

By the Committee on Environment and Natural Resources; and
Senators Albritton and Perry

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1 A bill to be entitled
2 An act relating to domestic wastewater collection
3 system assessment and maintenance; creating s.
4 403.1839, F.S.; providing definitions; providing
5 legislative findings; establishing the Blue Star
6 Collection System Assessment and Maintenance Program
7 and providing its purpose; requiring the Department of
8 Environmental Protection to adopt rules and review and
9 approve program applications for certification;
10 specifying the documentation utilities must submit to
11 qualify for certification; providing for certification
12 expiration and renewal; requiring the department to
13 publish an annual list of certified blue star
14 utilities; requiring the department to allow public
15 and nonprofit utilities to participate in the Clean
16 Water State Revolving Fund Program under certain
17 conditions; authorizing the department to reduce
18 penalties for sanitary sewer overflows at certified
19 utilities and for investments in certain assessment
20 and maintenance activities; amending s. 403.067, F.S.;
21 creating a defensible expectation of compliance with
22 certain water quality standards for certified
23 utilities; amending s. 403.087, F.S.; requiring the
24 department to issue extended operating permits to
25 certified utilities under certain conditions; amending
26 s. 403.161, F.S.; authorizing the department to reduce
27 penalties based on certain system investments for
28 permitted facilities; amending s. 403.1838, F.S.;
29 authorizing additional recipients and uses of Small

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30 Community Sewer Construction Assistance Act grants;
31 revising provisions to authorize the department,
32 rather than the Environmental Regulation Commission,
33 to implement rules for such grants; providing an
34 effective date.

35
36 Be It Enacted by the Legislature of the State of Florida:

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38 Section 1. Section 403.1839, Florida Statutes, is created
39 to read:

40 403.1839 Blue Star Collection System Assessment and
41 Maintenance Program.—

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

43 (a) "Domestic wastewater" has the same meaning as in s.
44 367.021.

45 (b) "Domestic wastewater collection system" has the same
46 meaning as in s. 403.866.

47 (c) "Program" means the Blue Star Collection System
48 Assessment and Maintenance Program.

49 (d) "Sanitary sewer overflow" means the unauthorized
50 overflow, spill, release, discharge, or diversion of untreated
51 or partially treated domestic wastewater.

52 (2) LEGISLATIVE FINDINGS.—The Legislature finds that:

53 (a) The implementation of domestic wastewater collection
54 system assessment and maintenance practices has been shown to
55 effectively limit sanitary sewer overflows and the unauthorized
56 discharge of pathogens.

57 (b) The voluntary implementation of domestic wastewater
58 collection system assessment and maintenance practices beyond

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59 those required by law has the potential to further limit
60 sanitary sewer overflows.

61 (c) The unique geography, community, growth, size, and age
62 of domestic wastewater collection systems across the state
63 require diverse responses, using the best professional judgment
64 of local utility operators, to ensure that programs designed to
65 limit sanitary sewer overflows are effective.

66 (3) ESTABLISHMENT AND PURPOSE.—There is established in the
67 department a Blue Star Collection System Assessment and
68 Maintenance Program. The purpose of this voluntary incentive
69 program is to assist public and private utilities in limiting
70 sanitary sewer overflows and the unauthorized discharge of
71 pathogens.

72 (4) APPROVAL AND STANDARDS.—

73 (a) The department shall adopt rules to administer the
74 program, including the certification standards for the program
75 in paragraph (b), and shall review and approve public and
76 private domestic wastewater utilities that apply for
77 certification or renewal under the program and that demonstrate
78 maintenance of program certification pursuant to paragraph (c)
79 based upon the certification standards.

80 (b) A utility must provide reasonable documentation of the
81 following certification standards in order to be certified under
82 the program:

83 1. The implementation of periodic collection system and
84 pump station structural condition assessments and the
85 performance of as-needed maintenance and replacements.

86 2. The rate of reinvestment as determined necessary by the
87 utility to fully implement its collection system and pump

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88 station structural condition assessment and maintenance and
89 replacement program.

