HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/CS/HB 1149	**FINAL HOUSE FLOOR ACTION:**	
SUBJECT/SHORT TITLE	Environmental Regulation	86 **Y's**	21 **N's**
SPONSOR(S):	Government Accountability Committee, Natural Resources & Public Lands Subcommittee, Payne, and others	**GOVERNOR'S ACTION:**	Vetoed
COMPANION BILLS:	CS/CS/CS/SB 1308		

SUMMARY ANALYSIS

CS/CS/HB 1149 passed the House on March 5, 2018, and subsequently passed the Senate on March 9, 2018. The bill includes CS/SB 244, CS/CS/HB 837, and CS/SB 992. It also includes parts of CS/CS/HB 7063.

The bill revises policies relating to Florida's environmental regulation by:

- Requiring the Department of Environmental Protection (DEP) to revise the water resource implementation rule to create criteria for an impact offset or substitution credit to be applied to the issuance, renewal, or extension of a consumptive use permit (CUP) or to address additional water resource constraints imposed by the adoption of a recovery or prevention strategy;
- Providing that the Legislature encourages the development of aquifer recharge for reuse implementation;
- Requiring DEP and water management districts to develop and enter into a memorandum of agreement no later than December 1, 2018, that provides for coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a CUP, to be used solely at the permit applicant's request;
- Requiring reissuance of the construction phase of an expired environmental resource permit (ERP) if the applicant can demonstrate meeting certain criteria and no more than three years have passed since the original ERP expired, prohibiting local governments from requiring a person claiming that a particular activity meets an ERP exception to provide further verification from DEP, and revising the ERP exception for the replacement or repair of existing docks and piers;
- Providing an exemption for governmental entities to provide mitigation for projects other than its own;
- Requiring local governments to address the contamination of recyclable material in contracts with residential recycling collectors and recovered materials processing facilities;
- Clarifying operation provisions of the C-51 reservoir project and providing waiver of repayment under the water storage facility revolving loan fund; and
- Creating the blue star collection system assessment and maintenance program, which is a voluntary, incentive-based program to assist public and private utilities in limiting sanitary sewer overflows and the unauthorized discharge of pathogens.

The bill has an insignificant negative fiscal impact on state government and a positive fiscal impact on local governments and the private sector.

The effective date of this bill was upon becoming a law; however, this bill was vetoed by the Governor on April 6, 2018.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Reuse of Reclaimed Water

Present Situation

Reclaimed water is water from a domestic wastewater[1] treatment facility, which has received at least secondary treatment[2] and basic disinfection[3] for reuse.[4] Reuse is the deliberate application of reclaimed water for a beneficial purpose.[5]

The encouragement and promotion of the reuse of reclaimed water is a state objective and considered to be in the public interest. The Legislature finds that the use of reclaimed water provided by domestic wastewater treatment facilities permitted and operated under a reuse program approved by the Department of Environmental Protection (DEP) is environmentally acceptable and not a threat to public health and safety. The Legislature also finds that the reuse of reclaimed water is a critical component of meeting the state's existing and future water supply needs while sustaining natural systems. Accordingly, the Legislature encourages the development of incentive-based programs for reuse.[6]

Reclaimed Water Permitting

The uses of reclaimed water and permitting requirements are contained in ch. 62-610, F.A.C. Permitted uses of reclaimed water include slow-rate land application systems for restricted public access; slow-rate land application systems for public access areas, residential irrigation, and edible crops; rapid-rate land application systems; groundwater recharge and indirect potable reuse systems; overland flow systems; and industrial uses.[7]

Consumptive Use Permitting

Before using waters of the state,[8] a person must apply for and obtain a consumptive use permit (CUP) from the applicable water management district (WMD)[9] or DEP. The WMD or DEP may impose reasonable conditions necessary to assure that such use is consistent with the overall objectives of the WMD or DEP and is not harmful to the water resources of the area.[10] To obtain a CUP, an applicant must establish that the proposed use of water is a reasonable-beneficial use,[11] will not interfere with any presently existing legal use of water, and is consistent with the public interest.[12]

[1] Section 367.021(5), F.S., defines the term "domestic wastewater" to mean wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.
[2] Rule 62-610.200(54), F.A.C., defines the term "secondary treatment."
[3] Rule 62-600.440(5), F.A.C., provides the requirements for basic disinfection.
[4] Section 373.019(17), F.S.; r. 62-610.200(48), F.A.C.
[5] Rule 62-610.200(52), F.A.C.
[6] Sections 373.250(1)(a) and 403.064(1), F.S.
[7] Chapter 62-610, F.A.C.
[8] Section 373.019(22), F.S., defines the term "water" or "waters of 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.
[9] 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.
[10] Section 373.219(1), F.S.; An individual solely using water for domestic consumption is exempt from CUP requirements.
[11] 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 which is both reasonable and consistent with the public interest.
[12] Section 373.223(1), F.S.

Recovery or Prevention Strategy

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 are responsible for identifying and establishing the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area.[13] This limit is the minimum flow[14] or minimum level (MFL).[15]

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. 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. 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.[16]

Water Resource Implementation Rule

The water resource implementation rule (Rule), ch. 62-40, F.A.C., sets forth goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources, based on statutory policies and directives.[17] The Legislature required DEP to initiate rulemaking by October 1, 2012, to revise the Rule to include:

- Criteria for the use of an impact offset derived from the use of reclaimed water when a WMD evaluates a CUP application; and
- Criteria for the use of substitution credits where a WMD has adopted rules establishing withdrawal limits from a specified water resource within a defined geographic area.[18]

Within 60 days after final adoption by DEP, the WMDs were required to initiate rulemaking to incorporate these Rule revisions into their rules.[19]

Impact Offset and Substitution Credit

An impact offset is the use of reclaimed water to reduce or eliminate a harmful impact that has occurred or would otherwise occur from other surface water or groundwater withdrawals.[20]

A substitution credit is the use of reclaimed water to replace all or a portion of an existing permitted use of resource-limited surface water or groundwater, thereby allowing a different user or use to initiate a withdrawal or increase its withdrawal from the same resource-limited surface water or groundwater provided that the withdrawal creates no net adverse impact on the limited water resource or creates a net positive impact if required by a recovery or prevention strategy.[21]

[13] 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 Feb. 8, 2018).
[14] Section 373.042(1)(a), F.S., provides that the minimum flow is the limit at which further water withdrawals would be significantly harmful to the water resources or ecology of the area.
[15] 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.
[16] Section 373.0421(2), F.S.
[17] Sections 373.019(25) and 373.036, F.S.
[18] Section 373.250(5)(a)1.-2., F.S.
[19] Section 373.250(5)(b), F.S.
[20] Section 373.250(5)(a)1., F.S.
[21] Section 373.250(5)(a)2., F.S.

