

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 141 Water Quality Improvements  
**SPONSOR(S):** Agriculture & Natural Resources Subcommittee, Fine and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 216

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	14 Y, 0 N, As CS	Melkun	Shugar
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

The Indian River Lagoon (IRL) is a biologically diverse estuary that is home to more than 2,000 species of plants, 600 species of fish, 300 species of birds, and 53 endangered or threatened species. Development has led to harmful levels of nutrients and sediments entering the lagoon as a result of stormwater runoff from urban and agricultural areas, wastewater treatment facility discharges, septic systems, and excess fertilizer applications. The St. Johns River Water Management District (SJRWMD) and local governments have been implementing projects that address water quality issues in the IRL.

The bill creates s. 373.4594, F.S., a grant program and requires each grant to have a minimum 50 percent local match. The bill requires DEP to coordinate with water management districts to identify grant recipients. The bill further requires DEP to submit an annual report to the Governor and Legislature.

The bill creates s. 403.0771, F.S., to require public notification by wastewater treatment facilities that unlawfully discharge raw or partially treated sewage into any waterway or aquifer within 24 hours of discovering the discharge. Written notification must include the date and time of discharge, the status of the discharge, the estimated volume of the discharge, the location or address of the discharge, a description of the area affected, and the name and phone number of all elected local government officials who have authority over the facility responsible for the discharge. The bill requires notification be sent to customers contingent on the volume of the spill and how far from the discharge the customer lives.

Finally, the bill amends s. 403.141, F.S. to create additional civil penalties for the unlawful discharge of raw or partially treated sewage by a wastewater treatment facility. The bill states that if a facility unlawfully discharges into any waterway or aquifer they must: remit to the department an amount equal to \$1 for each gallon of sewage discharged; or calculate the gallons of sewage discharged, and, with the department's approval, spend \$2 for each gallon discharged to upgrade or remediate the problems which gave rise to the unlawful discharge. The bill further requires a facility to remit a minimum penalty of \$10,000 if the number of gallons of sewage discharged cannot be calculated or estimated.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### The Indian River Lagoon

The Indian River Lagoon (IRL) system runs along 156 miles of Florida's east coast, extending from Ponce de Leon Inlet near New Smyrna Beach in Volusia County to Jupiter Inlet in Martin County.<sup>1</sup> The IRL system is composed of three main waterbodies: the Mosquito Lagoon, the Banana River, and the Indian River Lagoon.<sup>2</sup> More than 71 percent of its area and nearly half its length is within Brevard County.<sup>3</sup> The IRL system is an estuary in which freshwater from uplands and tributaries meets and mixes with saltwater from the ocean to create an estuarine environment.<sup>4</sup>

The IRL is a biologically diverse estuary that is home to more than 2,000 species of plants, 600 species of fish, 300 species of birds, and 53 endangered or threatened species.<sup>5</sup> The estimated economic value received from the IRL in 2014 was approximately \$7.6 billion, \$1.57 million of which was attributable to recreation and visitor-related activity.<sup>6</sup> Industry groups that are directly influenced by the IRL support nearly 72,000 jobs.<sup>7</sup>

Much of the IRL ecosystem has been disturbed by increased development in the area. Development has led to harmful levels of nutrients and sediments are entering the lagoon as a result of stormwater runoff from urban and agricultural areas, wastewater treatment facility discharges, septic systems, and excess fertilizer applications.<sup>8</sup> In recent years, there have been recurring brown tides; unusual mortalities of dolphins, manatees, and shorebirds; and large fish kills due to low dissolved oxygen from decomposing algae.<sup>9</sup> In 2011, a phytoplankton algae bloom occurred throughout most of the IRL system, extending from Southern Mosquito Lagoon to just north of the Ft. Pierce Inlet.<sup>10</sup> This "2011 Superbloom" lasted for seven months and resulted in a massive loss of seagrass coverage.<sup>11</sup>

The St. Johns River Water Management District (SJRWMD) and local governments have been working to implement projects that address water quality issues in the IRL. Brevard County established the Save Our Indian River Lagoon Project Plan (plan), which outlines local projects planned with the intent to meet water quality restoration targets and improve the health, productivity, aesthetic appeal, and economic value of the lagoon.<sup>12</sup> In 2016, Brevard County passed a referendum, approved by 62.4

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<sup>1</sup> IRL Council, *About the Indian River Lagoon*, available at <http://www.irlcouncil.com/> (last visited Jan. 22, 2019).

