

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: CS/SB 216

INTRODUCER: Environment and Natural Resources Committee and Senators Gruters and Harrell

SUBJECT: Water Quality Improvements

DATE: March 13, 2019 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	Fav/CS
2.	_____	_____	AEG	_____
3.	_____	_____	AP	_____

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

I. Summary:

CS/SB 216 requires a wastewater treatment facility that unlawfully discharges more than 1,000 gallons of raw or partially treated sewage into any waterway or aquifer to notify its customers of such discharges. The bill includes geographic notification requirements based on the volume of the discharge and specifies the information required in the written notification.

The bill creates penalties for a wastewater treatment facility that unlawfully discharges 1,000 gallons or more of raw or partially treated sewage into any waterway or aquifer. The facility is required to either:

- Remit to the Department of Environmental Protection an amount equal to \$1 for each gallon of sewage discharged; or
- Calculate or provide an estimate of the number of gallons of sewage discharged and, with the Department of Environmental Protection’s approval, spend \$2 for each gallon discharged to upgrade and repair the wastewater system to prevent future unlawful discharges.

If a facility cannot calculate or estimate the volume discharged, the bill creates a minimum penalty of \$10,000. If the cost of all potential repairs and upgrades is less than the calculated penalty amount, the total funds used to perform repairs and upgrades may not exceed the cost identified.

II. Present Situation:

Sanitary Sewer Overflows

Although domestic wastewater treatment facilities are permitted and designed to safely and properly collect and manage a specified wastewater capacity, obstructions or extreme conditions can cause a sanitary sewer overflow (SSO). Any overflow, spill, release, discharge, or diversion of untreated or partially treated wastewater from a sanitary sewer system is a SSO.¹

Factors contributing to SSOs may include:

- Build-up of solids, fats, oils, and greases in the wastewater collection system impeding flow;
- Too much rainfall infiltrating through the ground into leaky sanitary sewers, which are not intended to hold rainfall. Excess water can also flow through roof drains connected to sewers or poorly connected sewer lines;
- Blocked, broken, or cracked pipes and other equipment or power failures that keep the system from properly functioning. Tree roots can grow into the sewer. Sections of pipe can settle or shift so that pipe joints no longer match. Sediment and other material can build up and cause pipes to break or collapse; and
- A deteriorating or aging sewer system that can be expensive to repair. Some municipalities have found severe problems, necessitating costly correction programs.²

A key concern with SSOs entering rivers, lakes, or streams is their negative effect on water quality. In addition, because SSOs contain partially treated or potentially untreated domestic wastewater, ingestion or similar contact may cause illness. People can be exposed through direct contact in areas of high public access, food that has been contaminated, inhalation, and skin absorption. The Department of Health issues health advisories when bacteria levels present a risk to human health, and may post warning signs when bacteria affect public beaches or other areas where there is a risk of human exposure.³

Reduction of SSOs can be achieved through:

- Cleaning and maintaining the sewer system;
- Reducing infiltration and inflow through rehabilitation and repairing broken or leaking lines;
- Enlarging or upgrading sewer pump station or sewage treatment plant capacity and/or reliability; and
- Constructing wet weather storage and treatment facilities to treat excess flows.⁴

After an SSO event, the Department of Environmental Protection (DEP) reviews the data from utilities to assess the overall impact to the environment in deciding whether to take additional action. In its review, DEP considers how serious the violation was; whether this was a first-time violation or a repeated violation; whether the violation was inadvertent or beyond reasonable

¹ DEP, *Sanitary Sewer Overflows (SSOs)*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last visited Mar. 10, 2019).

² DEP, *Preventing SSOs*, available at <https://floridadep.gov/sites/default/files/preventing-sanitary-sewer-overflows.pdf> (last visited Mar. 10, 2019); DEP, *SSOs*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last visited Mar. 10, 2019).

³ DEP, *SSOs*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last visited Mar. 10, 2019).

⁴ *Id.*

control; and whether the damage to the environment can be undone or remediated quickly.⁵ DEP also takes into account the severity of the rain event (e.g., if it was a hurricane or a storm, or if the area had received an unusually large amount of rainfall beyond historical averages). If the discharge was caused by operator error or lack of a certified operator on-site at the time, then DEP may consider additional training for operators to prevent similar errors from occurring in the future. In some circumstances, DEP will meet with utilities to discuss infrastructure repairs and process improvements the utility is making and planning to implement in order to avoid further SSOs.⁶

Wastewater Treatment Facilities

The proper treatment and disposal or reuse of domestic wastewater is an important part of protecting Florida's water resources. The majority of Florida's domestic wastewater is controlled and treated by centralized treatment facilities regulated by DEP. Florida has approximately 2,000 permitted domestic wastewater treatment facilities.⁷

Chapter 403, F.S., requires that any facility or activity which discharges wastes into waters of the state or which will reasonably be expected to be a source of water pollution must obtain a permit from DEP.⁸ Generally, persons who intend to collect, transmit, treat, dispose or reuse wastewater are required to obtain a wastewater permit. A wastewater permit issued by DEP is required for both operation and certain construction activities associated with domestic or industrial wastewater facilities or activities.⁹ Wastewater treatment facilities that discharge to surface waters are also subject to permitting requirements under the National Pollution Discharge Elimination System.¹⁰ A DEP permit must be obtained prior to construction of a domestic wastewater collection and transmission system.¹¹

