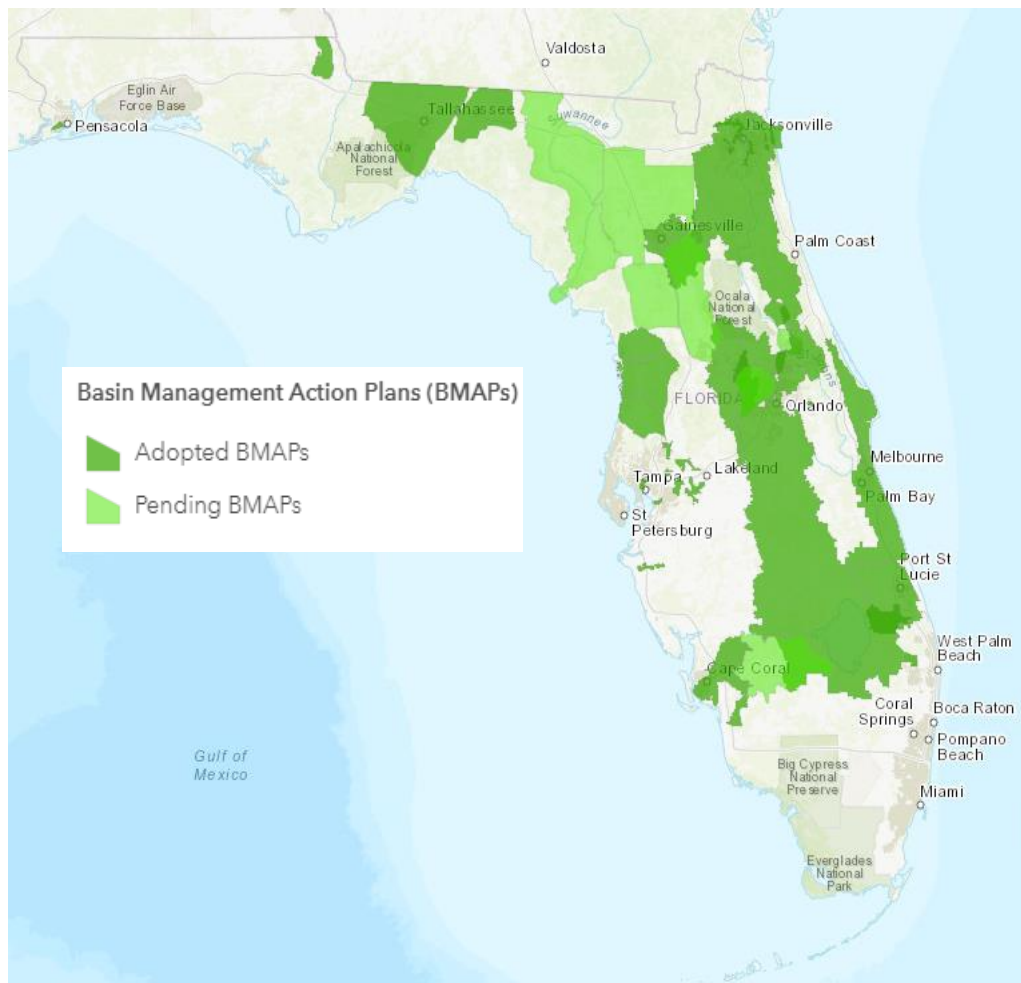
¹² Section 403.067(7), F.S.

¹³ *Id.*

¹⁴ DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Dec. 4, 2019).

¹⁵ Section 403.067(7)(a)5., F.S.

progress toward these milestones must be conducted every five years, and revisions to the BMAP must be made as appropriate.¹⁶



Producers of nonpoint source pollution included in a BMAP must comply with the established pollutant reductions by either implementing the appropriate BMPs or by conducting water quality monitoring.¹⁷ A nonpoint source discharger may be subject to enforcement action by the DEP or a water management district (WMD) based on a failure to implement these requirements.¹⁸ BMPs are designed to reduce the amount of nutrients, sediments, and pesticides that enter the water system and to help reduce water use. BMPs are developed for agricultural operations as well as for other activities, such as nutrient management on golf courses, forestry operations, and stormwater management.¹⁹

¹⁶ Section 403.067(7)(a)6., F.S.

¹⁷ Section 403.067(7)(b)2.g., F.S. For example, BMPs for agriculture include activities such as managing irrigation water to minimize losses, limiting the use of fertilizers, and waste management.

¹⁸ Section 403.067(7)(b)2.h., F.S.

¹⁹ DEP, *NPDES Stormwater Program*, <https://floridadep.gov/Water/Stormwater> (last visited Dec. 2, 2019).

Currently, BMAPs are adopted or pending for a significant portion of the state and will continue to be developed as necessary to address water quality impairments. The graphic above shows the state's adopted and pending BMAPs.²⁰

The Blue-Green Algae Task Force made the following recommendations for BMAPs:

- Include regional storage and treatment infrastructure in South Florida watersheds.
- Consider land use changes, legacy nutrients, and the impact of the BMAP on downstream waterbodies.
- Develop a more targeted approach to project selection.
- Evaluate project effectiveness through monitoring.²¹

Agricultural BMPs

Agricultural best management practices (BMPs) are practical measures that agricultural producers undertake to reduce the impacts of fertilizer and water use and otherwise manage the landscape to further protect water resources. BMPs are developed using the best available science with economic and technical consideration and, in certain circumstances, can maintain or enhance agricultural productivity.²² BMPs are implemented by the Department of Agriculture and Consumer Services (DACS). Since the BMP program was implemented in 1999,²³ the DACS has adopted nine BMP manuals and is currently developing two more that cover nearly all major agricultural commodities in Florida. According to the annual report on BMPs prepared by the DACS, approximately 54 percent of agricultural acreage is enrolled in the DACS BMP program statewide.²⁴ Producers implementing BMPs receive a presumption of compliance with state water quality standards for the pollutants addressed by the BMPs²⁵ and those who enroll in the BMP program become eligible for technical assistance and cost-share funding for BMP implementation. To enroll in the BMP program, producers must meet with the Office of Agricultural Water Policy (OAWP) to determine the BMPs that are applicable to their operation and submit a Notice of Intent to Implement the BMPs, along with the BMP checklist from the applicable BMP manual.²⁶ Within a BMAP, management strategies, including BMPs and water quality monitoring, are enforceable.²⁷ The University of Florida's Institute of Food and

²⁰ DEP, *Impaired Waters, TMDLs, and Basin Management Action Plans Interactive Map*, <https://floridadep.gov/dear/water-quality-restoration/content/impaired-waters-tmdls-and-basin-management-action-plans> (last visited Dec. 5, 2019).

²¹ DEP, *Blue-Green Algae Task Force Consensus Document #1, 2-4* (Oct. 11, 2019), available at https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf.

²² Florida Department of Agriculture and Consumer Services Office of Agricultural Water Policy, *Status of Implementation of Agricultural Nonpoint Source Best Management Practices*, 3, (Jul. 1, 2019), available at <https://www.fdacs.gov/ezs3download/download/84080/2481615/Media/Files/Agricultural-Water-Policy-Files/Status-of-Implementation-of-BMPs-Report-2019.pdf> (last visited Dec. 5, 2019).

²³ The program was voluntary from 1999-2005. In 2005 the Florida Legislature modified the law requiring agricultural producers to adopt BMPs or conduct water quality monitoring.

²⁴ Florida Department of Agriculture and Consumer Services Office of Agricultural Water Policy, *Status of Implementation of Agricultural Nonpoint Source Best Management Practices*, 2, (Jul. 1, 2019), available at <https://www.fdacs.gov/ezs3download/download/84080/2481615/Media/Files/Agricultural-Water-Policy-Files/Status-of-Implementation-of-BMPs-Report-2019.pdf> (last visited Dec. 5, 2019).

²⁵ Section 403.067(7), F.S.

²⁶ Florida Department of Agriculture and Consumer Services Office of Agricultural Water Policy, *Status of Implementation of Agricultural Nonpoint Source Best Management Practices*, 3, (Jul. 1, 2019), available at <https://www.fdacs.gov/ezs3download/download/84080/2481615/Media/Files/Agricultural-Water-Policy-Files/Status-of-Implementation-of-BMPs-Report-2019.pdf> (last visited Dec. 5, 2019).

²⁷ Section 403.067(7)(d), F.S.

Agricultural Sciences (IFAS) is heavily involved in the adoption and implementation of BMPs. The IFAS provides expertise to both the DACS and agriculture producers, and has extension offices throughout Florida. The IFAS puts on summits and workshops on BMPs,²⁸ conducts research to issue recommendations for improving BMPs,²⁹ and issues training certificates for BMPs that require licenses such as Green Industry BMPs.³⁰

For agriculture and BMPs, the Blue-Green Algae Task Force recommended:

- Increasing BMP enrollment.
- Improving records and additional data collection.
- Accelerating updates to BMP manuals.³¹

BMAPs for Outstanding Florida Springs

In 2016, the Legislature passed the Florida Springs and Aquifer Protection Act, which identified 30 "Outstanding Florida Springs" (OFS) that have additional statutory protections and requirements.³² Key aspects of the Springs and Aquifer Protection Act relating to water quality include:

- The designation of a priority focus area for each OFS. A priority focus area of an OFS means the area or areas of a basin where the Florida Aquifer is generally most vulnerable to pollutant inputs where there is a known connectivity between groundwater pathways and an Outstanding Florida Spring, as determined by the DEP in consultation with the appropriate WMDs, and delineated in a BMAP;³³
- The development of an onsite sewage treatment and disposal system (OSTDS) remediation plan³⁴ if it has been determined that OSTDSs within a priority focus area contribute at least 20 percent of nonpoint source nitrogen pollution or that remediation is necessary to achieve the TMDL;
- A 20-year timeline for implementation of the TMDL, including 5-, 10-, and 15-year targets;³⁵ and
- The prohibition against new OSTDSs on parcels of less than 1 acre, unless the system complies with the OSTDS remediation plan.³⁶

The DEP is the lead agency in coordinating the preparation and adoption of the OSTDS remediation plan. The OSTDS remediation plan must include options for repair, upgrade, replacement, drainfield modification, the addition of effective nitrogen reducing features,

²⁸ UF/IFAS, *BMP Resource*, available at <https://bmp.ifas.ufl.edu/> (last visited Dec. 5, 2019).

²⁹ UF/IFAS Everglades Research & Education Center, *Best Management Practices & Water Resources*, available at <https://erec.ifas.ufl.edu/featured-3-menus/research/-best-management-practices--water-resources/> (last visited Dec. 5, 2019).

³⁰ UF/IFAS Florida-Friendly Landscaping, *GI-BMP Training Program Overview*, available at https://ffl.ifas.ufl.edu/professionals/BMP_overview.htm (last visited Dec. 5, 2019).

³¹ *Id.*

³² Chapter 2016-1, Laws of Fla.; see s. 373.802, F.S., Outstanding Florida Springs include all historic first magnitude springs, including their associated spring runs, as determined by DEP using the most recent Florida Geological Survey springs bulletin, and De Leon Springs, Peacock Springs, Poe Springs, Rock Springs, Wekiwa Springs, and Gemini Springs, and their associated spring runs.

³³ Section 373.802(5), F.S.

³⁴ Commonly called a "septic remediation plan."

³⁵ Section 373.807, F.S.

³⁶ Section 373.811, F.S.

connection to a central sewerage system, or other action for a sewage system or group of systems.³⁷ The options must be cost-effective and financially feasible projects necessary to reduce the nutrient impacts from OSTDSs within the area.³⁸

In June 2018, the DEP adopted 13 BMAPs, addressing all 24 nitrogen-impaired OFS.³⁹ Eight of these plans are currently effective, while five others are pending the outcome of legal challenges on various alleged deficiencies in the BMAPs.⁴⁰ These alleged deficiencies include lack of specificity in the required list of projects and programs identified to implement a TMDL, lack of detail in cost estimates, incomplete or unclear strategies for nutrient reduction, and failure to account for population growth and agricultural activity.

Wastewater Treatment Facilities

The proper treatment and disposal or reuse of domestic wastewater is an important part of protecting Florida's water resources. The majority of Florida's domestic wastewater is controlled and treated by centralized treatment facilities regulated by the DEP. Florida has approximately 2,000 permitted domestic wastewater treatment facilities.⁴¹

Chapter 403, F.S., requires that any facility or activity which discharges waste into waters of the state or which will reasonably be expected to be a source of water pollution must obtain a permit from the DEP.⁴² Generally, persons who intend to collect, transmit, treat, dispose, or reuse wastewater are required to obtain a wastewater permit. A wastewater permit issued by the DEP is required for both operation and certain construction activities associated with domestic or industrial wastewater facilities or activities. A DEP permit must also be obtained prior to construction of a domestic wastewater collection and transmission system.⁴³

Under section 402 of the Clean Water Act, any discharge of a pollutant from a point source to surface waters (i.e., the navigable waters of the United States or beyond) must obtain a National Pollution Discharge Elimination System (NPDES) permit.⁴⁴ NPDES permit requirements for most wastewater facilities or activities (domestic or industrial) that discharge to surface waters are incorporated into a state-issued permit, thus giving the permittee one set of permitting requirements rather than one state and one federal permit.⁴⁵ The DEP issues operation permits for a period of five years for facilities regulated under the NPDES program and up to 10 years for other domestic wastewater treatment facilities meeting certain statutory requirements.⁴⁶

³⁷ Section 373.807(3), F.S.

³⁸ *Id.*

³⁹ DEP, *Springs*, <https://floridadep.gov/springs> (last visited Nov. 26, 2019).

⁴⁰ *Our Santa Fe River, Inc., et. al. v. DEP*, No. 18-1601, DEP No. 18-2013; *Sierra Club v. DEP*, No. 17-1175, DEP No. 18-0204; *Friends of Wekiva River, Inc. v. DEP*, No. 18-1065, DEP No. 18-0217; *Thomas Greenhalgh v. DEP*, No. 17-1165, DEP No. 18-0204; *Paul Still v. DEP*, No. 18-1061; *Save the Manatee Club, Inc. v. DEP*, No. 17-1167, DEP No. 18-0206; *Silver Springs Alliance, Inc. and Rainbow River Conservation, Inc. v. DEP*, No. 18-1060, DEP No. 18-0211.

⁴¹ DEP, *General Facts and Statistics about Wastewater in Florida*, <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Dec. 2, 2019).

⁴² Section 403.087, F.S.

⁴³ DEP, *Wastewater Permitting*, <https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting> (last visited Dec. 2, 2019).

⁴⁴ 33 U.S.C. s. 1342.

⁴⁵ Sections 403.061 and 403.087, F.S.

⁴⁶ Section 403.087(3), F.S.

In its 2016 Report Card for Florida's Infrastructure, the American Society of Civil Engineers reported that the state's wastewater system is increasing in age and the condition of installed treatment and conveyance systems is declining.⁴⁷ As existing infrastructure ages, Florida utilities are placing greater emphasis on asset management systems to maintain service to customers. Population growth, aging infrastructure, and sensitive ecological environments are increasing the need to invest in Florida's wastewater infrastructure.⁴⁸

Advanced Waste Treatment

Under Florida law, facilities for sanitary sewage disposal are required to provide for advanced waste treatment, as deemed necessary by the DEP.⁴⁹ The standard for advanced waste treatment is defined in statute using the maximum concentrations of nutrients or contaminants that a reclaimed water product may contain.⁵⁰ The standard also requires high-level disinfection.⁵¹

Nutrient or Contaminant	Maximum Concentration Annually
Biochemical Oxygen Demand	5 mg/L
Suspended Solids	5 mg/L
Total Nitrogen	3 mg/L
Total Phosphorus	1 mg/L

Facilities for sanitary sewage disposal are prohibited from disposing of waste into certain waters in the state without providing advanced waste treatment approved by the DEP.⁵² Specifically, Tampa Bay is viewed as a success story for this type of prohibition.

[Tampa Bay is] one of the few estuaries in the U.S. that has shown evidence of improving environmental conditions. These water-quality improvements have been due, in large part, to upgrades in wastewater-treatment practices at municipal wastewater-treatment plants in the region. Since 1980, all wastewater-treatment plants that discharge to the bay or its tributaries have been required by state legislation to meet advanced wastewater-treatment standards, a step that has reduced the annual nutrient loads from these sources by about 90 percent.⁵³

⁴⁷ American Society of Civil Engineers, *Report Card for Florida's Infrastructure* (2016), available at https://www.infrastructurereportcard.org/wp-content/uploads/2017/01/2016_RC_Final_screen.pdf.

⁴⁸ *Id.*

⁴⁹ Section 403.086(2), F.S.

⁵⁰ Section 403.086(4), F.S.

⁵¹ Section 403.086(4)(b), F.S.; Fla. Admin. Code R. 62-600.440(6).

⁵² Section 403.086(1)(c), F.S. Facilities for sanitary sewage disposal may not dispose of any wastes into Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, or Charlotte Harbor Bay, or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto, without providing advanced waste treatment approved by DEP. This prohibition does not apply to facilities permitted by February 1, 1987, and which discharge secondary treated effluent, followed by water hyacinth treatment, to tributaries of the named waters; or to facilities permitted to discharge to the non-tidally influenced portions of the Peace River.

⁵³ U.S. Department of the Interior and U.S. Geological Survey, *Integrating Science and Resource Management in Tampa Bay, Florida*, 110 (2011), available at https://pubs.usgs.gov/circ/1348/pdf/Chapter%205_105-156.pdf (internal citations omitted).

Sanitary Sewer Overflows, Leakages, and Inflow and Infiltration

Although domestic wastewater treatment facilities are permitted and designed to safely and properly collect and manage a specified wastewater capacity, obstructions or extreme conditions can cause a sanitary sewer overflow (SSO). Any overflow, spill, release, discharge, or diversion of untreated or partially treated wastewater from a sanitary sewer system is a SSO.⁵⁴ A SSO may subject the owner or operator of a facility to civil penalties of not more than \$10,000 for each offense, a criminal conviction or fines, and additional administrative penalties.⁵⁵ Each day during the period in which a violation occurs constitutes a separate offense.⁵⁶ However, administrative penalties are capped at \$10,000.⁵⁷

A key concern with SSOs entering rivers, lakes, or streams is their negative effect on water quality. In addition, because SSOs contain partially treated or potentially untreated domestic wastewater, ingestion or similar contact may cause illness. People can be exposed through direct contact in areas of high public access, food that has been contaminated, inhalation, and skin absorption. The Department of Health (DOH) issues health advisories when bacteria levels present a risk to human health and may post warning signs when bacteria affect public beaches or other areas where there is a risk of human exposure.⁵⁸

Reduction of SSOs can be achieved through:

- Cleaning and maintaining the sewer system;
- Reducing inflow and infiltration through rehabilitation and repairing broken or leaking lines;
- Enlarging or upgrading sewer, pump station, or sewage treatment plant capacity and/or reliability; and
- Constructing wet weather storage and treatment facilities to treat excess flows.⁵⁹

Inflow and Infiltration (I&I) occurs when groundwater and/or rainwater enters the sanitary sewer system and ends up at the wastewater treatment facility, necessitating its treatment as if it were wastewater.⁶⁰ I&I can be caused by groundwater infiltrating the sewer system through faulty pipes or infrastructure, or any inflows of rainwater or non-wastewater into the sewer system.

I&I is a major cause of SSOs in Florida.⁶¹ When domestic wastewater facilities are evaluated for permit renewal, collection systems are not evaluated for issues such as excessive

⁵⁴ DEP, *Sanitary Sewer Overflows (SSOs)*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last visited Dec. 4, 2019).

⁵⁵ Sections 403.121 and 403.141, F.S.

⁵⁶ *Id.*

⁵⁷ Section 403.121(2)(b), (8), and (9), F.S.

⁵⁸ DEP, *SSOs*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf>.

⁵⁹ *Id.*

⁶⁰ City of St. Augustine, *Inflow & Infiltration Elimination Program*, <https://www.citystaug.com/549/Inflow-Infiltration-Elimination-Program> (last visited Dec. 6, 2019).

⁶¹ See generally RS&H, Inc., *Evaluation of Sanitary Sewer Overflows and Unpermitted Discharges Associated with Hurricanes Hermine and Matthew* (Jan. 2017), available at https://floridadep.gov/sites/default/files/Final%20Report_Evaluation%20of%20SSO%20and%20Unpermitted%20Discharges%2001_06_17.pdf.

infiltration/inflow unless problems result at the treatment plant.⁶² Another major cause of SSOs is the loss of electricity to the infrastructure for the collection and transmission of wastewater, such as pump stations, especially during storms.⁶³ Pump stations receiving flow from another station through a force main, or those discharging through pipes 12 inches or larger, must have emergency generators.⁶⁴ All other pump stations must have emergency pumping capability through one of three specified arrangements.⁶⁵ These requirements for emergency pumping capacity only apply to domestic wastewater collection/transmission facilities existing after November 6, 2003, unless facilities existing prior to that date are modified.⁶⁶

The Blue-Green Algae Task Force made the following recommendations relating to SSOs:

- Emergency back-up capabilities should be required for all lift stations constructed prior to 2003.
- The DEP and wastewater facilities should take a more proactive approach to infiltration and inflow issues.⁶⁷

Wastewater Asset Management

Asset management is the practice of managing infrastructure capital assets to minimize the total cost of owning and operating these assets while delivering the desired service levels.⁶⁸ Many utilities use asset management to pursue and achieve sustainable infrastructure. A high-performing asset management program includes detailed asset inventories, operation and maintenance tasks, and long-range financial planning.⁶⁹

Each utility is responsible for making sure that its system stays in good working order, regardless of the age of its components or the availability of additional funds.⁷⁰ Asset management programs with good data can be the most efficient method of meeting this challenge. Some key steps for asset management are making an inventory of critical assets, evaluating the condition and performance of such assets, and developing plans to maintain, repair, and replace assets and

⁶² Fla. Admin. Code R. 62-600.735; see Fla. Admin. Code R. 62-600.200. “Collection/transmission systems” are defined as “sewers, pipelines, conduits, pumping stations, force mains, and all other facilities used for collection and transmission of wastewater from individual service connections to facilities intended for the purpose of providing treatment prior to release to the environment.”

⁶³ See generally RS&H, Inc., *Evaluation of Sanitary Sewer Overflows and Unpermitted Discharges Associated with Hurricanes Hermine and Matthew* (Jan. 2017), available at https://floridadep.gov/sites/default/files/Final%20Report_Evaluation%20of%20SSO%20and%20Unpermitted%20Discharges%2001_06_17.pdf.

⁶⁴ Fla. Admin. Code R. 62-604.400.

⁶⁵ *Id.*

⁶⁶ Fla. Admin. Code R. 62-604.100.

⁶⁷ DEP, *Blue-Green Algae Task Force Consensus Document #1*, 7 (Oct. 11, 2019), available at https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf.

⁶⁸ EPA, *Sustainable Water Infrastructure - Asset Management for Water and Wastewater Utilities*, <https://www.epa.gov/sustainable-water-infrastructure/asset-management-water-and-wastewater-utilities> (last visited Dec 9, 2019).

⁶⁹ *Id.*

⁷⁰ *Id.*

to fund these activities.⁷¹ The United States Environmental Protection Agency (EPA) provides guidance and reference manuals for utilities to aid in developing asset management plans.⁷²

Many states, including Florida, provide financial incentives for the development and implementation of an asset management plan when requesting funding under a State Revolving Fund or other state funding mechanism.⁷³ Florida's incentives include priority scoring,⁷⁴ reduction of interest rates,⁷⁵ principal forgiveness for financially disadvantaged small communities,⁷⁶ and eligibility for small community wastewater facilities grants.⁷⁷

In 2016, the Legislature authorized the Public Service Commission (PSC) to allow a utility to create a utility reserve fund for repair and replacement of existing distribution and collection infrastructure that is nearing the end of its useful life or is detrimental to water quality or reliability of service. The utility reserve fund would be funded by a portion of the rates charged by the utility, by a secured escrow account, or through a letter of credit.

The PSC adopted rules governing the implementation, management, and use of the fund, including expenses for which the fund may be used, segregation of reserve account funds, requirements for a capital improvement plan, and requirements for the PSC authorization before fund disbursements.⁷⁸ The PSC requires an applicant to provide a capital improvement plan or an asset management plan in seeking authorization to create a utility reserve fund.⁷⁹

The Clean Water State Revolving Fund Program

Florida's Clean Water State Revolving Fund (CWSRF) is a federal-state partnership that provides communities a permanent, independent source of low-cost financing for a wide-range of water quality infrastructure projects.⁸⁰ The CWSRF is funded through money received from 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

⁷¹ *Id.*

⁷² 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.

⁷³ EPA, *State Asset Management Initiatives* (Aug. 2012), available at https://www.epa.gov/sites/production/files/2016-04/documents/state_asset_management_initiatives_11-01-12.pdf.

⁷⁴ Fla. Admin. Code R. 62-503.300(e).

⁷⁵ Fla. Admin. Code R. 62-503.300(5)(b)1. and 62-503.700(7).

⁷⁶ Fla. Admin. Code R. 62-503.500(4).

⁷⁷ Fla. Admin. Code R. 62-505.300(d) and 62-505.350(5)(c).

⁷⁸ Fla. Admin. Code R. 25-30.444.

⁷⁹ Fla. Admin. Code R. 25-30.444(2)(e) and (m).

⁸⁰ 33 USC s. 1383; EPA, *CWSRF*, <https://www.epa.gov/cwsrf> (last visited Jan. 23, 2020); EPA, *Learn about the CWSRF*, <https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf> (last visited Jan. 23, 2020).

agricultural best management practices may also qualify for funding. Very low interest rate loans, grants, and other discounted assistance for small communities are available. Interest rates on loans are below market rates and vary based on the economic means of the community. Generally, local governments and special districts are eligible loan sponsors.⁸¹ The EPA classifies eleven types of projects that are eligible to receive CWSRF assistance. They include projects for:

- A publicly owned treatment works;
- A public, private, or nonprofit entity to implement a state nonpoint source pollution management program;
- A public, private, or nonprofit entity to develop and implement a conservation and management plan;
- A public, private, or nonprofit entity to construct, repair, or replace decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage;
- A public, private, or nonprofit entity to manage, reduce, treat, or recapture stormwater or subsurface drainage water;
- A public entity to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse;
- A public, private, or nonprofit entity to develop and implement watershed projects;
- A public entity to reduce the energy consumption needs for publicly owned treatment works;
- A public, private, or nonprofit entity for projects for reusing or recycling wastewater, stormwater, or subsurface drainage water;
- A public, private, or nonprofit entity to increase the security of publicly owned treatment works; and
- Any qualified nonprofit entity, to provide technical assistance to owners and operators of small and medium sized publicly owned treatment works to plan, develop, and obtain financing for the CWSRF eligible projects and to assist each treatment works in achieving compliance with the Clean Water Act.⁸²

Of these eligible projects, the DEP is required to give priority to projects that:

- Eliminate public health hazards;
- Enable compliance with laws requiring the elimination of discharges to specific water bodies, including the requirements of s. 403.086(9), F.S., regarding domestic wastewater ocean outfalls;
- Assist in the implementation of total maximum daily loads adopted under s. 403.067, F.S.;
- 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

⁸¹ DEP, *State Revolving Fund*, <https://floridadep.gov/wra/srf> (last visited Feb. 11, 2019).

⁸² EPA, *Learn about the CWSRF*, <https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf> (last visited Jan. 23, 2020).

- Reduce pollutants to and otherwise promote the restoration of Florida’s surface and ground waters.⁸³

Small Community Sewer Construction

The Small Community Sewer Construction Assistance Act is a grant program established as part of the CWSRF program that requires the DEP to award grants to assist financially disadvantaged small communities with their needs for adequate domestic wastewater facilities.⁸⁴ Under the program, a financially disadvantaged small community is defined as a county, municipality, or special district⁸⁵ with a total population of 10,000 or less, and a per capita income less than the state average per capita income.⁸⁶ In 2016, the Legislature included counties and special districts as eligible entities for grants under the program if they otherwise met the definition of a financially disadvantaged small community.⁸⁷

In accordance with rules adopted by the Environmental Regulation Commission, the DEP may provide grants, for up to 100 percent of the costs of planning, designing, constructing, upgrading, or replacing wastewater collection, transmission, treatment, disposal, and reuse facilities, including necessary legal and administrative expenses.⁸⁸ The rules of the commission must also:

- Require that projects to plan, design, construct, upgrade, or replace wastewater collection, transmission, treatment, disposal, and reuse facilities be cost-effective, environmentally sound, permittable, and implementable;
- Require appropriate user charges, connection fees, and other charges to ensure the long-term operation, maintenance, and replacement of the facilities constructed under each grant;
- Require grant applications to be submitted on appropriate forms with appropriate supporting documentation and require records to be maintained;
- Establish a system to determine eligibility of grant applications;
- Establish a system to determine the relative priority of grant applications, which must consider public health protection and water pollution abatement;
- Establish requirements for competitive procurement of engineering and construction services, materials, and equipment; and
- Provide for termination of grants when program requirements are not met.⁸⁹

Onsite Sewage Treatment and Disposal Systems

Onsite sewage treatment and disposal systems (OSTDSs), commonly referred to as “septic systems,” generally consist of two basic parts: the septic tank and the drainfield.⁹⁰ Waste from toilets, sinks, washing machines, and showers flows through a pipe into the septic tank, where

⁸³ Section 403.1835(7), F.S.

⁸⁴ Sections 403.1835(3)(d) and 403.1838, F.S.

⁸⁵ Section 189.012(6), F.S., defines special district; s. 189.012(2) and (3), F.S., define dependent special district and independent special district, respectively.

⁸⁶ Section 403.1838(2), F.S.

⁸⁷ Chapter 2016-55, Laws of Fla.

⁸⁸ Section 403.1838(3)(a), F.S.

⁸⁹ Section 403.1838(3)(b), F.S.; Fla. Admin. Code R. Ch. 62-505.

⁹⁰ DOH, *Septic System Information and Care*, <http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html> (last visited Dec. 2, 2019); EPA, *Types of Septic Systems*, <https://www.epa.gov/septic/types-septic-systems> (last visited Dec. 2, 2019) (showing the graphic provided in the analysis).

anaerobic bacteria break the solids into a liquid form. The liquid portion of the wastewater flows into the drainfield, which is generally a series of perforated pipes or panels surrounded by lightweight materials such as gravel or Styrofoam. The drainfield provides a secondary treatment where aerobic bacteria continue deactivating the germs. The drainfield also provides filtration of the wastewater, as gravity draws the water down through the soil layers.⁹¹



The DOH administers OSTDS programs, develops statewide rules, and provides training and standardization for county health department employees responsible for issuing permits for the installation and repair of OSTDSs within the state.⁹² The DOH regulations focus on construction standards and setback distances. The regulations are primarily designed to protect the public from waterborne illnesses.⁹³ The DOH also conducts research to evaluate performance, environmental health, and public health effects of OSTDSs. Innovative OSTDS products and technologies must be approved by the DOH.⁹⁴

The DOH and the DEP have an interagency agreement that standardizes procedures and clarifies responsibilities between them regarding the regulation of OSTDSs.⁹⁵ The DEP has jurisdiction over OSTDSs when: domestic sewage flow exceeds 10,000 gallons per day; commercial sewage flow exceeds 5,000 gallons per day; there is a likelihood of hazardous or industrial wastes; a sewer system is available; or if any system or flow from the establishment is currently regulated by the DEP (unless the DOH grants a variance).⁹⁶ In all other circumstances, the DOH regulates OSTDSs.

⁹¹ *Id.*

⁹² Section 381.0065(3), F.S.

⁹³ DOH, *Overview of Onsite Sewage Treatment and Disposal Systems*, 5 (Aug. 1, 2019), <http://floridadep.gov/file/19018/download?token=6r94Bi2B>.

⁹⁴ Section 381.0065(3), F.S.

⁹⁵ *Interagency Agreement between the Department of Environmental Protection and the Department of Health for Onsite Sewage Treatment and Disposal Systems* (Sept. 30, 2015), available at https://floridadep.gov/sites/default/files/HOHOSTDS_9_30_15.pdf.

⁹⁶ *Id.* at 6-13; s. 381.0065(3)(b), F.S.; DEP, *Septic Systems*, <https://floridadep.gov/water/domestic-wastewater/content/septic-systems> (last visited Dec. 2, 2019).

There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state's population.⁹⁷ In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.⁹⁸ For example, in rural areas and low-density developments, central sewer systems are not cost-effective. Less than one percent of OSTDSs in Florida are actively managed under operating permits and maintenance agreements.⁹⁹ The remainder of systems are generally serviced only when they fail, often leading to costly repairs that could have been avoided with routine maintenance.¹⁰⁰

In a conventional OSTDS, a septic tank does not reduce nitrogen from the raw sewage. In Florida, approximately 30-40 percent of the nitrogen levels are reduced in the drainfield of a system that is installed 24 inches or more from groundwater.¹⁰¹ This still leaves a significant amount of nitrogen to percolate into the groundwater, which makes nitrogen from OSTDSs a potential contaminant in groundwater.¹⁰²

Different types of advanced OSTDSs exist that can remove greater amounts of nitrogen than a typical septic system (often referred to as "advanced" or "nutrient-reducing" septic systems).¹⁰³ The DOH publishes on its website approved products and resources on advanced systems.¹⁰⁴ Determining which advanced system is the best option can depend on site-specific conditions.

The owner of a properly functioning OSTDS must connect to a sewer system within one year of receiving notification that a sewer system is available for connection.¹⁰⁵ Owners of an OSTDS in need of repair or modification must connect within 90 days of notification from the DOH.¹⁰⁶

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.

⁹⁷ DOH, *Onsite Sewage*, <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last visited Dec. 2, 2019).

⁹⁸ DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, Executive Summary (Oct. 1, 2008), available at http://www.floridahealth.gov/environmental-health/onsite-sewage/research/_documents/rrac/2008-11-06.pdf. The report begins on page 56 of the PDF.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ DOH, *Florida Onsite Sewage Nitrogen Reduction Strategies Study, Final Report 2008-2015*, 21 (Dec. 2015), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/research/draftlegreportsm.pdf>, see Fla. Admin. Code R. 64E-6.006(2).

¹⁰² University of Florida Institute of Food and Agricultural Sciences (IFAS), *Onsite Sewage Treatment and Disposal Systems: Nitrogen*, 3 (Feb. 2014), available at <http://edis.ifas.ufl.edu/pdf/SS/SS55000.pdf>.

¹⁰³ DOH, *Nitrogen-Reducing Systems for Areas Affected by the Florida Springs and Aquifer Protection Act* (2019), available at http://www.floridahealth.gov/environmental-health/onsite-sewage/products/_documents/bmap-n-reducing-tech-18-10-29.pdf.

¹⁰⁴ DOH, *Onsite Sewage Programs, Product Listings and Approval Requirements*, <http://www.floridahealth.gov/environmental-health/onsite-sewage/products/index.html> (last visited Dec. 2, 2019).

¹⁰⁵ Section 381.00655, F.S.

¹⁰⁶ *Id.*

- Additional funding to accelerate septic to sewer conversions.¹⁰⁷

The DOH Technical Review and Advisory Panel

The DOH has a technical review and advisory panel to review agency rules and provide assistance to the DOH with rule adoption.¹⁰⁸ It is comprised of, at a minimum:

- A soil scientist;
- A professional engineer registered in this state who is recommended by the Florida Engineering Society and who has work experience in OSTDSs;
- Two representatives from the home-building industry recommended by the Florida Home Builders Association, including one who is a developer in this state who develops lots using onsite sewage treatment and disposal systems;
- A representative from the county health departments who has experience permitting and inspecting the installation of onsite sewage treatment and disposal systems in this state;
- A representative from the real estate industry who is recommended by the Florida Association of Realtors;
- A consumer representative with a science background;
- Two representatives of the septic tank industry recommended by the Florida Onsite Wastewater Association, including one who is a manufacturer of onsite sewage treatment and disposal systems;
- A representative from local government who is knowledgeable about domestic wastewater treatment and who is recommended by the Florida Association of Counties and the Florida League of Cities; and
- A representative from the environmental health profession who is recommended by the Florida Environmental Health Association and who is not employed by a county health department.¹⁰⁹

Members are to be appointed for a term of two years. The panel may also, as needed, be expanded to include ad hoc, nonvoting representatives who have topic-specific expertise.¹¹⁰

Stormwater Management

Stormwater is the flow of water resulting from, and immediately following, a rainfall event.¹¹¹ When stormwater falls on pavement, buildings, and other impermeable surfaces, the runoff flows

¹⁰⁷ DEP, *Blue-Green Algae Task Force Consensus Document #1*, 6-7 (Oct. 11, 2019), available at https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf.

¹⁰⁸ Section 381.0068, F.S.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ DEP and Water Management Districts, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)*, 2-10 (June 1, 2018), available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Applicant_Hanbook_I_-_Combined.pdf.

quickly and can pick up sediment, nutrients (such as nitrogen and phosphorous), chemicals, and other pollutants.¹¹² Stormwater pollution is a major source of water pollution in Florida.¹¹³

There are two main regulatory programs to address water quality from stormwater: the federal program that regulates discharges of pollutants into waters of the United States¹¹⁴ and the state Environmental Resource Permitting (ERP) Program that regulates activities involving the alteration of surface water flows.¹¹⁵ The federal NPDES Stormwater Program regulates the following types of stormwater pollution:¹¹⁶

- Certain municipal storm sewer systems;
- Runoff from certain construction activities; and
- Runoff from industrial activities.¹¹⁷

Florida's ERP Program includes regulation of activities that create stormwater runoff, as well as dredging and filling in wetlands and other surface waters.¹¹⁸ ERPs are designed to prevent flooding, protect wetlands and other surface waters, and protect Florida's water quality from stormwater pollution.¹¹⁹ The statewide ERP Program is implemented by the DEP, the WMDs, and certain local governments. The ERP Applicant Handbook, incorporated by reference into the DEP rules, provides guidance on the DEP's ERP Program, including stormwater topics such as the design of stormwater management systems.¹²⁰

The DEP and the WMDs are authorized to require permits and impose reasonable conditions:

- To ensure that construction or alteration of stormwater management systems and related structures are consistent with applicable law and not harmful to water resources;¹²¹ and
- For the maintenance or operation of such structures.¹²²

¹¹² DEP, *Stormwater Management*, 1 (2016), available at https://floridadep.gov/sites/default/files/stormwater-management_0.pdf. When rain falls on fields, forests, and other areas with naturally permeable surfaces the water not absorbed by plants filters through the soil and replenishes Florida's groundwater supply.

¹¹³ DEP, *Stormwater Support*, <https://floridadep.gov/water/engineering-hydrology-geology/content/stormwater-support> (last visited Dec. 2, 2019); DEP, *Nonpoint Source Program Update*, 10 (2015), available at <https://floridadep.gov/sites/default/files/NPS-ManagementPlan2015.pdf>.

¹¹⁴ National Pollutant Discharge Elimination System (NPDES), 33 U.S.C. s. 1342 (2019); 40 C.F.R. pt. 122.

¹¹⁵ Chapter 373, pt. IV, F.S.; Fla. Admin. Code Ch. 62-330.

¹¹⁶ A point source is discernible, confined and discrete conveyance, such as a pipe, ditch, channel, tunnel, conduit, discrete fissure, or container. See The Clean Water Act, 33 U.S.C. s. 1362(14) and 40 C.F.R. 122.2; Stormwater can be either a point source or a nonpoint source of pollution. EPA, *Monitoring and Evaluating Nonpoint Source Watershed Projects*, 1-1, available at https://www.epa.gov/sites/production/files/2016-02/documents/chapter_1_draft_aug_2014.pdf; DEP, *Nonpoint Source Program Update*, 9 (2015), available at <https://floridadep.gov/sites/default/files/NPS-ManagementPlan2015.pdf>.

¹¹⁷ See generally EPA, *NPDES Stormwater Program*, <https://www.epa.gov/npdes/npdes-stormwater-program> (last visited Dec. 2, 2019).

¹¹⁸ DEP, *DEP 101: Environmental Resource Permitting*, <https://floridadep.gov/comm/press-office/content/dep-101-environmental-resource-permitting> (last visited Dec 2, 2019).

¹¹⁹ South Florida Water Management District, *Environmental Resource Permits*, <https://www.sfwmd.gov/doing-business-with-us/permits/environmental-resource-permits> (last visited Dec. 2, 2019).

¹²⁰ Fla. Admin. Code R. 62-330.010(4); DEP and WMDs, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)*, 2-10 (June 1, 2018), available at https://www.sfwmd.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).

¹²¹ Section 373.413, F.S.; see s. 403.814(12), F.S.

¹²² Section 373.416, F.S.

The DEP's stormwater rules are technology-based effluent limitations rather than water quality-based effluent limitations.¹²³ This means that stormwater rules rely on design criteria for BMPs to achieve a performance standard for pollution reduction, rather than specifying the amount of a specific pollutant that may be discharged to a waterbody and still ensure that the waterbody attains water quality standards.¹²⁴ The rules contain minimum stormwater treatment performance standards, which require design and performance criteria for new stormwater management systems to achieve at least 80 percent reduction of the average annual load of pollutants that would cause or contribute to violations of state water quality standards.¹²⁵ The standard is 95 percent reduction when applied to Outstanding Florida Waters. In 2007, an evaluation performed for the DEP generally concluded that Florida's stormwater design criteria failed to consistently meet either the 80 percent or 95 percent target goals in the DEP's rules.¹²⁶ The images shown here depict six major types of surface water management systems:¹²⁷



"Filtered" Ponds



Underground Vaults



"Dry" Retention Ponds



"Wet" Detention Ponds



Underground Exfiltration Trenches



Pervious Pavement

¹²³ DEP, *ERP Stormwater*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/erp-stormwater> (last visited Nov. 8, 2019).

¹²⁴ See generally, EPA, National Pollutant Discharge Elimination System (NPDES), www.epa.gov/npdes/npdes-permit-limits (last visited Dec. 2, 2019).

¹²⁵ Fla. Admin. Code R. 62-40.432(2).

¹²⁶ Environmental Research & Design, Inc., *Evaluation of Current Stormwater Design Criteria within the State of Florida*, 6-1 (2007), available at <https://www.sfwmd.gov/sites/default/files/documents/sw%20treatment%20report-final71907.pdf>. The report makes an exception for the St. John's River Water Management District's standards for on-line dry retention.

¹²⁷ Presentation to the Blue-Green Algae Task Force by Benjamin Melnik, Deputy Director of the Division of Water Resource Management, *Stormwater*, 12 (September 24, 2019) (on file with Committee on Environment and Natural Resources).

The DEP and the WMDs must require applicants to provide reasonable assurance that state water quality standards will not be violated.¹²⁸ If a stormwater management system is designed in accordance with the stormwater treatment requirements and criteria adopted by the DEP or the WMDs, then the system design is presumed not to cause or contribute to violations of applicable state water quality standards.¹²⁹ If a stormwater management system is constructed, operated, and maintained for stormwater treatment in accordance with a valid permit or exemption, then the stormwater discharged from the system is presumed not to cause or contribute to violations of applicable state water quality standards.¹³⁰ If an applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the DEP or a WMD must consider mitigation measures that cause a net improvement of the water quality in the water body that does not meet the standards.¹³¹

2010 Stormwater Rulemaking

From 2008 to 2010, the DEP and the WMDs worked together on developing a statewide unified stormwater rule to protect Florida's surface waters from the effects of excessive nutrients in stormwater runoff.¹³² A technical advisory committee was established. In 2010, the DEP announced a series of workshops to present for public comment the statewide stormwater quality draft rule Chapter 62-347 of the Florida Administrative Code and an Applicant's Handbook.¹³³ The notice stated the goal of the rule was to "increase the level of nutrient treatment in stormwater discharges and provide statewide consistency by establishing revised stormwater quality treatment performance standards and best management practices design criteria."¹³⁴

These rulemaking efforts produced a draft document called the "Environmental Resource Permit Stormwater Quality Applicant's Handbook: Design Requirements for Stormwater Treatment in Florida."¹³⁵ The 2010 draft handbook's stormwater quality permitting requirements:

- Provided for different stormwater treatment performance standards based on various classifications of water quality.¹³⁶

¹²⁸ Section 373.414(1), F.S.; see s. 373.403(11), F.S.; see Fla. Admin. Code Ch. 62-4, 62-302, 62-520, and 62-550.

¹²⁹ Section 373.4131(3)(b), F.S. Fla. Admin. Code R. 62-40.432(2); see also DEP, *ERP Stormwater*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/erp-stormwater> (last visited Dec. 2, 2019) (stating that a key component of the stormwater rule is a "rebuttable presumption that discharges from a stormwater management system designed in accordance with the BMP design criteria will not cause harm to water resources").

¹³⁰ Section 373.4131(3)(c), F.S.

¹³¹ Section 373.414(1)(b)3., F.S.

¹³² South Florida Water Management District, *Quick Facts on the Statewide Unified Stormwater Rule*, available at https://www.sfwmd.gov/sites/default/files/documents/spl_stormwater_rule.pdf.

¹³³ Florida Administrative Register, Notices of Meetings, Workshops, and Public Hearings, *Notice of Rescheduling*, pg. 1885 (Apr. 23, 2010), available at <https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2010/3616/3616doc.pdf>.

¹³⁴ *Id.*

¹³⁵ DEP and Water Management Districts, *March 2010 Draft, Environmental Resource Permit Stormwater Quality Applicant's Handbook, Design Requirements for Stormwater Treatment Systems in Florida* (2010), available at https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/content2/roadway/drainage/files/stormwaterqualityapphb-draft.pdf?sfvrsn=579bf184_0.

¹³⁶ *Id.* at 6-7.

- Included instructions for calculating a project's required nutrient load reduction based on comparing the predevelopment and post-development loadings.¹³⁷
- Provided the required criteria for stormwater BMPs.
- Listed fifteen different types of stormwater treatment systems, including low impact design, pervious pavements, and stormwater harvesting.¹³⁸

The new rule and revised handbook were expected to be adopted in 2011.¹³⁹ However, no such rules or revised handbook were ever adopted. While the draft Stormwater Quality Applicant's Handbook never went into effect, it can provide context for understanding what new rules on these topics may look like.

The Blue-Green Algae Task Force recommended that the DEP revise and update stormwater design criteria and implement an effective inspection and monitoring program.¹⁴⁰

Water Quality Monitoring

One of the DEP's goals is to determine the quality of the state's surface and ground water resources. This goal is primarily accomplished through several water quality monitoring strategies that are administered through the Water Quality Assessment Program. Responsibilities of the program include: monitoring and assessing how water quality is changing over time; the overall water quality and impairment status of the state's water resources; and the effectiveness of water resource management, protection, and restoration programs.¹⁴¹

Within the Water Quality Assessment Program, the DEP administers the Watershed Monitoring Program. This program is responsible for collecting reliable data through water samples from rivers, streams, lakes, canals, and wells around the state.¹⁴² This information is used by the DEP to determine which waters are impaired and what restoration efforts are needed.

