

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 973 Water Quality Improvements

**SPONSOR(S):** State Affairs Committee, Appropriations Committee, Agriculture & Natural Resources Subcommittee, Payne and others

**TIED BILLS:**           **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Melkun	Shugar
2) Appropriations Committee	29 Y, 0 N, As CS	White	Pridgeon
3) State Affairs Committee	23 Y, 0 N, As CS	Melkun	Williamson

### SUMMARY ANALYSIS

States are required by the Clean Water Act to maintain their water quality. In Florida, water quality is addressed through water quality standards, total maximum daily loads (TMDLs), basin management action plans (BMAP), and permits.

The bill amends statutes addressing water quality from wastewater. Specifically, the bill:

- Transfers the onsite sewage program from the Department of Health (DOH) to the Department of Environmental Protection (DEP), effective July 1, 2020, by a type two transfer.
- Requires DEP and DOH to submit recommendations to the Governor and the Legislature regarding the transfer of the onsite sewage program by December 1, 2019.
- Requires consolidated annual reports to be submitted to the Office of Economic and Demographic Research and include certain projects.
- Specifies that a hardship exists under certain criteria when evaluating the size of a lot for an onsite sewage treatment and disposal system (OSTDS) subject to certain prohibitions.
- Requires DOH to allow the use of certain nutrient removing OSTDSs to meet the requirements of TMDLs and water quality restoration plans.
- Creates an OSTDS technical advisory committee and requires DEP to submit recommendations to the Governor and the Legislature.
- Repeals the Research Review and Advisory Committee and the Technical Review and Advisory Panel.
- Requires a BMAP for a nutrient TMDL to include a wastewater treatment plan and an OSTDS remediation plan and requires DEP to submit a report identifying the costs and funding associated with specified projects.
- Creates a clean water grant program, subject to appropriation, and requires DEP to submit recommended processes for the prioritization of projects and allocation of funds.
- Requires specified sewage discharge notification for domestic wastewater treatment facilities that unlawfully discharge sewage.
- Requires advanced wastewater treatment for domestic wastewater discharges into the Indian River Lagoon and requires DEP to submit a progress report by a time certain.
- Prohibits the land application of biosolids under certain conditions, requires DEP to conduct rulemaking to implement the findings of the Biosolids Technical Advisory Committee, creates a Biosolids Alternative Management Technical Advisory Committee, and requires a report of its findings to be submitted to the Governor and the Legislature.

The bill may have an indeterminate fiscal impact on state and local governments and the private sector.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0973d.SAC

DATE: 4/22/2019

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Water Quality

The federal Clean Water Act (CWA) requires states to adopt water quality standards (WQS) for navigable waters.<sup>1</sup> The CWA requires states to develop lists of water bodies that do not meet WQS, which are called impaired waters. States are then required to develop a total maximum daily load (TMDL) for the particular pollutants causing the impairment. The TMDL is the maximum allowable amount of the pollutants the water body can receive while maintaining WQS.<sup>2</sup>

##### *Total Maximum Daily Loads and Basin Management Action Plans*

The Florida Watershed Restoration Act guides the development and implementation of TMDLs.<sup>3</sup> 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, reduce pollutants and achieve WQS.<sup>4</sup> The allocation must consider cost-effective approaches coordinated between contributing point and nonpoint sources of pollution for impaired water bodies and may include nonregulatory and incentive-based programs.<sup>5</sup>

The Department of Environmental Protection (DEP) is the lead agency in coordinating the development and implementation of TMDLs.<sup>6</sup> Once a TMDL is adopted,<sup>7</sup> DEP may develop and implement a basin management action plan (BMAP), which is a restoration plan for the watersheds and basins connected to the impaired water body.<sup>8</sup> A BMAP must integrate appropriate management strategies available to the state through existing water quality protection programs to achieve the TMDL.<sup>9</sup> The BMAP must include milestones for implementation and water quality improvement, and associated water quality monitoring, which determines whether there has been reasonable progress in pollutant load reductions. An assessment of progress must be conducted every five years, and revisions to the BMAP must be made as appropriate.<sup>10</sup>

For point source discharges, any management strategies and pollutant reduction requirements associated with a TMDL must be incorporated into subsequent permits or permit modifications. DEP may not impose limits or conditions implementing an adopted TMDL in a permit until the permit expires, the discharge is modified, or the permit is reopened pursuant to an adopted BMAP.<sup>11</sup>

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<sup>1</sup> 33 U.S.C. s. 1313.

<sup>2</sup> 33 U.S.C. s. 1313; *see* s. 403.067, F.S.

<sup>3</sup> Section 403.067, F.S.; ch. 99-223, Laws of Fla.

<sup>4</sup> Section 403.067(6)(b), F.S.

<sup>5</sup> Section 403.067(1), F.S.

<sup>6</sup> Section 403.061, F.S. DEP has the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it; s. 403.061(21), F.S., allows DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.

<sup>7</sup> Section 403.067(6)(c), F.S.

<sup>8</sup> Section 403.067(7)(a)1., F.S.

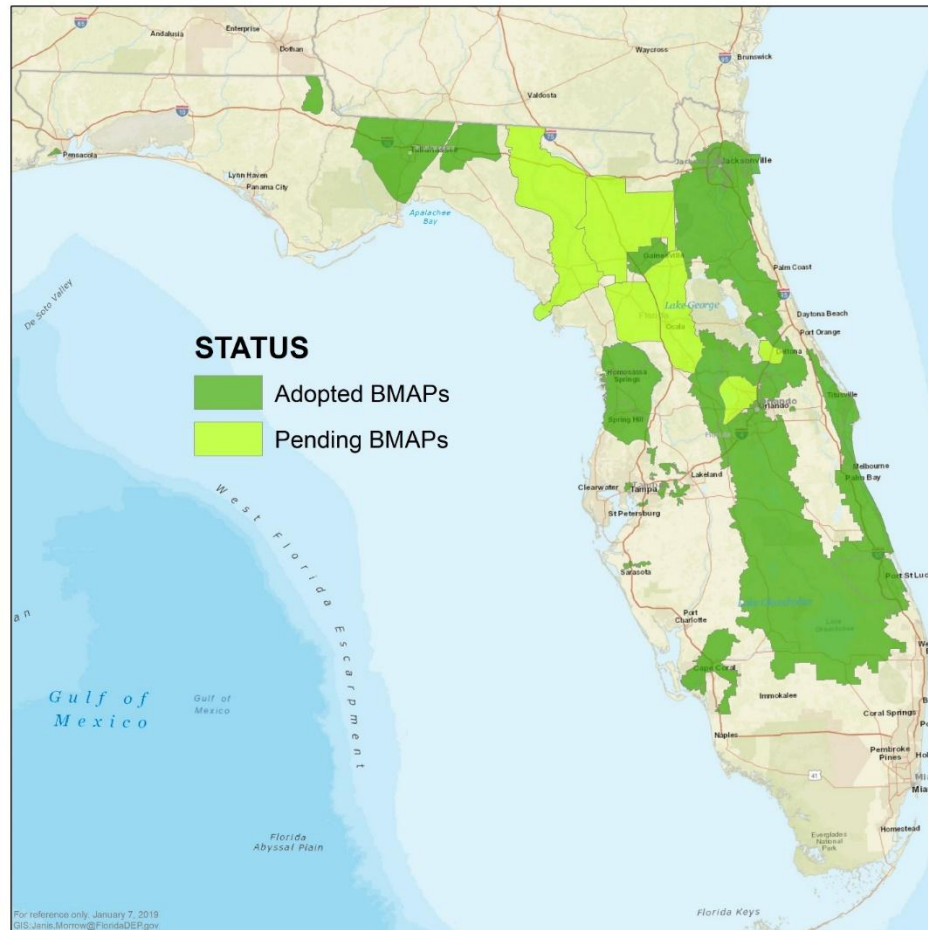
<sup>9</sup> *Id.*

<sup>10</sup> Section 403.067(7)(a)6., F.S.