Rule Revisions

DEP's revisions to the Rule are found in rr. 62-40.416(7) and (8), F.A.C., respectively. With regard to impact offsets, the Rule requires a WMD to consider the degree to which the reclaimed water offsets harmful impacts otherwise caused by the withdrawal, including saltwater intrusion, wetland or other surface water impacts, groundwater impacts, impacts to existing legal uses, harm to existing offsite land uses, and other water resource impacts.[22]

The Rule also provides that if an applicant meets the conditions for CUP issuance after consideration of the impact offset or substitution credit, a WMD must incorporate the impact offset or substitution credit into the CUP. The duration of an impact offset or substitution credit is limited to the duration of the CUP in which it is incorporated.[23] When reviewing an application for CUP renewal containing an impact offset or substitution credit, a WMD must renew the allocation on the continuation of the impact offset or substitution credit, provided the conditions for permit issuance are met.[24]

With regard to substitution credits, the Rule provides that such credits recognized in a CUP cannot be transferred to other users, except in the same manner as the permit itself and in compliance with applicable WMD rules.[25]

Underground Injection

DEP has general control and supervision over underground water, lakes, rivers, streams, canals, ditches, and coastal waters under the jurisdiction of the state insofar as their pollution may affect the public health or impair the interest of the public or persons lawfully using them.[26] Accordingly, DEP regulates the disposal of appropriately treated fluids through underground injection wells through its underground injection control (UIC) program. The UIC permitting program prevents degradation of the quality of aquifers adjacent to the injection zone.[27]

Aquifer Recharge

Aquifer recharge (AR) is the underground injection and storage of water into an aquifer for beneficial purposes. It is primarily considered a water resource development and conservation strategy used to preserve and enhance water resources and natural systems (e.g., sustain water levels, meet MFLs) and to attenuate flooding.[28]

AR wells are regulated as Class V injection wells. Class V injection wells inject non-hazardous fluids into or above formations that contain underground sources of drinking water. AR wells include:

- Recharger wells, which replenish, augment, or store water in an aquifer;
- Saltwater intrusion barrier wells, which inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water;
- Subsidence control wells, which inject fluids into a zone which does not produce oil or gas to reduce or eliminate subsidence associated with the overdraft of fresh water; and
- Connector wells, which connect two aquifers allowing interchange of water between them.[29]

[22] Rule 62-40.416(7)(a), F.A.C.
[23] Rules 62-40.416(7)(b) and (8)(c), F.A.C.
[24] Rules 62-40.416(7)(d) and (8)(f), F.A.C.
[25] Rule 62-40.416(8)(h), F.A.C.
[26] Section 403.062, F.S.
[27] DEP and WMD, *Florida's Water Permitting Portal*. http://flwaterpermits.com/typesofpermits.html (last visited Jan. 16, 2018); *see* ch. 62-528, F.A.C., for UIC permitting requirements.
[28] DEP, *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater and Excess Surface Water*, pg. 83, https://floridadep.gov/sites/default/files/SB536%20Final%20Report.pdf (last visited Jan. 16, 2018).
[29] Rule 62-528.300(1)(e), F.A.C.

Effect of the Bill

The bill amends s. 373.250(5), F.S., deleting the obsolete rulemaking authority initially directing DEP to revise the Rule to develop criteria for the use of impact offsets and substitution credits.

The bill amends s. 373.250(5)(a)1., F.S., providing examples of reclaimed water use that may create an impact offset to include, but not be limited to, those that prevent or stop further saltwater intrusion, raise aquifer levels, improve the water quality of an aquifer, or augment surface water to increase the quantity of water available for water supply.

The bill creates s. 373.250(5)(a)3., F.S., requiring DEP to revise the Rule to include criteria by which an impact offset or substitution credit may be applied to the issuance, renewal, or extension of a utility's or another user's CUP or may be used to address additional water resource constraints imposed through the adoption of a recovery or prevention strategy.

The bill amends s. 403.064(1), F.S., providing that the Legislature encourages the development of AR for reuse implementation.

The bill creates s. 403.064(17), F.S., requiring DEP and the WMDs to develop and enter into a memorandum of agreement (MOA) providing for coordinated review of any reclaimed water project requiring a reclaimed water facility permit, a UIC permit, and a CUP no later than December 1, 2018. The bill requires the MOA to provide such coordinated review solely at the applicant's request. The bill provides that the goal of the coordinated review is to share information, avoid requesting the applicant to submit redundant information, and ensure, to the extent feasible, a harmonized review of the reclaimed water project under these various permitting programs, including the use of a proposed impact offset or substitution credit.

Permits for Construction or Alteration

Present Situation

DEP or a WMD may require an environmental resource permit (ERP) and impose reasonable conditions necessary to assure the construction or alteration of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works complies with state law and applicable rules promulgated thereunder, and will not be harmful to water resources.[30] The application must contain the applicant's name and address, the name and address of the land owner where the works are to be constructed, a legal description of the land, location of the work, sketches of construction, name and address of the person who prepared the plans and specifications of construction and who will construct the work, general purpose of the work, and other information that DEP or a WMD may require.[31]

Notice Requirements for ERP Applications and Intended Agency Action

DEP or a WMD must send a notice of receipt of permit application to any persons who have filed a written request for notification of any pending applications affecting the particular designated area. The notice must contain the applicant's name and address; a brief description of the proposed activity, including any mitigation; the location of the proposed activity, including whether it is located within an Outstanding Florida Water or aquatic preserve; a map identifying the location of the proposed activity; a depiction of the proposed activity; a name or number identifying the application and the office where the application can be inspected; and any other information required by rule.[32]

[30] Section 373.413(1), F.S.
[31] Section 373.413(2), F.S.
[32] Section 373.413(3), F.S.

DEP or a WMD may also publish, or require an applicant to publish at its expense, in a newspaper of general circulation within the affected area, a notice of receipt of the application and a notice of intended agency action. DEP or a WMD must also provide notice of the intended agency action to the applicant and to persons who have requested a copy of the intended agency action.[33]

Types and Duration of ERPs

General permits are provided for certain activities that have been determined to have minimal adverse environmental effect to the water resources of the state when conducted in compliance with the terms and conditions of the permit.[34] Individual permits are required for activities that do not qualify for a general permit.[35] Individual permits are issued for five years, but an applicant may request a longer permit duration by providing reasonable assurance that:

- The project cannot reasonably be expected to be completed within five years after commencement of construction; and
- The impacts of the activity, considering its nature, the size of the project, and any required mitigation, can be accurately assessed and offset where appropriate, and the terms of the permit can be met for the duration of the requested permit.[36]

A permittee may also request to extend the duration of an individual permit. A request to extend the permit for up to five years is a minor modification of the permit and is not subject to public notification requirements.[37] The request is granted if:

- It is received by DEP or a WMD before the permit expires;
- The activity remains consistent with plans, terms, and conditions of the permit and rules of DEP or a WMD in effect when the permit was issued;
- The project cannot reasonably be expected to be completed within five years after commencement of construction; and
- The impacts of the activity, considering its nature, the size of the project, and any required mitigation, can be accurately assessed and offset where appropriate, and the terms of the permit can be met for the duration of the requested permit.[38]

Prior Legislative ERP Extensions

In 2009, as a result of real estate market conditions, the Legislature extended and renewed any ERP issued by DEP or a WMD that had an expiration date of September 1, 2008, through January 1, 2012, for a period of two years following its expiration date. The extended permits were governed by the rules in effect at the time the permit was issued, unless there would be an immediate threat to public health or safety.[39] In 2010, the Legislature provided an additional two-year extension for these permits.[40] In 2011, the Legislature provided a two-year extension for these permits so long as the permit had not already been extended for a total of four years.