The Blue-Green Algae Task Force recommended that science-based decision making and monitoring programs be enhanced, including the development of an expanded and more comprehensive statewide water quality monitoring strategy. Monitoring programs should focus on informing restoration project selection, implementation, and evaluation.¹⁴³

¹³⁷ *Id.* at 8-11.

¹³⁸ *Id.* at 3.

¹³⁹ Nicole C. Kibert, *Status of Low Impact Development in Florida and Legal Considerations for Operation and Maintenance of LID Systems*, FLORIDA BAR JOURNAL Vol. 85, No. 1 (2011), <https://www.floridabar.org/the-florida-bar-journal/status-of-low-impact-development-in-florida-and-legal-considerations-for-operation-and-maintenance-of-lid-systems/> (last visited Nov. 14, 2019).

¹⁴⁰ DEP, *Blue-Green Algae Task Force Consensus Document #1* (Dec. 2, 2019), available at https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf.

¹⁴¹ DEP, *Water Quality Assessment Program*, <https://floridadep.gov/dear/water-quality-assessment> (last visited Dec. 2, 2019).

¹⁴² DEP, *Watershed Monitoring*, <https://floridadep.gov/dear/watershed-monitoring-section> (last visited Dec. 2, 2019).

¹⁴³ DEP, *Blue-Green Algae Task Force Consensus Document #1* (Oct. 11, 2019), available at https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf.

Indian River Lagoon

The Indian River Lagoon (IRL) system is an estuary¹⁴⁴ that runs along 156 miles of Florida's east coast and borders Volusia, Brevard, Indian River, St. Lucie, and Martin counties.¹⁴⁵ The IRL system is composed of three main waterbodies: Mosquito Lagoon, Banana River, and the Indian River Lagoon.¹⁴⁶ Four BMAPs have been adopted for the IRL region.¹⁴⁷

The IRL is one of the most biologically diverse estuaries in North America and is home to more than 2,000 species of plants, 600 species of fish, 300 species of birds, and 53 endangered or threatened species.¹⁴⁸ The estimated economic value received from the IRL in 2014 was approximately \$7.6 billion.¹⁴⁹ Industry groups that are directly influenced by the IRL support nearly 72,000 jobs.¹⁵⁰

The IRL ecosystem has been harmed by human activities in the region. Stormwater runoff from urban and agricultural areas, wastewater treatment facility discharges, canal discharges, septic systems, animal waste, and fertilizer applications have led to harmful levels of nutrients and sediments entering the lagoon.¹⁵¹ These pollutants create cloudy conditions, feed algal blooms, and lead to muck accumulation, all of which negatively impact the seagrass that provides habitat for much of the IRL's marine life.¹⁵²

Type Two Transfer

Section 20.06(2), F.S., defines a type two transfer as the merging of an existing department, program, or activity into another department. Any program or activity transferred by a type two transfer retains all the statutory powers, duties, and functions it held previous to the transfer. The program or activity also retains its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, unless otherwise provided by law. The transfer of

¹⁴⁴ An estuary is a partially enclosed, coastal waterbody where freshwater from rivers and streams mixes with saltwater from the ocean. Estuaries are among the most productive ecosystems on earth, home to unique plant and animal communities that have adapted to brackish water: freshwater mixed with saltwater. U.S. EPA, *What Is an Estuary?*, <https://www.epa.gov/nep/basic-information-about-estuaries> (last visited Dec. 2, 2019); NOAA, *What Is An Estuary?*, <https://oceanservice.noaa.gov/facts/estuary.html> (last visited Dec. 2, 2019).

¹⁴⁵ IRL National Estuary Program, *About the Indian River Lagoon*, <http://www.irlcouncil.com/> (last visited Dec. 2, 2019).

¹⁴⁶ *Id.*

¹⁴⁷ East Central Florida Regional Planning Council and the Treasure Coast Regional Planning Council, *Indian River Lagoon Economic Valuation Update*, x (Aug. 26, 2016), available at http://tcrpc.org/special_projects/IRL_Econ_Valu/FinalReportIRL08_26_2016.pdf; DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Dec. 2, 2019).

¹⁴⁸ IRL National Estuary Program, *About the Indian River Lagoon*, <http://www.irlcouncil.com/> (last visited Dec. 2, 2019).

¹⁴⁹ East Central Florida Regional Planning Council and the Treasure Coast Regional Planning Council, *Indian River Lagoon Economic Valuation Update*, vi (Aug. 26, 2016), available at http://tcrpc.org/special_projects/IRL_Econ_Valu/FinalReportIRL08_26_2016.pdf.

¹⁵⁰ *Id.* at ix. The main IRL-related industry groups are categorized as: Living Resources; Marine Industries; Recreation and Visitor-related; Resource Management; and Defense & Aerospace.

¹⁵¹ Tetra Tech, Inc. & Closewaters, LLC, *Draft Save Our Indian River Lagoon Project Plan 2019 Update for Brevard County, Florida*, xii (Mar. 2019), available at <https://www.dropbox.com/s/j9pxd59mt1baf7q/Revised%202019%20Save%20Our%20Indian%20River%20Lagoon%20Project%20Plan%20Update%20032519.pdf?dl=0>.

¹⁵² *Id.*

segregated funds must be made in such a manner that the relation between the program and the revenue source is retained.¹⁵³

Rural Areas of Opportunity

A rural area of opportunity (RAO) is a rural community or region of rural communities that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.¹⁵⁴ By executive order, the Governor may designate up to three RAOs, establishing each region as a priority assignment for Rural Economic Development Initiative (REDI) agencies. The Governor can waive the criteria, requirements, or any similar provisions of any state economic development incentive for projects in a RAO.¹⁵⁵

The currently designated RAOs are:¹⁵⁶

- Northwestern RAO: Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and part of Walton County.
- South Central RAO: DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the cities of Pahokee, Belle Glade, South Bay (Palm Beach County), and Immokalee (Collier County).
- North Central RAO: Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.

Statement of Estimated Regulatory Cost

If a proposed agency rule will have an adverse impact on small business or is likely to increase directly or indirectly regulatory costs in excess of \$200,000 aggregated within one year after implementation, an agency must prepare a statement of estimated regulatory costs (SERC).¹⁵⁷ The SERC must include an economic analysis projecting a proposed rule's adverse effect on specified aspects of the state's economy or an increase in regulatory costs. If the SERC shows that the adverse impact or regulatory costs of the proposed rule exceeds \$1 million in the aggregate within five years after implementation, then the proposed rule must be submitted to the Legislature for ratification and may not take effect until it is ratified by the Legislature.¹⁵⁸

Biosolids

Approximately two-thirds of Florida's population is served by around 2,000 domestic wastewater facilities permitted by the DEP.¹⁵⁹ When domestic wastewater is treated, solid,

¹⁵³ Section 20.06(2), F.S.

¹⁵⁴ Section 288.0656(2)(d), F.S.

¹⁵⁵ Section 288.0656(7), F.S.

¹⁵⁶ Department of Economic Opportunity, *Rural Areas of Opportunity*, <http://www.floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity> (last visited Dec. 2, 2019).

¹⁵⁷ Section 120.541, F.S.

¹⁵⁸ *Id.*

¹⁵⁹ DEP, *General Facts and Statistics about Wastewater in Florida*, <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Dec. 9, 2019).

semisolid, or liquid residue known as biosolids¹⁶⁰ accumulates in the wastewater treatment plant and must be removed periodically to keep the plant operating properly.¹⁶¹ Biosolids also include products and treated material from biosolids treatment facilities and septage management facilities regulated by the DEP.¹⁶² The collected residue is high in organic content and contains moderate amounts of nutrients.¹⁶³

The DEP has stated that wastewater treatment facilities produce about 340,000 dry tons of biosolids each year.¹⁶⁴ Biosolids can be disposed of in several ways: transfer to another facility, placement in a landfill, distribution and marketing as fertilizer, incineration, bioenergy, and land application to pasture or agricultural lands.¹⁶⁵ About one-third of the total amount of biosolids produced is used for land application¹⁶⁶ and is subject to regulatory requirements established by the DEP to protect public health and the environment.¹⁶⁷

Land application is the use of biosolids at a permitted site to provide nutrients or organic matter to the soil, such as agricultural land, golf courses, forests, parks, or reclamation sites. Biosolids are applied in accordance with restrictions based on crop nutrient needs, phosphorus limits in the area, and soil fertility.¹⁶⁸ Biosolids contain macronutrients (such as nitrogen and phosphorus) and micronutrients (such as copper, iron, and manganese) that are utilized by crops. The application of these nutrient-rich biosolids increases the organic content of the soil, fostering more productive plant growth.¹⁶⁹ To prevent odor or the contamination of soil, crops, livestock, and humans, land application sites must meet site management requirements such as site slopes, setbacks, and proximity to groundwater restrictions.¹⁷⁰ There are approximately 140 permitted land application sites in Florida, with waste haulers being the most common site permittees.¹⁷¹

¹⁶⁰ Section 373.4595, F.S. Biosolids are the solid, semisolid, or liquid residue generated during the treatment of domestic wastewater in a domestic wastewater treatment facility and include products and treated material from biosolids treatment facilities and septage management facilities. The term does not include the treated effluent or reclaimed water from a domestic wastewater treatment facility, solids removed from pump stations and lift stations, screenings and grit removed from the preliminary treatment components of domestic wastewater treatment facilities, or ash generated during the incineration of biosolids.

¹⁶¹ DEP, *Domestic Wastewater Biosolids*, <https://floridadep.gov/water/domestic-wastewater/content/domestic-wastewater-biosolids> (last visited Dec. 9, 2019).

¹⁶² Fla. Admin. Code R. 62-640.200(6).

¹⁶³ *Id.*

¹⁶⁴ DEP, *Presentation to Senate Committee on Environment and Natural Resources*, 40-62 (Nov. 13, 2019) available at http://www.flsenate.gov/Committees/Show/EN/MeetingPacket/4733/8393_MeetingPacket_4733.13.19.pdf; DEP Technical Advisory Committee, *Biosolids Use and Regulations in Florida Presentation*, 5 (Sept. 2018), available at <https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf> (last visited Dec. 9, 2019).

¹⁶⁵ *Id.* at 4.

¹⁶⁶ *Id.* at 5.

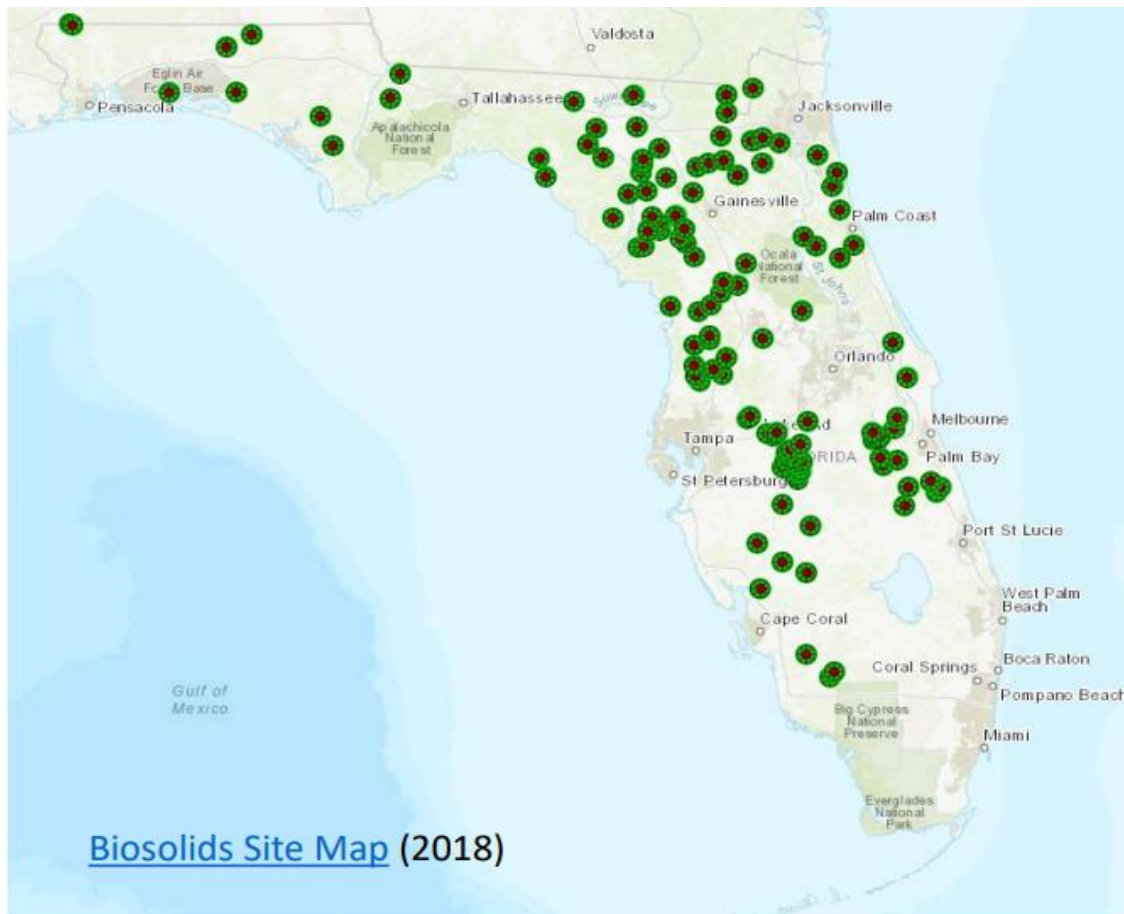
¹⁶⁷ Fla. Admin. Code R. 62-640.

¹⁶⁸ DEP Technical Advisory Committee, *Biosolids Use and Regulations in Florida*, 8 (Sept. 2018), available at <https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf> (last visited Dec. 9, 2019); *see also*, United States EPA, A Plain English Guide to the EPA Part 503 Biosolids Rule, 26 (Sept. 1994), available at <https://www.epa.gov/sites/production/files/2018-12/documents/plain-english-guide-part503-biosolids-rule.pdf> (last visited Dec. 9, 2019).

¹⁶⁹ *Id.* at 20.

¹⁷⁰ *Id.* at 9.

¹⁷¹ DEP, *Presentation to Senate Committee on Environment and Natural Resources*, 40-62 (Nov. 13, 2019) available at http://www.flsenate.gov/Committees/Show/EN/MeetingPacket/4733/8393_MeetingPacket_4733.13.19.pdf; DEP Technical Advisory Committee, *Biosolids Use and Regulations in Florida Presentation*, 20 (Sept. 2018), available at



Regulation of Biosolids by the DEP

The DEP regulates three classes of biosolids for beneficial use.

- Class B - minimum level of treatment;
- Class A - intermediate level of treatment; and
- Class AA - highest level of treatment.¹⁷²

The DEP categorizes the classes based on treatment and quality. Treatment of biosolids must:

- Reduce or completely eliminate pathogens;
- Reduce the attractiveness of the biosolids for pests (such as insects and rodents); and
- Reduce the amount of toxic metals in the biosolids.¹⁷³

<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.

¹⁷² *Id.* at 6.

¹⁷³ *Id.* at 7.

Class AA biosolids can be distributed and marketed as fertilizer. Because they are the highest quality, they are not subject to the same regulations as Class A and Class B biosolids and are exempt from nutrient restrictions.¹⁷⁴ Typically, Class B biosolids are used in land application.¹⁷⁵

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, applicers, and distributors¹⁷⁶ and include permit requirements for both treatment facilities and biosolids application sites.¹⁷⁷

Each permit application for a biosolids application site must include a site-specific nutrient management plan (NMP) that establishes the specific rates of application and procedures to apply biosolids to land.¹⁷⁸ Biosolids may only be applied to land application sites that are permitted by the DEP and have a valid NMP.¹⁷⁹ Biosolids must be applied at rates established in accordance with the nutrient management plan and may be applied to a land application site only if all concentrations of minerals do not exceed ceiling and cumulative concentrations determined by rule.¹⁸⁰ According to the St. Johns Water Management District, application rates of biosolids are determined by crop nitrogen demand, which can often result in the overapplication of phosphorus to the soil and can increase the risk of nutrient runoff into nearby surface waters.¹⁸¹

Once a facility or site is permitted, it is subject to monitoring, record-keeping, reporting, and notification requirements.¹⁸² The requirements are site-specific and can be increased or reduced by the DEP based on the quality or quantity of wastewater or biosolids treated; historical variations in biosolids characteristics; industrial wastewater or sludge contributions to the facility; the use, land application, or disposal of the biosolids; the water quality of surface and ground water and the hydrogeology of the area; wastewater or biosolids treatment processes; and the compliance history of the facility or application site.¹⁸³

State Bans on the Land Application of Biosolids

Section 373.4595, F.S., sets out the statutory guidelines for the Northern Everglades and Estuaries Protection Program. This statute is designed to protect and promote the hydrology of Lake Okeechobee, and the Caloosahatchee and St. Lucie Rivers and their estuaries. As part of those protections, the Legislature banned the disposal of domestic wastewater biosolids within the Lake Okeechobee, Caloosahatchee River, and St. Lucie River watersheds unless the applicant can affirmatively demonstrate that the nutrients in the biosolids will not add to nutrient

¹⁷⁴ *Id.* at 8.

¹⁷⁵ *Id.* at 6.

¹⁷⁶ Fla. Admin. Code R. 62-640.100.

¹⁷⁷ Fla. Admin. Code R. 62-640.300.

¹⁷⁸ Fla. Admin. Code R. 62-640.500.

¹⁷⁹ *Id.*

¹⁸⁰ Fla. Admin. Code R. 62-640.700.

¹⁸¹ Victoria R. Hoge, Environmental Scientist IV, St. Johns River Water Management District, *Developing a Biosolids Database for Watershed Modeling Efforts*, abstract available at

http://archives.waterinstitute.ufl.edu/symposium2018/abstract_detail.asp?AssignmentID=1719 (last visited Mar. 8, 2019).

¹⁸² Fla. Admin. Code R. 62-640.650.

¹⁸³ *Id.*

loadings in the watershed.¹⁸⁴ The prohibition against land application in these watersheds does not apply to Class AA biosolids that are distributed as fertilizer products in accordance with Rule 62-640.850 of the Florida Administrative Code.¹⁸⁵

The land application of Class A and Class B biosolids is also prohibited within priority focus areas in effect for Outstanding Florida Springs if the land application is not in accordance with a NMP that has been approved by the DEP.¹⁸⁶ The NMP must establish the rate at which all biosolids, soil amendments, and nutrient sources at the land application site can be applied to the land for crop production while minimizing the amount of pollutants and nutrients discharged into groundwater and waters of the states.¹⁸⁷

Local Regulation of Biosolids

The Indian River County Code addresses land application of biosolids by providing criteria for designated setbacks, reporting requirements, and required approval. In July 2018, the Indian River County Commission voted for a six-month moratorium on the land application of Class B biosolids on all properties within the unincorporated areas of the county.¹⁸⁸ The ordinance also directs the County Administrator to coordinate with the DEP on a study to report the findings and recommendations concerning Class B biosolids land application activities and potential adverse effects.¹⁸⁹ The County Commission voted in January 2019 to extend the moratorium for an additional six months.¹⁹⁰

The City Council of Fellsmere adopted a similar moratorium, Ordinance 2018-06, in August 2018, authorizing a temporary moratorium for 180 days or until a comprehensive review of the impact on the city's ecosystem is completed.¹⁹¹ In January 2019, the ordinance was extended for an additional 180 days.¹⁹²

The Treasure Coast Regional Planning Council held a Regional Biosolids Symposium in June 2018, where regional representatives and stakeholders discussed biosolids and alternative techniques for disposal.¹⁹³ At its meeting in July, the Treasure Coast Regional Planning Council adopted a resolution encouraging state and local governments to prioritize the reduction and eventual elimination of the land application of human wastewater biosolids.¹⁹⁴ It also encouraged

¹⁸⁴ Chapter 2016-1, Laws of Florida; *see* s. 373.4595, F.S.

¹⁸⁵ *Id.*

¹⁸⁶ Section 373.811(4), F.S.

¹⁸⁷ *Id.*

¹⁸⁸ Indian River County Commission Ordinance 18-2020 (Jul. 17, 2018), *available at* http://ircgov.granicus.com/player/clip/183?view_id=1&meta_id=64650 (last visited Dec. 9, 2019).

¹⁸⁹ *Id.*

¹⁹⁰ Indian River County Commission Ordinance 18-2642 (Jan. 14, 2019), *available at* http://ircgov.granicus.com/player/clip/204?view_id=1&meta_id=77302 (last visited Dec. 9, 2019).

¹⁹¹ Fellsmere City Council Meeting, *Agenda* (Aug. 16, 2018), *available at* https://www.cityoffellsmere.org/sites/default/files/fileattachments/city_council/meeting/8301/co20180816agenda.pdf.

¹⁹² Fellsmere City Council Meeting, *Agenda* (Feb. 7, 2019), *available at* https://www.cityoffellsmere.org/sites/default/files/fileattachments/city_council/meeting/14391/co20190221agenda.pdf.

¹⁹³ Treasure Coast Regional Planning Council Regional Biosolids Symposium, *Charting the Future of Biosolids Management Executive Summary* (Jun. 18, 2018), *available at* <http://www.tcrpc.org/announcements/Biosolids/summit%20summary.pdf>.

¹⁹⁴ Treasure Coast Regional Planning Council Resolution 18-03 (Jul. 20, 2018), *available at* <http://www.flregionalcouncils.org/wp-content/uploads/2019/01/Treasure-Coast-Resolution-No.-18-03.pdf>.

the state to establish a Pilot Projects Program to incentivize local utilities to implement new wastewater treatment technologies that would allow more efficient use of biosolids.¹⁹⁵

Rule Development

In 2018, the DEP created a Biosolids Technical Advisory Committee (TAC) to establish an understanding of potential nutrient impacts of the land application of biosolids, evaluate current management practices, and explore opportunities to better protect Florida's water resources. The TAC members represent various stakeholders, including environmental and agricultural industry experts, large and small utilities, waste haulers, consultants, and academics.¹⁹⁶

The TAC convened on four occasions from September 2018 to January 2019 and discussed the current options for biosolids management in the state, ways to manage biosolids to improve the protection of water resources, and research needs to build upon and improve biosolids management.¹⁹⁷

Based on recommendations of the TAC and public input, the DEP published a draft rule on October 29, 2019.¹⁹⁸ Key proposals in the draft rule include:

- A prohibition on the land application of biosolids where the seasonal high water table is within 15 cm of the soil surface or 15 cm of the intended depth of biosolids placement. The existing rule requires a soil depth of two feet between the depth of biosolids placement and the water table level at the time the Class A or Class B biosolids are applied to the soil.
- A requirement that land application must be done in accordance with applicable BMAPs.
- Definitions for “capacity index,” “percent water extractable phosphorus,” and “seasonal high water table.”
- More stringent requirements must be provided in the Nutrient Management Plan.
- All biosolids sites must enroll in a DACS BMP Program.
- All biosolids applications are considered projects of heightened public concern/interest,¹⁹⁹ meaning that a permit applicant must publish notice of their application one time only within fourteen days after a complete application is filed.²⁰⁰
- Increased monitoring for surface and groundwater.
- The requirement measures to be taken to prevent leaching of nutrients for the storage of biosolids.
- Existing facilities must be in compliance with the new rule within three years of the adoption date.

¹⁹⁵ *Id.*

¹⁹⁶ The seven members of TAC included two academic representatives from the University of Florida, two representatives of small and large utilities, and one representative each for environmental interests, agricultural interests, and waste haulers.

¹⁹⁷ DEP, *DEP Biosolids Technical Advisory Committee*, <https://floridadep.gov/water/domestic-wastewater/content/dep-biosolids-technical-advisory-committee> (last visited Mar. 6, 2019).

¹⁹⁸ Florida Department of State, Notice of Proposed Rule: Rule No.: 62-640.100, 62-640.200, 62-640.210, 62-640.300, 62-640.500, 62-640.600, 62-640.650, 62-640.700, 62-640.800, 62-640.850, 62-640.880 (Oct. 29, 2019), https://www.flrules.org/gateway/View_Notice.asp?id=22546212 (last visited Dec. 5, 2019).

¹⁹⁹ Note: the draft rule uses the phrase “public interest” but the rule cross-referenced in the draft rule uses the phrase “public concern.”

²⁰⁰ Fla. Admin. Code R. 62-110.106(6).

This biosolids rule required a SERC that exceeds the threshold to trigger the requirement for legislative ratification.²⁰¹ The SERC makes the following statements:

The revised rule may significantly reduce biosolids land application rates (the amount applied per acre on an annual basis) by an estimated 75 percent. In 2018, just under 90,000 dry tons of Class B biosolids were applied to biosolids land application sites with about 84,000 acres of the currently permitted 100,000 acres in Florida. Reduced land application rates would necessitate the permitting about four to ten times more land to accommodate the current quantity of land applied Class B biosolids.

As haulers have already permitted land application sites closer to the domestic wastewater facilities that generate biosolids, any additional sites are expected to be at greater distances from these facilities. This could result in longer hauling distances. Additionally, some existing sites may cease land application completely, either because the site may not be suitable for land application or because the landowner may not want to subject their property to ground water or surface water quality monitoring. The additional site monitoring requirements for ground water and surface water will also increase operational costs, so some biosolids site permittees, especially for smaller sites, may choose to cease operations. Under the proposed rule, some portion of currently land-applied Class B biosolids are expected to then be disposed of in landfills or be converted to Class AA biosolids. The reduction in land application rates, loss of land application sites, and shift away from land application could result in:

- Loss of biosolids hauling contracts.
- Loss of jobs with biosolids hauling companies.
- Loss of grass production and income for landowners.
- Increased operational expenses for biosolids haulers, and;
- Loss of cost savings and production for cattle ranchers and hay farmers.

Under the revised rule, biosolids land application rates will drop by an average of 75 percent. Some farmers indicate an economic value of about \$60 per acre in fertilizer savings through biosolids land application. In 2018, approximately 84,000 acres were utilized for the land application of biosolids, which would represent a current fertilizer cost savings of approximately \$5,040,000. This would be a loss of \$3,780,000 in cost savings annually if 75 percent less biosolids can be applied per acre.²⁰²

The SERC includes the following statewide estimates:

- Capital costs for new permitting and land application sites of \$10 million;
- Recurring costs for additional sites and transportation of wet biosolids of at least \$31 million; and

²⁰¹ DEP, *Statement of Estimated Regulatory Costs (SERC)*, available at https://content.govdelivery.com/attachments/FLDEP/2019/10/29/file_attachments/1313532/62-640%20SERC.pdf.

²⁰² *Id.*

- Additional monitoring costs of \$1 million.²⁰³

The DEP expects more biosolids to be converted to class AA biosolids/fertilizer. They estimate the capital cost for additional class AA biosolids projects will be between \$300-\$400 million.²⁰⁴ The DEP is currently reviewing lower cost regulatory alternatives that have been submitted.²⁰⁵ The next step will be a hearing before the Environmental Regulation Commission and adoption of the rule. Following rule adoption, legislative ratification is required.²⁰⁶

Damages and Monetary Penalties

The DEP may institute a civil action (in court) or an administrative proceeding (in the Division of Administrative Hearings) to recover damages for any injury to the air, waters, or property, including animal, plant, and aquatic life, of the state caused by any violation.²⁰⁷ Civil actions and administrative proceedings have different procedures.²⁰⁸ Administrative proceedings are often viewed as less formal, less lengthy, and less costly.

With respect to damages, the violator is liable for:

- Damage caused to the air, waters, or property, including animal, plant, or aquatic life, of the state; and
- Reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including animal, plant, and aquatic life, of the state to their former condition.²⁰⁹

In addition to damages, a violator can be liable for penalties. For civil penalties, the DEP can levy up to \$10,000 per offense. Each day of the violation is a separate offense. The DEP is directed to proceed administratively in all cases in which the DEP seeks penalties that do not exceed \$10,000 per assessment. The DEP is prohibited from imposing penalties in excess of \$10,000 in a notice of violation. The DEP cannot have more than one notice of violation pending against a party unless it occurred at a different site or the violations were discovered by the department subsequent to the filing of a previous notice of violation.²¹⁰

Section 403.121(3), F.S., sets out a penalty schedule for various violations. In particular, it includes the following penalties related to wastewater:

- \$1,000 for failure to obtain a required wastewater permit.
- \$2,000 for a domestic or industrial wastewater violation not involving a surface water or groundwater quality violation resulting in an unpermitted or unauthorized discharge or effluent-limitation exceedance.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ Email from Justin Wolfe, General Counsel, DEP, RE: Biosolids Rule (Dec. 2. 2019)(on file with the Environment and Natural Resources Committee).

²⁰⁶ Section 120.541(3), F.S.

²⁰⁷ Section 403.121, F.S.

²⁰⁸ Sections 403.121 and 403.141, F.S.

²⁰⁹ Section 403.121, F.S.

²¹⁰ *Id.*

- \$5,000 for an unpermitted or unauthorized discharge or effluent-limitation exceedance that resulted in a surface water or groundwater quality violation.²¹¹

A court or an administrative law judge may receive evidence in mitigation.²¹² The DEP may also seek injunctive relief either judicially or administratively.²¹³ Additionally, criminal penalties are available for various types of violations of chapter 403, F.S.²¹⁴

The Rights of Nature Movement

The Rights of Nature Movement is the concept of recognizing that nature has legal rights and legal standing in a court of law.²¹⁵ “It is the recognition that our ecosystems – including trees, oceans, animals, and mountains – have rights just as human beings have rights.”²¹⁶

Standing is a party’s right to make a legal claim or seek judicial enforcement of a duty or right.²¹⁷ To have standing in federal court, a plaintiff must show that the challenged conduct has caused the plaintiff actual injury and that the interest sought to be protected is within the zone of interests meant to be regulated by the statutory or constitutional guarantee.²¹⁸ Under the Rights of Nature concept, an ecosystem could be named as an injured party in a court of law, with its own legal standing rights. Proponents of the Rights of Nature see legal personhood as a promising tool for protecting nature and analogous to corporate personhood and the protection of corporate rights.²¹⁹

Ecuador includes a Rights of Nature provision in its constitution.²²⁰ Under the Ecuadorian constitution, nature has rights “to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.”²²¹ Bolivia, New Zealand, India,²²² and Colombia²²³ have also taken steps toward recognizing rights of nature.

The Pennsylvania Constitution contains a provision stating “the people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people,

²¹¹ Section 403.121(3)(b), F.S.

²¹² Section 403.121(3)(b), F.S.

²¹³ Section 403.121(3)(b), F.S.

²¹⁴ Section 403.161, F.S.

²¹⁵ Global Alliance for the Rights of Nature, *What is Rights of Nature?*, <https://therightsofnature.org/what-is-rights-of-nature/> (last visited Jan. 18, 2020); Community Environmental Defense Fund, *Champion the Rights of Nature*, <https://celdf.org/advancing-community-rights/rights-of-nature/> (last visited Jan. 18, 2020).

²¹⁶ *Id.*

²¹⁷ BLACK’S LAW DICTIONARY, 1536 (9th ed. 2009).

²¹⁸ *Id.*

²¹⁹ Gwendolyn J. Gordon, *Environmental Personhood*, 50, 43 COLUM. J. ENVTL. L. 49 (Jan. 11, 2019) (citing *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751 (2014); *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010)).

²²⁰ Constitución Política de la República del Ecuador, art. 10, 71-74 (Ecuador), English translation available at <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>.

²²¹ *Id.*

²²² See generally, Gwendolyn J. Gordon, *Environmental Personhood*, 50, 43 COLUM. J. ENVTL. L. 49 (Jan. 11, 2019).

²²³ See, Patrick Parenteau, *Green Justice Revisited: Dick Brooks on the Laws of Nature and the Nature of Law*, 20 VT. J. ENVTL. L. 183, 186 (2019); Global Alliance for the Rights of Nature, *Columbia Constitutional Court Finds Atrato River Possesses Rights*, <https://therightsofnature.org/colombia-constitutional-court-finds-atrato-river-possesses-rights/> (last visited Jan. 19, 2020).

including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.”²²⁴ Based on this constitutional provision, a court overturned a Pennsylvania law protecting extractive interests from local ordinances to limit environmentally harmful activities.²²⁵ Local governments in Pennsylvania,²²⁶ Maine,²²⁷ New Hampshire,²²⁸ and California,²²⁹ among others, have enacted rights of nature provisions in their local ordinances. The idea is being discussed in various Florida communities, but no local ordinances have been adopted at this time.²³⁰

The Florida Environmental Protection Act

The Environmental Protection Act of 1971 authorizes the bringing of an action for injunctive relief to compel a governmental authority to enforce laws, rules, and regulations for the protection of the air, water, and other natural resources of the State of Florida or to enjoin a person or governmental agency or authority from violating any laws, rules, or regulations for the protection of the air, water, and other natural resources of the state.²³¹ In any administrative, licensing, or other proceedings authorized by law for the protection of the air, water, or other natural resources of the state from pollution, impairment, or destruction, the government or a citizen of the state has standing to intervene as a party on the filing of a pleading asserting that the activity to be licensed or permitted has or will have the effect of impairing, polluting, or otherwise injuring the air, water, or other natural resources of the state.²³² A citizen’s substantial interests are considered to be affected if the party demonstrates it may suffer an injury in fact which is of sufficient immediacy and is of the type and nature intended to be protected by law. No demonstration of special injury different in kind from the general public at large is required. A sufficient demonstration of a substantial interest may be made by a petitioner who establishes that the proposed activity, conduct, or product to be licensed or permitted affects the petitioner’s use or enjoyment of air, water, or natural resources protected by law.²³³

In *Florida Wildlife Federation v. State Dept. of Environmental Regulation*, the Florida Supreme Court held that the Environmental Protection Act (Act) sets out substantive rights not previously possessed.²³⁴ Private citizens of Florida may institute a suit under the Act without showing of special injury required by traditional rules of standing.²³⁵ The Act does not constitute an impermissible intrusion by the Legislature into the Supreme Court’s power over practice and procedure in state courts, but rather creates a new cause of action setting out substantive rights

²²⁴PA. CONST. art. 1, § 27

²²⁵ *Robinson v. Commonwealth*, 83 A.3d 901 (2013).

²²⁶ See City of Pittsburgh Code of Ordinances, § 618.03.

²²⁷ Town of Shapleigh Code, §99-16.

²²⁸ Barrington, NH, Community Bill of Rights §2(e), available at https://www.barrington.nh.gov/sites/barringtonnh/files/uploads/bill_of_rights.pdf.

²²⁹ Santa Monica Municipal Code, Ch. 12.02.030.

²³⁰ SAFEBOB, *Welcome to the Santa Fe River Bill of Rights Campaign*, <https://safebor.org/> (last visited Jan. 23, 2020); Global Alliance for the Rights of Nature, *The Rights of Nature Movement has Arrived to Florida*, <https://therightsofnature.org/the-rights-of-nature-movement-has-arrived-to-florida/> (last visited Jan. 23, 2020).

²³¹ Section 403.412(2)(a), F.S.

²³² Section 403.412(5), F.S.

²³³ *Id.*

²³⁴ 390 So.2d 64 (Fla. 1980).

²³⁵ *Id.*

not previously possessed and enabling the citizens of Florida to institute suit for the protection of their environment without a showing of "special injury" as previously required.²³⁶

Regulation of Bottled Water

The U.S. Food and Drug Administration regulates the bottled water industry for safety and water quality.²³⁷ Bottled water is water intended for human consumption that is sealed in bottles or other containers with no added ingredients except that it may optionally contain safe and suitable antimicrobial agents.²³⁸ A "bottled water plant" is an establishment in which bottled water is prepared for sale.²³⁹ In Florida, the regulation of bottled water plants is preempted to the state.²⁴⁰ The DACS Division of Food Safety regulates bottling, labeling, and handling at bottled water plants.²⁴¹ The DACS requires bottled water plants to obtain a food permit, which must be renewed annually.²⁴²

Florida law requires that bottled water come from an "approved source," which is defined as any source of water that complies with the federal Safe Drinking Water Act.²⁴³ Bottled water must be processed in conformance with the applicable federal regulations.²⁴⁴ It must conform to specific federal standards for water quality, label statements, and adulteration.²⁴⁵ If the label bears a name or trademark containing terms such as "springs," "well," or "natural" then the label must also state the source of the water, if the correct source is not indicated in the name or trademark.²⁴⁶ The person operating the bottled water plant is responsible for all water sampling and analysis.²⁴⁷

²³⁶ *Id.*

²³⁷ 21 C.F.R. pt. 129; 21 C.F.R. s. 165.110; FDA, *FDA Regulates the Safety of Bottled Water Beverages Including Flavored Water and Nutrient-Added Water Beverages*, <https://www.fda.gov/food/buy-store-serve-safe-food/fda-regulates-safety-bottled-water-beverages-including-flavored-water-and-nutrient-added-water> (last visited Jan. 6, 2020).

²³⁸ Section 500.03(1)(d), F.S. Florida law defines "bottled water" using the description provided in federal regulation; 21 C.F.R. s. 165.110(a)(1). The full description of "bottled water" in the federal regulation is: "water that is intended for human consumption and that is sealed in bottles or other containers with no added ingredients except that it may optionally contain safe and suitable antimicrobial agents. Fluoride may be optionally added within the limitations established in § 165.110(b)(4)(ii). Bottled water may be used as an ingredient in beverages (e.g., diluted juices, flavored bottled waters). It does not include those food ingredients that are declared in ingredient labeling as "water," "carbonated water," "disinfected water," "filtered water," "seltzer water," "soda water," "sparkling water," and "tonic water." The processing and bottling of bottled water shall comply with applicable regulations in part 129 of this chapter."

²³⁹ Section 500.03(1)(e), (n), and (p), F.S.

²⁴⁰ Section 500.511, F.S.; see s. 367.022(1), F.S. The sale, distribution, or furnishing of bottled water is not regulated by the Florida Public Service Commission as a utility.

²⁴¹ Section 500.12, F.S.; see DACS, *Food Establishments*, <https://www.fdacs.gov/Business-Services/Food-Establishments> (last visited Jan. 6, 2020); see DEP, *Source & Drinking Water Program*, <https://floridadep.gov/water/source-drinking-water> (last visited Jan. 6, 2020).

²⁴² Section 500.12(1)(b) and (c), F.S.; Fla. Admin. Code R. 5K-4.020(4)(b). The annual permitting fee for a bottled water plant is \$500.

²⁴³ Sections 500.03(1)(c) and 500.147(3), F.S.; see s. 500.03(1)(w), F.S. "Natural water" is defined as "bottled spring water, artesian well water, or well water that has not been altered with water from another source or that has not been modified by mineral addition or deletion, except for alteration that is necessary to treat the water through ozonation or an equivalent disinfection and filtration process."

²⁴⁴ Section 500.147(3), F.S.; 21 C.F.R. pt. 129.

²⁴⁵ Section 500.147(3), F.S.; 21 C.F.R. s. 165.110; see DACS, Division of Food Safety, *Bottled Water Testing Requirements*, <https://www.fdacs.gov/content/download/72733/file/Bottled-Water-Testing-Requirements.pdf> (last visited Jan. 6, 2020).

²⁴⁶ Section 500.11(1)(o), F.S.

²⁴⁷ Section 500.147(3), F.S.

Consumptive Use Permits

Consumptive use is any use of water which reduces the supply from which it is withdrawn or diverted.²⁴⁸ A consumptive use permit (CUP), also known as a water use permit (WUP), establishes the duration and type of water use as well as the maximum quantity of water that may be withdrawn.²⁴⁹ The DEP and the WMDs are authorized to issue CUPs and impose reasonable conditions as necessary to assure such use is consistent with the DEP or the WMDs goals and is not harmful to the water resources of the area.²⁵⁰ This authority is primarily delegated to the WMDs, which implement extensive CUP programs within their respective jurisdictions.²⁵¹ To obtain a CUP, an applicant must establish that the proposed use of water:

- Is a reasonable-beneficial use;²⁵²
- Will not interfere with any presently existing legal use of water; and
- Is consistent with the public interest.²⁵³

Each of the five WMDs publishes an applicant's handbook, incorporated by reference into their respective rules, identifying the procedures and information used by district staff for review of CUP applications.²⁵⁴ Generally, there are two types of CUP permits: general permits that may be granted by rule based on regulatory thresholds for factors such as withdrawal volume or pipe diameter, and individual permits requiring applications when regulatory thresholds are exceeded.²⁵⁵ The WMDs have different schedules for application processing fees, which can vary based on total requested withdrawal amounts or type of application.²⁵⁶ The DEP and the WMDs are authorized to grant permits for a period of up to 20 years, if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit.²⁵⁷

²⁴⁸ Fla. Admin. Code R. 62-40.210(4).

²⁴⁹ Chapter 373, part II, F.S.

²⁵⁰ Section 373.219, F.S. No permit is required for domestic consumption of water by individual users.

²⁵¹ Section 373.216, F.S.; Fla Admin. Code Chapters 40A-2, 40B-2, 40C-2, 40D-2, and 40E-2.

²⁵² Section 373.019(16), F.S. "Reasonable-beneficial use" is defined as "the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest"; Fla. Admin. Code R. 62-40.410. DEP rules contain a list of factors that must be considered when determining whether a water use is a reasonable-beneficial use.

²⁵³ Section 373.223, F.S.; see s. 373.229, F.S. Permit applications must contain certain specified information.

²⁵⁴ South Florida WMD, *Applicant's Handbook for Water Use Permit Applications* (2015)[hereinafter *SFWMD WUP Handbook*], available at https://www.sfwmd.gov/sites/default/files/documents/wu_applicants_handbook.pdf; Southwest Florida WMD, *Water Use Permit - Applicant's Handbook Part B* (2015)[hereinafter *SWFWMD WUP Handbook*], available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/WUP_Applicants_Handbook_Part_B.pdf; St. John's River WMD, *Applicant's Handbook: Consumptive Uses of Water* (2018)[hereinafter *SJRWMD CUP Handbook*], available at <https://www.sjrwmd.com/static/permitting/CUP-Handbook-20180829.pdf>; Northwest Florida WMD, *Water Use Permit Applicant's Handbook* (2015)[hereinafter *NFWWMD WUP Handbook*], available at https://www.nfwwater.com/content/download/8605/71075/Applicant_Handbook_201504.pdf; Suwannee River WMD, *Water Use Permit Applicant's Handbook* (2019)[hereinafter *SRWMD WUP Handbook*], available at https://www.flrules.org/gateway/readRefFile.asp?refId=11315&filename=REFERENCE%20MATERIAL_WUP%20Applicant%27s%20Handbook%20FINAL%2010-31-2019.pdf.

²⁵⁵ See Michael T. Olexa et al., University of Florida, Institute of Food and Agricultural Sciences, *Handbook of Florida Water Regulation: Consumptive Use*, 2 (2017), available at <https://edis.ifas.ufl.edu/pdf/FE/FE60400.pdf>; The water management districts' respective rules contain various exemptions from CUP permitting, such as for firefighting purposes.

²⁵⁶ See s. 373.109, F.S.

²⁵⁷ Section 373.236, F.S.

The WMDs are required to include appropriate monitoring efforts as part of their CUP programs.²⁵⁸ CUPs must be monitored when they authorize groundwater withdrawals of 100,000 gallons or more per day from a well with an inside diameter of eight inches or more.²⁵⁹ Such monitoring must be at intervals and must use methods determined by the applicable WMD.²⁶⁰ The results of such monitoring must be reported to the applicable WMD at least annually.²⁶¹ The WMD's respective CUP applicant handbooks contain various monitoring standards, which may include thresholds for required monitoring, reporting requirements, and specific standards for metering.²⁶² Generally, pursuant to the handbooks, the permittee is responsible for required monitoring of withdrawal quantities.

Minimum Flows and Minimum Water Levels

Minimum Flows and Minimum Water Levels (MFLs) are adopted standards that identify the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area.²⁶³ The DEP and the WMDs are required to establish MFLs based on priority lists for surface water courses, aquifers, and surface waters.²⁶⁴ By establishing the limit at which further withdrawals would be significantly harmful, the MFLs provide a benchmark to help establish excess quantities of water that are available from priority water bodies. A key goal of establishing an MFL is to ensure there is enough water to satisfy the consumptive use of the water resource without causing significant harm to the resource.²⁶⁵

Consolidated Water Management District Annual Report

The Consolidated Water Management District Annual Report addresses both water supply and water quality. Each WMD must annually prepare and submit the report to the DEP, the Governor, and the Legislature.²⁶⁶

The report contains several reports required under the Florida Water Resources Act, including:

- A district water management plan annual report or the annual work plan report.
- The DEP-approved minimum flows and minimum water levels annual priority list and schedule.²⁶⁷
- The annual five year capital improvements plan.²⁶⁸
- The alternative water supplies annual report.²⁶⁹

²⁵⁸ Section 373.216, F.S.

²⁵⁹ Section 373.223(6), F.S. The water management districts are authorized to adopt or enforce certain rules in lieu of these requirements, in accordance with the statute.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *SFWMD WUP Handbook*, at 93-98; *SWFWMD WUP Handbook*, at 70-71, 76-92; *SJRWMD CUP Handbook*, at 4-1-4-3; *NWFWMD WUP Handbook*, at 63-64; *SRWMD WUP Handbook*, at 43-44, 50.

²⁶³ Section 373.042, F.S.

²⁶⁴ Sections 373.042 and 373.0421, F.S.; Fla. Admin. Code R. 62-40.473.

²⁶⁵ *see* DEP, *Minimum Flows and Minimum Water Levels and Reservations*, <https://floridadep.gov/water-policy/water-policy/content/minimum-flows-and-minimum-water-levels-and-reservations> (last visited Jan. 9, 2020).

²⁶⁶ Section 373.036(7)(a), F.S.

²⁶⁷ Section 373.042(3), F.S.

²⁶⁸ Section 373.536(6)(a)3., F.S.

²⁶⁹ Section 373.707(8)(n), F.S.

- The final annual five year water resource development work program.²⁷⁰
- The Florida Forever Water Management District Work Plan annual report.²⁷¹
- The mitigation donation annual report.²⁷²

The report must also contain information on all projects related to water quality or water quantity as part of a five year work program, including:

- A list of all specific projects identified to implement a basin management action plan or a recovery or prevention strategy;
- A priority ranking for each listed project for which state funding through the water resources development work program is requested, which must be made available to the public for comment at least 30 days before submission of the consolidated annual report;
- The estimated cost for each listed project;
- The estimated completion date for each listed project;
- The source and amount of financial assistance to be made available by the DEP, a WMD, or other entity for each listed project; and
- A quantitative estimate of each listed project's benefit to the watershed, water body, or water segment in which it is located.²⁷³

Appointment of the DEP Secretary

The head of the DEP is a secretary, who is appointed by the Governor, with the concurrence of three members of the Cabinet.²⁷⁴ The secretary must be confirmed by the Florida Senate and serves at the pleasure of the Governor.²⁷⁵

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

²⁷⁰ Section 373.536(6)(a)4., F.S.

²⁷¹ Section 373.199, F.S.

²⁷² Section 373.414(1)(b)2., F.S.

²⁷³ Section 373.036(7)(b)8.a.-f., F.S.

²⁷⁴ Section 20.255, F.S.

