

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government

**BILL:** PCS/CS/SB 286 (720642)

**INTRODUCER:** Appropriations Subcommittee on Agriculture, Environment, and General Government; Environment and Natural Resources Committee; and Senators Albritton and Perry

**SUBJECT:** Domestic Wastewater Collection System Assessment and Maintenance

**DATE:** April 11, 2019      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	<b>Fav/CS</b>
2.	Reagan	Betta	AEG	<b>Recommend: Fav/CS</b>
3.			AP	

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

**I. Summary:**

PCS/CS/SB 286 creates the Blue Star Collection System Assessment and Maintenance Program for domestic sewer systems. The Department of Environmental Protection (DEP) will administer the program and codify program certification standards. Certification requires a demonstration of:

- The rate of reinvestment determined necessary by the utility to fully implement its collection system and pump station structural condition assessment and maintenance and replacement program;
- Periodic structural condition assessments and as-needed maintenance and replacements;
- A program designed to limit fats, roots, oils, and grease in its collection system;
- For public utilities, a local requirement that the private pump stations and lateral lines connecting to the public system be free of defects and direct stormwater connections;
- A power outage contingency plan; and
- An infiltration and inflow reduction plan.

Provides that the DEP may revoke certification if program certification standards are not met or maintained or other specified circumstances.

Public and private utilities certified under the program may receive the following:

- Publication on the DEP’s website;
- Participation in the Clean Water State Revolving Loan Fund Program;

- Reduced penalties for a sanitary sewer overflow;
- 10-year operating permits; and
- A presumption of compliance with state water quality standards for pathogens.

The bill expands the Small Community Sewer Construction Assistance Grant Program to provide grant eligibility for nonprofit utilities serving financially disadvantaged small communities. The bill allows the DEP to waive the population requirement for certain independent special districts. The bill also provides that Small Community Sewer Construction Grants may be used for assessments and for planning and implementing domestic wastewater collection system assessment programs to identify conditions that may cause sanitary sewer overflows or interruption of service to customers due to a physical condition or defect in the system.

The bill may have an indeterminate, negative fiscal impact on the DEP associated with the rulemaking requirements and the implementation of the Blue Star Collection System Assessment and Maintenance Program. The bill may also have an indeterminate, negative fiscal impact to state revenues associated with the opportunities for reduced penalties related to sanitary sewer overflows at certified blue star facilities.

The bill takes effect July 1, 2019.

## II. Present Situation:

Domestic wastewater is wastewater derived principally from dwellings, business buildings, and institutions, commonly referred to as sanitary wastewater or sewage.<sup>1</sup> Domestic wastewater leaves these structures through a domestic wastewater collection system for treatment at a domestic wastewater treatment facility.<sup>2</sup> There are approximately 2,000 domestic wastewater treatment facilities in the state serving roughly two-thirds of the state's population.<sup>3</sup> Treated effluent and reclaimed water from these facilities amounts to over 1.5 billion gallons per day and is disposed of using methods such as surface water outfalls, deep aquifer injection wells, and other disposal methods such as percolation ponds and spray fields.<sup>4</sup>

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<sup>1</sup> Fla. Admin. Code R. 62-600.200(21).

<sup>2</sup> Section 403.866(1), F.S. "Domestic wastewater collection system" is defined to mean "pipelines or conduits, pumping stations, and force mains and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;" Section 403.866(2), F.S. "Domestic wastewater treatment plant" is defined to mean "any plant or other works used for the purpose of treating, stabilizing, or holding domestic wastes."

<sup>3</sup> DEP, *General Facts and Statistics about Wastewater in Florida*, <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Feb. 11, 2019). The remainder of the state is served by on-site treatment and disposal systems regulated by the Department of Health.

<sup>4</sup> Fla. Admin. Code R. 62-600.200(22). "Effluent" is defined to mean, 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;" Fla. Admin. Code R. 62-600.200(54). "Reclaimed water" is defined to mean, "water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility;" 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 Feb. 11, 2019).