90 3. The implementation of a program designed to limit the
91 presence of fats, roots, oils, and grease in the collection
92 system.

93 4. If the applicant is a public utility, a local law or
94 building code requiring the private pump stations and lateral
95 lines connecting to the public system to be free of:

96 a. Cracks, holes, missing parts, or similar defects; and

97 b. Direct stormwater connections that allow the direct
98 inflow of stormwater into the private system and the public
99 domestic wastewater collection system.

100 5. A power outage contingency plan that addresses
101 mitigation of the impacts of power outages on the utility's
102 collection system and pump stations.

103 (c) Program certifications shall expire after 5 years. A
104 utility shall document its implementation of the program on an
105 annual basis with the department and must demonstrate that the
106 utility meets all program standards in order to maintain its
107 program certification. The approval of an application for
108 renewal certification must be based on the utility demonstrating
109 maintenance of program standards. A utility applying for renewal
110 certification must demonstrate maintenance of program standards
111 and progress in implementing the program.

112 (5) PUBLICATION.—The department shall annually publish on
113 its website a list of certified blue star utilities beginning on
114 January 1, 2021.

115 (6) FEDERAL PROGRAM PARTICIPATION.—The department shall
116 allow public and nonprofit utilities to participate in the Clean

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117 Water State Revolving Fund Program for any purpose of the
118 program that is consistent with federal requirements for
119 participating in the Clean Water State Revolving Fund Program.

120 (7) REDUCED PENALTIES.-In the calculation of penalties
121 pursuant to s. 403.161 for a sanitary sewer overflow, the
122 department may reduce the penalty based on a utility's status as
123 a certified blue star utility in accordance with this section.
124 The department may also reduce a penalty based on a certified
125 blue star utility's investment in assessment and maintenance
126 activities to identify and address conditions that may cause
127 sanitary sewer overflows or interruption of service to customers
128 due to a physical condition or defect in the system.

129 Section 2. Paragraph (c) of subsection (7) of section
130 403.067, Florida Statutes, is amended to read:

131 403.067 Establishment and implementation of total maximum
132 daily loads.-

133 (7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND
134 IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.-

135 (c) *Best management practices*.-

136 1. The department, in cooperation with the water management
137 districts and other interested parties, as appropriate, may
138 develop suitable interim measures, best management practices, or
139 other measures necessary to achieve the level of pollution
140 reduction established by the department for nonagricultural
141 nonpoint pollutant sources in allocations developed pursuant to
142 subsection (6) and this subsection. These practices and measures
143 may be adopted by rule by the department and the water
144 management districts and, where adopted by rule, shall be
145 implemented by those parties responsible for nonagricultural

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146 nonpoint source pollution.

147 2. The Department of Agriculture and Consumer Services may
148 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54
149 suitable interim measures, best management practices, or other
150 measures necessary to achieve the level of pollution reduction
151 established by the department for agricultural pollutant sources
152 in allocations developed pursuant to subsection (6) and this
153 subsection or for programs implemented pursuant to paragraph
154 (12) (b). These practices and measures may be implemented by
155 those parties responsible for agricultural pollutant sources and
156 the department, the water management districts, and the
157 Department of Agriculture and Consumer Services shall assist
158 with implementation. In the process of developing and adopting
159 rules for interim measures, best management practices, or other
160 measures, the Department of Agriculture and Consumer Services
161 shall consult with the department, the Department of Health, the
162 water management districts, representatives from affected
163 farming groups, and environmental group representatives. Such
164 rules must also incorporate provisions for a notice of intent to
165 implement the practices and a system to assure the
166 implementation of the practices, including site inspection and
167 recordkeeping requirements.

