

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Environment and Natural Resources

BILL: SB 1344

INTRODUCER: Senator Cruz

SUBJECT: Statewide Environmental Resource Permitting Rules

DATE: April 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	Favorable
2.	_____	_____	AEG	_____
3.	_____	_____	AP	_____

I. Summary:

SB 1344 requires the water management districts, with Department of Environmental Protection (DEP) oversight, to adopt rules governing stormwater quality and quantity, including standards for removing nutrients from stormwater discharges. The bill requires DEP to incorporate these standards by reference for use within each district to ensure new pollutant loadings are not discharged into impaired water bodies.

The bill requires DEP and the water management districts, by December 1, 2019, to amend the environmental resource permit applicant’s handbook to include revised best management practices and low impact design that increase the removal of nutrients from stormwater discharges and to require application of the net improvement performance standard to ensure that new pollutant loadings are not discharged into impaired water bodies.

The bill clarifies that a rebuttable presumption that a stormwater management system does not cause or contribute to violations of water quality standards applies if designed in accordance with certain stormwater treatment requirements *and* best management practices criteria.

II. Present Situation:

Stormwater Management

Stormwater is the flow of water resulting from, and immediately following, a rainfall event.¹ When stormwater falls on pavement, buildings, and other impermeable surfaces the runoff flows quickly and can pick up sediment, nutrients (such as nitrogen and phosphorous), chemicals, and

¹ DEP and Water Management Districts, *Environmental Resource Permit Applicant’s Handbook Volume I (General and Environmental)*, 2-10 (June 1, 2018), available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Appllicant_Hanbook_I_-_Combined.pd_0.pdf (last visited Mar. 29, 2019).

other pollutants.² A stormwater management system is a system designed to control discharges necessitated by rainfall events, incorporating methods to collect, convey, store, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution.³ Most activities that create new impermeable surfaces or alter surface water flows will involve a stormwater management system.⁴ Stormwater pollution is a major source of water pollution in Florida.⁵

The Department of Environmental Protection's (DEP) rules state that effective stormwater management is essential to reduce nonpoint source pollution.⁶ Stormwater runoff is a form of nonpoint source pollution because it comes from many different places and not from a single identifiable point.⁷ Nonpoint source pollution is the largest contributor of pollutants to Florida's surface and ground waters.⁸ DEP states that it is far easier and much more cost-effective to prevent or minimize nonpoint source pollution, especially from new land use activities, than it is to restore polluted waterbodies.⁹

Methods, such as low-impact design technologies and best management practices, can be implemented to address pollution in stormwater discharges.¹⁰ Low-impact development refers to systems and practices that mimic or preserve natural drainage processes to manage stormwater.¹¹ This approach is also known as "green infrastructure," and instead of moving stormwater away from the built environment these methods treat stormwater at its source.¹² Low-impact designs, including green roofs, permeable pavements, or bioswales, can result in stormwater being reused, soaking into vegetation which performs evaporative cooling, or infiltrating the soil and replenishing groundwater.¹³ A stormwater best management practice (BMP) is a method or

² DEP, *Stormwater Management*, 1 (2016), available at https://floridadep.gov/sites/default/files/stormwater-management_0.pdf (last visited Mar. 30, 2019). When rain falls on fields, forests, and other areas with naturally permeable surfaces the water not absorbed by plants filters through the soil and replenishes Florida's groundwater supply.

³ Section 373.403(10), F.S.

⁴ DEP and Water Management Districts, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)*, 1-5 (June 1, 2018), available at https://www.sfwmd.state.fl.us/sites/default/files/medias/documents/Applylicant_Hanbook_I_-_Combined.pdf (last visited Mar. 29, 2019).

⁵ DEP, *Stormwater Support*, <https://floridadep.gov/water/engineering-hydrology-geology/content/stormwater-support> (last visited Mar. 30, 2019); DEP, *Nonpoint Source Program Update*, 10 (2015), available at <https://floridadep.gov/sites/default/files/NPS-ManagementPlan2015.pdf> (last visited Mar. 30, 2019).

⁶ Fla. Admin. Code R. 62-40.431(1).