## Wastewater Treatment Facility Permits

Domestic wastewater facilities that discharge to surface waters must obtain a National Pollutant Discharge Elimination System (NPDES) permit.<sup>5</sup> The NPDES program is a federal program established by the Clean Water Act (CWA) to control point source discharges.<sup>6</sup> NPDES permit requirements for most domestic wastewater facilities are incorporated into a state-issued permit, giving the permittee one set of permitting requirements rather than separate requirements for each permit.<sup>7</sup>

A domestic wastewater system is a stationary installation that is reasonably expected to be a source of water pollution.<sup>8</sup> The systems must not be operated, maintained, constructed, expanded, or modified without an appropriate and currently valid permit issued by the Department of Environmental Protection (DEP), unless otherwise exempted by law.<sup>9</sup> A domestic wastewater treatment plant operating permit is issued for a term of five years.<sup>10</sup> As an incentive, certain wastewater treatment facilities that are not required to have a NPDES permit may request renewal of an operation permit for a term of up to 10 years for the same fee and under the same conditions as a five-year permit. These facilities must meet the following criteria:

- The waters from the treatment facility are not discharged to Class I municipal injection wells or the treatment facility is not required to comply with the federal standards under the Underground Injection Control Program;
- The treatment facility is not operating under a temporary operating permit or a permit with an accompanying administrative order and does not have any enforcement action pending against it by the United States Environmental Protection Agency (EPA), the DEP, or an approved local program;
- The treatment facility has operated under an operation permit for five years and, for at least the preceding two years, has generally operated in conformance with the limits of permitted flows and other conditions specified in the permit;
- The DEP has reviewed the discharge monitoring reports required by the DEP rule and is satisfied that the reports are accurate;
- The treatment facility has generally met water quality standards in the preceding two years, except for violations attributable to events beyond the control of the treatment plant or its operator (e.g., destruction of equipment by fire, wind, or other abnormal events that could not reasonably be expected to occur); and
- The DEP or an approved local program has conducted, in the preceding 12 months, an inspection of the facility and has verified in writing to the operator of the facility that it is not exceeding the permitted capacity and is in substantial compliance.<sup>11</sup>

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<sup>5</sup> Section 403.031(13), F.S., defines “waters” to mean rivers, lakes, streams, springs, impoundments, wetlands, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface, or underground waters; *see also* Fla. Admin. Code R. 62-620.200(77).

<sup>6</sup> 33 U.S.C. s. 1342.

<sup>7</sup> Section 403.0885, F.S.; Fla. Admin. Code R. Ch. 62-620; DEP, *Wastewater Permitting*, <https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting> (last visited Feb. 11, 2019); DEP, *Types of Permits*, <http://flwaterpermits.com/typesofpermits.html> (last visited Feb. 11, 2019).

<sup>8</sup> Section 403.031(7), F.S.

<sup>9</sup> Section 403.087(1), F.S.

<sup>10</sup> Section 430.087(1), F.S.; Fla. Admin. Code R. 62-620.320(8).

<sup>11</sup> Section 403.087(3), F.S.

### ***Disinfection***

Disinfection is the selective destruction of disease-producing organisms, or pathogens, in wastewater effluent, reclaimed water, and biosolids.<sup>12</sup> Most domestic wastewater treatment facilities must meet either basic disinfection for discharges to surface water or high-level disinfection for reuse systems.<sup>13</sup>

Basic disinfection requires that the effluent after disinfection contain less than 200 fecal coliform values per 100 milliliters of sample.<sup>14</sup> High-level disinfection, which is used in conjunction with some types of reuse projects, including irrigation of residential lawns, areas accessible to the public, and edible food crops, requires that fecal coliforms be reduced below detection.<sup>15</sup> Filtration is required ahead of the disinfection process and serves as an integral part of the overall high-level disinfection process.<sup>16</sup>

### **Total Maximum Daily Loads**

A total maximum daily load (TMDL), which must be adopted by rule, is a scientific determination of the maximum amount of a given pollutant that can be absorbed by a waterbody and still meet water quality standards.<sup>17</sup> Waterbodies or sections of waterbodies that do not meet the established water quality standards are deemed impaired. Pursuant to the federal Clean Water Act, the DEP is required to establish a TMDL for impaired waterbodies.<sup>18</sup> A TMDL for an impaired waterbody is defined as the sum of the individual waste load allocations for point sources and the load allocations for nonpoint sources and natural background.<sup>19</sup> Waste load allocations are pollutant loads attributable to existing and future point sources. Load allocations are pollutant loads attributable to existing and future nonpoint sources. Point sources are discernible, confined, and discrete conveyances including pipes, ditches, and tunnels. Nonpoint sources are unconfined sources that include runoff from agricultural lands or residential areas.<sup>20</sup>

### ***Basin Management Action Plans and Best Management Practices***

The DEP is the lead agency in coordinating the development and implementation of TMDLs. Basin management action plans (BMAPs) are one of the primary mechanisms the DEP uses to

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<sup>12</sup> Fla. Admin. Code R. 62-600.200(18) and (47).