168 3. When ~~where~~ interim measures, best management practices,
169 or other measures are adopted by rule, the effectiveness of such
170 practices in achieving the levels of pollution reduction
171 established in allocations developed by the department pursuant
172 to subsection (6) and this subsection or in programs implemented
173 pursuant to paragraph (12) (b) must be verified at representative
174 sites by the department. The department shall use best

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175 professional judgment in making the initial verification that
176 the best management practices are reasonably expected to be
177 effective and, where applicable, must notify the appropriate
178 water management district or the Department of Agriculture and
179 Consumer Services of its initial verification before the
180 adoption of a rule proposed pursuant to this paragraph.
181 Implementation, in accordance with rules adopted under this
182 paragraph, of practices that have been initially verified to be
183 effective, or verified to be effective by monitoring at
184 representative sites, by the department, shall provide a
185 presumption of compliance with state water quality standards and
186 release from the provisions of s. 376.307(5) for those
187 pollutants addressed by the practices, and the department is not
188 authorized to institute proceedings against the owner of the
189 source of pollution to recover costs or damages associated with
190 the contamination of surface water or groundwater caused by
191 those pollutants. Research projects funded by the department, a
192 water management district, or the Department of Agriculture and
193 Consumer Services to develop or demonstrate interim measures or
194 best management practices shall be granted a presumption of
195 compliance with state water quality standards and a release from
196 the provisions of s. 376.307(5). The presumption of compliance
197 and release is limited to the research site and only for those
198 pollutants addressed by the interim measures or best management
199 practices. Eligibility for the presumption of compliance and
200 release is limited to research projects on sites where the owner
201 or operator of the research site and the department, a water
202 management district, or the Department of Agriculture and
203 Consumer Services have entered into a contract or other

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204 agreement that, at a minimum, specifies the research objectives,
205 the cost-share responsibilities of the parties, and a schedule
206 that details the beginning and ending dates of the project.

207 4. When ~~where~~ water quality problems are demonstrated,
208 despite the appropriate implementation, operation, and
209 maintenance of best management practices and other measures
210 required by rules adopted under this paragraph, the department,
211 a water management district, or the Department of Agriculture
212 and Consumer Services, in consultation with the department,
213 shall institute a reevaluation of the best management practice
214 or other measure. Should the reevaluation determine that the
215 best management practice or other measure requires modification,
216 the department, a water management district, or the Department
217 of Agriculture and Consumer Services, as appropriate, shall
218 revise the rule to require implementation of the modified
219 practice within a reasonable time period as specified in the
220 rule.

221 5. Agricultural records relating to processes or methods of
222 production, costs of production, profits, or other financial
223 information held by the Department of Agriculture and Consumer
224 Services pursuant to subparagraphs 3. and 4. or pursuant to any
225 rule adopted pursuant to subparagraph 2. are confidential and
226 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
227 Constitution. Upon request, records made confidential and exempt
228 pursuant to this subparagraph shall be released to the
229 department or any water management district provided that the
230 confidentiality specified by this subparagraph for such records
231 is maintained.

232 6. ~~The provisions of~~ Subparagraphs 1. and 2. do not

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233 preclude the department or water management district from
234 requiring compliance with water quality standards or with
235 current best management practice requirements set forth in any
236 applicable regulatory program authorized by law for the purpose
237 of protecting water quality. Additionally, subparagraphs 1. and
238 2. are applicable only to the extent that they do not conflict
239 with any rules adopted by the department that are necessary to
240 maintain a federally delegated or approved program.

241 7. For the sole purpose of establishing a total maximum
242 daily load for pathogens in a surface water, the department must
243 provide a domestic wastewater utility with a defensible
244 expectation of compliance with state water quality standards for
245 fecal indicator bacteria when the utility implements and
246 maintains a program as a certified blue star utility in
247 accordance with s. 403.1839 and demonstrates a history of
248 compliance with wastewater disinfection requirements
249 incorporated in the utility's operating permit for any discharge
250 into the impaired surface water.

251 Section 3. Subsection (11) is added to section 403.087,
252 Florida Statutes, to read:

253 403.087 Permits; general issuance; denial; revocation;
254 prohibition; penalty.-

255 (11) Subject to the permit duration limits for a utility
256 permitted pursuant to s. 403.0885, a blue star utility certified
257 pursuant to s. 403.1839 shall be issued a 10-year permit for the
258 same fee and under the same conditions as a 5-year permit upon
259 approval of its application for permit renewal by the department
260 if the certified blue star utility demonstrates that it:

261 (a) Is in compliance with any consent order or an

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262 accompanying administrative order to its permit;

263 (b) Does not have any pending enforcement action against it
264 by the United States Environmental Protection Agency, the
265 department, or a local program; and

266 (c) If applicable, has submitted annual program
267 implementation reports demonstrating progress in the
268 implementation of the program.

