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 Appropriations Subcommittee on Agriculture, Environment, and General Government

BILL:	CS/SB 1522
INTRODUCER:	Environment and Natural Resources Committee and Senator Stewart
SUBJECT:	Implementation of the Recommendations of the Blue-Green Algae Task Force
DATE:	April 7, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	**Fav/CS**
2.	Reagan	Betta	AEG	**Recommend: Favorable**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1522, entitled the "Implementation of Governor DeSantis' Blue-Green Algae Task Force Recommendations Act," includes legislation intended to implement the recommendations of the Blue-Green Algae Task Force.

The bill includes provisions that require the Department of Environmental Protection (DEP) to:

- Administer an onsite sewage treatment and disposal system inspection program to inspect systems at least once every five years, beginning on July 1, 2024.
- Assess whether certain pollution reduction projects are effectively reducing nutrient pollution or water use.

The bill requires basin management action plans to identify and prioritize spatially focused suites of projects in areas likely to yield maximum pollutant reductions.

The DEP will incur indeterminate costs relating to the implementation and administration of the inspection program and monitoring required under the bill.

The bill takes effect July 1, 2021.

II. Present Situation:

Blue-Green Algae Task Force

In January of 2019, Governor DeSantis issued Executive Order Number 19-12.[1] The order directed the DEP to establish a Blue-Green Algae Task Force charged with expediting progress towards reducing nutrient pollution and the impacts of blue-green algae (cyanobacteria) blooms in the state.[2] The task force's responsibilities included identifying priority projects for funding and making recommendations for regulatory changes. The five-person task force issued a consensus document on October 11, 2019.[3] The recommendations issued by the task force on topics addressed in this Present Situation are included in the relevant section below.

Onsite Sewage Treatment and Disposal Systems

Onsite sewage treatment and disposal systems (OSTDSs), commonly referred to as "septic systems," generally consist of two basic parts: the septic tank and the drainfield.[4] Waste from toilets, sinks, washing machines, and showers flows through a pipe into the septic tank, where anaerobic bacteria break the solids into a liquid form. The liquid portion of the wastewater flows into the drainfield, which is generally a series of perforated pipes or panels surrounded by lightweight materials such as gravel or Styrofoam. The drainfield provides a secondary treatment where aerobic bacteria continue deactivating the germs. The drainfield also provides filtration of the wastewater, as gravity draws the water down through the soil layers.[5]

There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state's population.[6] In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.[7] For example, in rural areas and low-density developments, central sewer systems are not cost-effective. Less than one percent of OSTDSs in Florida are actively managed under operating permits and maintenance agreements.[8] The remainder of systems are generally serviced only when they fail, often leading to costly repairs that could have been avoided with routine maintenance.[9]