<sup>2</sup> *Id.*

<sup>3</sup> Tetra Tech, Inc. & Closewaters, LLC, *Save Our Lagoon Project Plan for Brevard County, Florida* (April 2018), 1, [hereinafter referred to as *Save Our Lagoon*], available at <https://www.brevardfl.gov/docs/default-source/save-our-lagoon-documents/final-2018-save-our-indian-river-lagoon-project-plan-update-041218.pdf?sfvrsn=2> (last visited Jan. 22, 2019).

<sup>4</sup> IRL Council, *About the Indian River Lagoon*, available at <http://www.irlcouncil.com/> (last visited Jan. 22, 2019).

<sup>5</sup> *Id.*

<sup>6</sup> IRL National Estuary Program, *Annual Report 2017* (Feb. 26, 2018), 4, available at [http://www.irlcouncil.com/uploads/7/9/2/7/79276172/annrept\\_final\\_2-26-18.pdf](http://www.irlcouncil.com/uploads/7/9/2/7/79276172/annrept_final_2-26-18.pdf) (last visited Jan. 23, 2019).

<sup>7</sup> *Id.*

<sup>8</sup> *Save Our Lagoon* at ix.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See Brian E. Lapointe, Laura W. Herren, David D. Debortoli, Margaret A. Vogel, *Evidence of sewage-driven eutrophication and harmful algae blooms in Florida's Indian River Lagoon*, (Jan. 28, 2015), available at <http://static.politico.com/27/4c/d449d31440529b9d75d8ac3bb461/2015-study-of-indian-river-lagoon-algae.%202015.pdf> (last visited Jan. 23, 2019).

<sup>12</sup> *Save Our Lagoon* at ix.

percent of the voting population, to authorize the issuance of a half-cent infrastructure tax to pay for a portion of the plan.<sup>13</sup> The sales tax is estimated to generate \$32 million per year.<sup>14</sup>

### Stormwater Runoff

The east coast Florida drainage systems were constructed to support agriculture and urban development. These systems have increased the volume of inflows to the IRL, while also changing the timing of flows and increasing nutrient loads conveyed to the IRL.<sup>15</sup> Canal diversions to the IRL increase nutrient, sediment, and freshwater loading to the IRL and decrease flows to the St. Johns River.<sup>16</sup> Stormwater runoff contributes a significant portion of total nitrogen and total phosphorus to the lagoon each year.<sup>17</sup>

In Brevard County, there are more than 1,500 stormwater outfalls to the IRL.<sup>18</sup> In 1990, Brevard County implemented a stormwater utility assessment, which established an annual assessment rate of \$36 per year per equivalent residential unit (ERU), which was increased to \$64/ERU in 2016.<sup>19</sup> The collections from the assessment were estimated to be \$6 million. Of the funding raised, a portion is available for capital improvement programs and flood control and mitigation programs.<sup>20</sup> In addition, funding is spent on annual program operating expenses, such as the National Pollutant Discharge Elimination System permit compliance activities (street sweeping, trap and box cleaning, and aquatic weed harvesting) and outfall/ditch treatments.<sup>21</sup>

Large-scale stormwater capture and treatment projects are intended to store and treat stormwater runoff before it enters the IRL. For example, the C-10 Water Management Area is a project that diverts water from the IRL system to the St. Johns River through a system of pump stations.<sup>22</sup> The project is estimated to provide a total nitrogen reduction of 29,300 pounds with an estimated capital cost of \$25.2 million.<sup>23</sup> Another example is the Nova Canal Watershed Alternative Water supply project, which diverts water away from the IRL to an integrated water resource system that fully utilizes stormwater, surface water, and reclaimed water.<sup>24</sup> The project is estimated to provide a total nitrogen reduction of 33,000 pounds with an estimated capital cost between \$22.1 million and \$35.9 million.<sup>25</sup>

### Public Notice of Pollution

Many commercial, industrial, agricultural, and utility operations and entities are required to report various releases, discharges, or emissions as a condition of permitted operations or pursuant to law or rule. Notification typically must be made to the Department of Environmental Protection (DEP).<sup>26</sup> In some cases, notice to DEP is provided through the State Watch Office, an emergency communications

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<sup>13</sup> Brevard County Supervisor of Elections, *2016 General Election Official Results*, available at <https://enr.electionsfl.org/BRE/1616/Summary/> (last visited Jan. 23, 2019); see Brevard County Ordinance 2016-15, *Placing a Referendum on November 8, 2016 Ballot for One-Half Cent Infrastructure Sales Tax to Fund Implementation of the Save Our Lagoon Project Plan* (August 23, 2016), available at <https://www.brevardfl.gov//docs/default-source/countymanager/save-our-lagoon-referendum-election-2016-ordinance-august-23-2016.pdf?sfvrsn=2&sfvrsn=2> (last visited Jan. 23, 2019).