⁷ U.S. EPA, *Basic Information about Nonpoint Source (NPS) Pollution*, <https://www.epa.gov/nps/basic-information-about-nonpoint-source-nps-pollution> (last visited Mar. 30, 2019).

⁸ DEP, *Nonpoint Source Program Update*, 9 (2015), available at <https://floridadep.gov/sites/default/files/NPS-ManagementPlan2015.pdf> (last visited Mar. 30, 2019).

⁹ *Id.* at 10.

¹⁰ South Florida Water Management District, *Quick Facts on the Statewide Unified Stormwater Rule* (2009), available at https://www.sfwmd.gov/sites/default/files/documents/spl_stormwater_rule.pdf (last visited Mar. 30, 2019).

¹¹ U.S. EPA, *Benefits of Low Impact Development*, 1 (2012), available at <https://www.epa.gov/sites/production/files/2015-09/documents/bbfs1benefits.pdf> (last visited Mar. 30, 2019); U.S. EPA, *Urban Runoff: Low Impact Development*, <https://www.epa.gov/nps/urban-runoff-low-impact-development> (last visited Mar. 27, 2019).

¹² DEP, *Green Infrastructure*, <https://floridadep.gov/wra/319-tmdl-fund/content/green-infrastructure> (last visited Mar. 30, 2019).

¹³ U.S. EPA, *Benefits of Low Impact Development*, 1 (2012), available at <https://www.epa.gov/sites/production/files/2015-09/documents/bbfs1benefits.pdf> (last visited Mar. 30, 2019); South Florida Water Management District, *Quick Facts on the Statewide Unified Stormwater Rule* (2009), available at https://www.sfwmd.gov/sites/default/files/documents/spl_stormwater_rule.pdf (last visited Mar. 30, 2019).

combination of methods found to be the most effective and feasible means of preventing or reducing the amount of pollution generated, and this may include low-impact designs.¹⁴

Since the 1980s, Florida has regulated the discharge of stormwater to prevent pollution of the waters of the state and protect the designated beneficial use of surface waters.¹⁵ Florida has established minimum stormwater treatment performance standards, which require design and performance criteria for new stormwater management systems to: achieve at least 80 percent reduction of the average annual load of pollutants that would cause or contribute to violations of state water quality standards and achieve at least 95 percent reduction of the average annual load of pollutants that would cause or contribute to violations of state water quality standards in Outstanding Florida Waters (OFW).¹⁶ When a stormwater management system complies with rules establishing applicable design and performance criteria, there is a rebuttable presumption that the system's discharge will comply with state water quality standards.¹⁷ Research has shown that stormwater management systems can vary greatly in pollutant removal effectiveness.¹⁸

Environmental Resource Permits

Florida's Environmental Resource Permitting (ERP) program regulates activities involving the alteration of surface water flows.¹⁹ This includes activities that create stormwater runoff, as well as dredging and filling in wetlands and other surface waters.²⁰ ERPs are designed to prevent flooding, protect wetlands and other surface waters, and protect Florida's water quality from stormwater pollution.²¹ The statewide ERP program is implemented by DEP, the water management districts, and certain local governments.

DEP and the water management districts are authorized to require permits and impose reasonable conditions to ensure that construction or alteration of stormwater management systems and related structures are consistent with applicable law and not harmful to water resources.²² DEP and the water management districts are also authorized to require permits and impose reasonable conditions for the maintenance or operation of such structures.²³

¹⁴ South Florida Water Management District, *Best Management Practices for South Florida Urban Stormwater Management Systems*, 2 (2002), available at https://www.sfwmd.gov/sites/default/files/documents/bmp_manual.pdf (last visited Mar. 30, 2019).

¹⁵ DEP, *Evaluation of Current Stormwater Design Criteria within the State of Florida*, 1-1 (2007), available at <https://www.sfwmd.gov/sites/default/files/documents/sw%20treatment%20report-final71907.pdf> (last visited Mar. 30, 2019).

¹⁶ Fla. Admin. Code R. 62-40.432(2); DEP, *Outstanding Florida Waters*, <https://floridadep.gov/dear/water-quality-standards/content/outstanding-florida-waters> (last visited Mar. 30, 2019).