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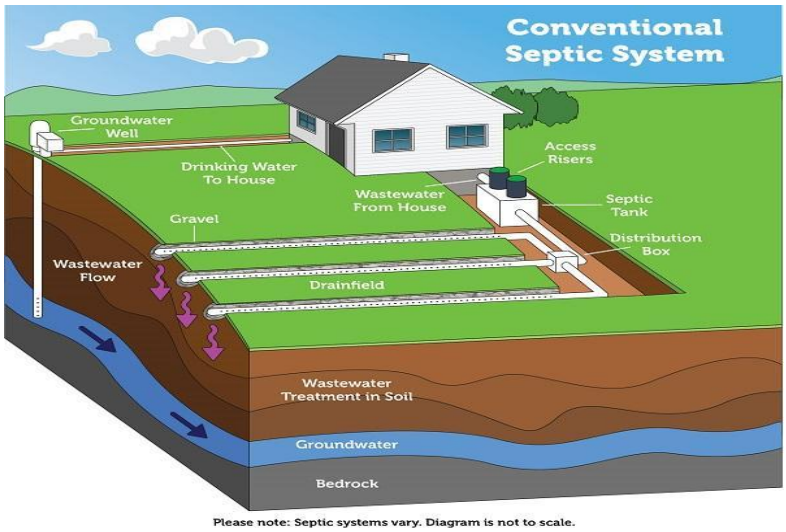
[1] State of Florida, Office of the Governor, *Executive Order Number 19-12* (2019), *available at* https://www.flgov.com/wp-content/uploads/orders/2019/EO_19-12.pdf (last visited Mar. 24, 2021).
[2] *Id.* at 2; Department of Environmental Protection (DEP), *Blue-Green Algae Task Force*, https://protectingfloridatogether.gov/state-action/blue-green-algae-task-force (last visited Mar. 24, 2021).
[3] DEP, *Blue-Green Algae Task Force Consensus Document #1* (Dec. 2, 2019), *available at* https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf (last visited Mar. 24, 2021).
[4] Department of Health (DOH), *Septic System Information and Care*, http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html (last visited Mar. 24, 2021); Environmental Protection Agency (EPA), *Types of Septic Systems*, https://www.epa.gov/septic/types-septic-systems (last visited Mar. 24, 2021) (showing the graphic provided in the analysis).
[5] *Id.*
[6] DOH, *Onsite Sewage*, http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html (last visited Mar. 24, 2021).
[7] DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, Executive Summary (Oct. 1, 2008), *available at* http://www.floridahealth.gov/environmental-health/onsite-sewage/research/_documents/rrac/2008-11-06.pdf (last visited Mar. 24, 2021). The report begins on page 56 of the PDF.
[8] *Id.*
[9] *Id.*



The Blue-Green Algae Task Force recommended that the DEP develop a more comprehensive regulatory program to ensure that OSTDSs are sized, designed, constructed, installed, operated, and maintained to prevent nutrient pollution, reduce environmental impact, and preserve human health. The task force also recommended more post-permitting septic tank inspections.[10]

The Clean Waterways Act transferred the Onsite Sewage Program from the Department of Health (DOH) to the DEP, effective July 1, 2021.[11] Currently, permitting and inspection of OSTDSs is handled by the Environmental Health Section of the DOH in each county.[12] The section permits, regulates, and inspects the construction of new systems, repairs and modifications to existing systems, existing system approvals, and abandonments of systems.[13] The DEP has historically had jurisdiction over OSTDSs when: domestic sewage flow exceeds 10,000 gallons per day; commercial sewage flow exceeds 5,000 gallons per day; there is a likelihood of hazardous or industrial wastes; a sewer system is available; or if any system or flow from the establishment is currently regulated by the DEP (unless DOH grants a variance).[14]

Historically, OSTDSs have not been regulated for nutrient pollution. However, the Clean Waterways Act requires basin management action plans (BMAPs) to include remediation plans if OSTDSs are found to contribute at least 20 percent of point source or nonpoint source nutrient pollution.[15]

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[10] DEP, *Blue-Green Algae Task Force Consensus Document #1*, 6-7 (Oct. 11, 2019), *available at* https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf (last visited Mar. 24, 2021).
[11] Chapter 2020-150, s. 2, Laws of Fla.
[12] DOH, *Onsite Sewage*, http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html (last visited Mar. 24, 2021).
[13] *Id*.
[14] *Interagency Agreement between the Department of Environmental Protection and the Department of Health for Onsite Sewage Treatment and Disposal Systems*, 6-13 (Sept. 30, 2015), *available at* https://floridadep.gov/sites/default/files/HOHOSTDS_9_30_15.pdf (last visited Mar. 24, 2021); s. 381.0065(3)(b), F.S.; DEP, *Septic Systems*, https://floridadep.gov/water/domestic-wastewater/content/septic-systems (last visited Mar. 24, 2021).
[15] Section 403.067(7)(a)9., F.S.