<sup>11</sup> Section 403.067(7)(b)2., F.S.

Where there is an adopted best management practice (BMP)<sup>12</sup> for a nonpoint source, the BMAP must require the nonpoint source to implement the applicable BMPs. The nonpoint source discharger must demonstrate compliance with BMP implementation or conduct water quality monitoring prescribed by DEP or the water management district (WMD), and may be subject to enforcement action for failure to implement the BMPs.<sup>13</sup>

The adopted and pending BMAPs are illustrated in the graphic below.<sup>14</sup>



### *Restoration Plans as Alternatives to TMDLS*

DEP encourages local stakeholders to develop restoration plans<sup>15</sup> at the earliest practicable time to restore waters not meeting WQS.<sup>16</sup> Under the Florida Watershed Restoration Act, DEP is not required

<sup>12</sup> Rule 62-306.200(2), F.A.C., a “BMP” is a practice or combination of practices adopted by rule by the Department of Agriculture and Consumer Services (DACS), 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; r. 62-503.200(4), F.A.C., defines “best management practice” to mean a control technique used for a given set of conditions to achieve water quality and water quantity enhancement at a feasible cost.

<sup>13</sup> Sections 403.067(7)(b)g. and 403.067(7)(b)h., F.S.

<sup>14</sup> DEP, *Impaired Waters, TMDLs, and Basin Management Action Plans Interactive Map*, available at <https://floridadep.gov/dear/water-quality-restoration/content/impaired-waters-tmdls-and-basin-management-action-plans> (last visited Apr. 14, 2019).

<sup>15</sup> Rule 62-303.600, F.A.C.

<sup>16</sup> DEP, *Guidance on Developing Restoration Plans as Alternatives to TMDLs – Assessment Category 4b and 4e Plans*, 1 (June 2015), available at <https://floridadep.gov/sites/default/files/4b4ePlansGuidance.pdf> (last visited Apr. 8, 2019).

to develop a TMDL if there is existing reasonable assurance or proposed pollution control mechanisms or programs that will effectively address the impairment.<sup>17</sup>

Restoration plans are required to include a description of the impaired waterbody, water quality and aquatic ecological goals, proposed management actions to be undertaken, procedures for monitoring and reporting results, and proposed corrective actions.<sup>18</sup> Local stakeholders provide documentation to demonstrate, with reasonable assurance, that the proposed control mechanisms will restore the particular waterbody.<sup>19</sup>

### Wastewater

A person generates approximately 100 gallons of domestic wastewater<sup>20</sup> per day.<sup>21</sup> This wastewater must be managed to protect public health, water quality, recreation, fish, wildlife, and the aesthetic appeal of the state's waterways.<sup>22</sup>

#### *Onsite Sewage Treatment and Disposal*

One of the methods utilized to treat domestic wastewater is an onsite sewage treatment and disposal system (OSTDS)<sup>23</sup>, commonly referred to as a septic system.<sup>24</sup> Approximately 30 percent of the population in Florida uses an OSTDS.

An OSTDS must be permitted and inspected by the Department of Health (DOH) before it is placed into operation and must be located and installed so that, along with proper maintenance, the system functions in a sanitary manner, does not create a sanitary nuisance or health hazard, and does not endanger the safety of any domestic water supply, groundwater, or surface water.<sup>25</sup> Sewage waste and effluent from an OSTDS may not be discharged onto the ground surface or directly or indirectly discharged into ditches, drainage structures, ground waters, surface waters, or aquifers.<sup>26</sup> DOH regulates an estimated 2.6 million OSTDSs.<sup>27</sup> The permitting and inspection of OSTDSs is handled mainly by county health departments with support from the Bureau of Onsite Sewage.<sup>28</sup>

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<sup>17</sup> DEP, *Guidance on Developing Restoration Plans as Alternatives to TMDLs – Assessment Category 4b and 4e Plans*, 2 (June 2015), available at <https://floridadep.gov/sites/default/files/4b4ePlansGuidance.pdf> (last visited Apr. 8, 2019).

<sup>18</sup> *Id.* at 6-7.

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

<sup>20</sup> Section 367.021(5), F.S., defines “domestic wastewater” as wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.

<sup>21</sup> DEP, *Domestic Wastewater Program*, available at <https://floridadep.gov/water/domestic-wastewater> (last visited Feb. 20, 2019).

<sup>22</sup> Sections 381.0065(1) and 403.021, F.S.

<sup>23</sup> Section 381.0065(2)(k), F.S., defines an “OSTDS” as a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. This term does not include package sewage treatment facilities and other treatment works regulated under ch. 403, F.S.

<sup>24</sup> Sections 381.0065(2)(k) and 381.0065(3), F.S.; chs. 62-600 and 62-701, F.A.C.

<sup>25</sup> Section 381.0065(4), F.S.; rr. 64E-6.003, F.A.C. and 64E-6.004, F.A.C.

<sup>26</sup> Rule 64E-6.005, F.A.C.

<sup>27</sup> DOH, *Onsite Sewage*, available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last visited Jan. 10, 2019).

<sup>28</sup> Sections 381.006(7) and 381.0065, F.S.; r. 62-600.120, F.A.C.; see DEP, *Domestic Wastewater - Septic Systems*, available at <https://floridadep.gov/water/domestic-wastewater/content/septic-systems> (last visited Feb. 20, 2019); DOH is an integrated agency that is comprised of the main state office in Tallahassee and 67 county health departments. OSTDS functions are performed by both the state office and the county health departments, with permitting and inspections the responsibility of the counties.

## DOH Advisory Committees

DOH operates and serves three advisory organizations: the Research Review and Advisory Committee (RRAC),<sup>29</sup> the Technical Review and Advisory Panel (TRAP),<sup>30</sup> and the Variance Review and Advisory Committee.<sup>31</sup> The TRAP assists in the adoption of rules for OSTDSs and it reviews and comments on any legislation or existing policy related to OSTDSs. All rules proposed by DOH that relate to OSTDSs must be presented to the TRAP for review and comment prior to adoption.<sup>32</sup> The RRAC advises on new research, reviews and ranks proposals for research contracts, and reviews and provides comments on draft research reports regarding the OSTDS industry.<sup>33</sup>

The Variance Review and Advisory Committee recommends agency action on variance requests. A person who applies for an OSTDS construction permit but cannot meet the requirements of the rule or statute will not be issued a permit; however, a person may request a variance from the standards.<sup>34</sup> DOH, in hardship cases, may grant variances, which may be less restrictive than the OSTDS provisions required by statute and rule.<sup>35</sup>

## Outstanding Florida Springs

Nutrients, specifically nitrogen and phosphorous, are naturally present in the water and necessary for the growth of plant and animal life. However, too much nitrogen or phosphorous can harm water quality. In some areas, the wastewater leaving OSTDSs has been identified as a contributor to nitrogen pollution.<sup>36</sup>

In 2016, the Legislature required additional protections to conserve and protect 30 Outstanding Florida Springs<sup>37</sup>. The Springs and Aquifer Protection Act (act) directed DEP to assess the Outstanding Florida Springs for nutrient impairment and, in collaboration with other state agencies and local governments, develop BMAPs by July 1, 2016.<sup>38</sup> Each BMAP must identify the sources of nitrogen pollution within the springshed and identify projects and strategies that will achieve the reductions needed to improve water quality in the region, including, as necessary, an OSTDS remediation plan that identifies cost-effective and financially feasible projects to reduce nitrogen contributions from OSTDSs.<sup>39</sup>

Further, the act prohibits new homes or businesses with new OSTDSs on lots less than one acre in priority focus areas from installing conventional non-nitrogen reducing OSTDSs if the installation is

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<sup>29</sup> Section 381.0065(4)(o), F.S.

<sup>30</sup> Section 381.0068, F.S.

<sup>31</sup> Section 381.0065(4)(h)2., F.S.; *see also*, DOH, *Boards, Councils and Committees*, available at <http://www.floridahealth.gov/provider-and-partner-resources/advisory-councils-stakeholder-groups/index.html> (last visited Mar. 1, 2019).