In its 2016 Report Card for Florida's infrastructure, the American Society of Civil Engineers reported that the state's wastewater system is increasing in age and the condition of installed treatment and conveyance systems is declining.¹² As existing infrastructure ages, Florida utilities are placing greater emphasis on asset management systems to maintain service to customers. Florida is a national leader in reclaimed water use, which helps offset the state's potable water needs and is a vital component of water resource and ecosystem management. Nonetheless, population growth, aging infrastructure, and sensitive ecological environments are increasing the need to invest in Florida's wastewater infrastructure.

⁵ *Id.*

⁶ *Id.*

⁷ 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 Mar. 6, 2019).

⁸ Section 403.087, F.S.

⁹ Sections 403.088 and 403.0881, F.S.

¹⁰ Section 403.0885, F.S.

¹¹ DEP, *Wastewater Permitting*, <https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting> (last visited Mar. 6, 2019).

¹² American Society of Civil Engineers, *2016 Florida Infrastructure Report Card*, available at <https://www.infrastructurereportcard.org/state-item/florida/> (last visited Mar. 10, 2019).

Public Notice of Pollution Act

In 2017, the state passed the Public Notice of Pollution Act (Act).¹³ The Act applies to any “reportable pollution release,” defined as 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; not authorized by law; and reportable to the State Watch Office within the Division of Emergency Management pursuant to any department rule, permit, order, or variance.¹⁴

Pursuant to DEP rules, the State Watch Office, within the Division of Emergency Management, must be notified of events such as the release of hazardous substances, wastewater discharges, petroleum discharges, and the discharge of dry-cleaning solvents.¹⁵ The Act requires that an owner or operator of the installation at which the reportable pollution release occurs, within 24 hours of discovery by the owner or operator, must notify DEP of the release.¹⁶ The Act requires DEP to publish on a publically accessible website, within 24 hours of reception, all notices received pursuant to the statute.¹⁷ The Act also requires DEP to create an electronic mailing list for announcements of such notices, and establish an online form for receiving the pollution notices.¹⁸

The owner or operator of an installation is subject to civil penalties of up to \$10,000 per day for each day the owner or operator is in violation of the requirement to provide notification of a reportable pollution release.¹⁹ A person violating the Act is also liable to the state for “any damage caused to the air, waters, or property, including animal, plant, or aquatic life, of the state and for reasonable costs and expenses of the state in tracing the source of the discharge, in 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.”²⁰

Pursuant to the Act, DEP provides a page on its website enabling the public to: submit or update pollution notices to DEP; subscribe to receive notifications whenever a pollution notice is submitted to DEP; and view a continuously updated page of information showing all notices of pollution DEP has received.²¹

¹³ Sections 403.076–403.078, F.S.

¹⁴ Section 403.077(1), F.S.

¹⁵ Section 376.3078(9)(c), F.S.; Fla. Admin. Code R. 62-780.210; Fla. Admin. Code R. 62S-6.022; Fla. Admin. Code R. 62-620.610; Fla. Admin. Code R. 62-604.550; and Fla. Admin. Code R. 62-150.300; DEP, *Emergency Response*, <https://floridadep.gov/water/water-compliance-assurance/content/emergency-response> (last visited Mar. 6, 2019).

¹⁶ Section 403.077(2), F.S.

¹⁷ Section 403.077(3), F.S.

¹⁸ *Id.*

¹⁹ Section 403.121(1), F.S.

²⁰ Sections 403.141(1) and 403.161(1)(e), (2), F.S. Section 403.141(1), F.S., states that the civil penalty for each offense shall not be more than \$10,000 per offense.

²¹ Florida Department of Environmental Protection, *Public Notice of Pollution*, <https://floridadep.gov/pollutionnotice> (last visited Mar. 6, 2019).

III. Effect of Proposed Changes:

Section 1 creates s. 403.0771, F.S., on sewage spill notification. The bill requires that a wastewater treatment facility that unlawfully discharges more than 1,000 gallons of raw or partially treated sewage into any waterway or aquifer in violation of a permit issued pursuant to ss. 403.088 or 403.0885, F.S., must, within 24 hours after discovering the discharge, notify its customers that the discharge has occurred. The bill requires written notification by first class mail. The bill includes the following requirements for a wastewater treatment facility to notify its customers based on the number of gallons of sewage discharged:

- For spills of 1,000 to 100,000 gallons of sewage, customers within a half-mile radius must be notified;
- For spills between 100,000 and 1 million gallons of sewage, customers within a 1-mile radius must be notified; and
- For spills of more than 1 million gallons, all customers of the facility must be notified.

The bill specifies what information must be included in the wastewater treatment facility's written notification to customers in the event of an unlawful discharge. The notification must include all of the following:

- The date and time of the 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 by the discharge, including the name of the waterbody affected, if any.
- The name and phone number of all local elected officials who have authority over the facility responsible for the discharge.