¹⁷ Fla. Admin. Code R. 62-40.432(2).

¹⁸ DEP, *Evaluation of Current Stormwater Design Criteria within the State of Florida*, 1-1 (2007), available at <https://www.sfwmd.gov/sites/default/files/documents/sw%20treatment%20report-final71907.pdf> (last visited Mar. 30, 2019).

¹⁹ Chapter 373, p. IV, F.S.; Fla. Admin. Code Ch. 62-330; DEP, *DEP 101: Environmental Resource Permitting*, <https://floridadep.gov/comm/press-office/content/dep-101-environmental-resource-permitting> (last visited Mar. 30, 2019).

²⁰ DEP, *DEP 101: Environmental Resource Permitting*, <https://floridadep.gov/comm/press-office/content/dep-101-environmental-resource-permitting> (last visited Mar. 30, 2019).

²¹ South Florida Water Management District, *Environmental Resource Permits*, <https://www.sfwmd.gov/doing-business-with-us/permits/environmental-resource-permits> (last visited Mar. 29, 2019).

²² Section 373.413, F.S.; see s. 403.814(12), F.S.

²³ Section 373.416, F.S.

In 2012, the Legislature passed s. 373.4131, F.S., which directed DEP to create new statewide ERP rules.²⁴ The law requires DEP, in coordination with the water management districts, to adopt statewide ERP rules governing the construction, operation, or removal of stormwater management systems, dams, reservoirs, appurtenant works, or any combination thereof.²⁵ The rules must provide for general permits that do not allow significant adverse impacts and impose conditions including monitoring, inspection, and reporting requirements.²⁶ The rules must also provide for conceptual permits for local governments that create stormwater master plans for urban infill and redevelopment areas or community redevelopment areas.²⁷

The water management districts are required to implement DEP's rules under the ERP permitting program and are authorized to implement and interpret the rules.²⁸ The districts are authorized, with DEP oversight, to continue to adopt rules governing design and performance standards for stormwater quality and quantity, which DEP may incorporate by reference into its rules for use within the geographic jurisdiction of each district.²⁹ DEP may delegate authority to implement the ERP program to local governments.³⁰

DEP and the water management districts must require applicants to provide reasonable assurance that state water quality standards will not be violated.³¹ If a stormwater management system is designed in accordance with the stormwater treatment requirements and criteria adopted by DEP or the water management districts, then the system design is presumed not to cause or contribute to violations of applicable state water quality standards.³² If a stormwater management system is constructed, operated, and maintained for stormwater treatment in accordance with a valid permit or exemption then the stormwater discharged from the system is presumed not to cause or contribute to violations of applicable state water quality standards.³³ If an applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, DEP or a district must consider mitigation measures acceptable to the applicant that cause net improvement of the water quality in the water body that does not meet the standards.³⁴

²⁴ Chapter 2012-94, Laws of Fla.; Susan Roeder Martin, *New Environmental Resource Permit Rules*, FLORIDA BAR JOURNAL Vol. 87, No. 8 (2013), available at <https://www.floridabar.org/the-florida-bar-journal/new-environmental-resource-permit-rules/> (last visited Mar. 29, 2019); Florida Senate, Committee on Environmental Preservation and Conservation, *Statewide Environmental Resource Permit*, 6 (2012), available at

<https://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-121ep.pdf> (last visited Mar. 29, 2019).

²⁵ Section 373.4131(1), F.S.

²⁶ *Id.*

²⁷ *Id.*; s. 163.340(10), F.S. "Community redevelopment area" is defined as "a slum area, a blighted area, or an area in which there is a shortage of housing that is affordable to residents of low or moderate income, including the elderly, or a coastal and tourist area that is deteriorating and economically distressed due to outdated building density patterns, inadequate transportation and parking facilities, faulty lot layout or inadequate street layout, or a combination thereof which the governing body designates as appropriate for community redevelopment"; see ch. 163, part III, F.S.

²⁸ Section 373.4131(2), F.S.

²⁹ Section 373.4131(3), F.S.

³⁰ Sections 373.4131(2)(b) and 373.441, F.S.; Fla. Admin. Code R. 62-344.500.