In 2011, the Legislature also provided an opportunity for any ERP with an expiration date from January 1, 2012, through January 1, 2014, to be extended and renewed for two years. The extended permits were governed by the rules in effect at the time the permit was issued, unless there would be an

[33] Section 373.413(4), F.S.
[34] Section 403.814(1), F.S.
[35] Rule 62-330.054(1), F.A.C.
[36] Rules 62-330.320(2) and 62-330.010(4)(a), F.A.C.
[37] Rule 62-330.315(2), F.A.C.
[38] Rules 62-330.320(6), 62-330.315(1), and 62-330.010(4)(a), F.A.C.
[39] Chapter 2009-96, Laws of Fla.
[40] Chapter 2010-147, Laws of Fla.

immediate threat to public health or safety.[41] In 2012, the Legislature provided an opportunity for these permits to be extended and renewed for another two years, for a total of four years.[42]

In 2014, the Legislature provided an opportunity for ERPs with an expiration date from January 1, 2014, through January 1, 2016, to be extended and renewed for a period of two years. Such extension could build upon prior extensions provided the ERP was not extended for longer than four years.[43]

Transfer of ERP upon Change of Ownership or Control

A permittee of an individual permit must notify DEP or a WMD in writing within 30 days of any change in ownership or control of any portion of the real property where the permitted activity is to occur. A person who obtains an interest in or control of such real property must request transfer of the permit to become the new permittee or a co-permittee, which will be processed as a minor modification, or provide written documentation of the following:

- Certification that the permittee continues to retain sufficient real property interest over the land where the activities subject to the permit will be conducted; and
- Authorization for DEP or a WMD to enter, inspect, sample, and test the project or activities to ensure conformity with the plans and specifications authorized in the permit.[44]

The person requesting transfer of the permit must demonstrate that it has sufficient real property interest in or control over the land.[45] Failure of the permittee to notify DEP or a WMD of a change in ownership or control will not, by itself, render a permit invalid. In such circumstances, DEP or a WMD will provide notice to the former permittee, at its last known address, advising of the permit transfer, together with a notice of rights under ch. 120, F.S.[46]

Effect of the Bill

The bill creates s. 373.413(7), F.S., allowing DEP, in coordination with the WMDs, to adopt rules to administer the subsection, and requiring DEP or a WMD to reissue an expired individual permit to the original applicant or to a new property owner if the applicant can demonstrate:

- The applicant could not reasonably be expected to complete the original permitted activity within the original permit period;
- The applicant can meet the plans, terms, and conditions of the original permit for the duration of the reissued permit period;
- The site conditions or significant information regarding the site or activity have not changed since the original permit was issued to an extent that the permitted activity would create additional adverse impacts;
- No more than three years have passed since the expiration of the original permit; and
- For a new property owner, sufficient evidence of ownership pursuant to DEP or WMD rule.

The bill requires an applicant for such reissuance to submit to DEP or a WMD:

- The applicant's name and contact information;
- The permit number;
- A clear statement explaining why the permitted activity could not be completed within the original permit period; and

[41] Chapter 2011-139, Laws of Fla.
[42] Chapter 2012-205, Laws of Fla.
[43] Chapter 2014-218, Laws of Fla.
[44] Rule 62-330.340(2)-(3), F.A.C.
[45] Rule 62-330.340(3), F.A.C.
[46] Rule 62-330.340(4), F.A.C.

- A certification from a professional registered in or licensed by the state and practicing under ch. 471, F.S., ch. 472, F.S., ch. 481, F.S., or ch. 492, F.S., that the:
    - Permitted activity remains consistent with plans, terms, and conditions of the original permit and DEP or WMD rules in effect when the original permit was issued; and
    - Site conditions or significant information regarding the site or activity have not changed since the original permit was issued to an extent that the permitted activity would create additional adverse impacts.

Verification of ERP Exceptions

Present Situation

Current law provides exceptions from ERP permitting[47] for certain types of projects.[48] Generally, these permit exceptions restrict how the project is undertaken, provide size and location requirements, or provide for maintenance, repair, or replacement of existing structures.[49] These exceptions do not relieve an applicant from obtaining permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a WMD or from complying with local pollution control programs or other requirements of local governments.[50]

A local government, as part of its permitting process, may require applicants to provide verification from DEP that the activity is exempt. To expedite this process, DEP developed an online self-certification process for individuals to verify whether the activity is exempt from regulation.[51] It appears as though there is no fee charged for such verification from DEP.[52]

Effect of the Bill

The bill amends s. 403.813(1), F.S., prohibiting local governments from requiring a person claiming an ERP exception to provide further verification from DEP that the particular activity meets the exception.

Dock and Pier Replacement and Repair ERP Exception

Present Situation

Currently, an exception from ERP permitting applies for the replacement or repair of existing docks and piers if fill[53] material is not used and the replacement or repaired dock or pier is in the same location and of the same configuration and dimensions as the dock or pier being replaced or repaired. The exception allows the use of different construction materials or minor deviations to allow upgrades to current structural and design standards.[54]

Other ERP permit exceptions that allow for repair or replacement also require the repair or replacement to be of the same configuration, location, length, and dimensions. These include the repair or

[47] *See* chs. 373 and 403, F.S.; ch. 61-691, Laws of Fla., created the Southwest Florida WMD; chs. 25214 and 25270, 1949, Laws of Fla., created what is known today as the South Florida WMD.
[48] Section 403.803(1), F.S.
[49] Section 403.803(1)(a)-(v), F.S.
[50] Section 403.813(1), F.S.
[51] DEP, Agency Analysis of House Bill 1149, p. 3 (January 22, 2018); DEP, *ERP e-Permitting*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/erp-e-permitting (last visited Feb. 7, 2018); DEP, *Submitting an ERP*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/submitting-erp (last visited Feb. 7, 2018).
[52] DEP, *Submitting an ERP*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/submitting-erp (last visited Feb. 7, 2018); *but see* r. 62-4.050(4)(e)9, F.A.C., providing for a $100 application fee.
[53] Section 373.403(14), F.S., defines the term "filling" to mean the deposition, by any means, of materials in surface waters or wetlands, as delineated in s. 373.421(1), F.S.
[54] Section 403.813(1)(d), F.S.

replacement of stormwater pipes or culverts,[55] open-trestle foot bridges and vehicular bridges that are 100 feet or less in length and two lanes or less in width,[56] and insect control impoundment dikes, which are less than 100 feet in length.[57] Another ERP exception, regarding the restoration of seawalls, allows for the restoration of the seawall to take place at the previous location or upland of, or within 18 inches waterward of the previous location.[58]

Effect of the Bill

The bill amends s. 403.813(1)(d), F.S., removing the requirement that a dock or pier replacement or repair remain in the same location and be of the same configuration and dimensions as the existing dock or pier. The bill provides that an ERP exception applies if the dock or pier replacement or repair:

- Is within five feet of the same location;
- Is no larger in size than the existing dock or pier; and
- There are no additional aquatic resources that are adversely and permanently impacted by the replacement or repair.

Mitigation

Present Situation

Mitigation is used to offset the adverse impacts to wetlands or other surface waters resulting from construction activities. Mitigation usually consists of restoration, enhancement, creation, preservation, or a combination thereof and is accomplished by providing onsite mitigation, offsite mitigation, or purchasing mitigation credits from permitted mitigation banks. The ecological benefits of mitigation compensate for the functional loss resulting from the ERP impact. The Uniform Mitigation Assessment Method (UMAM) provides a standardized procedure for assessing the ecological values and functions of wetlands and other surface waters.[59]

Mitigation banking is a practice in which an environmental enhancement and preservation project is conducted by a public agency or private entity (banker) to provide mitigation for unavoidable wetland impacts within a defined region referred to as a mitigation service area. The bank is the site itself, and the currency sold by the banker to the ERP applicant is a credit. The number of potential credits permitted for the bank and the credit required for ERPs are determined by DEP or a WMD.[60]

Offsite regional mitigation areas are environmental enhancement projects conducted by DEP, a WMD, or a local government (sponsor) that serve as mitigation for multiple ERP projects. Applicants pay money to the sponsor, and the collected funds are used toward the implementation of the larger mitigation project. An offsite regional mitigation area that serves as mitigation for more than five permits or 35 acres of impact is operated under a MOA, similar to a mitigation bank permit.[61]

[55] Section 403.813(1)(h), F.S.
[56] Section 403.813(1)(l), F.S.
[57] Section 403.813(1)(p), F.S.
[58] Section 403.813(1)(e), F.S.
[59] DEP, *Mitigation*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation (last visited Mar. 12, 2018); r. 62-330.010(4)(a), F.A.C.
[60] DEP, *Mitigation and Mitigation Banking*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-and-mitigation-banking (last visited Mar. 12, 2018); r. 62-330.010(4)(a), F.A.C.
[61] DEP, *Regional Offsite Mitigation Areas*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/regional-offsite-mitigation-areas (last visited Mar. 9, 2018); r. 62-330.010(4)(a), F.A.C.