<sup>14</sup> *Save Our Lagoon* at 101.

<sup>15</sup> Jones Edmunds & Associates, Inc. and Collective Water Resources, LLC, *IRL Stormwater Capture and Treatment Preliminary Feasibility Analysis* [hereinafter *IRL Feasibility Analysis*] (Jan. 26, 2017), 4-1, available at [http://www.irlcouncil.com/uploads/7/9/2/7/79276172/16\\_irl\\_finalswfeasibility\\_2017\\_02\\_01.pdf](http://www.irlcouncil.com/uploads/7/9/2/7/79276172/16_irl_finalswfeasibility_2017_02_01.pdf) (last visited Jan. 23, 2019).

<sup>16</sup> *Id.* at 1-1.

<sup>17</sup> *Save Our Lagoon* at 11, for specific nutrient loadings from different sources in each sub-lagoon.

<sup>18</sup> *Save Our Lagoon* at 42.

<sup>19</sup> *Id.* at 2.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *IRL Feasibility Analysis* at 6-37.

<sup>23</sup> *Id.* at 6-47, 48.

<sup>24</sup> *Id.* at 6-46.

<sup>25</sup> *Id.* at 6-47, 48.

<sup>26</sup> See, e.g., ss. 377.371(2), 376.30702, 403.862(1)(b), and 403.93345(5), F.S.

center in the Division of Emergency Management. The State Watch Office, also known as the State Warning Point, serves as Florida’s primary point of contact for a wide variety of both natural and man-made emergencies. It serves as the contact point in Florida for communications between local governments and emergency agencies of both the state and federal governments and also provides emergency information to newspapers and radio and television stations. Examples of notification to the State Watch Office include notification of petroleum discharges,<sup>27</sup> wastewater discharges,<sup>28</sup> and releases of hazardous substances.<sup>29</sup>

Section 403.077, F.S., requires an owner or operator of a facility that commits a reportable pollution release<sup>30</sup> must provide DEP the information reported to the State Watch Office within 24 hours after the owner’s or operator’s discovery of such reportable pollution release. DEP must then publish, on a website accessible to the public, all notices of reportable pollution releases provided by an owner or operator within 24 hours after receipt.<sup>31</sup>

### Civil Penalties

Whoever commits a violation<sup>32</sup> is liable to the state for any damage caused to the environment and for reasonable costs and expenses of the state in: tracing the source of the discharge; controlling and abating the source and the pollutants; and, in restoring the air, waters, and property, including animal, plant, and aquatic life, of the state to their former condition.<sup>33</sup> Furthermore, violators are subject to the judicial imposition of a civil penalty for each offense in an amount of not more than \$10,000 per offense. Each day during any portion of which such violation occurs constitutes a separate offense.<sup>34</sup> The penalties for violations are as follows:

Violation	Type of Infraction	Civil Penalty
Reckless indifference or gross careless disregard	2 <sup>nd</sup> Degree Misdemeanor	Max. \$5,000 <sup>35</sup> or Max. 60 days <sup>36</sup> or both
Willfully fails to comply with the law or knowingly makes false statements	1 <sup>st</sup> Degree Misdemeanor	Max. \$10,000 <sup>37</sup> or Max. 6 months <sup>38</sup> or both
Willfully causes pollution to harm or injure	3 <sup>rd</sup> Degree Felony	Max. \$50,000 <sup>39</sup> or Max. 5 years <sup>40</sup> or both

### **Effect of Proposed Changes**

The bill creates s. 373.4594, F.S., to direct DEP to use funds received for the Indian River Lagoon grant program to provide cost-share grants for the upgrade of existing wastewater treatment facilities,

<sup>27</sup> Division of Emergency Management, *State Watch Office*, available at <https://www.floridadisaster.org/dem/response/operations/> (last visited Jan. 23, 2019); *see*, r. 62-780.210, F.A.C.

<sup>28</sup> Rule 62-620.610, F.A.C.

<sup>29</sup> Rule 62-150.300, F.A.C.

<sup>30</sup> The term “reportable pollution release” means the release or discharge of a substance from an installation to the air, land, or waters of the state which is discovered by the owner or operator of the installation, which is not authorized by law, and which is reportable to the State Watch Office within the Division of Emergency Management pursuant to any department rule, permit, order, or variance.

<sup>31</sup> DEP Pollution Notice, available at <http://prodenv.dep.state.fl.us/DepPNP/reports/viewIncidentDetails?page=1> (last visited Jan. 25, 2019).

<sup>32</sup> *See* s. 403.161(1), F.S., for definition of what constitutes a violation.

<sup>33</sup> Section 403.141, F.S.