<sup>13</sup> DEP, *Ultraviolet Disinfection for Domestic Wastewater*, <https://floridadep.gov/water/domestic-wastewater/content/ultraviolet-uv-disinfection-domestic-wastewater> (last visited Feb. 11, 2019).

<sup>14</sup> Fla. Admin. Code R. 62-600.440(5).

<sup>15</sup> Fla. Admin. Code R. 62-600.440(6).

<sup>16</sup> DEP, *Ultraviolet Disinfection for Domestic Wastewater*, <https://floridadep.gov/water/domestic-wastewater/content/ultraviolet-uv-disinfection-domestic-wastewater> (last visited Feb. 11, 2019).

<sup>17</sup> Section 403.067, F.S.

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

<sup>19</sup> Section 403.031(21), F.S.

<sup>20</sup> Fla. Admin. Code R. 62-620.200(37). “Point source” is defined as “any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.” Nonpoint sources of pollution are sources of pollution that are not point sources. Nonpoint sources can include runoff from agricultural lands or residential areas; oil, grease and toxic materials from urban runoff; and sediment from improperly managed construction sites.

achieve TMDLs. BMAPs are plans that use existing planning tools to 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;
- Non-regulatory and incentive-based programs, including best management practices (BMPs), cost sharing, waste minimization, pollution prevention, agreements, and public education;<sup>21</sup>
- Public works projects, including capital facilities; and
- Land acquisition.<sup>22</sup>

The DEP may establish a BMAP as part of the development and implementation of a TMDL for a specific waterbody. First, the BMAP equitably allocates pollutant reductions to individual basins, to all basins as a whole, or to each identified point source or category of nonpoint sources.<sup>23</sup> Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations. The BMAP development process provides an opportunity for local stakeholders, local government and community leaders, and the public to collectively determine and share water quality clean-up responsibilities.<sup>24</sup>

The BMAPs must include milestones for implementation and water quality improvement. They must also include an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones must be conducted every five years and revisions to the BMAP must be made as appropriate.<sup>25</sup>

Producers of nonpoint source pollution included in a BMAP must comply with the established pollutant reductions by either implementing the appropriate BMPs or by conducting water quality monitoring.<sup>26</sup> A nonpoint source discharger may be subject to enforcement action by the DEP or a water management district based on a failure to implement these requirements.<sup>27</sup> BMPs are designed to reduce the amount of nutrients, sediments, and pesticides that enter the water system and to help reduce water use. BMPs are developed for agricultural operations as well as for other activities, such as nutrient management on golf courses, forestry operations, and stormwater management.<sup>28</sup>

### ***Presumption of Compliance***

Where interim measures, BMPs, or other measures are adopted by rule, the effectiveness of such practices in achieving the levels of pollution reduction, or in voluntary BMP programs, must be

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<sup>21</sup> Section 403.061, F.S. DEP has the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. Furthermore, s. 403.061(21), F.S., allows DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.

<sup>22</sup> Section 403.067(7), F.S.

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

<sup>24</sup> DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Feb. 11, 2019).

<sup>25</sup> Section 403.067(7)(a)6., F.S.

<sup>26</sup> Section 403.067(7)(b)2.g., F.S. For example, BMPs for agriculture include activities such as managing irrigation water to minimize losses, limiting the use of fertilizers, and waste management.

<sup>27</sup> Section 403.067(7)(b)2.h., F.S.

<sup>28</sup> DEP, *NPDES Stormwater Program*, <https://floridadep.gov/Water/Stormwater> (last visited Feb. 11, 2019).

verified at representative sites by the DEP.<sup>29</sup> Implementation of practices that have been initially verified to be effective, or verified to be effective by monitoring at representative sites by the DEP, provide a presumption of compliance with water quality standards.<sup>30</sup> The DEP is not authorized to institute proceedings against the owner of the source of pollution to recover costs or damages associated with the contamination of surface water or groundwater caused by those pollutants.<sup>31</sup>