²⁷⁵ *Id.*

- 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.
- 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. 20.255, F.S., relating to the DEP. The bill revises the number of Cabinet members that are required to concur with the Governor to approve the secretary of the DEP from three members to one member of the Cabinet.

Section 4 amends s. 373.036, F.S., relating to the Florida water plan and district water management plans. The bill adds the Office of Economic and Demographic Research (EDR) to the list of entities each water management district (WMD) must submit its consolidated WMD annual report. As part of a five year work program included in the report, the bill clarifies that projects to connect OSTDSs to central sewerage systems and convert OSTDSs to enhanced nutrient reducing systems will be included in the specific projects identified to implement a BMAP.

Section 5 amends s. 373.223, F.S., relating to conditions for a consumptive use permit. The bill requires a unanimous vote by a WMD governing board to approve a consumptive use permit. The board must find that that the applicant's use:

- Is a reasonable-beneficial use;
- Will not interfere with any presently existing legal use of water; and
- Is consistent with the public interest.

This provision expires on June 30, 2022.

The bill also requires the DEP, in coordination with the WMD, to conduct a study on the bottled water industry in the state. The study must:

- Identify all springs statewide that have an associated consumptive use permit for a bottled water facility producing its product with water derived from a spring as well as:
 - The magnitude of the spring;
 - Whether the spring has been identified as an Outstanding Florida Spring;
 - Any DEP or WMD adopted minimum flow or minimum water levels, the status of any adopted minimum flow or minimum water levels, and any associated recovery or prevention strategy;
 - The permitted and actual use associated with the consumptive use permits;
 - The reduction in flow associated with the permitted and actual use associated with the consumptive use permits;
 - The impact bottled water facilities have on springs as compared to other users; and
 - The types of water conservation measures employed at bottled water facilities permitted to derive water from a spring.
- Identify the labeling and marketing regulations associated with the identification of bottled water as spring water, including whether these regulations incentivize the withdrawal of water from springs.
- Evaluate the direct and indirect economic benefits to the local communities resulting from bottled water facilities that derive water from springs, including but not limited to tax revenue, job creation, and wages.
- Evaluate the direct and indirect costs to the local communities located in proximity to springs impacted by withdrawals from bottled water production, including but not limited to, the decreased recreational value of the spring and the cost to other users for the development of alternative water supply or reductions in permit durations and allocations.
- Include a cost-benefit analysis of withdrawing, producing, marketing, selling, and consuming spring water as compared to other sources of bottled water.
- Evaluate how much bottled water derived from Florida springs is sold in this state.

The bill requires the DEP to submit a report containing the findings of the study to the Governor, the Legislature, and the EDR by June 30, 2021.

The bill defines the term “bottled water” to mean a beverage that is processed in compliance with federal law and the term “water derived from a spring” to mean water derived from an underground formation from which water flows naturally to the surface of the earth as spring water.

Section 6 amends s. 373.4131, F.S., relating to statewide environmental resource permitting (ERPs). The bill requires the DEP to train its staff on 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, including updates to the Environmental Resource Permit Applicant’s Handbooks, to update the stormwater design and operation regulations using the most recent scientific information available. As part of rule development, DEP must consider and address low-impact design

BMPs and design criteria that increase the removal of nutrients from stormwater discharges, and measures for consistent application of the net improvement performance standard to ensure significant reductions of any pollutant loadings to a waterbody; and

- The DEP must evaluate inspection data relating to compliance by those entities that submit self-certification stormwater ERPs and must provide the Legislature with recommendations for improvements to the self-certification.

*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.*²⁷⁶

Section 7 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 the effective date of these rules, the rules will supersede existing statutory revisions relating to setbacks. The DEP must report the effective date of the rules to the Division of Law Revision for incorporation into the statutes.

The bill deletes language that is inconsistent with these provisions. The bill also deletes the OSTDS research review and advisory committee and related 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.*²⁷⁷

Section 8 amends s. 381.0065, F.S., relating to OSDTS regulation, to require the DEP to implement a fast-track approval process for the use in this state of American National Standards Institute 245 systems approved by NSF International before July 1, 2020, to meet the requirements of a TMDL. This provision takes effect on July 1, 2020.

Section 9 creates s. 381.00652, F.S., to create an OSTDS technical advisory committee (TAC) within the DEP.

²⁷⁶ Section 120.541, F.S.

²⁷⁷ *Id.*

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 10 members to the TAC:

- A professional engineer.
- A septic tank contractor.
- Two representatives 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 10 repeals the DOH's technical review and advisory panel, effective July 1, 2021.

Section 11 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.*²⁷⁸

Section 12 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 13 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 allows a regulated entity to choose a different cost option if it complies with the pollutant reduction requirements of an adopted TMDL and provides additional benefits. It also requires an agricultural element as part of a BMAP and 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 necessary to achieve a TMDL. The bill clarifies that a local government is not responsible for a

²⁷⁸ *Id.*

private domestic wastewater facility's compliance with a BMAP unless such facility is operated through a public-private partnership to which the local government is a party.

An OSTDS remediation plan must be developed by each local government in cooperation with the DEP, the DOH, 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 collection and review of the BMP documentation from the previous two years 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 DACS must initially prioritize the inspection of agricultural producers located in the BMAPs for Lake Okeechobee, the Indian River Lagoon, the Caloosahatchee River and Estuary, and Silver Springs.

The bill creates a cooperative agricultural regional water quality improvement element as part of a BMAP. The DEP, the DACS, and owners of agricultural operations in the basin must develop a cooperative agricultural regional water quality improvement element as part of a BMAP only if:

- Agricultural measures have been adopted and implemented by the DACS and the waterbody remains impaired;
- Agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges; and
- The DEP determines that additional measures, in combination with state-sponsored regional projects and other management strategies included in the BMAP, are necessary to achieve the total maximum daily load.

The element must be implemented through the use of cost-sharing projects and must include cost-effective and technically and financially practical cooperative regional agricultural nutrient reduction projects that can be implemented on private properties on a site-specific, cooperative basis. These projects may include land acquisition in fee or conservation easements on the lands of willing sellers and site-specific water quality improvement or dispersed water management projects on the lands of project participants.

To qualify for participation in the element, the participant must have already implemented the interim measures, BMPs, or other measures adopted by the DACS. The element may be included in the BMAP as a part of the next five-year assessment. The DEP may submit a legislative budget request to fund projects under the element.

The bill requires the DACS, in cooperation with 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 nutrient runoff;
- 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 runoff 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, 2020, for the 2020-2021 fiscal year, and by May 1 for each subsequent fiscal year.

Section 14 creates s. 403.0671, F.S., relating to BMAP wastewater reports. The bill requires the DEP, by July 1, 2021, in coordination with county health departments, wastewater treatment facilities, and other governmental entities, to submit a report to the Governor and the Legislature evaluating the costs of wastewater projects identified in BMAPs, OSTDS remediation plans, and other restoration plans developed to meet TMDLs. The report must include:

- Projects to replace OSTDSs with enhanced nutrient removing OSTDSs; install or retrofit OSTDSs with enhanced nutrient removing technologies; construct, upgrade, or expand domestic wastewater treatment facilities to meet the wastewater treatment plan; and connect OSTDSs to domestic wastewater treatment facilities;
- The estimated costs, nutrient load reduction estimates, and other benefits of each project;
- The estimated implementation timeline for each project;
- A proposed five-year funding plan for each project and the source and amount of financial assistance the DEP, the WMD, or other project partner will make available to fund the project; and
- The projected costs of installing enhanced nutrient removing OSTDSs on buildable lots in priority focus areas to comply with statutory restrictions on the activities allowed in such areas.

The bill requires the DEP to submit a report to the Governor and the Legislature by July 1, 2021, that provides an assessment of the water quality monitoring being conducted for each BMAP implementing a nutrient TMDL. The bill specifies that the DEP may coordinate with the WMDs and any applicable university in developing the report. The bill requires the report to:

- Evaluate the water quality monitoring prescribed for each BMAP to determine if it is sufficient to detect changes in water quality caused by the implementation of a project;

- Identify gaps in water quality monitoring; and
- Recommend ways to address water quality needs.

The bill requires the DEP, beginning January 1, 2022, to submit annual cost estimates for projects listed in the wastewater treatment plans or OSTDS remediation plans to the EDR, and requires the EDR to include the estimates in its annual assessment of water resources and conservation lands.

Section 15 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 16 creates s. 403.0855, F.S., on biosolids management. The bill provides legislative findings and requires the DEP to adopt rules for biosolids management. The bill requires all biosolids application sites to meet the DEP rules in effect at the time of the renewal of the biosolids application site permit or facility permit, effective July 1, 2020.

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.

The bill requires a biosolids land application site permittee to:

- Conduct the land application of biosolids in accordance with adopted BMAPs.
- Establish a groundwater monitoring program approved by the DEP for land application sites when:
 - The application rate in the nutrient management plan exceeds more than 160 pounds per acre per year of total plant available nitrogen or 40 pounds per acre per year of total P2O5; or
 - The soil capacity index is less than 0 mg/kg.
- When soil fertility testing indicates the soil capacity index has become less than 0 mg/kg, establish a groundwater monitoring program in accordance with the DEP rules within one year of the date of the sampling results.
- When groundwater monitoring is not required, allow the DEP to install groundwater monitoring wells at any time during the effective period of the DEP-issued facility or land application site permit and conduct monitoring.
- Ensure a minimum unsaturated 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. Biosolids may not be applied on soils that have a seasonal high-water table less than 15 centimeters from the soil surface or within 15 centimeters of the intended depth of biosolids placement. As used in this section, the term “seasonal high water” means the elevation to which the ground and surface water may be expected to rise due to a normal wet season.
- Be enrolled in the DACS BMP Program or be within an agricultural operation enrolled in the program for the applicable commodity type.

The bill repeals the provision providing requirements for biosolids land application site permittees upon the effective date of biosolids rules adopted by the DEP after July 1, 2020.

Section 17 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 the DEP, by December 31, 2020, to submit a progress report to the Governor and the Legislature that provides the status of upgrades made by each wastewater treatment facility discharging into specified waterbodies to meet the advanced waste treatment requirements. The report must include a list of sewage disposal facilities that will be required to upgrade to advanced waste treatment, the preliminary cost estimates for the upgrades, and a projected timeline for the upgrades.

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 with at least a five-year planning horizon which 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; expenditures dedicated to pipe assessment, repair, and replacement; and expenditures designed to limit the presence of fats, roots, oils, and grease in the utility's collection system.

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.*²⁷⁹

Section 18 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 19 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 or responsible operating entity name; permitted capacity in annual average gallons per day; number of overflows; type of water discharged; total volume of sewage released; and, to the extent known and available, the

²⁷⁹ *Id.*

volume of sewage recovered, the volume of sewage discharged to surface waters, and the cause of the sanitary sewer overflow, including whether it was caused by a third party.

*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.*²⁸⁰

Section 20 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 21 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 22 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 or 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 23 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 24 amends s. 403.412, F.S., relating to the Environmental Protection Act. 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 does not limit:

²⁸⁰ *Id.*

- 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.

Section 25 provides a statement that this act fulfills an important state interest.

Sections 26 through 51 make conforming changes.

Section 52 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 53 states that except as otherwise expressly provided in the bill, the act will take effect July 1, 2020.

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.

There may be a negative fiscal impact to the public to implement the cooperative agricultural regional water quality improvement element. However, this may be offset by lowered pollution costs.

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.

There is likely a negative fiscal impact to both the public and private sectors to meet the requirements of the new provisions relating to biosolids. 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: 20.255, 153.54, 153.73, 163.3180, 180.03, 311.105, 327.46, 373.036, 373.223, 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, 403.412, 403.707, 403.861, 489.551, and 590.02.

This bill creates the following sections of the Florida Statutes: 381.00652, 403.0616, 403.0671, 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 20, 2020:

The committee substitute revises the title of the bill to “An act relating to environmental resource management” and:

- Revises appointment by the Governor of the Secretary of the DEP to require concurrence by one Cabinet member.
- Requires a unanimous vote by the governing board of a water management district to approve a consumptive use permit to use water from a spring for bottled water (provision expires on June 30, 2022).
- Requires the DEP to conduct a study on the bottled water industry in Florida.
- Revises the requirements of the consolidated water management district annual report.
- Adds updates to the Environmental Resource Permit Applicant's Handbooks to the requirement that the DEP and water management districts update stormwater design and operation regulations, and includes factors that the DEP must consider in rulemaking.
- Requires the DEP to implement a fast track-approval process for the use in Florida of NSF/ANSI 245 septic systems approved before July 1, 2020 to meet TMDL requirements.
- Deletes the septic research review and advisory committee.
- Adds an additional representative of the home building industry to the septic technical advisory committee, for a total of 10 members.
- Requires a BMAP to include an estimated allocation of the pollutant load reduction for each point source or category of point sources.
- Provides that a local government is not responsible for a private domestic wastewater facility's compliance with a BMAP unless the facility is operated through a public-private partnership to which the local government is a party.
- For wastewater projects in a BMAP, allows a regulated entity to choose a different cost option if it complies with the pollutant reduction requirements of an adopted TMDL and provides additional benefits.
- Requires the DACS to prioritize the inspection of agricultural producers located in the BMAPs for Lake Okeechobee, the Indian River Lagoon, the Caloosahatchee River and Estuary, and Silver Springs.
- Authorizes BMAPs to include cooperative agricultural regional water quality improvements (agricultural element), in addition to existing strategies such as BMPs and interim measures, if agricultural measures have been implemented and the water body remains impaired, agricultural nonpoint sources contributed to at least 20 percent of nonpoint source nutrient discharges, and the DEP determines that additional measures are necessary to achieve the TMDL.
- Authorizes legislative budget requests to fund cooperative regional agricultural nutrient reduction projects.
- Requires the DEP to work with UF/IFAS and regulated entities to consider the adoption by rule of BMPs for nutrient impacts from golf courses.
- Requires the DEP to submit various reports to the Governor and the Legislature regarding:
 - The costs of wastewater projects identified in BMAPs, septic remediation plans, and other restoration plans developed to meet TMDLs.
 - An assessment of the water quality monitoring being conducted for each BMAP implementing a nutrient TMDL.

- The status of upgrades made by each wastewater treatment facility discharging into specified waterbodies to meet advanced waste treatment requirements.
- Provides requirements for biosolids application site permittees including a prohibition on application of biosolids within 15 centimeters of the seasonal high-water table, adopting agricultural BMPs, and increasing monitoring requirements. Many of these requirements are repealed once the DEP rules go into effect.
- Revises the requirement that facilities for sanitary sewage disposal develop pipe assessment, repair, and replacement action plans in the underlying bill to require the action plans to have a five-year planning horizon.
- 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.
- 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 environmental resource management;
3 providing a short title; requiring the Department of
4 Health to provide a report regarding the Onsite Sewage
5 Program to the Governor and Legislature by a specified
6 date; directing the Department of Health and the
7 Department of Environmental Protection to submit
8 recommendations regarding the transfer of the program
9 to the Governor and Legislature by a specified date;
10 requiring the departments to enter into an interagency
11 agreement that meets certain requirements by a
12 specified date; transferring the Onsite Sewage Program
13 in the Department of Health to the Department of
14 Environmental Protection; providing that certain
15 employees retain and transfer certain types of leave
16 upon the transfer; amending s. 20.255, F.S.; revising
17 the number of Cabinet members required to concur with
18 the appointment of the Secretary of Environmental
19 Protection; amending s. 373.036, F.S.; directing water
20 management districts to submit consolidated annual
21 reports to the Office of Economic and Demographic
22 Research; requiring such reports to include connection
23 and conversion projects for onsite sewage treatment
24 and disposal systems; amending s. 373.223, F.S.;
25 requiring the Department of Environmental Protection,

26 in coordination with the water management districts,
27 to conduct a study on the bottled water industry in
28 the state; providing requirements for the study;
29 requiring the department to submit a report to the
30 Governor, Legislature, and Office of Economic and
31 Demographic Research by a specified date; providing
32 definitions; prohibiting the approval of certain
33 consumptive use permits; providing exceptions;
34 providing for expiration of such prohibition; amending
35 s. 373.4131, F.S.; requiring the Department of
36 Environmental Protection to include stormwater
37 structural control inspections as part of its regular
38 staff training; requiring the department and the water
39 management districts to adopt rules regarding
40 stormwater design and operation regulations by a
41 specified date and address specified information as
42 part of such rule development; requiring the
43 department to evaluate data relating to self-
44 certification and provide the Legislature with
45 recommendations for improvements; amending s.
46 381.0065, F.S.; authorizing the use of specified
47 nutrient reducing onsite sewage treatment and disposal
48 systems to meet certain total maximum daily load
49 requirements; requiring the Department of
50 Environmental Protection to adopt rules relating to

51 the location of onsite sewage treatment and disposal
52 systems and complete such rulemaking by a specified
53 date; providing requirements for such rules; requiring
54 the department to determine that a hardship exists for
55 certain variance applicants; providing a definition;
56 providing that certain provisions relating to existing
57 setback requirements are applicable to permits only
58 until the effective date of certain rules adopted by
59 the department; removing provisions requiring certain
60 onsite sewage treatment and disposal system research
61 projects to be approved by a Department of Health
62 technical review and advisory panel; removing
63 provisions prohibiting the award of research projects
64 to certain entities; removing provisions establishing
65 a Department of Health onsite sewage treatment and
66 disposal system research review and advisory
67 committee; conforming provisions to changes made by
68 the act; amending s. 381.00651, F.S.; directing county
69 health departments to coordinate with the Department
70 of Environmental Protection to administer onsite
71 sewage treatment and disposal system evaluation and
72 assessment programs; conforming provisions to changes
73 made by the act; creating s. 381.00652, F.S.;
74 authorizing the Department of Environmental
75 Protection, in consultation with the Department of

76 Health, to appoint an onsite sewage treatment and
77 disposal systems technical advisory committee;
78 providing for committee purpose, membership, and
79 expiration; requiring the committee to submit its
80 recommendations to the Governor and Legislature;
81 repealing s. 381.0068, F.S., relating to the
82 Department of Health onsite sewage treatment and
83 disposal systems technical review and advisory panel;
84 amending s. 403.061, F.S.; requiring the department to
85 adopt rules relating to domestic wastewater collection
86 and transmission system pipe leakages and inflow and
87 infiltration; requiring the department to adopt rules
88 to require public utilities or their affiliated
89 companies holding, applying for, or renewing a
90 domestic wastewater discharge permit to file certain
91 annual reports and data with the department; creating
92 s. 403.0616, F.S.; requiring the department, subject
93 to legislative appropriation, to establish a real-time
94 water quality monitoring program; encouraging the
95 formation of public-private partnerships; amending s.
96 403.067, F.S.; requiring basin management action plans
97 for nutrient total maximum daily loads to include
98 wastewater treatment and onsite sewage treatment and
99 disposal system remediation plans that meet certain
100 requirements; requiring the Department of Agriculture

101 and Consumer Services to collect fertilizer
102 application records from certain agricultural
103 producers and provide the information to the
104 department annually by a specified date; requiring the
105 Department of Agriculture and Consumer Services to
106 perform onsite inspections of the agricultural
107 producers at specified intervals; providing for
108 prioritization of such inspections; requiring certain
109 basin management action plans to include cooperative
110 agricultural regional water quality improvement
111 elements; authorizing the Department of Agriculture
112 and Consumer Services, in cooperation with specified
113 entities, to annually develop research plans and
114 legislative budget requests relating to best
115 management practices by a specified date; requiring
116 such entities to submit such plans to the Department
117 of Environmental Protection and the Department of
118 Agriculture and Consumer Services by a specific date;
119 requiring the Department of Environmental Protection
120 to work with specified entities to consider the
121 adoption of best management practices for nutrient
122 impacts from golf courses; creating s. 403.0671, F.S.;
123 directing the Department of Environmental Protection,
124 in coordination with specified entities, to submit a
125 report regarding wastewater projects identified in the

basin management action plans to the Governor and
Legislature by a specified date and to submit certain
wastewater project cost estimates to the Office of
Economic and Demographic Research; creating s.
403.0673, F.S.; establishing a wastewater grant
program within the Department of Environmental
Protection; authorizing the department to distribute
appropriated funds for certain projects; providing
requirements for the distribution; requiring the
department to coordinate with each water management
district to identify grant recipients; requiring an
annual report to the Governor and Legislature by a
specified date; creating s. 403.0855, F.S.; providing
legislative findings regarding the regulation of
biosolids management in this state; requiring the
department to adopt rules; providing that such rules
are not effective until ratified by the Legislature;
providing requirements for certain biosolids land
application site permittees and permits; providing a
definition; authorizing the enforcement or extension
of certain local government regulations relating to
the land application of specified biosolids until such
regulations are repealed; amending s. 403.086, F.S.;
prohibiting sewage disposal facilities from disposing
waste into the Indian River Lagoon beginning on a

151 specified date without certain advanced waste
152 treatment; directing the Department of Environmental
153 Protection, in consultation with specified entities,
154 to submit a report to the Governor and Legislature by
155 a specified date; requiring sewage disposal facilities
156 to have a power outage contingency plan, to take steps
157 to prevent overflows and leaks and ensure that the
158 wastewater reaches the facility for appropriate
159 treatment, and to provide the Department of
160 Environmental Protection with certain information;
161 requiring the department to adopt rules; limiting the
162 scope of such rules; authorizing utilities and
163 operating entities to consolidate certain reports;
164 providing that specified compliance is evidence in
165 mitigation for assessment of certain penalties;
166 amending s. 403.087, F.S.; requiring the department to
167 issue operation permits for certain domestic
168 wastewater treatment facilities under certain
169 circumstances; amending s. 403.088, F.S.; revising the
170 permit conditions for a water pollution operation
171 permit; requiring the department to submit a report
172 identifying all domestic wastewater treatment
173 facilities that experienced sanitary sewer overflows
174 to the Governor and Legislature by a specified date;
175 amending s. 403.0891, F.S.; requiring model stormwater

management programs to contain model ordinances for nutrient reduction practices and green infrastructure; amending s. 403.121, F.S.; revising administrative penalties for violations of ch. 403, F.S.; amending ss. 403.1835 and 403.1838, F.S.; requiring the Department of Environmental Protection to give funding priority to certain domestic wastewater utility projects; amending s. 403.412, F.S.; prohibiting local governments from recognizing or granting certain legal rights to the natural environment or granting such rights relating to the natural environment to a person or political subdivision; providing construction; providing a determination and declaration of important state interest; amending ss. 153.54, 153.73, 163.3180, 180.03, 311.105, 327.46, 373.250, 373.414, 373.705, 373.707, 373.709, 373.807, 376.307, 380.0552, 381.006, 381.0061, 381.0064, 381.0101, 403.08601, 403.0871, 403.0872, 403.707, 403.861, 489.551, and 590.02, F.S.; conforming cross-references and provisions to changes made by the act; providing a directive to the Division of Law Revision; providing effective dates.

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

Section 1. This act may be cited as the "Clean Waterways

201 Act."

202 Section 2. (1) By July 1, 2020, the Department of Health
203 must provide a report to the Governor, the President of the
204 Senate, and the Speaker of the House of Representatives
205 detailing the following information regarding the Onsite Sewage
206 Program:

207 (a) The average number of permits issued each year;

208 (b) The number of department employees conducting work on
209 or related to the program each year; and

210 (c) The program's costs and expenditures, including, but
211 not limited to, salaries and benefits, equipment costs, and
212 contracting costs.

213 (2) By December 31, 2020, the Department of Health and the
214 Department of Environmental Protection shall submit
215 recommendations to the Governor, the President of the Senate,
216 and the Speaker of the House of Representatives regarding the
217 type two transfer of the Onsite Sewage Program in subsection
218 (4). The recommendations must address all aspects of the type
219 two transfer, including the continued role of the county health
220 departments in the permitting, inspection, and tracking of
221 onsite sewage treatment and disposal systems under the direction
222 of the Department of Environmental Protection.

223 (3) By June 30, 2021, the Department of Health and the
224 Department of Environmental Protection shall enter into an
225 interagency agreement based on the recommendations required

226 under subsection (2) and on recommendations from a plan that
227 must address all agency cooperation for a period of not less
228 than 5 years after the transfer, including:

229 (a) The continued role of the county health departments in
230 the permitting, inspection, data management, and tracking of
231 onsite sewage treatment and disposal systems under the direction
232 of the Department of Environmental Protection.

233 (b) The appropriate proportionate number of
234 administrative, auditing, inspector general, attorney, and
235 operational support positions, and their related funding levels
236 and sources and assigned property, to be transferred from the
237 Office of General Counsel, the Office of Inspector General, and
238 the Division of Administrative Services or other relevant
239 offices or divisions within the Department of Health to the
240 Department of Environmental Protection.

241 (c) The development of a recommended plan to address the
242 transfer or shared use of buildings, regional offices, and other
243 facilities used or owned by the Department of Health.

244 (d) Any operating budget adjustments that are necessary to
245 implement the requirements of this act. Adjustments made to the
246 operating budgets of the agencies in the implementation of this
247 act must be made in consultation with the appropriate
248 substantive and fiscal committees of the Senate and the House of
249 Representatives. The revisions to the approved operating budgets
250 for the 2021-2022 fiscal year which are necessary to reflect the

organizational changes made by this act must be implemented pursuant to s. 216.292(4)(d), Florida Statutes, and are subject to s. 216.177, Florida Statutes. Subsequent adjustments between the Department of Health and the Department of Environmental Protection which are determined necessary by the respective agencies and approved by the Executive Office of the Governor are authorized and subject to s. 216.177, Florida Statutes. The appropriate substantive committees of the Senate and the House of Representatives must also be notified of the proposed revisions to ensure their consistency with legislative policy and intent.

(4) Effective July 1, 2021, all powers, duties, functions, records, offices, personnel, associated administrative support positions, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds for the regulation of onsite sewage treatment and disposal systems relating to the Onsite Sewage Program in the Department of Health are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, to the Department of Environmental Protection.

(5) Notwithstanding chapter 60L-34, Florida Administrative Code, or any law to the contrary, employees who are transferred from the Department of Health to the Department of Environmental Protection to fill positions transferred by this act retain and

276 transfer any accrued annual leave, sick leave, and regular and
277 special compensatory leave balances.

278 Section 3. Subsection (1) of section 20.255, Florida
279 Statutes, is amended to read:

280 20.255 Department of Environmental Protection.—There is
281 created a Department of Environmental Protection.

282 (1) The head of the Department of Environmental Protection
283 shall be a secretary, who shall be appointed by the Governor,
284 with the concurrence of two or more ~~three~~ members of the
285 Cabinet. The secretary shall be confirmed by the Florida Senate.
286 The secretary shall serve at the pleasure of the Governor.

287 Section 4. Paragraphs (a) and (b) of subsection (7) of
288 section 373.036, Florida Statutes, are amended to read:

289 373.036 Florida water plan; district water management
290 plans.—

291 (7) CONSOLIDATED WATER MANAGEMENT DISTRICT ANNUAL REPORT.—

292 (a) By March 1, annually, each water management district
293 shall prepare and submit to the Office of Economic and
294 Demographic Research, the department, the Governor, the
295 President of the Senate, and the Speaker of the House of
296 Representatives a consolidated water management district annual
297 report on the management of water resources. In addition, copies
298 must be provided by the water management districts to the chairs
299 of all legislative committees having substantive or fiscal
300 jurisdiction over the districts and the governing board of each

301 county in the district having jurisdiction or deriving any funds
302 for operations of the district. Copies of the consolidated
303 annual report must be made available to the public, either in
304 printed or electronic format.

305 (b) The consolidated annual report shall contain the
306 following elements, as appropriate to that water management
307 district:

308 1. A district water management plan annual report or the
309 annual work plan report allowed in subparagraph (2)(e)4.

310 2. The department-approved minimum flows and minimum water
311 levels annual priority list and schedule required by s.
312 373.042(3).

313 3. The annual 5-year capital improvements plan required by
314 s. 373.536(6)(a)3.

315 4. The alternative water supplies annual report required
316 by s. 373.707(8)(n).

317 5. The final annual 5-year water resource development work
318 program required by s. 373.536(6)(a)4.

319 6. The Florida Forever Water Management District Work Plan
320 annual report required by s. 373.199(7).

321 7. The mitigation donation annual report required by s.
322 373.414(1)(b)2.

323 8. Information on all projects related to water quality or
324 water quantity as part of a 5-year work program, including:

325 a. A list of all specific projects identified to implement

326 a basin management action plan, including any projects to
327 connect onsite sewage treatment and disposal systems to central
328 sewerage systems and convert onsite sewage treatment and
329 disposal systems to enhanced nutrient reducing onsite sewage
330 treatment and disposal systems, or a recovery or prevention
331 strategy;

332 b. A priority ranking for each listed project for which
333 state funding through the water resources development work
334 program is requested, which must be made available to the public
335 for comment at least 30 days before submission of the
336 consolidated annual report;

337 c. The estimated cost for each listed project;

338 d. The estimated completion date for each listed project;

339 e. The source and amount of financial assistance to be
340 made available by the department, a water management district,
341 or other entity for each listed project; and

342 f. A quantitative estimate of each listed project's
343 benefit to the watershed, water body, or water segment in which
344 it is located.

345 9. A grade for each watershed, water body, or water
346 segment in which a project listed under subparagraph 8. is
347 located representing the level of impairment and violations of
348 adopted minimum flow or minimum water levels. The grading system
349 must reflect the severity of the impairment of the watershed,
350 water body, or water segment.

351 Section 5. Subsections (7) and (8) are added to section
352 373.223, Florida Statutes, to read:

353 373.223 Conditions for a permit.—

354 (7) The department shall, in coordination with the water
355 management districts, conduct a study on the bottled water
356 industry in the state.

357 (a) The study must:

358 1. Identify all springs in the state associated with a
359 consumptive use permit for a bottled water facility producing
360 its product with water withdrawn from a spring. Such
361 identification must include:

362 a. The magnitude of the spring;

363 b. Whether the spring has been identified as an
364 Outstanding Florida Spring as defined in s. 373.802;

365 c. Any minimum flow or minimum water levels adopted by the
366 department or water management district, the status of any such
367 adopted minimum flow or minimum water levels, and any associated
368 recovery or prevention strategies;

369 d. The permitted and actual use associated with the
370 consumptive use permits;

371 e. The reduction in spring flow associated with the
372 permitted and actual use associated with the consumptive use
373 permits;

374 f. The impact of bottled water facilities on springs
375 compared to other users; and

376 g. The types of water conservation measures used by
377 bottled water facilities permitted to withdraw water from
378 springs.

379 2. Identify the labeling and marketing regulations
380 associated with the identification of bottled water as spring
381 water, including whether the regulations incentivize the
382 withdrawal of water from springs.

383 3. Evaluate the direct and indirect economic benefits to
384 the local communities resulting from bottled water facilities
385 that withdraw water from springs, including, but not limited to,
386 tax revenue, job creation, and wages.

387 4. Evaluate the direct and indirect costs to the local
388 communities located in proximity to springs impacted by
389 withdrawals from bottled water production, including, but not
390 limited to, the decreased recreational value of the spring and
391 the cost to other users for the development of alternative water
392 supply or reductions in permit durations and allocations.

393 5. Include a cost-benefit analysis of withdrawing,
394 producing, marketing, selling, and consuming spring water as
395 compared to other sources of bottled water.

396 6. Evaluate how much bottled water withdrawn from springs
397 is sold in the state.

398 (b) By June 30, 2021, the department shall submit a report
399 containing the findings of the study to the Governor, the
400 President of the Senate, the Speaker of the House of

Representatives, and the Office of Economic and Demographic Research.

(c) As used in this section, the term:

1. "Bottled water" has the same meaning as in s. 500.03.

2. "Water withdrawn from a spring" means water withdrawn from an underground formation from which water flows naturally to the surface of the earth in the manner described in 21 C.F.R. s. 165.110(a)(2)(vi).

(8) Beginning July 1, 2020, a new consumptive use permit, or the renewal or modification of a consumptive use permit, that authorizes the use of water withdrawn from a spring for bottled water may not be approved by the governing board or the department unless, in the case of a renewal or modification, the application for renewal or modification was submitted to the department or water management district before January 1, 2020. This subsection expires June 30, 2022.

Section 6. Subsection (5) of section 373.4131, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

373.4131 Statewide environmental resource permitting rules.—

(5) To ensure consistent implementation and interpretation of the rules adopted pursuant to this section, the department shall conduct or oversee regular assessment and training of its staff and the staffs of the water management districts and local

governments delegated local pollution control program authority under s. 373.441. The training must include coordinating field inspections of publicly and privately owned stormwater structural controls, such as stormwater retention and detention ponds.

(6) By January 1, 2021:

(a) The department and the water management districts shall initiate rulemaking to update the stormwater design and operation regulations, including updates to the environmental resource permit applicant handbooks, using the most recent scientific information available. As part of rule development, the department shall consider and address low-impact design best management practices and design criteria that increase the removal of nutrients from stormwater discharges, and measures for consistent application of the net improvement performance standard to ensure significant reductions of any pollutant loadings to a waterbody.

(b) The department shall evaluate inspection data relating to compliance by those entities that submit a self-certification under s. 403.814(12) and provide the Legislature with recommendations for improvements to the self-certification process.

Section 7. Subsection (7) is added to section 381.0065, Florida Statutes, to read:

381.0065 Onsite sewage treatment and disposal systems;

regulation.—

(7) USE OF ENHANCED NUTRIENT REDUCING ONSITE SEWAGE TREATMENT AND DISPOSAL SYSTEMS.—To meet the requirements of a total maximum daily load, the department shall implement a fast-track approval process of no longer than 6 months for the determination of the use of American National Standards Institute 245 systems approved by NSF International before July 1, 2020.

Section 8. Effective July 1, 2021, paragraphs (d) and (e) and (g) through (q) of subsection (2) of section 381.0065, Florida Statutes, are redesignated as paragraphs (e) and (g) and (h) through (r), respectively, subsections (3) and (4) are amended, and a new paragraph (d) is added to subsection (2) of that section, to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(2) DEFINITIONS.—As used in ss. 381.0065–381.0067, the term:

(d) "Department" means the Department of Environmental Protection.

(3) DUTIES AND POWERS OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION ~~HEALTH~~.—The department shall:

(a) Adopt rules to administer ss. 381.0065–381.0067, including definitions that are consistent with the definitions in this section, ~~decreases to setback requirements where no~~

476 ~~health hazard exists,~~ increases for the lot-flow allowance for
477 performance-based systems, requirements for separation from
478 water table elevation during the wettest season, requirements
479 for the design and construction of any component part of an
480 onsite sewage treatment and disposal system, application and
481 permit requirements for persons who maintain an onsite sewage
482 treatment and disposal system, requirements for maintenance and
483 service agreements for aerobic treatment units and performance-
484 based treatment systems, and recommended standards, including
485 disclosure requirements, for voluntary system inspections to be
486 performed by individuals who are authorized by law to perform
487 such inspections and who shall inform a person having ownership,
488 control, or use of an onsite sewage treatment and disposal
489 system of the inspection standards and of that person's
490 authority to request an inspection based on all or part of the
491 standards.

492 (b) Perform application reviews and site evaluations,
493 issue permits, and conduct inspections and complaint
494 investigations associated with the construction, installation,
495 maintenance, modification, abandonment, operation, use, or
496 repair of an onsite sewage treatment and disposal system for a
497 residence or establishment with an estimated domestic sewage
498 flow of 10,000 gallons or less per day, or an estimated
499 commercial sewage flow of 5,000 gallons or less per day, which
500 is not currently regulated under chapter 403.

501 (c) Develop a comprehensive program to ensure that onsite
502 sewage treatment and disposal systems regulated by the
503 department are sized, designed, constructed, installed, sited,
504 repaired, modified, abandoned, used, operated, and maintained in
505 compliance with this section and rules adopted under this
506 section to prevent groundwater contamination, including impacts
507 from nutrient pollution, and surface water contamination and to
508 preserve the public health. The department is the final
509 administrative interpretive authority regarding rule
510 interpretation. In the event of a conflict regarding rule
511 interpretation, the Secretary of Environmental Protection ~~State~~
512 ~~Surgeon General,~~ or his or her designee, shall timely assign a
513 staff person to resolve the dispute.

514 (d) Grant variances in hardship cases under the conditions
515 prescribed in this section and rules adopted under this section.

516 (e) Permit the use of a limited number of innovative
517 systems for a specific period of time, when there is compelling
518 evidence that the system will function properly and reliably to
519 meet the requirements of this section and rules adopted under
520 this section.

521 (f) Issue annual operating permits under this section.

522 (g) Establish and collect fees as established under s.
523 381.0066 for services provided with respect to onsite sewage
524 treatment and disposal systems.

525 (h) Conduct enforcement activities, including imposing

526 fines, issuing citations, suspensions, revocations, injunctions,
527 and emergency orders for violations of this section, part I of
528 chapter 386, or part III of chapter 489 or for a violation of
529 any rule adopted under this section, part I of chapter 386, or
530 part III of chapter 489.

531 (i) Provide or conduct education and training of
532 department personnel, service providers, and the public
533 regarding onsite sewage treatment and disposal systems.

534 (j) Supervise research on, demonstration of, and training
535 on the performance, environmental impact, and public health
536 impact of onsite sewage treatment and disposal systems within
537 this state. Research fees collected under s. 381.0066(2)(k) must
538 be used to develop and fund hands-on training centers designed
539 to provide practical information about onsite sewage treatment
540 and disposal systems to septic tank contractors, master septic
541 tank contractors, contractors, inspectors, engineers, and the
542 public and must also be used to fund research projects which
543 focus on improvements of onsite sewage treatment and disposal
544 systems, including use of performance-based standards and
545 reduction of environmental impact. Research projects shall be
546 ~~initially approved by the technical review and advisory panel~~
547 ~~and shall be~~ applicable to and reflect the soil conditions
548 specific to the state Florida. Such projects shall be awarded
549 through competitive negotiation, using the procedures provided
550 in s. 287.055, to public or private entities that have

551 experience in onsite sewage treatment and disposal systems in
552 the state Florida and that are principally located in the state
553 Florida. ~~Research projects shall not be awarded to firms or~~
554 ~~entities that employ or are associated with persons who serve on~~
555 ~~either the technical review and advisory panel or the research~~
556 ~~review and advisory committee.~~

557 (k) Approve the installation of individual graywater
558 disposal systems in which blackwater is treated by a central
559 sewerage system.

560 (l) Regulate and permit the sanitation, handling,
561 treatment, storage, reuse, and disposal of byproducts from any
562 system regulated under this chapter ~~and not regulated by the~~
563 ~~Department of Environmental Protection.~~

564 (m) Permit and inspect portable or temporary toilet
565 services and holding tanks. The department shall review
566 applications, perform site evaluations, and issue permits for
567 the temporary use of holding tanks, privies, portable toilet
568 services, or any other toilet facility that is intended for use
569 on a permanent or nonpermanent basis, including facilities
570 placed on construction sites when workers are present. The
571 department may specify standards for the construction,
572 maintenance, use, and operation of any such facility for
573 temporary use.

574 (n) Regulate and permit maintenance entities for
575 performance-based treatment systems and aerobic treatment unit

576 systems. To ensure systems are maintained and operated according
577 to manufacturer's specifications and designs, the department
578 shall establish by rule minimum qualifying criteria for
579 maintenance entities. The criteria shall include: training,
580 access to approved spare parts and components, access to
581 manufacturer's maintenance and operation manuals, and service
582 response time. The maintenance entity shall employ a contractor
583 licensed under s. 489.105(3)(m), or part III of chapter 489, or
584 a state-licensed wastewater plant operator, who is responsible
585 for maintenance and repair of all systems under contract.

586 (4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may
587 not construct, repair, modify, abandon, or operate an onsite
588 sewage treatment and disposal system without first obtaining a
589 permit approved by the department. The department may issue
590 permits to carry out this section, ~~but shall not make the~~
591 ~~issuance of such permits contingent upon prior approval by the~~
592 ~~department of Environmental Protection~~, except that the issuance
593 of a permit for work seaward of the coastal construction control
594 line established under s. 161.053 shall be contingent upon
595 receipt of any required coastal construction control line permit
596 from the department ~~of Environmental Protection~~. A construction
597 permit is valid for 18 months after ~~from~~ the date of issuance
598 ~~date~~ and may be extended by the department for one 90-day period
599 under rules adopted by the department. A repair permit is valid
600 for 90 days after ~~from~~ the date of issuance. An operating permit

601 must be obtained before ~~prior to~~ the use of any aerobic
602 treatment unit or if the establishment generates commercial
603 waste. Buildings or establishments that use an aerobic treatment
604 unit or generate commercial waste shall be inspected by the
605 department at least annually to assure compliance with the terms
606 of the operating permit. The operating permit for a commercial
607 wastewater system is valid for 1 year after ~~from~~ the date of
608 issuance and must be renewed annually. The operating permit for
609 an aerobic treatment unit is valid for 2 years after ~~from~~ the
610 date of issuance and must be renewed every 2 years. If all
611 information pertaining to the siting, location, and installation
612 conditions or repair of an onsite sewage treatment and disposal
613 system remains the same, a construction or repair permit for the
614 onsite sewage treatment and disposal system may be transferred
615 to another person, if the transferee files, within 60 days after
616 the transfer of ownership, an amended application providing all
617 corrected information and proof of ownership of the property. A
618 ~~There is no fee~~ is not associated with the processing of this
619 supplemental information. A person may not contract to
620 construct, modify, alter, repair, service, abandon, or maintain
621 any portion of an onsite sewage treatment and disposal system
622 without being registered under part III of chapter 489. A
623 property owner who personally performs construction,
624 maintenance, or repairs to a system serving his or her own
625 owner-occupied single-family residence is exempt from

626 registration requirements for performing such construction,
627 maintenance, or repairs on that residence, but is subject to all
628 permitting requirements. A municipality or political subdivision
629 of the state may not issue a building or plumbing permit for any
630 building that requires the use of an onsite sewage treatment and
631 disposal system unless the owner or builder has received a
632 construction permit for such system from the department. A
633 building or structure may not be occupied and a municipality,
634 political subdivision, or any state or federal agency may not
635 authorize occupancy until the department approves the final
636 installation of the onsite sewage treatment and disposal system.
637 A municipality or political subdivision of the state may not
638 approve any change in occupancy or tenancy of a building that
639 uses an onsite sewage treatment and disposal system until the
640 department has reviewed the use of the system with the proposed
641 change, approved the change, and amended the operating permit.

642 (a) Subdivisions and lots in which each lot has a minimum
643 area of at least one-half acre and either a minimum dimension of
644 100 feet or a mean of at least 100 feet of the side bordering
645 the street and the distance formed by a line parallel to the
646 side bordering the street drawn between the two most distant
647 points of the remainder of the lot may be developed with a water
648 system regulated under s. 381.0062 and onsite sewage treatment
649 and disposal systems, provided the projected daily sewage flow
650 does not exceed an average of 1,500 gallons per acre per day,

651 and provided satisfactory drinking water can be obtained and all
652 distance and setback, soil condition, water table elevation, and
653 other related requirements of this section and rules adopted
654 under this section can be met.

655 (b) Subdivisions and lots using a public water system as
656 defined in s. 403.852 may use onsite sewage treatment and
657 disposal systems, provided there are no more than four lots per
658 acre, provided the projected daily sewage flow does not exceed
659 an average of 2,500 gallons per acre per day, and provided that
660 all distance and setback, soil condition, water table elevation,
661 and other related requirements that are generally applicable to
662 the use of onsite sewage treatment and disposal systems are met.

663 (c) Notwithstanding paragraphs (a) and (b), for
664 subdivisions platted of record on or before October 1, 1991,
665 when a developer or other appropriate entity has previously made
666 or makes provisions, including financial assurances or other
667 commitments, acceptable to the department ~~of Health~~, that a
668 central water system will be installed by a regulated public
669 utility based on a density formula, private potable wells may be
670 used with onsite sewage treatment and disposal systems until the
671 agreed-upon densities are reached. In a subdivision regulated by
672 this paragraph, the average daily sewage flow may not exceed
673 2,500 gallons per acre per day. This section does not affect the
674 validity of existing prior agreements. After October 1, 1991,
675 the exception provided under this paragraph is not available to

676 a developer or other appropriate entity.

677 (d) Paragraphs (a) and (b) do not apply to any proposed
678 residential subdivision with more than 50 lots or to any
679 proposed commercial subdivision with more than 5 lots where a
680 publicly owned or investor-owned sewage treatment ~~sewerage~~
681 system is available. ~~It is the intent of~~ This paragraph does not
682 ~~to~~ allow development of additional proposed subdivisions in
683 order to evade the requirements of this paragraph.

684 (e) The department shall adopt rules relating to the
685 location of onsite sewage treatment and disposal systems,
686 including establishing setback distances, to prevent groundwater
687 contamination and surface water contamination and to preserve
688 the public health. The rulemaking process for such rules must be
689 completed by July 1, 2022, and the department shall notify the
690 Division of Law Revision of the date such rules take effect. The
691 rules must consider conventional and enhanced nutrient reducing
692 onsite sewage treatment and disposal system designs, impaired or
693 degraded water bodies, domestic wastewater and drinking water
694 infrastructure, potable water sources, nonpotable wells,
695 stormwater infrastructure, the onsite sewage treatment and
696 disposal system remediation plans developed pursuant to s.
697 403.067(7)(a)9.b., nutrient pollution, and the recommendations
698 of the onsite sewage treatment and disposal systems technical
699 advisory committee established pursuant to s. 381.00652. The
700 rules must also allow a person to apply for and receive a

701 variance from a rule requirement upon demonstration that the
702 requirement would cause an undue hardship and granting the
703 variance would not cause or contribute to the exceedance of a
704 total maximum daily load.

705 (f)(e) Onsite sewage treatment and disposal systems that
706 are permitted before the rules in paragraph (e) take effect may
707 ~~must~~ not be placed closer than:

- 708 1. Seventy-five feet from a private potable well.
- 709 2. Two hundred feet from a public potable well serving a
710 residential or nonresidential establishment having a total
711 sewage flow of greater than 2,000 gallons per day.
- 712 3. One hundred feet from a public potable well serving a
713 residential or nonresidential establishment having a total
714 sewage flow of less than or equal to 2,000 gallons per day.
- 715 4. Fifty feet from any nonpotable well.
- 716 5. Ten feet from any storm sewer pipe, to the maximum
717 extent possible, but in no instance shall the setback be less
718 than 5 feet.
- 719 6. Seventy-five feet from the mean high-water line of a
720 tidally influenced surface water body.
- 721 7. Seventy-five feet from the mean annual flood line of a
722 permanent nontidal surface water body.
- 723 8. Fifteen feet from the design high-water line of
724 retention areas, detention areas, or swales designed to contain
725 standing or flowing water for less than 72 hours after a

726 rainfall or the design high-water level of normally dry drainage
727 ditches or normally dry individual lot stormwater retention
728 areas.

