

**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.)

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Prepared By: The Professional Staff of the Committee on Environment and Natural Resources

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BILL: SB 458

INTRODUCER: Senator Rodriguez

SUBJECT: Wastewater Grant Program

DATE: March 3, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carroll	Rogers	EN	<b>Pre-Meeting</b>
2.			AEG	
3.			FP	

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**I. Summary:**

SB 458 expands the wastewater grant program to include projects that are directed at or focused on a water body included on the verified list of impaired waters by the Department of Environmental Protection.

**II. Present Situation:**

**Water Quality and Nutrients**

Phosphorus and nitrogen are naturally present in water and are essential nutrients for the healthy growth of plant and animal life.<sup>1</sup> The correct balance of both nutrients is necessary for a healthy ecosystem; however, excessive nitrogen and phosphorus can cause significant water quality problems.<sup>2</sup>

Phosphorus and nitrogen are derived from natural and human-made sources.<sup>3</sup> Human-made sources include sewage disposal systems (wastewater treatment facilities and septic systems), overflows of storm and sanitary sewers (untreated sewage), agricultural production and irrigation practices, and stormwater runoff.<sup>4</sup>

Excessive nutrient loads may result in harmful algal blooms, nuisance aquatic weeds, and the alteration of the natural community of plants and animals.<sup>5</sup> Dense, harmful algal blooms can also cause human health problems, fish kills, problems for water treatment plants, and impairment of

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<sup>1</sup> U.S. Environmental Protection Agency, *The Issue*, <https://www.epa.gov/nutrientpollution/issue> (last visited Feb. 10, 2023).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> U.S. Environmental Protection Agency (EPA), *Sources and Solutions*, <https://www.epa.gov/nutrientpollution/sources-and-solutions> (last visited Feb 10, 2023).

<sup>5</sup> EPA, *The Issue*, <https://www.epa.gov/nutrientpollution/issue> (last visited Feb. 10, 2023).

the aesthetics and taste of waters. Growth of nuisance aquatic weeds tends to increase in nutrient-enriched waters, which can impact recreational activities.<sup>6</sup>

### **Statewide Comprehensive Verified List of Impaired Waters**

Under section 303(d) of the federal Clean Water Act, states must establish water quality standards for waters within their borders and develop a list of impaired waters that do not meet the established water quality standards.<sup>7</sup> States must then develop a total maximum daily load (TMDL)<sup>8</sup> for every pollutant/waterbody combination on the list.<sup>9</sup>

Due to limited funds and the wide variety of surface waters in Florida, the Department of Environmental Protection (DEP) has sorted those waters into 29 major watersheds, or basins, and further organized them into five basin groups for assessment purposes.<sup>10</sup> DEP completes an assessment of all basins every two years.<sup>11</sup> If DEP determines that any waters are impaired, the waterbody or segment must be placed on the verified list of impaired waters and a TMDL must be calculated for that waterbody or segment.<sup>12</sup> The list is adopted by DEP secretarial order and is submitted to the U.S. Environmental Protection Agency every two years.<sup>13</sup> A waterbody or segment may be removed from the list at any time during the TMDL process upon demonstration that it has attained water quality criteria.<sup>14</sup>

### **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.<sup>15</sup> 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

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<sup>6</sup> *Id.*

<sup>7</sup> EPA, *Overview of Identifying and Restoring Impaired Waters under Section 303(d) of the CWA*, <https://www.epa.gov/tmdl/overview-identifying-and-restoring-impaired-waters-under-section-303d-cwa> (last visited Feb. 24, 2023); 40 C.F.R. 130.7.

<sup>8</sup> A total maximum daily load is a scientific determination of the maximum amount of a given pollutant that can be absorbed by a waterbody and still meet water quality standards. DEP, *Total Maximum Daily Loads Program*, <https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program> (last visited Feb. 10, 2023).