### **Penalties**

It is a violation of state law for any person to cause pollution that harms or injures human health or welfare; animal, plant, or aquatic life; or property.<sup>32</sup> A person who commits such a violation is liable to the state for any damage caused and for civil penalties.<sup>33</sup> A person who willfully commits such a violation is guilty of a felony of the third degree, punishable by a fine of not more than \$50,000 or by imprisonment for five years, or by both, for each offense.<sup>34</sup> Each day during any portion of which such violation occurs constitutes a separate offense.<sup>35</sup> It is the Legislature's intent that the civil penalties and criminal fines imposed by the court be of such amount as to ensure immediate and continued compliance.<sup>36</sup>

### **Sanitary Sewer Overflows**

Although domestic wastewater treatment facilities are permitted and designed to safely and properly collect and manage a specified wastewater capacity, obstructions or extreme conditions can cause a sanitary sewer overflow (SSO). Any overflow, spill, release, discharge, or diversion of untreated or partially treated wastewater from a sanitary sewer system is a SSO.<sup>37</sup>

Factors contributing to SSOs may include:

- Build-up of solids, fats, oils, and greases in the wastewater collection system impeding flow;
- Too much rainfall infiltrating through the ground into leaky sanitary sewers, which are not intended to hold rainfall. Excess water can also flow through roof drains connected to sewers or poorly connected sewer lines;
- Blocked, broken, or cracked pipes and other equipment or power failures that keep the system from properly functioning. Tree roots can grow into the sewer. Sections of pipe can settle or shift so that pipe joints no longer match. Sediment and other material can build up and cause pipes to break or collapse; and

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<sup>29</sup> Sections 403.067(7)(c)3., and (12)(b), F.S.

<sup>30</sup> Section 403.067(7)(c)3., F.S.

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

<sup>32</sup> Section 403.161(1)(a), F.S.

<sup>33</sup> Section 403.161(2), F.S.; *see s.* 403.141, F.S., for civil penalties.

<sup>34</sup> Section 403.161(3), F.S.

<sup>35</sup> Section 403.161(3), F.S.; *ss.* 775.082(3)(e) and 775.083(1)(g), F.S.

<sup>36</sup> Section 403.161(6), F.S.

<sup>37</sup> DEP, *Sanitary Sewer Overflows (SSOs)*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last visited Feb. 11, 2019).

- A deteriorating or aging sewer system that can be expensive to repair. Some municipalities have found severe problems, necessitating costly correction programs.<sup>38</sup>

A key concern with SSOs entering rivers, lakes, or streams is their negative effect on water quality. In addition, because SSOs contain partially treated or potentially untreated domestic wastewater, ingestion or similar contact may cause illness. People can be exposed through direct contact in areas of high public access, food that has been contaminated, inhalation, and skin absorption. The Department of Health issues health advisories when bacteria levels present a risk to human health, and may post warning signs when bacteria affect public beaches or other areas where there is a risk of human exposure.<sup>39</sup>

Reduction of SSOs can be achieved through:

- Cleaning and maintaining the sewer system;
- Reducing infiltration and inflow through rehabilitation and repairing broken or leaking lines;
- Enlarging or upgrading sewer pump station or sewage treatment plant capacity and/or reliability; and
- Constructing wet weather storage and treatment facilities to treat excess flows.<sup>40</sup>

After an SSO event, the DEP reviews the data from utilities to assess the overall impact to the environment in deciding whether to take additional action. In its review, the DEP considers how serious the violation was; whether this was a first-time violation or a repeated violation; whether the violation was inadvertent or beyond reasonable control; and whether the damage to the environment can be undone or remediated quickly.<sup>41</sup> The DEP also takes into account the severity of the rain event (e.g., if it was a hurricane or a storm, or if the area had received an unusually large amount of rainfall beyond historical averages). If the discharge was caused by operator error or lack of a certified operator on-site at the time, then the DEP may consider additional training for operators to prevent similar errors from occurring in the future. In some circumstances, the DEP will meet with utilities to discuss infrastructure repairs and process improvements the utility is making and planning to implement in order to avoid further SSOs.<sup>42</sup>

## **Financing Wastewater Treatment Facilities**

### ***Asset Management***

Renewing and replacing domestic wastewater treatment infrastructure is an ongoing task. Asset management can help a utility maximize the value of its capital as well as its operations and maintenance dollars. Asset management provides utility managers and decision makers with critical information on capital assets and timing of investments. 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

<sup>38</sup> DEP, *Preventing SSOs*, available at <https://floridadep.gov/sites/default/files/preventing-sanitary-sewer-overflows.pdf> (last visited Feb. 11, 2019); DEP, *SSOs*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last visited Feb. 11, 2019).

