

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: SB 7060

INTRODUCER: Environment and Natural Resources Committee

SUBJECT: Biosolids

DATE: April 14, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|-----------------|------------|---------------------------------------|
| | <u>Anderson</u> | <u>Rogers</u> | | EN Submitted as Comm. Bill/Fav |
| 1. | <u>Reagan</u> | <u>Betta</u> | <u>AEG</u> | Recommend: Fav/CS |
| 2. | <u>Reagan</u> | <u>Sadberry</u> | <u>AP</u> | Pre-meeting |

I. Summary:

SB 7060 ratifies the Department of Environmental Protection's (DEP's) revisions to their biosolids rules, chapter 62-640 of the Florida Administrative Code. The bill exempts the rules from review and approval by the Environmental Regulation Commission.

Chapter 2020-150, Laws of Florida, required the DEP to adopt rules for biosolids management and included provisions that the rule must:

- Require a new land application site permit or permit renewal issued after July 1, 2020, to:
 - Ensure a minimum unsaturated soil depth of two feet between the depth of biosolids placement and the water table level at the time biosolids are applied to the soil;
 - Prohibit applying biosolids to land with a seasonal high water table within six inches of the soil surface or depth of biosolids placement unless a department-approved nutrient management plan and water quality monitoring plan provide reasonable assurances that the land application of biosolids at the site will not cause or contribute to a violation of the state's surface water quality standards or groundwater standards; and
 - Require biosolids sites to enroll in a Department of Agriculture and Consumer Services Best Management Practices program;
- Require all permits to comply with these requirements by July 1, 2022; and
- Require biosolids sites to comply with the DEP's new rule within two years of the effective date of the rule.

The Statement of Estimated Regulatory Costs (SERC) developed by the DEP determined that the proposed rule will likely increase regulatory costs in excess of \$1 million in the aggregate within five years after implementation of the rule. This amount triggers the statutory requirement for the rule to be ratified by the Legislature before it may go into effect.

The bill provides a declaratory statement and determination by the Legislature that the rule ratification fulfills an important state interest.

The bill requires the DEP to provide notice to and receive consent from a private property owner before entering onto his or her property to install monitoring equipment or conduct sampling for biosolids sites.

The act is effective upon becoming a law. At that time, the rule also becomes effective.

The bill will have an indeterminate negative fiscal impact on the DEP due to increased inspections and monitoring of application sites.

II. Present Situation:

Legislative Ratification

A rule is subject to legislative ratification if it:

- Has an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within five years after the implementation of the rule;
- Has an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within five years after the implementation of the rule; or
- Increases regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within five years after the implementation of the rule.¹

If a rule requires ratification by the Legislature, the rule must be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the regular legislative session. The rule may not go into effect until it is ratified by the Legislature.²

Statement of Estimated Regulatory Costs Requirements

A statement of estimated regulatory costs (SERC) is an analysis prepared by an agency before the adoption, amendment, or repeal of a rule other than an emergency rule. An SERC must be prepared by an agency for a proposed rule that:

- Will have an adverse impact on small business; or
- Is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in the state within one year after the implementation of the rule.³

An SERC must include:

- An economic analysis showing whether the rule exceeds the thresholds requiring legislative ratification;
- A good faith estimate of the number and types of individuals and entities likely to be required to comply with the rule, and a general description of the types of individuals likely to be affected by the rule;

¹ Section 120.541(2)(a), F.S.

² Section 120.541(3), F.S.

³ Section 120.54(3)(b)1., F.S.

