

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 Fiscal Policy

BILL: CS/CS/CS/SB 162

INTRODUCER: Fiscal Policy Committee, Regulated Industries Committee, Environment and Natural Resources Committee, and Senator Collins

SUBJECT: Water and Wastewater Facility Operators

DATE: April 14, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barriero</u>	<u>Rogers</u>	<u>EN</u>	<u>Fav/CS</u>
2.	<u>Schrader</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
3.	<u>Barriero</u>	<u>Yeatman</u>	<u>FP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 162 requires the Department of Environmental Protection (DEP) to issue reciprocal licenses to water utility workers licensed in other jurisdictions and other license applicants who meet certain requirements. The bill directs the DEP to award education and operational experience credits to license applicants who have performed comparable duties in the United States Armed Forces but who do not meet some other requirements for a reciprocal license.

The bill also provides that, during a declared state of emergency under s. 252.36, F.S., the DEP:

- May issue a temporary license to applicants who otherwise meet the requirements for licensure reciprocity; and
- Must waive the application fee for a temporary operator license.

The DEP must also adopt rules for licensure by reciprocity.

II. Present Situation:

Water Treatment Facilities

The DEP has the primary role of regulating public water systems in Florida.¹ A public water system is one that provides water to 25 or more people for at least 60 days each year or serves 15 or more service connections. These public water systems may be publicly or privately owned and operated. Smaller water systems that provide water for public consumption, but which do not fall under the above definition, are regulated by the Department of Health and the county health departments.²

Public drinking water systems use different water treatment methods to provide safe drinking water to local communities.³ Public water systems often use a series of water treatment steps that include coagulation,⁴ flocculation,⁵ sedimentation, filtration, and disinfection.⁶

Wastewater Treatment Facilities

According to the DEP, the proper treatment and disposal or reuse of wastewater is a crucial part of protecting Florida's water resources.⁷ Each person in Florida generates about 100 gallons of domestic wastewater each day.⁸ This wastewater must be managed to protect public health, water quality, recreation, fish and wildlife, and the aesthetic appeal of our waterways.⁹ Domestic wastewater in Florida is treated either by on-site sewage treatment and disposal systems (OSTDSs), also known as septic tanks, or by centralized domestic (municipal) wastewater treatment facilities.¹⁰ The majority of the state's domestic wastewater is treated by larger centralized treatment facilities, which are the regulatory responsibility of the DEP's Wastewater Management Program.¹¹ The DEP also regulates smaller domestic wastewater treatment facilities, known as "package plants," as well as networked, distributed wastewater treatment systems.¹²

¹ DEP, *Source and Drinking Water Program*, <https://floridadep.gov/water/source-drinking-water> (last visited Mar. 24, 2023), and Section 403.852(1), F.S.

² *Id.*

³ U.S. Centers for Disease Control and Prevention (CDC), *Water Treatment*, https://www.cdc.gov/healthywater/drinking/public/water_treatment.html (last visited Mar. 24, 2023).

⁴ Coagulation is often the first step in water treatment. During coagulation, chemicals with a positive charge are added to the water. The positive charge neutralizes the negative charge of dirt and other dissolved particles in the water. When this occurs, the particles bind with the chemicals to form slightly larger particles. *Id.*

⁵ Flocculation follows the coagulation step. Flocculation is the gentle mixing of the water to form larger, heavier particles called flocs. Often, water treatment plants will add additional chemicals during this step to help the flocs form. *Id.*

⁶ *Id.*

⁷ DEP, *General Facts and Statistics about Wastewater in Florida*, <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Mar. 24, 2023).

⁸ DEP, *Domestic Wastewater Program*, <https://floridadep.gov/water/domestic-wastewater> (last visited Mar. 24, 2023).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

The DEP is also responsible for permitting and compliance activities for the state’s approximately 2,000 domestic wastewater treatment facilities.¹³ The DEP’s Wastewater Management Program develops and administers rules and policy for proper treatment of wastewater from domestic facilities.¹⁴ The Wastewater Management Program is also responsible for regulating domestic industrial pretreatment, domestic biosolids management, reuse of reclaimed water, and domestic wastewater to wetlands programs.