<sup>39</sup> DEP, *SSOs*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last visited Feb. 11, 2019).

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

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

activities.<sup>43</sup> The EPA provides guidance and reference manuals for utilities to aid in developing asset management plans.<sup>44</sup>

Many states, including Florida, provide financial incentives for the development and implementation of an asset management plan when requesting funding under a State Revolving Fund or other state funding mechanism.<sup>45</sup> Florida's incentives include priority scoring,<sup>46</sup> reduction of interest rates,<sup>47</sup> principal forgiveness for financially disadvantaged small communities,<sup>48</sup> and eligibility for small community wastewater facilities grants.<sup>49</sup>

### ***Water and Wastewater Utility Reserve Fund***

In 2016, the Legislature authorized the Public Service Commission (PSC) to allow a utility to create a utility reserve fund for repair and replacement of existing distribution and collection infrastructure that is nearing the end of its useful life or is detrimental to water quality or reliability of service. The utility reserve fund would be funded by a portion of the rates charged by the utility, by a secured escrow account, or through a letter of credit.

The PSC adopted rules governing the implementation, management, and use of the fund, including expenses for which the fund may be used, segregation of reserve account funds, requirements for a capital improvement plan, and requirements for the PSC authorization before fund disbursements.<sup>50</sup> The PSC requires an applicant to provide a capital improvement plan or an asset management plan in seeking authorization to create a utility reserve fund.<sup>51</sup>

### ***The Clean Water State Revolving Fund Program***

Florida's Clean Water State Revolving Fund (CWSRF) is a federal-state partnership that provides communities a permanent, independent source of low-cost financing for a wide-range of water quality infrastructure projects.<sup>52</sup> 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.

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<sup>43</sup> EPA, *Sustainable Water Infrastructure - Asset Management for Water and Wastewater Utilities*, <https://www.epa.gov/sustainable-water-infrastructure/asset-management-water-and-wastewater-utilities> (last visited Feb. 11, 2019).

<sup>44</sup> EPA, *Asset Management: A Best Practices Guide*, available at <https://nepis.epa.gov/Exe/ZyPDF.cgi/P1000LP0.PDF?Dockey=P1000LP0.PDF>; EPA, *Reference Guide for Asset Management Tools/Asset Management Plan Components and Implementation Tools for Small and Medium Sized Drinking Water and Wastewater Systems* (May 2014), available at [https://www.epa.gov/sites/production/files/2016-04/documents/am\\_tools\\_guide\\_may\\_2014.pdf](https://www.epa.gov/sites/production/files/2016-04/documents/am_tools_guide_may_2014.pdf) (last visited Feb. 11, 2019).

<sup>45</sup> EPA, *State Asset Management Initiatives* (Aug. 2012), available at [https://www.epa.gov/sites/production/files/2016-04/documents/state\\_asset\\_management\\_initiatives\\_11-01-12.pdf](https://www.epa.gov/sites/production/files/2016-04/documents/state_asset_management_initiatives_11-01-12.pdf) (last visited Feb. 11, 2019).

<sup>46</sup> Fla. Admin. Code R. 62-503.300(e).

<sup>47</sup> Fla. Admin. Code R. 62-503.300(5)(b)1. and 62-503.700(7).

<sup>48</sup> Fla. Admin. Code R. 62-503.500(4).

<sup>49</sup> Fla. Admin. Code R. 62-505.300(d) and 62-505.350(5)(c).

<sup>50</sup> Fla. Admin. Code R. 25-30.444.

<sup>51</sup> Fla. Admin. Code R. 25-30.444(2)(e) and (m).

<sup>52</sup> 33 USC s. 1383; EPA, *CWSRF*, <https://www.epa.gov/cwsrf> (last visited Feb. 11, 2019); EPA, *Learn about the CWSRF*, <https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf> (last visited Feb. 11, 2019).