- A good faith estimate of the cost to the agency, and to other state and local government entities, of implementing and enforcing the proposed rule, including anticipated effects on state or local revenues;
- A good faith estimate of the transactional costs (direct business costs) likely to be incurred by individuals and entities required to comply with the requirements of the rule;
- An analysis of the impact on small businesses, small counties, and small cities; and
- A description of regulatory alternatives submitted to the agency and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.⁴

Biosolids

When domestic wastewater is treated, a solid, semisolid, or liquid byproduct, known as biosolids,⁵ accumulates in the wastewater treatment plant and must be removed periodically to keep the plant operating properly.⁶ Biosolids also include products and treated material from biosolids treatment facilities and septage management facilities regulated by the Department of Environmental Protection (DEP).⁷ The collected material is high in organic content and contains moderate amounts of nutrients that are needed by plants.⁸

The DEP has stated that wastewater treatment facilities produce about 340,000 dry tons of biosolids each year.⁹ Biosolids can be disposed of in several ways: transfer to another facility, placement in a landfill, distribution and marketing as fertilizer, incineration, bioenergy, and land application to pasture or agricultural lands.¹⁰ About one-third of the total amount of biosolids produced is used for land application¹¹ and is subject to regulatory requirements established by the DEP to protect public health and the environment.¹²

Biosolids may be used by land application in farming and ranching operations, forest lands, and public areas such as parks, or in land reclamation projects such as restoration of mining properties. Biosolids contain macronutrients (such as nitrogen and phosphorus) and micronutrients (such as copper, iron, and manganese) that are utilized by crops. The application

⁴ Section 120.541(2), F.S.

⁵ Section 373.4595, F.S.; *see also* Fla. Admin. Code R. 62-640.200(6). Biosolids are the solid, semisolid, or liquid residue generated during the treatment of domestic wastewater in a domestic wastewater treatment facility and include products and treated material from biosolids treatment facilities and septage management facilities. The term does not include the treated effluent or reclaimed water from a domestic wastewater treatment facility, solids removed from pump stations and lift stations, screenings and grit removed from the preliminary treatment components of domestic wastewater treatment facilities, or ash generated during the incineration of biosolids.

⁶ Department of Environmental Protection (DEP), *Domestic Wastewater Biosolids*, <https://floridadep.gov/water/domestic-wastewater/content/domestic-wastewater-biosolids> (last visited Mar. 5, 2021).

⁷ Fla. Admin. Code R. 62-640.200(6).

⁸ DEP, *Domestic Wastewater Biosolids*, <https://floridadep.gov/water/domestic-wastewater/content/domestic-wastewater-biosolids> (last visited Mar. 5, 2021).

⁹ DEP, *Presentation to Senate Committee on Environment and Natural Resources*, 40-62 (Nov. 13, 2019) available at http://www.flsenate.gov/Committees/Show/EN/MeetingPacket/4733/8393_MeetingPacket_4733.13.19.pdf (last visited Mar. 5, 2021); DEP Technical Advisory Committee, *Biosolids Use and Regulations in Florida Presentation*, 5 (Sept. 2018), available at <https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf> (last visited Mar. 5, 2021).

¹⁰ *Id.* at 4.

¹¹ *Id.* at 5.

¹² Fla. Admin. Code R. 62-640.

of nutrient-rich biosolids increases the organic content of the soil, fostering more productive plant growth.¹³ There are approximately 140 permitted land application sites in Florida, with waste haulers being the most common site permittees.¹⁴ The map below shows the permitted sites.



Typically, Class B biosolids are used in land application.¹⁵ The highest quality of biosolids, known in Florida as “Class AA,” are distributed and marketed like other commercial fertilizers. The DEP does not track the sale of commercial fertilizers.

Biosolids are regulated under chapter 62-640 of the Florida Administrative Code. The rules provide minimum requirements, including pollutant limits and monitoring and reporting requirements, for the treatment, management, use, and disposal of biosolids. The rules are applicable to wastewater treatment facilities, applicators, and distributors¹⁶ and include permit requirements for both treatment facilities and biosolids application sites.¹⁷

The application of Class A and Class B biosolids is banned in South Florida within the Lake Okeechobee, Caloosahatchee River, and St. Lucie River watersheds unless the applicant can affirmatively demonstrate that the nutrients in the biosolids will not add to nutrient loadings in

¹³ *Id.* at 20.