³¹ Section 373.414(1), F.S.; see s. 373.403(11), F.S.; see Ch. 403, F.S.; see Fla. Admin. Code Ch. 62-4, 62-302, 62-520, and 62-550.

³² Section 373.4131(3)(b), F.S.

³³ Section 373.4131(3)(c), F.S.

³⁴ Section 373.414(1)(b)3., F.S.

Chapter 62-330 of the Florida Administrative Code implements the statewide ERP program under s. 373.4131, F.S.³⁵ Under the rules, a permit is required prior to the construction, alteration, operation, maintenance, removal, or abandonment of any nonexempt project that cumulatively results in any of the following:

- Any project in, on, or over wetlands or other surface waters;
- A total of more than 4,000 square feet of impervious and semi-impervious surface areas subject to vehicular traffic;
- A total of more than 9,000 square feet of impervious and semi-impervious surface area;
- A total project area of more than five acres;
- A capability of impounding more than 40 acre-feet of water;
- Any dam having a height of more than 10 feet, as measured from the lowest elevation of the downstream toe to the dam crest;
- Any project that is part of a larger common plan of development or sale;
- Any dry storage facility storing 10 or more vessels that is functionally associated with a boat launching area;
- Any project exceeding the thresholds in section 1.2 (District-specific thresholds) of the applicable Volume II; or
- Any modification or alteration of a project previously permitted under part IV of ch. 373, F.S.³⁶

Exemptions from these permitting requirements exist, both in the rules and in district handbooks, including for activities relating to aquatic plant control, repair of bridges and roadways, and silviculture (cultivating trees).³⁷

The ERP rules contain numerous permit conditions that are designed to protect water resources. As a condition of permitting, activities may not be conducted in a manner that causes or contributes to violations of state water quality standards.³⁸ Another condition is the use of performance-based erosion and sediment control BMPs.³⁹

Environmental Resource Permit Applicant's Handbook

The Environmental Resource Permit Applicant's Handbook was developed by DEP to help people understand the rules, procedures, standards, and criteria that apply to the ERP program.⁴⁰ The handbook exists in two volumes, and both are incorporated into the Florida Administrative Code by reference.⁴¹

³⁵ Fla. Admin. Code Ch. 62-330.

³⁶ Fla. Admin. Code R. 62-330.020(2).

³⁷ Fla. Admin. Code R. 62-330.051 and 62-330.0511.

³⁸ Fla. Admin. Code R. 62-330.350(1)(c) and 62-330.405.11; *see* Fla. Admin. Code R. 62-330.301(1).

³⁹ Fla. Admin. Code R. 62-330.350(1)(c) and 62-330.405.11.

⁴⁰ Section 373.4131(1)(a)9., F.S.; DEP and Water Management Districts, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)*, 1-4 (June 1, 2018), available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Appliicant_Hanbook_I_-_Combined_pd_0.pdf (last visited Mar. 29, 2019).

⁴¹ Fla. Admin. Code R. 62-330.010(4).

The Applicant's Handbook Volume I applies statewide to all activities regulated under Chapter 62-330 of the Florida Administrative Code, and it includes:

- Explanations, procedures, guidance, standards, and criteria on what is regulated by the chapter;
- The types of permits available;
- How to submit an application or notice for a regulated activity;
- How applications and notices are reviewed;
- The standards and criteria for issuance; and
- Permit duration and modification.⁴²

A separate ERP Applicant's Handbook Volume II is adopted by each water management district, for use within their respective jurisdictions.⁴³ The separate volumes provide design and performance standards specific to the geographical areas of each district, accounting for regional differences in hydrology, soils, geology, and rainfall.⁴⁴ Volume II applies whether an ERP application is processed by DEP, a water management district, or a delegated local government.⁴⁵ Volume II provides:

- Design and performance standards and criteria for water quality and quantity, including those for specific types of stormwater management systems, dams, impoundments, reservoirs, works, and appurtenant works;
- Standards and criteria pertaining to special basins that may exist within the geographic area of each district;
- Standards and criteria pertaining to flood protection; and
- Design and performance standards for dams.