Mitigation by Governmental Entities

In 2012, a governmental entity was prohibited from creating or providing mitigation for a project other than its own, unless it used land that was not previously purchased for conservation and provided the same financial assurances as those required for private mitigation banks.[62] Exceptions are provided for:

- Mitigation banks and offsite regional mitigation areas permitted before December 31, 2011;
- Mitigation for transportation projects, mining activities, electric utility impacts, or on sovereign submerged lands;
- Mitigation provided for single-family lots or homeowners; or
- Entities authorized in ch. 98-492, Laws of Fla.[63]

Effect of the Bill

The bill amends s. 373.4135, F.S., expanding an existing exemption to allow governmental entities to provide offsite regional mitigation areas established before December 31, 2011, when credits are not available at a mitigation bank, if mitigation credits were awarded pursuant to UMAM, under a permit issued before December 31, 2011.

Recyclable Materials and Contamination

Present Situation

Recycling is any process by which solid waste[64] or materials that would otherwise become solid waste are collected, separated, or processed and reused or returned to use in the form of raw materials or intermediate or final products.[65] Recyclable materials are materials that are capable of being recycled and would otherwise be processed or disposed of as solid waste.[66]

Recycling Goal

Each county must implement a recycling program with a goal of recycling recyclable solid waste by 40 percent by December 31, 2012; 50 percent by December 31, 2014; 60 percent by December 31, 2016; 70 percent by December 31, 2018; and 75 percent by December 31, 2020 (recycling goal).[67] Counties are required to annually report on their solid waste management program and recycling activities.[68] The 2016 recycling goal fell short, having achieved 56 percent.[69]

Local Government Recycling Programs

Local governments are encouraged to form cooperative arrangements for implementing recycling programs.[70] Recycling programs must recycle a significant portion of at least four of the following materials from the solid waste stream prior to final disposal at a solid waste disposal facility: newspaper, aluminum cans, steel cans, glass, plastic bottles, cardboard, office paper, and yard trash. Local governments are also encouraged to separate all plastics, metal, and all grades of paper for

[62] Chapter 2012-174, Law of Fla.
[63] Chapter 98-492, Laws of Fla., is the Greater Orlando Aviation Authority Act; s. 373.415(1)(b), F.S.
[64] Section 403.703(36), F.S., defines the term "solid waste."
[65] Section 403.703(31), F.S.
[66] Section 403.706(30), F.S.
[67] Section 403.706(2)(a), F.S.
[68] Section 403.706(7), F.S.
[69] DEP, *Florida and the 2020 75% Recycling Goal*, https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf (last visited Jan. 25, 2018).
[70] Section 403.706(2)(a), F.S.

recycling prior to final disposal and are further encouraged to recycle yard trash and other mechanically treated solid waste into compost available for agricultural and other acceptable uses.[71]

Local Government Contracting for Solid Waste

Local governments may enter into a written agreement with others to fulfill some or all of its solid waste responsibilities.[72] In developing and implementing recycling programs, local governments are required to consider the collection, marketing, and disposition of recyclable materials by persons engaged in the business of recycling, whether or not the persons are operating for profit. Local governments are encouraged to use for-profit and nonprofit organizations in fulfilling their solid waste responsibilities.[73]

Curbside Recyclable Materials Collection

In the development and implementation of a curbside recyclable materials collection program, a county or municipality is required to enter into negotiations with a franchisee who is operating to exclusively collect solid waste within a service area of a county or municipality to undertake curbside recyclable materials collection responsibilities for a county or municipality. If the county or municipality and such franchisee fail to reach an agreement within 60 days from the initiation of such negotiations, the county or municipality may solicit proposals (RFP) from other persons to undertake curbside recyclable materials collection responsibilities for the county or municipality as it may require. Upon the determination of the lowest responsible proposal, the county or municipality may undertake, or enter into a written agreement with the person who submitted the lowest responsible proposal to undertake, the curbside recyclable materials collection responsibilities for the county or municipality, notwithstanding the exclusivity of such franchise agreement.[74]

Contamination of Curbside Recyclable Material

Contamination of curbside recyclable material occurs when residents place materials that are not recyclable into curbside recycling bins (e.g., plastic bags, styrofoam peanuts, and other increasingly popular thin plastics). While a material recovery facility is equipped to handle some non-recyclable materials, excessive contamination can undermine the recycling process resulting in additional sorting, processing, energy consumption, and other increased costs due to equipment downtime, repair or replacement needs. In addition to increased recycling processing costs, curbside contamination also results in poorer quality recyclables and increased rejection and landfilling of unusable materials.[75]

Effect of the Bill

The bill creates s. 403.706(22), F.S., requiring counties and municipalities to address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material.

[71] Section 403.706(2)(g), F.S.
[72] Section 403.706(8), F.S.
[73] Section 403.706(10), F.S.
[74] Section 403.706(9), F.S.
[75] DEP, *Florida and the 2020 75% Recycling Goal*, https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf (last visited Jan. 25, 2018).

The bill provides that a residential recycling collector may not be required to collect or transport contaminated recyclable material, except pursuant to a contract consistent with the subsection, and defines a "residential recycling collector" to mean a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality. The bill requires that contracts between a residential recycling collector and a county or municipality for the collection or transportation of residential recyclable material, and each RFP or other solicitation for the collection of residential recyclable material:

- Define the term "contaminated recyclable material" in a manner that is appropriate for the local community, taking into consideration available markets for recyclable material, available waste composition studies, and other relevant factors;
- Include respective strategies and obligations of the county or municipality and the residential recycling collector to reduce the amount of contaminated recyclable material being collected;
- Include procedures for identifying, documenting, managing, and rejecting residential recycling containers, truck loads, carts, or bins that contain contaminated recyclable material;
- Include remedies used if a container, cart, or bin contains contaminated recyclable material; and
- Provide education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.

The bill provides that a recovered materials processing facility[76] may not be required to process contaminated recyclable material, except pursuant to a contract consistent with the subsection. The bill requires that contracts between a recovered materials processing facility and a county or municipality for processing residential recyclable material and each RFP or other solicitation for processing residential recyclable material:

- Define the term "contaminated recyclable material" in a manner that is appropriate for the local community, taking into consideration available markets for recyclable material, available waste composition studies, and other relevant factors;
- Include respective strategies and obligations of the county or municipality and the facility to reduce the amount of contaminated recyclable material being collected and processed;
- Include procedures for identifying, documenting, managing, and rejecting residential recycling containers, truck loads, carts, or bins that contain contaminated recyclable material; and
- Include remedies used if a container or truck load contains contaminated recyclable material.

The bill provides that the contract requirements apply to each contract between a municipality or county and a residential recycling collector or recovered materials processing facility executed or renewed after July 1, 2018. The bill also provides that the use of the term "contaminated recyclable material" refers to recyclable material that is comingled or mixed with solid waste or other nonhazardous material. The term does not relate to contamination as that term or a derivation of that term is used in ch. 376, F.S., and other sections of ch. 403, F.S., including, but not limited to, brownfield site cleanup, water quality remediation, dry cleaning solvent contaminated site cleanup, petroleum contaminated site cleanup, cattle dipping vat site cleanup, or other hazardous waste remediation.