The CWSRF provides low-interest loans to local governments to plan, design, and build or upgrade wastewater, stormwater, and nonpoint source pollution prevention projects. Certain agricultural best management practices may also qualify for funding. Very low interest rate loans, grants, and other discounted assistance for small communities are available. Interest rates on loans are below market rates and vary based on the economic means of the community. Generally, local governments and special districts are eligible loan sponsors.<sup>53</sup> The EPA classifies eleven types of projects that are eligible to receive CWSRF assistance. They include projects:

- For a municipality or inter-municipal, interstate, or state agency to construct a publicly owned treatment works;
- For a public, private, or nonprofit entity to implement a state nonpoint source pollution management program;
- For a public, private, or nonprofit entity to develop and implement a conservation and management plan;
- For a public, private, or nonprofit entity to construct, repair, or replace decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage;
- For a public, private, or nonprofit entity to manage, reduce, treat, or recapture stormwater or subsurface drainage water;
- For a municipality or inter-municipal, interstate, or state agency to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse;
- For a public, private, or nonprofit entity to develop and implement watershed projects;
- For a municipality or inter-municipal, interstate, or state agency to reduce the energy consumption needs for publicly owned treatment works;
- For a public, private, or nonprofit entity for projects for reusing or recycling wastewater, stormwater, or subsurface drainage water;
- For a public, private, or nonprofit entity to increase the security of publicly owned treatment works; and
- For 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 CWA.<sup>54</sup>

### ***Small Community Sewer Construction***

The Small Community Sewer Construction Assistance Act is a grant program established as part of the CWSRF program that requires the DEP to award grants to assist financially disadvantaged small communities with their needs for adequate domestic wastewater facilities.<sup>55</sup> Under the program, a financially disadvantaged small community is defined as a county, municipality, or special district<sup>56</sup> with a total population of 10,000 or less, and a per capita income less than the

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<sup>53</sup> DEP, *State Revolving Fund*, <https://floridadep.gov/wra/srf> (last visited Feb. 11, 2019).

<sup>54</sup> EPA, *Learn about the CWSRF*, <https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf> (last visited Feb. 11, 2019).

<sup>55</sup> Sections 403.1835(3)(d) and 403.1838, F.S.

<sup>56</sup> Section 189.012(6), F.S., defines special district; ss. 189.012(2) and (3), F.S., define dependent special district and independent special district, respectively.

state average per capita income.<sup>57</sup> In 2016, the Legislature included counties and special districts as eligible entities for grants under the program if they otherwise met the definition of a financially disadvantaged small community.<sup>58</sup>

In accordance with rules adopted by the Environmental Regulation Commission, the DEP may provide grants, for up to 100 percent of the costs of planning, designing, constructing, upgrading, or replacing wastewater collection, transmission, treatment, disposal, and reuse facilities, including necessary legal and administrative expenses.<sup>59</sup> The rules of the commission must also:

- Require that projects to plan, design, construct, upgrade, or replace wastewater collection, transmission, treatment, disposal, and reuse facilities be cost-effective, environmentally sound, permissible, and implementable;
- Require appropriate user charges, connection fees, and other charges to ensure the long-term operation, maintenance, and replacement of the facilities constructed under each grant;
- Require grant applications to be submitted on appropriate forms with appropriate supporting documentation and require records to be maintained;
- Establish a system to determine eligibility of grant applications;
- Establish a system to determine the relative priority of grant applications, which must consider public health protection and water pollution abatement;
- Establish requirements for competitive procurement of engineering and construction services, materials, and equipment; and
- Provide for termination of grants when program requirements are not met.<sup>60</sup>

### ***Rural Area of Opportunity***

A rural area of opportunity (RAO) is a rural community, or a region composed of rural communities, designated by the Governor, affected adversely by an extraordinary economic event, severe or chronic distress, or a natural disaster that presents a unique economic development opportunity of regional impact.<sup>61</sup> The three designated RAOs are the:

- Northwest RAO, which includes Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and the City of Freeport;
- South Central RAO, which includes DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the cities of Pahokee, Belle Glade, South Bay, and Immokalee; and
- North Central RAO, which includes Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.<sup>62</sup>

### **Plant Operations Excellence Awards**

Each year, the DEP presents awards to domestic wastewater and drinking water facilities around the state that demonstrate excellence in operation, maintenance, innovative treatment, waste

<sup>57</sup> Section 403.1838(2), F.S.

<sup>58</sup> Chapter 2016-55, Laws of Fla.

<sup>59</sup> Section 403.1838(3)(a), F.S.

<sup>60</sup> Section 403.1838(3)(b), F.S.; Fla. Admin. Code R. Ch. 62-505.

<sup>61</sup> Section 288.0656(2)(d), F.S.