These design and performance standards and criteria are also applicable to inspections, compliance, and enforcement.⁴⁶

Operating agreements between DEP and each water management district specify which agency will process each type of application.⁴⁷ DEP generally reviews and takes action on applications involving waste facilities, mining, power plants and transmission lines, certain types of dredging, seaports, single-family dwelling units, systems seaward of the coastal construction control line, and other related areas.⁴⁸ The water management districts review and take action on all other applications.⁴⁹

⁴² Fla. Admin. Code R. 62-330.010(4)(a).

⁴³ Fla. Admin. Code R. 62-330.010(4)(b); DEP, *ERP Stormwater*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/erp-stormwater> (last visited Mar. 29, 2019).

⁴⁴ DEP and Water Management Districts, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)*, 1-5 (June 1, 2018), available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Applicant_Hanbook_I_-_Combined.pdf (last visited Mar. 29, 2019).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ DEP, Environmental Resource Permitting Coordination, Assistance, Portals, *Operating Agreements ERP Permitting: DEP District Offices and the Water Management District Offices*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/environmental-resource-permitting> (last visited Mar. 29, 2019); see Fla. Admin Code Ch. 62-113.

⁴⁸ *Id.*

⁴⁹ *Id.*

Net Improvement

An applicant for an ERP permit must provide reasonable assurance that the regulated activity will not cause or contribute to violations of water quality standards.⁵⁰ If the site of the proposed activity currently does not meet water quality standards then the applicant must demonstrate that the activities will not contribute to the existing violation or must propose mitigation.⁵¹

An “impaired water” is a waterbody or segment of a waterbody that does not meet its applicable water quality standards, due at least in part to discharges of pollutants from point or nonpoint sources.⁵² DEP’s regulations provide the process for identification of waters that do not meet state water quality standards and that are subject to pollution limits and recovery plans.⁵³

When an applicant is unable to meet water quality standards because existing ambient water quality does not meet the standards, and the activity will cause or contribute to this existing condition, mitigation for water quality impacts can consist of water quality enhancement that achieves a net improvement.⁵⁴ In such cases, the applicant must propose and agree to implement mitigation measures that will cause net improvement of the water quality in the receiving waters that are not meeting the standards.⁵⁵

NPDES Permits

The ERP program is separate from the National Point Discharge Elimination System (NPDES) permitting program, which is part of the federal Clean Water Act and includes certain types of stormwater permitting.⁵⁶ Although DEP is authorized to implement parts of the NPDES program, NPDES permitting is a federal program that is not linked to the ERP program, and applicants are advised to pursue both ERP and NPDES permits, as required, prior to construction.⁵⁷

⁵⁰ DEP and Water Management Districts, *Environmental Resource Permit Applicant’s Handbook Volume I (General and Environmental)*, 10-9 (June 1, 2018), available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Applicant_Hanbook_I_-_Combined.pdf (last visited Mar. 29, 2019); see s. 373.414(1), F.S.

⁵¹ *Id.* at 10-11.

⁵² See Fla. Admin. Code R. 62-303.200(7).

⁵³ DEP and Water Management Districts, *Environmental Resource Permit Applicant’s Handbook Volume I (General and Environmental)*, 1-13 (June 1, 2018), available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Applicant_Hanbook_I_-_Combined.pdf (last visited Mar. 29, 2019); see Fla. Admin. Code Ch. 62-303, 62-304, and 62-306; see DEP, *Assessment Lists*, <https://floridadep.gov/dear/watershed-assessment-section/content/assessment-lists> (last visited Mar. 30, 2019).

⁵⁴ *Id.* at 8-2, 10-26.

⁵⁵ *Id.*; see s. 373.414(1)(b)3., F.S.; see Fla. Admin Code R. 62-330.301(2) and 62-330-451(7)(b).

⁵⁶ DEP and Water Management Districts, *Environmental Resource Permit Applicant’s Handbook Volume I (General and Environmental)*, 1-9, 1-10 (June 1, 2018), available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Applicant_Hanbook_I_-_Combined.pdf (last visited Mar. 29, 2019); see DEP, *Construction Activity (CGP)*, <https://floridadep.gov/water/stormwater/content/construction-activity-cgp> (last visited Mar. 31, 2019). A NPDES Stormwater Construction Generic Permit (CGP) is required for construction activities that: disturb at least one or more acres of land or disturb less than one acre of land but are part of a common plan of development or sale; and discharge stormwater to surface waters of the state or to surface waters of the state through a municipal separate storm sewer system (MS4).

