

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 Environmental Preservation and Conservation Committee

BILL: CS/SB 796

INTRODUCER: Environmental Preservation and Conservation Committee and Senators Diaz de la Portilla and Sobel

SUBJECT: Domestic Wastewater Discharged/Ocean Outfalls

DATE: March 18, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	Fav/CS
2.	_____	_____	CA	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This Committee Substitute (CS) extends compliance deadlines five years for utilities to install functional reuse systems and eliminate discharges through ocean outfalls. Utilities will be allowed to meet the 60-percent reuse requirement from their entire service areas. The CS allows utilities to continue to discharge peak flows up to five percent of utilities' baseline flows through ocean outfalls and exempts those discharges if the utilities meet certain requirements. Additionally, the CS requires utilities to include supplemental information on costs and options in their detailed plans necessary to achieve the requirements of subsection 403.086(9), F.S. Finally, the CS requires the utilities, the Department of Environmental Protection (DEP) and the South Florida Water Management District (SFWMD) to evaluate the detailed plans and recommend to the Legislature adjustments, if necessary, to the reuse requirements in this subsection.

This bill substantially amends s. 403.086, Florida Statutes.

II. Present Situation:

Eliminating Ocean Outfalls and Reuse Requirements

There are six domestic wastewater facilities in Palm Beach, Broward, and Miami-Dade Counties discharging approximately 300 million gallons per day of treated domestic wastewater directly into the Atlantic Ocean through ocean outfalls.¹ The ocean outfall providing service to the cities of Boynton Beach and Delray Beach largely ceased discharges in early 2009.² Exceptions for this facility are allowed to handle peak wet weather flows, during integrity testing of deep well injection and for emergencies.

Chapter 2008-232, Laws of Florida, prohibits construction of new ocean outfalls and requires that all six ocean outfalls in Florida cease discharging wastewater by December 31, 2025. In addition, wastewater facilities that discharged wastewater through an ocean outfall on July 1, 2008 are required to install a reuse system no later than December 31, 2025. The reuse systems must be capable of providing a minimum of 60 percent of the wastewater facilities actual annual flow for beneficial reuse. The actual annual flow is calculated using the annual average flow through a wastewater facility's ocean outfall from 2003 through 2007.³

Wastewater facilities operating ocean outfalls may receive a significant portion of their annual average flow from other wastewater facilities located outside their direct service areas. SB 550, passed during the 2010 Regular Session,⁴ addressed the possibility of certain facilities not being able to comply with the 60 percent reuse requirement of s. 403.086(9)(c), F.S. The potential existed that flow received from outside their service areas could be diverted to other wastewater facilities that do not discharge through ocean outfalls, and therefore, diverting facilities would not have to comply with the 60-percent beneficial reuse requirement for ocean outfalls. In addition, discharges of wastewater through ocean outfalls after December 31, 2018, must meet AWT standards or equivalent processes.⁵

Implementation Issues

The first progress report from the DEP was presented to the Governor, President of the Florida Senate and Speaker of the Florida House of Representatives in June 2010.⁶ Although there is general understanding of the existing requirements, some confusion remains about what current and future reuse projects count towards the 60-percent reuse threshold. The DEP reports:

The City of Hollywood and Broward County Office of Environmental Services assumed that reuse projects that were in use during 2003 through 2007 can be

¹ Florida Dep't of Environmental Protection, *Implementation of Chapter 2008-232, Laws of Florida Domestic Wastewater Ocean Outfalls* (June 2010), available at <http://www.dep.state.fl.us/water/wastewater/docs/ocean-outfall-2010.pdf> (last visited 03/14/2011).

² Christine Stapleton, *Delray Beach to stop dumping wastewater in ocean*, The Palm Beach Post, Mar. 31, 2009, available at http://www.palmbeachpost.com/localnews/content/local_news/epaper/2009/03/31/0331_delrayoutfall.html (last visited 03/14/2011).

³ Section 403.086(9)(c), F.S.

⁴ Ch. 2010-205, s. 38, Laws of Fla.

⁵ Section 403.086(9)(b), F.S.

⁶ *Supra* note 2.

applied to the 60 percent reuse requirement. The Department has informed all ocean outfall permit holders that such existing reuse projects do not count toward meeting the reuse requirement.⁷

In addition, the Miami-Dade Water and Sewer Department is planning to divert flows from its two ocean outfalls to other facilities to support reuse projects located near those sites.⁸ The DEP has had discussions with utilities' personnel that subsection 403.086(9)(c), F.S., does not allow existing reuse projects to count towards meeting the 60-percent reuse requirement, "since one of the primary goals of the Act is to beneficially reuse wastewater flows that are discharged through the outfalls and therefore increase of amount of new reuse in Southeast Florida."⁹

III. Effect of Proposed Changes:

Section 1 amends s. 403.086, F.S., to extend compliance deadlines five years related to:

- Achieving the 60-percent reuse requirement for discharges through ocean outfalls by December 31, 2025,
- Eliminating ocean outfalls by December 31, 2025, and
- Utility submission of detailed plans on how to achieve the requirements of subsection 403.086(9), F.S., by July 1, 2013, with updates by July 1, 2016.