<sup>62</sup> DEO, RAO, <http://www.floridajobs.org/business-growth-and-partnerships/rural-and-economic-development-initiative/rural-areas-of-opportunity> (last visited Feb. 11, 2019).

reduction, pollution prevention, recycling, or other achievements. These awards recognize facilities that demonstrate a special commitment to excellence in management through dedicated professionalism and that have an impeccable history of record-keeping compliance. In 2019, the department will award a total of 18 facilities, including 10 domestic wastewater facilities and eight drinking water facilities statewide.<sup>63</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 403.1839, F.S., creating the Blue Star Collection System Assessment and Maintenance Program.

The bill defines terms and provides the following legislative findings:

- The implementation of domestic wastewater collection system assessment and maintenance practices has been shown to effectively limit sanitary sewer overflows (SSOs) and the unauthorized discharge of pathogens.
- The voluntary implementation of practices beyond those required by law has the potential to further limit SSOs.
- The unique geography, community, growth, size, and age of domestic wastewater collection systems across the state require diverse responses, using the best professional judgment of local utility operators, to ensure that programs designed to limit SSOs are effective.

The bill establishes in the Department of Environmental Protection (DEP) a Blue Star Collection System Assessment and Maintenance Program and states that the purpose of this voluntary incentive program is to assist public and private utilities in limiting sanitary sewer overflows and the unauthorized discharge of pathogens.

The bill requires the DEP to adopt rules to administer the program, including certification standards for the program. The bill requires the DEP to review and approve public and private domestic wastewater utilities that apply for certification under the program and that demonstrate continued compliance with program certification requirements. A utility must provide reasonable documentation that it meets the following certification standards:

- Implementation of periodic collection system and pump station structural condition assessments and the performance of as-needed maintenance and replacement.
- The rate of reinvestment determined necessary by the utility to fully implement its collection system and pump station structural condition assessment and maintenance and replacement program.
- Implementation of a program designed to limit the presence of fats, roots, oils, and grease in the collection system.
- If the applicant is a public utility, the existence of a local law or building code requiring the private pump stations and lateral lines connecting to the public system to be free of:
  - Cracks, holes, missing parts, or similar defects; and
  - Direct stormwater connections that allow the direct inflow of stormwater into the private system and the public domestic wastewater collection system.

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<sup>63</sup> DEP, *DEP Presents Plant Excellence Awards to One Wastewater and Three Northwest Florida Drinking Water Facilities* (Feb. 13, 2019), available at <https://content.govdelivery.com/accounts/FLDEP/bulletins/22ebc9f> (last visited Feb. 14, 2019).

- Adoption of a power outage contingency plan that addresses mitigation of the impacts of power outages on the utility's collection system and pump stations.
- Adoption of an infiltration and inflow reduction plan to minimize infiltration and inflow throughout the utility's collection system.

The bill provides that program certifications expire after five years. During the five-year certification period, a utility must annually provide documentation to the DEP on the status of its implementation of the program and must demonstrate that it meets all program criteria in order to maintain its program certification or the DEP shall revoke the certification.

The bill provides that the DEP may revoke a utility's program certification if the utility experiences SSOs due to factors under the control of the utility or if the utility violates any permit condition or any applicable DEP rule or law.

The bill provides that if a utility knowingly submits false or inaccurate information or documentation in a program certification application the DEP shall revoke the program certification.

The bill requires the DEP to annually publish on its website a list of certified blue star utilities beginning on January 1, 2021, and allow public and nonprofit utilities to participate in the Clean Water State Revolving Fund Program for any purpose of the Blue Star Collection System Assessment and Maintenance Program which is consistent with federal requirements for participating in the Clean Water State Revolving Fund Program.

The bill authorizes the DEP, in the calculation of penalties for a sanitary sewer overflow, to reduce the penalty based on a utility's status as a certified blue star utility. The DEP may also reduce a penalty based on a certified blue star utility's investment in assessment and maintenance activities to identify and address conditions that may cause sanitary sewer overflows or interruption of service to customers due to a physical condition or defect in the system.

**Section 2** amends s. 403.067(7)(c), F.S., relating to best management practices. The bill requires that for the sole purpose of establishing a total maximum daily load (TMDL) for pathogens in a surface water, the DEP must provide a domestic wastewater utility with a defensible expectation of compliance with water quality standards for fecal indicator bacteria when the utility implements and maintains a program as a certified blue star utility and when the utility demonstrates a history of compliance with wastewater disinfection requirements incorporated in the utility's operating permit for any discharge into the impaired surface water.