⁵⁷ DEP and Water Management Districts, *Environmental Resource Permit Applicant’s Handbook Volume I (General and Environmental)*, 1-9 (June 1, 2018), available at

2010 Stormwater Rulemaking

From 2008 to 2010, DEP and the water management districts worked together on developing a statewide unified stormwater rule. The general goal of the rulemaking initiative was to protect Florida's surface waters from the effects of excessive nutrients in stormwater runoff.⁵⁸ A technical advisory committee was established to assist the staff of DEP and the districts, and the committee met ten times leading up to 2010.⁵⁹ In 2010, DEP announced a series of workshops to present for public comment the statewide stormwater quality draft rule Chapter 62-347 of the Florida Administrative Code and an Applicant's Handbook.⁶⁰ The notice stated that DEP, the water management districts, and a technical advisory committee had "developed stormwater quality design and performance standards to update the existing criteria and reflect new research and today's understanding of the impact of nutrient discharges from surface water management systems on water quality."⁶¹ The notice also stated that the goal of the rule was to "increase the level of nutrient treatment in stormwater discharges and provide statewide consistency by establishing revised stormwater quality treatment performance standards and best management practices design criteria."⁶²

These rulemaking efforts produced a draft version of a document called the "Environmental Resource Permit Stormwater Quality Applicant's Handbook: Design Requirements for Stormwater Treatment in Florida."⁶³ The handbook applied to the design of stormwater treatment systems authorized pursuant to ch. 373, F.S., and stated that Chapter 62-347 of the Florida Administrative Code would be entitled "Stormwater Treatment Systems."⁶⁴ The handbook defined stormwater treatment system as "a system which is designed and constructed or implemented to reduce the discharge of pollutants in stormwater by incorporating methods to collect, convey, store, absorb, treat, use, or reuse stormwater."⁶⁵ Fifteen different types of stormwater treatment systems were listed, including low impact design, pervious pavements, and stormwater harvesting.⁶⁶

https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Applicant_Hanbook_I_-_Combined.pdf (last visited Mar. 29, 2019).

⁵⁸ South Florida Water Management District, *Quick Facts on the Statewide Unified Stormwater Rule*, https://www.swfwmd.gov/sites/default/files/documents/spl_stormwater_rule.pdf (last visited Mar. 30, 2019).

⁵⁹ Nicole C. Kibert, *Status of Low Impact Development in Florida and Legal Considerations for Operation and Maintenance of LID Systems*, FLORIDA BAR JOURNAL Vol. 85, No. 1 (2011), available at <https://www.floridabar.org/the-florida-bar-journal/status-of-low-impact-development-in-florida-and-legal-considerations-for-operation-and-maintenance-of-lid-systems/> (last visited Mar. 30, 2019).

⁶⁰ Florida Administrative Register, Notices of Meetings, Workshops, and Public Hearings, *Notice of Rescheduling*, pg. 1885 (Apr. 23, 2010), available at <https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2010/3616/3616doc.pdf> (last visited Mar. 30, 2019).

⁶¹ *Id.*

⁶² *Id.*

⁶³ DEP and Water Management Districts, *March 2010 Draft, Environmental Resource Permit Stormwater Quality Applicant's Handbook, Design Requirements for Stormwater Treatment Systems in Florida* (2010), available at https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/content2/roadway/drainage/files/stormwaterqualityapphb-draft.pdf?sfvrsn=579bf184_0 (last visited Mar. 30, 2019).

⁶⁴ *Id.* at 1; see s. 373.4142, F.S.

⁶⁵ DEP and Water Management Districts, *March 2010 Draft, Environmental Resource Permit Stormwater Quality Applicant's Handbook, Design Requirements for Stormwater Treatment Systems in Florida*, 1, 5 (2010). The handbook described stormwater treatment systems as usually being components of surface water management systems.

⁶⁶ *Id.* at 3. Language highlighted in yellow was where comments and alternatives were especially being sought.