[76] Section 403.703(29), F.S., defines the term "recovered materials processing facility" to mean a facility engaged solely in the storage, processing, resale, or reuse of recovered materials. Such facility is not a solid waste management facility if it meets the conditions of s. 403.7045(1)(e), F.S.

C-51 Reservoir Project

Present Situation

The C-51 reservoir project is a water storage facility[77] located in western Palm Beach County south of Lake Okeechobee consisting of in-ground reservoirs and conveyance structures that will provide water supply and water management benefits to participating water supply utilities and provide environmental benefits by reducing freshwater discharges to tide and making water available for natural systems.[78]

The C-51 reservoir project consists of Phase I and Phase II. Phase I will provide approximately 14,000 acre-feet of water storage and will hydraulically connect to the South Florida WMD's L-8 Flow Equalization Basin. Phase II will provide approximately 46,000 acre-feet of water storage, for a total increase of 60,000 acre-feet of water storage.[79]

If state funds are appropriated for Phase I or Phase II: the South Florida WMD must operate the reservoir to maximize the reduction of high-volume Lake Okeechobee regulatory releases to the St. Lucie or Caloosahatchee estuaries, in addition to providing relief to the Lake Worth Lagoon; water made available by the reservoir must be used for natural systems in addition to any allocated amounts for water supply; and water received from Lake Okeechobee may not be available to support CUPs.[80] Phase I may be funded by appropriation or through the water storage facility revolving loan fund. Phase II may be funded by the issuance of Florida Forever bonds, through the water storage facility revolving loan fund, as a project component of the Comprehensive Everglades Restoration Plan (CERP), or through the Everglades Trust Fund.[81]

Water Storage Facility Revolving Loan Fund

In 2017, the Legislature created the water storage facility revolving loan fund.[82] It provides that the state, through DEP, must provide funding assistance to local governments or water supply entities for the development and construction of water storage facilities to increase the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems. DEP may make loans, provide loan guarantees, purchase loan insurance, and refinance local debt through the issuance of new loans for water storage facilities approved by DEP. Local governments or water supply entities may borrow funds made available and may pledge any revenues or other adequate security available to them to repay any funds borrowed. DEP may award loan amounts for up to 75 percent of the costs of planning, designing, constructing, upgrading, or replacing water resource infrastructure or facilities, whether natural or manmade, including the acquisition of real property for water storage facilities.[83] The minimum amount of a loan is $75,000 and the term of the loan may not exceed 30 years.[84]

[77] Section 373.475(2)(b), F.S., defines the term "water storage facility."
[78] Section 373.4598(9)(a), F.S.
[79] Section 373.4598(9)(b), F.S.
[80] Section 373.4598(9)(d), F.S.
[81] Section 373.4598(9)(e), F.S.; *see* s. 373.475, F.S., for the water storage facility revolving loan fund.
[82] Chapter 2017-10, Laws of Fla.
[83] Sections 373.475(3)(a)-(b), F.S.
[84] Section 373.475(7), F.S.

Effect of the Bill

The bill amends s. 373.4598(9)(d), F.S., and requires that if state funds are appropriated for Phase I or Phase II:

- The South Florida WMD, to the extent practicable, must operate either Phase I or Phase II to maximize the reduction of high-volume Lake Okeechobee releases to the St. Lucie or Caloosahatchee estuaries, in addition to maximizing the reduction of harmful discharges to the Lake Worth Lagoon;
- Operation of Phase I be in accordance with any operation and maintenance agreement adopted by the South Florida WMD;
- Water made available by Phase I or Phase II be used for natural systems in addition to any permitted amounts for water supply; and
- Water received from Lake Okeechobee may only be available to support CUPs if the use is in accordance with rules of the South Florida WMD.

The bill allows the South Florida WMD to enter into a capacity allocation agreement with a water supply entity for a pro rata share of unreserved capacity in the C-51 reservoir and to request DEP to waive repayment of all or a portion of the loan issued under the water storage facility revolving loan fund. The bill authorizes DEP to waive repayment if it has received reasonable value for the waiver. The bill provides that the South Florida WMD is not responsible for repaying the loan waived by DEP.

Domestic Wastewater

Present Situation

Domestic wastewater is principally derived from dwellings, business buildings, and institutions.[85] This wastewater leaves these structures through a domestic wastewater collection system[86] for treatment at a domestic wastewater treatment plant.[87] There are approximately 1,900 domestic wastewater treatment facilities in the state serving roughly two-thirds of the state's population.[88]

Domestic wastewater treatment facilities are reasonably expected to be sources of water pollution and must be operated, maintained, constructed, expanded, or modified with a permit issued by DEP.[89] Each day over 1.5 billion gallons of treated wastewater effluent[90] and reclaimed water[91] from these facilities are disposed of through a variety of methods (e.g., for reuse and land application systems; ground water disposal by underground injection; ground water recharge using injection wells; surface water discharges, excluding coastal and open ocean waters; disposal to coastal and open ocean waters; or wetland discharges).[92] These facilities must provide the level of disinfection[93] necessary to

[85] Section 367.021(5), F.S.; r. 62-600.200(21), F.A.C.
[86] Section 403.866(1), F.S., defines the term "domestic wastewater collection system" 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.
[87] Section 403.866(2), F.S., defines the term "domestic wastewater treatment plant" to mean any plant or other works used for the purpose of treating, stabilizing, or holding domestic wastes.
[88] 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 Jan. 27, 2018); The remainder of the state is served by on-site treatment and disposal systems permitted and regulated by the Department of Health.
[89] Section 403.087(1), F.S.
[90] Rule 62-600.200(22), F.A.C., defines the term "effluent" 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.
[91] Rule 62-600.200(54), F.A.C., defines the term "reclaimed water" 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, except as provided in ch. 62-610, F.A.C.
[92] 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 Jan. 27, 2018); ch. 62-610, F.A.C.
[93] Rule 62-600.200(18), F.A.C., defines the term "disinfection" to mean the selective destruction of pathogens in wastewater effluent, reclaimed water, and biosolids; r. 62-600.200(47), F.A.C., defines the term "pathogens" to mean disease-producing organisms.

protect public health such that the microbiological pollutants criteria are not exceeded for any receiving waters.[94] Most domestic wastewater treatment facilities must meet either basic disinfection or high-level disinfection.[95] Basic disinfection requires that the effluent contain less than 200 fecal coliforms per 100 microgram per milliliter.[96] High-level disinfection essentially requires that fecal coliforms be reduced below detection.[97]

Domestic wastewater treatment facilities that discharge to surface waters[98] must also obtain a National Pollutant Discharge Elimination System (NPDES) permit. The NPDES program is a federal program established by the Clean Water Act (CWA) to control point source discharges.[99] NPDES permit requirements for most domestic wastewater facilities are incorporated into a DEP-issued permit.[100]

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 an overflow, spill, release, discharge, or diversion of untreated or partially treated wastewater, referred to as a sanitary sewer overflow (SSO).[101] 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 the system through leaky infrastructure, roof drains connected to the system, or poorly connected wastewater lines, which are not intended to hold rainfall;
- Blocked, broken, or cracked pipes (e.g., roots growing into the system, settling or shifting so that pipe joints no longer match, buildup of sediment and other material) and other equipment or power failures that keep the system from functioning properly; and
- A deteriorating or aging system.[102]

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, and 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 the risk of human exposure. SSOs also have a negative effect on surface waters.[103]

Reduction of SSOs can occur through:

- Cleaning and maintaining the domestic wastewater system;
- Reducing infiltration and inflow through rehabilitation and repairing broken or leaking lines;
- Enlarging or upgrading pump stations or treatment plant capacity and/or reliability; and
- Constructing wet weather storage and treatment facilities to treat excess flows.[104]