Licensure Requirements

The DEP derives its water system authority from the Florida Safe Drinking Water Act¹⁵ and has been delegated authority from the U.S. Environmental Protection Agency to implement the federal Safe Drinking Water Act.¹⁶

State law provides that a current operator’s license issued by the DEP is required in order for a person to perform the duties of an operator of a water treatment plant, water distribution system, or domestic wastewater treatment plant.¹⁷ A “water treatment plant” collects, treats, and stores water for human consumption;¹⁸ “water distribution system” conveys water for human consumption;¹⁹ and “domestic wastewater treatment plant” treats, stabilizes, or holds domestic waste.²⁰ An operator is any person, including the owner, who is onsite and in charge of the actual operation of such plants or systems.²¹

To become a licensed operator, a person must apply to the DEP to take the licensure examination, submit a completed application for licensure, remit all required fees,²² and meet certain other criteria, including having a high school diploma or its equivalent, successfully completing a training course approved by the DEP, and possessing onsite operational experience.²³ The Department of Veteran Affairs offers reimbursement of fees associated with professional licensure exams to qualified veterans.²⁴

¹³ DEP, *General Facts and Statistics about Wastewater in Florida*, *supra* note 7.

¹⁴ DEP, *Domestic Wastewater Program*, *supra* note 8.

¹⁵ Sections 403.850 – 403.892, F.S.

¹⁶ DEP, *Source and Drinking Water Program*, <https://floridadep.gov/water/source-drinking-water> (last visited Mar. 24, 2023).

¹⁷ Section 403.867, F.S.

¹⁸ Section 403.866(6), F.S.

¹⁹ Section 403.866(5), F.S.

²⁰ Section 403.866(2), F.S.

²¹ Section 403.866(3), F.S.

²² Individuals must submit a \$25 fee at the time they submit their application to take the licensure examination. Fla. Admin. Code R. 62-602.600(1). Individuals applying for a Class A, Class B, or Class C Treatment Plant Operator license must submit \$50 at the time they submit their application for licensure, and individuals applying for a Class D Treatment Plant Operator license or a Water Distribution System Operator license must submit \$25. Fla. Admin. Code R. 62-602.600(2).

²³ Section 403.872, F.S.; Fla. Admin. Code R. 62-602.300.

²⁴ DEP, *Water and Domestic Wastewater Operator Certification Program*, <https://floridadep.gov/water/certification-restoration/content/water-and-domestic-wastewater-operator-certification-program> (last visited Mar. 24, 2023).

Licensure Reciprocity

Ensuring a pool of qualified and certified operators is essential in addressing the workforce needs of water utilities.²⁵ However, because licensing standards vary by state and an operator license is typically only valid in the state in which it is issued, it can be challenging to recruit new out-of-state operators.²⁶ This may be particularly problematic as the workforce becomes more mobile and workers change jobs and move across state lines more frequently.²⁷ Most states offer reciprocity to make it easier for an operator who already holds a license in one state to obtain a license in another state.²⁸

Florida does not offer reciprocal licensure to individuals who are licensed in other states or jurisdictions. Florida is one of only three states that do not offer reciprocal licensure for operators of water treatment plants or water distribution systems (Nebraska and Oklahoma are the others), and is one of two states that do not offer reciprocal licensure to operators of domestic wastewater facilities (Oklahoma is the other).²⁹

State Emergency Management Act

The State Emergency Management Act (act), part I, ch. 252, F.S., was enacted to be the legal framework for this state's emergency management activities, recognizing the state's vulnerability to a wide range of emergencies, including natural, manmade, and technological disasters.³⁰ In order to reduce the state's vulnerability to these circumstances and to prepare to respond to them, the act promotes the state's emergency readiness through enhanced coordination, long-term planning, and adequate funding.³¹