¹⁴ DEP, *Presentation to Senate Committee on Environment and Natural Resources*, 40-62 (Nov. 13, 2019) available at http://www.flsenate.gov/Committees/Show/EN/MeetingPacket/4733/8393_MeetingPacket_4733.13.19.pdf (last visited Mar. 5, 2021); DEP Technical Advisory Committee, *Biosolids Use and Regulations in Florida Presentation*, 20 (Sept. 2018), available at <https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf> (last visited Mar. 5, 2021). Wastewater treatment facilities commonly contract with waste haulers instead of applying the biosolids themselves.

¹⁵ *Id.* at 6.

¹⁶ Fla. Admin. Code R. 62-640.100.

¹⁷ Fla. Admin. Code R. 62-640.300.

the watershed.¹⁸ However, other communities have expressed concerns that runoff from farms and ranches that use biosolids can lead to toxic blue-green algae blooms and have sought bans locally.¹⁹

Rule 62-640, Florida Administrative Code

In 2018, the DEP created a Biosolids Technical Advisory Committee (TAC) to evaluate current biosolids management practices and explore opportunities to better protect Florida’s water resources. The TAC convened four times in 2018 and 2019 and discussed current options for biosolids management in the state, potential improvements in biosolids management to protect our water resources, and looked at what research is necessary for successful improvements.²⁰ The DEP issued its first draft rule in October 2019 after the TAC disbanded, but withdrew the rule following the passage of the Clean Waterways Act.²¹

The Clean Waterways Act (Chapter 2020-150, Laws of Florida)

The Clean Waterways Act required the DEP to adopt rules for biosolids management and specified that any rules adopted may not take effect until ratified by the Legislature.

Section 403.0855, F.S., includes provisions that the rule must:

- Require a new land application site permit or permit renewal issued after July 1, 2020, to:
 - Ensure a minimum unsaturated soil depth of two feet between the depth of biosolids placement and the water table level at the time biosolids are applied to the soil;
 - Prohibit applying biosolids to land with a seasonal high water table²² within six inches of the soil surface or depth of biosolids placement unless a department-approved nutrient management plan and water quality monitoring plan provide reasonable assurances that the land application of biosolids at the site will not cause or contribute to a violation of the state’s surface water quality standards or groundwater standards; and
 - Require biosolids sites to enroll in a Department of Agriculture and Consumer Services (DACS) Best Management Practices program;
- Require all permits to comply with these requirements by July 1, 2022; and
- Require biosolids sites to comply with the DEP’s new rule within two years of the effective date of the rule.

¹⁸ Section 373.4595, F.S.

¹⁹ TCPalm, *Ban biosolids use along upper St. Johns River, Indian River County administrator tells DEP*, <https://www.tcpalm.com/story/news/local/indian-river-lagoon/health/2019/06/27/ban-biosolids-use-along-upper-st-johns-river-irc-official-tells-dep/1581585001/> (last visited Mar. 6, 2021). Local bans on the land application of biosolids have been established in Indian River County and the City of Fellsmere. See Indian River County Commission Ordinance 18-2642 (Jan. 14, 2019), available at http://ircgov.granicus.com/player/clip/204?view_id=1&meta_id=77302 (last visited Mar. 6, 2021); Fellsmere City Council Meeting, *Agenda* (Feb. 7, 2019), available at https://www.cityoffellsmere.org/sites/default/files/fileattachments/city_council/meeting/14391/co20190221agenda.pdf (last visited Mar. 6, 2021).

²⁰ DEP, *DEP Biosolids Technical Advisory Committee*, <https://floridadep.gov/water/domestic-wastewater/content/dep-biosolids-technical-advisory-committee> (last visited Mar. 5, 2021).

²¹ Chapter 2020-150, Laws of Fla.

²² “Seasonal high water” means the elevation to which the ground and surface water may be expected to rise due to a normal wet season. Chapter 2020-150, Laws of Fla.

The DEP published its proposed rule implementing the provisions of s. 403.0855, F.S., on December 3, 2020. In addition to the requirements in the Clean Waterways Act, the proposed rule issued by the DEP:

- Revises the provisions for determining biosolids land application rates to include basing rates on nitrogen and phosphorus levels;
- Imposes groundwater and surface water monitoring requirements for land application sites; and
- Considers biosolids permit applications as projects of heightened public interest.