The DEP and DOH issued recommendations on the Onsite Sewage Program transfer in response to the Clean Waterways Act and found, in agreement with the Act, that county health departments should continue to have a role in the inspection, permitting, and tracking of OSTDSs, under the direction of the DEP.[16]

Basin Management Action Plans

The DEP is the lead agency in coordinating the development and implementation of total maximum daily loads (TMDLs), which are scientific determinations of the maximum amount of a given pollutant that can be absorbed by a waterbody and still meet water quality standards.[17] BMAPs are one of the primary mechanisms the DEP uses to achieve TMDLs. BMAPs address the entire pollution load, including point and nonpoint discharges, for a watershed. BMAPs generally include:

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Best management practices (BMPs) and non-regulatory and incentive-based programs, including cost-sharing, waste minimization, pollution prevention, agreements, and public education;
- Public works projects, including capital facilities; and
- Land acquisition.[18]

BMAPs equitably allocate pollutant reductions to individual basins, to all basins as a whole, or to each identified point source or category of nonpoint sources.[19] Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations. The BMAP development process provides an opportunity for local stakeholders, local government and community leaders, and the public to collectively determine and share water quality cleanup responsibilities.[20]

BMAPs must include milestones for implementation and water quality improvement. They must also include an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones must be conducted every five years, with revisions made to the BMAP, as appropriate.[21]

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[16] DOH and DEP, *Onsite Sewage Treatment and Disposal Systems Program Transfer Process – Recommendations Report* (Dec. 31, 2020), *available at* http://www.floridahealth.gov/environmental-health/onsite-sewage/variances/_documents/ostds-recomm-rep-final12-30-20.pdf (last visited Mar. 24, 2021).

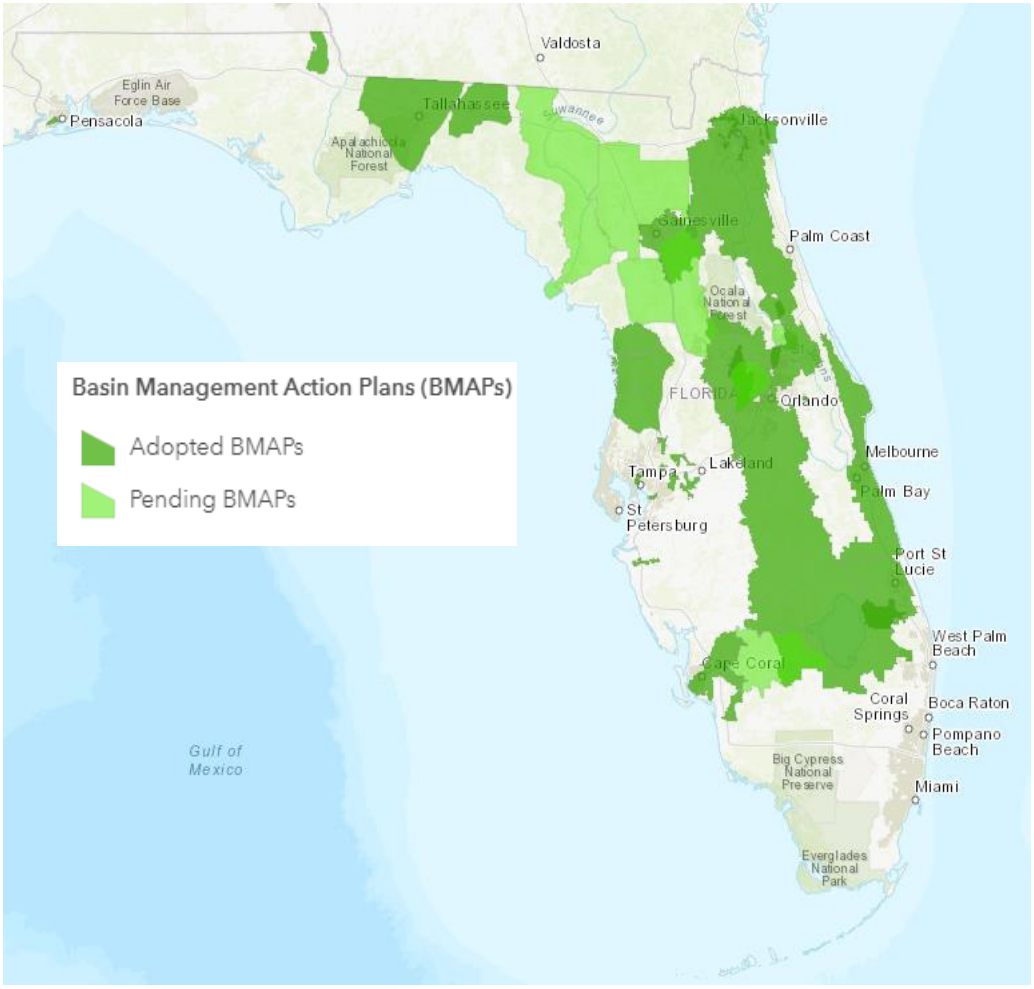
[17] DEP, *Total Maximum Daily Loads Program*, https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program (last visited Mar. 24, 2021); s. 403.061, F.S. DEP has the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. Furthermore, 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.