729 ~~(f) Except as provided under paragraphs (c) and (t), no~~
730 ~~limitations shall be imposed by rule, relating to the distance~~
731 ~~between an onsite disposal system and any area that either~~
732 ~~permanently or temporarily has visible surface water.~~

733 (g) ~~All provisions of~~ This section and rules adopted under
734 this section relating to soil condition, water table elevation,
735 distance, and other setback requirements must be equally applied
736 to all lots, with the following exceptions:

737 1. Any residential lot that was platted and recorded on or
738 after January 1, 1972, or that is part of a residential
739 subdivision that was approved by the appropriate permitting
740 agency on or after January 1, 1972, and that was eligible for an
741 onsite sewage treatment and disposal system construction permit
742 on the date of such platting and recording or approval shall be
743 eligible for an onsite sewage treatment and disposal system
744 construction permit, regardless of when the application for a
745 permit is made. If rules in effect at the time the permit
746 application is filed cannot be met, residential lots platted and
747 recorded or approved on or after January 1, 1972, shall, to the
748 maximum extent possible, comply with the rules in effect at the
749 time the permit application is filed. At a minimum, however,
750 those residential lots platted and recorded or approved on or

751 after January 1, 1972, but before January 1, 1983, shall comply
752 with those rules in effect on January 1, 1983, and those
753 residential lots platted and recorded or approved on or after
754 January 1, 1983, shall comply with those rules in effect at the
755 time of such platting and recording or approval. In determining
756 the maximum extent of compliance with current rules that is
757 possible, the department shall allow structures and
758 appurtenances thereto which were authorized at the time such
759 lots were platted and recorded or approved.

760 2. Lots platted before 1972 are subject to a 50-foot
761 minimum surface water setback and are not subject to lot size
762 requirements. The projected daily flow for onsite sewage
763 treatment and disposal systems for lots platted before 1972 may
764 not exceed:

765 a. Two thousand five hundred gallons per acre per day for
766 lots served by public water systems as defined in s. 403.852.

767 b. One thousand five hundred gallons per acre per day for
768 lots served by water systems regulated under s. 381.0062.

769 (h)1. The department may grant variances in hardship cases
770 which may be less restrictive than the provisions specified in
771 this section. If a variance is granted and the onsite sewage
772 treatment and disposal system construction permit has been
773 issued, the variance may be transferred with the system
774 construction permit, if the transferee files, within 60 days
775 after the transfer of ownership, an amended construction permit

776 application providing all corrected information and proof of
777 ownership of the property and if the same variance would have
778 been required for the new owner of the property as was
779 originally granted to the original applicant for the variance. A
780 ~~There is no fee~~ is not associated with the processing of this
781 supplemental information. A variance may not be granted under
782 this section until the department is satisfied that:

783 a. The hardship was not caused intentionally by the action
784 of the applicant;

785 b. A ~~No~~ reasonable alternative, taking into consideration
786 factors such as cost, does not exist ~~exists~~ for the treatment of
787 the sewage; and

788 c. The discharge from the onsite sewage treatment and
789 disposal system will not adversely affect the health of the
790 applicant or the public or significantly degrade the groundwater
791 or surface waters.

792
793 Where soil conditions, water table elevation, and setback
794 provisions are determined by the department to be satisfactory,
795 special consideration must be given to those lots platted before
796 1972.

797 2. The department shall appoint and staff a variance
798 review and advisory committee, which shall meet monthly to
799 recommend agency action on variance requests. The committee
800 shall make its recommendations on variance requests at the

meeting in which the application is scheduled for consideration, except for an extraordinary change in circumstances, the receipt of new information that raises new issues, or when the applicant requests an extension. The committee shall consider the criteria in subparagraph 1. in its recommended agency action on variance requests and shall also strive to allow property owners the full use of their land where possible. The committee consists of the following:

a. The Secretary of Environmental Protection ~~State Surgeon General~~ or his or her designee.

b. A representative from the county health departments.

c. A representative from the home building industry recommended by the Florida Home Builders Association.

d. A representative from the septic tank industry recommended by the Florida Onsite Wastewater Association.

e. A representative from the Department of Health ~~Environmental Protection~~.

f. A representative from the real estate industry who is also a developer in this state who develops lots using onsite sewage treatment and disposal systems, recommended by the Florida Association of Realtors.

g. A representative from the engineering profession recommended by the Florida Engineering Society.

Members shall be appointed for a term of 3 years, with such

826 appointments being staggered so that the terms of no more than
827 two members expire in any one year. Members shall serve without
828 remuneration, but if requested, shall be reimbursed for per diem
829 and travel expenses as provided in s. 112.061.

830 (i) A construction permit may not be issued for an onsite
831 sewage treatment and disposal system in any area zoned or used
832 for industrial or manufacturing purposes, or its equivalent,
833 where a publicly owned or investor-owned sewage treatment system
834 is available, or where a likelihood exists that the system will
835 receive toxic, hazardous, or industrial waste. An existing
836 onsite sewage treatment and disposal system may be repaired if a
837 publicly owned or investor-owned sewage treatment ~~sewerage~~
838 system is not available within 500 feet of the building sewer
839 stub-out and if system construction and operation standards can
840 be met. This paragraph does not require publicly owned or
841 investor-owned sewage ~~sewerage~~ treatment systems to accept
842 anything other than domestic wastewater.

843 1. A building located in an area zoned or used for
844 industrial or manufacturing purposes, or its equivalent, when
845 such building is served by an onsite sewage treatment and
846 disposal system, must not be occupied until the owner or tenant
847 has obtained written approval from the department. The
848 department may ~~shall~~ not grant approval when the proposed use of
849 the system is to dispose of toxic, hazardous, or industrial
850 wastewater or toxic or hazardous chemicals.

2. Each person who owns or operates a business or facility in an area zoned or used for industrial or manufacturing purposes, or its equivalent, or who owns or operates a business that has the potential to generate toxic, hazardous, or industrial wastewater or toxic or hazardous chemicals, and uses an onsite sewage treatment and disposal system that is installed on or after July 5, 1989, must obtain an annual system operating permit from the department. A person who owns or operates a business that uses an onsite sewage treatment and disposal system that was installed and approved before July 5, 1989, does not need to ~~not~~ obtain a system operating permit. However, upon change of ownership or tenancy, the new owner or operator must notify the department of the change, and the new owner or operator must obtain an annual system operating permit, regardless of the date that the system was installed or approved.

3. The department shall periodically review and evaluate the continued use of onsite sewage treatment and disposal systems in areas zoned or used for industrial or manufacturing purposes, or its equivalent, and may require the collection and analyses of samples from within and around such systems. If the department finds that toxic or hazardous chemicals or toxic, hazardous, or industrial wastewater have been or are being disposed of through an onsite sewage treatment and disposal system, the department shall initiate enforcement actions

876 against the owner or tenant to ensure adequate cleanup,
877 treatment, and disposal.

878 (j) An onsite sewage treatment and disposal system
879 designed by a professional engineer registered in the state and
880 certified by such engineer as complying with performance
881 criteria adopted by the department must be approved by the
882 department subject to the following:

883 1. The performance criteria applicable to engineer-
884 designed systems must be limited to those necessary to ensure
885 that such systems do not adversely affect the public health or
886 significantly degrade the groundwater or surface water. Such
887 performance criteria shall include consideration of the quality
888 of system effluent, the proposed total sewage flow per acre,
889 wastewater treatment capabilities of the natural or replaced
890 soil, water quality classification of the potential surface-
891 water-receiving body, and the structural and maintenance
892 viability of the system for the treatment of domestic
893 wastewater. However, performance criteria shall address only the
894 performance of a system and not a system's design.

895 2. A person electing to use ~~utilize~~ an engineer-designed
896 system shall, upon completion of the system design, submit such
897 design, certified by a registered professional engineer, to the
898 county health department. The county health department may use
899 ~~utilize~~ an outside consultant to review the engineer-designed
900 system, with the actual cost of such review to be borne by the

901 applicant. Within 5 working days after receiving an engineer-
902 designed system permit application, the county health department
903 shall request additional information if the application is not
904 complete. Within 15 working days after receiving a complete
905 application for an engineer-designed system, the county health
906 department ~~either~~ shall issue the permit or, if it determines
907 that the system does not comply with the performance criteria,
908 shall notify the applicant of that determination and refer the
909 application to the department for a determination as to whether
910 the system should be approved, disapproved, or approved with
911 modification. The department engineer's determination shall
912 prevail over the action of the county health department. The
913 applicant shall be notified in writing of the department's
914 determination and of the applicant's rights to pursue a variance
915 or seek review under the provisions of chapter 120.

916 3. The owner of an engineer-designed performance-based
917 system must maintain a current maintenance service agreement
918 with a maintenance entity permitted by the department. The
919 maintenance entity shall inspect each system at least twice each
920 year and shall report quarterly to the department on the number
921 of systems inspected and serviced. The reports may be submitted
922 electronically.

923 4. The property owner of an owner-occupied, single-family
924 residence may be approved and permitted by the department as a
925 maintenance entity for his or her own performance-based

926 treatment system upon written certification from the system
927 manufacturer's approved representative that the property owner
928 has received training on the proper installation and service of
929 the system. The maintenance service agreement must conspicuously
930 disclose that the property owner has the right to maintain his
931 or her own system and is exempt from contractor registration
932 requirements for performing construction, maintenance, or
933 repairs on the system but is subject to all permitting
934 requirements.

935 5. The property owner shall obtain a biennial system
936 operating permit from the department for each system. The
937 department shall inspect the system at least annually, or on
938 such periodic basis as the fee collected permits, and may
939 collect system-effluent samples if appropriate to determine
940 compliance with the performance criteria. The fee for the
941 biennial operating permit shall be collected beginning with the
942 second year of system operation.

943 6. If an engineer-designed system fails to properly
944 function or fails to meet performance standards, the system
945 shall be re-engineered, if necessary, to bring the system into
946 compliance with the provisions of this section.

947 (k) An innovative system may be approved in conjunction
948 with an engineer-designed site-specific system that ~~which~~ is
949 certified by the engineer to meet the performance-based criteria
950 adopted by the department.

(1) For the Florida Keys, the department shall adopt a special rule for the construction, installation, modification, operation, repair, maintenance, and performance of onsite sewage treatment and disposal systems which considers the unique soil conditions and water table elevations, densities, and setback requirements. On lots where a setback distance of 75 feet from surface waters, saltmarsh, and buttonwood association habitat areas cannot be met, an injection well, approved and permitted by the department, may be used for disposal of effluent from onsite sewage treatment and disposal systems. The following additional requirements apply to onsite sewage treatment and disposal systems in Monroe County:

1. The county, each municipality, and those special districts established for the purpose of the collection, transmission, treatment, or disposal of sewage shall ensure, in accordance with the specific schedules adopted by the Administration Commission under s. 380.0552, the completion of onsite sewage treatment and disposal system upgrades to meet the requirements of this paragraph.

2. Onsite sewage treatment and disposal systems must cease discharge by December 31, 2015, or must comply with department rules and provide the level of treatment which, on a permitted annual average basis, produces an effluent that contains no more than the following concentrations:

a. Biochemical Oxygen Demand (CBOD5) of 10 mg/l.

976 b. Suspended Solids of 10 mg/l.

977 c. Total Nitrogen, expressed as N, of 10 mg/l or a
978 reduction in nitrogen of at least 70 percent. A system that has
979 been tested and certified to reduce nitrogen concentrations by
980 at least 70 percent shall be deemed to be in compliance with
981 this standard.

982 d. Total Phosphorus, expressed as P, of 1 mg/l.

983
984 In addition, onsite sewage treatment and disposal systems
985 discharging to an injection well must provide basic disinfection
986 as defined by department rule.

987 3. In areas not scheduled to be served by a central
988 sewerage system ~~sewer~~, onsite sewage treatment and disposal
989 systems must, by December 31, 2015, comply with department rules
990 and provide the level of treatment described in subparagraph 2.

991 4. In areas scheduled to be served by a central sewerage
992 system ~~sewer~~ by December 31, 2015, if the property owner has
993 paid a connection fee or assessment for connection to the
994 central sewerage ~~sewer~~ system, the property owner may install a
995 holding tank with a high water alarm or an onsite sewage
996 treatment and disposal system that meets the following minimum
997 standards:

998 a. The existing tanks must be pumped and inspected and
999 certified as being watertight and free of defects in accordance
1000 with department rule; and

1001 b. A sand-lined drainfield or injection well in accordance
1002 with department rule must be installed.

1003 5. Onsite sewage treatment and disposal systems must be
1004 monitored for total nitrogen and total phosphorus concentrations
1005 as required by department rule.

1006 6. The department shall enforce proper installation,
1007 operation, and maintenance of onsite sewage treatment and
1008 disposal systems pursuant to this chapter, including ensuring
1009 that the appropriate level of treatment described in
1010 subparagraph 2. is met.

1011 7. The authority of a local government, including a
1012 special district, to mandate connection of an onsite sewage
1013 treatment and disposal system is governed by s. 4, chapter 99-
1014 395, Laws of Florida.

1015 8. Notwithstanding any other ~~provision of~~ law, an onsite
1016 sewage treatment and disposal system installed after July 1,
1017 2010, in unincorporated Monroe County, excluding special
1018 wastewater districts, that complies with the standards in
1019 subparagraph 2. is not required to connect to a central sewerage
1020 ~~sewer~~ system until December 31, 2020.

1021 (m) A ~~No~~ product sold in the state for use in onsite
1022 sewage treatment and disposal systems may not contain any
1023 substance in concentrations or amounts that would interfere with
1024 or prevent the successful operation of such system, or that
1025 would cause discharges from such systems to violate applicable

1026 water quality standards. The department shall publish criteria
1027 for products known or expected to meet the conditions of this
1028 paragraph. If ~~In the event~~ a product does not meet such
1029 criteria, such product may be sold if the manufacturer
1030 satisfactorily demonstrates to the department that the
1031 conditions of this paragraph are met.

1032 (n) Evaluations for determining the seasonal high-water
1033 table elevations or the suitability of soils for the use of a
1034 new onsite sewage treatment and disposal system shall be
1035 performed by department personnel, professional engineers
1036 registered in the state, or such other persons with expertise,
1037 as defined by rule, in making such evaluations. Evaluations for
1038 determining mean annual flood lines shall be performed by those
1039 persons identified in paragraph (2) (k) ~~(2) (j)~~. The department
1040 shall accept evaluations submitted by professional engineers and
1041 such other persons as meet the expertise established by this
1042 section or by rule unless the department has a reasonable
1043 scientific basis for questioning the accuracy or completeness of
1044 the evaluation.

1045 ~~(e) The department shall appoint a research review and~~
1046 ~~advisory committee, which shall meet at least semiannually. The~~
1047 ~~committee shall advise the department on directions for new~~
1048 ~~research, review and rank proposals for research contracts, and~~
1049 ~~review draft research reports and make comments. The committee~~
1050 ~~is comprised of:~~

1051 ~~1. A representative of the State Surgeon General, or his~~
1052 ~~or her designee.~~

1053 ~~2. A representative from the septic tank industry.~~

1054 ~~3. A representative from the home building industry.~~

1055 ~~4. A representative from an environmental interest group.~~

1056 ~~5. A representative from the State University System, from~~
1057 ~~a department knowledgeable about onsite sewage treatment and~~
1058 ~~disposal systems.~~

1059 ~~6. A professional engineer registered in this state who~~
1060 ~~has work experience in onsite sewage treatment and disposal~~
1061 ~~systems.~~

1062 ~~7. A representative from local government who is~~
1063 ~~knowledgeable about domestic wastewater treatment.~~

1064 ~~8. A representative from the real estate profession.~~

1065 ~~9. A representative from the restaurant industry.~~

1066 ~~10. A consumer.~~

1067
1068 ~~Members shall be appointed for a term of 3 years, with the~~
1069 ~~appointments being staggered so that the terms of no more than~~
1070 ~~four members expire in any one year. Members shall serve without~~
1071 ~~remuneration, but are entitled to reimbursement for per diem and~~
1072 ~~travel expenses as provided in s. 112.061.~~

1073 (o) ~~(p)~~ An application for an onsite sewage treatment and
1074 disposal system permit shall be completed in full, signed by the
1075 owner or the owner's authorized representative, or by a

1076 contractor licensed under chapter 489, and shall be accompanied
1077 by all required exhibits and fees. ~~No~~ Specific documentation of
1078 property ownership is not ~~shall be~~ required as a prerequisite to
1079 the review of an application or the issuance of a permit. The
1080 issuance of a permit does not constitute determination by the
1081 department of property ownership.

1082 (p)-(q) The department may not require any form of
1083 subdivision analysis of property by an owner, developer, or
1084 subdivider before ~~prior to~~ submission of an application for an
1085 onsite sewage treatment and disposal system.

1086 (q)-(r) ~~Nothing in~~ This section does not limit ~~limits~~ the
1087 power of a municipality or county to enforce other laws for the
1088 protection of the public health and safety.

1089 (r)-(s) In the siting of onsite sewage treatment and
1090 disposal systems, including drainfields, shoulders, and slopes,
1091 guttering may ~~shall~~ not be required on single-family residential
1092 dwelling units for systems located greater than 5 feet from the
1093 roof drip line of the house. If guttering is used on residential
1094 dwelling units, the downspouts shall be directed away from the
1095 drainfield.

1096 (s)-(t) Notwithstanding ~~the provisions of~~ subparagraph
1097 (g)1., onsite sewage treatment and disposal systems located in
1098 floodways of the Suwannee and Aucilla Rivers must adhere to the
1099 following requirements:

1100 1. The absorption surface of the drainfield may ~~shall~~ not

1101 be subject to flooding based on 10-year flood elevations.
1102 Provided, however, for lots or parcels created by the
1103 subdivision of land in accordance with applicable local
1104 government regulations before ~~prior to~~ January 17, 1990, if an
1105 applicant cannot construct a drainfield system with the
1106 absorption surface of the drainfield at an elevation equal to or
1107 above 10-year flood elevation, the department shall issue a
1108 permit for an onsite sewage treatment and disposal system within
1109 the 10-year floodplain of rivers, streams, and other bodies of
1110 flowing water if all of the following criteria are met:

- 1111 a. The lot is at least one-half acre in size;
- 1112 b. The bottom of the drainfield is at least 36 inches
1113 above the 2-year flood elevation; and
- 1114 c. The applicant installs ~~either:~~ a waterless,
1115 incinerating, or organic waste composting toilet and a graywater
1116 system and drainfield in accordance with department rules; an
1117 aerobic treatment unit and drainfield in accordance with
1118 department rules; a system ~~approved by the State Health Office~~
1119 that is capable of reducing effluent nitrate by at least 50
1120 percent in accordance with department rules; or a system other
1121 than a system using alternative drainfield materials in
1122 accordance with department rules ~~approved by the county health~~
1123 ~~department pursuant to department rule other than a system using~~
1124 ~~alternative drainfield materials~~. The United States Department
1125 of Agriculture Soil Conservation Service soil maps, State of

1126 Florida Water Management District data, and Federal Emergency
1127 Management Agency Flood Insurance maps are resources that shall
1128 be used to identify flood-prone areas.

1129 2. The use of fill or mounding to elevate a drainfield
1130 system out of the 10-year floodplain of rivers, streams, or
1131 other bodies of flowing water may ~~shall~~ not be permitted if such
1132 a system lies within a regulatory floodway of the Suwannee and
1133 Aucilla Rivers. In cases where the 10-year flood elevation does
1134 not coincide with the boundaries of the regulatory floodway, the
1135 regulatory floodway will be considered for the purposes of this
1136 subsection to extend at a minimum to the 10-year flood
1137 elevation.

1138 (t)1. ~~(u)1.~~ The owner of an aerobic treatment unit system
1139 shall maintain a current maintenance service agreement with an
1140 aerobic treatment unit maintenance entity permitted by the
1141 department. The maintenance entity shall inspect each aerobic
1142 treatment unit system at least twice each year and shall report
1143 quarterly to the department on the number of aerobic treatment
1144 unit systems inspected and serviced. The reports may be
1145 submitted electronically.

1146 2. The property owner of an owner-occupied, single-family
1147 residence may be approved and permitted by the department as a
1148 maintenance entity for his or her own aerobic treatment unit
1149 system upon written certification from the system manufacturer's
1150 approved representative that the property owner has received

1151 training on the proper installation and service of the system.
1152 The maintenance entity service agreement must conspicuously
1153 disclose that the property owner has the right to maintain his
1154 or her own system and is exempt from contractor registration
1155 requirements for performing construction, maintenance, or
1156 repairs on the system but is subject to all permitting
1157 requirements.

1158 3. A septic tank contractor licensed under part III of
1159 chapter 489, if approved by the manufacturer, may not be denied
1160 access by the manufacturer to aerobic treatment unit system
1161 training or spare parts for maintenance entities. After the
1162 original warranty period, component parts for an aerobic
1163 treatment unit system may be replaced with parts that meet
1164 manufacturer's specifications but are manufactured by others.
1165 The maintenance entity shall maintain documentation of the
1166 substitute part's equivalency for 2 years and shall provide such
1167 documentation to the department upon request.

1168 4. The owner of an aerobic treatment unit system shall
1169 obtain a system operating permit from the department and allow
1170 the department to inspect during reasonable hours each aerobic
1171 treatment unit system at least annually, and such inspection may
1172 include collection and analysis of system-effluent samples for
1173 performance criteria established by rule of the department.

1174 (u)~~(v)~~ The department may require the submission of
1175 detailed system construction plans that are prepared by a

1176 professional engineer registered in this state. The department
1177 shall establish by rule criteria for determining when such a
1178 submission is required.

1179 (v)~~(w)~~ Any permit issued and approved by the department
1180 for the installation, modification, or repair of an onsite
1181 sewage treatment and disposal system shall transfer with the
1182 title to the property in a real estate transaction. A title may
1183 not be encumbered at the time of transfer by new permit
1184 requirements by a governmental entity for an onsite sewage
1185 treatment and disposal system which differ from the permitting
1186 requirements in effect at the time the system was permitted,
1187 modified, or repaired. An inspection of a system may not be
1188 mandated by a governmental entity at the point of sale in a real
1189 estate transaction. This paragraph does not affect a septic tank
1190 phase-out deferral program implemented by a consolidated
1191 government as defined in s. 9, Art. VIII of the State
1192 Constitution (1885).

1193 (w)~~(x)~~ A governmental entity, including a municipality,
1194 county, or statutorily created commission, may not require an
1195 engineer-designed performance-based treatment system, excluding
1196 a passive engineer-designed performance-based treatment system,
1197 before the completion of the Florida Onsite Sewage Nitrogen
1198 Reduction Strategies Project. This paragraph does not apply to a
1199 governmental entity, including a municipality, county, or
1200 statutorily created commission, which adopted a local law,

ordinance, or regulation on or before January 31, 2012.

Notwithstanding this paragraph, an engineer-designed performance-based treatment system may be used to meet the requirements of the variance review and advisory committee recommendations.

(x)1.~~(y)~~1. An onsite sewage treatment and disposal system is not considered abandoned if the system is disconnected from a structure that was made unusable or destroyed following a disaster and if the system was properly functioning at the time of disconnection and was not adversely affected by the disaster. The onsite sewage treatment and disposal system may be reconnected to a rebuilt structure if:

a. The reconnection of the system is to the same type of structure which contains the same number of bedrooms or fewer, if the square footage of the structure is less than or equal to 110 percent of the original square footage of the structure that existed before the disaster;

b. The system is not a sanitary nuisance; and

c. The system has not been altered without prior authorization.

2. An onsite sewage treatment and disposal system that serves a property that is foreclosed upon is not considered abandoned.

(y)~~(z)~~ If an onsite sewage treatment and disposal system permittee receives, relies upon, and undertakes construction of

1226 a system based upon a validly issued construction permit under
1227 rules applicable at the time of construction but a change to a
1228 rule occurs within 5 years after the approval of the system for
1229 construction but before the final approval of the system, the
1230 rules applicable and in effect at the time of construction
1231 approval apply at the time of final approval if fundamental site
1232 conditions have not changed between the time of construction
1233 approval and final approval.

1234 (z)~~(aa)~~ An existing-system inspection or evaluation and
1235 assessment, or a modification, replacement, or upgrade of an
1236 onsite sewage treatment and disposal system is not required for
1237 a remodeling addition or modification to a single-family home if
1238 a bedroom is not added. However, a remodeling addition or
1239 modification to a single-family home may not cover any part of
1240 the existing system or encroach upon a required setback or the
1241 unobstructed area. To determine if a setback or the unobstructed
1242 area is impacted, the local health department shall review and
1243 verify a floor plan and site plan of the proposed remodeling
1244 addition or modification to the home submitted by a remodeler
1245 which shows the location of the system, including the distance
1246 of the remodeling addition or modification to the home from the
1247 onsite sewage treatment and disposal system. The local health
1248 department may visit the site or otherwise determine the best
1249 means of verifying the information submitted. A verification of
1250 the location of a system is not an inspection or evaluation and

assessment of the system. The review and verification must be completed within 7 business days after receipt by the local health department of a floor plan and site plan. If the review and verification is not completed within such time, the remodeling addition or modification to the single-family home, for the purposes of this paragraph, is approved.

Section 9. Effective July 1, 2021, paragraph (d) of subsection (7) and subsections (8) and (9) of section 381.00651, Florida Statutes, are amended to read:

381.00651 Periodic evaluation and assessment of onsite sewage treatment and disposal systems.—

(7) The following procedures shall be used for conducting evaluations:

(d) Assessment procedure.—All evaluation procedures used by a qualified contractor shall be documented in the environmental health database of the department ~~of Health~~. The qualified contractor shall provide a copy of a written, signed evaluation report to the property owner upon completion of the evaluation and to the county health department within 30 days after the evaluation. The report shall contain the name and license number of the company providing the report. A copy of the evaluation report shall be retained by the local county health department for a minimum of 5 years and until a subsequent inspection report is filed. The front cover of the report must identify any system failure and include a clear and

conspicuous notice to the owner that the owner has a right to have any remediation of the failure performed by a qualified contractor other than the contractor performing the evaluation. The report must further identify any crack, leak, improper fit, or other defect in the tank, manhole, or lid, and any other damaged or missing component; any sewage or effluent visible on the ground or discharging to a ditch or other surface water body; any downspout, stormwater, or other source of water directed onto or toward the system; and any other maintenance need or condition of the system at the time of the evaluation which, in the opinion of the qualified contractor, would possibly interfere with or restrict any future repair or modification to the existing system. The report shall conclude with an overall assessment of the fundamental operational condition of the system.

(8) The county health department, in coordination with the department, shall administer any evaluation program on behalf of a county, or a municipality within the county, that has adopted an evaluation program pursuant to this section. In order to administer the evaluation program, the county or municipality, in consultation with the county health department, may develop a reasonable fee schedule to be used solely to pay for the costs of administering the evaluation program. Such a fee schedule shall be identified in the ordinance that adopts the evaluation program. When arriving at a reasonable fee schedule, the

1301 estimated annual revenues to be derived from fees may not exceed
1302 reasonable estimated annual costs of the program. Fees shall be
1303 assessed to the system owner during an inspection and separately
1304 identified on the invoice of the qualified contractor. Fees
1305 shall be remitted by the qualified contractor to the county
1306 health department. The county health department's administrative
1307 responsibilities include the following:

1308 (a) Providing a notice to the system owner at least 60
1309 days before the system is due for an evaluation. The notice may
1310 include information on the proper maintenance of onsite sewage
1311 treatment and disposal systems.

1312 (b) In consultation with the department ~~of Health,~~
1313 providing uniform disciplinary procedures and penalties for
1314 qualified contractors who do not comply with the requirements of
1315 the adopted ordinance, including, but not limited to, failure to
1316 provide the evaluation report as required in this subsection to
1317 the system owner and the county health department. Only the
1318 county health department may assess penalties against system
1319 owners for failure to comply with the adopted ordinance,
1320 consistent with existing requirements of law.

1321 (9) (a) A county or municipality that adopts an onsite
1322 sewage treatment and disposal system evaluation and assessment
1323 program pursuant to this section shall notify the Secretary of
1324 Environmental Protection, the Department of Health, and the
1325 applicable county health department upon the adoption of its

1326 ordinance establishing the program.

1327 (b) Upon receipt of the notice under paragraph (a), the
1328 department ~~of Environmental Protection~~ shall, within existing
1329 resources, notify the county or municipality of the potential
1330 use of, and access to, program funds under the Clean Water State
1331 Revolving Fund or s. 319 of the Clean Water Act, provide
1332 guidance in the application process to receive such moneys, and
1333 provide advice and technical assistance to the county or
1334 municipality on how to establish a low-interest revolving loan
1335 program or how to model a revolving loan program after the low-
1336 interest loan program of the Clean Water State Revolving Fund.
1337 This paragraph does not obligate the department ~~of Environmental~~
1338 ~~Protection~~ to provide any county or municipality with money to
1339 fund such programs.

1340 (c) The department ~~of Health~~ may not adopt any rule that
1341 alters the provisions of this section.

1342 (d) The department ~~of Health~~ must allow county health
1343 departments and qualified contractors access to the
1344 environmental health database to track relevant information and
1345 assimilate data from assessment and evaluation reports of the
1346 overall condition of onsite sewage treatment and disposal
1347 systems. The environmental health database must be used by
1348 contractors to report each service and evaluation event and by a
1349 county health department to notify owners of onsite sewage
1350 treatment and disposal systems when evaluations are due. Data

and information must be recorded and updated as service and evaluations are conducted and reported.

Section 10. Section 381.00652, Florida Statutes, is created to read:

381.00652 Onsite sewage treatment and disposal systems technical advisory committee.—

(1) As used in this section, the term "department" means the Department of Environmental Protection.

(2) An onsite sewage treatment and disposal systems technical advisory committee, a committee as defined in s. 20.03(8), is created within the department. The committee shall:

(a) Provide recommendations to increase the availability of enhanced nutrient reducing onsite sewage treatment and disposal systems in the marketplace, including such systems that are cost-effective, low maintenance, and reliable.

(b) Consider and recommend regulatory options, such as fast-track approval, prequalification, or expedited permitting, to facilitate the introduction and use of enhanced nutrient reducing onsite sewage treatment and disposal systems that have been reviewed and approved by a national agency or organization, such as the American National Standards Institute 245 systems approved by NSF International.

(c) Provide recommendations for appropriate setback distances for onsite sewage treatment and disposal systems from surface water, groundwater, and wells.

1376 (3) The department shall use existing and available
1377 resources to administer and support the activities of the
1378 committee.

1379 (4) (a) By August 1, 2021, the department, in consultation
1380 with the Department of Health, shall appoint no more than 10
1381 members to the committee, as follows:

- 1382 1. A professional engineer.
- 1383 2. A septic tank contractor.
- 1384 3. Two representatives from the home building industry.
- 1385 4. A representative from the real estate industry.
- 1386 5. A representative from the onsite sewage treatment and
1387 disposal system industry.
- 1388 6. A representative from local government.
- 1389 7. Two representatives from the environmental community.
- 1390 8. A representative of the scientific and technical
1391 community who has substantial expertise in the areas of the fate
1392 and transport of water pollutants, toxicology, epidemiology,
1393 geology, biology, or environmental sciences.

1394 (b) Members shall serve without compensation and are not
1395 entitled to reimbursement for per diem or travel expenses.

1396 (5) By January 1, 2022, the committee shall submit its
1397 recommendations to the Governor, the President of the Senate,
1398 and the Speaker of the House of Representatives.

1399 (6) This section expires August 15, 2022.

1400 Section 11. Effective July 1, 2021, section 381.0068,

1401 Florida Statutes, is repealed.

1402 Section 12. Subsections (14) through (44) of section
1403 403.061, Florida Statutes, are renumbered as subsections (15)
1404 through (45), respectively, subsection (7) is amended, and a new
1405 subsection (14) is added to that section, to read:

1406 403.061 Department; powers and duties.—The department
1407 shall have the power and the duty to control and prohibit
1408 pollution of air and water in accordance with the law and rules
1409 adopted and promulgated by it and, for this purpose, to:

1410 (7) Adopt rules ~~pursuant to ss. 120.536(1) and 120.54~~ to
1411 ~~implement the provisions of~~ this act. Any rule adopted pursuant
1412 to this act must ~~shall~~ be consistent with the provisions of
1413 federal law, if any, relating to control of emissions from motor
1414 vehicles, effluent limitations, pretreatment requirements, or
1415 standards of performance. A ~~No~~ county, municipality, or
1416 political subdivision may not ~~shall~~ adopt or enforce any local
1417 ordinance, special law, or local regulation requiring the
1418 installation of Stage II vapor recovery systems, as currently
1419 defined by department rule, unless such county, municipality, or
1420 political subdivision is or has been in the past designated by
1421 federal regulation as a moderate, serious, or severe ozone
1422 nonattainment area. Rules adopted pursuant to this act may ~~shall~~
1423 not require dischargers of waste into waters of the state to
1424 improve natural background conditions. The department shall
1425 adopt rules to reasonably limit, reduce, and eliminate domestic

1426 wastewater collection and transmission system pipe leakages and
1427 inflow and infiltration. Discharges from steam electric
1428 generating plants existing or licensed under this chapter on
1429 July 1, 1984, may ~~shall~~ not be required to be treated to a
1430 greater extent than may be necessary to assure that the quality
1431 of nonthermal components of discharges from nonrecirculated
1432 cooling water systems is as high as the quality of the makeup
1433 waters; that the quality of nonthermal components of discharges
1434 from recirculated cooling water systems is no lower than is
1435 allowed for blowdown from such systems; or that the quality of
1436 noncooling system discharges which receive makeup water from a
1437 receiving body of water which does not meet applicable
1438 department water quality standards is as high as the quality of
1439 the receiving body of water. The department may not adopt
1440 standards more stringent than federal regulations, except as
1441 provided in s. 403.804.

1442 (14) In order to promote resilient utilities, require
1443 public utilities or their affiliated companies holding, applying
1444 for, or renewing a domestic wastewater discharge permit to file
1445 annual reports and other data regarding transactions or
1446 allocations of common costs and expenditures on pollution
1447 mitigation and prevention among the utility's permitted systems,
1448 including, but not limited to, the prevention of sanitary sewer
1449 overflows, collection and transmission system pipe leakages, and
1450 inflow and infiltration. The department shall adopt rules to

1451 implement this subsection.

1452
1453 The department shall implement such programs in conjunction with
1454 its other powers and duties and shall place special emphasis on
1455 reducing and eliminating contamination that presents a threat to
1456 humans, animals or plants, or to the environment.

1457 Section 13. Section 403.0616, Florida Statutes, is created
1458 to read:

1459 403.0616 Real-time water quality monitoring program.—

1460 (1) Subject to appropriation, the department shall
1461 establish a real-time water quality monitoring program to assist
1462 in the restoration, preservation, and enhancement of impaired
1463 water bodies and coastal resources.

1464 (2) In order to expedite the creation and implementation
1465 of the program, the department is encouraged to form public-
1466 private partnerships with established scientific entities that
1467 have proven existing real-time water quality monitoring
1468 equipment and experience in deploying the equipment.

1469 Section 14. Subsection (7) of section 403.067, Florida
1470 Statutes, is amended to read:

1471 403.067 Establishment and implementation of total maximum
1472 daily loads.—

1473 (7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND
1474 IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

1475 (a) *Basin management action plans.—*

1. In developing and implementing the total maximum daily load for a water body, the department, or the department in conjunction with a water management district, may develop a basin management action plan that addresses some or all of the watersheds and basins tributary to the water body. Such plan must integrate the appropriate management strategies available to the state through existing water quality protection programs to achieve the total maximum daily loads and may provide for phased implementation of these management strategies to promote timely, cost-effective actions as provided for in s. 403.151. The plan must establish a schedule implementing the management strategies, establish a basis for evaluating the plan's effectiveness, and identify feasible funding strategies for implementing the plan's management strategies. The management strategies may include regional treatment systems or other public works, when ~~where~~ appropriate, and voluntary trading of water quality credits to achieve the needed pollutant load reductions.

2. A basin management action plan must equitably allocate, pursuant to paragraph (6) (b), pollutant reductions to individual basins, as a whole to all basins, or to each identified point source or category of nonpoint sources, as appropriate. For nonpoint sources for which best management practices have been adopted, the initial requirement specified by the plan must be those practices developed pursuant to paragraph (c). When ~~Where~~

1501 appropriate, the plan may take into account the benefits of
1502 pollutant load reduction achieved by point or nonpoint sources
1503 that have implemented management strategies to reduce pollutant
1504 loads, including best management practices, before the
1505 development of the basin management action plan. The plan must
1506 also identify the mechanisms that will address potential future
1507 increases in pollutant loading.

1508 3. The basin management action planning process is
1509 intended to involve the broadest possible range of interested
1510 parties, with the objective of encouraging the greatest amount
1511 of cooperation and consensus possible. In developing a basin
1512 management action plan, the department shall assure that key
1513 stakeholders, including, but not limited to, applicable local
1514 governments, water management districts, the Department of
1515 Agriculture and Consumer Services, other appropriate state
1516 agencies, local soil and water conservation districts,
1517 environmental groups, regulated interests, and affected
1518 pollution sources, are invited to participate in the process.
1519 The department shall hold at least one public meeting in the
1520 vicinity of the watershed or basin to discuss and receive
1521 comments during the planning process and shall otherwise
1522 encourage public participation to the greatest practicable
1523 extent. Notice of the public meeting must be published in a
1524 newspaper of general circulation in each county in which the
1525 watershed or basin lies at least ~~not less than~~ 5 days, but not

1526 ~~not~~ more than 15 days, before the public meeting. A basin
1527 management action plan does not supplant or otherwise alter any
1528 assessment made under subsection (3) or subsection (4) or any
1529 calculation or initial allocation.

1530 4. Each new or revised basin management action plan shall
1531 include:

1532 a. The appropriate management strategies available through
1533 existing water quality protection programs to achieve total
1534 maximum daily loads, which may provide for phased implementation
1535 to promote timely, cost-effective actions as provided for in s.
1536 403.151;

1537 b. A description of best management practices adopted by
1538 rule;

1539 c. A list of projects in priority ranking with a planning-
1540 level cost estimate and estimated date of completion for each
1541 listed project;

1542 d. The source and amount of financial assistance to be
1543 made available by the department, a water management district,
1544 or other entity for each listed project, if applicable; and

1545 e. A planning-level estimate of each listed project's
1546 expected load reduction, if applicable.

1547 5. The department shall adopt all or any part of a basin
1548 management action plan and any amendment to such plan by
1549 secretarial order pursuant to chapter 120 to implement ~~the~~
1550 ~~provisions of~~ this section.

1551 6. The basin management action plan must include
1552 milestones for implementation and water quality improvement, and
1553 an associated water quality monitoring component sufficient to
1554 evaluate whether reasonable progress in pollutant load
1555 reductions is being achieved over time. An assessment of
1556 progress toward these milestones shall be conducted every 5
1557 years, and revisions to the plan shall be made as appropriate.
1558 Revisions to the basin management action plan shall be made by
1559 the department in cooperation with basin stakeholders. Revisions
1560 to the management strategies required for nonpoint sources must
1561 follow the procedures ~~set forth~~ in subparagraph (c)4. Revised
1562 basin management action plans must be adopted pursuant to
1563 subparagraph 5.

1564 7. In accordance with procedures adopted by rule under
1565 paragraph (9)(c), basin management action plans, and other
1566 pollution control programs under local, state, or federal
1567 authority as provided in subsection (4), may allow point or
1568 nonpoint sources that will achieve greater pollutant reductions
1569 than required by an adopted total maximum daily load or
1570 wasteload allocation to generate, register, and trade water
1571 quality credits for the excess reductions to enable other
1572 sources to achieve their allocation; however, the generation of
1573 water quality credits does not remove the obligation of a source
1574 or activity to meet applicable technology requirements or
1575 adopted best management practices. Such plans must allow trading

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1576 between NPDES permittees, and trading that may or may not
1577 involve NPDES permittees, where the generation or use of the
1578 credits involve an entity or activity not subject to department
1579 water discharge permits whose owner voluntarily elects to obtain
1580 department authorization for the generation and sale of credits.

1581 8. ~~The provisions of~~ The department's rule relating to the
1582 equitable abatement of pollutants into surface waters do not
1583 apply to water bodies or water body segments for which a basin
1584 management plan that takes into account future new or expanded
1585 activities or discharges has been adopted under this section.

1586 9. In order to promote resilient wastewater utilities, if
1587 the department identifies domestic wastewater treatment
1588 facilities or onsite sewage treatment and disposal systems as
1589 contributors of at least 20 percent of point source or nonpoint
1590 source nutrient pollution or if the department determines
1591 remediation is necessary to achieve the total maximum daily
1592 load, a basin management action plan for a nutrient total
1593 maximum daily load must include the following:

1594 a. A wastewater treatment plan developed by each local
1595 government, in cooperation with the department, the water
1596 management district, and the public and private domestic
1597 wastewater treatment facilities within the jurisdiction of the
1598 local government, that addresses domestic wastewater. The
1599 wastewater treatment plan must:

1600 (I) Provide for construction, expansion, or upgrades

1601 necessary to achieve the total maximum daily load requirements
1602 applicable to the domestic wastewater treatment facility.

1603 (II) Include the permitted capacity in average annual
1604 gallons per day for the domestic wastewater treatment facility;
1605 the average nutrient concentration and the estimated average
1606 nutrient load of the domestic wastewater; a projected timeline
1607 of the dates by which the construction of any facility
1608 improvements will begin and be completed and the date by which
1609 operations of the improved facility will begin; the estimated
1610 cost of the improvements; and the identity of responsible
1611 parties.

1612
1613 The wastewater treatment plan must be adopted as part of the
1614 basin management action plan no later than July 1, 2025. A local
1615 government that does not have a domestic wastewater treatment
1616 facility in its jurisdiction is not required to develop a
1617 wastewater treatment plan unless there is a demonstrated need to
1618 establish a domestic wastewater treatment facility within its
1619 jurisdiction to improve water quality necessary to achieve a
1620 total maximum daily load. A local government is not responsible
1621 for a private domestic wastewater facility's compliance with a
1622 basin management action plan unless such facility is operated
1623 through a public-private partnership to which the local
1624 government is a party.

1625 b. An onsite sewage treatment and disposal system

1626 remediation plan developed by each local government in
1627 cooperation with the department, the Department of Health, water
1628 management districts, and public and private domestic wastewater
1629 treatment facilities.

1630 (I) The onsite sewage treatment and disposal system
1631 remediation plan must identify cost-effective and financially
1632 feasible projects necessary to achieve the nutrient load
1633 reductions required for onsite sewage treatment and disposal
1634 systems. To identify cost-effective and financially feasible
1635 projects for remediation of onsite sewage treatment and disposal
1636 systems, the local government shall:

1637 (A) Include an inventory of onsite sewage treatment and
1638 disposal systems based on the best information available;

1639 (B) Identify onsite sewage treatment and disposal systems
1640 that would be eliminated through connection to existing or
1641 future central domestic wastewater infrastructure in the
1642 jurisdiction or domestic wastewater service area of the local
1643 government, that would be replaced with or upgraded to enhanced
1644 nutrient reducing onsite sewage treatment and disposal systems,
1645 or that would remain on conventional onsite sewage treatment and
1646 disposal systems;

1647 (C) Estimate the costs of potential onsite sewage
1648 treatment and disposal system connections, upgrades, or
1649 replacements; and

1650 (D) Identify deadlines and interim milestones for the

1651 planning, design, and construction of projects.

1652 (II) The department shall adopt the onsite sewage
1653 treatment and disposal system remediation plan as part of the
1654 basin management action plan no later than July 1, 2025, or as
1655 required for Outstanding Florida Springs under s. 373.807.

1656 10. When identifying wastewater projects in a basin
1657 management action plan, the department may not require the
1658 higher cost option if it achieves the same nutrient load
1659 reduction as a lower cost option. A regulated entity may choose
1660 a different cost option if it complies with the pollutant
1661 reduction requirements of an adopted total maximum daily load.

1662 (b) Total maximum daily load implementation.—

1663 1. The department shall be the lead agency in coordinating
1664 the implementation of the total maximum daily loads through
1665 existing water quality protection programs. Application of a
1666 total maximum daily load by a water management district must be
1667 consistent with this section and does not require the issuance
1668 of an order or a separate action pursuant to s. 120.536(1) or s.
1669 120.54 for the adoption of the calculation and allocation
1670 previously established by the department. Such programs may
1671 include, but are not limited to:

1672 a. Permitting and other existing regulatory programs,
1673 including water-quality-based effluent limitations;

1674 b. Nonregulatory and incentive-based programs, including
1675 best management practices, cost sharing, waste minimization,

pollution prevention, agreements established pursuant to s.
403.061(22) ~~s. 403.061(21)~~, and public education;

c. Other water quality management and restoration activities, for example surface water improvement and management plans approved by water management districts or basin management action plans developed pursuant to this subsection;

d. Trading of water quality credits or other equitable economically based agreements;

e. Public works including capital facilities; or

f. Land acquisition.

2. For a basin management action plan adopted pursuant to paragraph (a), any management strategies and pollutant reduction requirements associated with a pollutant of concern for which a total maximum daily load has been developed, including effluent limits ~~set forth~~ for a discharger subject to NPDES permitting, if any, must be included in a timely manner in subsequent NPDES permits or permit modifications for that discharger. The department may not impose limits or conditions implementing an adopted total maximum daily load in an NPDES permit until the permit expires, the discharge is modified, or the permit is reopened pursuant to an adopted basin management action plan.

a. Absent a detailed allocation, total maximum daily loads must be implemented through NPDES permit conditions that provide for a compliance schedule. In such instances, a facility's NPDES permit must allow time for the issuance of an order adopting the

1701 basin management action plan. The time allowed for the issuance
1702 of an order adopting the plan may not exceed 5 years. Upon
1703 issuance of an order adopting the plan, the permit must be
1704 reopened or renewed, as necessary, and permit conditions
1705 consistent with the plan must be established. Notwithstanding
1706 the other provisions of this subparagraph, upon request by an
1707 NPDES permittee, the department as part of a permit issuance,
1708 renewal, or modification may establish individual allocations
1709 before the adoption of a basin management action plan.

1710 b. For holders of NPDES municipal separate storm sewer
1711 system permits and other stormwater sources, implementation of a
1712 total maximum daily load or basin management action plan must be
1713 achieved, to the maximum extent practicable, through the use of
1714 best management practices or other management measures.

1715 c. The basin management action plan does not relieve the
1716 discharger from any requirement to obtain, renew, or modify an
1717 NPDES permit or to abide by other requirements of the permit.

1718 d. Management strategies ~~set forth~~ in a basin management
1719 action plan to be implemented by a discharger subject to
1720 permitting by the department must be completed pursuant to the
1721 schedule ~~set forth~~ in the basin management action plan. This
1722 implementation schedule may extend beyond the 5-year term of an
1723 NPDES permit.