DEP Statement of Estimated Regulatory Costs

The DEP anticipates the rule costing in excess of \$1 million in the next five years. The DEP published a SERC on December 3, 2020.²³ The DEP projects the following changes would increase costs due to the revised rule:

- A significant reduction (estimated 75 percent) in biosolids land application which could lead to permitting more land to accommodate the current quantity of biosolids;
- Longer hauling distances to newly permitted land application sites;
- Additional site monitoring requirements and increased operational costs at land application sites;
- Loss of fertilizer cost savings by not being able to land apply biosolids;²⁴ and
- Possible transfer of biosolids out-of-state for management or disposal.

The DEP estimates that the cost of the proposed rule over the next five years will be \$310,000,000 to continue land application of Class B biosolids, and \$450,000,000-\$600,000,000 to convert to Class AA biosolids (fertilizer).²⁵ There are innovative technologies to process biosolids for energy or fuel as an alternative to land application, but the DEP stated that there is limited evidence that these methods could serve as feasible alternatives and the costs are higher than the costs for conversion to Class AA biosolids.²⁶

In the SERC, the DEP states that the majority of biosolids are generated by utilities owned and operated by local government entities. Therefore, estimates for one-time capital costs and recurring costs will primarily affect local government entities. This includes 104 domestic wastewater treatment facilities that treat and land apply biosolids, and unknown numbers of small wastewater treatment facilities that send biosolids to larger treatment facilities and biosolids treatment facilities that treat and land apply biosolids.²⁷

²³ DEP, *Statement of Estimated Regulatory Costs* (Dec. 3, 2020), available at https://floridadep.gov/sites/default/files/SERC%2062-640_120320_Final.pdf (last visited Mar. 5, 2021).

²⁴ DEP states in the SERC that it is unlikely that all of the approximately 94,000 dry tons of Class B biosolids currently land applied in the state will continue to be land applied. *Id.* at 6.

²⁵ *Id.* at 4.

²⁶ *Id.* at 11. DEP states in the SERC that it does not have enough information to make an analysis on innovative technologies. *Id.* at 8.

²⁷ *Id.* at 5.

Environmental Regulation Commission

The Environmental Regulation Commission (ERC) is an unpaid seven-member board within the DEP.²⁸ Under specified statutory provisions and with certain exceptions, the ERC must exercise the standard-setting authority of the DEP – approving, modifying, or disapproving proposed rules that contain standards.²⁹ In exercising its authority to set standards, the ERC must consider scientific and technical validity, economic impacts, and relative risks and benefits to the public and the environment.³⁰

The ERC is composed of seven state residents, appointed by the Governor for four-year terms, subject to confirmation by the Senate.³¹ The appointees must provide reasonable representation from all sections of the state, and be representative of agriculture, the development industry, local government, the environmental community, lay citizens, and members of the scientific and technical community who have substantial expertise related to water pollutants, toxicology, epidemiology, geology, biology, environmental sciences, or engineering.³² Most issues that go before the ERC relate to air pollution, water quality, or waste management.³³ The ERC is scheduled to meet monthly, but has not met since 2019.³⁴ According to the DEP’s website, two of the memberships to the ERC are vacant and the terms of the five listed members have lapsed.³⁵ However, the Governor recently appointed four members to the ERC.³⁶

III. Effect of Proposed Changes:

The bill ratifies the rules comprising ch. 62-640 of the Florida Administrative Code, titled “Biosolids,” for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), F.S. Chapter 62-640 of the Florida Administrative Code, proposed by the Department of Environmental Protection (DEP) and published on December 3, 2020, in the Florida Administrative Register, Vol. 46, No. 234, pages 5281-5297, consists of rules:

- 62-640.100, entitled Scope, Intent, Purpose, and Applicability;
- 62-640.200, entitled Definitions;
- 62-640.210, entitled General Technical Guidance and Forms;
- 62-640.300, entitled General Requirements;
- 62-640.400, entitled Prohibitions;
- 62-640.500, entitled Nutrient Management Plan (NMP);

²⁸ Section 20.255(6), F.S., DEP, *Environmental Regulation Commission*, <https://floridadep.gov/ogc/ogc/content/environmental-regulation-commission> (last visited Mar. 5, 2021).