<sup>32</sup> Section 381.0068, F.S.

<sup>33</sup> Section 381.0065(4)(o), F.S.

<sup>34</sup> DOH, *Variances*, available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/variances/index.html> (last visited Mar. 1, 2019).

<sup>35</sup> Section 381.0065(4)(h), F.S.

<sup>36</sup> DEP, *Meeting the Septic System Permitting Requirements: Springs and Aquifer Protection Act*, available at [https://floridadep.gov/sites/default/files/Springs%20and%20Aquifer%20Protection%20Act\\_0.pdf](https://floridadep.gov/sites/default/files/Springs%20and%20Aquifer%20Protection%20Act_0.pdf) (last visited Mar. 1, 2019).

<sup>37</sup> Section 373.802(4), F.S., defines an “Outstanding Florida Spring” as all historic first magnitude springs, including their associated spring runs, as determined by DEP using the most recent Florida Geological Survey springs bulletin, and the following additional springs, including their associated spring runs: De Leon Springs, Peacock Springs, Poe Springs, Rock Springs, Wekiwa Springs, and Gemini Springs. The term does not include submarine springs or river rises; ch. 2016-001, Laws of Fla., also known as the Springs and Aquifer Protection Act.

<sup>38</sup> DEP, *Meeting the Septic System Permitting Requirements: Springs and Aquifer Protection Act*, available at [https://floridadep.gov/sites/default/files/Springs%20and%20Aquifer%20Protection%20Act\\_0.pdf](https://floridadep.gov/sites/default/files/Springs%20and%20Aquifer%20Protection%20Act_0.pdf) (last visited Mar. 1, 2019).

<sup>39</sup> Section 373.807, F.S.; DEP, *Meeting the Septic System Permitting Requirements: Springs and Aquifer Protection Act*, available at [https://floridadep.gov/sites/default/files/Springs%20and%20Aquifer%20Protection%20Act\\_0.pdf](https://floridadep.gov/sites/default/files/Springs%20and%20Aquifer%20Protection%20Act_0.pdf) (last visited Mar. 1, 2019).

inconsistent with a BMAP.<sup>40</sup> Instead, new construction must either connect to available central sewer lines, install a nitrogen-reducing OSTDS, such as “in-ground, passive nitrogen-reducing systems” that use additional soil and media layers to reduce nitrogen flowing into the aquifer, or install nitrogen-reducing Aerobic Treatment Units and Performance-Based Treatment Systems.<sup>41</sup>

### *Wastewater Treatment Facilities*

Domestic wastewater treatment facilities are stationary installations that are reasonably expected to be sources of water pollution and must be operated, maintained, constructed, expanded, or modified with a permit issued by DEP.<sup>42</sup> Approximately 2,000 domestic wastewater treatment facilities in the state serve roughly two-thirds of the state’s population.<sup>43</sup> Each day over 1.5 billion gallons of treated wastewater effluent<sup>44</sup> and reclaimed water<sup>45</sup> are disposed of from these facilities.<sup>46</sup> Methods of disposal include reuse and land application systems, groundwater disposal by underground injection, groundwater recharge using injection wells, surface water discharges, disposal to coastal and open ocean waters, or wetland discharges.<sup>47</sup>

Most domestic wastewater treatment facilities must meet either basic disinfection or high-level disinfection requirements, dependent upon the type of discharge.<sup>48</sup> Basic disinfection requires the effluent to contain less than 200 fecal coliforms per 100 microgram per milliliter,<sup>49</sup> while high-level disinfection requires fecal coliforms to be reduced below detection.<sup>50</sup> Domestic wastewater treatment facilities that discharge to surface waters<sup>51</sup> must also obtain a National Pollutant Discharge Elimination System (NPDES) permit, which is established by the CWA to control point source discharges.<sup>52</sup> NPDES permit requirements for most domestic wastewater facilities are incorporated into the DEP-issued permit.<sup>53</sup>

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<sup>40</sup> Section 373.802(5), F.S., defines a “priority focus area” as the area or areas of a basin where the Floridan Aquifer is generally most vulnerable to pollutant inputs where there is a known connectivity between groundwater pathways and an Outstanding Florida Spring, as determined by DEP in consultation with the appropriate WMDs, and delineated in a BMAP.

<sup>41</sup> DOH, *OSTDS Permitting in a County affected by the Florida Springs and Aquifer Protection Act* (May 14, 2018), available at [http://www.floridahealth.gov/environmental-health/onsite-sewage/\\_documents/letter-to-builders-springs.pdf](http://www.floridahealth.gov/environmental-health/onsite-sewage/_documents/letter-to-builders-springs.pdf) (last visited Mar. 1, 2019).

<sup>42</sup> Section 403.087(1), F.S.

<sup>43</sup> DEP, *General Facts and Statistics about Wastewater in Florida*, available at <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Jan. 16, 2019); the remainder of the state is served by on-site sewage and disposal systems permitted and regulated by DOH.

<sup>44</sup> Rule 62-600.200(22), F.A.C., defines “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.

<sup>45</sup> 62-600.200(54), F.A.C.; reclaimed water means water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.

<sup>46</sup> DEP, *General Facts and Statistics about Wastewater in Florida*, available at <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Jan. 16, 2019).

<sup>47</sup> Rule 62-600.440(4), F.A.C.

<sup>48</sup> DEP, *Ultraviolet Disinfection for Domestic Wastewater*, available at <https://floridadep.gov/water/domestic-wastewater/content/ultraviolet-uv-disinfection-domestic-wastewater> (last visited Jan. 16, 2019).

<sup>49</sup> Rules 62-600.510(1) and 62-600.440(5), F.A.C.

<sup>50</sup> Rule 62-600.440(6), F.A.C.

<sup>51</sup> Section 373.019(21), F.S., defines “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; s. 403.031(13), F.S., defines “waters” to mean rivers, lakes, streams, springs, impoundments, wetlands, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface, or underground waters; r. 62-620.200(56), F.A.C.

<sup>52</sup> 33 U.S.C. s. 1342.

<sup>53</sup> Section 403.0885, F.S.; ch. 62-620, F.A.C.; DEP, *Wastewater Permitting*, available at <https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting> (last visited Jan. 16, 2019); DEP, *Types of Permits*, available at <http://flwaterpermits.com/typesofpermits.html> (last visited Jan. 16, 2019).

## 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.<sup>54</sup> Factors contributing to SSOs may include:

- Build-up of solids, fats, oils, and greases in the wastewater collection system which impedes flow;
- Too much rainfall infiltrating the system through leaky infrastructure, roof drains, or poorly connected wastewater lines;
- Blocked, broken, or cracked pipes and other equipment or power failures that keep the system from functioning properly (e.g., tree roots growing into the system, pipe settling or shifting so pipe joints no longer match, buildup of sediment and other material causing pipes to break or collapse); and
- A deteriorating or aging system.<sup>55</sup>

A key concern with SSOs entering rivers, lakes, or streams is their negative effect on water quality. 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. DOH may issue 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.<sup>56</sup>

## Advanced Waste Treatment

Under Florida law, facilities for sanitary sewage disposal are required to provide for advanced waste treatment, under certain conditions.<sup>57</sup> The standard for advanced waste treatment is defined in statute using the maximum concentrations of nutrients or contaminants that a reclaimed water product may contain.<sup>58</sup> The reclaimed water product must be disinfected to a higher standard.<sup>59</sup>

Nutrient or Contaminant	Maximum concentration annually
Biochemical Oxygen Demand	5 mg/L
Suspended Solids	5 mg/L
Total Nitrogen	3 mg/L
Total Phosphorus	1 mg/L

Facilities for sanitary sewage disposal are prohibited from disposing of waste into certain waters in the state without providing advanced waste treatment approved by DEP.<sup>60</sup>

<sup>54</sup> DEP, *SSOs*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last visited Apr. 8, 2019).