The act creates the Division of Emergency Management (division) within the Executive Office of the Governor and grants the division with powers and duties necessary to mitigate the vulnerability of life, property, and economic prosperity due to natural and manmade disasters.³²

The act also delineates the Governor's authority to declare a state of emergency, issue executive orders, and otherwise lead the state during emergencies. If the Governor finds that an emergency³³ has occurred or is imminent, he or she must declare a state of emergency.³⁴ An executive order or proclamation of a state of emergency shall identify whether the state of

²⁵ Jeff Oxenford and Jim Ginley, American Water Works Association, *Operator Licensing Requirements Across the United States*, 2 (2018), available at https://www.awwa.org/Portals/0/AWWA/ETS/Resources/Final_Report_Compiled_2.19.18.pdf?ver=2019-02-18-142536-257.

²⁶ *Id.* at 4.

²⁷ *Id.* at 12.

²⁸ See generally American Water Works Association, *Operator certification requirements catalogued for all 50 states* (2018), <https://www.awwa.org/AWWA-Articles/operator-certification-requirements-catalogued-for-all-50-states> (last visited Mar. 24, 2023).

²⁹ Oxenford, *supra* note 25, at 8.

³⁰ Section 252.311(1), F.S.

³¹ Section 252.311(3), F.S.

³² Sections 252.32(1)(a) and 252.34(3), F.S.

³³ "Emergency" means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property. See s. 252.34(4), F.S.

³⁴ Section 252.36(2), F.S.

emergency is due to a minor,³⁵ major,³⁶ or catastrophic³⁷ disaster.³⁸ The state of emergency must continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist, but no state of emergency may continue for longer than 60 days unless renewed by the Governor.³⁹ Additionally, the Legislature may end a state of emergency by passing a concurrent resolution.⁴⁰

III. Effect of Proposed Changes:

Section 1 amends s. 403.865, F.S., regarding water and wastewater facility personnel, to include the following legislative findings:

- Water and wastewater services are essential to the health and well-being of all citizens; and
- Water and wastewater facility personnel are essential first responders.

The section also defines “water and wastewater facility personnel,” as used in the findings, as, “any employee of a governmental authority as defined in s. 367.021;⁴¹ a utility as defined in s. 367.021;⁴² a state, municipal, or county sewerage system as defined in s. 403.031(9);⁴³ or a public water system as defined in s. 403.852(2).⁴⁴”

Section 2 amends s. 403.867, F.S., which provides that a person may not perform the duties of an operator of a water treatment plant, water distribution system, or domestic wastewater treatment plant unless he or she holds a current operator’s license issued by the DEP. The bill changes this requirement by providing that an operator must hold an *active and valid operator* license issued by the DEP under s. 403.872, F.S., which provides the requirements for licensure, or s. 403.8721, F.S., which is created by this bill.

Section 3 creates s. 403.8721, F.S., to establish requirements for licensure by reciprocity. The bill directs the DEP to issue a license by reciprocity to any applicant who meets, at minimum, all of the following requirements:

³⁵ “Minor disaster” means a disaster that is likely to be within the response capabilities of local government and to result in only a minimal need for state or federal assistance. *See* s. 252.34(2)(c), F.S.

³⁶ “Major disaster” means a disaster that will likely exceed local capabilities and require a broad range of state and federal assistance. *See* s. 252.34(2)(b), F.S.

³⁷ “Catastrophic disaster” means a disaster that will require massive state and federal assistance, including immediate military involvement. *See* s. 252.34(2)(a), F.S.

³⁸ Section 252.36(4)(c), F.S.

³⁹ Section 252.36(2), F.S.

⁴⁰ Section 252.36(3), F.S.

⁴¹ Section 367.021, F.S., defines “governmental authority” as, “a political subdivision, as defined by s. 1.01(8), a regional water supply authority created pursuant to s. 373.713, or a nonprofit corporation formed for the purpose of acting on behalf of a political subdivision with respect to a water or wastewater facility.”

⁴² Section 367.021, F.S., defines “utility” as, “a water or wastewater utility and, except as provided in s. 367.022, includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation.”