1724 e. Management strategies and pollution reduction
1725 requirements ~~set forth~~ in a basin management action plan for a

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specific pollutant of concern are not subject to challenge under chapter 120 at the time they are incorporated, in an identical form, into a subsequent NPDES permit or permit modification.

f. For nonagricultural pollutant sources not subject to NPDES permitting but permitted pursuant to other state, regional, or local water quality programs, the pollutant reduction actions adopted in a basin management action plan must be implemented to the maximum extent practicable as part of those permitting programs.

g. A nonpoint source discharger included in a basin management action plan must demonstrate compliance with the pollutant reductions established under subsection (6) by implementing the appropriate best management practices established pursuant to paragraph (c) or conducting water quality monitoring prescribed by the department or a water management district. A nonpoint source discharger may, in accordance with department rules, supplement the implementation of best management practices with water quality credit trades in order to demonstrate compliance with the pollutant reductions established under subsection (6).

h. A nonpoint source discharger included in a basin management action plan may be subject to enforcement action by the department or a water management district based upon a failure to implement the responsibilities ~~set forth~~ in subparagraph g.

1751 i. A landowner, discharger, or other responsible person
1752 who is implementing applicable management strategies specified
1753 in an adopted basin management action plan may not be required
1754 by permit, enforcement action, or otherwise to implement
1755 additional management strategies, including water quality credit
1756 trading, to reduce pollutant loads to attain the pollutant
1757 reductions established pursuant to subsection (6) and shall be
1758 deemed to be in compliance with this section. This subparagraph
1759 does not limit the authority of the department to amend a basin
1760 management action plan as specified in subparagraph (a)6.

1761 (c) *Best management practices.*—

1762 1. The department, in cooperation with the water
1763 management districts and other interested parties, as
1764 appropriate, may develop suitable interim measures, best
1765 management practices, or other measures necessary to achieve the
1766 level of pollution reduction established by the department for
1767 nonagricultural nonpoint pollutant sources in allocations
1768 developed pursuant to subsection (6) and this subsection. These
1769 practices and measures may be adopted by rule by the department
1770 and the water management districts and, where adopted by rule,
1771 shall be implemented by those parties responsible for
1772 nonagricultural nonpoint source pollution.

1773 2. The Department of Agriculture and Consumer Services may
1774 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54
1775 suitable interim measures, best management practices, or other

measures necessary to achieve the level of pollution reduction established by the department for agricultural pollutant sources in allocations developed pursuant to subsection (6) and this subsection or for programs implemented pursuant to paragraph (12) (b). These practices and measures may be implemented by those parties responsible for agricultural pollutant sources and the department, the water management districts, and the Department of Agriculture and Consumer Services shall assist with implementation. In the process of developing and adopting rules for interim measures, best management practices, or other measures, the Department of Agriculture and Consumer Services shall consult with the department, the Department of Health, the water management districts, representatives from affected farming groups, and environmental group representatives. Such rules must also incorporate provisions for a notice of intent to implement the practices and a system to assure the implementation of the practices, including site inspection and recordkeeping requirements.

3. When ~~Where~~ interim measures, best management practices, or other measures are adopted by rule, the effectiveness of such practices in achieving the levels of pollution reduction established in allocations developed by the department pursuant to subsection (6) and this subsection or in programs implemented pursuant to paragraph (12) (b) must be verified at representative sites by the department. The department shall use best

1801 professional judgment in making the initial verification that
1802 the best management practices are reasonably expected to be
1803 effective and, when ~~where~~ applicable, shall ~~must~~ notify the
1804 appropriate water management district or the Department of
1805 Agriculture and Consumer Services of its initial verification
1806 before the adoption of a rule proposed pursuant to this
1807 paragraph. Implementation, in accordance with rules adopted
1808 under this paragraph, of practices that have been initially
1809 verified to be effective, or verified to be effective by
1810 monitoring at representative sites, by the department, shall
1811 provide a presumption of compliance with state water quality
1812 standards and release from ~~the provisions of~~ s. 376.307(5) for
1813 those pollutants addressed by the practices, and the department
1814 is not authorized to institute proceedings against the owner of
1815 the source of pollution to recover costs or damages associated
1816 with the contamination of surface water or groundwater caused by
1817 those pollutants. Research projects funded by the department, a
1818 water management district, or the Department of Agriculture and
1819 Consumer Services to develop or demonstrate interim measures or
1820 best management practices shall be granted a presumption of
1821 compliance with state water quality standards and a release from
1822 ~~the provisions of~~ s. 376.307(5). The presumption of compliance
1823 and release is limited to the research site and only for those
1824 pollutants addressed by the interim measures or best management
1825 practices. Eligibility for the presumption of compliance and

release is limited to research projects on sites where the owner or operator of the research site and the department, a water management district, or the Department of Agriculture and Consumer Services have entered into a contract or other agreement that, at a minimum, specifies the research objectives, the cost-share responsibilities of the parties, and a schedule that details the beginning and ending dates of the project.

4. When ~~Where~~ water quality problems are demonstrated, despite the appropriate implementation, operation, and maintenance of best management practices and other measures required by rules adopted under this paragraph, the department, a water management district, or the Department of Agriculture and Consumer Services, in consultation with the department, shall institute a reevaluation of the best management practice or other measure. If ~~Should~~ the reevaluation determines ~~determine~~ that the best management practice or other measure requires modification, the department, a water management district, or the Department of Agriculture and Consumer Services, as appropriate, shall revise the rule to require implementation of the modified practice within a reasonable time period as specified in the rule.

5. Subject to the provisions of subparagraph 6., the Department of Agriculture and Consumer Services shall provide to the department information obtained pursuant to subparagraph (d) 3.

1851 ~~6.5.~~ Agricultural records relating to processes or methods
1852 of production, and costs of production, profits, or other
1853 financial information held by the Department of Agriculture and
1854 Consumer Services pursuant to subparagraphs 3.-5. ~~3. and 4.~~ or
1855 pursuant to any rule adopted pursuant to subparagraph 2. are
1856 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
1857 of the State Constitution. Upon request, records made
1858 confidential and exempt pursuant to this subparagraph shall be
1859 released to the department or any water management district
1860 provided that the confidentiality specified by this subparagraph
1861 for such records is maintained.

1862 ~~7.6.~~ ~~The provisions of~~ Subparagraphs 1. and 2. do not
1863 preclude the department or water management district from
1864 requiring compliance with water quality standards or with
1865 current best management practice requirements ~~set forth~~ in any
1866 applicable regulatory program authorized by law for the purpose
1867 of protecting water quality. Additionally, subparagraphs 1. and
1868 2. are applicable only to the extent that they do not conflict
1869 with any rules adopted by the department that are necessary to
1870 maintain a federally delegated or approved program.

1871 (d) *Enforcement and verification of basin management*
1872 *action plans and management strategies.—*

1873 1. Basin management action plans are enforceable pursuant
1874 to this section and ss. 403.121, 403.141, and 403.161.
1875 Management strategies, including best management practices and

water quality monitoring, are enforceable under this chapter.

2. No later than January 1, 2017:

a. The department, in consultation with the water management districts and the Department of Agriculture and Consumer Services, shall initiate rulemaking to adopt procedures to verify implementation of water quality monitoring required in lieu of implementation of best management practices or other measures pursuant to sub-subparagraph (b)2.g.;

b. The department, in consultation with the water management districts and the Department of Agriculture and Consumer Services, shall initiate rulemaking to adopt procedures to verify implementation of nonagricultural interim measures, best management practices, or other measures adopted by rule pursuant to subparagraph (c)1.; and

c. The Department of Agriculture and Consumer Services, in consultation with the water management districts and the department, shall initiate rulemaking to adopt procedures to verify implementation of agricultural interim measures, best management practices, or other measures adopted by rule pursuant to subparagraph (c)2.

The rules required under this subparagraph shall include enforcement procedures applicable to the landowner, discharger, or other responsible person required to implement applicable management strategies, including best management practices or

1901 water quality monitoring as a result of noncompliance.

1902 3. At least every 2 years, the Department of Agriculture
1903 and Consumer Services shall perform onsite inspections of each
1904 agricultural producer that enrolls in a best management practice
1905 to ensure that such practice is being properly implemented. Such
1906 verification must include a collection and review of the best
1907 management practice documentation from the previous 2 years
1908 required by rules adopted pursuant to subparagraph (c)2.,
1909 including, but not limited to, nitrogen and phosphorus
1910 fertilizer application records, which must be collected and
1911 retained pursuant to subparagraphs (c)3., 4., and 6. The
1912 Department of Agriculture and Consumer Services shall initially
1913 prioritize the inspection of agricultural producers located in
1914 the basin management action plans for Lake Okeechobee, the
1915 Indian River Lagoon, the Caloosahatchee River and Estuary, and
1916 Silver Springs.

1917 (e) Cooperative agricultural regional water quality
1918 improvement element.—

1919 1. The department, the Department of Agriculture and
1920 Consumer Services, and owners of agricultural operations in the
1921 basin shall develop a cooperative agricultural regional water
1922 quality improvement element as part of a basin management action
1923 plan only if:

1924 a. Agricultural measures have been adopted by the
1925 Department of Agriculture and Consumer Services pursuant to

subparagraph (c)2. and have been implemented and the waterbody remains impaired;

b. Agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges; and

c. The department determines that additional measures, in combination with state-sponsored regional projects and other management strategies included in the basin management action plan, are necessary to achieve the total maximum daily load.

2. The element will be implemented through the use of cost-sharing projects. The element must include cost-effective and technically and financially practical cooperative regional agricultural nutrient reduction projects that can be implemented on private properties on a site-specific, cooperative basis. Such cooperative regional agricultural nutrient reduction projects may include land acquisition in fee or conservation easements on the lands of willing sellers and site-specific water quality improvement or dispersed water management projects on the lands of project participants.

3. To qualify for participation in the cooperative agricultural regional water quality improvement element, the participant must have already implemented the interim measures, best management practices, or other measures adopted by the Department of Agriculture and Consumer Services pursuant to subparagraph (c)2. The element may be included in the basin management action plan as a part of the next 5-year assessment

1951 under subparagraph (a) 6.

1952 4. The department may submit a legislative budget request
1953 to fund projects developed pursuant to this paragraph.

1954 (f) Data collection and research.—

1955 1. The Department of Agriculture and Consumer Services, in
1956 cooperation with the University of Florida Institute of Food and
1957 Agricultural Sciences and other state universities and Florida
1958 College System institutions that have agricultural research
1959 programs, shall annually develop research plans and legislative
1960 budget requests to:

1961 a. Evaluate and suggest enhancements to the existing
1962 adopted agricultural best management practices to reduce
1963 nutrient runoff;

1964 b. Develop new best management practices that, if proven
1965 effective, the Department of Agriculture and Consumer Services
1966 may adopt by rule pursuant to subparagraph (c)2.; and

1967 c. Develop agricultural nutrient runoff reduction projects
1968 that willing participants could implement on a site-specific,
1969 cooperative basis, in addition to best management practices. The
1970 department may consider these projects for inclusion in a basin
1971 management action plan. These nutrient runoff reduction projects
1972 must reduce the nutrient impacts from agricultural operations on
1973 water quality when evaluated with the projects and management
1974 strategies currently included in the basin management action
1975 plan.

1976 2. To be considered for funding, the University of Florida
1977 Institute of Food and Agricultural Sciences and other state
1978 universities and Florida College System institutions that have
1979 agricultural research programs must submit such plans to the
1980 department and the Department of Agriculture and Consumer
1981 Services by August 1, 2021, and each May 1 thereafter.

1982 3. The department shall work with the University of
1983 Florida Institute of Food and Agricultural Sciences and
1984 regulated entities to consider the adoption by rule of best
1985 management practices for nutrient impacts from golf courses.
1986 Such adopted best management practices are subject to the
1987 requirements of paragraph (c).

1988 Section 15. Section 403.0671, Florida Statutes, is created
1989 to read:

1990 403.0671 Basin management action plan wastewater reports.—

1991 (1) By July 1, 2021, the department, in coordination with
1992 the county health departments, wastewater treatment facilities,
1993 and other governmental entities, shall submit a report to the
1994 Governor, the President of the Senate, and the Speaker of the
1995 House of Representatives evaluating the costs of wastewater
1996 projects identified in the basin management action plans
1997 developed pursuant to ss. 373.807 and 403.067(7) and the onsite
1998 sewage treatment and disposal system remediation plans and other
1999 restoration plans developed to meet the total maximum daily
2000 loads required under s. 403.067. The report must include:

(a) Projects to:

1. Replace onsite sewage treatment and disposal systems with enhanced nutrient reducing onsite sewage treatment and disposal systems.

2. Install or retrofit onsite sewage treatment and disposal systems with enhanced nutrient reducing technologies.

3. Construct, upgrade, or expand domestic wastewater treatment facilities to meet the wastewater treatment plan required under s. 403.067(7)(a)9.

4. Connect onsite sewage treatment and disposal systems to domestic wastewater treatment facilities;

(b) The estimated costs, nutrient load reduction estimates, and other benefits of each project;

(c) The estimated implementation timeline for each project;

(d) A proposed 5-year funding plan for each project and the source and amount of financial assistance the department, a water management district, or other project partner will make available to fund the project; and

(e) The projected costs of installing enhanced nutrient reducing onsite sewage treatment and disposal systems on buildable lots in priority focus areas to comply with s. 373.811.

(2) By July 1, 2021, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of

the House of Representatives that provides an assessment of the water quality monitoring being conducted for each basin management action plan implementing a nutrient total maximum daily load. In developing the report, the department may coordinate with water management districts and any applicable university. The report must:

(a) Evaluate the water quality monitoring prescribed for each basin management action plan to determine if it is sufficient to detect changes in water quality caused by the implementation of a project.

(b) Identify gaps in water quality monitoring.

(c) Recommend water quality monitoring needs.

(3) Beginning January 1, 2022, and each January 1 thereafter, the department shall submit to the Office of Economic and Demographic Research the cost estimates for projects required in s. 403.067(7)(a)9. The office shall include the project cost estimates in its annual assessment conducted pursuant to s. 403.928.

Section 16. Section 403.0673, Florida Statutes, is created to read:

403.0673 Wastewater grant program.—A wastewater grant program is established within the Department of Environmental Protection.

(1) Subject to the appropriation of funds by the Legislature, the department may provide grants for the following

2051 projects within a basin management action plan, an alternative
2052 restoration plan adopted by final order, or a rural area of
2053 opportunity under s. 288.0656 which will individually or
2054 collectively reduce excess nutrient pollution:

2055 (a) Projects to retrofit onsite sewage treatment and
2056 disposal systems to upgrade such systems to enhanced nutrient
2057 reducing onsite sewage treatment and disposal systems.

2058 (b) Projects to construct, upgrade, or expand facilities
2059 to provide advanced waste treatment, as defined in s.
2060 403.086(4).

2061 (c) Projects to connect onsite sewage treatment and
2062 disposal systems to central sewer facilities.

2063 (2) In allocating such funds, priority must be given to
2064 projects that subsidize the connection of onsite sewage
2065 treatment and disposal systems to wastewater treatment
2066 facilities. First priority must be given to subsidize the
2067 connection of onsite sewage treatment and disposal systems to
2068 existing infrastructure. Second priority must be given to any
2069 expansion of a collection or transmission system that promotes
2070 efficiency by planning the installation of wastewater
2071 transmission facilities to be constructed concurrently with
2072 other construction projects occurring within or along a
2073 transportation facility right-of-way. Third priority must be
2074 given to all other connections of onsite sewage treatment and
2075 disposal systems to wastewater treatment facilities. The

department shall consider the estimated reduction in nutrient load per project; project readiness; cost-effectiveness of the project; overall environmental benefit of a project; the location of a project; the availability of local matching funds; and projected water savings or quantity improvements associated with a project.

(3) Each grant for a project described in subsection (1) must require a minimum of a 50 percent local match of funds. However, the department may, at its discretion, 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 under s. 288.0656.

(4) The department shall coordinate with each water management district, as necessary, to identify grant recipients in each district.

(5) Beginning January 1, 2021, and each January 1 thereafter, the department shall submit a report regarding the projects funded pursuant to this section to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 17. Section 403.0855, Florida Statutes, is created to read:

403.0855 Biosolids management.—

(1) The Legislature finds that it is in the best interest of this state to regulate biosolids management in order to

2101 minimize the migration of nutrients that impair water bodies.
2102 The Legislature further finds that permitting according to site-
2103 specific application conditions, an increased inspection rate,
2104 groundwater and surface water monitoring protocols, and nutrient
2105 management research will improve biosolids management and assist
2106 in protecting this state's water resources and water quality.

2107 (2) The department shall adopt rules for biosolids
2108 management. Rules adopted by the department pursuant to this
2109 section may not take effect until ratified by the Legislature.

2110 (3) For a new or renewed biosolids land application site
2111 permit issued after July 1, 2020, the permittee of a biosolids
2112 land application site shall:

2113 (a) Ensure a minimum unsaturated soil depth of 2 feet
2114 between the depth of biosolids placement and the water table
2115 level at the time the Class A or Class B biosolids are applied
2116 to the soil. Biosolids may not be applied on soils that have a
2117 seasonal high-water table less than 6 inches from the soil
2118 surface or within 6 inches of the intended depth of biosolids
2119 placement, unless a department-approved nutrient management plan
2120 and water quality monitoring plan provide reasonable assurances
2121 that the land application of biosolids at the site will not
2122 cause or contribute to a violation of the state's surface water
2123 quality standards or groundwater standards. As used in this
2124 subsection, the term "seasonal high water" means the elevation
2125 to which the ground and surface water may be expected to rise

2126 due to a normal wet season.

2127 (b) Be enrolled in the Department of Agriculture and
2128 Consumer Service's best management practices program or be
2129 within an agricultural operation enrolled in the program for the
2130 applicable commodity type.

2131 (4) All biosolids land application site permits must
2132 comply with the requirements of subsection (3) by July 1, 2022.

2133 (5) A new or renewed biosolids land application site or
2134 facility permit issued after July 1, 2020, must comply with this
2135 section and must include a permit condition that requires the
2136 permit to be reopened to insert a compliance date of no later
2137 than 1 year after the effective date of the rules adopted
2138 pursuant to subsection (2). All permits must meet the
2139 requirements of the rules adopted pursuant to subsection (2) no
2140 later than 2 years after the effective date of such rules.

2141 (6) A municipality or county may enforce or extend a local
2142 ordinance, regulation, resolution, rule, moratorium, or policy,
2143 any of which was adopted before November 1, 2019, relating to
2144 the land application of Class A or Class B biosolids until the
2145 ordinance, regulation, resolution, rule, moratorium, or policy
2146 is repealed by the municipality or county.

2147 Section 18. Subsections (7) through (10) of section
2148 403.086, Florida Statutes, are renumbered as subsections (8)
2149 through (11), respectively, subsections (1) and (2) are amended,
2150 and a new subsection (7) is added to that section, to read:

2151 403.086 Sewage disposal facilities; advanced and secondary
2152 waste treatment.—

2153 (1)(a) ~~Neither~~ The Department of Health or ~~nor~~ any other
2154 state agency, county, special district, or municipality may not
2155 ~~shall~~ approve construction of any sewage disposal facilities ~~for~~
2156 ~~sanitary sewage disposal~~ which do not provide for secondary
2157 waste treatment and, ~~in addition thereto,~~ advanced waste
2158 treatment as deemed necessary and ordered by the department.

2159 (b) Sewage disposal ~~No~~ facilities ~~for sanitary sewage~~
2160 ~~disposal~~ constructed after June 14, 1978, may not ~~shall~~ dispose
2161 of any wastes by deep well injection without providing for
2162 secondary waste treatment and, ~~in addition thereto,~~ advanced
2163 waste treatment deemed necessary by the department to protect
2164 adequately the beneficial use of the receiving waters.

2165 (c) Notwithstanding ~~any other provisions of~~ this chapter
2166 or chapter 373, sewage disposal facilities ~~for sanitary sewage~~
2167 ~~disposal~~ may not dispose of any wastes into Old Tampa Bay, Tampa
2168 Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound,
2169 Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay,
2170 Lemon Bay, ~~or~~ Charlotte Harbor Bay, or, beginning July 1, 2025,
2171 Indian River Lagoon, or into any river, stream, channel, canal,
2172 bay, bayou, sound, or other water tributary thereto, without
2173 providing advanced waste treatment, as defined in subsection
2174 (4), approved by the department. This paragraph does ~~shall~~ not
2175 apply to facilities which were permitted by February 1, 1987,

2176 and which discharge secondary treated effluent, followed by
2177 water hyacinth treatment, to tributaries of tributaries of the
2178 named waters; or to facilities permitted to discharge to the
2179 nontidally influenced portions of the Peace River.

2180 (d) By December 31, 2020, the department, in consultation
2181 with the water management districts and sewage disposal
2182 facilities, shall submit to the Governor, the President of the
2183 Senate, and the Speaker of the House of Representatives a
2184 progress report on the status of upgrades made by each facility
2185 to meet the advanced waste treatment requirements under
2186 paragraph (c). The report must include a list of sewage disposal
2187 facilities required to upgrade to advanced waste treatment, the
2188 preliminary cost estimates for the upgrades, and a projected
2189 timeline of the dates by which the upgrades will begin and be
2190 completed and the date by which operations of the upgraded
2191 facility will begin.

2192 (2) All sewage disposal ~~Any facilities for sanitary sewage~~
2193 ~~disposal~~ shall provide for secondary waste treatment, a power
2194 outage contingency plan that mitigates the impacts of power
2195 outages on the utility's collection system and pump stations,
2196 ~~and, in addition thereto,~~ advanced waste treatment as deemed
2197 necessary and ordered by the Department of Environmental
2198 Protection. Failure to conform is ~~shall be~~ punishable by a civil
2199 penalty of \$500 for each 24-hour day or fraction thereof that
2200 such failure is allowed to continue thereafter.

2201 (7) All sewage disposal facilities under subsection (2)
2202 which control a collection or transmission system of pipes and
2203 pumps to collect and transmit wastewater from domestic or
2204 industrial sources to the facility shall take steps to prevent
2205 sanitary sewer overflows or underground pipe leaks and ensure
2206 that collected wastewater reaches the facility for appropriate
2207 treatment. Facilities must use inflow and infiltration studies
2208 and leakage surveys to develop pipe assessment, repair, and
2209 replacement action plans with a 5-year planning horizon that
2210 comply with department rule to limit, reduce, and eliminate
2211 leaks, seepages, or inputs into wastewater treatment systems'
2212 underground pipes. The pipe assessment, repair, and replacement
2213 action plans must be reported to the department. The facility
2214 action plans must include information regarding the annual
2215 expenditures dedicated to the inflow and infiltration studies
2216 and the required replacement action plans; expenditures that are
2217 dedicated to pipe assessment, repair, and replacement; and
2218 expenditures designed to limit the presence of fats, roots,
2219 oils, and grease in the facility's collection system. The
2220 department shall adopt rules regarding the implementation of
2221 inflow and infiltration studies and leakage surveys; however,
2222 such rules may not fix or revise utility rates or budgets. A
2223 utility or an operating entity subject to this subsection and s.
2224 403.061(14) may submit one report to comply with both
2225 requirements. Substantial compliance with this subsection is

2226 evidence in mitigation for the purposes of assessing penalties
2227 pursuant to ss. 403.121 and 403.141.

2228 Section 19. Subsections (4) through (10) of section
2229 403.087, Florida Statutes, are renumbered as subsections (5)
2230 through (11), respectively, and a new subsection (4) is added to
2231 that section to read:

2232 403.087 Permits; general issuance; denial; revocation;
2233 prohibition; penalty.—

2234 (4) The department shall issue an operation permit for a
2235 domestic wastewater treatment facility other than a facility
2236 regulated under the National Pollutant Discharge Elimination
2237 System Program under s. 403.0885 for a term of up to 10 years if
2238 the facility is meeting the stated goals in its action plan
2239 adopted pursuant to s. 403.086(7).

2240 Section 20. Subsections (3) and (4) of section 403.088,
2241 Florida Statutes, are renumbered as subsections (4) and (5),
2242 respectively, paragraph (c) of subsection (2) is amended, and a
2243 new subsection (3) is added to that section, to read:

2244 403.088 Water pollution operation permits; conditions.—

2245 (2)

2246 (c) A permit shall:

2247 1. Specify the manner, nature, volume, and frequency of
2248 the discharge permitted;

2249 2. Require proper operation and maintenance of any
2250 pollution abatement facility by qualified personnel in

2251 accordance with standards established by the department;

2252 3. Require a deliberate, proactive approach to
2253 investigating or surveying a significant percentage of the
2254 domestic wastewater collection system throughout the duration of
2255 the permit to determine pipe integrity, which must be
2256 accomplished in an economically feasible manner. The permittee
2257 shall submit an annual report to the department which details
2258 facility revenues and expenditures in a manner prescribed by
2259 department rule. The report must detail any deviation of annual
2260 expenditures from identified system needs related to inflow and
2261 infiltration studies; model plans for pipe assessment, repair,
2262 and replacement; and pipe assessment, repair, and replacement
2263 required under s. 403.086(7). Substantial compliance with this
2264 subsection is evidence in mitigation for the purposes of
2265 assessing penalties pursuant to ss. 403.121 and 403.141;

2266 ~~4.3.~~ Contain such additional conditions, requirements, and
2267 restrictions as the department deems necessary to preserve and
2268 protect the quality of the receiving waters;

2269 ~~5.4.~~ Be valid for the period of time specified therein;
2270 and

2271 ~~6.5.~~ Constitute the state National Pollutant Discharge
2272 Elimination System permit when issued pursuant to the authority
2273 in s. 403.0885.

2274 (3) No later than March 1 of each year, the department
2275 shall submit a report to the Governor, the President of the

Senate, and the Speaker of the House of Representatives which identifies all domestic wastewater treatment facilities that experienced a sanitary sewer overflow in the preceding calendar year. The report must identify the name of the utility or responsible operating entity, permitted capacity in annual average gallons per day, number of overflows, type of water discharged, total volume of sewage released, and, to the extent known and available, volume of sewage recovered, volume of sewage discharged to surface waters, and cause of the sanitary sewer overflow, including whether the overflow was caused by a third party. The department shall include with this report the annual report specified under subparagraph (2)(c)3. for each utility that experienced an overflow.

Section 21. Subsection (6) of section 403.0891, Florida Statutes, is amended to read:

403.0891 State, regional, and local stormwater management plans and programs.—The department, the water management districts, and local governments shall have the responsibility for the development of mutually compatible stormwater management programs.

(6) The department and the Department of Economic Opportunity, in cooperation with local governments in the coastal zone, shall develop a model stormwater management program that could be adopted by local governments. The model program must contain model ordinances that target nutrient

2301 reduction practices and use green infrastructure. The model
2302 program shall contain dedicated funding options, including a
2303 stormwater utility fee system based upon an equitable unit cost
2304 approach. Funding options shall be designed to generate capital
2305 to retrofit existing stormwater management systems, build new
2306 treatment systems, operate facilities, and maintain and service
2307 debt.

2308 Section 22. Paragraphs (b) and (g) of subsection (2),
2309 paragraph (b) of subsection (3), and subsections (8) and (9) of
2310 section 403.121, Florida Statutes, are amended to read:

2311 403.121 Enforcement; procedure; remedies.—The department
2312 shall have the following judicial and administrative remedies
2313 available to it for violations of this chapter, as specified in
2314 s. 403.161(1).

2315 (2) Administrative remedies:

2316 (b) If the department has reason to believe a violation
2317 has occurred, it may institute an administrative proceeding to
2318 order the prevention, abatement, or control of the conditions
2319 creating the violation or other appropriate corrective action.
2320 Except for violations involving hazardous wastes, asbestos, or
2321 underground injection, the department shall proceed
2322 administratively in all cases in which the department seeks
2323 administrative penalties that do not exceed \$50,000 ~~\$10,000~~ per
2324 assessment as calculated in accordance with subsections (3),
2325 (4), (5), (6), and (7). Pursuant to 42 U.S.C. s. 300g-2, the

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

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

2351 department also retains the authority provided in ss. 403.131,
2352 403.141, and this section to judicially pursue injunctive relief
2353 and damages, if a notice of violation seeking the imposition of
2354 administrative penalties has not been issued. The department has
2355 the authority to enter into a settlement, ~~either~~ before or after
2356 initiating a notice of violation, and the settlement may include
2357 a penalty amount different from the administrative penalty
2358 schedule. Any case filed in state court because it is alleged to
2359 exceed a total of \$50,000 ~~\$10,000~~ in penalties may be settled in
2360 the court action for less than \$50,000 ~~\$10,000~~.

2361 (3) Except for violations involving hazardous wastes,
2362 asbestos, or underground injection, administrative penalties
2363 must be calculated according to the following schedule:

2364 (b) For failure to obtain a required wastewater permit,
2365 other than a permit required for surface water discharge, the
2366 department shall assess a penalty of \$2,000 ~~\$1,000~~. For a
2367 domestic or industrial wastewater violation not involving a
2368 surface water or groundwater quality violation, the department
2369 shall assess a penalty of \$4,000 ~~\$2,000~~ for an unpermitted or
2370 unauthorized discharge or effluent-limitation exceedance or for
2371 failure to comply with s. 403.061(14) or s. 403.086(7) or rules
2372 adopted thereunder. For an unpermitted or unauthorized discharge
2373 or effluent-limitation exceedance that resulted in a surface
2374 water or groundwater quality violation, the department shall
2375 assess a penalty of \$10,000 ~~\$5,000~~.

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

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

Section 23. Subsection (7) of section 403.1835, Florida Statutes, is amended to read:

403.1835 Water pollution control financial assistance.—

(7) Eligible projects must be given priority according to the extent each project is intended to remove, mitigate, or prevent adverse effects on surface or ground water quality and public health. The relative costs of achieving environmental and public health benefits must be taken into consideration during the department's assignment of project priorities. The

department shall adopt a priority system by rule. In developing the priority system, the department shall give priority to projects that:

(a) Eliminate public health hazards;

(b) Enable compliance with laws requiring the elimination of discharges to specific water bodies, including the requirements of s. 403.086(10) ~~s. 403.086(9)~~ regarding domestic wastewater ocean outfalls;

(c) Assist in the implementation of total maximum daily loads adopted under s. 403.067;

(d) Enable compliance with other pollution control requirements, including, but not limited to, toxics control, wastewater residuals management, and reduction of nutrients and bacteria;

(e) Assist in the implementation of surface water improvement and management plans and pollutant load reduction goals developed under state water policy;

(f) Promote reclaimed water reuse;

(g) Eliminate failing onsite sewage treatment and disposal systems or those that are causing environmental damage; ~~or~~

(h) Reduce pollutants to and otherwise promote the restoration of Florida's surface and ground waters;

(i) Implement the requirements of s. 403.086(7) or s. 403.088(2)(c); or

(j) Promote efficiency by planning for the installation of

2426 wastewater transmission facilities to be constructed
2427 concurrently with other construction projects occurring within
2428 or along a transportation facility right-of-way.

2429 Section 24. Paragraph (b) of subsection (3) of section
2430 403.1838, Florida Statutes, is amended to read:

2431 403.1838 Small Community Sewer Construction Assistance
2432 Act.—

2433 (3)

2434 (b) The rules of the Environmental Regulation Commission
2435 must:

2436 1. Require that projects to plan, design, construct,
2437 upgrade, or replace wastewater collection, transmission,
2438 treatment, disposal, and reuse facilities be cost-effective,
2439 environmentally sound, permittable, and implementable.

2440 2. Require appropriate user charges, connection fees, and
2441 other charges sufficient to ensure the long-term operation,
2442 maintenance, and replacement of the facilities constructed under
2443 each grant.

2444 3. Require grant applications to be submitted on
2445 appropriate forms with appropriate supporting documentation, and
2446 require records to be maintained.

2447 4. Establish a system to determine eligibility of grant
2448 applications.

2449 5. Establish a system to determine the relative priority
2450 of grant applications. The system must consider public health

2451 protection and water pollution prevention or abatement and must
2452 prioritize projects that plan for the installation of wastewater
2453 transmission facilities to be constructed concurrently with
2454 other construction projects occurring within or along a
2455 transportation facility right-of-way.

2456 6. Establish requirements for competitive procurement of
2457 engineering and construction services, materials, and equipment.

2458 7. Provide for termination of grants when program
2459 requirements are not met.

2460 Section 25. Subsection (9) is added to section 403.412,
2461 Florida Statutes, to read:

2462 403.412 Environmental Protection Act.—

2463 (9) (a) A local government regulation, ordinance, code,
2464 rule, comprehensive plan, charter, or any other provision of law
2465 may not recognize or grant any legal rights to a plant, an
2466 animal, a body of water, or any other part of the natural
2467 environment that is not a person or political subdivision as
2468 defined in s. 1.01 or grant such person or political subdivision
2469 any specific rights relating to the natural environment not
2470 otherwise authorized in general law or specifically granted in
2471 the State Constitution.

2472 (b) This subsection does not limit the power of an
2473 adversely affected party to challenge the consistency of a
2474 development order with a comprehensive plan as provided in s.
2475 163.3215 or to file an action for injunctive relief to enforce

2476 the terms of a development agreement or challenge compliance of
2477 the agreement as provided in s. 163.3243.

2478 (c) This subsection does not limit the standing of the
2479 Department of Legal Affairs, a political subdivision or
2480 municipality of the state, or a citizen of the state to maintain
2481 an action for injunctive relief as provided in this section.

2482 Section 26. The Legislature determines and declares that
2483 this act fulfills an important state interest.

2484 Section 27. Effective July 1, 2021, subsection (5) of
2485 section 153.54, Florida Statutes, is amended to read:

2486 153.54 Preliminary report by county commissioners with
2487 respect to creation of proposed district.—Upon receipt of a
2488 petition duly signed by not less than 25 qualified electors who
2489 are also freeholders residing within an area proposed to be
2490 incorporated into a water and sewer district pursuant to this
2491 law and describing in general terms the proposed boundaries of
2492 such proposed district, the board of county commissioners if it
2493 shall deem it necessary and advisable to create and establish
2494 such proposed district for the purpose of constructing,
2495 establishing or acquiring a water system or a sewer system or
2496 both in and for such district (herein called "improvements"),
2497 shall first cause a preliminary report to be made which such
2498 report together with any other relevant or pertinent matters,
2499 shall include at least the following:

2500 (5) For the construction of a new proposed central

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sewerage system or the extension of an existing central sewerage system that was not previously approved, the report shall include a study that includes the available information from the Department of Environmental Protection ~~Health~~ on the history of onsite sewage treatment and disposal systems currently in use in the area and a comparison of the projected costs to the owner of a typical lot or parcel of connecting to and using the proposed central sewerage system versus installing, operating, and properly maintaining an onsite sewage treatment and disposal system that is approved by the Department of Environmental Protection ~~Health~~ and that provides for the comparable level of environmental and health protection as the proposed central sewerage system; consideration of the local authority's obligations or reasonably anticipated obligations for water body cleanup and protection under state or federal programs, including requirements for water bodies listed under s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq.; and other factors deemed relevant by the local authority.

Such report shall be filed in the office of the clerk of the circuit court and shall be open for the inspection of any taxpayer, property owner, qualified elector or any other interested or affected person.

Section 28. Effective July 1, 2021, paragraph (c) of

subsection (2) of section 153.73, Florida Statutes, is amended to read:

153.73 Assessable improvements; levy and payment of special assessments.—Any district may provide for the construction or reconstruction of assessable improvements as defined in s. 153.52, and for the levying of special assessments upon benefited property for the payment thereof, under the provisions of this section.

(2)

(c) For the construction of a new proposed central sewerage system or the extension of an existing central sewerage system that was not previously approved, the report shall include a study that includes the available information from the Department of Environmental Protection ~~Health~~ on the history of onsite sewage treatment and disposal systems currently in use in the area and a comparison of the projected costs to the owner of a typical lot or parcel of connecting to and using the proposed central sewerage system versus installing, operating, and properly maintaining an onsite sewage treatment and disposal system that is approved by the Department of Environmental Protection ~~Health~~ and that provides for the comparable level of environmental and health protection as the proposed central sewerage system; consideration of the local authority's obligations or reasonably anticipated obligations for water body cleanup and protection under state or federal programs,

including requirements for water bodies listed under s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq.; and other factors deemed relevant by the local authority.

Section 29. Effective July 1, 2021, subsection (2) of section 163.3180, Florida Statutes, is amended to read:

163.3180 Concurrency.—

(2) Consistent with public health and safety, sanitary sewer, solid waste, drainage, adequate water supplies, and potable water facilities shall be in place and available to serve new development no later than the issuance by the local government of a certificate of occupancy or its functional equivalent. Before ~~Prior to~~ approval of a building permit or its functional equivalent, the local government shall consult with the applicable water supplier to determine whether adequate water supplies to serve the new development will be available no later than the anticipated date of issuance by the local government of a certificate of occupancy or its functional equivalent. A local government may meet the concurrency requirement for sanitary sewer through the use of onsite sewage treatment and disposal systems approved by the Department of Environmental Protection ~~Health~~ to serve new development.

Section 30. Effective July 1, 2021, subsection (3) of section 180.03, Florida Statutes, is amended to read:

180.03 Resolution or ordinance proposing construction or

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extension of utility; objections to same.—

(3) For the construction of a new proposed central sewerage system or the extension of an existing central sewerage system that was not previously approved, the report shall include a study that includes the available information from the Department of Environmental Protection ~~Health~~ on the history of onsite sewage treatment and disposal systems currently in use in the area and a comparison of the projected costs to the owner of a typical lot or parcel of connecting to and using the proposed central sewerage system versus installing, operating, and properly maintaining an onsite sewage treatment and disposal system that is approved by the Department of Environmental Protection ~~Health~~ and that provides for the comparable level of environmental and health protection as the proposed central sewerage system; consideration of the local authority's obligations or reasonably anticipated obligations for water body cleanup and protection under state or federal programs, including requirements for water bodies listed under s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq.; and other factors deemed relevant by the local authority. The results of the ~~such a~~ study shall be included in the resolution or ordinance required under subsection (1).

Section 31. Subsections (2), (3), and (6) of section 311.105, Florida Statutes, are amended to read:

311.105 Florida Seaport Environmental Management

Committee; permitting; mitigation.—

(2) Each application for a permit authorized pursuant to s. 403.061(38) ~~s. 403.061(37)~~ must include:

(a) A description of maintenance dredging activities to be conducted and proposed methods of dredged-material management.

(b) A characterization of the materials to be dredged and the materials within dredged-material management sites.

(c) A description of dredged-material management sites and plans.

(d) A description of measures to be undertaken, including environmental compliance monitoring, to minimize adverse environmental effects of maintenance dredging and dredged-material management.

(e) Such scheduling information as is required to facilitate state supplementary funding of federal maintenance dredging and dredged-material management programs consistent with beach restoration criteria of the Department of Environmental Protection.

(3) Each application for a permit authorized pursuant to s. 403.061(39) ~~s. 403.061(38)~~ must include ~~the provisions of~~ paragraphs (2)(b)-(e) and the following:

(a) A description of dredging and dredged-material management and other related activities associated with port development, including the expansion of navigation channels, dredged-material management sites, port harbors, turning basins,

harbor berths, and associated facilities.

(b) A discussion of environmental mitigation as is proposed for dredging and dredged-material management for port development, including the expansion of navigation channels, dredged-material management sites, port harbors, turning basins, harbor berths, and associated facilities.

(6) Dredged-material management activities authorized pursuant to s. 403.061(38) or (39) ~~s. 403.061(37) or (38)~~ shall be incorporated into port master plans developed pursuant to s. 163.3178(2) (k).

Section 32. Paragraph (d) of subsection (1) of section 327.46, Florida Statutes, is amended to read:

327.46 Boating-restricted areas.—

(1) Boating-restricted areas, including, but not limited to, restrictions of vessel speeds and vessel traffic, may be established on the waters of this state for any purpose necessary to protect the safety of the public if such restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards or to protect seagrasses on privately owned submerged lands.

(d) Owners of private submerged lands that are adjacent to Outstanding Florida Waters, as defined in s. 403.061(28) ~~s. 403.061(27)~~, or an aquatic preserve established under ss. 258.39-258.399 may request that the commission establish

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boating-restricted areas solely to protect any seagrass and contiguous seagrass habitat within their private property boundaries from seagrass scarring due to propeller dredging. Owners making a request pursuant to this paragraph must demonstrate to the commission clear ownership of the submerged lands. The commission shall adopt rules to implement this paragraph, including, but not limited to, establishing an application process and criteria for meeting the requirements of this paragraph. Each approved boating-restricted area shall be established by commission rule. For marking boating-restricted zones established pursuant to this paragraph, owners of privately submerged lands shall apply to the commission for a uniform waterway marker permit in accordance with ss. 327.40 and 327.41, and shall be responsible for marking the boating-restricted zone in accordance with the terms of the permit.

Section 33. Paragraph (d) of subsection (3) of section 373.250, Florida Statutes, is amended to read:

373.250 Reuse of reclaimed water.—

(3)

(d) The South Florida Water Management District shall require the use of reclaimed water made available by the elimination of wastewater ocean outfall discharges as provided for in s. 403.086(10) ~~s. 403.086(9)~~ in lieu of surface water or groundwater when the use of reclaimed water is available; is environmentally, economically, and technically feasible; and is

of such quality and reliability as is necessary to the user. Such reclaimed water may also be required in lieu of other alternative sources. In determining whether to require such reclaimed water in lieu of other alternative sources, the water management district shall consider existing infrastructure investments in place or obligated to be constructed by an executed contract or similar binding agreement as of July 1, 2011, for the development of other alternative sources.

Section 34. Subsection (9) of section 373.414, Florida Statutes, is amended to read:

373.414 Additional criteria for activities in surface waters and wetlands.—

(9) The department and the governing boards, on or before July 1, 1994, shall adopt rules to incorporate ~~the provisions of~~ this section, relying primarily on the existing rules of the department and the water management districts, into the rules governing the management and storage of surface waters. Such rules shall seek to achieve a statewide, coordinated and consistent permitting approach to activities regulated under this part. Variations in permitting criteria in the rules of individual water management districts or the department shall only be provided to address differing physical or natural characteristics. Such rules adopted pursuant to this subsection shall include the special criteria adopted pursuant to s. 403.061(30) ~~s. 403.061(29)~~ and may include the special criteria

2701 adopted pursuant to s. 403.061(35) ~~s. 403.061(34)~~. Such rules
2702 shall include a provision requiring that a notice of intent to
2703 deny or a permit denial based upon this section shall contain an
2704 explanation of the reasons for such denial and an explanation,
2705 in general terms, of what changes, if any, are necessary to
2706 address such reasons for denial. Such rules may establish
2707 exemptions and general permits, if such exemptions and general
2708 permits do not allow significant adverse impacts to occur
2709 individually or cumulatively. Such rules may require submission
2710 of proof of financial responsibility which may include the
2711 posting of a bond or other form of surety prior to the
2712 commencement of construction to provide reasonable assurance
2713 that any activity permitted pursuant to this section, including
2714 any mitigation for such permitted activity, will be completed in
2715 accordance with the terms and conditions of the permit once the
2716 construction is commenced. Until rules adopted pursuant to this
2717 subsection become effective, existing rules adopted under this
2718 part and rules adopted pursuant to the authority of ss. 403.91-
2719 403.929 shall be deemed authorized under this part and shall
2720 remain in full force and effect. Neither the department nor the
2721 governing boards are limited or prohibited from amending any
2722 such rules.

2723 Section 35. Paragraph (b) of subsection (4) of section
2724 373.705, Florida Statutes, is amended to read:

2725 373.705 Water resource development; water supply

development.—

(4)

(b) Water supply development projects that meet the criteria in paragraph (a) and that meet one or more of the following additional criteria shall be given first consideration for state or water management district funding assistance:

1. The project brings about replacement of existing sources in order to help implement a minimum flow or minimum water level;

2. The project implements reuse that assists in the elimination of domestic wastewater ocean outfalls as provided in s. 403.086(10) ~~s. 403.086(9)~~; or

3. The project reduces or eliminates the adverse effects of competition between legal users and the natural system.

Section 36. Paragraph (f) of subsection (8) of section 373.707, Florida Statutes, is amended to read:

373.707 Alternative water supply development.—

(8)

(f) The governing boards shall determine those projects that will be selected for financial assistance. The governing boards may establish factors to determine project funding; however, significant weight shall be given to the following factors:

1. Whether the project provides substantial environmental benefits by preventing or limiting adverse water resource

2751 impacts.

2752 2. Whether the project reduces competition for water
2753 supplies.

2754 3. Whether the project brings about replacement of
2755 traditional sources in order to help implement a minimum flow or
2756 level or a reservation.

2757 4. Whether the project will be implemented by a
2758 consumptive use permittee that has achieved the targets
2759 contained in a goal-based water conservation program approved
2760 pursuant to s. 373.227.

2761 5. The quantity of water supplied by the project as
2762 compared to its cost.

2763 6. Projects in which the construction and delivery to end
2764 users of reuse water is a major component.

2765 7. Whether the project will be implemented by a
2766 multijurisdictional water supply entity or regional water supply
2767 authority.

2768 8. Whether the project implements reuse that assists in
2769 the elimination of domestic wastewater ocean outfalls as
2770 provided in s. 403.086(10) ~~s. 403.086(9)~~.

2771 9. Whether the county or municipality, or the multiple
2772 counties or municipalities, in which the project is located has
2773 implemented a high-water recharge protection tax assessment
2774 program as provided in s. 193.625.

2775 Section 37. Subsection (4) of section 373.709, Florida

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Statutes, is amended to read:

373.709 Regional water supply planning.—

(4) The South Florida Water Management District shall include in its regional water supply plan water resource and water supply development projects that promote the elimination of wastewater ocean outfalls as provided in s. 403.086(10) ~~s. 403.086(9)~~.

Section 38. Effective July 1, 2021, subsection (3) of section 373.807, Florida Statutes, is amended to read:

373.807 Protection of water quality in Outstanding Florida Springs.—By July 1, 2016, the department shall initiate assessment, pursuant to s. 403.067(3), of Outstanding Florida Springs or spring systems for which an impairment determination has not been made under the numeric nutrient standards in effect for spring vents. Assessments must be completed by July 1, 2018.

(3) As part of a basin management action plan that includes an Outstanding Florida Spring, the department, ~~the Department of Health,~~ relevant local governments, and relevant local public and private wastewater utilities shall develop an onsite sewage treatment and disposal system remediation plan for a spring if the department determines onsite sewage treatment and disposal systems within a priority focus area contribute at least 20 percent of nonpoint source nitrogen pollution or if the department determines remediation is necessary to achieve the total maximum daily load. The plan shall identify cost-effective

2801 and financially feasible projects necessary to reduce the
2802 nutrient impacts from onsite sewage treatment and disposal
2803 systems and shall be completed and adopted as part of the basin
2804 management action plan no later than the first 5-year milestone
2805 required by subparagraph (1)(b)8. The department is the lead
2806 agency in coordinating the preparation of and the adoption of
2807 the plan. The department shall:

2808 (a) Collect and evaluate credible scientific information
2809 on the effect of nutrients, particularly forms of nitrogen, on
2810 springs and springs systems; and

2811 (b) Develop a public education plan to provide area
2812 residents with reliable, understandable information about onsite
2813 sewage treatment and disposal systems and springs.