[18] Section 403.067(7), F.S.

[19] Section 403.067(7)(a)2., F.S.

[20] DEP, *Basin Management Action Plans (BMAPs)*, https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps (last visited Mar. 24, 2021).

[21] Section 403.067(7)(a)6., F.S.



Currently, BMAPs are adopted or pending for a significant portion of the state and will continue to be developed as necessary to address water quality impairments. The graphic above shows the state's adopted and pending BMAPs.[22]

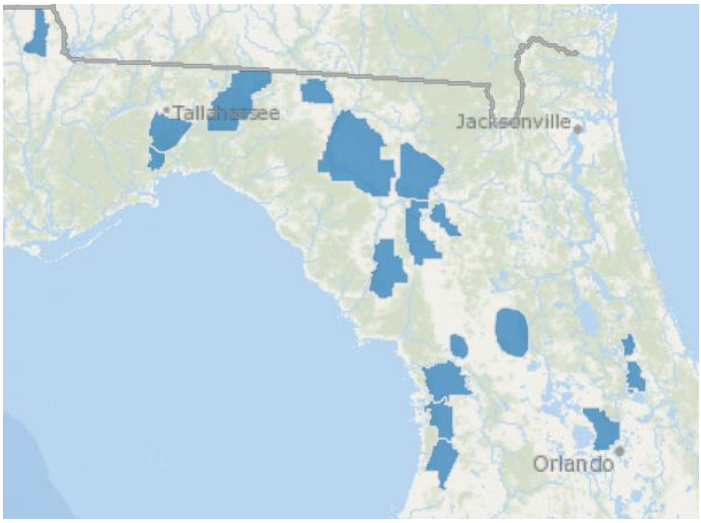
Producers of nonpoint source pollution included in a BMAP must comply with established pollutant reductions by either implementing appropriate BMPs or by conducting water quality monitoring.[23] BMPs are designed to reduce the amount of nutrients, sediments, and pesticides that enter the water system and to help reduce water use. BMPs are developed for agricultural operations as well as for other activities, such as nutrient management on golf courses, forestry operations, and stormwater management.[24]

The Blue-Green Algae Task Force recommended that the DEP develop a more targeted approach to project selection and evaluate project effectiveness through monitoring.[25]

[22] DEP, *Impaired Waters, TMDLs, and Basin Management Action Plans Interactive Map*, https://floridadep.gov/dear/water-quality-restoration/content/impaired-waters-tmdls-and-basin-management-action-plans (last visited Mar. 24, 2021).
[23] Section 403.067(7)(b)2.g., F.S.
[24] DEP, *NPDES Stormwater Program*, https://floridadep.gov/Water/Stormwater (last visited Mar. 24, 2021).
[25] DEP, *Blue-Green Algae Task Force Consensus Document #1*, 2-4 (Oct. 11, 2019), *available at* https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf (last visited Mar. 24, 2021).