The 2010 draft handbook's stormwater quality permitting requirements provided for different stormwater treatment performance standards based on various classifications of water quality.⁶⁷ The handbook included instructions for calculating a project's required nutrient load reduction based on comparing the pre-development and post-development loadings.⁶⁸ In order to implement appropriate BMPs to minimize erosion and control sediment, the handbook required applicants to have either: an erosion and sediment control plan, or a stormwater pollution prevention plan.⁶⁹ Stating that stormwater treatment systems are composed of BMPs, the handbook provided required criteria for such BMPs while categorizing them into three types:

- Retention BMPs, where stormwater is not discharged but is recovered through percolation into the soil, evaporation, or evapotranspiration;
- Detention BMPs, which retain stormwater and discharge it at a specified rate, usually the predevelopment peak discharge rate; and
- Source control BMPs, practices that are nonstructural BMPs used to either minimize the amount of stormwater generated or minimize the amount of pollution getting into the stormwater.⁷⁰

The 2010 draft handbook provided criteria for Low Impact Design BMPs, stating that when these nonstructural BMPs are applied early in the design process they can reduce stormwater volume and pollutants generated from development sites.⁷¹ Five of these BMPs were listed as being eligible for "stormwater nutrient load reduction credits": natural area conservation; site reforestation; disconnecting directly connected impervious areas; Florida-friendly landscaping; and rural subdivisions.⁷²

The new rule and revised handbook were expected to be adopted in 2011.⁷³ However, no such rules or revised handbook were ever adopted, and Chapter 62-347 of the Florida Administrative Code, entitled "Stormwater Permitting," contains no regulations.⁷⁴ While the draft Stormwater Quality Applicant's Handbook never went into effect it can provide context for understanding what new rules on these topics may look like.

⁶⁷ *Id.* at 6-7.

⁶⁸ *Id.* at 8-11.

⁶⁹ *Id.* at 21.

⁷⁰ *Id.* at 29.

⁷¹ *Id.* at 146.

⁷² *Id.* at 146-151.

⁷³ Nicole C. Kibert, *Status of Low Impact Development in Florida and Legal Considerations for Operation and Maintenance of LID Systems*, FLORIDA BAR JOURNAL Vol. 85, No. 1 (2011), available at <https://www.floridabar.org/the-florida-bar-journal/status-of-low-impact-development-in-florida-and-legal-considerations-for-operation-and-maintenance-of-lid-systems/> (last visited Mar. 30, 2019).

⁷⁴ Department of State, Florida Administrative Code, *Division: 62*, <https://www.flrules.org/gateway/organization.asp?divid=430> (last visited Mar. 30, 2019).

III. Effect of Proposed Changes:

Section 1 amends s. 373.4131, F.S., which requires the Department of Environmental Protection (DEP), water management districts, and local governments to establish environmental resource permitting programs for stormwater management systems, dams, impoundments, reservoirs, and associated structures or canals.

The bill requires the water management districts, with DEP oversight, to adopt rules governing design and performance standards for stormwater quality and quantity, including design and performance standards that increase the removal of nutrients from stormwater discharges from all new development and redevelopment projects.

The bill requires DEP to incorporate by reference the design and performance standards adopted by the water management districts for use within the geographic jurisdiction of each water management district to ensure that new pollutant loadings are not discharged into impaired water bodies.

The bill requires DEP and the water management districts, by December 1, 2019, to amend the environmental resource permit applicant's handbook to include revised best management practices design criteria and low impact design best management practices and design criteria that increase the removal of nutrients from stormwater discharges from all new development and redevelopment projects and measures for consistent application of the net improvement performance standard to ensure that new pollutant loadings are not discharged into impaired water bodies.

The bill clarifies that a rebuttable presumption that a stormwater management system does not cause or contribute to violations of water quality standards applies if designed in accordance with certain stormwater treatment requirements *and* best management practices criteria.

Section 2 states that the bill takes effect on July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The bill requires DEP and the water management districts to create new rules and standards and to amend the environmental resource permit applicant's handbook. These actions may cause DEP and the water management districts to incur additional costs. Therefore, this bill may have an indeterminate, negative fiscal impact on DEP and the water management districts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 373.4131 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.