2814
2815 In addition to the requirements in s. 403.067, the plan shall
2816 include options for repair, upgrade, replacement, drainfield
2817 modification, addition of effective nitrogen reducing features,
2818 connection to a central sewerage system, or other action for an
2819 onsite sewage treatment and disposal system or group of systems
2820 within a priority focus area that contribute at least 20 percent
2821 of nonpoint source nitrogen pollution or if the department
2822 determines remediation is necessary to achieve a total maximum
2823 daily load. For these systems, the department shall include in
2824 the plan a priority ranking for each system or group of systems
2825 that requires remediation and shall award funds to implement the

remediation projects contingent on an appropriation in the General Appropriations Act, which may include all or part of the costs necessary for repair, upgrade, replacement, drainfield modification, addition of effective nitrogen reducing features, initial connection to a central sewerage system, or other action. In awarding funds, the department may consider expected nutrient reduction benefit per unit cost, size and scope of project, relative local financial contribution to the project, and the financial impact on property owners and the community. The department may waive matching funding requirements for proposed projects within an area designated as a rural area of opportunity under s. 288.0656.

Section 39. Paragraph (k) of subsection (1) of section 376.307, Florida Statutes, is amended to read:

376.307 Water Quality Assurance Trust Fund.—

(1) The Water Quality Assurance Trust Fund is intended to serve as a broad-based fund for use in responding to incidents of contamination that pose a serious danger to the quality of groundwater and surface water resources or otherwise pose a serious danger to the public health, safety, or welfare. Moneys in this fund may be used:

(k) For funding activities described in s. 403.086(10) ~~s. 403.086(9)~~ which are authorized for implementation under the Leah Schad Memorial Ocean Outfall Program.

Section 40. Paragraph (i) of subsection (2), paragraph (b)

of subsection (4), paragraph (j) of subsection (7), and paragraph (a) of subsection (9) of section 380.0552, Florida Statutes, are amended to read:

380.0552 Florida Keys Area; protection and designation as area of critical state concern.—

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature to:

(i) Protect and improve the nearshore water quality of the Florida Keys through federal, state, and local funding of water quality improvement projects, including the construction and operation of wastewater management facilities that meet the requirements of ss. 381.0065(4)(l) and 403.086(11) ~~403.086(10)~~, as applicable.

(4) REMOVAL OF DESIGNATION.—

(b) Beginning November 30, 2010, the state land planning agency shall annually submit a written report to the Administration Commission describing the progress of the Florida Keys Area toward completing the work program tasks specified in commission rules. The land planning agency shall recommend removing the Florida Keys Area from being designated as an area of critical state concern to the commission if it determines that:

1. All of the work program tasks have been completed, including construction of, operation of, and connection to central wastewater management facilities pursuant to s.

2876 403.086(11) ~~s. 403.086(10)~~ and upgrade of onsite sewage
2877 treatment and disposal systems pursuant to s. 381.0065(4)(1);

2878 2. All local comprehensive plans and land development
2879 regulations and the administration of such plans and regulations
2880 are adequate to protect the Florida Keys Area, fulfill the
2881 legislative intent specified in subsection (2), and are
2882 consistent with and further the principles guiding development;
2883 and

2884 3. A local government has adopted a resolution at a public
2885 hearing recommending the removal of the designation.

2886 (7) PRINCIPLES FOR GUIDING DEVELOPMENT.—State, regional,
2887 and local agencies and units of government in the Florida Keys
2888 Area shall coordinate their plans and conduct their programs and
2889 regulatory activities consistent with the principles for guiding
2890 development as specified in chapter 27F-8, Florida
2891 Administrative Code, as amended effective August 23, 1984, which
2892 is adopted and incorporated herein by reference. For the
2893 purposes of reviewing the consistency of the adopted plan, or
2894 any amendments to that plan, with the principles for guiding
2895 development, and any amendments to the principles, the
2896 principles shall be construed as a whole and specific provisions
2897 may not be construed or applied in isolation from the other
2898 provisions. However, the principles for guiding development are
2899 repealed 18 months from July 1, 1986. After repeal, any plan
2900 amendments must be consistent with the following principles:

(j) Ensuring the improvement of nearshore water quality by requiring the construction and operation of wastewater management facilities that meet the requirements of ss. 381.0065(4)(l) and s. 403.086(11) ~~403.086(10)~~, as applicable, and by directing growth to areas served by central wastewater treatment facilities through permit allocation systems.

(9) MODIFICATION TO PLANS AND REGULATIONS.—

(a) Any land development regulation or element of a local comprehensive plan in the Florida Keys Area may be enacted, amended, or rescinded by a local government, but the enactment, amendment, or rescission becomes effective only upon approval by the state land planning agency. The state land planning agency shall review the proposed change to determine if it is in compliance with the principles for guiding development specified in chapter 27F-8, Florida Administrative Code, as amended effective August 23, 1984, and must approve or reject the requested changes within 60 days after receipt. Amendments to local comprehensive plans in the Florida Keys Area must also be reviewed for compliance with the following:

1. Construction schedules and detailed capital financing plans for wastewater management improvements in the annually adopted capital improvements element, and standards for the construction of wastewater treatment and disposal facilities or collection systems that meet or exceed the criteria in s. 403.086(11) ~~s. 403.086(10)~~ for wastewater treatment and disposal

2926 facilities or s. 381.0065(4)(1) for onsite sewage treatment and
2927 disposal systems.

2928 2. Goals, objectives, and policies to protect public
2929 safety and welfare in the event of a natural disaster by
2930 maintaining a hurricane evacuation clearance time for permanent
2931 residents of no more than 24 hours. The hurricane evacuation
2932 clearance time shall be determined by a hurricane evacuation
2933 study conducted in accordance with a professionally accepted
2934 methodology and approved by the state land planning agency.

2935 Section 41. Effective July 1, 2021, section 381.006,
2936 Florida Statutes, is amended to read:

2937 381.006 Environmental health.—The Department of Health
2938 shall conduct an environmental health program as part of
2939 fulfilling the state's public health mission. The purpose of
2940 this program is to detect and prevent disease caused by natural
2941 and manmade factors in the environment. The environmental health
2942 program shall include, but not be limited to:

2943 (1) A drinking water function.

2944 (2) An environmental health surveillance function which
2945 shall collect, compile, and correlate information on public
2946 health and exposure to hazardous substances through sampling and
2947 testing of water, air, or foods. Environmental health
2948 surveillance shall include a comprehensive assessment of
2949 drinking water under the department's supervision and an indoor
2950 air quality testing and monitoring program to assess health

risks from exposure to chemical, physical, and biological agents in the indoor environment.

(3) A toxicology and hazard assessment function which shall conduct toxicological and human health risk assessments of exposure to toxic agents, for the purposes of:

(a) Supporting determinations by the State Health Officer of safe levels of contaminants in water, air, or food if applicable standards or criteria have not been adopted. These determinations shall include issuance of health advisories to protect the health and safety of the public at risk from exposure to toxic agents.

(b) Provision of human toxicological health risk assessments to the public and other governmental agencies to characterize the risks to the public from exposure to contaminants in air, water, or food.

(c) Consultation and technical assistance to the Department of Environmental Protection and other governmental agencies on actions necessary to ameliorate exposure to toxic agents, including the emergency provision by the Department of Environmental Protection of drinking water in cases of drinking water contamination that present an imminent and substantial threat to the public's health, as required by s. 376.30(3)(c)1.a.

(d) Monitoring and reporting the body burden of toxic agents to estimate past exposure to these toxic agents, predict

future health effects, and decrease the incidence of poisoning by identifying and eliminating exposure.

(4) A sanitary nuisance function, as that term is defined in chapter 386.

(5) A migrant labor function.

(6) A public facilities function, including sanitary practices relating to state, county, municipal, and private institutions serving the public; jointly with the Department of Education, publicly and privately owned schools; all places used for the incarceration of prisoners and inmates of state institutions for the mentally ill; toilets and washrooms in all public places and places of employment; any other condition, place, or establishment necessary for the control of disease or the protection and safety of public health.

~~(7) An onsite sewage treatment and disposal function.~~

(7)~~(8)~~ A biohazardous waste control function.

(8)~~(9)~~ A function to control diseases transmitted from animals to humans, including the segregation, quarantine, and destruction of domestic pets and wild animals having or suspected of having such diseases.

(9)~~(10)~~ An environmental epidemiology function which shall investigate food-borne disease, waterborne disease, and other diseases of environmental causation, whether of chemical, radiological, or microbiological origin. A \$10 surcharge for this function shall be assessed upon all persons permitted under

chapter 500. This function shall include an educational program for physicians and health professionals designed to promote surveillance and reporting of environmental diseases, and to further the dissemination of knowledge about the relationship between toxic substances and human health which will be useful in the formulation of public policy and will be a source of information for the public.

(10)~~(11)~~ Mosquito and pest control functions as provided in chapters 388 and 482.

(11)~~(12)~~ A radiation control function as provided in chapter 404 and part IV of chapter 468.

(12)~~(13)~~ A public swimming and bathing facilities function as provided in chapter 514.

(13)~~(14)~~ A mobile home park, lodging park, recreational vehicle park, and recreational camp function as provided in chapter 513.

(14)~~(15)~~ A sanitary facilities function, which shall include minimum standards for the maintenance and sanitation of sanitary facilities; public access to sanitary facilities; and fixture ratios for special or temporary events and for homeless shelters.

(15)~~(16)~~ A group-care-facilities function. As used in this subsection, the term "group care facility" means any public or private school, assisted living facility, adult family-care home, adult day care center, short-term residential treatment

3026 center, residential treatment facility, home for special
3027 services, transitional living facility, crisis stabilization
3028 unit, hospice, prescribed pediatric extended care center,
3029 intermediate care facility for persons with developmental
3030 disabilities, or boarding school. The department may adopt rules
3031 necessary to protect the health and safety of residents, staff,
3032 and patrons of group care facilities. Rules related to public
3033 and private schools shall be developed by the Department of
3034 Education in consultation with the department. Rules adopted
3035 under this subsection may include definitions of terms;
3036 provisions relating to operation and maintenance of facilities,
3037 buildings, grounds, equipment, furnishings, and occupant-space
3038 requirements; lighting; heating, cooling, and ventilation; food
3039 service; water supply and plumbing; sewage; sanitary facilities;
3040 insect and rodent control; garbage; safety; personnel health,
3041 hygiene, and work practices; and other matters the department
3042 finds are appropriate or necessary to protect the safety and
3043 health of the residents, staff, students, faculty, or patrons.
3044 The department may not adopt rules that conflict with rules
3045 adopted by the licensing or certifying agency. The department
3046 may enter and inspect at reasonable hours to determine
3047 compliance with applicable statutes or rules. In addition to any
3048 sanctions that the department may impose for violations of rules
3049 adopted under this section, the department shall also report
3050 such violations to any agency responsible for licensing or

3051 certifying the group care facility. The licensing or certifying
3052 agency may also impose any sanction based solely on the findings
3053 of the department.

3054 (16)~~(17)~~ A function for investigating elevated levels of
3055 lead in blood. Each participating county health department may
3056 expend funds for federally mandated certification or
3057 recertification fees related to conducting investigations of
3058 elevated levels of lead in blood.

3059 (17)~~(18)~~ A food service inspection function for domestic
3060 violence centers that are certified by the Department of
3061 Children and Families and monitored by the Florida Coalition
3062 Against Domestic Violence under part XII of chapter 39 and group
3063 care homes as described in subsection (15)~~(16)~~, which shall be
3064 conducted annually and be limited to the requirements in
3065 department rule applicable to community-based residential
3066 facilities with five or fewer residents.

3067
3068 The department may adopt rules to carry out ~~the provisions of~~
3069 this section.

3070 Section 42. Effective July 1, 2021, subsection (1) of
3071 section 381.0061, Florida Statutes, is amended to read:

3072 381.0061 Administrative fines.—

3073 (1) In addition to any administrative action authorized by
3074 chapter 120 or by other law, the department may impose a fine,
3075 which shall not exceed \$500 for each violation, for a violation

of s. 381.006(15) ~~s. 381.006(16)~~, s. 381.0065, s. 381.0066, s. 381.0072, or part III of chapter 489, for a violation of any rule adopted under this chapter, or for a violation of any of the provisions of chapter 386. Notice of intent to impose such fine shall be given by the department to the alleged violator. Each day that a violation continues may constitute a separate violation.

Section 43. Effective July 1, 2021, subsection (1) of section 381.0064, Florida Statutes, is amended to read:

381.0064 Continuing education courses for persons installing or servicing septic tanks.—

(1) The Department of Environmental Protection ~~Health~~ shall establish a program for continuing education which meets the purposes of ss. 381.0101 and 489.554 regarding the public health and environmental effects of onsite sewage treatment and disposal systems and any other matters the department determines desirable for the safe installation and use of onsite sewage treatment and disposal systems. The department may charge a fee to cover the cost of such program.

Section 44. Effective July 1, 2021, paragraph (g) of subsection (1) of section 381.0101, Florida Statutes, is amended to read:

381.0101 Environmental health professionals.—

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

(g) "Primary environmental health program" means those

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3101 programs determined by the department to be essential for
3102 providing basic environmental and sanitary protection to the
3103 public. At a minimum, these programs shall include food
3104 protection program work ~~and onsite sewage treatment and disposal~~
3105 ~~system evaluations.~~

3106 Section 45. Section 403.08601, Florida Statutes, is
3107 amended to read:

3108 403.08601 Leah Schad Memorial Ocean Outfall Program.—The
3109 Legislature declares that as funds become available the state
3110 may assist the local governments and agencies responsible for
3111 implementing the Leah Schad Memorial Ocean Outfall Program
3112 pursuant to s. 403.086(10) ~~s. 403.086(9)~~. Funds received from
3113 other sources provided for in law, the General Appropriations
3114 Act, from gifts designated for implementation of the plan from
3115 individuals, corporations, or other entities, or federal funds
3116 appropriated by Congress for implementation of the plan, may be
3117 deposited into an account of the Water Quality Assurance Trust
3118 Fund.

3119 Section 46. Section 403.0871, Florida Statutes, is amended
3120 to read:

3121 403.0871 Florida Permit Fee Trust Fund.—There is
3122 established within the department a nonlapsing trust fund to be
3123 known as the "Florida Permit Fee Trust Fund." All funds received
3124 from applicants for permits pursuant to ss. 161.041, 161.053,
3125 161.0535, 403.087(7) ~~403.087(6)~~, and 403.861(7)(a) shall be

3126 deposited in the Florida Permit Fee Trust Fund and shall be used
3127 by the department with the advice and consent of the Legislature
3128 to supplement appropriations and other funds received by the
3129 department for the administration of its responsibilities under
3130 this chapter and chapter 161. In no case shall funds from the
3131 Florida Permit Fee Trust Fund be used for salary increases
3132 without the approval of the Legislature.

3133 Section 47. Paragraph (a) of subsection (11) of section
3134 403.0872, Florida Statutes, is amended to read:

3135 403.0872 Operation permits for major sources of air
3136 pollution; annual operation license fee.—Provided that program
3137 approval pursuant to 42 U.S.C. s. 7661a has been received from
3138 the United States Environmental Protection Agency, beginning
3139 January 2, 1995, each major source of air pollution, including
3140 electrical power plants certified under s. 403.511, must obtain
3141 from the department an operation permit for a major source of
3142 air pollution under this section. This operation permit is the
3143 only department operation permit for a major source of air
3144 pollution required for such source; provided, at the applicant's
3145 request, the department shall issue a separate acid rain permit
3146 for a major source of air pollution that is an affected source
3147 within the meaning of 42 U.S.C. s. 7651a(1). Operation permits
3148 for major sources of air pollution, except general permits
3149 issued pursuant to s. 403.814, must be issued in accordance with
3150 the procedures contained in this section and in accordance with

chapter 120; however, to the extent that chapter 120 is inconsistent with ~~the provisions of~~ this section, the procedures contained in this section prevail.

(11) Each major source of air pollution permitted to operate in this state must pay between January 15 and April 1 of each year, upon written notice from the department, an annual operation license fee in an amount determined by department rule. The annual operation license fee shall be terminated immediately in the event the United States Environmental Protection Agency imposes annual fees solely to implement and administer the major source air-operation permit program in Florida under 40 C.F.R. s. 70.10(d).

(a) The annual fee must be assessed based upon the source's previous year's emissions and must be calculated by multiplying the applicable annual operation license fee factor times the tons of each regulated air pollutant actually emitted, as calculated in accordance with the department's emissions computation and reporting rules. The annual fee shall only apply to those regulated pollutants, except carbon monoxide and greenhouse gases, for which an allowable numeric emission limiting standard is specified in the source's most recent construction or operation permit; provided, however, that:

1. The license fee factor is \$25 or another amount determined by department rule which ensures that the revenue provided by each year's operation license fees is sufficient to

cover all reasonable direct and indirect costs of the major stationary source air-operation permit program established by this section. The license fee factor may be increased beyond \$25 only if the secretary of the department affirmatively finds that a shortage of revenue for support of the major stationary source air-operation permit program will occur in the absence of a fee factor adjustment. The annual license fee factor may never exceed \$35.

2. The amount of each regulated air pollutant in excess of 4,000 tons per year emitted by any source, or group of sources belonging to the same Major Group as described in the Standard Industrial Classification Manual, 1987, may not be included in the calculation of the fee. Any source, or group of sources, which does not emit any regulated air pollutant in excess of 4,000 tons per year, is allowed a one-time credit not to exceed 25 percent of the first annual licensing fee for the prorated portion of existing air-operation permit application fees remaining upon commencement of the annual licensing fees.

3. If the department has not received the fee by March 1 of the calendar year, the permittee must be sent a written warning of the consequences for failing to pay the fee by April 1. If the fee is not postmarked by April 1 of the calendar year, the department shall impose, in addition to the fee, a penalty of 50 percent of the amount of the fee, plus interest on such amount computed in accordance with s. 220.807. The department

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may not impose such penalty or interest on any amount underpaid, provided that the permittee has timely remitted payment of at least 90 percent of the amount determined to be due and remits full payment within 60 days after receipt of notice of the amount underpaid. The department may waive the collection of underpayment and may ~~shall~~ not be required to refund overpayment of the fee, if the amount due is less than 1 percent of the fee, up to \$50. The department may revoke any major air pollution source operation permit if it finds that the permitholder has failed to timely pay any required annual operation license fee, penalty, or interest.

4. Notwithstanding the computational provisions of this subsection, the annual operation license fee for any source subject to this section may ~~shall~~ not be less than \$250, except that the annual operation license fee for sources permitted solely through general permits issued under s. 403.814 may ~~shall~~ not exceed \$50 per year.

5. Notwithstanding s. 403.087(7)(a)5.a., which authorizes ~~the provisions of s. 403.087(6)(a)5.a., authorizing~~ air pollution construction permit fees, the department may not require such fees for changes or additions to a major source of air pollution permitted pursuant to this section, unless the activity triggers permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a. Costs to issue and administer such permits shall be

3226 considered direct and indirect costs of the major stationary
3227 source air-operation permit program under s. 403.0873. The
3228 department shall, however, require fees pursuant to s.
3229 403.087(7)(a)5.a. ~~the provisions of s. 403.087(6)(a)5.a.~~ for the
3230 construction of a new major source of air pollution that will be
3231 subject to the permitting requirements of this section once
3232 constructed and for activities triggering permitting
3233 requirements under Title I, Part C or Part D, of the federal
3234 Clean Air Act, 42 U.S.C. ss. 7470-7514a.

3235 Section 48. Paragraph (d) of subsection (3) of section
3236 403.707, Florida Statutes, is amended to read:

3237 403.707 Permits.—

3238 (3)

3239 (d) The department may adopt rules to administer this
3240 subsection. However, the department is not required to submit
3241 such rules to the Environmental Regulation Commission for
3242 approval. Notwithstanding the limitations of s. 403.087(7)(a) ~~s.~~
3243 ~~403.087(6)(a)~~, permit fee caps for solid waste management
3244 facilities shall be prorated to reflect the extended permit term
3245 authorized by this subsection.

3246 Section 49. Subsections (8) and (21) of section 403.861,
3247 Florida Statutes, are amended to read:

3248 403.861 Department; powers and duties.—The department
3249 shall have the power and the duty to carry out the provisions
3250 and purposes of this act and, for this purpose, to:

3251 (8) Initiate rulemaking to increase each drinking water
3252 permit application fee authorized under s. 403.087(7) ~~s.~~
3253 ~~403.087(6)~~ and this part and adopted by rule to ensure that such
3254 fees are increased to reflect, at a minimum, any upward
3255 adjustment in the Consumer Price Index compiled by the United
3256 States Department of Labor, or similar inflation indicator,
3257 since the original fee was established or most recently revised.

3258 (a) The department shall establish by rule the inflation
3259 index to be used for this purpose. The department shall review
3260 the drinking water permit application fees authorized under s.
3261 403.087(7) ~~s. 403.087(6)~~ and this part at least once every 5
3262 years and shall adjust the fees upward, as necessary, within the
3263 established fee caps to reflect changes in the Consumer Price
3264 Index or similar inflation indicator. In the event of deflation,
3265 the department shall consult with the Executive Office of the
3266 Governor and the Legislature to determine whether downward fee
3267 adjustments are appropriate based on the current budget and
3268 appropriation considerations. The department shall also review
3269 the drinking water operation license fees established pursuant
3270 to paragraph (7)(b) at least once every 5 years to adopt, as
3271 necessary, the same inflationary adjustments provided for in
3272 this subsection.

3273 (b) The minimum fee amount shall be the minimum fee
3274 prescribed in this section, and such fee amount shall remain in
3275 effect until the effective date of fees adopted by rule by the

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2020

department.

(21) (a) Upon issuance of a construction permit to construct a new public water system drinking water treatment facility to provide potable water supply using a surface water that, at the time of the permit application, is not being used as a potable water supply, and the classification of which does not include potable water supply as a designated use, the department shall add treated potable water supply as a designated use of the surface water segment in accordance with s. 403.061(30)(b) ~~s. 403.061(29)(b)~~.

(b) For existing public water system drinking water treatment facilities that use a surface water as a treated potable water supply, which surface water classification does not include potable water supply as a designated use, the department shall add treated potable water supply as a designated use of the surface water segment in accordance with s. 403.061(30)(b) ~~s. 403.061(29)(b)~~.

Section 50. Effective July 1, 2021, subsection (1) of section 489.551, Florida Statutes, is amended to read:

489.551 Definitions.—As used in this part:

(1) "Department" means the Department of Environmental Protection ~~Health~~.

Section 51. Paragraph (b) of subsection (10) of section 590.02, Florida Statutes, is amended to read:

590.02 Florida Forest Service; powers, authority, and

duties; liability; building structures; Withlacoochee Training Center.—

(10)

(b) The Florida Forest Service may delegate to a county, municipality, or special district its authority:

1. As delegated by the Department of Environmental Protection pursuant to ss. 403.061(29) ~~ss. 403.061(28)~~ and 403.081, to manage and enforce regulations pertaining to the burning of yard trash in accordance with s. 590.125(6).

2. To manage the open burning of land clearing debris in accordance with s. 590.125.

Section 52. The Division of Law Revision is directed to replace the phrase "before the rules in paragraph (e) take effect" as it is used in the amendment made by this act to s. 381.0065(4)(f), Florida Statutes, with the date such rules are adopted, as provided by the Department of Environmental Protection pursuant to s. 381.0065(4)(f), Florida Statutes, as amended by this act.

Section 53. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1343 Environmental Resource Management

SPONSOR(S): State Affairs Committee, Payne, Ingoglia and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 712

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N	Melkun	Moore
2) Appropriations Committee	28 Y, 0 N	White	Pridgeon
3) State Affairs Committee	15 Y, 7 N, As CS	Melkun	Williamson

SUMMARY ANALYSIS

The federal Clean Water Act requires states to maintain the quality of their waters. In Florida, water quality is addressed through water quality standards, total maximum daily loads (TMDLs), basin management action plans (BMAPs), and permits. The bill addresses water quality impacts by:

- Transferring the Onsite Sewage Program from the Department of Health to the Department of Environmental Protection (DEP);
- Repealing certain onsite sewage treatment and disposal system (OSTDS) advisory committees;
- Creating an OSTDS technical advisory committee to make recommendations that increase the availability of nutrient-reducing OSTDSs and assist DEP in the development of setback distances;
- Requiring OSTDS remediation plans;
- Requiring DEP staff training to include field inspections of stormwater structural controls;
- Requiring DEP and the water management districts (WMDs) to update the stormwater regulations using the most recent science;
- Requiring the model stormwater management program to contain model ordinances targeting nutrient reduction;
- Requiring local governments to create wastewater treatment plans;
- Requiring sanitary sewage facilities to take steps to prevent sanitary sewer overflows;
- Requiring DEP to establish real-time water quality monitoring;
- Requiring advanced wastewater treatment for domestic wastewater discharges to the Indian River Lagoon;
- Prohibiting the land application of biosolids on certain sites, unless an exception applies;
- Requiring the Department of Agriculture and Consumer Services (DACS) to conduct inspections of producers enrolled in best management practices (BMPs);
- Requiring the University of Florida to develop research plans for developing new BMPs; and
- Creating grant programs for the funding of water quality projects.

The bill requires the Secretary of DEP to be appointed by the Governor with the concurrence of two or more, rather than three, members of the Cabinet.

The bill requires DEP to conduct a study on the bottled water industry in the state and prohibits DEP and the governing board of a WMD from approving certain consumptive use permits that authorize the use of water withdrawn from a spring for bottled water until June 30, 2022.

The bill prohibits a local government regulation 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 may have an indeterminate negative fiscal impact to the state and local governments. The proposed House of Representatives' Fiscal Year 2020-2021 General Appropriations Act appropriates funding within DEP and DACS for the increase in the number of required site visits, water quality improvement cost share grants, water quality monitoring, and TMDLs.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Water Quality

Background

The federal Clean Water Act (CWA) requires states to adopt water quality standards (WQS) for navigable waters.¹ The CWA also requires states to develop lists of water bodies that do not meet WQS, which are called impaired waters. States must then develop a total maximum daily load (TMDL) for the particular pollutants causing the impairment. The TMDL is the maximum allowable amount of the pollutants the water body can receive while still maintaining WQS.²

Total Maximum Daily Loads and Basin Management Action Plans

The Florida Watershed Restoration Act guides the development and implementation of TMDLs.³ TMDLs must include reasonable and equitable pollutant load allocations between or among point sources (e.g., pipes and culverts discharging from a permitted facility, such as a domestic wastewater treatment facility) and nonpoint sources (e.g., agriculture, septic tanks, golf courses) that will alone, or in conjunction with other management and restoration activities, reduce pollutants and achieve WQS.⁴ The allocation must consider cost-effective approaches coordinated between contributing point and nonpoint sources of pollution for impaired water bodies and may include both non-regulatory and incentive-based programs.⁵ However, under the Florida Watershed Restoration Act, the Department of Environmental Protection (DEP) is not required to develop a TMDL if there is existing reasonable assurance that there are existing or proposed pollution control mechanisms or programs that will effectively address the impairment.⁶

DEP is the lead agency coordinating the development and implementation of TMDLs.⁷ Once a TMDL is adopted,⁸ DEP may develop and implement a basin management action plan (BMAP), which is a restoration plan for the watersheds and basins connected to the impaired water body.⁹ A BMAP must integrate appropriate management strategies available to the state through existing water quality protection programs to achieve the TMDL.¹⁰ The BMAP must also include milestones for implementation and water quality improvement, and associated water quality monitoring, which determine whether there has been reasonable progress in pollutant load reductions. DEP must conduct an assessment of progress every five years, and revisions to the BMAP must be made as appropriate.¹¹

For point source discharges, any management strategies and pollutant reduction requirements associated with a TMDL must be incorporated into subsequent permits or permit modifications. DEP may not impose limits or conditions implementing an adopted TMDL in a permit until the permit expires, the discharge is modified, or the permit is reopened pursuant to an adopted BMAP.¹²

¹ 33 U.S.C. s. 1313.

² 33 U.S.C. s. 1313; *see* s. 403.067, F.S.

³ Section 403.067, F.S.; ch. 99-223, Laws of Fla.

⁴ Section 403.067(6)(b), F.S.

⁵ Section 403.067(1), F.S.

⁶ *Id.* at 2.

⁷ Section 403.061, F.S. DEP has the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. Section 403.061(21), F.S., allows DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.

⁸ Section 403.067(6)(c), F.S.

⁹ Section 403.067(7)(a)1., F.S.

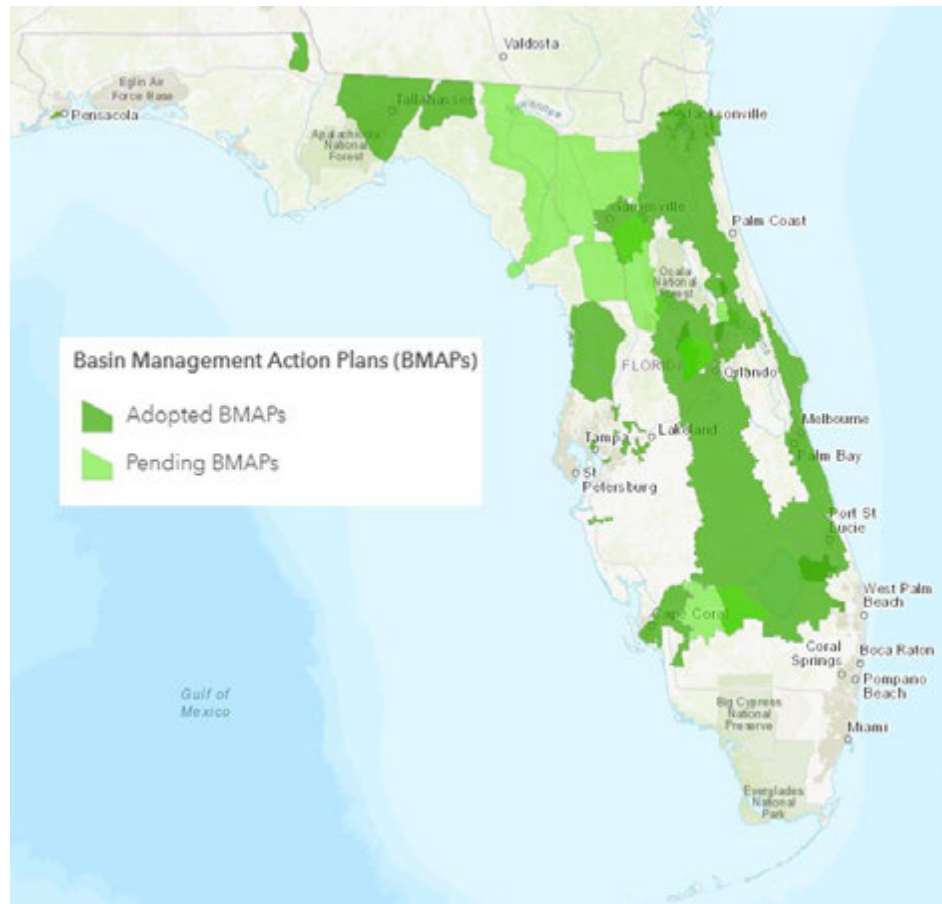
¹⁰ *Id.*

¹¹ Section 403.067(7)(a)6., F.S.

¹² Section 403.067(7)(b)2., F.S.

A best management practice (BMP) is a practice or combination of practices adopted by rule by the Department of Agriculture and Consumer Services (DACS), DEP, or the applicable water management district (WMD) as an effective and practicable means for reducing nutrient inputs and improving water quality, taking into account economic and technological considerations.¹³ Where there is an adopted BMP for a nonpoint source, the BMAP must require the nonpoint source to implement the applicable BMPs. The nonpoint source discharger must demonstrate compliance with BMP implementation or conduct water quality monitoring prescribed by DEP or the WMD. If the discharger fails to demonstrate compliance, the discharger may be subject to enforcement action.¹⁴

The adopted and pending BMAPs are illustrated in the graphic below:¹⁵



Agricultural Best Management Practices

Agricultural 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. Agricultural BMPs are implemented by DACS. Since the implementation of the BMP program in 1999, DACS has adopted nine BMP manuals that cover nearly all major agricultural commodities in Florida. The University of Florida's Institute of Food and Agricultural Sciences (UF/IFAS) is also involved in the adoption and implementation of agricultural BMPs. UF/IFAS provides expertise to both DACS and agricultural producers, holds summits and workshops on agricultural BMPs,¹⁶ conducts research to issue recommendations for improving agricultural BMPs,¹⁷ and issues training certificates for

¹³ Rule 62-306.200(2), F.A.C.; r. 62-503.200(4), F.A.C., defines "best management practice" as a control technique used for a given set of conditions to achieve water quality and water quantity enhancement at a feasible cost.

¹⁴ Sections 403.067(7)(b)2.g. and 2.h., F.S.

¹⁵ DEP, *Impaired Waters, TMDLs, and Basin Management Action Plans Interactive Map*, available at <https://floridadep.gov/dear/water-quality-restoration/content/impaired-waters-tmdls-and-basin-management-action-plans> (last visited Jan. 17, 2020).

¹⁶ UF/IFAS, *Best Management Practices Resource*, available at <https://bmp.ifas.ufl.edu/> (last visited Jan. 21, 2020).

¹⁷ UF/IFAS, *Best Management Practices & Water Resources*, available at <https://erec.ifas.ufl.edu/featured-3-menus/research/-best-management-practices--water-resources/> (last visited Jan. 21, 2020).

agricultural BMPs that require licenses, such as Green Industry BMPs.¹⁸ It is estimated that approximately 54 percent of the state's agricultural acreage is enrolled in the DACS BMP program.¹⁹

Producers implementing agricultural BMPs receive a presumption of compliance with WQS for the pollutants addressed by the BMPs,²⁰ and those who enroll in the BMP program are eligible for technical assistance and cost-share funding for BMP implementation. To enroll in the BMP program, a producer must meet with the Office of Agricultural Water Policy (OAWP) within DACS to determine the BMPs that are applicable to its operation and must submit a Notice of Intent to Implement the BMPs, along with the BMP checklist from the applicable manual. Where DEP adopts a BMAP that includes agriculture, producers must either implement DACS-adopted BMPs or conduct water quality monitoring (prescribed by DEP or the WMD and paid for by the producer) to show they are not violating WQS.²¹

DACS also has an implementation verification program to follow up with producers and help ensure that BMPs are being implemented properly. Representatives of DACS conduct site visits to enrolled operations, and some producers are asked to complete online surveys.²²

Effect of the Bill

The bill requires DACS to conduct onsite inspections at least every two years for each agricultural producer enrolled in a BMP to ensure proper implementation of the BMPs. The bill further requires verification to include a collection and review of BMP documentation from the previous two years, including nitrogen and phosphorus fertilizer application records. The bill requires DACS to initially prioritize the inspection of agricultural producers located in BMAPs for Lake Okeechobee, the Indian River Lagoon, the Caloosahatchee River and Estuary, and Silver Springs. The bill requires DACS to provide all documentation regarding BMPs to DEP.

The bill requires DEP, DACS, and owners of agricultural operations in a basin to develop a cooperative agricultural regional water quality improvement element as part of the BMAP if:

- Agricultural measures adopted by DACS have been implemented and the waterbody remains impaired;
- Agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges; and
- DEP determines that additional measures, in combination with state-sponsored regional projects and other management strategies included in the BMAP, are necessary to achieve the TMDL.

The bill requires the cooperative agricultural regional water quality improvement element to be implemented through a cost-sharing program. The element must include cost-effective and technically and financially practical cooperative regional agricultural nutrient reduction projects that can be implemented on private properties on a site-specific, cooperative basis. Such projects may include land acquisition in fee or conservation easements on the lands of willing sellers and site-specific water quality improvement or dispersed water management projects on the lands of project participants. To qualify for participation in the element, the bill requires a participant to have already implemented the interim measures, BMPs, or other measures adopted by DACS. The bill allows the element to be included in the BMAP as a part of the next five-year assessment and authorizes DEP to submit a legislative budget request to fund projects developed pursuant to the cooperative element.

The bill requires DACS, in cooperation with UF/IFAS, and other state universities and Florida College System institutions with agricultural research programs to annually develop research plans and legislative budget requests related to evaluating and developing BMPs. The bill further requires

¹⁸ UF/IFAS, *GI-BMP Training Program Overview*, available at https://ffl.ifas.ufl.edu/professionals/BMP_overview.htm (last visited Jan. 21, 2020).

¹⁹ *Id.* at 2.

²⁰ Section 403.067(7), F.S.

²¹ DACS, *Agricultural Best Management Practices*, available at <https://www.fdacs.gov/Agriculture-Industry/Water/Agricultural-Best-Management-Practices> (last visited Jan. 21, 2020).

²² *Id.*

UF/IFAS and the other universities and colleges to submit such research plans to DEP and DACS by August 1, 2021, and each May 1 thereafter to be considered for funding.

The bill requires DEP to work with UF/IFAS and regulated entities to consider the adoption of BMPs for nutrient impacts from golf courses.

Wastewater

Background

A person generates approximately 100 gallons of domestic wastewater²³ per day.²⁴ This wastewater must be managed to protect public health, water quality, recreation, fish, wildlife, and the aesthetic appeal of the state's waterways.²⁵

Onsite Sewage Treatment and Disposal Systems

One of the methods utilized to treat domestic wastewater is an onsite sewage treatment and disposal system (OSTDS),²⁶ commonly referred to as a septic system.²⁷ Approximately 30 percent of the population in Florida uses an OSTDS.²⁸

An OSTDS must be permitted and inspected by the Department of Health (DOH) before it is placed into operation and must be located and installed so that, along with proper maintenance, the system functions in a sanitary manner, does not create a sanitary nuisance or health hazard, and does not endanger the safety of any domestic water supply, groundwater, or surface water.²⁹ Sewage waste and effluent from an OSTDS may not be discharged onto the ground surface or directly or indirectly discharged into ditches, drainage structures, groundwaters, surface waters, or aquifers.³⁰ DOH regulates an estimated 2.6 million OSTDSs.³¹ The permitting and inspection of OSTDSs is handled mainly by county health departments with support from the Bureau of Onsite Sewage within DOH.³²

DOH OSTDS Advisory Committees

DOH operates and serves three advisory organizations related to OSTDSs: the Research Review and Advisory Committee (RRAC),³³ the Technical Review and Advisory Panel (TRAP),³⁴ and the Variance Review and Advisory Committee (VRAC).³⁵ The TRAP assists in the adoption of rules for OSTDSs and reviews and comments on any legislation or existing policy related to OSTDSs. All rules proposed by DOH that relate to OSTDSs must be presented to the TRAP for review and comment prior to

²³ Section 367.021(5), F.S., defines “domestic wastewater” as wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.

²⁴ DEP, *Domestic Wastewater Program*, available at <https://floridadep.gov/water/domestic-wastewater> (last visited Jan. 21, 2020).

²⁵ Sections 381.0065(1) and 403.021, F.S.

²⁶ Section 381.0065(2)(k), F.S., defines an “onsite sewage treatment and disposal system” as a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. This term does not include package sewage treatment facilities and other treatment works regulated under ch. 403, F.S.

²⁷ Sections 381.0065(2)(k) and (3), F.S.; chs. 62-600 and 62-701, F.A.C.

²⁸ DOH, *Onsite Sewage*, available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last visited Jan. 21, 2020).

²⁹ Section 381.0065(4), F.S.; rr. 64E-6.003 and 64E-6.004, F.A.C.

³⁰ Rule 64E-6.005, F.A.C.

³¹ DOH, *Onsite Sewage*, available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last visited Jan. 21, 2020).

³² Sections 381.006(7) and 381.0065, F.S.; r. 62-600.120, F.A.C.; see DEP, *Domestic Wastewater - Septic Systems*, available at <https://floridadep.gov/water/domestic-wastewater/content/septic-systems> (last visited Jan. 21, 2020).

³³ Section 381.0065(4)(o), F.S.

³⁴ Section 381.0068, F.S.

³⁵ Section 381.0065(4)(h)2., F.S.; see also, DOH, *Boards, Councils and Committees*, available at <http://www.floridahealth.gov/provider-and-partner-resources/advisory-councils-stakeholder-groups/index.html> (last visited Jan. 21, 2020).

adoption.³⁶ The RRAC advises on new research, reviews and ranks proposals for research contracts, and reviews and provides comments on draft research reports regarding the OSTDS industry.³⁷

The VRAC recommends agency action on variance requests. A person who applies for an OSTDS construction permit but cannot meet the requirements of the rule or statute will not be issued a permit; however, a person may request a variance from the standards.³⁸ DOH, in hardship cases, may grant variances, which may be less restrictive than the OSTDS provisions required by statute and rule.³⁹

Outstanding Florida Springs

Nutrients, specifically nitrogen and phosphorous, are naturally present in the water and are necessary for the growth of plant and animal life. However, too much nitrogen or phosphorous can harm water quality. In some areas, the wastewater leaving OSTDSs has been identified as a contributor to nitrogen pollution.⁴⁰

In 2016, the Legislature enacted the Springs and Aquifer Protection Act (act), which established additional protections to conserve and protect 30 Outstanding Florida Springs.⁴¹ The act directed DEP to assess the Outstanding Florida Springs for nutrient impairment and, in collaboration with other state agencies and local governments, develop BMAPs by July 1, 2016.⁴² Each BMAP was required to identify the sources of nitrogen pollution within the springshed and identify projects and strategies that will achieve the reductions needed to improve water quality in the region, including, as necessary, an OSTDS remediation plan that identifies cost-effective and financially feasible projects to reduce nitrogen contributions from OSTDSs.⁴³

Further, the act prohibited new homes or businesses with new OSTDSs on lots less than one acre in priority focus areas⁴⁴ from installing conventional non-nitrogen reducing OSTDSs if the installation is inconsistent with a BMAP.⁴⁵ Instead, new construction must either connect to available central sewer lines, install a nitrogen-reducing OSTDS, such as “in-ground, passive nitrogen-reducing systems” that use additional soil and media layers to reduce nitrogen flowing into the aquifer, or install nitrogen-reducing Aerobic Treatment Units and Performance-Based Treatment Systems.⁴⁶

Wastewater Treatment Facilities

Because domestic wastewater treatment facilities are stationary installations that are reasonably expected to be sources of water pollution, they must be operated, maintained, constructed, expanded, or modified with a permit issued by DEP.⁴⁷ Approximately 2,000 domestic wastewater treatment

³⁶ Section 381.0068, F.S.

³⁷ Section 381.0065(4)(o), F.S.

³⁸ DOH, *Variances*, available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/variances/index.html> (last visited Jan. 21, 2020).

³⁹ Section 381.0065(4)(h), F.S.

⁴⁰ DEP, *Meeting the Septic System Permitting Requirements: Springs and Aquifer Protection Act*, available at https://floridadep.gov/sites/default/files/Springs%20and%20Aquifer%20Protection%20Act_0.pdf (last visited Jan. 21, 2020).

⁴¹ Section 373.802(4), F.S., defines an “Outstanding Florida Spring” as all historic first magnitude springs, including their associated spring runs, as determined by DEP using the most recent Florida Geological Survey springs bulletin, and the following additional springs, including their associated spring runs: De Leon Springs, Peacock Springs, Poe Springs, Rock Springs, Wekiwa Springs, and Gemini Springs. The term does not include submarine springs or river rises; ch. 2016-001, Laws of Fla.

⁴² DEP, *Meeting the Septic System Permitting Requirements: Springs and Aquifer Protection Act*, available at https://floridadep.gov/sites/default/files/Springs%20and%20Aquifer%20Protection%20Act_0.pdf (last visited Jan. 21, 2020).

⁴³ Section 373.807, F.S.; DEP, *Meeting the Septic System Permitting Requirements: Springs and Aquifer Protection Act*, available at https://floridadep.gov/sites/default/files/Springs%20and%20Aquifer%20Protection%20Act_0.pdf (last visited Jan. 21, 2020).

⁴⁴ Section 373.802(5), F.S., defines a “priority focus area” as the area or areas of a basin where the Floridan Aquifer is generally most vulnerable to pollutant inputs where there is a known connectivity between groundwater pathways and an Outstanding Florida Spring, as determined by DEP in consultation with the appropriate WMDs, and delineated in a BMAP.

⁴⁵ DOH, *OSTDS Permitting in a County affected by the Florida Springs and Aquifer Protection Act* (May 14, 2018), available at http://www.floridahealth.gov/environmental-health/onsite-sewage/_documents/letter-to-builders-springs.pdf (last visited Jan. 21, 2020).

⁴⁶ *Id.*

⁴⁷ Section 403.087(1), F.S.

facilities in the state serve roughly two-thirds of the state's population.⁴⁸ Each day over 1.5 billion gallons of treated wastewater effluent⁴⁹ and reclaimed water⁵⁰ are disposed of from these facilities.⁵¹ Methods of disposal include reuse and land application systems, groundwater disposal by underground injection, groundwater recharge using injection wells, surface water discharges, disposal to coastal and open ocean waters, and wetland discharges.⁵²

Most domestic wastewater treatment facilities must meet either basic disinfection or high-level disinfection requirements, depending upon the type of discharge.⁵³ Basic disinfection requires the effluent to contain less than 200 fecal coliforms per 100 micrograms per milliliter,⁵⁴ while high-level disinfection requires fecal coliforms to be reduced below detection.⁵⁵ Domestic wastewater treatment facilities that discharge to surface waters⁵⁶ must also obtain a National Pollutant Discharge Elimination System (NPDES) permit, which is established by the CWA to control point source discharges.⁵⁷ NPDES permit requirements for most domestic wastewater facilities are incorporated into the DEP-issued permit.⁵⁸ 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.⁵⁹

Advanced Waste Treatment

Under Florida law, facilities for sanitary sewage disposal are required to provide for advanced waste treatment, as deemed necessary by DEP.⁶⁰ The standard for advanced waste treatment requires high-level disinfection and is defined using the maximum concentrations of nutrients or contaminants that a reclaimed water product may contain, which are outlined in the following table.⁶¹

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 without providing advanced waste treatment approved by DEP.⁶²

⁴⁸ DEP, *General Facts and Statistics about Wastewater in Florida*, available at <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Jan. 21, 2020).

⁴⁹ Rule 62-600.200(22), F.A.C., defines the term “effluent” as, unless specifically stated otherwise, water that is not reused after flowing out of any plant or other works used for the purpose of treating, stabilizing, or holding wastes.

⁵⁰ Rule 62-600.200(54), F.A.C., defines the term “reclaimed water” as water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.

⁵¹ DEP, *General Facts and Statistics about Wastewater in Florida*, available at <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Jan. 21, 2020).

⁵² Rule 62-600.440(4), F.A.C.

⁵³ DEP, *Ultraviolet Disinfection for Domestic Wastewater*, available at <https://floridadep.gov/water/domestic-wastewater/content/ultraviolet-uv-disinfection-domestic-wastewater> (last visited Jan. 21, 2020).

⁵⁴ Rules 62-600.510(1) and 62-600.440(5), F.A.C.

⁵⁵ Rule 62-600.440(6), F.A.C.

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

⁵⁷ 33 U.S.C. s. 1342.

⁵⁸ Section 403.0885, F.S.; ch. 62-620, F.A.C.; DEP, *Wastewater Permitting*, available at <https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting> (last visited Jan. 21, 2020); Florida's Water Permitting Portal, *Types of Permits*, available at <http://flwaterpermits.com/typesofpermits.html> (last visited Jan. 21, 2020).