<sup>34</sup> *Id.*

<sup>35</sup> Section 403.161(4), F.S.; *see also*, s. 775.083(1)(g), F.S.

<sup>36</sup> Section 775.082(4)(b), F.S.

<sup>37</sup> Section 403.161(5), F.S.

<sup>38</sup> *Id.*

<sup>39</sup> Section 403.161(3), F.S.

<sup>40</sup> Section 775.082(3)(e), F.S.

the expansion of existing wastewater treatment facilities, and the connection of onsite sewage treatment and disposal systems to a central sewer system.

The bill requires each grant to have a minimum 50 percent local match. The bill further requires DEP to coordinate with the South Florida Water Management District (SFWMD), SJRWMD, and other water management districts, as necessary, to identify grant recipients.

The bill further requires DEP to submit an annual report to the Governor, the President of the Senate, the Speaker of the House, and each state senator and state representative for the area, beginning January 1, 2020, and every January 1 thereafter. The projects identified in the report must include a priority ranking based on the most cost-effective pollutant reduction projects for each listed project, the estimated cost of each listed project, the estimated completion date of each listed project, and the source and amount of financial assistance to be provided for the project.

The bill creates s. 403.0771, F.S., to require public notification for wastewater treatment facilities that unlawfully discharge 1,000 gallons or more of raw or partially treated sewage into any waterway or aquifer. The bill states that the facility must provide written notification, by first class mail, to its customers that a discharge has occurred within 24 hours of discovering the discharge. Written notification must include the date and time of discharge, the status of the discharge, the estimated volume of the discharge, the location or address of the discharge, a description of the area affected, and the name and phone number of all elected local government officials who have authority over the facility responsible for the discharge. The bill requires notification be sent to customers based on the volume of the spill and the distance from the discharge (i.e. for spills between 1,000 and 100,000 gallons, customers within a half mile radius of the discharge will receive notification).

The bill amends s. 403.141, F.S., to create additional civil penalties for the unlawful discharge of 1,000 gallons or more of raw or partially treated sewage by a wastewater treatment facility. The bill states that if a facility discharges into any waterway or aquifer the facility must remit to the department an amount equal to \$1 for each gallon of sewage discharged; or, calculate the gallons of sewage discharged, and, with the department's approval, spend \$2 for each gallon to upgrade or remediate the problems which gave rise to the unlawful discharge.

The bill specifies the use of funds to include smoke testing of sewer lines, repairs and replacement of lateral and main sewer lines, manhole cover repairs, purchase and maintenance of generators for lift stations, wastewater capacity increases, and incremental nutrient reduction technology. The bill further requires a facility to remit a minimum penalty of \$10,000 if the number of gallons of sewage discharged cannot be calculated or estimated.

Finally, the bill clarifies that if the cost of all potential upgrades or repairs to a wastewater system are less than the calculated penalty amount, the total funds used to perform such upgrades or repairs may not exceed the identified cost.

## B. SECTION DIRECTORY:

Section 1 amends s. 375.041, F.S., to create the IRL grant program and specify uses of the grant.

Section 2 creates s. 403.0771, to require wastewater facilities to notify customers of unlawful discharges of sewage into waterways or aquifers.

Section 3 amends s. 403.141, F.S., to create a penalty for unlawful discharge by a wastewater treatment facility.

Section 4 provides an effective date of July 1, 2019.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill may have a significant positive fiscal impact to state government due to the potential increase in penalties received for unlawful discharges.

#### 2. Expenditures:

The bill may have an indeterminate negative fiscal impact to DEP due to the administrative costs associated with providing an annual report to the Governor and the Legislature.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill may have an indeterminate positive fiscal impact to local governments that receive grants to upgrade existing facilities, expand existing facilities, and connect onsite sewage treatment and disposal systems to central sewer systems.

#### 2. Expenditures:

The bill may have an indeterminate negative fiscal impact if an unlawful discharge occurs at a wastewater treatment facility owned by a local government because of costs to notify customers of the discharge and the increase in civil penalties. The bill may also have an indeterminate negative fiscal impact due to the requirement that each grant received be supported by a minimum 50 percent local match.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact if an unlawful discharge occurs at privately owned wastewater treatment facilities due to the costs to notify customers of the discharge and the increase in civil penalties.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 12, 2019, the Agriculture & Natural Resources Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment removed provisions providing an allocation of funding from the Land Acquisition Trust Fund and added provisions creating a grant program. The amendment added more specific parameters for the pollution notification requirements and added requirements for information that must be included in the report.

This analysis is drafted to the committee substitute as approved by the Agriculture & Natural Resources Subcommittee.