<sup>55</sup> DEP, *Preventing SSOs*, available at <https://floridadep.gov/sites/default/files/preventing-sanitary-sewer-overflows.pdf> (last visited Jan. 16, 2019); DEP, *SSOs*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last visited Jan. 16, 2019).

<sup>56</sup> DEP, *SSOs*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last visited Mar. 15, 2019).

<sup>57</sup> Section 403.086(2), F.S.

<sup>58</sup> Section 403.086(4), F.S.

<sup>59</sup> Section 403.086(4)(b), F.S.; r. 62-600.440(6), F.A.C.

<sup>60</sup> Section 403.086(1)(c), F.S. Facilities for sanitary sewage disposal may not dispose of any wastes into Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, or Charlotte Harbor Bay, or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto, without providing advanced waste treatment approved by DEP. This prohibition does not apply to facilities permitted by February 1, 1987, and which discharge secondary treated effluent, followed by water hyacinth treatment, to tributaries of the named waters; or to facilities permitted to discharge to the nontidally influenced portions of the Peace River.

## Biosolids

When domestic wastewater is treated, a solid byproduct accumulates in the wastewater treatment plant and must be removed periodically to keep the plant operating properly. The collected material, called biosolids or “sewage sludge,” is high in organic content and contains moderate amounts of nutrients.<sup>61</sup> Wastewater facilities can dispose of biosolids by transferring them to another facility, placing them in a landfill, incineration, distributing them as fertilizer, or land applying them to permitted sites.<sup>62</sup> The option selected for use or disposal is typically stated in the permit issued to the wastewater treatment facility by DEP.<sup>63</sup> Florida produces a total of 340,000 dry tons of biosolids annually, of which approximately two-thirds are beneficially used and one-third is landfilled.<sup>64</sup>

Three classes of biosolids are regulated for beneficial use and are categorized based on treatment and quality: Class B, Class A, and Class AA.<sup>65</sup> Treatment is required to either reduce or completely eliminate pathogens. Class B treatment significantly reduces pathogens, but does not completely eliminate them. Class AA treatment essentially eliminates pathogens and meets strict concentration limits for heavy metals. Class A treatment level is between Class B and Class AA. While Class A and Class AA can be used for a variety of beneficial purposes, Class B, the lowest quality of biosolids, is typically only used for land application.<sup>66</sup>

Land application is the use of biosolids at a permitted site to provide nutrients or organic matter to the soil, such as agricultural land, golf courses, forests, parks, or reclamation sites. The biosolids are applied in accordance with restrictions based on crop nutrient needs, phosphorus limits in the area, and soil fertility.<sup>67</sup> Biosolids contain macronutrients (such as nitrogen and phosphorus) and micronutrients (such as copper, iron, and manganese) that are utilized by crops. The application of these nutrient-rich biosolids increases the organic content of the soil, fostering more productive plant growth.<sup>68</sup> To prevent odor or the contamination of soils, crops, livestock, and humans, land application sites must meet site management requirements such as site slopes, setbacks, and proximity to groundwater restrictions.<sup>69</sup> There are approximately 140 permitted land application sites in Florida.<sup>70</sup>

Class AA biosolids can be land applied or can be distributed and marketed as a commercial fertilizer.<sup>71</sup> Class AA biosolids products are also not subject to site management requirements if distributed and marketed as a fertilizer or distributed and marketed to a person or entity that will sell or give away the

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<sup>61</sup> DEP, *Domestic Wastewater Biosolids*, available at <https://floridadep.gov/water/domestic-wastewater/content/domestic-wastewater-biosolids> (last visited Feb. 4, 2019); “Biosolids” is defined in r. 62-640.200(6), F.A.C., as the solid, semisolid, or liquid residue generated during the treatment of domestic wastewater in a domestic wastewater treatment facility, formerly known as “domestic wastewater residuals” or “residuals.” The treated effluent or reclaimed water from a domestic wastewater treatment plant is not included. Also, solids removed from pump stations and lift stations, screenings and grit removed from the preliminary treatment components of domestic wastewater treatment facilities, other solids as defined in subsection 62-640.200(31), F.A.C., and ash generated during the incineration of biosolids are not included. Biosolids include products and treated material from biosolids treatment facilities and septage management facilities regulated by DEP.

<sup>62</sup> DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 3, available at <https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf> (last visited Feb. 22, 2019).

<sup>63</sup> *Id.* at slide 4.

<sup>64</sup> *Id.* at slide 5.

<sup>65</sup> *Id.* at slide 6.

<sup>66</sup> *Id.* at slide 7.

<sup>67</sup> DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 23, available at <https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf> (last visited Feb. 25, 2019); *see also*, United States Environmental Protection Agency (EPA), *A Plain English Guide to the EPA Part 503 Biosolids Rule* (Sept. 1994), p. 26, available at <https://www.epa.gov/sites/production/files/2018-12/documents/plain-english-guide-part503-biosolids-rule.pdf> (last visited Feb. 26, 2019).

<sup>68</sup> DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 20, available at <https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf> (last visited Feb. 25, 2019).

<sup>69</sup> *Id.* at slides 8-9.

<sup>70</sup> *Id.* at slide 20.

<sup>71</sup> *Id.* at slide 6.



biosolids products as a fertilizer or component of a fertilizer.<sup>72</sup> There are approximately 39 facilities in Florida that produce Class AA biosolids.<sup>73</sup> In 2016, 197,115 dry tons of Class AA biosolids product was distributed and marketed in Florida.<sup>74</sup>

The beneficial use of biosolids is regulated by DEP under ch. 62-640, F.A.C., and by the United States Environmental Protection Agency (EPA) under Title 40 Code of Federal Regulations Part 503 (Part 503).<sup>75</sup> Adopted in 1993, Part 503 created standards for the final use or disposal of biosolids generated during domestic wastewater treatment. The standards included general requirements, pollutant limits, management practices, and operational standards for biosolids. Standards were also included for biosolids applied to the land, placed on a surface disposal site, or fired in a sewage sludge incinerator.<sup>76</sup>

In 1990, DEP adopted rules governing biosolids based on the draft of Part 503 and previously adopted solid waste rules.<sup>77</sup> DEP's rules were revised in 1998 to be consistent with the final version of Part 503. Part 503 was self-implementing, meaning it did not require permits to be issued. Also, it did not address phosphorus, a major pollutant in Florida.<sup>78</sup> As a result, Florida amended the rules in 2010 to improve site accountability and nutrient management by requiring site permits for the land application of biosolids, nutrient management plans (NMPs), provisions governing phosphorus limitations, and site management requirements.<sup>79</sup> Additionally, the rules clarified that the disposal and incineration of biosolids must be in accordance with DEP's solid waste<sup>80</sup> and air<sup>81</sup> rules to protect water quality and human health.

NMPs are site-specific plans that specify the rate at which biosolids can be applied in the area, the method of application allowed (i.e. surface application, injection, incorporation, etc.), the zone in which biosolids can be applied, pollutant concentration targets,<sup>82</sup> and cumulative pollutant loading limits from all sources at the application site.<sup>83</sup> NMPs are submitted to DEP along with the permit application for each agricultural site.

Agricultural sites that are required to have a NMP for the application of biosolids are also often required to participate in the Florida Department of Agriculture and Consumer Services (DACS) BMP program if the site is located in an impaired watershed because of the potential impact biosolids may have on

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<sup>72</sup> DEP, *Biosolids in Florida: 2013 Summary* (Dec. 2014), p. 4, available at [https://floridadep.gov/sites/default/files/BiosolidsFlorida-2013-Summary\\_2.pdf](https://floridadep.gov/sites/default/files/BiosolidsFlorida-2013-Summary_2.pdf) (last visited Feb. 25, 2019).

<sup>73</sup> DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 13, available at <https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf> (last visited Feb. 25, 2019).

<sup>74</sup> *Id.* at slide 19.

<sup>75</sup> EPA, *Biosolids Laws and Regulations*, available at <https://www.epa.gov/biosolids/biosolids-laws-and-regulations> (last visited Feb. 25, 2019).