⁴³ Section 403.031(9), F.S., defines “sewerage system” as, “pipelines or conduits, pumping stations, and force mains and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.”

⁴⁴ Section 403.852(2), F.S., defines “public water system,” in part, as, “a system for the provision to the public of water for human consumption through pipes or other constructed conveyances if such system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year.”

- Is a water treatment plant operator, water distribution system operator, or domestic wastewater treatment plant operator and holds an active and valid license from another state, the Federal Government, a territory or tribal government that has been designated as the primary agency by the U.S. Environmental Protection Agency, or any unit thereof for which the licensure requirements, including education and operational experience, are comparable to or exceed Florida's licensure requirements;
- Has passed a licensure examination comparable to the licensure examination of the DEP, subject to approval by the DEP;
- Is not the subject of a disciplinary or enforcement action outside this state at the time of application for reciprocal licensure;
- Submits a completed application for reciprocal licensure and any required supporting documentation; and
- Remits the application fee.

The bill also directs the DEP to issue a license by reciprocity to any applicant who has performed duties comparable to a water treatment plant operator, water distribution system operator, or domestic wastewater treatment plant operator while serving in the U.S. Armed Forces for which the requirements for performing the duties, including education and operational experience, are comparable to or exceed Florida's licensure requirements. Such applicants must, at minimum, meet the following requirements:

- (1) Passing a skill assessment or competency examination comparable to the DEP's licensure exam;
- (2) Not being subject to a disciplinary or enforcement action at the time of application for reciprocal licensure;
- (3) Submitting a completed application for reciprocal licensure and any required supporting documentation; and
- (4) Remitting the application fee.

If an applicant does not meet the requirements under (1) and (2) above, the DEP must award education and operational experience credits for licensure under s. 403.872, F.S., which provides the requirements for licensure in Florida.

The bill also provides that, during a declared state of emergency pursuant to s. 252.36, F.S., the DEP:

- May issue a temporary license to applicants who otherwise meet the requirements for licensure reciprocity; and
- Must waive the application fee for a temporary operator license.

The bill also directs the DEP to adopt rules to implement this section.

Section 3 provides an effective date of July 1, 2023.

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:

None.

C. Government Sector Impact:

The bill may have an insignificant negative fiscal impact on the DEP because the bill requires the DEP to waive the application fee for a temporary reciprocal license issued during a declared state of emergency. In addition, the bill may have a negative fiscal impact on the DEP related to reviewing the licensure examinations of other jurisdictions and determining whether those examinations are comparable to the DEP's licensure examination. The DEP estimates year one non-recurring expenses of \$11,000 and \$184,000 in annual recurring expenses associated with salary and benefits to implement the program, including public outreach and staff training.⁴⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁴⁵ Email from Alex Kernan, Director of Legislative and Governmental Affairs, DEP, to Senate Committee on Environment and Natural Resources (Mar. 14, 2023) (email on file with the Senate Committee on Regulated Industries).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 403.865 and 403.867.

This bill creates section 403.8721 of the Florida Statutes.

IX. Additional Information:

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

CS by Fiscal Policy on April 13, 2023:

The amendment removes the word “drinking” from the term “drinking water and wastewater facility personnel.”

CS by Environment and Natural Resources on March 20, 2023:

The amendment reorganizes the bill language to clarify that only applicants who have performed comparable duties in the United States Armed Forces are eligible for education and operational experience credits.

CS by Regulated Industries on March 29, 2023:

The amendment revises the bill to:

- Amend legislative intent and provide a definition for the term “drinking water and wastewater facility personnel” within the legislative intent.
- Clarify that the standards for the Department of Environmental Protection (DEP) to approve a reciprocal water treatment plant operator, water distribution system operator, or domestic wastewater treatment plant operator, provided in the bill for a license-holder from another government entity, or with certain armed forces experience, are minimum standards.
- Provide rulemaking authority for the DEP.
- Make technical revisions.

- B. **Amendments:**

None.