These notification requirements are in addition to existing requirements for a "reportable pollution release," which must be reported to the Department of Environmental Protection (DEP).

Section 2 amends s. 403.141, F.S., which establishes the civil liability and penalties for certain violations of ch. 403, F.S. The bill adds penalties for a wastewater treatment facility unlawfully discharges 1,000 gallons or more of raw or potentially treated sewage into any waterway or aquifers, in violation of a permit issued pursuant to s. 403.0885, F.S. The bill states that this is in addition to the civil penalty limitation in subsection (1) of s. 403.141, F.S., which provides that a civil penalty may not exceed \$10,000 per offense. The bill requires a wastewater treatment facility that has made such an unlawful discharge to do one of the following:

- Pay DEP an amount equal to \$1 for every gallon of sewage discharged; or
- Calculate or provide an estimate of the number of gallons discharged and, with DEP's approval, spend \$2 per gallon to upgrade and repair the wastewater system to prevent future unlawful discharges. The bill states that such funds may be used to:
 - Smoke test sewer lines.
 - Repair and replace sewer mains and laterals.
 - Repair manholes.
 - Purchase and maintain generators for lift stations.

- Increase wastewater treatment facility capacity.
- Provide incremental nutrient reduction technology.

The bill states that if a wastewater treatment facility is unable to calculate or estimate the volume discharged, the facility must remit to DEP a minimum penalty of \$10,000. The bill states that if the cost of all potential repairs and upgrades is less than the calculated penalty amount, the total funds used to perform repairs and upgrades may not exceed the cost identified.

Section 3 states that the act shall take 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:

The bill would require private wastewater treatment facilities to notify customers of unlawful discharges of raw or partially treated sewage, and would make private wastewater treatment facilities subject to penalties for such discharges. Therefore, the bill may have a negative, indeterminate fiscal impact on private wastewater treatment facilities that unlawfully discharge sewage.

C. Government Sector Impact:

The bill would require publically-owned wastewater treatment facilities to notify customers of unlawful discharges of raw or partially treated sewage, and would make publically-owned wastewater treatment facilities subject to penalties for such discharges. Therefore, the bill may have a negative, indeterminate fiscal impact on government wastewater treatment facilities that unlawfully discharge sewage.

The bill adds a potential penalty where DEP may receive a dollar for every gallon of sewage unlawfully discharged from a wastewater treatment facility. This may result in a positive, indeterminate fiscal impact for DEP.

VI. Technical Deficiencies:

Section 403.141, F.S., primarily deals with the judicial imposition of penalties.

The penalty set out in section 2 of the CS does not reference or appear to be limited to the judicial imposition of penalties. It simply creates a penalty to be remitted to the department, and authorizes the department to allow \$2/gallon to be spent on upgrades and repairs in lieu of the penalty. This appears to be a penalty that could be directly imposed by the department as an administrative penalty. As such, it may more appropriately be placed in s. 403.121, F.S., which provides for administrative remedies. Note that s. 403.121, F.S., also has caps on civil and administrative penalties. If the intent of the bill is that the penalties created in the bill not be subject to either the caps in s. 403.121, F.S., or s. 403.141, F.S., that should be clarified.

If the intent of the CS is to ensure that the \$1/gallon penalty is not subject to a cap, then instead of the language stating “[i]n addition to the civil penalty limitation set forth in subsection (1)[,]” the following language may add clarity: “[n]otwithstanding the limitations and requirements on civil and administrative penalties set forth in this part. . .”

Language in section 2 of the bill states: “[i]f the cost of all potential repairs and upgrades is less than the calculated penalty amount, the total funds used to perform repairs and upgrades may not exceed the cost identified.” This language creates a cap on the amount of money that a wastewater treatment facility can spend on repairs and upgrades following an unlawful discharge. This may create a limitation on penalties that is not intended.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 403.0771 of the Florida Statutes.
This bill substantially amends section 403.141 of the Florida Statutes.

IX. Additional Information:

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

CS by Environment and Natural Resources Committee on March 12, 2019:

- Deletes the distribution from the Land Acquisition Trust Fund to projects that implement the Indian River Lagoon Comprehensive Conservation and Management Plan.
- Specifies that a wastewater treatment facility that discharges more than 1,000 gallons of raw or partially treated sewage into any aquifer or waterway in violation of the conditions set forth in a permit must notify its customers.
- Adds geographic details to the sewage spill notification requirements that are based on the gallons of raw or partially treated sewage discharged.
- Specifies the information that the written notification for a sewage spill must include.
- Specifies that the penalties for a wastewater treatment facility are triggered by the unlawful discharge of 1,000 gallons or more of raw or partially treated sewage into any aquifer or waterway in violation of a permit.
- Lists the upgrades or repairs to wastewater systems that would satisfy the requirements of the penalty.
- Adds that if a wastewater treatment facility is unable to calculate or estimate the volume discharged the facility must pay DEP a minimum of \$10,000.
- Adds that if the cost of all potential repairs and upgrades is less than the calculated penalty amount, the total funds used to perform repairs and upgrades may not exceed the cost identified.

- B. **Amendments:**

None.