⁵⁹ Section 403.087(3), F.S.

⁶⁰ Section 403.086(2), F.S.

⁶¹ Sections 403.086(4) and (4)(b), F.S.; r. 62-600.440(6), F.A.C.

⁶² 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 before February 1, 1987,

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 considered a SSO.⁶³ Factors contributing to SSOs may include:

- Build-up of solids, fats, oils, and greases in the wastewater collection system that impede flow;
- Too much rainfall infiltrating the system through leaky infrastructure, roof drains, or poorly connected wastewater lines;
- Blocked, broken, or cracked pipes and other equipment or power failures that keep the system from functioning properly (e.g., tree roots growing into the system, pipe settling or shifting so pipe joints no longer match, buildup of sediment and other material causing pipes to break or collapse); and
- A deteriorating or aging system.⁶⁴

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.⁶⁵ Each day during the period in which a violation occurs constitutes a separate offense.⁶⁶ However, administrative penalties are capped at \$10,000.⁶⁷

A key concern with SSOs entering rivers, lakes, or streams is their negative effect on water quality. 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. DOH may issue 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.⁶⁸

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 reliability; and constructing wet weather storage and treatment facilities to treat excess flows.⁶⁹

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 wastewater.⁷⁰ 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.⁷¹ When domestic wastewater facilities are evaluated for permit renewal, collection systems are not evaluated for issues such as excessive I&I, unless problems result

that 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.

⁶³ DEP, *SSOs*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last visited Jan. 21, 2020).

⁶⁴ DEP, *Preventing SSOs*, available at <https://floridadep.gov/sites/default/files/preventing-sanitary-sewer-overflows.pdf> (last visited Jan. 21, 2020); DEP, *SSOs*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last visited Jan. 21, 2020).

⁶⁵ Sections 403.121 and 403.141, F.S.

⁶⁶ *Id.*

⁶⁷ Sections 403.121(2)(b), (8), and (9), F.S.

⁶⁸ DEP, *SSOs*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last visited Jan. 21, 2020).

⁶⁹ *Id.*

⁷⁰ City of St. Augustine, *Inflow & Infiltration Elimination Program*, available at <https://www.citystaug.com/549/Inflow-Infiltration-Elimination-Program> (last visited Jan. 21, 2020).

⁷¹ See 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 (last visited Jan. 21, 2020).

at the treatment plant.⁷² 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.⁷³ Pump stations receiving flow from another station through a force main, or those discharging through pipes 12 inches or larger, must have emergency generators.⁷⁴ All other pump stations must have emergency pumping capability through one of three specified arrangements.⁷⁵ 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.⁷⁶

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.⁷⁷ 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.⁷⁸

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.⁷⁹ Asset management programs with good data can be the most efficient method of meeting this requirement. 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.⁸⁰ The United States Environmental Protection Agency (EPA) provides guidance and reference manuals for utilities to aid in developing asset management plans.⁸¹

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.⁸² Florida's incentives include priority scoring,⁸³ reduction of interest rates,⁸⁴ principal forgiveness for financially disadvantaged small communities,⁸⁵ and eligibility for small community wastewater facilities grants.⁸⁶

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.⁸⁷ The utility

⁷² Rule 62-600.735, F.A.C.; see r. 62-600.200, F.A.C. "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.

⁷³ See 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 (last visited Jan. 21, 2020).

⁷⁴ Rule 62-604.400, F.A.C.

⁷⁵ *Id.*

⁷⁶ Rule 62-604.100, F.A.C.

⁷⁷ EPA, *Sustainable Water Infrastructure - Asset Management for Water and Wastewater Utilities*, available at <https://www.epa.gov/sustainable-water-infrastructure/asset-management-water-and-wastewater-utilities> (last visited Jan. 22, 2020).

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ EPA, *Asset Management: A Best Practices Guide* (2008), available at <https://nepis.epa.gov/Exe/ZyPDF.cgi/P1000LP0.PDF?Dockey=P1000LP0.PDF> (last visited Jan. 22, 2020); 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 (last visited Jan. 22, 2020).

⁸² 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 (last visited Jan. 22, 2020).

⁸³ Rule 62-503.300(e), F.A.C.

⁸⁴ Rules 62-503.300(5)(b)1. and 62-503.700(7), F.A.C.

⁸⁵ Rule 62-503.500(4), F.A.C.

⁸⁶ Rules 62-505.300(d) and 62-505.350(5)(c), F.A.C.

⁸⁷ Chapter 2016-226, Laws of Fla.; s. 367.081(2)(c), F.S.

reserve fund is funded by a portion of the rates charged by the utility, by a secured escrow account, or through a letter of credit.⁸⁸

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.⁸⁹ 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.⁹⁰

Biosolids

When domestic wastewater is treated, a solid byproduct accumulates in the wastewater treatment plant and must be removed periodically to keep the plant operating properly. The collected material, called biosolids or “sewage sludge,” is high in organic content and contains moderate amounts of nutrients.⁹¹ Wastewater facilities can dispose of biosolids by transferring them to another facility, placing them in a landfill, incinerating them, distributing them as fertilizer, or land applying them to permitted sites.⁹² The option selected for use or disposal is typically stated in the permit issued to the wastewater treatment facility by DEP.⁹³ Florida produces a total of 340,000 dry tons of biosolids annually, of which approximately two-thirds are beneficially used and one-third is landfilled.⁹⁴

Three classes of biosolids are regulated for beneficial use and are categorized based on treatment and quality: Class B, Class A, and Class AA.⁹⁵ Treatment is required to either reduce or completely eliminate pathogens. Class B treatment significantly reduces pathogens, but does not completely eliminate them. Class AA treatment essentially eliminates pathogens and meets strict concentration limits for heavy metals. The Class A treatment level is between Class B and Class AA. While Class A and Class AA can be used for a variety of beneficial purposes, Class B, the lowest quality of biosolids, is typically only used for land application.⁹⁶

Land application is the use of biosolids at a permitted site, such as agricultural land or a golf course, forest, park, or reclamation site, to provide nutrients or organic matter to the soil. The biosolids are applied in accordance with restrictions based on crop nutrient needs, phosphorus limits in the area, and soil fertility.⁹⁷ 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.⁹⁸ To prevent odor or the contamination of soils, crops, and livestock, land application sites must meet site

⁸⁸ Section 367.081(2)(c), F.S.

⁸⁹ Rule 25-30.444, F.A.C.

⁹⁰ Rules 25-30.444(2)(e) and 25-30.444(2)(m), F.A.C.

⁹¹ DEP, *Domestic Wastewater Biosolids*, available at <https://floridadep.gov/water/domestic-wastewater/content/domestic-wastewater-biosolids> (last visited Jan. 21, 2020); r. 62-640.200(6), F.A.C., defines the term “biosolids” to mean the solid, semisolid, or liquid residue generated during the treatment of domestic wastewater in a domestic wastewater treatment facility, formerly known as “domestic wastewater residuals” or “residuals.” The treated effluent or reclaimed water from a domestic wastewater treatment plant is not included. Also, solids removed from pump stations and lift stations, screenings and grit removed from the preliminary treatment components of domestic wastewater treatment facilities, other solids as defined in subsection 62-640.200(31), F.A.C., and ash generated during the incineration of biosolids are not included.

⁹² DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 3, available at <https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf> (last visited Jan. 21, 2020).

⁹³ *Id.* at slide 4.

⁹⁴ *Id.* at slide 5.

⁹⁵ *Id.* at slide 6.

⁹⁶ *Id.* at slide 7.

⁹⁷ DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 23, available at <https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf> (last visited Jan. 21, 2020); see also, EPA, *A Plain English Guide to the EPA Part 503 Biosolids Rule* (Sept. 1994), 26, available at <https://www.epa.gov/sites/production/files/2018-12/documents/plain-english-guide-part503-biosolids-rule.pdf> (last visited Jan. 21, 2020).

⁹⁸ DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 20, available at <https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf> (last visited Jan. 21, 2020).

management requirements such as the construction of site slopes and establishment of setback distances.⁹⁹ There are approximately 140 permitted land application sites in Florida.¹⁰⁰

Class AA biosolids can be land applied or can be distributed and marketed as a commercial fertilizer.¹⁰¹ Class AA biosolids products are also not subject to site management requirements if distributed and marketed as a fertilizer or distributed and marketed to a person or entity that will sell or give away the biosolids products as a fertilizer or component of a fertilizer.¹⁰² There are approximately 39 facilities in Florida that produce Class AA biosolids.¹⁰³ In 2016, 197,115 dry tons of Class AA biosolids product was distributed and marketed in Florida.¹⁰⁴

The beneficial use of biosolids is regulated by DEP under ch. 62-640, F.A.C., and by the EPA under Title 40 Code of Federal Regulations Part 503 (Part 503).¹⁰⁵ Adopted in 1993, Part 503 created standards for the final use or disposal of biosolids generated during domestic wastewater treatment. The standards included general requirements, pollutant limits, management practices, and operational standards for biosolids. Standards were also included for biosolids applied to the land, placed on a surface disposal site, or fired in a sewage sludge incinerator.¹⁰⁶

In 1990, DEP adopted rules governing biosolids based on the draft of Part 503 and previously adopted solid waste rules.¹⁰⁷ DEP's rules were revised in 1998 to be consistent with the final version of Part 503. Part 503, a self-implementing program, did not address phosphorus, a major pollutant in Florida.¹⁰⁸ As a result, DEP amended its rules in 2010 to improve site accountability and nutrient management by requiring site permits for the land application of biosolids, requiring nutrient management plans (NMPs), establishing phosphorus limitations, and specifying site management requirements.¹⁰⁹ Additionally, the rules clarified that the disposal and incineration of biosolids must be in accordance with DEP's solid waste¹¹⁰ and air¹¹¹ rules to protect water quality and human health.

NMPs are site-specific plans that specify the rate at which biosolids can be applied in the area, the method of application allowed (i.e., surface application, injection, incorporation, etc.), the zone in which biosolids can be applied, pollutant concentration targets, and cumulative pollutant loading limits from all sources at the application site.¹¹² NMPs are submitted to DEP along with the permit application for each agricultural site.

Agricultural sites that are required to have a NMP for the application of biosolids are also often required to participate in DACS's agricultural BMP program if the site is located in an impaired watershed because of the potential impact biosolids may have on water quality.¹¹³ Typical BMP practices include

⁹⁹ *Id.* at slides 8-9.

¹⁰⁰ *Id.* at slide 20.

¹⁰¹ *Id.* at slide 6.

¹⁰² DEP, *Biosolids in Florida: 2013 Summary* (Dec. 2014), 4, available at https://floridadep.gov/sites/default/files/BiosolidsFlorida-2013-Summary_2.pdf (last visited Jan. 21, 2020).

¹⁰³ DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 13, available at <https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf> (last visited Jan. 21, 2020).

¹⁰⁴ *Id.* at slide 19.

¹⁰⁵ EPA, *Biosolids Laws and Regulations*, available at <https://www.epa.gov/biosolids/biosolids-laws-and-regulations> (last visited Jan. 21, 2020).

¹⁰⁶ 40 C.F.R. Part 503.

¹⁰⁷ Chapters 62-701 and 62-709, F.A.C.

¹⁰⁸ DEP, *Biosolids Rule/Permitting* (Nov. 2018), slide 2, available at <https://floridadep.gov/water/domestic-wastewater/documents/tac-3-biosolids-rulepermitting> (last visited Jan. 21, 2020); *see also*, DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 11, available at <https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf> (last visited Jan. 21, 2020).

¹⁰⁹ DEP, *Biosolids Rule/Permitting* (Nov. 2018), slide 2, available at <https://floridadep.gov/water/domestic-wastewater/documents/tac-3-biosolids-rulepermitting> (last visited Jan. 21, 2020); *see* ch. 62-640, F.A.C.

¹¹⁰ Chapter 62-701, F.A.C.

¹¹¹ *See* Chapters 62-204, 62-210, 62-212, 62-213, 62-296, and 62-297, F.A.C.

¹¹² DEP, *NMPs*, available at <https://floridadep.gov/water/domestic-wastewater/documents/nutrient-management-plans-biosolids> (last visited Jan. 21, 2020); *see also*, r. 62-640.500, F.A.C.

¹¹³ Rule 62-303.200(7), F.A.C., defines "impaired water" to mean a waterbody or waterbody segment that does not meet its applicable water quality standards [...] due in whole or in part to discharges of pollutants from point or nonpoint sources.

nutrient management, irrigation and water table management, and water resource protection. Nutrient management practices for biosolids land application address appropriate source, rate, timing, and placement of nutrients to minimize impacts to water resources. Irrigation and water table management practices address methods for irrigating to reduce water and nutrient losses to the environment and to maximize the efficient use and distribution of water. Finally, water resource protection practices, such as the site management requirements for biosolids, help to reduce or prevent the transport of nutrients and sediments from production areas to water resources.¹¹⁴ The BMPs for the site are typically included in facility permits.¹¹⁵

Biosolids Technical Advisory Committee

In 2018, DEP created a Biosolids Technical Advisory Committee (Biosolids TAC) to evaluate current management practices and explore opportunities to better protect Florida's water resources.¹¹⁶ The Biosolids TAC was composed of various stakeholders, including environmental and agricultural industry experts, representatives of large and small utilities, waste haulers, consultants, and academics.¹¹⁷ The meetings included presentations and public comments as well as discussions among the Biosolids TAC members, the audience, and DEP.

Based on the deliberations of the Biosolids TAC and feedback from public participants, the Biosolids TAC recommended that DEP take the following actions:

- Permit biosolids in a manner that minimizes migration of nutrients to prevent impairment to waterbodies and amend current permitting rules to:
 - Establish the rate of biosolids application based on site specifics, such as soil characteristics/adsorption capacity, water table, hydrogeology, site use, and distance to surface water;
 - Evaluate the percentage of water extractable phosphorus in all biosolids to inform the appropriate application rate; and
 - Establish criteria for low, medium, and high-risk sites that guide application practices and required water quality monitoring.
- Increase the inspection rate of land application.
- Develop site-specific groundwater and surface water monitoring protocols to detect nutrient migration.
- Develop and conduct biosolids and nutrient management research on nutrient run-off through surface and groundwater flow using various application rates, types of biosolids application, and different geologic conditions.
- Promote innovative technology pilot projects for biosolids processing that could provide a wider range of beneficial end products.¹¹⁸

DEP published a notice of rule development to amend its biosolids rules¹¹⁹ on March 22, 2019. DEP held rulemaking workshops on June 25, 26, and 27, 2019, in various locations across the state and accepted public comments until August 15, 2019. A notice of proposed rule was published on October 29, 2019.¹²⁰

¹¹⁴ DACS, *Agriculture and Water Quality*, available at https://www.freshfromflorida.com/content/download/33106/813038/Agriculture_and_water_quality_2018.pdf (last visited Jan. 21, 2020).

¹¹⁵ Section 403.067(7)(c), F.S.; see ch. 2016-1, Laws of Fla.

¹¹⁶ DEP, *DEP Biosolids Technical Advisory Committee*, available at <https://floridadep.gov/water/domestic-wastewater/content/dep-biosolids-technical-advisory-committee> (last visited Jan. 21, 2020).

¹¹⁷ *Id.*

¹¹⁸ DEP, *Biosolids Technical Advisory Committee Recommendations* (January 2019), available at <https://floridadep.gov/water/domestic-wastewater/documents/tac-4-biosolids-tac-considerations> (last visited Jan. 21, 2020).

¹¹⁹ Chapter 62-640, F.A.C.

¹²⁰ The public comment period was originally scheduled to end July 29, 2019, but the deadline was extended; see Florida Administrative Register, *Notice List: 62-640*, available at <https://www.flrules.org/gateway/result.asp> (last visited Jan. 21, 2020).

The statement of estimated regulatory costs (SERC) for the proposed rule includes the following statewide cost estimates:

- \$10 million in capital costs for new permitting and land application sites;
- At least \$31 million in recurring costs for additional sites and transportation of wet biosolids; and
- \$1 million in additional monitoring costs.¹²¹

DEP expects more biosolids to be converted to Class AA biosolids/fertilizer as a result of the proposed rule and estimates the capital cost for additional Class AA biosolids projects to be between \$300 and \$400 million.¹²² DEP is currently reviewing lower cost regulatory alternatives that have been submitted. Because the SERC shows that the adverse impact or regulatory cost of the proposed rule exceeds \$1 million in the aggregate within five years after implementation, the proposed rule must be submitted to the Legislature for ratification and may not take effect until it is ratified by the Legislature.¹²³

Consolidated WMD Annual Reports

By March 1 of each year, the WMDs must submit a consolidated annual report to the Governor, the Legislature, and DEP. The WMDs must also provide copies of the report to the chairs of the legislative committees having substantive or fiscal jurisdiction over the WMDs and to the governing boards of all county entities having jurisdiction or deriving any funds for operations of the district. The report must also be made available to the public in either a printed or an electronic format.¹²⁴

The consolidated annual report includes several legislatively mandated plans and reports regarding the status of water resource programs. The consolidated annual report includes: the Strategic Water Management Plan Annual Work Plan Report; the Minimum Flows and Minimum Water Levels Annual Priority List and Schedule; the Annual Five-Year Capital Improvement Plan; the Alternative Water Supplies Annual Report; the Five-Year Water Resource Development Work Program; the Florida Forever WMD Work Plan Annual Report; the Mitigation Donation Annual Report; the Water Projects in the Five-Year Water Resources Development Work Program; and the Surface Water Improvement and Management Program Annual Report.¹²⁵

Indian River Lagoon

The Indian River Lagoon (IRL) system is an estuary¹²⁶ that runs along 156 miles of Florida's east coast and borders Volusia, Brevard, Indian River, St. Lucie, and Martin Counties.¹²⁷ The IRL system is composed of three main waterbodies: Mosquito Lagoon, Banana River, and the Indian River Lagoon.¹²⁸ Four BMAPs have been adopted for the IRL region.¹²⁹

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.¹³⁰ The estimated economic value received from the IRL in 2014 was approximately \$7.6 billion.¹³¹ Industry groups that are directly influenced by the IRL support nearly 72,000 jobs.¹³²

¹²¹ *Id.*

¹²² *Id.*

¹²³ Section 120.541, F.S.

¹²⁴ Northwest Florida WMD, *Consolidated Annual Reports*, available at <https://www.nwfwater.com/Data-Publications/Reports-Plans/Consolidated-Annual-Reports> (last visited Jan. 21, 2020).

¹²⁵ Section 373.036(7), F.S.

¹²⁶ An estuary is a partially enclosed coastal waterbody where freshwater from rivers and streams mixes with saltwater from the ocean. EPA, *What Is An Estuary?*, available at <https://www.epa.gov/nep/basic-information-about-estuaries> (last visited Jan. 21, 2020).

¹²⁷ IRL National Estuary Program, *About the Indian River Lagoon*, available at <http://www.irlcouncil.com/> (last visited Jan. 21, 2020).

¹²⁸ *Id.*

¹²⁹ East Central Florida Regional Planning Council and the Treasure Coast Regional Planning Council, *Indian River Lagoon Economic Valuation Update* (Aug. 26, 2016), x, available at http://tcrpc.org/special_projects/IRL_Econ_Valu/FinalReportIRL08_26_2016.pdf (last visited Jan. 21, 2020); DEP, *Basin Management Action Plans (BMAPs)*, available at <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Jan. 21, 2020).

¹³⁰ IRL National Estuary Program, *About the Indian River Lagoon*, available at <http://www.irlcouncil.com/> (last visited Jan. 21, 2020).

¹³¹ East Central Florida Regional Planning Council and the Treasure Coast Regional Planning Council, *Indian River Lagoon Economic Valuation Update* (Aug. 26, 2016), x, available at http://tcrpc.org/special_projects/IRL_Econ_Valu/FinalReportIRL08_26_2016.pdf (last visited Jan. 21, 2020).

¹³² *Id.* at ix.

The IRL ecosystem has been harmed by human activities in the region. Specifically, 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.¹³³ 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.¹³⁴

Effect of the Bill

OSTDSs

The bill requires the consolidated WMD annual report to be submitted to the Office of Economic and Demographic Research (EDR)¹³⁵ in addition to DEP, the Governor, and the Legislature and requires the report to include projects to connect OSTDSs to central sewerage systems and to convert OSTDSs to enhanced nutrient reducing OSTDSs.

The bill requires DEP and DOH to include all portions of a lot subject to any easement, right-of-way, and right of entry when calculating the size of the lot when determining whether an OSTDS can be installed on lots of less than one acre in priority focus areas.

The bill repeals the TRAP and the RRAC.

Before July 1, 2020, the bill requires DOH to implement a fast-track approval process of no longer than six months for the determination of the use of American National Standards Institute 245 systems approved by the National Sanitation Foundation International (NSF/ANSI 245).¹³⁶

The bill creates an OSTDS TAC to provide recommendations to increase the availability of enhanced nutrient reducing OSTDSs in the marketplace, to consider and recommend regulatory options to facilitate the use of enhanced nutrient reducing OSTDSs approved by a national agency or organization, and provide recommendations on appropriate setback distances for OSTDSs from surface water, groundwater, and wells. The bill requires DEP to use existing and available resources to administer and support the activities of the TAC.

By August 1, 2021, the bill requires DEP, in consultation with DOH, to appoint no more than 10 members to the TAC, who must include:

- A professional engineer;
- A septic tank contractor;
- Two representatives 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; and

¹³³ Tetra Tech, Inc. & Closewaters, LLC, *Draft Save Our Indian River Lagoon Project Plan 2019 Update for Brevard County, Florida* (Mar. 2019), xii, available at <https://www.dropbox.com/s/j9pxd59mt1baf7q/Revised%202019%20Save%20Our%20Indian%20River%20Lagoon%20Project%20Plan%20Update%20032519.pdf?dl=0> (last visited Jan. 21, 2020).

¹³⁴ *Id.*

¹³⁵ EDR is a research arm of the Legislature that is principally concerned with forecasting economic and social trends that affect policymaking, revenues, and appropriations. EDR publishes the official economic, demographic, revenue, and agency workload forecasts that are developed by Consensus Estimating Conferences and makes them available to the Legislature, state agencies, universities, research organizations, and the general public. See EDR, *Welcome*, available at <http://edr.state.fl.us/Content/> (last visited Jan. 21, 2020); EDR, *About Us*, available at <http://edr.state.fl.us/Content/about/index.cfm> (last visited Jan. 21, 2020).

¹³⁶ NSF/ANSI 245 is a certification applied to an OSTDS that defines total nitrogen reduction requirements. A NSF/ANSI 245 certified system covers residential wastewater treatment systems with rated capacities between 400 and 1,500 gallons per day. To achieve certification, treatment systems must produce an acceptable quality of effluent during a six-month (26-week) test; see also, The Public Health and Safety Organization, *NSF/ANSI 245: Nitrogen Reduction*, available at <http://www.nsf.org/services/by-industry/water-wastewater/onsite-wastewater/nitrogen-reduction> (last visited Jan. 21, 2020).

- A representative of the scientific and technical community who has expertise in water pollutants, toxicology, epidemiology, geology, biology, or environmental sciences.

The bill requires the TAC to submit its recommendations to the Governor and the Legislature by January 1, 2022, and requires the TAC to expire August 15, 2022.

The bill requires DEP to adopt rules relating to the location of OSTDSs, including establishing setback distances, to prevent surface water and groundwater contamination. The bill further requires the rulemaking process for such rules to be completed by July 1, 2022, and requires DEP to notify the Division of Law Revision of the date such rules take effect. The bill requires the rules to consider conventional and enhanced nutrient-reducing OSTDS designs, impaired or degraded water bodies, domestic wastewater and drinking water infrastructure, potable water sources, non-potable wells, stormwater infrastructure, OSTDS remediation plans, nutrient pollution, and recommendations by the OSTDS TAC. The rules must also allow a person to apply for and receive a variance from a rule requirement upon demonstration that the requirement would cause an undue hardship and granting the variance would not cause or contribute to the exceedance of a total maximum daily load. The bill specifies that OSTDSs permitted before the rules take effect must comply with the statutory setback distances.

Wastewater Treatment Facilities

The bill requires DEP to adopt rules to reasonably limit, reduce, and eliminate domestic wastewater collection and transmission system pipe leakages and inflow and infiltration.

The bill requires public utilities, or their affiliated companies, holding, applying for, or renewing a domestic wastewater discharge permit to file annual reports regarding transactions or allocations of common costs and expenditures on pollution mitigation and prevention among the utility's permitted systems. DEP must adopt rules to implement the reporting requirement.

The bill requires DEP, subject to appropriation, to establish a real-time water quality monitoring program to assist in the restoration, preservation, and enhancement of impaired waterbodies and coastal resources. The bill encourages DEP to form public-private partnerships with established scientific entities that have proven existing real-time water quality monitoring equipment in order to expedite creation of the program.

The bill requires BMAPs for nutrient TMDLs to include a wastewater treatment plan developed by a local government in consultation with DEP, the WMD, and the public and private domestic wastewater facilities within the local government's jurisdiction if DEP identifies domestic wastewater facilities or OSTDSs as contributors of at least 20 percent of point source or nonpoint source nutrient pollution or if DEP determines remediation is necessary to achieve nutrient TMDLs. The bill requires the wastewater treatment plan to be adopted as part of the BMAP no later than July 1, 2025.

The bill requires the wastewater treatment plan to provide for construction, expansion, or upgrades necessary to achieve the TMDL requirements applicable to the domestic wastewater treatment facility and include the permitted capacity in average annual gallons per day for the domestic wastewater treatment facility, the average nutrient concentration and the estimated average nutrient load of the domestic wastewater, a projected timeline of the dates by which the construction of any facility improvements will begin and be completed, the date by which operations of the improved facility will begin, the estimated cost of the improvements, and the identity of responsible parties.

The bill specifies that 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 necessary to achieve a TMDL. The bill further specifies that a local government is not responsible for a private domestic wastewater facility's compliance with a BMAP unless such facility is operated through a public-private partnership to which the local government is a party.

The bill requires BMAPs to include an OSTDS remediation plan developed by a local government, in consultation with DOH, the WMD, DEP, and public and private domestic wastewater facilities, if DEP determines that OSTDSs contribute to at least 20 percent of nonpoint source nutrient pollution or that the plan is necessary to achieve the TMDL.

The bill requires an OSTDS remediation plan to include an inventory of OSTDSs; identify OSTDSs that would be upgraded to enhanced nutrient reducing systems, that would be connected to existing or future central domestic wastewater infrastructure in the jurisdiction or domestic wastewater service area of the local government, or that would remain conventional; estimate the cost of these upgrades; and identify deadlines and interim milestones for the planning, design, and construction of projects. The bill further requires DEP to adopt the OSTDS remediation plan as part of a BMAP by July 1, 2025, or as required for Outstanding Florida Springs.

When identifying wastewater projects in a BMAP, the bill prohibits DEP from requiring the higher cost project if a lower cost option achieves the same nutrient load reduction. However, the bill allows the regulated entity to choose a different cost option if it complies with the pollutant reduction requirements of an adopted TMDL.

By July 1, 2021, the bill requires DEP, in consultation with county health departments, wastewater treatment facilities, and other governmental entities, to submit a report to the Governor and the Legislature evaluating the costs of wastewater projects identified in BMAPs, OSTDS remediation plans, and other restoration plans developed to meet TMDLs. The report must include:

- Projects to replace OSTDSs with enhanced nutrient reducing OSTDSs; install or retrofit OSTDSs with enhanced nutrient reducing technologies; construct, upgrade, or expand domestic wastewater treatment facilities to meet the wastewater treatment plan; and connect OSTDSs to domestic wastewater treatment facilities;
- The estimated costs, nutrient load reduction estimates, and other benefits of each project;
- The estimated implementation timeline for each project;
- A proposed five-year funding plan for each project and the source and amount of financial assistance DEP, the WMD, or other project partner will make available to fund the project; and
- The projected costs of installing enhanced nutrient reducing OSTDSs on buildable lots in priority focus areas to comply with statutory restrictions on the activities allowed in such areas.

The bill requires DEP to submit a report to the Governor and the Legislature by July 1, 2021, that provides an assessment of the water quality monitoring being conducted for each BMAP implementing a nutrient TMDL. The bill specifies that DEP may coordinate with the WMDs and any applicable university in developing the report. The bill requires the report to:

- Evaluate the water quality monitoring prescribed for each BMAP to determine if it is sufficient to detect changes in water quality caused by the implementation of a project;
- Identify gaps in water quality monitoring; and
- Recommend water quality needs.

The bill requires DEP, beginning January 1, 2022, to submit annual cost estimates for projects listed in the wastewater treatment plans or OSTDS remediation plans to EDR, and requires EDR to include the estimates in its annual assessment of water resources and conservation lands.

The bill creates a wastewater grant program and allows DEP, in consultation with the WMDs, to provide grants, subject to appropriation, for projects within BMAPs, alternative restoration plans adopted by final order, or rural areas of opportunity (RAOs)¹³⁷ that will reduce excess nutrient pollution. Projects eligible for funding include projects to retrofit OSTDSs to upgrade them to enhanced nutrient-reducing OSTDSs; projects to provide advanced waste treatment; and projects to connect OSTDSs to central

¹³⁷ A RAO is a rural community or region of rural communities that presents a unique economic development opportunity of regional impact or that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster. By executive order, the Governor may designate up to three RAOs, establishing each region as a priority assignment for Rural Economic Development Initiative agencies. The Governor can waive the criteria, requirements, or any similar provisions of any state economic development incentive for projects in a RAO. Sections 288.0656(2)(d) and (7), F.S.

sewer facilities. The bill requires each grant for a project to have a minimum 50 percent local match, but allows DEP to waive such match for projects within an area designated as a RAO. The bill establishes the following priority for funding projects:

- First priority must be given to projects that subsidize the connection of OSTDSs to a wastewater treatment facility;
- Second priority must be given to projects that expand a collection or transmission system that promotes efficiency by planning the installation of wastewater transmission facilities to be constructed concurrently with other construction projects occurring within or along a transportation facility right-of-way; and
- Third priority must be given to projects that otherwise connect OSTDSs to wastewater treatment facilities.

The bill further requires DEP, in determining priorities, to consider the estimated reduction in nutrient load per project; project readiness; cost-effectiveness of the project; overall environmental benefit of a project; the location of a project; the availability of local matching funds; and projected water savings or quantity improvements associated with a project. The bill requires DEP, beginning January 1, 2021, and each January 1 thereafter, to submit a report to the Governor and the Legislature regarding the projects funded pursuant to the grant program.

Beginning July 1, 2025, the bill prohibits wastewater treatment facilities from discharging into the IRL without providing advanced waste treatment.

The bill requires DEP, by December 31, 2020, to submit a report to the Governor and the Legislature that provides the status of upgrades made by each wastewater treatment facility discharging into specified waterbodies to meet the advanced waste treatment requirements. The report must include a list of wastewater treatment facilities that will be required to upgrade to advanced waste treatment, the preliminary cost estimates for the upgrades, and a projected timeline for the upgrades.

The bill requires any facility 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.

The bill requires sanitary sewage disposal facilities that control a collection or transmission system of pipes and pumps to collect or transmit wastewater from domestic or industrial sources to the facility to take steps to prevent SSOs or underground pipe leaks and ensure collected wastewater reaches the facility. The bill further requires these facilities to use I&I studies and leakage surveys to develop pipe assessment, repair, and replacement action plans on a five-year planning horizon. The facilities must report such plans to DEP and include information regarding the annual expenditures dedicated to the I&I studies and replacement action plans; expenditures dedicated to pipe assessment, repair, and replacement; and expenditures designed to limit the presence of fats, roots, oils, and grease in the facility's collection system. The bill requires DEP to adopt rules regarding the implementation of I&I studies and leakage surveys but prohibits such rules from fixing or revising utility rates or budgets. The bill specifies that substantial compliance with these replacement action plan requirements must be considered evidence in mitigation for the purposes of assessing penalties.

The bill requires DEP to issue an operation permit for a domestic wastewater treatment facility not regulated under the NPDES program for a term of up to 10 years if the facility is meeting the goals stated in its action plan.

The bill requires water pollution operation permits to include procedures to investigate or survey a significant percentage of the domestic wastewater collection system throughout the duration of the permit to determine pipe integrity. The bill further requires the permittee to submit an annual report to DEP including annual facility revenues and expenditures and detailing any deviation from annual expenditures related to I&I studies; model pipe assessment, repair, and replacement action plans; and pipe assessment, repair, and replacement. The bill directs DEP to adopt rules establishing requirements for the annual report. The bill specifies that substantial compliance with these requirements must be considered evidence in mitigation for the purposes of assessing penalties.

The bill requires DEP, by March 1 of each year, to submit a report to the Governor and the Legislature identifying all domestic wastewater utilities that experienced a SSO in the preceding calendar year. The report must include the name of the utility or responsible entity, permitted capacity in annual average gallons per day, number of overflows, type of water discharged, and total volume of sewage released. To the extent known and available, the report must also include the volume of sewage recovered, the volume of sewage discharged to surface waters, and the cause of the SSO. The bill further requires that, for each facility that experienced an overflow, DEP submit with the SSO report the annual report required for water pollution operation permits regarding facility revenues and expenditures.

Biosolids

The bill requires DEP to adopt rules for biosolids management and specifies that such rules may not take effect until ratified by the Legislature.

For a new land application site permit or permit renewal issued after July 1, 2020, the bill requires the permittee of the biosolids land application site to ensure a minimum unsaturated soil depth of 2 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. The bill specifies that biosolids may not be applied on soils that have a seasonal high-water table less than six inches from the soil surface or within six inches of the intended depth of biosolids placement, unless a DEP-approved NMP and water quality monitoring plan provide reasonable assurances that the land application of biosolids at the site will not cause or contribute to a violation of the state's surface WQS or groundwater standards. The bill defines the term "seasonal high water" to mean the elevation to which the ground and surface water may be expected to rise due to a normal wet season.

The bill also requires a new land application site permit or permit renewal submitted after July 1, 2020, to be enrolled in DACS's BMP program or be within an agricultural operation enrolled in the program for the applicable commodity type. The bill requires all permits to comply with these statutory requirements by July 1, 2022.

The bill requires new or renewed biosolids land application site or facility permits issued after July 1, 2020, to include a permit condition that requires the permit to be reopened to insert a compliance date of no later than one year after the effective date of the biosolids rules adopted by DEP. The bill specifies that all permits must meet the requirements of the biosolids rules adopted by DEP no later than two years after the effective date of such rules.

The bill authorizes a municipality or county to enforce or extend a local ordinance, regulation, resolution, rule, moratorium, or policy relating to the land application of Class A or Class B biosolids if it was adopted before November 1, 2019. The bill specifies that such local ordinance, regulation, resolution, rule, moratorium, or policy is effective until repealed by the municipality or county.

Stormwater

Background

Stormwater is the flow of water resulting from, and immediately following, a rainfall event.¹³⁸ 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.¹³⁹ A stormwater management system is a system designed to control discharges necessitated by rainfall events, incorporating methods to collect, convey, store, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution.¹⁴⁰ Most activities that create

¹³⁸ DEP, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)* (June 1, 2018), 2-10, available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Applicant_Hanbook_I_-_Combined.pdf (last visited Jan. 21, 2020).

¹³⁹ DEP, *Stormwater Management* (2016), 1, available at https://floridadep.gov/sites/default/files/stormwater-management_0.pdf (last visited Jan. 21, 2020).

¹⁴⁰ Section 373.403(10), F.S.

new impermeable surfaces or alter surface water flows will involve a stormwater management system.¹⁴¹

Effective stormwater management is essential to reducing nonpoint source pollution.¹⁴² Methods such as low-impact design technologies and BMPs can be implemented to address pollution in stormwater discharges.¹⁴³ Low-impact development refers to systems and practices that mimic or preserve natural drainage processes to manage stormwater.¹⁴⁴ This approach is also known as “green infrastructure,” and instead of moving stormwater away from the built environment, these methods treat stormwater at its source.¹⁴⁵ Low-impact designs, including green roofs, permeable pavements, or bioswales, can result in stormwater being reused, soaking into vegetation that performs evaporative cooling, or infiltrating the soil and replenishing groundwater.¹⁴⁶

Since the 1980s, Florida has regulated the discharge of stormwater to prevent pollution of the waters of the state and protect the designated beneficial use of surface waters.¹⁴⁷ Florida has established minimum stormwater treatment performance standards, which require design and performance criteria for new stormwater management systems to achieve at least an 80 percent reduction of the average annual load of pollutants that would cause or contribute to violations of state WQS and further achieve at least a 95 percent reduction of the average annual load of pollutants that would cause or contribute to violations of state WQS in Outstanding Florida Waters.¹⁴⁸ When a stormwater management system complies with rules establishing applicable design and performance criteria, there is a rebuttable presumption that the system’s discharge will comply with WQS.¹⁴⁹

Through its Environmental Resource Permitting (ERP) program, DEP regulates activities that create stormwater runoff, as well as dredging and filling in wetlands and other surface waters.¹⁵⁰ ERPs are designed to prevent flooding, protect wetlands and other surface waters, and protect Florida’s water quality from stormwater pollution.¹⁵¹ DEP implements the statewide ERP program in conjunction with the WMDs and certain local governments. The ERP Applicant Handbook, which is incorporated by reference into DEP rules, provides guidance on DEP’s ERP program, including stormwater topics such as the design of stormwater management systems.¹⁵²

¹⁴¹ DEP, *Environmental Resource Permit Applicant’s Handbook Volume I (General and Environmental)* (June 1, 2018), 1-5, available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Applicant_Hanbook_I_-_Combined.pdf (last visited Jan. 21, 2020).

¹⁴² Rule 62-40.431(1), F.A.C.

¹⁴³ South Florida WMD, *Quick Facts on the Statewide Unified Stormwater Rule* (2009), available at https://www.sfwmd.gov/sites/default/files/documents/spl_stormwater_rule.pdf (last visited Jan. 21, 2020).

¹⁴⁴ EPA, *Benefits of Low Impact Development* (2012), 1, available at <https://www.epa.gov/sites/production/files/2015-09/documents/bbfs1benefits.pdf> (last visited Jan. 21, 2020); EPA, *Urban Runoff: Low Impact Development*, available at <https://www.epa.gov/nps/urban-runoff-low-impact-development> (last visited Jan. 21, 2020).

¹⁴⁵ DEP, *Green Infrastructure*, available at <https://floridadep.gov/wra/319-tmdl-fund/content/green-infrastructure> (last visited Jan. 21, 2020).

¹⁴⁶ EPA, *Benefits of Low Impact Development* (2012), 1, available at <https://www.epa.gov/sites/production/files/2015-09/documents/bbfs1benefits.pdf> (last visited Jan. 21, 2020); South Florida WMD, *Quick Facts on the Statewide Unified Stormwater Rule* (2009), available at https://www.sfwmd.gov/sites/default/files/documents/spl_stormwater_rule.pdf (last visited Jan. 21, 2020).

¹⁴⁷ DEP, *Evaluation of Current Stormwater Design Criteria within the State of Florida* (2007), 1-1, available at <https://www.sfwmd.gov/sites/default/files/documents/sw%20treatment%20report-final71907.pdf> (last visited Jan. 21, 2020).

¹⁴⁸ Rule 62-40.432(2), F.A.C.; DEP, *Outstanding Florida Waters*, available at <https://floridadep.gov/dear/water-quality-standards/content/outstanding-florida-waters> (last visited Jan. 21, 2020). Rule 62-302.200(26), F.A.C., defines “Outstanding Florida Water” to mean waters designated by the Environmental Regulation Commission as worthy of special protection because of their natural attributes.

¹⁴⁹ Rule 62-40.432(2), F.A.C.

¹⁵⁰ DEP, *DEP 101: Environmental Resource Permitting*, available at <https://floridadep.gov/comm/press-office/content/dep-101-environmental-resource-permitting> (last visited Jan. 22, 2020).

¹⁵¹ South Florida WMD, *Environmental Resource Permits*, available at <https://www.sfwmd.gov/doing-business-with-us/permits/environmental-resource-permits> (last visited Jan. 22, 2020).

¹⁵² Rule 62-330.010(4), F.A.C.; DEP, *Environmental Resource Permit Applicant’s Handbook Volume I (General and Environmental)* (June 1, 2018), 2-10, available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Applicant_Hanbook_I_-_Combined.pdf (last visited Jan. 22, 2020).

2010 Stormwater Rulemaking

From 2008 to 2010, DEP and the WMDs worked together to develop a statewide unified stormwater rule to protect Florida's surface waters from the effects of excessive nutrients in stormwater runoff.¹⁵³ A technical advisory committee was established and, in 2010, DEP announced a series of workshops to allow for public comment on the statewide stormwater quality draft rule.¹⁵⁴ 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 BMP design criteria.¹⁵⁵

These rulemaking efforts produced a draft document called the "ERP Stormwater Quality Applicant's Handbook: Design Requirements for Stormwater Treatment in Florida."¹⁵⁶ The 2010 draft handbook provided for different stormwater treatment performance standards based on various classifications of water quality;¹⁵⁷ included instructions for calculating a project's required nutrient load reduction based on comparing the predevelopment and post-development loadings;¹⁵⁸ provided the required criteria for stormwater BMPs; and listed 15 different types of stormwater treatment systems, including low impact design, pervious pavements, and stormwater harvesting.¹⁵⁹

The proposed rule and revised handbook were expected to be adopted in 2011; however, neither the rules nor a revised handbook were ever adopted.

Effect of the Bill

The bill requires DEP local pollution control staff training to include coordinating field inspections of public and privately-owned stormwater structural controls.

The bill requires DEP and the WMDs to initiate rulemaking by January 1, 2021, to update the stormwater design and operation regulations using the most recent scientific information available. As part of rule development, the bill requires DEP to consider and address low-impact design BMPs and design criteria that increase the removal of nutrients from stormwater discharges, and measures for consistent application of the net performance standard to ensure significant reductions of any pollutant loadings to a waterbody.

In addition, the bill requires DEP to evaluate inspection data relating to compliance by entities that submit self-certifications for the construction, alteration, and maintenance of a stormwater management system serving a total project area of up to 10 acres. DEP must recommend improvements to the self-certification process to the Legislature.

The bill requires the model stormwater management program to contain model ordinances targeting nutrient reduction practices and utilizing green infrastructure.

Consumptive Use of Water

Background

Consumptive Use Permits

¹⁵³ South Florida WMD, *Quick Facts on the Statewide Unified Stormwater Rule*, available at https://www.sfwmd.gov/sites/default/files/documents/spl_stormwater_rule.pdf (last visited Jan. 21, 2020).

¹⁵⁴ Chapter 62-347, F.A.C.; Florida Administrative Register, *Notice of Rescheduling* (Apr. 23, 2010), 1885, available at <https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2010/3616/3616doc.pdf> (last visited Jan. 21, 2020).

¹⁵⁵ *Id.*

¹⁵⁶ DEP, *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 (last visited Jan. 21, 2020).

¹⁵⁷ *Id.* at 6-7.

¹⁵⁸ *Id.* at 8-11.

¹⁵⁹ *Id.* at 3.

Before using waters of the state,¹⁶⁰ a person must apply for and obtain a consumptive use permit (CUP) from the applicable WMD¹⁶¹ or DEP. The WMD or DEP may impose reasonable conditions necessary to assure that the proposed use is consistent with the overall objectives of the WMD or DEP and is not harmful to the water resources of the area.¹⁶² To obtain a CUP, an applicant must establish that the proposed use of water is a reasonable-beneficial use,¹⁶³ will not interfere with any presently existing legal use of water, and is consistent with the public interest.¹⁶⁴

It is possible for consumptive use to lower the flows and levels of water bodies to a point that the resource values are significantly harmed. To prevent this harm, the WMDs must identify and establish the limit at which further water withdrawals would be significantly harmful to the water resources or ecology of the area, known as the minimum flow¹⁶⁵ and minimum level (MFL).¹⁶⁶

For water bodies that are below their MFL, or are projected to fall below it within 20 years, the WMDs are required to implement a recovery or prevention strategy to ensure the MFL is maintained.¹⁶⁷ A recovery or prevention strategy must include the development of additional water supplies and other actions to achieve recovery to the established MFL as soon as practicable or prevent the existing flow or water level from falling below the established MFL.¹⁶⁸ A recovery or prevention strategy must also include a phased-in approach or a timetable that will allow for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses, including implementation of conservation and other efficiency measures to offset reductions in permitted withdrawals.¹⁶⁹

Bottled Water

The U.S. Food and Drug Administration regulates the bottled water industry for safety and water quality.¹⁷⁰ Bottled water is water intended for human consumption that is sealed in bottles or other containers with no added ingredients except that it may optionally contain safe and suitable antimicrobial agents.¹⁷¹ A “bottled water plant” is an establishment in which bottled water is prepared for sale.¹⁷²

Florida law requires that bottled water come from an “approved source,” which is defined as any source of water that complies with the federal Safe Drinking Water Act.¹⁷³ Bottled water must be processed in conformance with applicable federal regulations such as standards for water quality and label

¹⁶⁰ Section 373.019(22), F.S., defines the term “water” or “waters in the state” to mean any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.

¹⁶¹ Section 373.216, F.S.; see chs. 40A-2, 40B-2, 40C-2, 40D-2, and 40E-2, F.A.C., for CUP permitting requirements.

¹⁶² Section 373.219(1), F.S.; an individual solely using water for domestic consumption is exempt from CUP requirements.

¹⁶³ Section 373.019(16), F.S., defines the term “reasonable-beneficial use” to mean the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner that is both reasonable and consistent with the public interest.

¹⁶⁴ Section 373.223(1), F.S.

¹⁶⁵ Section 373.042(1)(a), F.S., provides that the minimum flow for a given watercourse is the limit at which further water withdrawals would be significantly harmful to the water resources or ecology of the area.

¹⁶⁶ Section 373.042(1)(b), F.S., provides that the minimum level is the level of groundwater in an aquifer or the level of a surface waterbody at which further withdrawals will significantly harm the water resources of the area. DEP, *Minimum Flows and Minimum Water Levels and Reservations*, available at <https://floridadep.gov/water-policy/water-policy/content/minimum-flows-and-minimum-water-levels-and-reservations> (last visited Jan. 27, 2020).

¹⁶⁷ DEP, *Minimum Flows and Minimum Water Levels and Reservations*, available at <https://floridadep.gov/water-policy/water-policy/content/minimum-flows-and-minimum-water-levels-and-reservations> (last visited Jan. 27, 2020).

¹⁶⁸ Section 373.0421(2), F.S.

¹⁶⁹ *Id.*

¹⁷⁰ 21 C.F.R. Part 129; Food and Drug Administration, *FDA Regulates the Safety of Bottled Water Beverages Including Flavored Water and Nutrient-Added Water Beverages*, available at <https://www.fda.gov/food/buy-store-serve-safe-food/fda-regulates-safety-bottled-water-beverages-including-flavored-water-and-nutrient-added-water> (last visited Feb. 19, 2020).