<sup>76</sup> 40 C.F.R. Part 503.

<sup>77</sup> Chapters 62-701 and 62-709, F.A.C.

<sup>78</sup> DEP, *Biosolids Rule/Permitting* (Nov. 2018), slide 2, available at <https://floridadep.gov/water/domestic-wastewater/documents/tac-3-biosolids-rulepermitting> (last visited Feb. 25, 2018); *see also*, DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 11, available at <https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf> (last visited Feb. 25, 2019).

<sup>79</sup> DEP, *Biosolids Rule/Permitting* (Nov. 2018), slide 2, available at <https://floridadep.gov/water/domestic-wastewater/documents/tac-3-biosolids-rulepermitting> (last visited Feb. 25, 2018); *see* ch. 62-640, F.A.C.

<sup>80</sup> Chapter 62-701, F.A.C.

<sup>81</sup> *See* Chapters 62-204, 62-210, 62-212, 62-213, 62-296, and 62-297, F.A.C.

<sup>82</sup> The pollutant concentration target may be a total maximum daily load (TMDL). When a river, lake, estuary, or spring does not meet state water quality standards, DEP determines a water quality restoration goal known as a TMDL that will restore the waterbody so that it meets water quality standards. TMDLs establish a target for the maximum of a specific pollutant that may be present while ensuring the functionality and health of the affected waterbody; therefore, a waterbody may have multiple TMDLs to address different pollutants.

<sup>83</sup> DEP, *NMPs*, available at <https://floridadep.gov/water/domestic-wastewater/documents/nutrient-management-plans-biosolids> (last visited Feb. 25, 2019); *see also*, r. 62-640.500, F.A.C.

water quality.<sup>84</sup> Typical BMP practices include nutrient management, irrigation and water table management, and water resource protection. Nutrient management practices for biosolids land application address appropriate source, rate, timing, and placement of nutrients to minimize impacts to water resources. Irrigation and water table management practices address methods for irrigating to reduce water and nutrient losses to the environment and to maximize the efficient use and distribution of water. Finally, water resource protection practices, such as the site management requirements for biosolids, help to reduce or prevent the transport of nutrients and sediments from production areas to water resources.<sup>85</sup> The BMPs for the site are typically included in facility permits.<sup>86</sup>

While counties do not have the authority to permit the management of biosolids in Florida, some, through their local regulations, have enacted limitations on the use of biosolids within the county limits. For example, Indian River County has established a moratorium that prohibits the use of Class B biosolids for a certain period where waterways are at high risk for pollutant loadings due to the rainy season.<sup>87</sup>

### *Biosolids Technical Advisory Committee*

In 2018, DEP created a Biosolids Technical Advisory Committee (TAC) to evaluate current management practices and explore opportunities to better protect Florida's water resources.<sup>88</sup> The TAC members represented stakeholders from several interest areas including environmental and agricultural industry experts, large and small utilities, waste haulers, consultants, and academics.<sup>89</sup> The meetings included presentations and public comment as well as discussion among the TAC members, the audience, and DEP.

Based on the deliberations of the TAC and feedback from public participants, DEP recommended the following actions:

- Permit biosolids in a manner that minimizes migration of nutrients to prevent impairment to waterbodies and amend current permitting rules to: establish the rate of biosolids application based on site specifics, such as soil characteristics/adsorption capacity, water table, hydrogeology, site use, and distance to surface water; evaluate the percentage of water extractable phosphorus in all biosolids to inform the appropriate application rate; and establish criteria for low, medium and high-risk sites that guide application practices and required water quality monitoring.
- Increase the inspection rate of land application.
- Develop site specific groundwater and/or surface water monitoring protocols to detect nutrient migration.
- Develop and conduct biosolids and nutrient management research on nutrient run-off through surface and groundwater flow using various application rates, types of biosolids application, and different geologic conditions.
- Promote innovative technology pilot projects for biosolids processing that could provide a wider range of beneficial end products.<sup>90</sup>

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<sup>84</sup> "Impaired water" is defined in r. 62-303.200(7), F.A.C., as a waterbody or waterbody segment that does not meet its applicable water quality standards [...] due in whole or in part to discharges of pollutants from point or nonpoint sources.

<sup>85</sup> DACS, *Agriculture and Water Quality*, available at

[https://www.freshfromflorida.com/content/download/33106/813038/Agriculture\\_and\\_water\\_quality\\_2018.pdf](https://www.freshfromflorida.com/content/download/33106/813038/Agriculture_and_water_quality_2018.pdf) (last visited Feb. 26, 2019).

<sup>86</sup> Section 403.067(7)(c), F.S.; see ch. 2016-1, Laws of Fla.

<sup>87</sup> Southwest Florida Regional Planning Council Res. 2018-03; Treasure Coast Regional Planning Council Res. 18-03.

<sup>88</sup> DEP, *DEP Biosolids Technical Advisory Committee*, available at <https://floridadep.gov/water/domestic-wastewater/content/dep-biosolids-technical-advisory-committee> (last visited Feb. 25, 2018).

<sup>89</sup> *Id.*

<sup>90</sup> DEP, *Biosolids Technical Advisory Committee Recommendations* (January 2019), available at

<https://floridadep.gov/water/domestic-wastewater/documents/tac-4-biosolids-tac-considerations> (last visited Feb. 25, 2018).

## 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 DEP.<sup>91</sup> In some cases, notice to DEP is provided through the State Watch Office, an emergency communications 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 provides emergency information to newspapers and radio and television stations. Examples of notification to the State Watch Office include notification of petroleum discharges,<sup>92</sup> wastewater discharges,<sup>93</sup> and releases of hazardous substances.<sup>94</sup>

Section 403.077, F.S., requires an owner or operator of a facility that commits a reportable pollution release<sup>95</sup> to 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>96</sup>

## 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>97</sup> The IRL system is composed of three main waterbodies: the Mosquito Lagoon, the Banana River, and the IRL.<sup>98</sup> More than 71 percent of its area and nearly half its length is within Brevard County.<sup>99</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>100</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>101</sup> The estimated economic value received from the IRL in 2014 was approximately \$7.6 billion, of which \$1.57 million was attributed to recreation and visitor-related activity.<sup>102</sup> Industry groups that are directly influenced by the IRL support nearly 72,000 jobs.<sup>103</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 IRL as a result of stormwater

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<sup>91</sup> See, e.g., ss. 377.371(2), 376.30702, 403.862(1)(b), and 403.93345(5), F.S.

<sup>92</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>93</sup> Rule 62-620.610, F.A.C.

<sup>94</sup> Rule 62-150.300, F.A.C.

<sup>95</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 DEP rule, permit, order, or variance.

<sup>96</sup> DEP Pollution Notice, available at <http://prodenv.dep.state.fl.us/DepPNP/reports/viewIncidentDetails?page=1> (last visited Jan. 25, 2019).

<sup>97</sup> IRL Council, *About the Indian River Lagoon*, available at <http://www.irlcouncil.com/> (last visited Jan. 22, 2019).

<sup>98</sup> *Id.*

<sup>99</sup> Tetra Tech, Inc. & Closewaters, LLC, *Save Our Lagoon Project Plan for Brevard County, Florida* (April 2018), p. 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>100</sup> IRL Council, *About the Indian River Lagoon*, available at <http://www.irlcouncil.com/> (last visited Jan. 22, 2019).

<sup>101</sup> *Id.*

<sup>102</sup> IRL National Estuary Program, *Annual Report 2017* (Feb. 26, 2018), p. 4, available at [http://www.irlcouncil.com/uploads/7/9/2/7/79276172/annrpt\\_final\\_2-26-18.pdf](http://www.irlcouncil.com/uploads/7/9/2/7/79276172/annrpt_final_2-26-18.pdf) (last visited Jan. 23, 2019).