Priority Focus Areas for Springs

Pursuant to the Florida Springs and Aquifer Protection Act,[26] the DEP delineates priority focus areas for each Outstanding Florida Spring[27] that is impaired by excessive nutrient pollution.[28] The DEP uses the best available data to delineate these areas, considering groundwater travel time to the spring, hydrogeology, nutrient loads in the springshed, and other factors. These areas are effective upon incorporation into a BMAP.[29] The delineated priority focus areas are shown in the map below.[30]



III. Effect of Proposed Changes:

The bill includes a series of whereas clauses stating that:

- Governor Ron DeSantis created the Blue-Green Algae Task Force (task force) in 2019, to "improve water quality for the benefit of all Floridians," the task force issued a consensus report in October 2019, with multiple recommendations for BMAPs, agriculture, human waste, stormwater, technology, public health, and science;
- In June 2020, Governor DeSantis signed SB 712, the Clean Waterways Act, which implemented many of the recommendations of the task force; and
- Full implementation of the task force's recommendations will require enactment of additional substantive legislation.

Section 1 titles the bill the "Implementation of Governor DeSantis' Blue-Green Algae Task Force Recommendations Act."

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[26] Sections 373.801-813, F.S.
[27] *See* s. 373.802, F.S., Outstanding Florida Springs include all historic first magnitude springs, including their associated spring runs, as determined by DEP using the most recent Florida Geological Survey springs bulletin, and De Leon Springs, Peacock Springs, Poe Springs, Rock Springs, Wekiwa Springs, and Gemini Springs, and their associated spring runs.
[28] Section 373.803, F.S.
[29] *Id*.
[30] DEP, *Springs Priority Focus Areas*, https://geodata.dep.state.fl.us/datasets/8a6f9e78959d48849e65f96c628eb883_1?geometry=-90.108%2C27.975%2C-76.232%2C31.316 (last visited Mar. 25, 2021).

Section 2 amends s. 381.0065, F.S., relating to regulation of OSTDSs Beginning July 1, 2024, the bill requires periodic inspections of OSTDSs. The bill specifies that the owner of an OSTDS, excluding a system required to have an operating permit, must have the system inspected at least once every five years to assess the fundamental operational condition of the system, prolong the life of the system, and identify any failure within the system.

The bill requires the DEP to administer an OSTDS inspection program, including implementing program standards, procedures, and requirements. The bill requires the DEP to adopt rules, including, at a minimum, all of the following:

- A schedule for a five-year inspection cycle;
- A county-by-county implementation plan phased in over a 10-year period with first priority given to those areas within a springshed protection area identified by the DEP;
- Minimum standards for a functioning OSTDS;
- Requirements for the pumpout or repair of a failing OSTDS; and
- Enforcement procedures for the failure of an OSTDS owner to obtain an OSTDS inspection and failure of a contractor to timely report inspection results to the DEP and the owner.

Section 3 amends s. 403.067, F.S., relating to the development of BMAPs. The bill requires BMAPs to:

- Include identification and prioritization of spatially focused suites of projects in areas likely to yield maximum pollutant reductions; and
- For pollution reduction projects with a total cost exceeding $1 million, include an assessment, through integrated and comprehensive monitoring, by the DEP of whether the pollution reduction project is working to reduce nutrient pollution or water use, or both, as intended, and complete the assessment expeditiously.

Section 4 provides that the act takes effect on July 1, 2021.

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 requires owners of onsite sewage treatment and disposal systems to have the system inspected once every five years. This will have an indeterminate fiscal impact on the owners of the systems to pay for the inspections and any repairs that may be required due to the inspections.

C. Government Sector Impact:

The DEP estimates that three new positions and $251,625 will be needed for the implementation and administration of the inspection program and monitoring required under the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

On line 57, the bill refers to "springshed protection area." For clarity and consistency with existing law, the term could be revised to "priority focus area for springs."

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.0065 and 403.067.

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 on March 29, 2021:
The amendment deletes requirements from the underlying bill that:

- The DEP implement a stormwater inspection and monitoring program.
- A basin management action plan describe potential future increases in pollutant loading and provide a comprehensive analysis of options for mitigation or elimination of these increases.

- A notice of intent to implement best management practices include an estimate of input reduction and load reduction.
- Verification of interim measures, best management practices, or other measures adopted by rule must be completed by a certain date to receive a presumption of compliance.
- The Department of Agriculture and Consumer Services provide to the DEP certain information promptly and in unadulterated form.

B. Amendments:

None.