The CS allows utilities to comply with the 60-percent reuse requirement from their entire service areas rather than just from ocean outfalls. This provision will allow utilities the flexibility to find the most cost-effective method to achieve a 60-percent reuse for their service areas. However, it may also reduce the percentage of reuse derived from ocean outfalls. The CS specifies that only the Biscayne and Upper Floridan Aquifers may be recharged with reuse from these facilities. Additionally, facilities that shared a common ocean outfall as of July 1, 2008, are required to meet the 60-percent reuse requirement individually but may contract to share or transfer this responsibility with other utilities.

The CS allows utilities to continue backup discharges through ocean outfalls that are part of a functioning reuse system or other wastewater management system authorized by the DEP. Utilities may discharge peak flows that do not cumulatively exceed five percent of total baseline flows. "Baseline flow" is defined as "the annual average flow of domestic wastewater discharging through the facility's ocean outfall, as determined by the department, using monitoring data available for calendar years 2003 through 2007." Backup discharges are subject to effluent limitations contained in DEP rules and, if in compliance, are deemed to meet advanced wastewater treatment (AWT) standards.¹⁰ In addition, backup discharges are deemed to meet AWT standards if the discharging facility has installed a fully operational reuse system by December 31, 2018, that handles 100 percent of a facility's average annual daily flow. This change will allow backup discharges to violate AWT standards while being statutorily deemed to meet them.

⁷ See *supra* note 2, at 17.

⁸ See *supra* note 2, at 18.

⁹ See *supra* note 2, at 3.

¹⁰ See s. 403.086(4), F.S.

The CS updates the requirements for the detailed plans that utilities must develop. The new information included in the plan must identify:

- The technical, environmental and economic feasibility of various reuse options,
- An analysis of costs necessary for utilities to meet state and local water quality criteria, and
- A comparative cost estimate of achieving reuse requirements from ocean outfalls and other sources.

The plan must evaluate the demand for reuse in the context of future water use estimates, the availability of traditional sources of water, the need for alternative water supplies, the offset reuse will have on potable supplies and other factors contained in the SFWMD's Lower East Coast Regional Water Supply Plan.

Finally, the CS requires the utilities, the DEP and the SFWMD to evaluate the detailed plans and recommend to the Legislature adjustments, if necessary, to the reuse requirements in this subsection. The report is due to the Legislature by February 15, 2019.

This section contains technical and conforming changes.

Section 2 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Water utility consumers will benefit from the cost saving provisions for wastewater utilities in this bill. While the cost savings are indeterminate, they will likely be insignificant on an individual basis.

C. Government Sector Impact:

First, wastewater utilities may see significant cost reductions in implementing the 60-percent reuse requirements for ocean outfalls by utilizing their entire service areas rather than only flows discharged through ocean outfalls. Second, allowing utilities to continue backup discharges up to five percent of their peak flows will also save significant costs. Exempting five percent of their peak flows from AWT standards if those discharges meet statutory requirements and DEP rules on effluent limitations is another provision that will save the utilities millions of dollars. The sponsor of the bill testified in the Environmental Preservation and Conservation Committee meeting that the amendments offered to the bill, which are incorporated in this CS, will save more than \$5 billion over 20 years for all counties combined and \$50 million in annual operation and maintenance costs for Miami-Dade County alone. Last, extending compliance deadlines may allow utilities time to access more favorable bond market conditions due to the economic recovery and recovering tax revenues. Although potentially significant, the impact cannot be determined at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS by Environmental Preservation and Conservation on March 17, 2011:

- Extends compliance deadline five years to Dec. 31, 2030, for utilities to install functioning reuse systems,
- Allows utilities operating more than one wastewater facility to meet the 60-percent reuse requirement from the entire wastewater system,
- Changes the standard for reuse from “actual flow on an annual basis” to “baseline flow,” and provides a definition for such,
- Clarifies what aquifers may be recharged with reuse water – Biscayne or Upper Floridan,
- Clarifies that utilities that shared a common ocean outfall are individually responsible for meeting the reuse requirement and may enter into contracts to share or transfer this responsibility,
- Extends compliance deadline five years to eliminate discharges through ocean outfalls,
- Allows facilities to continue backup discharges after the 2030 deadline for peak flows,
- Limits peak flow discharges to five percent of baseline flow measured on a 5-year rolling average,

- Specifies that peak flow discharges meet AWT standards if they are in compliance with department rule limitations for effluent,
- Authorizes peak flow discharges for facilities operating 100 percent reuse systems by Dec. 31, 2018,
- Clarifies what needs to be included in the detailed plans to achieve the requirements of this subsection,
- Extends compliance deadline 5 years for submittal of these plans and plan updates to July 1, 2018, and July 1, 2021, respectively, and
- Requires the DEP, the water management districts and affected utilities to reevaluate the reuse requirements in this subsection. The DEP must then submit a report to the Legislature by Feb. 15, 2019, detailing any changes needed to the reuse requirement.

B. Amendments:

None.