<sup>103</sup> *Id.*

runoff from urban and agricultural areas, wastewater treatment facility discharges, septic systems, and excess fertilizer applications.<sup>104</sup> The nutrients have led to recurring brown tides; unusual mortalities of dolphins, manatees, and shorebirds; and large fish kills due to low dissolved oxygen from decomposing algae.<sup>105</sup>

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<sup>104</sup> *Save Our Lagoon* at ix.

<sup>105</sup> *Id.*

## Type Two Transfer

Section 20.06(2), F.S., defines a type two transfer as the merging of an existing department, program or activity into another department. Any program or activity transferred by a type two transfer retains all the statutory powers, duties, and functions it held before the transfer. The program or activity also retains its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, unless otherwise provided by law. The transfer of segregated funds must be made in such a manner that the relation between the program and the revenue source is retained.<sup>106</sup>

## Consolidated Annual Reports

By March 1 of each year, the WMDs must submit a consolidated annual report to the Governor, the Legislature, and DEP. The WMDs must also provide copies of the report to the chairs of the legislative committees having substantive or fiscal jurisdiction over the WMDs and the governing boards of all county entities having jurisdiction or deriving any funds for operations of the district. The report must also be made available to the public in either a printed or an electronic format.<sup>107</sup>

The consolidated annual report includes several legislatively mandated plans and reports regarding the status of water resource programs. The consolidated annual report includes: the Strategic Water Management Plan Annual Work Plan Report; the Minimum Flows and Minimum Water Levels Annual Priority List and Schedule; the Annual Five-Year Capital Improvement Plan; the Alternative Water Supplies Annual Report; the Five-Year Water Resource Development Work Program; the Florida Forever WMD Work Plan Annual Report; the Mitigation Donation Annual Report; the Water Projects in the Five-Year Water Resources Development Work Program; and the Surface Water Improvement and Management Program Annual Report.<sup>108</sup>

## The Office of Economic and Demographic Research

The Office of Economic and Demographic Research (EDR) is a research arm of the Legislature principally concerned with forecasting economic and social trends that affect policy making, revenues, and appropriations.<sup>109</sup> EDR publishes all of the official economic, demographic, revenue, and agency workload forecasts that are developed by Consensus Estimating Conferences and makes them available to the Legislature, state agencies, universities, research organizations, and the general public.<sup>110</sup>

## **Effect of Proposed Changes**

The bill transfers the onsite sewage program from DOH to DEP by type two transfer, effective July 1, 2020, and requires DEP and DOH to submit recommendations to the Governor and the Legislature addressing the transfer, including the continued role of the county health departments in permitting, inspection, and tracking of OSTDSs under the direction of DEP.

The bill requires the consolidated WMD annual report to be submitted to EDR in addition to DEP, the Governor, and the Legislature and requires the report to include projects to connect OSTDSs to central sewerage systems and to convert OSTDSs to advanced nutrient removing OSTDSs.

The bill requires DEP and DOH to include all portions of a lot subject to any easement, right of way, and right of entry when calculating the size of the lot.

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<sup>106</sup> Section 20.06(2), F.S.

<sup>107</sup> Northwest Florida WMD, *Consolidated Annual Reports*, available at <https://www.nfwfwater.com/Data-Publications/Reports-Plans/Consolidated-Annual-Reports> (last visited Mar. 2, 2019).

<sup>108</sup> Section 373.036(7), F.S.

<sup>109</sup> EDR, *Welcome*, available at <http://edr.state.fl.us/Content/> (last visited Apr. 11, 2019).

<sup>110</sup> EDR, *About Us*, available at <http://edr.state.fl.us/Content/about/index.cfm> (last visited Apr. 11, 2019).

The bill provides that a hardship exists when an applicant for a variance demonstrates that the lot is at least 0.85 acres and that lots in the immediate proximity average at least one acre. The bill specifies that the term "immediate proximity" means lots within the same unit or phase of a subdivision as, adjacent or contiguous to, or across the road from the lot subject to the variance request.

The bill repeals the TRAP and the RRAC.

The bill requires DOH, effective July 1, 2019, to allow the use of American National Standards Institute 245 systems approved by the National Sanitation Foundation International (NSF/ANSI 245).<sup>111</sup>

The bill creates an OSTDS TAC and requires DEP, in consultation with DOH, to appoint members to make recommendations that increase the availability of nutrient removing OSTDSs. The bill requires the TAC to consider and recommend regulatory options, such as fast-track approval, prequalification, or expedited permitting, to facilitate the introduction and use of nutrient removing OSTDSs that have been reviewed and approved by a national agency or organization, and requires the TAC to submit its recommendations to the Governor and the Legislature by August 1, 2020.

The bill specifies that the TAC should consist of no more than nine members representing the home building industry, the real estate industry, the OSTDS industry, septic tank contractors, professional engineers, and local governments. The bill specifies that the TAC will expire on August 15, 2020.

The bill requires each local government, in cooperation with DEP, the WMD, and the public and private domestic wastewater facilities within the jurisdiction of the local government, to develop a wastewater treatment plan to provide for construction, expansion, or upgrades necessary to achieve the TMDL requirements applicable to the domestic wastewater facilities. The bill specifies that the wastewater treatment plan must be adopted as part of the BMAP no later than the first five-year milestone assessment. The plan must include the permitted capacity of the facility, in gallons per day; the average nutrient concentration; the estimated average nutrient load; and a timeline of the dates by which the construction of any improvements will commence, construction will be completed, and operations of the improved facility or facilities will commence.

The bill provides that a local government that does not have a domestic wastewater treatment facility in its jurisdiction is not required to develop a wastewater treatment plan, unless there is a demonstrated need for water quality improvement that requires the creation of such a facility within its jurisdiction.

If DEP determines that OSTDSs contribute at least 20 percent of the nonpoint source nutrient pollution or that remediation is necessary to achieve a TMDL, the bill requires the BMAP to include an OSTDS remediation plan that identifies cost-effective and financially feasible projects necessary to achieve the nutrient load reductions required for OSTDSs.

In order to promote cost-effective remediation, DEP may identify one or more OSTDS priority focus areas considering soil conditions; groundwater or surface water travel time; proximity to surface waters, including predominantly marine waters; hydrogeology; density of OSTDSs; nutrient load; and other factors that may lead to water quality degradation when identifying these priority focus areas.

The bill requires DEP, in cooperation with DOH, WMDs, and public and private domestic wastewater facilities, to develop and adopt the OSTDS remediation plan as part of the BMAP no later than the first five-year milestone assessment, or as required for Outstanding Florida Springs. The bill specifies that DEP, when identifying wastewater projects in BMAPs, may not require the higher cost option if it

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<sup>111</sup> NSF/ANSI 245 is a certification applied to an OSTDS that defines total nitrogen reduction requirements. A NSF/ANSI 245 certified system covers residential wastewater treatment systems with rated capacities between 400 and 1,500 gallons per day. To achieve certification, treatment systems must produce an acceptable quality of effluent during a six-month (26-week) test; *see also*, The Public Health and Safety Organization, *NSF/ANSI 245: Nitrogen Reduction*, available at <http://www.nsf.org/services/by-industry/water-wastewater/onsite-wastewater/nitrogen-reduction> (last visited Mar. 6, 2019).

achieves the same nutrient load reduction as a lower cost option. The bill further specifies that a regulated entity may choose an alternative option if it provides additional benefits or meets other water quality or water supply requirements.

The bill requires DEP to submit to EDR the cost estimates for projects required in s. 403.067(7)(a)9., F.S., and requires EDR to include the project cost estimates in its annual assessment.

The bill requires DEP, in coordination with the county health departments, domestic wastewater treatment facilities, and other governmental entities, to submit a report by July 1, 2020, to the Governor and the Legislature evaluating the costs of wastewater projects identified in BMAPs, the OSTDS remediation plans, and other restoration plans developed to meet TMDLs. The bill requires the report to include projects to replace OSTDSs with enhanced nutrient removing OSTDSs; projects to install retrofit OSTDSs with enhanced nutrient removing technologies; projects to construct, upgrade, or expand wastewater facilities to provide advanced waste treatment; and projects to connect OSTDSs to wastewater treatment facilities. The bill further requires the report to include the estimated costs, nutrient load reduction estimates, other benefits, and an estimated implementation timeline for each project. The report must also include a proposed five-year funding plan and the source and amount of financial assistance to be made available by DEP, a WMD, or other project partner.