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[94] Rules 62-600.440(1) and (4), F.A.C.; *see* ch. 62-302, F.A.C.
[95] DEP, *Ultraviolet Disinfection for Domestic Wastewater*, https://floridadep.gov/water/domestic-wastewater/content/ultraviolet-uv-disinfection-domestic-wastewater (last accessed Jan. 27, 2018).
[96] Rules 62-600.510(1) and 62-600.440(5), F.A.C.
[97] Rule 62-600.440(6), F.A.C.
[98] Section 373.019(21), F.S., defines the term "surface water" to mean 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.
[99] 33 U.S.C. §1342.
[100] Section 403.0885, F.S.; ch. 62-620, F.A.C.; DEP, *Wastewater Permitting*, https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting (last accessed Jan. 28, 2018); DEP, *Types of Permits*, http://flwaterpermits.com/typesofpermits.html (last assessed Jan. 28, 2018).
[101] DEP, *SSOs*, https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf (last accessed Jan. 26, 2018).
[102] DEP, *Preventing SSOs*, https://floridadep.gov/sites/default/files/preventing-sanitary-sewer-overflows.pdf (last accessed Jan. 27, 2018); DEP, *SSOs*, https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf (last accessed Jan. 26, 2018).
[103] DEP, *SSOs*, https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf (last accessed Jan. 26, 2018).
[104] *Id*.

After an SSO event, DEP reviews the data from the facility to assess the overall impact to the environment. DEP looks at 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. DEP also takes into account the severity of the rain event (e.g., was it a hurricane or a storm, or if the area had received rainfall beyond historical averages). If the discharge was caused by an operator error or lack of a certified operator on-site at the time, then DEP may consider additional training for operators to prevent similar errors from occurring in the future. DEP may meet with utilities to discuss infrastructure repairs and process improvements the facility is making and planning to implement to avoid further SSOs.[105]

Clean Water State Revolving Fund

The Clean Water State Revolving Fund (CWSRF) program 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.[106] The United States Environmental Protection Agency (EPA) classifies 11 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, as defined in section 212 of the CWA;
- Public, private, or nonprofit entity to implement a state nonpoint source pollution management program established under section 319 of the CWA;
- Public, private, or nonprofit entity to develop and implement a conservation and management plan under section 320 of the CWA;
- Public, private, or nonprofit entity to construct, repair, or replace decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage;
- Public, private, or nonprofit entity to manage, reduce, treat, or recapture stormwater or subsurface drainage water;
- Municipality or inter-municipal, interstate, or state agency to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse;
- Public, private, or nonprofit entity to develop and implement watershed projects meeting the criteria in section 122 of the CWA;
- Municipality or inter-municipal, interstate, or state agency to reduce the energy consumption needs for publicly owned treatment works;
- Public, private, or nonprofit entity for projects reusing wastewater, stormwater, or subsurface drainage water;
- Public, private, or nonprofit entity to increase security of publicly owned treatment works; and
- 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 CWA.[107]

EPA provides grants to the state to capitalize CWSRF loan programs. The states then contribute an additional 20 percent to match the federal grants.[108] The CWSRF then revolves through the repayment of principal and earned interest on outstanding loans.[109]

States are responsible for the operation of their CWSRF program and may provide various types of assistance, including loans, refinancing, purchasing, or guaranteeing local debt and purchasing bond insurance. States may set specific loan terms, including interest rates from zero percent to market rate

[105] *Id*.
[106] 33 USC §1383; EPA, *CWSRF*, https://www.epa.gov/cwsrf (last visited Jan. 26, 2018); EPA, *Learn about the CWSRF*, https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf (last visited Jan. 26, 2018).
[107] EPA, *Learn about the CWSRF*, https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf (last visited Jan. 26, 2018).
[108] *Id*.
[109] EPA, *Fed Funds for Water and Wastewater Utilities*, https://www.epa.gov/fedfunds/epa-state-revolving-funds (last visited Jan. 16, 2018); DEP. *SRF*, https://floridadep.gov/wra/srf (last visited Jan. 16, 2018).

and repayment periods of up to 30 years. States may also customize loan terms to meet the needs of small and disadvantaged communities, or to provide incentives for certain types of projects. In 2009, Congress authorized the CWSRF to provide further financial assistance through additional subsidization, such as grants, principal forgiveness, and negative interest rate loans.[110]

Florida's CWSRF Implementation

Florida implements the CWSRF pursuant to s. 403.1835, F.S., and the rules promulgated in ch. 62-503, F.A.C. DEP is authorized to make loans to local government agencies,[111] which may pledge any revenue available to them to repay any funds borrowed.[112] DEP may also make loans, grants, and deposits to other entities eligible to participate as authorized by federal law, which may pledge any revenue available to them to repay any funds borrowed.[113]

Effect of the Bill

The bill creates s. 403.1839, F.S., creating the blue star collection system assessment and maintenance program (program). The bill establishes the program within DEP to serve as a voluntary incentive program to assist public and private utilities in limiting SSOs and the unauthorized discharge of pathogens.

The bill defines the term:

- "Domestic wastewater" as having the same meaning as provided in s. 367.021, F.S.;
- "Domestic wastewater collection system" as having the same meaning as provided in s. 403.866, F.S.;
- "Program" to mean the blue star collection and maintenance program; and
- "SSO" to mean the unauthorized overflow, spill, release, discharge, or diversion of untreated or partially treated domestic wastewater.

The bill provides the following legislative findings:

- Implementation of domestic wastewater collection system assessment and maintenance practices has been shown to effectively limit SSOs and the unauthorized discharge of pathogens;
- Voluntary implementation of domestic wastewater collection system assessment and maintenance practices beyond those required by law has the potential to further limit SSOs; and
- 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 requires DEP to adopt rules to administer the program, including certification standards for the program. The bill requires DEP to review and approve public and private domestic wastewater utilities applying for program certification or renewal certification and for demonstrating maintenance of program certification based upon the certification standards. The bill requires a utility to provide reasonable documentation of the following criteria for program certification:

- Implementation of periodic collection system and pump station structural condition assessments and the performance of as-needed maintenance and replacements;

[110] EPA, *Learn about the CWSRF*, https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf (last visited Jan. 26, 2018).
[111] Section 403.1835(2)(c), F.S., defines the term "local governmental agencies" to mean any municipality, county, district, or authority, or any agency thereof, or a combination of two or more of the foregoing, acting jointly in connection with a project having jurisdiction over collection, transmission, treatment, or disposal of sewage, industrial wastes, stormwater, or other wastes and includes a district or authority whose principal responsibility is to provide airport, industrial or research park, or port facilities to the public.
[112] Section 403.1835(3)(a), F.S.
[113] Section 403.1835(3)(b), F.S.

- Rate of reinvestment determined necessary by the utility for 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, 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; and
- A power outage contingency plan that addresses mitigation of the impacts of power outages on the utility's collection system and pump stations.

The bill provides that a program certification expires after five years. The bill requires a utility to document its implementation of the program on an annual basis with DEP and demonstrate it meets all program criteria to maintain program certification. For certification renewal, the bill requires a utility to demonstrate maintenance of program standards and progress in implementing the program.

Beginning January 1, 2020, the bill requires DEP to publish annually on its website a list of certified blue star utilities. Also, the bill requires DEP to allow public and private, nonprofit utilities to participate in the CWSRF for any purpose of the program that is consistent with federal requirements.