269 Section 4. Present subsection (6) of section 403.161,
270 Florida Statutes, is redesignated as subsection (7), and a new
271 subsection (6) is added to that section, to read:

272 403.161 Prohibitions, violation, penalty, intent.—

273 (6) Notwithstanding any other law, the department may
274 reduce the amount of a penalty based on the person's investment
275 in the assessment, maintenance, rehabilitation, or expansion of
276 the permitted facility.

277 Section 5. Subsection (2) and paragraphs (a) and (b) of
278 subsection (3) of section 403.1838, Florida Statutes, are
279 amended to read:

280 403.1838 Small Community Sewer Construction Assistance
281 Act.—

282 (2) The department shall use funds specifically
283 appropriated to award grants under this section to assist
284 financially disadvantaged small communities with their needs for
285 adequate sewer facilities. The department may use funds
286 specifically appropriated to award grants under this section to
287 assist nonprofit utilities providing wastewater services to
288 financially disadvantaged small communities. For purposes of
289 this section, the term "financially disadvantaged small
290 community" means a county, municipality, or special district

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291 that has a population of 10,000 or fewer, according to the
292 latest decennial census, and a per capita annual income less
293 than the state per capita annual income as determined by the
294 United States Department of Commerce. For purposes of this
295 subsection, the term "special district" has the same meaning as
296 provided in s. 189.012 and includes only those special districts
297 whose public purpose includes water and sewer services, utility
298 systems and services, or wastewater systems and services. The
299 department may waive the population requirement for an
300 independent special district that serves fewer than 10,000
301 wastewater customers, is located within a watershed with an
302 adopted total maximum daily load or basin management action plan
303 for pollutants associated with domestic wastewater pursuant to
304 s. 403.067, and is wholly located within a rural area of
305 opportunity as defined in s. 288.0656.

306 (3) (a) In accordance with rules adopted by the department
307 ~~Environmental Regulation Commission~~ under this section, the
308 department may provide grants, from funds specifically
309 appropriated for this purpose, to financially disadvantaged
310 small communities and to nonprofit utilities serving financially
311 disadvantaged small communities for up to 100 percent of the
312 costs of planning, assessing, designing, constructing,
313 upgrading, or replacing wastewater collection, transmission,
314 treatment, disposal, and reuse facilities, including necessary
315 legal and administrative expenses. Grants issued pursuant to
316 this section may also be used for planning and implementing
317 domestic wastewater collection system assessment and maintenance
318 programs to identify conditions that may cause sanitary sewer
319 overflows or interruption of service to customers due to a

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320 physical condition or defect in the system.

321 (b) The rules of the department ~~Environmental Regulation~~
322 ~~Commission~~ must:

323 1. Require that projects to plan, assess, design,
324 construct, upgrade, or replace wastewater collection,
325 transmission, treatment, disposal, and reuse facilities be cost-
326 effective, environmentally sound, permittable, and
327 implementable.

328 2. Require appropriate user charges, connection fees, and
329 other charges sufficient to ensure the long-term operation,
330 maintenance, and replacement of the facilities constructed under
331 each grant.

332 3. Require grant applications to be submitted on
333 appropriate forms with appropriate supporting documentation, and
334 require records to be maintained.

335 4. Establish a system to determine eligibility of grant
336 applications.

337 5. Establish a system to determine the relative priority of
338 grant applications. The system must consider public health
339 protection and water pollution abatement.

340 6. Establish requirements for competitive procurement of
341 engineering and construction services, materials, and equipment.

342 7. Provide for termination of grants when program
343 requirements are not met.

344 Section 6. This act shall take effect July 1, 2019.