**Section 3** amends s. 403.087, F.S., to require, subject to National Pollutant Discharge Elimination System (NPDES) permit duration limits for a utility, the DEP to issue 10-year permits to blue star certified utilities for the same fee and under the same conditions that apply to a five-year permit, upon approval of its application for renewal, if the certified blue star utility demonstrates that it:

- Is in compliance with any consent order or an accompanying administrative order related to its permit;
- Does not have any pending enforcement action against it by the United States Environmental Protection Agency, the DEP, or a local program; and

- If applicable, has submitted annual program implementation reports demonstrating progress in the implementation of the program.

**Section 4** amends s. 403.161, F.S., to authorize, notwithstanding any other law, the DEP to reduce a penalty based on the person's investment in the assessment, maintenance, rehabilitation, or expansion of the permitted facility.

**Section 5** amends s. 403.1838, F.S., to expand the eligibility for and uses of the Small Community Sewer Construction Grants to include nonprofit utilities serving financially disadvantaged small communities. The bill also allows the DEP to waive the population requirement for an independent special district that serves fewer than 10,000 wastewater customers, is located within a watershed with an adopted TMDL or basin management action plan for pollutants associated with domestic wastewater, and is wholly located within a rural area of opportunity.

Under the bill, nonprofit utilities serving these communities may also receive grants for up to 100 percent of the costs of planning, assessing, designing, constructing, upgrading, or replacing wastewater facilities. The use of grant funds for assessments is added to the section. The bill also provides that Small Community Sewer Construction Grants may be used for planning and implementing domestic wastewater collection system assessment programs to identify conditions that may cause sanitary sewer overflows or interruption of service to customers due to a physical condition or defect in the system.

**Section 6** provides an effective date of July 1, 2019.

#### **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 may have a positive fiscal impact on private utilities that will now be eligible for the Clean Water State Revolving Fund and Small Community Sewer Construction Assistance Grants.

The bill may also have a positive fiscal impact on private utilities being afforded an opportunity to have reduced penalties based on the investment, maintenance, rehabilitation, or expansion of a permitted facility.

**C. Government Sector Impact:**

The bill may have a negative fiscal impact on the Department of Environmental Protection associated with the rulemaking requirements of the bill and the implementation of the Blue Star Collection System Assessment and Maintenance Program, including review of annual reports and annual posting of blue star certified facilities on its website. The incentives associated with being blue star certified (e.g., reduced penalties, in-kind penalties, and 10-year operating permits) may reduce the amount of revenue generated from these activities.

The bill may have a negative fiscal impact to state revenues associated with the opportunities for reduced penalties related to sanitary sewer overflows at certified blue star facilities. However, the bill may have a positive fiscal impact on local governments which are afforded an opportunity to have reduced penalties based on the investment, maintenance, rehabilitation, or expansion of a permitted facility.

The bill may have a positive fiscal impact on local governments as it increases the eligible uses for Small Community Sewer Construction Assistance Grants.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Wastewater facilities are a traditional type of “point source” pollution and are subject to National Pollutant Discharge Elimination System (NPDES) permits. Generally, best management practices are applicable to nonpoint sources. It is unclear how the defensible expectation of compliance in the best management practices paragraph will affect how these utilities are regulated.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 403.067, 403.087, 403.161, and 403.1838.

This bill creates section 408.1839 of the Florida Statutes.

**IX. Additional Information:**

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

**Recommended CS/CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on April 9, 2019:**

- Requires that a utility must demonstrate a plan to reduce infiltration and inflow throughout the utility's collection system in order to obtain certification.
- Requires the Department of Environmental Protection (DEP) to revoke a utility's certification if all program standards are not met.
- Requires the DEP to revoke the utility's certification if a sanitary sewer overflow occurs due to factors under the control of the utility or if the utility violates any permit condition or any applicable DEP rule or law.
- Requires the DEP to revoke the program certification if a utility knowingly submits false or inaccurate information or documentation.

**CS by Environment and Natural Resources Committee on March 5, 2019:**

- Requires that for the purpose of establishing a total maximum daily load for pathogens in a surface water, the DEP must provide a domestic wastewater utility with a "defensible expectation of compliance" with state water quality standards for fecal indicator bacteria when a utility meets certain requirements.
- Revises one of the certification standards for the Blue Star Collection System Assessment and Maintenance Program to clarify that the rate of reinvestment determined necessary by the utility is the rate necessary to fully implement its collection system and pump station structural condition assessment and maintenance and replacement program.
- Authorizes the DEP to implement the Small Community Sewer Construction Assistance Program.
- Makes technical changes.

- B. **Amendments:**

None.