Water Quality Standards

Present Situation

The CWA requires states to adopt water quality standards (WQS) for navigable waters, and to review and update the standards at least triennially.[114] The CWA requires states to develop lists of water bodies that do not meet WQS (impaired waters). States are then required to develop a total maximum daily loads (TMDLs) for the particular pollutants and the concentration of those pollutants causing the impairment relative to the WQS, which serves as the maximum allowable amount of pollutants that the water body can receive while maintaining the WQS.[115]

Total Maximum Daily Loads

TMDLs must include reasonable and equitable pollutant load allocations between or among point sources (e.g., pipes, 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, provide for the attainment of the pollutant reductions to achieve WQS for the pollutant causing impairment.[116] Implementation of the allocation must include consideration of a cost-effective approach coordinated between contributing point and nonpoint sources of pollution for impaired water bodies and may include the opportunity to implement the allocation through nonregulatory and incentive-based programs.[117]

Basin Management Action Plans

Once a TMDL is adopted,[118] DEP may develop and implement a basin management action plan (BMAP) that addresses some or all of the watersheds and basins tributary to the water body.[119] A BMAP must integrate appropriate management strategies available to the state through existing water

[114] 33 U.S.C. § 1313.
[115] 33 U.S.C. § 1313; *see* s. 403.067, F.S.
[116] Section 403.067(6)(b), F.S.
[117] Section 403.067(1), F.S.
[118] Section 403.067(6)(c), F.S.
[119] Section 403.067(7)(a)1., F.S.

quality protection programs to achieve the TMDL.[120] The BMAP must also 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. An assessment of progress toward these milestones must be conducted every five years, and revisions to the plan must be made as appropriate.[121]

For point source discharges, any management strategies and pollutant reduction requirements associated with a TMDL, including effluent limits set forth for a discharger subject to NPDES permitting, must be included in a timely manner in subsequent NPDES permits or permit modifications. DEP may not impose limits or conditions implementing an adopted TMDL in an NPDES permit until the permit expires, the discharge is modified, or the permit is reopened pursuant to an adopted BMAP.[122]

Where there is an adopted best management practice[123] (BMP) for a nonpoint source, the BMAP must require the nonpoint source to implement the BMP. The nonpoint source discharger must demonstrate compliance with the BMP or conduct water quality monitoring prescribed by DEP or a WMD and may be subject to enforcement action for failure to implement these pollutant load-reducing requirements.[124]

Best Management Practices and Presumption of Compliance with WQS

DEP, in cooperation with the WMDs and other interested parties, may develop suitable interim measures, BMPs, or other measures necessary to achieve the level of pollution reduction for nonagricultural nonpoint pollutant sources (e.g., mobile vehicle washing, green lodging). These practices and measures may be adopted by DEP or WMD rule and, where adopted by rule, must be implemented by those parties responsible for nonagricultural nonpoint source pollution.[125]

The effectiveness of adopted interim measures, BMPs, or other measures, including voluntary BMPs, in achieving pollution reduction must be verified at representative sites by DEP.[126] Implementation of practices that are initially verified to be effective, or verified as effective by monitoring at representative sites by DEP, must be granted a presumption of compliance with WQS and 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.[127]

Effect of the Bill

The bill amends s. 403.067(7), F.S., requiring DEP to provide a domestic wastewater utility with a presumption of compliance with WQS for pathogens 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, and the utility implements and maintains a program as a certified blue star utility.

Domestic Wastewater Treatment Facility Renewal Operating Permit

[120] Section 403.067(7)(a)1., F.S.
[121] Section 403.067(7)(a)6., F.S.
[122] Section 403.067(7)(b)2., F.S.
[123] Under the water quality credit trading rule, r. 62-306.200(2), F.A.C., the term "best management practice" is defined to mean a practice or combination of practices adopted by rule by the Department of Agriculture and Consumer Services, DEP, or applicable WMD as an effective and practicable means for reducing nutrient inputs and improving water quality, taking into account economic and technological considerations; Under the CWSRF rule, r. 62-503.200(4), F.A.C., defines the term "best management practice" to mean a control technique that is used for a given set of conditions to achieve water quality and water quantity enhancement at a feasible cost.
[124] Sections 403.067(7)(b)2.g.-h., F.S.
[125] Section 403.067(7)(c)1., F.S.; DEP, *BMPs*, https://floridadep.gov/taxonomy/term/387?page=1 (last visited Jan. 31, 2018).
[126] Sections 403.067(7)(c)3. and (12)(b), F.S.
[127] Section 403.067(7)(c)3., F.S.

Present Situation

A domestic wastewater treatment plant operating permit is issued for five years.[128] An applicant may request renewal of an operating permit for up to 10 years for the same fee and under the same conditions as a five-year permit, and must be issued the permit if:

- The facility is not regulated under the NPDES program;
- The waters from the facility are not discharged to Class I municipal injection wells or the facility is not required to comply with federal standards under the UIC program;
- The 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 EPA, DEP, or an approved local program;
- The 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;
- DEP has reviewed the discharge monitoring reports required by DEP rule and is satisfied that the reports are accurate;
- The facility has generally met WQS 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 are not reasonably expected to occur); and
- 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.[129]

Effect of the Bill

The bill amends s. 403.087, F.S, creating an additional opportunity by which a domestic wastewater treatment facility may qualify for issuance of a 10-year operating permit. The bill provides that a certified blue star utility pursuant to s. 403.1839, F.S., must be issued a 10-year permit for the same fee and under the same conditions as a five-year permit upon approval of its application for permit renewal by DEP, if the certified blue star utility demonstrates that it:

- Is in compliance with any consent order or an accompanying administrative order to its permit;
- Does not have any pending enforcement action against it by EPA, DEP, or a local program; and
- If applicable, has submitted the annual program implementation reports demonstrating progress in the implementation of the program.

Penalties for Causing Pollution

Present Situation

It is a violation of state law and prohibited by state law for any person to cause pollution that harms or injures human health or welfare, animal, plant, or aquatic life or property.[130] Whoever commits such a violation is liable to the state for any damage caused and for civil penalties.[131] Any person who willfully commits such 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. Each day during any portion of which such violation occurs constitutes a separate offense.[132] 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.[133]

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[128] Section 430.087(1), F.S.; r. 62-620.320(8), F.A.C.
[129] Section 403.087(3), F.S.
[130] Section 403.161(1)(a), F.S.
[131] Section 403.161(2), F.S.; *see* s. 403.141, F.S., for civil penalties.
[132] Section 403.161(3), F.S.; ss. 775.082(3)(e) and 775.083(1)(g), F.S.
[133] Section 403.161(6), F.S.

Effect of the Bill

The bill amends s. 403.161, F.S., providing that DEP may reduce a penalty based on the person's investment in the assessment, maintenance, rehabilitation, or expansion of the permitted facility.

The bill also creates s. 403.1839(7), F.S., providing that DEP may reduce a penalty assessed under s. 403.161, F.S., for a SSO at a certified blue star utility. Additionally, a penalty may be reduced based on the certified blue star utility's investment in assessment and maintenance activities to identify and address conditions that may cause SSOs or interruption of service to customers due to a physical condition or defect in the system.