¹⁷¹ Section 500.03(1)(d), F.S. Florida law defines “bottled water” using the description provided in federal regulation; 21 C.F.R. s. 165.110(a)(1).

¹⁷² Sections 500.03(1)(e), (n), and (p), F.S.

¹⁷³ Sections 500.03(1)(c) and 500.147(3), F.S.; s. 500.03(1)(w), F.S., defines the term “natural water” to mean bottled spring water, artesian well water, or well water that has not been altered with water from another source or that has not been modified by mineral addition or deletion, except for alteration that is necessary to treat the water through ozonation or an equivalent disinfection and filtration process.

statements.¹⁷⁴ If the label bears a name or trademark containing terms such as “springs,” “well,” or “natural,” then the label must also state the source of the water.¹⁷⁵

Effect of the Bill

The bill requires DEP, in coordination with the WMDs, to conduct a study on the bottled water industry in the state. The study must identify all springs in the state associated with a CUP for a bottled water facility producing its product with water withdrawn from a spring. Such identification must include the magnitude of the spring; whether the spring has been identified as an Outstanding Florida Spring; any MFLs adopted by DEP or the WMD, the status of any such adopted MFLs, and any associated recovery or prevention strategies; the permitted and actual use associated with the CUPs; the reduction in spring flow associated with the permitted and actual use associated with the CUPs; the impact of bottled water facilities on springs compared to other users; and the types of water conservation measures used by bottled water facilities permitted to withdraw water from a spring.

The study must also:

- Identify the labeling and marketing regulations associated with the identification of bottled water as spring water, including whether the regulations incentivize the withdrawal of water from springs;
- Evaluate the direct and indirect economic benefits to the local communities resulting from bottled water facilities that withdraw water from springs, including, but not limited to, tax revenue, job creation, and wages;
- Evaluate the direct and indirect costs to the local communities located in proximity to springs impacted by withdrawals from bottled water production, including, but not limited to, the decreased recreational value of the spring and the cost to other users for the development of alternative water supply or reductions in permit durations and allocations;
- Include a cost-benefit analysis of withdrawing, producing, marketing, selling, and consuming spring water as compared to other sources of bottled water; and
- Evaluate how much bottled water derived from Florida springs is sold in the state.

The bill requires DEP to submit a report containing the findings of the study to the Governor, the Legislature, and EDR by June 30, 2021.

Beginning July 1, 2020, the bill prohibits the governing board of a WMD from approving a new CUP, or the renewal or modification of a CUP, that authorizes the use of water withdrawn from a spring for bottled water unless, in the case of a renewal or modification, the application was submitted to DEP or the WMD prior to January 1, 2020. The bill specifies that this prohibition expires on June 30, 2022.

Water Quality Funding Sources

Background

Clean Water State Revolving Fund

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.¹⁷⁶ The CWSRF is funded through money received from 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.¹⁷⁷

¹⁷⁴ Section 500.147(3), F.S.; 21 C.F.R. Part 129; 21 C.F.R. § 165.110; *see* DACS, *Bottled Water Testing Requirements*, available at <https://www.fdacs.gov/content/download/72733/file/Bottled-Water-Testing-Requirements.pdf> (last visited Feb. 19, 2020).

¹⁷⁵ Section 500.11(1)(o), F.S.

¹⁷⁶ 33 USC s. 1383; EPA, *CWSRF*, available at <https://www.epa.gov/cwsrf> (last visited Feb. 21, 2020); EPA, *Learn about the CWSRF*, available at <https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf> (last visited Feb. 21, 2020).

¹⁷⁷ *Id.*

The CWSRF provides low-interest loans to local governments to plan, design, and build or upgrade wastewater, stormwater, and nonpoint source pollution prevention projects. 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 considered eligible loan sponsors.¹⁷⁸ The EPA classifies 11 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 CWSRF eligible projects and to assist each treatment works in achieving compliance with the Clean Water Act.¹⁷⁹

Of these eligible projects, DEP must 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 for domestic wastewater ocean outfalls; assist in the implementation of TMDLs adopted under BMAPs; enable compliance with other pollution control requirements, including 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 OSTDSs or those that are causing environmental damage; or reduce pollutants to and otherwise promote the restoration of surface and ground waters.¹⁸⁰

Small Community Sewer Construction Assistance Act

The Small Community Sewer Construction Assistance Act is a grant program established as part of the CWSRF program that requires DEP to award grants to assist financially disadvantaged small communities¹⁸¹ with their needs for adequate domestic wastewater facilities.¹⁸²

In accordance with rules adopted by the Environmental Regulation Commission (ERC), 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.¹⁸³ The rules of the ERC must also:

¹⁷⁸ DEP, *State Revolving Fund*, available at <https://floridadep.gov/wra/srf> (last visited Feb. 21, 2020).

¹⁷⁹ EPA, *Learn about the CWSRF*, available at <https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf> (last visited Feb. 21, 2020).

¹⁸⁰ Section 403.1835(7), F.S.

¹⁸¹ Section 403.1838(2), F.S., defines the term “financially disadvantaged small community” to mean a county, municipality, or special district that has a population of 10,000 or fewer, according to the latest decennial census, and a per capita annual income less than the state per capita annual income as determined by the U. S. Department of Commerce.

¹⁸² Sections 403.1835(3)(d) and 403.1838, F.S.

¹⁸³ Section 403.1838(3)(a), F.S.

- 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.¹⁸⁴

Effect of the Bill

For projects funded by the CWSRF, the bill requires DEP to prioritize projects that are identified in sewage disposal facility action plans or water pollution operation facility reports or 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.

The bill requires the system established by ERC rule that determines the priority of grant applications for funding under the Small Community Sewer Construction Assistance Act to consider water pollution prevention or abatement and further requires such system to prioritize 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.

Type Two Transfer

Background

A type two transfer is the merging of an existing department, program, or activity into another department.¹⁸⁵ Any program or activity transferred by a type two transfer retains all the statutory powers, duties, and functions it held before 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.¹⁸⁶

Effect of the Bill

Effective July 1, 2021, the bill transfers the duties and powers related to regulation of the Onsite Sewage Program from DOH to DEP by a type two transfer and requires DEP and DOH to submit recommendations to the Governor and the Legislature regarding the transfer by December 31, 2020. The bill further requires DOH to submit a report by July 1, 2020, detailing the number of permits issued per year, costs and expenditures related to equipment and contracting, and other employee-related information.

The bill requires DEP and DOH, by June 30, 2021, to enter into an interagency agreement that addresses agency cooperation following the transfer. The bill allows employees transferred from DOH to DEP to retain any accrued leave.

Environmental Violations

Background

¹⁸⁴ Section 403.1838(3)(b), F.S.; ch. 62-505, F.A.C.

¹⁸⁵ Section 20.06(2), F.S.

¹⁸⁶ Section 20.06(2), F.S.

In accordance with the state's numerous environmental laws, DEP is responsible for compliance and enforcement.¹⁸⁷ 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.¹⁸⁸ In environmental enforcement, penalties should create incentives to bring immediate compliance and curb future violations.¹⁸⁹ 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 may be levied directly by DEP or in a proceeding in the Division of Administrative Hearings.¹⁹⁰ 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.¹⁹¹ In most administrative proceedings, DEP has the final decision.¹⁹² 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.¹⁹³ Compared to the judicial process, the administrative process is generally considered less expensive, faster, and more conducive to negotiated settlement.¹⁹⁴ 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.¹⁹⁵

DEP must proceed administratively when it seeks administrative penalties that do not exceed \$10,000 per assessment; DEP is prohibited from imposing administrative penalties in excess of \$10,000 in a single notice of violation.¹⁹⁶ 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.¹⁹⁷

Civil penalties are noncriminal fines that are generally levied by a court, but certain agencies may 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.¹⁹⁸

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.¹⁹⁹ Under both actions, DEP may seek injunctive relief, civil penalties, damages, and costs and expenses.²⁰⁰ 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.²⁰¹

A court or an administrative law judge may receive evidence in mitigation, which may result in the decrease or elimination of penalties.²⁰²

¹⁸⁷ 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).

¹⁸⁸ See BLACK'S LAW DICTIONARY 1247 (9th ed. 2009).

¹⁸⁹ 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).

¹⁹⁰ See ch. 120, F.S. The administrative process is formalized in the Administrative Procedure Act.

¹⁹¹ DEP, *Enforcement Manual: The Administrative Process and Remedies* (2014), 58, available at https://floridadep.gov/sites/default/files/chapter5_0.pdf (last visited Jan. 27, 2020).

¹⁹² *Id.*

¹⁹³ *Id.* at 58-59, 66-70; ch. 2001-258, Laws of Fla.

¹⁹⁴ DEP, *Enforcement Manual: The Administrative Process and Remedies* (2014), 59, available at https://floridadep.gov/sites/default/files/chapter5_0.pdf (last visited Jan. 27, 2020).

¹⁹⁵ *Id.* at 59-60.

¹⁹⁶ Section 403.121(2)(b), F.S.; DEP, *Enforcement Manual: The Administrative Process and Remedies* (2014), 66-67, available at https://floridadep.gov/sites/default/files/chapter5_0.pdf (last visited Jan. 27, 2020). This requirement does not apply to underground injection, hazardous waste, or asbestos programs.

¹⁹⁷ *Id.*

¹⁹⁸ Section 403.121, F.S.

¹⁹⁹ 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).

²⁰⁰ *Id.*

²⁰¹ Section 403.121(1)(b), F.S.

²⁰² Section 403.121, F.S.

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.²⁰³

Effect of the Bill

The bill requires DEP to assess a penalty of \$4,000 for failure to comply with the pollution prevention and mitigation report or the facility action plan.

The bill increases the administrative penalties for: the failure to obtain certain wastewater permits from \$1,000 to \$2,000; an unpermitted or unauthorized discharge not involving a surface water or groundwater quality violation from \$2,000 to \$4,000; and an unpermitted or unauthorized discharge involving a surface water or groundwater quality violation from \$5,000 to \$10,000.

The bill increases the cap of administrative penalties that may be assessed by DEP per violator from \$5,000 to \$10,000, unless the economic benefit of the violation exceeds \$10,000, and the cap for all violations attributable to one person from \$10,000 per assessment to \$50,000 per assessment.

Secretary of DEP

Background

Current law requires the Secretary of DEP to be appointed by the Governor, with the concurrence of three members of the Cabinet.²⁰⁴ The Cabinet consists of the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.²⁰⁵

Effect of the Bill

The bill requires the Secretary of DEP to be appointed by the Governor with the concurrence of two or more members of the Cabinet.

Environmental Rights

Background

Environmental Protection Act

Florida's Environmental Protection Act (Protection Act) 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:²⁰⁶

- 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 intervene²⁰⁷ 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.²⁰⁸ A citizen may not institute, initiate, petition for, or request such a proceeding unless he or

²⁰³ Section 403.412, F.S.

²⁰⁴ Section 20.255(1), F.S.

²⁰⁵ Section 20.03(1), F.S.

²⁰⁶ Section 403.412(2), F.S.

²⁰⁷ Section 403.412(5), F.S., defines "intervene" to mean 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 Procedure Act.

²⁰⁸ Section 403.412(5), F.S.

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.²⁰⁹

The Florida Supreme Court has held that the Protection Act 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.²¹⁰

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 worldwide²¹¹ have authorized specific legal rights of nature authorizing a person to assert standing on behalf of natural resources.²¹²

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.²¹³ The Sierra Club (Club) argued that the ski development would adversely affect the forest, but did not allege any personal injury to any specific member of the Club.²¹⁴ 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.²¹⁵ 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.²¹⁶

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."²¹⁷ 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.²¹⁸

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.²¹⁹ 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

²⁰⁹ *Id.*

²¹⁰ *Florida Wildlife Federation v. State Dept. of Environmental Regulation*, 390 So. 2d 64 (Fla. 1980).

²¹¹ 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, available at <https://globalwaterforum.org/2018/05/14/flowing-from-fiction-to-fact-the-challenges-of-implementing-legal-rights-for-rivers/> (last visited Jan. 30, 2020).

²¹² Lidia Cano Pecharroman, *Rights of Nature: Rivers That Can Stand in Court* (Feb 14, 2018), available at <https://www.mdpi.com/2079-9276/7/1/13/htm> (last visited Jan. 30, 2020).

²¹³ *Sierra Club v. Morton*, 405 U.S. 727 (1972).

²¹⁴ *Id.* at 734.

²¹⁵ *Id.* at 735.

²¹⁶ *Id.* at 740.

²¹⁷ *Id.* at 741-42.

²¹⁸ *Id.* at 755-56.

²¹⁹ 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.

interest could be represented in court.²²⁰ 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.²²¹ 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.²²²

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.²²³ 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.²²⁴

In 2013, 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.”²²⁵ 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.²²⁶

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.²²⁷

Effect of the Bill

The bill amends the 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 person²²⁸ or political subdivision;²²⁹ 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 Protection Act.

²²⁰ *Id.* at 12.

²²¹ *Id.* at 2.

²²² Motion to Dismiss, No. 1:17-cv-02316-NYW (D. Colo. Oct. 17, 2017).

²²³ *Swept, LP v. Mora Cty.*, 81 F. Supp. 3d 1075, 1090 (D.N.M. 2015).

²²⁴ *Swept*, 81 F. Supp. 3d at 1088

²²⁵ *City of Lafayette “Community Rights Act” Fracking Ban Amendment, Question 300* (November 2013), BALLOTOPEDIA (Nov. 2013), available at

[\(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).

²²⁶ *Id.*

²²⁷ Orange County Comptroller, *2020-01-22 Rights of the Wekiva River and Econlockhatchee River Committee*, available at <https://www.occompt.com/meetings/meeting/2020-01-22-rights-of-the-wekiva-river-and-econlockhatchee-river-committee/> (last visited Jan. 30, 2020).

²²⁸ Section 1.01(3), F.S., defines the term “person” to include individuals, children, firms, associations, joint adventures, partnerships, estates trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

²²⁹ Section 1.01(8), F.S., defines the term “political subdivision” to include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in Florida.

Important State Interest

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

B. SECTION DIRECTORY:

- Section 1. Provides the title "Clean Waterways Act."
- Section 2. Transfers the authority of the Onsite Sewage Program from DOH to DEP via a type two transfer.
- Section 3. Amends s. 20.255, F.S., relating to the Secretary of DEP.
- Section 4. Amends s. 373.036, F.S., relating to consolidated WMD annual reports.
- Section 5. Amends s. 373.223, F.S., relating to conditions for a permit
- Section 6. Amends s. 373.4131, F.S., relating to statewide ERP rules.
- Section 7. Amends s. 381.0065, F.S., relating to OSTDSs.
- Section 8. Amends s. 381.0065, F.S., relating to OSTDSs.
- Section 9. Amends s. 381.00651, F.S., relating to periodic evaluation and assessment of OSTDSs.
- Section 10. Creates s. 381.00652, F.S., creating the OSTDS TAC.
- Section 11. Repeals s. 381.0068, F.S., relating to the TRAP.
- Section 12. Amends s. 403.061, F.S., relating to DEP powers and duties.
- Section 13. Creates s. 403.0616, F.S., to create a real-time water quality monitoring program.
- Section 14. Amends s. 403.067, F.S., relating to the establishment of BMAPs and implementation of TMDLs.
- Section 15. Creates s. 403.0671, F.S., relating to BMAP wastewater reports.
- Section 16. Creates s. 403.0673, F.S., relating to the wastewater grant program.
- Section 17. Creates s. 403.0855, F.S., relating to biosolids management.
- Section 18. Amends s. 403.086, F.S., relating to sewage disposal facilities.
- Section 19. Amends s. 403.087, F.S., relating to permits.
- Section 20. Amends s. 403.088, F.S., relating to water pollution operation permits.
- Section 21. Amends s. 403.0891, F.S., relating to state, regional, and local stormwater management plans and programs.
- Section 22. Amends s. 403.121, F.S., relating to enforcement, procedure, and remedies.
- Section 23. Amends s. 403.1835, F.S., relating to water pollution control financial assistance.
- Section 24. Amends s. 403.1838, F.S., relating to the Small Community Sewer Construction Assistance Act.

- Section 25. Amends s. 403.412, F.S., relating to the Protection Act.
- Section 26. Provides an important state interest.
- Section 27. Amends s. 153.54, F.S., to make conforming changes.
- Section 28. Amends s. 153.73, F.S., to make conforming changes.
- Section 29. Amends s. 163.3180, F.S., to make conforming changes.
- Section 30. Amends s. 180.03, F.S., to make conforming changes.
- Section 31. Amends s. 311.105, F.S., to make conforming changes.
- Section 32. Amends s. 327.46, F.S., to make conforming changes.
- Section 33. Amends s. 373.250, F.S., to make conforming changes.
- Section 34. Amends s. 373.414, F.S., to make conforming changes.
- Section 35. Amends s. 373.705, F.S., to make conforming changes.
- Section 36. Amends s. 373.707, F.S., to make conforming changes.
- Section 37. Amends s. 373.709, F.S., to make conforming changes.
- Section 38. Amends s. 373.807, F.S., to make conforming changes.
- Section 39. Amends s. 376.307, F.S., to make conforming changes.
- Section 40. Amends s. 380.0552, F.S., to make conforming changes.
- Section 41. Amends s. 381.006, F.S., to make conforming changes.
- Section 42. Amends s. 381.0061, F.S., to make conforming changes.
- Section 43. Amends s. 381.0064, F.S., to make conforming changes.
- Section 44. Amends s. 381.0101, F.S., to make conforming changes.
- Section 45. Amends s. 403.08601, F.S., to make conforming changes.
- Section 46. Amends s. 403.0871, F.S., to make conforming changes.
- Section 47. Amends s. 403.0872, F.S., to make conforming changes.
- Section 48. Amends s. 403.707, F.S., to make conforming changes.
- Section 49. Amends s. 403.861, F.S., to make conforming changes.
- Section 50. Amends s. 489.551, F.S., to make conforming changes.
- Section 51. Amends s. 590.02, F.S., to make conforming changes.
- Section 52. Provides a directive to the Division of Law Revision.
- Section 53. Provides an effective date of July 1, 2020, except as otherwise expressly provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive impact on state government revenues because some revenue could be realized from enforcement citations and fines.

2. Expenditures:

The bill may have an insignificant negative fiscal impact on DEP and DOH that can be absorbed within existing resources to complete recommendations on the type two transfer. The bill transfers all of the resources and personnel for the OSTDS program by a type two transfer from DOH to DEP, so DEP would use these resources to regulate the OSTDS program beginning July 1, 2021. There may also be an insignificant negative fiscal impact on DEP that can be absorbed within existing resources to administer and support the OSTDS TAC.

The bill requires DEP to make changes to multiple regulatory programs, update BMAPs, and develop, submit, and review multiple new reports.

The bill requires DEP to establish a real-time water quality monitoring program. The bill also requires DEP to create a wastewater grant program. These requirements are subject to appropriation, so there is no fiscal impact.

The bill requires DACS to conduct onsite inspections at least every two years for agricultural producers enrolled in a BMP.

The proposed House of Representatives' Fiscal Year 2020-2021 General Appropriations Act appropriates \$955,592 in trust funds and 8.00 full-time employees (FTE) to DACS for the expected increase in the number of required site visits to be conducted; \$122 million in nonrecurring general revenue funds for water quality improvement cost share grants; \$10.8 million in nonrecurring general revenue funds for water quality improvements and monitoring; and \$50 million in nonrecurring general revenue and trust funds for TMDLs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on local governments because they will be required to create wastewater treatment plans and OSTDS remediation plans.

The bill may have an indeterminate negative fiscal impact to any local government-owned wastewater facilities discharging into the IRL because they must upgrade to provide advanced waste treatment.

The bill may have an indeterminate negative fiscal impact to any local government-owned wastewater facilities that land apply biosolids on a site that does not meet the minimum requirements for land application established by the bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It is unclear whether the transfer of the OSTDS program to DEP on July 1, 2021, will result in changes to the program that could affect the private sector, such as changes in the cost of permit fees or the approval of using lower cost, nutrient reducing OSTDSs.

The bill may have an indeterminate negative fiscal impact to the private sector because the bill requires updates to stormwater rules and the adoption of new OSTDS and wastewater rules. However, if that impact exceeds \$1 million over five years, the rules will require legislative ratification.

The additional requirements of OSTDS remediation plans and wastewater treatment plans may result in a negative fiscal impact on the private sector entities within BMAPs that must address OSTDS or wastewater pollution to meet the TMDL.

The bill may have an indeterminate negative fiscal impact to any private wastewater facilities discharging into the IRL because the facility must make facility improvements to provide advanced waste treatment.

The bill may have an indeterminate negative fiscal impact to any privately-owned wastewater facilities or land application sites that will no longer be permitted to land apply biosolids in certain locations.

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:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires local governments to develop wastewater treatment plans and OSTDS remediation plans. An exemption may apply if the requirement results in an insignificant fiscal impact. In addition, an exception may apply because the requirement applies to similarly situated persons and the bill provides a legislative finding that the requirements of the bill fulfill an important state interest.

2. Other:

Section 6, Art. IV of the State Constitution provides that, “[w]hen provided by law, confirmation by the senate or the approval of three members of the cabinet shall be required for appointment to or removal from any designated statutory office.” The bill requires the Secretary of DEP to be appointed by the Governor with the concurrence of at least two members of the Cabinet and requires confirmation by the Senate.

B. RULE-MAKING AUTHORITY:

The bill requires DEP and the WMDs to adopt rules to implement the various programs, reports, and other requirements related to water quality that are established by the bill. DEP and the WMDs appear to have sufficient rulemaking authority to adopt the rules required by the bill. In addition, the bill requires the rules for biosolids management to be ratified by the Legislature; as such, the biosolids rules will not take effect until ratified.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 27, 2020, the State Affairs Committee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS added provisions relating to the appointment of the Secretary of DEP, the consumptive use of water from springs for bottled water, the land application of biosolids, and the Protection Act. The PCS also revised provisions relating to OSTDS rulemaking, grant funding priorities, inspections of agricultural BMPs, and the requirements of BMAPs.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.

MIAF Bill Tracking

Ordered by Bill Number

SB 0034	Prohibited Discrimination by Rouson
Prohibited Discrimination; Citing this act as the "Florida Competitive Workforce Act"; adding sexual orientation and gender identity as impermissible grounds for discrimination in public lodging establishments and public food service establishments; providing an exception for constitutionally protected free exercise of religion, etc. Effective Date: 7/1/2020	
Actions	
09/03/2019 SENATE Withdrawn prior to introduction	
HB 0073	Environmental Regulation by Overdorf
Environmental Regulation: Specifies requirements for contracts between residential recycling collectors or recovered materials processing facilities & counties or municipalities for collecting, transporting, & processing residential recycling material & contaminated recyclable material; prohibits local governments from requiring further verification from DEP for certain projects; revises types of dock & pier replacements & repairs that are exempt from such verification & certain permitting requirements. Effective Date: July 1, 2020	
Actions	
02/26/2020 SENATE Read Third Time; Passed (Vote: 40 Yeas / 0 Nays)	
SB 0090	Discrimination in Labor and Employment by Stewart
Discrimination in Labor and Employment; Creating the "Senator Helen Gordon Davis Fair Pay Protection Act"; prohibiting an employer from providing less favorable employment opportunities to employees based on their sex; prohibiting an employer from taking certain employment actions against employees; prohibiting an employer from engaging in certain activities relating to wages and benefits, etc. Effective Date: 7/1/2020	
Actions	
02/18/2020 SENATE Temporarily Postponed by Commerce and Tourism	
SB 0112	Capital Relocation Study by Rader
Capital Relocation Study; Requiring the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a study regarding the relocation of the state capital; prescribing requirements for the study; requiring OPPAGA to submit a report to the Legislature by a specified date, etc. Effective Date: 7/1/2020	
Actions	
08/16/2019 SENATE Referred to Governmental Oversight and Accountability; Community Affairs; Rules	
HB 0133	Towing and Immobilizing Vehicles and Vessels by McClain
Towing and Immobilizing Vehicles and Vessels: Authorizes local governments to enact rates to tow vessels on private property & remove & store vessels; prohibits counties or municipalities from enacting ordinances that impose costs or penalties on owners, persons in control, or lienholders of vehicles or vessels or that require wrecker operators or towing businesses to accept specified form of payment; authorizes persons to place liens on vehicles or vessels to recover fees or charges; revises requirement regarding notices & signs concerning towing or removal of vehicles & vessels. Effective Date: October 1, 2020	
Actions	
02/27/2020 SENATE Referred to Community Affairs; Infrastructure and Security; Rules	
SB 0142	Abolishing the Constitution Revision Commission by Brandes
Abolishing the Constitution Revision Commission; Proposing amendments to the State Constitution to abolish the Constitution Revision Commission, etc.	

Actions

02/12/2020 SENATE Retained on Calendar

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; providing that such rule operates prospectively on projects that have not yet commenced as of the finalization of the rule, etc. Effective Date: Except as otherwise expressly provided in this act, this act shall take effect July 1, 2020

Actions

02/28/2020 SENATE Committee Substitute Text (C2) Filed

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

02/26/2020 SENATE On Committee agenda - Rules, 03/02/20, 12:00 pm, 110 S

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

02/26/2020 HOUSE In Messages

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

02/26/2020 SENATE On Committee agenda - Rules, 03/02/20, 12:00 pm, 110 S

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

02/12/2020 HOUSE Placed on Calendar, on 2nd reading

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

02/28/2020 HOUSE Committee Substitute Text (C2) Filed

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

02/19/2020 SENATE Read Second Time; Substituted for HB 0073; Laid on Table, Refer to HB 0073

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

02/25/2020 SENATE Now in Appropriations

HB 0343 Recreational Vehicle Industries by Fetterhoff

Recreational Vehicle Industries: Creates & revises provisions for recreational vehicle parks relating to permit applications, preemption of permitting standards to DOH, transient guests, standards for rebuilding after damage or destruction, abandoned property, park operator authority to refuse access & eject guests & visitors, & certain immunity from liability; requires DACS to adopt rules for establishment &

administration of certain examinations; authorizes certain qualifiers to engage in service & repair of recreational vehicles; requires specified LP gas experience or certification to apply for master qualifier certification. Effective Date: July 1, 2020

Actions

02/26/2020 HOUSE Read Second Time; Read Third Time; Passed (Vote: 115 Yeas / 0 Nays)

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

02/11/2020 SENATE Not Considered by Banking and Insurance

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: Revises & provides requirements relating to organization & responsibilities of DOT; rail enterprise & high-speed rail system; transportation funding; insurance & liability; motor vehicle & vessel operation; airport zoning regulations & contractors; utilities within rights-of-way; emergency response staging areas; M.P.O. projects; economic development transportation projects; & Jacksonville Transportation Authority leases; requires reports to Governor & Legislature. Effective Date: July 1, 2020

Actions

03/01/2020 HOUSE Committee Substitute Text (C3) Filed

HB 0401

Shark Fins by Jacobs

Shark Fins: Prohibits import, export, & sale of shark fins. Effective Date: October 1, 2020

Actions

02/17/2020 HOUSE Placed on Calendar, on 2nd reading

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 Vehicle Industries by Perry

Recreational Vehicle Industries; Preempting to the Department of Health the regulatory authority for permitting standards; providing standards for a damaged or destroyed recreational vehicle park to be rebuilt under certain circumstances; authorizing a park operator to refuse access to the premises and to eject transient guests or visitors based on specified conduct; providing for ejection from a park and specifying grounds and requirements therefor, etc. Effective Date: 7/1/2020

Actions

02/27/2020 SENATE Placed on Calendar, on 2nd reading

SB 0438 Land Acquisition Trust Fund by Harrell

Land Acquisition Trust Fund; Providing an appropriation for certain projects related to the Indian River Lagoon Comprehensive Conservation and Management Plan; authorizing the Department of Environmental Protection to make grants for such projects; providing for a specified local match for such grants, etc. Effective Date: 7/1/2020

Actions

10/15/2019 SENATE Referred to Environment and Natural Resources; Appropriations Subcommittee on Agriculture, Environment, and General Government; Appropriations

SB 0444 Customer Service Standards for State Agencies by Rader

Customer Service Standards for State Agencies; Requiring departments within the executive branch of state government to implement certain measures with respect to telephone calls placed by customers, etc. Effective Date: 10/1/2020

Actions

12/09/2019 SENATE Now in Innovation, Industry, and Technology

SB 0450 Whistleblower's Act by Brandes

Whistleblower's Act; Revising the actions that an agency or independent contractor is prohibited from taking against an employee who participates in protected activity or discloses certain information; specifying that whistleblower remedies and protections do not apply to certain persons; revising applicability of provisions relating to investigative procedures upon receipt of whistleblower information; revising investigative procedures in response to retaliatory actions, etc. Effective Date: 7/1/2020

Actions

10/15/2019 SENATE Referred to Governmental Oversight and Accountability; Judiciary; Rules

SB 0456 Minimum Wage by Rodriguez (J)

Minimum Wage; Revising the formula for the adjusted state minimum wage, etc. Effective Date: 7/1/2020

Actions

10/15/2019 SENATE Referred to Commerce and Tourism; Innovation, Industry, and Technology; Rules

HB 0465 High-Speed Passenger Rail Safety by Sirois

High-Speed Passenger Rail Safety: Provides for regulation of railroad companies; requires training for

local emergency services under certain circumstances; provides requirements for railroad company reporting & DOT website publication; provides minimum safety standards for high-speed passenger rail; designates responsibility for maintenance of certain safety improvements; provides safety inspection requirements; requires certain fencing; provides liability for failure to construct or maintain fencing; provides for enforcement. Effective Date: July 1, 2020

Actions

11/07/2019 HOUSE Now in Transportation & Infrastructure Subcommittee

HB 0485

Athletic Trainers by Antone

Athletic Trainers: Revises definition of term "athletic trainer"; revises athletic trainer licensure requirements; requires certain licensees to maintain certification in good standing without lapse as condition of renewal of their athletic trainer licenses; requires that athletic trainer work within specified scope of practice; requires direct supervision of athletic training student to be in accordance with rules adopted by Board of Athletic Training. Effective Date: July 1, 2020

Actions

01/30/2020 HOUSE Placed on Calendar, on 2nd reading

HB 0489

Land Acquisition Trust Fund by Plasencia

Land Acquisition Trust Fund: Provides appropriation for certain projects related to Indian River Lagoon Comprehensive Conservation & Management Plan; authorizes DEP to make grants for such projects; provides for specified local match for such grants; requires department to submit annual report to Governor & Legislature. Effective Date: July 1, 2020

Actions

11/07/2019 HOUSE Now in Agriculture & Natural Resources Appropriations Subcommittee

SB 0504

Local Government Public Construction Works by Perry

Local Government Public Construction Works; Revising disclosure requirements for bidding documents and other requests for proposals issued for bids by a local governmental entity and public contracts entered into between local governmental entities and contractors; requiring the governing board of a local government to consider estimated costs of certain projects using generally accepted cost-accounting principles that account for specified costs when the board is making a specified determination, etc. Effective Date: 7/1/2020

Actions

02/26/2020 SENATE On Committee agenda - Rules, 03/02/20, 12:00 pm, 110 S

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

02/27/2020 HOUSE Placed on Calendar, on 2nd reading

HB 0571

Vehicle and Vessel Registration Data and Functionality by Fernandez-Barquin

Vehicle and Vessel Registration Data and Functionality: Requires tax collector to determine service charges collected by privately owned license plate agents for motor vehicle titles & registrations & for

vessel titles & registrations; requires license plate agent to enter into contract with tax collector; specifies tax collection systems for which certain fees may be used for integration with Florida Real Time Vehicle Information System; requires DHSMV to provide tax collectors & their approved vendors with same data access & interface functionality as provided to other third parties; specifies authorized uses for such data & functionality; requires tax collectors & their approved license plate agents to enter into memorandum of understanding with DHSMV. Effective Date: July 1, 2020

Actions

02/25/2020 HOUSE Placed on Calendar, on 2nd reading

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

03/01/2020 HOUSE On Committee agenda - State Affairs Committee, 03/02/20, 9:00 am, 17 H

HB 0595 Medical Marijuana Employee Protection by Polsky

Medical Marijuana Employee Protection: Prohibits employers from taking adverse personnel action against employees or applicants who are qualified patients using medical marijuana; requires employers to provide certain written notice to employees or applicants who test positive for marijuana; provides procedures for if employee or applicant tests positive for marijuana; provides cause of action & damages. Effective Date: upon becoming a law

Actions

11/25/2019 HOUSE Now in Oversight, Transparency & Public Management Subcommittee

SB 0606 Anchoring Limitation Areas by Bean

Anchoring Limitation Areas; Designating specified waterways as anchoring limitation areas, etc. Effective Date: 7/1/2020

Actions

01/16/2020 SENATE Now in Community Affairs

SB 0638 Apalachicola Environmental Stewardship Act by Montford

Apalachicola Environmental Stewardship Act; Providing that this act may be referred to as "The Apalachicola Environmental Stewardship Act", appropriating a sum annually for a specified timeframe from the Florida Forever Fund to the Apalachicola Area of Critical State Concern for specified purposes; renaming the Apalachicola Bay Area of Critical State Concern as the Apalachicola Area of Critical State Concern; providing additional principles for guiding development within the Apalachicola Area of Critical State Concern to include projects that protect and improve water quality, etc. Effective Date: 7/1/2020

Actions

02/26/2020 SENATE Now in Appropriations

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 written agreements for the procurement of specified contractual services to include a statement regarding the requirement that a contractor or subcontractor register with and use an employment verification system; requiring public employers and certain contractors and subcontractors to register with and use an employment verification system by a specified date; requiring employers who meet specified criteria to register with and use an employment verification system to verify the employment eligibility of new employees; authorizing the imposition of fines for violations of the act, etc. Effective Date: 7/1/2020

Actions

02/26/2020 SENATE On Committee agenda - Rules, 03/02/20, 12:00 pm, 110 S

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 of shark fins to this state; prohibiting the sale of shark fins within or the export of shark fins from this state, etc. Effective Date: 10/1/2020

Actions

02/26/2020 SENATE On Committee agenda - Rules, 03/02/20, 12:00 pm, 110 S

SB 0686**Stormwater Management Systems** by Gruters

Stormwater Management Systems; Directing the water management districts, with Department of Environmental Protection oversight, to adopt rules for specified design and performance standards relating to new development and redevelopment projects; providing a rebuttable presumption that certain

stormwater management systems do not cause or contribute to violations of applicable state water quality standards; requiring certain inspection training for department, water management district, and local pollution control program staff, etc. Effective Date: 7/1/2020

Actions

11/06/2019 SENATE Referred to Environment and Natural Resources; Appropriations Subcommittee on Agriculture, Environment, and General Government; Appropriations

SB 0690 Water Resources by Albritton

Water Resources; Requiring the Department of Environmental Protection to conduct a comprehensive and quantitative needs-based overview of this state's water resources; specifying requirements for the overview; requiring the department to submit a report every 5 years to the Governor and the Legislature by a specified date, etc. Effective Date: 7/1/2020

Actions

11/06/2019 SENATE Referred to Environment and Natural Resources; Appropriations Subcommittee on Agriculture, Environment, and General Government; Appropriations

HB 0691 Minimum Wage by Jacquet

Minimum Wage: Revises formula for adjusted state minimum wage. Effective Date: July 1, 2020

Actions

12/03/2019 HOUSE Now in Workforce Development & Tourism Subcommittee

HB 0707 Legislative Review of Occupational Regulations by Renner

Legislative Review of Occupational Regulations: Authorizes schedule for 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

02/26/2020 HOUSE Read Second Time; Read Third Time; Passed (Vote: 85 Yeas / 29 Nays)

SB 0712 Environmental Resource Management by Mayfield

Environmental Resource Management; 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; requiring a consumptive use permit to use water derived from a spring for bottled water to meet certain requirements before approval; removing provisions establishing a Department of Health onsite sewage treatment and disposal system research review and advisory committee, etc. Effective Date: Except as otherwise expressly provided in this act, this act shall take effect July 1, 2020

Actions

02/27/2020 SENATE Placed on Calendar, on 2nd reading

HB 0713 Department of Health by Rodriguez (AM)

Department of Health: Specifies direct reporting requirements for certain positions within Children's Medical Services Program; revises provisions relating to Florida Consortium of National Cancer Institute Centers Program; revises duties & responsibilities of DOH; revises licensure requirements for certain professions under authority of DOH; provides requirements relating to radiation machines; provides adverse incident reporting requirements for dental professionals. Effective Date: July 1, 2020

Actions

02/17/2020 HOUSE Placed on Calendar, on 2nd reading

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

02/28/2020 HOUSE Placed on Calendar, on 2nd reading

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; designates green iguanas & tegu lizards as prohibited reptiles; authorizes certain persons & entities to exhibit, sell, or breed green iguanas & tegu lizards commercially under specified conditions. Effective Date: July 1, 2020

Actions

02/27/2020 HOUSE Placed on Calendar, on 2nd reading

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

02/26/2020 SENATE On Committee agenda - Rules, 03/02/20, 12:00 pm, 110 S

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

02/26/2020 SENATE On Committee agenda - Rules, 03/02/20, 12:00 pm, 110 S

HB 0889**Employment Practices** by Davis

Employment Practices: Creates "Florida Family Leave Act"; requires employer to allow certain employees to take paid family leave to bond with minor child upon child's birth, adoption, or foster care placement; provides requirements, limitations, & duties; provides for civil action & penalties & criminal penalty; prohibits specified employment practices on basis of pregnancy, childbirth, or medical condition related to pregnancy or childbirth; provides for leave, maintenance of health coverage, reasonable accommodation & transfer, & return rights for employee who is disabled from pregnancy, childbirth, or medical condition related to pregnancy or childbirth. Effective Date: July 1, 2020

Actions

12/19/2019 HOUSE Now in Business & Professions Subcommittee

HB 0913**Florida Climate and Resiliency Research Program** by Diamond

Florida Climate and Resiliency Research Program: Establishes program within DEP; provides for program purpose & participants; requires program to submit Florida Resiliency Plan to Governor & Legislature at specified intervals; provides plan requirements; directs DEP to coordinate & oversee program & provide staff support. Effective Date: July 1, 2020

Actions

12/19/2019 HOUSE Now in Agriculture & Natural Resources Subcommittee

SB 0962**Medical Marijuana Employee Protection** by Berman

Medical Marijuana Employee Protection; Prohibiting an employer from taking adverse personnel action against an employee or job applicant who is a qualified patient using medical marijuana; requiring an employer to provide written notice to an employee or job applicant who tests positive for marijuana of his or her right to explain the positive test result; providing procedures when an employee or job applicant tests positive for marijuana; providing a cause of action and damages, etc. Effective Date: Upon becoming a law

Actions

12/13/2019 SENATE Referred to Governmental Oversight and Accountability; Judiciary; Rules

SB 0998**Housing** by Hutson

Housing; Authorizing a board of county commissioners to approve development of affordable housing on any parcel zoned for residential, commercial, or industrial use; requiring counties, municipalities, and special districts to include certain data relating to impact fees in their annual financial reports; revising applicable standards for the repair and remodeling of mobile and manufactured homes; renaming the Community Workforce Housing Innovation Pilot Program as the Community Workforce Housing Loan

Program to provide workforce housing for persons affected by the high cost of housing, etc. Effective Date: 7/1/2020

Actions

02/27/2020 SENATE On Committee agenda - Appropriations, 03/03/20, 1:00 pm, 412 K

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

02/10/2020 SENATE Temporarily Postponed by Governmental Oversight and Accountability

HB 1039 Transportation Network Companies by Rommel

Transportation Network Companies: Removes for-hire vehicles from list of vehicles that are not considered transportation network carriers or are not exempt from certain registration; provides insurance maintained by TNC vehicle owners may satisfy required insurance coverages; authorizes TNC drivers to contract with companies to install TNC digital advertising devices on TNC vehicles; provides immunity from certain liability for TNC drivers, TNC vehicle owners, owners & operators of TNC digital advertising devices, & certain TNCs; authorizes entities to elect to be regulated as luxury ground TNCs by notifying DFS; provides for preemption over local law on governance of luxury ground TNCs, luxury ground TNC drivers, & luxury ground TNC vehicles; provides that TNCs are not liable for certain harm to persons or property if certain conditions are met. Effective Date: upon becoming a law

Actions

03/01/2020 HOUSE Committee Substitute Text (C2) Filed

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

02/26/2020 SENATE On Committee agenda - Rules, 03/02/20, 12:00 pm, 110 S

HB 1061 Aquatic Preserves by Massullo, Jr.

Aquatic Preserves: Creates Nature Coast Aquatic Preserve; designates preserve for inclusion in aquatic preserve system & as Outstanding Florida Water; describes boundaries of preserve. Effective Date: July 1, 2020

Actions

02/28/2020 HOUSE Committee Substitute Text (C2) Filed

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

02/27/2020 SENATE Now in Appropriations

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

02/28/2020 HOUSE Committee Substitute Text (C2) Filed

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

02/12/2020 HOUSE Placed on Calendar, on 2nd reading

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: Prohibits approval of certain applications after specified date; requires awardee to repay certain moneys within specified timeframe; 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; provides liability; requires private employers to verify employment eligibility of newly hired employees; provides acceptable methods for verification; provides specified immunity & creates rebuttable presumption; requires private employers to provide copies of certain documents, upon request, to specified persons & entities for certain purposes; prohibits such persons & entities from making independent determination; requires affidavit; provides for suspension or revocation of certain licenses. Effective Date: July 1, 2020

Actions

03/01/2020 HOUSE On Committee agenda - State Affairs Committee, 03/02/20, 9:00 am, 17 H

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

02/19/2020 SENATE Placed on Calendar, on 2nd reading

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

02/28/2020 HOUSE Committee Substitute Text (C1) Filed

SB 1352 Transportation Companies by Brandes

Transportation Companies; Revising the definition of the term "for-hire vehicle" to exclude transportation network company (TNC) vehicles and certain motor vehicles used for prearranged rides for persons with disabilities for compensation; deleting for-hire vehicles from the list of vehicles that are not considered TNC carriers or are not exempt from certain registration; authorizing TNC drivers or their designees to contract with companies to install TNC digital advertising devices on TNC vehicles, etc. Effective Date: Upon becoming a law

Actions

02/26/2020 SENATE On Committee agenda - Rules, 03/02/20, 12:00 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 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

02/19/2020 SENATE Now in Appropriations

HB 1363 Basin Management Action Plans by Overdorf

Basin Management Action Plans: Provides additional management strategies for such plans; requires certain plans to include specified elements; provides requirements for DEP, DACS, DOH, UF/IFAS, local governments, water management districts, & owners of agricultural operations; requires specified data

collection & research; establishes nutrient reduction cost-share program within DEP; exempts rural homesteads from certain best management practices under certain conditions; requires DEP & DACS to include specified information in annual progress reports for such plans. Effective Date: July 1, 2020

Actions

02/03/2020 HOUSE Now in State Affairs Committee

SB 1378 Vessels by Rouson

Vessels; Specifying the conditions under which a vessel is and is not considered to be operating at slow speed, minimum wake; prohibiting certain parties within certain waterbodies from anchoring or mooring a vessel within a specified distance of a mangrove or to upland vegetation upon public lands; revising civil penalties relating to certain at-risk vessels and prohibited anchoring or mooring; providing procedures for abandoned or lost property relating to certain vessels, etc. Effective Date: 7/1/2020

Actions

02/12/2020 SENATE Now in Judiciary

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, research, or eradication or control purposes; including green iguanas and species of the genera Salvator and Tupinambis in such prohibition, etc. Effective Date: 7/1/2020

Actions

02/27/2020 SENATE Committee Substitute Text (C3) Filed

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

02/27/2020 SENATE Favorable with CS by Appropriations; 17 Yeas, 0 Nays

SB 1468 Trains by Taddeo

Trains; Requiring, as a condition of operation in this state, that trains used in connection with the movement of freight and passengers have a crew that consists of at least two individuals; providing exceptions; authorizing the Secretary of Transportation to exempt certain railroad carriers from specified provisions of law under certain conditions; authorizing the Department of Transportation to assess civil penalties against a person or an entity for a specified violation, subject to certain requirements, etc. Effective Date: 7/1/2020

Actions

01/13/2020 SENATE Referred to Infrastructure and Security; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Appropriations

SB 1744 Personal Watercraft by Torres, Jr.

Personal Watercraft; Providing requirements for persons operating, riding on, and being towed behind personal watercraft; increasing the age requirement for operation of a personal watercraft; prohibiting the owner of, or a person having charge of or control over, any leased, hired, or rented personal watercraft from authorizing or knowingly allowing the watercraft to be operated by certain persons; requiring companies that provide personal watercraft for lease, hire, or rent to maintain specified liability insurance coverage, etc. Effective Date: 7/1/2020

Actions

01/17/2020 SENATE Referred to Environment and Natural Resources; Banking and Insurance; Rules

SB 1786 Vessel Safety by Stewart

Vessel Safety; Prohibiting a vessel operator from endangering the life, limb, or property of another person by allowing passengers to ride on the bow of the vessel; providing that careless operation includes causing wake to law enforcement vessels under certain circumstances, etc. Effective Date: 7/1/2020

Actions

01/17/2020 SENATE Referred to Environment and Natural Resources; Criminal Justice; Rules

SB 1788 Boating-restricted Areas by Stewart

Boating-restricted Areas; Authorizing municipalities and counties to establish certain boating-restricted areas by ordinance for areas within a specified distance of any shoreline, etc. Effective Date: 7/1/2020

Actions

01/17/2020 SENATE Referred to Community Affairs; Environment and Natural Resources; Rules

SB 1822 Verification of Employment Eligibility by Gruters

Verification of Employment Eligibility; Requiring public employers, contractors, and subcontractors to register with and use the E-Verify system; prohibiting such entities from entering into a contract unless each party to the contract registers with and uses the E-Verify system; requiring private employers to verify

the employment eligibility of newly hired employees, beginning on a specified date; providing acceptable methods for verifying employment eligibility, etc. Effective Date: 7/1/2020

Actions

01/17/2020 SENATE Referred to Judiciary; Commerce and Tourism; Rules

SB 1878 Environmental Protection by Bradley

Environmental Protection; Requiring a minimum annual appropriation for Everglades restoration and the protection of water resources in this state beginning in a specified fiscal year; 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

02/26/2020 SENATE Read Third Time; Passed (Vote: 40 Yeas / 0 Nays)

SB 7016 Statewide Office of Resiliency by Infrastructure and Security

Statewide Office of Resiliency; Establishing the office within the Executive Office of the Governor; creating the Statewide Sea-Level Rise Task Force within the office; authorizing the Department of Environmental Protection to contract for specified services, upon request of the task force; requiring the Environmental Regulation Commission to take certain action on the task force's recommendations, etc. APPROPRIATION: \$500,000 Effective Date: 7/1/2020

Actions

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

02/27/2020 SENATE Now in Appropriations

HB 9027 UF/IFAS Algal Bloom Research & Mitigation by Eagle

UF/IFAS Algal Bloom Research & Mitigation: Provides an appropriation for the UF/IFAS Algal Bloom

Research & Mitigation. Effective Date: July 1, 2020

Actions

01/15/2020 HOUSE Now in Appropriations Committee

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