²⁹ Sections 403.803(13), 403.804, and 403.805(1), F.S. “Standard” is defined as any DEP rule relating to air and water quality, noise, solid-waste management, and electric and magnetic fields associated with electrical transmission and distribution lines and substations. The term does not include rules relating to internal management or procedural matters.

³⁰ Section 403.804, F.S.

³¹ Section 20.255(6), F.S.

³² *Id.*

³³ DEP, *Environmental Regulation Commission*, <https://floridadep.gov/ogc/ogc/content/environmental-regulation-commission> (last visited Mar. 4, 2021).

³⁴ *Id.*

³⁵ DEP, *ERC Members*, <https://floridadep.gov/ogc/ogc/content/erc-members> (last visited Mar. 5, 2021).

³⁶ News Release, Governor Ron DeSantis, *Governor Ron DeSantis Appoints Four to the Environmental Regulation Commission* (Mar. 12, 2021), <https://www.flgov.com/2021/03/12/governor-ron-desantis-appoints-four-to-the-environmental-regulation-commission/> (last visited Mar. 15, 2021).

- 62-640.600, entitled Pathogen Reduction and Vector Attraction Reduction;
- 62-640.650, entitled Monitoring, Record Keeping, Reporting, and Notification;
- 62-640.700, entitled Requirements for Land Application of Class AA, A, and B Biosolids;
- 62-640.800, entitled Additional Requirements for Land Application at Reclamation Sites;
- 62-640.850, entitled Distribution and Marketing of Class AA Biosolids; and
- 62-640.880, entitled Additional Requirements Related to Biosolids Treatment Facilities.

The bill:

- Exempts the rules from review and approval by the Environmental Regulation Commission (ERC) under s. 403.804(1), F.S.;
- Directs that section one of the bill serves no other purpose and may not be codified in the Florida Statutes;
- Requires the DEP to publish a notice of the enactment of the exemption from review and approval by the ERC in the Florida Administrative Register; and
- Provides that section one of the bill does not:
 - Alter rulemaking authority delegated by prior law;
 - Constitute a legislative preemption of, or exception to, any other provision of law regarding adoption or enforcement of the rule cited; and
 - Does not cure any rulemaking defect or preempt any challenge on lack of authority or a violation of the legal requirements governing adoption of any rule cited.

The bill provides a declaratory statement and determination by the Legislature that section 1 of the bill fulfills an important state interest.

The bill amends s. 403.0855, F.S., to require the DEP to provide notice to and receive consent from a private property owner before entering onto his or her property to install monitoring equipment or conduct sampling for biosolids sites.

The act is effective upon becoming a law. At that time, the rule also becomes effective.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, s. 18(a) of the Florida Constitution may apply to this bill because local governments may be required to expend funds to manage biosolids under the new requirements of the rule. The bill includes a legislative finding that the rule ratification fulfills an important state interest. The expenditures are required to comply with rules and law that applies to all persons similarly situated. Therefore, an exception from Art. VII, s. 18(a) of the Florida Constitution likely applies.

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:

According to the Department of Environmental's (DEP's) statement of estimated regulatory costs (SERC), there will likely be increased operational costs to biosolids treatment facilities and septage management facilities. There will also likely be impacts to biosolids haulers and the ranchers and farmers who own land application sites. Utility ratepayers and homeowners may ultimately bear the increased operational costs of wastewater treatment facilities.³⁷ *See discussion of SERC in Section II on page six of the analysis.*

C. Government Sector Impact:

According to the DEP's statement of estimated regulatory costs, there will likely be increased operational costs to wastewater treatment facilities.³⁸ *See discussion of SERC in Section II on page six of the analysis.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 403.0855 of the Florida Statutes.

³⁷ DEP, *Statement of Estimated Regulatory Costs* (Dec. 3, 2020), available at https://floridadep.gov/sites/default/files/SERC%2062-640_120320_Final.pdf (last visited Mar. 5, 2021).

³⁸ *Id.*

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