The bill requires DEP to submit a report by July 1, 2020, to the Governor and the Legislature assessing the water quality monitoring being conducted for each BMAP. The report must evaluate the water quality monitoring prescribed for each BMAP to determine if it is sufficient to detect changes in water quality from project implementation, identify gaps in water quality monitoring, and recommend water quality monitoring needs. The bill specifies that DEP may coordinate with the WMDs and any applicable university in developing the report.

The bill creates a clean water grant program within DEP and requires DEP to submit a report to the Governor and the Legislature by January 1, 2020, that includes a recommended process for the prioritization of projects that are considered for grant funding. The bill further requires DEP, in consideration of the prioritization process, to consider estimated nutrient load reduction per project, cost effectiveness of the project, overall environmental benefit of a project, project readiness, the location of a project within the plan area, and availability of local matching funds. In determining a process for allocating funds, DEP must recommend a minimum cost share match for local governments, the WMDs, public and private domestic wastewater facilities, and homeowners for each project type, as applicable, and hardship criteria for lowering the cost share requirements.

Effective July 1, 2020, and subject to appropriation, DEP may provide grants for projects that will individually or collectively reduce excess nutrient pollution in a BMAP or an alternative restoration plan adopted by final order that will install or retrofit OSTDSs; construct, upgrade, or expand wastewater facilities to provide advanced waste treatment; or connect OSTDSs to central sewerage facilities. The bill authorizes DEP to coordinate with the WMDs to identify grant recipients. The bill requires DEP to submit a progress report on funded projects to the Governor and the Legislature every October 1, beginning in 2021, on the implementation status and the funds expended or committed to each project.

The bill requires additional public notification for domestic wastewater treatment facilities that unlawfully discharge raw or partially treated domestic wastewater. The domestic wastewater treatment facility must provide notice to the county health department and the local government with jurisdiction of the area in which the discharge occurred.

The bill requires a county health department and local government notified by a domestic wastewater treatment facility to publish on a website accessible by the public all notices submitted by the facility within 24 hours after receiving notification of the discharge. The bill requires each listing remain on the website until such time that the discharge has ceased or, if the discharge endangers the public health or environment, until such time that the danger no longer exists, whichever is longer.

The bill requires the domestic wastewater treatment facility, in coordination with the county health department, to post signs indicating a sewage discharge has occurred next to any surface water or publicly accessible area impacted by a discharge. The bill requires each sign remain in place until such time that the discharge has ceased or, if the discharge endangers the public health or environment, until such time that the danger no longer exists, whichever is longer.

The bill further requires the local government to make a good faith effort to notify the public of a discharge within 24 hours after discovering the discharge by using press releases digital strategies, social media, and any other form of messaging deemed necessary and appropriate. The bill requires the cost of notification be paid by the domestic wastewater treatment facility or entity responsible for the discharge.

The bill requires advanced waste treatment for wastewater discharges into the IRL by July 1, 2024.

The bill requires DEP, in consultation with the WMDs and sewage disposal facilities, to submit a progress report to the Governor and the Legislature by July 1, 2020, that provides the status of upgrades by each sewage disposal facility required to meet advanced waste treatment requirements. The report must also include a list of sewage disposal facilities in the IRL that will be required to upgrade to advanced waste treatment, the preliminary cost estimated for the upgrades, and a projected timeline.

The bill provides legislative intent to regulate biosolids management to minimize the migration of nutrients that impair or contribute to the impairment of waterbodies and to expedite the implementation of the Biosolids TAC recommendations and biosolids processing innovative technologies. The bill provides that the term biosolids has the same meaning as in s. 373.4595(2), F.S.

The bill prohibits the land application of biosolids on any site when the biosolids application zone interacts with the seasonal high ground water level. The bill specifies that DEP may not issue a new permit or renew an existing permit for the land application of biosolids for any site where it is prohibited. The bill further specifies that permits issued prior to July 1, 2019, continue in effect until July 1, 2022, or the termination date of the permit, whichever is earlier.

The bill directs DEP to initiate rulemaking by August 1, 2019, and to adopt rules for biosolids management to:

- Permit the use of biosolids in a manner that minimizes the migration of nutrients, including phosphorus and nitrogen, that impair or contribute to the impairment of surface water and groundwater quality, including:
  - Site-specific land application rates of biosolids based on soil characteristics, soil adsorption capacity, water table characteristics, hydrogeology, site use, and distance to surface water;
  - An evaluation of the percentage of water extractable phosphorus in all biosolids to inform the appropriate application rates; and
  - Criteria for low, medium, and high-risk sites that guide application practices and required water quality monitoring;
- Establish site specific groundwater and surface water monitoring requirements.

The bill requires DEP to implement an offsite water quality monitoring program sufficient to determine impacts from the application of biosolids on downstream and nearby surface water and groundwater quality.

The bill creates the Biosolids Alternative Management TAC within DEP for the purpose of reviewing the recommendations of the Biosolids TAC. The bill specifies that the TAC must be chaired by DEP and consist of the following members:

- A representative from a wastewater facility that applies biosolids on land;
- A representative from a wastewater facility that uses an alternative biosolids disposal method;



- An agricultural representative who is knowledgeable of biosolids land application;
- A representative from a nonuniversity public or private environmental organization;
- A representative from a university or educational institution who is knowledgeable of alternative biosolids uses or disposal methods;
- A biosolids hauler;
- A representative from local government; and
- A professional engineer who is experienced in biosolids management.

The bill requires the TAC to conduct at least three meetings, with the first convening on or before August 1, 2019. The bill further requires the TAC to conduct additional meetings, as needed, to receive input from the public regarding alternative management approaches and the identification of biosolids processing technologies.

The bill requires the TAC to evaluate the costs and impacts of the land application of biosolids and the identification of alternative management approaches and the identification of biosolids processing technologies by considering:

- The existing costs associated with the land application of biosolids;
- The costs related to the elimination of land application of biosolids;
- The alternative processing technologies available for biosolids; and
- Identification of new alternative technologies for biosolids management.

The bill further requires the TAC to submit a report to the Governor and the Legislature by July 1, 2020, on the TAC findings and recommendations.

The bill provides that this section does not apply to Class AA biosolids that are marketed and distributed as fertilizer products in accordance with DEP rule. Finally, the bill clarifies that this section does not preempt a municipality or county from enforcing or extending an ordinance, moratorium, or regulation adopted before February 1, 2019, relating to the land application of Class B biosolids until the ordinance, moratorium, or regulation expires or is repealed by the municipality or county, or until rules adopted by DEP are in effect. The bill specifies that upon adoption of rules by DEP, no municipality or county may adopt or enforce any ordinance, regulation, resolution, rule, moratorium, or policy pertaining to biosolids.

The bill provides that the development of wastewater treatment plans and the reporting of unauthorized wastewater discharges is essential to the protection of public health and natural resources and, therefore, the Legislature determines and declares that this act fulfills an important state interest.

## B. SECTION DIRECTORY:

Section 1 transfers authority of the onsite sewage program from DOH to DEP via a type two transfer.

Section 2 requires DOH and DEP to submit recommendations to the Governor and the Legislature regarding the type two transfer, before December 1, 2019.

Section 3 amends s. 153.54, F.S., to conform to changes made in the act.

Section 4 amends s. 153.73, F.S., to conform to changes made in the act.

Section 5 amends s. 163.3180, F.S., to conform to changes made in the act.

Section 6 amends s. 180.03, F.S., to conform to changes made in the act.

Section 7 amends s. 373.036, F.S., to require consolidated annual reports to be submitted to EDR and include projects to connect OSTDSs to central sewerage systems and convert OSTDSs to advanced nutrient removing OSTDSs.

Section 8 amends s. 373.807, F.S., to conform to changes made in the act.