Small Community Sewer Construction Assistance Act

Present Situation

The Small Community Sewer Construction Assistance Act (SCSC) is a grant program established as part of the CWSRF program to assist financially disadvantaged small communities with their needs for adequate domestic wastewater facilities.[134] Under the SCSC, a financially disadvantaged small community is defined as a county, municipality, county or special district[135] with a total population of 10,000 or less, and a per capita income (PCI) less than the state average PCI.[136] In 2016, the Legislature included counties and special districts as eligible entities for grants under SCSC if they otherwise met the definition of a financially disadvantaged small community.[137]

DEP administers the SCSC pursuant to rules adopted by the Environmental Regulation Commission (ERC). The ERC's rules must require that projects plan, design, construct, upgrade, or replace wastewater collection, transmission, treatment, disposal, and reuse facilities be cost-effective, environmentally sound, permittable, and implementable.[138]

Projects must compete separately for planning, design and construction grants. The highest priority is given to projects that address a public health risk and projects that are included in a BMAP. The grant percentage is determined by the sponsor's affordability index and is 70, 80, or 90 percent of the loan amount up to 25 percent of the funds available during the fiscal year. All projects must receive a CWSRF loan to receive these grant funds.[139]

ERC

The ERC is charged with exercising the standard-setting authority of DEP in certain circumstances.[140] It is composed of seven residents of the state appointed by the Governor, subject to Senate confirmation. Membership must be representative of agriculture, the development industry, local government, the environmental community, lay citizens, and members of the scientific and technical community who have substantial expertise in the areas of the fate and transport of water pollutants, toxicology, epidemiology, geology, biology, environmental sciences, or engineering. Appointments are for four-year terms. DEP provides administrative, personnel, and other support services necessary for the ERC. The ERC may employ independent counsel and contract for the services of outside technical consultants.[141]

Rural Area of Opportunity

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[134] Sections 403.1835(3)(d) and 403.1838, F.S.
[135] Section 189.012(6), F.S., defines the term "special district"; ss. 189.012(2) and (3), F.S., define the term "dependent special district" and "independent special district", respectively.
[136] Section 403.1838(2), F.S.
[137] Chapter 2016-55, Laws of Fla.
[138] Section 403.1838(3)(b), F.S.; *see* ch. 62-505, F.A.C.
[139] DEP, *CWSRF Program*, https://floridadep.gov/wra/srf/content/cwsrf-program (last visited Feb. 16, 2018).
[140] Sections 403.804 and 403.805(1), F.S.
[141] Section 20.255(6), F.S.

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.[142] 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.[143]

Effect of the Bill

The bill amends s. 403.1838, F.S., to provide eligibility under the SCSC for private, nonprofit utilities serving financially disadvantaged small communities. The bill also allows 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 BMAP for pollutants associated with domestic wastewater, and is wholly located within a RAO.

The bill also allows grants issued under the SCSC to be used for planning and implementing domestic wastewater collection system assessment programs identifying conditions that may cause SSOs or interruption of service to customers due to a physical condition or defect in the system. The bill requires the ERC to adopt rules requiring projects to assess wastewater collection, transmission, treatment, disposal, and reuse facilities be cost-effective, environmentally sound, permittable, and implementable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may have a negative fiscal impact to state revenues associated with the opportunities for reduced penalties related to SSOs at certified blue star utilities, as well as an opportunity for any person to reduce its penalty based on the investment, maintenance, rehabilitation, or expansion of a permitted facility. The bill may also have an indeterminate negative fiscal impact to state revenues as a result of issuing 10-year operating permits to certified blue star utilities, because it is unknown how many utilities will qualify and apply to become a certified blue star utility. The revenue impact would be to the Permit Fee Trust Fund in DEP. This trust fund currently has recurring expenditures that are greater than revenues, and DEP has been spending down the cash balance in the fund. Any negative impact on revenues will increase the recurring deficit in the fund and will spend the cash balance more quickly.

2. Expenditures:

   The bill may have an insignificant negative fiscal impact on DEP associated with the rulemaking requirements of the bill, as well as those associated with the ERC. The bill may also have an insignificant fiscal impact on DEP in implementing the program, including review of annual reports and the annual posting of certified blue star utilities on its website.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[142] Section 288.0656(2)(d), F.S.
[143] DEO, *RAO*, http://www.floridajobs.org/business-growth-and-partnerships/rural-and-economic-development-initiative/rural-areas-of-opportunity (last visited Feb. 22, 2018).

1. Revenues:

   The bill may have a positive fiscal impact on local governments when seeking issuance, renewal, or extension of a CUP resulting from further revisions to the Rule required by the bill; utilizing the coordinated review process for a reclaimed water project established by the MOA between DEP and the WMDs provided by the bill; and in being provided an exemption to provide mitigation to other entities other than themselves. The bill may also have a positive fiscal impact on local governments afforded an opportunity to have penalties reduced based on the investment, maintenance, rehabilitation, or expansion of their permitted facility. Additionally, the bill may have a positive fiscal impact on certain independent special districts awarded grant eligibility under the SCSC.

2. Expenditures:

   The bill may have an indeterminate fiscal impact on local governments who elect for their domestic wastewater treatment facilities to become a certified blue star utility. Establishing the requirements to become a certified blue star utility may be costly on the front end, but the benefits of being certified (e.g., a stitch in time approach; 10-year permit renewal; presumption of compliance for WQS; reduced penalties for SSOs) may eventually outweigh these costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on the private sector when seeking issuance, renewal, or extension of a CUP resulting from further revisions to the Rule required by the bill and utilizing the coordinated review process for a reclaimed water project established by DEP and a WMD MOA required by the bill.

The bill may have a positive fiscal impact on the private sector by prohibiting a local government from requiring the person to verify an ERP exception from DEP under s. 403.813, F.S. The bill may also have a positive fiscal impact on the private sector by expanding the ERP exception for the replacement or repair of existing docks and piers and in the requirement for DEP or a WMD to renew certain expired ERPs.

The bill may have a positive fiscal impact on the private sector in providing that residential recycling collectors are not required to collect or transport contaminated recyclable materials and recovered materials processing facilities are not required to process contaminated recyclable materials except pursuant to contract terms provided by the bill.

The bill may have a positive fiscal impact on the private water supply entity if the South Florida WMD enters into a capacity allocation agreement with the water supply entity for a pro rata share of unreserved capacity in the water storage facility, and the South Florida WMD requests DEP to waive repayment of all or a portion of the loan issued pursuant to s. 373.475, F.S.

The bill may have an indeterminate fiscal impact on the private sector who elect for their domestic wastewater treatment utilities to become certified blue star utilities. Establishing the requirements to become a certified blue star utility may be costly on the front end, but the benefits of being certified (e.g., a stitch in time approach; 10-year operating permit renewal; presumption of compliance with WQS; reduced penalties for SSOs) may eventually outweigh these costs. Additionally, the bill may have a positive fiscal impact on public and private, nonprofit utilities who elect to participate in the program awarded eligibility to the CWSRF and the SCSC.

The bill may have a positive fiscal impact on the private sector afforded an opportunity to have its penalty reduced based on the investment, maintenance, rehabilitation, or expansion of a permitted facility, regardless of the utility's status of being a certified blue star utility.

D. FISCAL COMMENTS:

Ch. 2017-10, Laws of Fla., provided $30 million in nonrecurring funds from the General Revenue Trust Fund to the Water Resource Projection and Sustainability Trust Fund to provide a loan to the water supply entity responsible for implementing Phase I of the C-51 reservoir project through the water storage facility revolving loan fund. The water supply entity has executed capacity allocation agreements with local governments to allow the local governments to utilize specific water allocations identified in the agreements. The executed capacity allocation agreements do not utilize the total capacity of water available in the reservoir.

The bill allows the South Florida WMD to enter into a capacity allocation agreement with the water supply entity for an allocation of the unreserved water needed for the natural system based on water needs identified in CERP or other restoration plans. The bill allows the South Florida WMD to request that DEP waive repayment of all or a portion of the loan based on pro rata share of the costs for providing the water storage capacity in the reservoir used by the South Florida WMD. Instead of the South Florida WMD directly providing the funding to develop the water capacity in the C-51 reservoir, the South Florida WMD may request that DEP waive repayments of the loan by the water supply entity. Waiving repayment of the loan will reduce the future funding available for other water storage reservoirs that qualify for loans under the water storage facility revolving loan fund.