Section 9 amends s. 373.811, F.S., to require DEP to include all portions of a lot subject to an easement, right of way, or right of entry when calculating the size of the lot.

Section 10 amends s. 381.006, F.S., to clarify DOH must retain the environmental health program with the exception of the OSTDS program.

Section 11 amends s. 381.0061, F.S., to update a cross-reference.

Section 12 amends s. 381.0064, F.S., to conform to changes made in the act.

Section 13 amends 381.0065, F.S., to specify that a hardship exists under certain conditions and require DEP to allow the use of NSF/ANSI 245 systems approved before July 1, 2019, to meet the requirements to a TMDL or BMAP, a reasonable assurance plan, or other water quality protection and restoration requirements, effective July 1, 2019.

Section 14 amends s. 381.0065, F.S., to conform to changes made in the act.

Section 15 amends s. 381.00651, F.S., to conform to changes made in the act.

Section 16 creates s. 381.00652, F.S., to require DEP to appoint an OSTDS TAC and submit recommendations no later than August 1, 2020.

Section 17 repeals s. 381.0068, F.S., to repeal the TRAP.

Section 18 amends s. 381.0101, F.S., to conform to changes made in the act.

Section 19 amends s. 403.067, F.S., to require a BMAP for a nutrient TMDL to be subject to certain requirements and require DEP to prepare a report identifying the costs and funding associated with certain projects identified in BMAPs, OSTDS remediation plans, or other restoration plans.

Section 20 creates s. 403.0671, F.S., to require DEP to submit to EDR the cost estimates of certain projects required by BMAPs, to submit reports evaluating the costs of wastewater projects identified in the BMAPS, and to assess the water quality monitoring that is conducted for each BMAP.

Section 21 creates s. 403.0673, F.S., to establish the clean water grant program.

Section 22 creates s. 403.0771, F.S., to require sewage discharge notification for domestic wastewater treatment facilities that unlawfully discharge sewage.

Section 23 amends s. 403.086, F.S., to require advanced wastewater treatment for wastewater discharges into the IRL by July 1, 2024, and require DEP to submit a progress report by July 1, 2020.

Section 24 creates s. 403.08715, F.S., to prohibit the land application of biosolids, require DEP to conduct rulemaking, establish the biosolids alternative management TAC, and require the TAC to submit a report of its findings.

Section 25 amends s. 489.551, F.S., to conform to changes made in the act.

Section 26 provides that this act fulfills an important state interest.

Section 27 provides effective dates.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill may have an indeterminate effect on state government revenues because some revenue could be realized from enforcement citations and fines, but this revenue stream would likely be minimal.

#### 2. Expenditures:

The bill may have an insignificant negative fiscal impact on DEP and DOH that can be absorbed within existing resources to complete recommendations on the type two transfer. The bill transfers all of the resources and personnel for the OSTDS program by type two transfer from DOH to DEP, so DEP would use these resources to regulate the OSTDS program beginning July 1, 2020. There may also be an insignificant negative fiscal impact on DEP that can be absorbed within existing resources to administer and support the OSTDS TAC.

The bill may have an indeterminate negative fiscal impact to DEP that can likely be absorbed within existing resources because the agency must:

- Provide recommendations to the Governor and the Legislature for the clean water grant program process and administering the clean water grant program if funds are appropriated; a report identifying the costs and funding associated with certain projects identified in BMAPs, OSTDS remediation plans, or other restoration plans; a report to the Governor and Legislature evaluating the costs of wastewater projects identified in the BMAPS and assessing the water quality monitoring being conducted for each BMAP; a progress report of all advanced waste treatment facilities discharging into certain waterways; and a report to the Governor and Legislature of the findings of the a Biosolids Alternative Management TAC.
- Conduct rulemaking.
- Perform water quality monitoring.

The bill may have a positive fiscal impact on state government expenditures if the revisions to BMAPs improve water quality, resulting in decreased expenditures on water cleanup efforts.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill may have an indeterminate positive fiscal impact to local governments that receive clean water 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 because local governments will be required to create wastewater treatment plans.

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 of notification.

The bill may have an indeterminate negative fiscal impact to any local government-owned wastewater facilities discharging into the IRL because they must upgrade to provide advanced waste treatment.

The bill may have an indeterminate negative fiscal impact on local government expenditures because of the ban on the application of biosolids for certain sites and the potential for more restrictive biosolids land application rules may reduce or prohibit the future use of existing permitted biosolids land application sites, thereby requiring wastewater facilities owned by local governments to identify alternative biosolids disposal methods.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It is unclear whether the transfer of the OSTDS program to DEP on July 1, 2020, will result in changes to the program that could affect the private sector, such as changes in the cost of permit fees or the approval of using lower cost, nutrient reducing OSTDSs.

The bill may have an indeterminate negative fiscal impact on the private sector if unlawful discharges occur at privately owned wastewater treatment facilities due to the costs of notification.

The bill may have an indeterminate negative fiscal impact to any private wastewater facilities discharging into the IRL because the facility must make facility improvements to provide advanced waste treatment.

The bill may also have an indeterminate negative fiscal impact because the prohibition on the application of biosolids for certain sites and the potential for more restrictive land application rules may require wastewater facilities and biosolids haulers to find alternative biosolids disposal methods. The bill may have an indeterminate negative impact on private landowners where biosolids are land applied. Further, the bill may have a negative impact on customers served by a wastewater facility that must find alternative disposal options for biosolids.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires local governments to develop wastewater treatment plans, in cooperation with DEP, the WMD, and the public and private domestic wastewater facilities. An exemption may apply if the requirement results in an insignificant fiscal impact. In addition, an exception may apply because the requirement applies to similarly situated persons and the bill provides a legislative finding that the requirement to develop the wastewater treatment plan is essential to the protection of public health and natural resources.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DEP to conduct rulemaking to increase the availability of cost-effective, low maintenance, and reliable nutrient removing OSTDSs in the marketplace and adopt the recommendations of the Biosolids TAC. While the bill does not expressly grant rulemaking authority to DEP, existing rulemaking authority is sufficient.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 6, 2019, the Agriculture & Natural Resources Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment clarified the transfer of any binding contracts or interagency agreements between DOH and any other agency must continue for the remainder of the term of the contract or agreement. The amendment also updated several statutes that provide for the regulation of OSTDSs to conform with the transfer of authority from DOH to DEP. Further, the amendment clarified that DEP must appoint a TAC whose purpose is to increase the availability of nutrient removing OSTDSs, rather than exclusively nitrogen removing OSTDSs. Finally, the amendment required DEP to initiate rulemaking for specified requirements by a time certain.

On April 2, 2019, the Appropriations Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment changed the effective date of the bill to July 1, 2020, and required DOH and DEP to enter into a new memorandum of agreement prior to July 1, 2020. The amendment also added a calculation of lot size for the purposes of implementing s. 373.811(2), F.S.

On April 18, 2019, the State Affairs Committee adopted a PCS and reported the bill favorably as a committee substitute. The PCS changed the focus of the bill from OSTDSs to water quality improvements and expanded the bill to:

- Require DEP and DOH to submit recommendations to the Governor and the Legislature regarding the type two transfer.
- Specify that a hardship exists under certain criteria when evaluating the size of the lot for an OSTDS.
- Require a BMAP for a nutrient TMDL to include a wastewater treatment plan and an OSTDS remediation plan and require DEP to submit a report identifying the costs and funding associated with specified projects.
- Create a clean water grant program and require DEP to submit recommended processes for the prioritization of projects and allocation of funds.
- Require sewage discharge notification from domestic wastewater facilities that unlawfully discharge sewage.
- Require advanced wastewater treatment for domestic wastewater discharges into the IRL and require DEP to submit a progress report by a time certain.
- Prohibit the land application of biosolids under certain conditions, require DEP to conduct rulemaking to implement the findings of the Biosolids TAC, create a Biosolids Alternative Management TAC, and require a report of its findings to be submitted to the Governor and the Legislature.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.