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

<sup>10</sup> DEP, *Assessment Lists*, <https://floridadep.gov/dear/watershed-assessment-section/content/assessment-lists> (last visited Feb. 24, 2023).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*; DEP, *Verified List Waterbody Ids (WBIDs)*, <https://geodata.dep.state.fl.us/datasets/FDEP::verified-list-waterbody-ids-wbids/about> (last visited Feb. 24, 2023); and section 403.067(4), F.S.

<sup>13</sup> DEP, *Assessment Lists*; EPA, *Overview of Identifying and Restoring Impaired Waters under Section 303(d) of the CWA*.

<sup>14</sup> Section 403.067(5), F.S.

<sup>15</sup> Florida 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 Feb, 2023); EPA, *Types of Septic Systems*, <https://www.epa.gov/septic/types-septic-systems> (last visited Feb. 10, 2023) (showing the graphic provided in the analysis).

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.<sup>16</sup>

There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state's population.<sup>17</sup> In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.<sup>18</sup> 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.<sup>19</sup> The remainder of the systems are generally serviced only when they fail, often leading to costly repairs that could have been avoided with routine maintenance.<sup>20</sup>



In a conventional OSTDS, the septic tank does not reduce nitrogen from raw sewage. Approximately 30-40 percent of the nitrogen levels are reduced in the drainfield of a system that is installed 24 inches or more from groundwater.<sup>21</sup> This still leaves a significant amount of nitrogen to percolate into the groundwater, which makes nitrogen from OSTDSs a potential contaminant in groundwater.<sup>22</sup>

Different types of advanced OSTDSs exist that can remove greater amounts of nitrogen than a typical septic system (often referred to as “advanced” or “nutrient-reducing” septic systems).<sup>23</sup> DEP publishes on its website approved products and resources on advanced systems.<sup>24</sup> Determining which advanced system is the best option can depend on site-specific conditions.

<sup>16</sup> *Id.*

<sup>17</sup> DEP, *Onsite Sewage Program*, <https://floridadep.gov/water/onsite-sewage#:~:text=Onsite%20sewage%20treatment%20and%20disposal%20systems%20%28OSTDS%29%2C%20commonly,represents%2012%25%20of%20the%20United%20States%2E2%80%99%20septic%20systems> (last visited Feb. 10, 2023).

<sup>18</sup> 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/documents/costs-implement-mandatory-statewide-inspection.pdf> (last visited Feb. 10, 2023).

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

<sup>20</sup> *Id.*

<sup>21</sup> DOH, *Florida Onsite Sewage Nitrogen Reduction Strategies Study, Final Report 2008-2015*, 21 (Dec. 2015), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/research/draftlegreportsm.pdf>; see Fla. Admin. Code R. 64E-6.006(2).

<sup>22</sup> University of Florida Institute of Food and Agricultural Sciences (IFAS), *Onsite Sewage Treatment and Disposal Systems: Nitrogen*, 3 (Oct. 2020), available at <http://edis.ifas.ufl.edu/pdf/SS/SS55000.pdf> (last visited Feb. 10, 2023).

<sup>23</sup> DOH, *Nitrogen-Reducing Systems for Areas Affected by the Florida Springs and Aquifer Protection Act* (updated May 2021), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/products/documents/bmap-n-reducing-tech-18-10-29.pdf>.

<sup>24</sup> DEP, *Onsite Sewage Program, Product Listings and Approval Requirements*, <https://floridadep.gov/water/onsite-sewage/content/product-listings-and-approval-requirements> (last visited Feb. 10, 2023).

The owner of a properly functioning OSTDS must connect to a sewer system within one year of receiving notification that a sewer system is available for connection.<sup>25</sup> Owners of an OSTDS in need of repair or modification must connect within 90 days of notification from DEP.<sup>26</sup>

In 2020, the Clean Waterways Act provided for the transfer of the Onsite Sewage Program from the Department of Health (DOH) to DEP.<sup>27</sup> The Onsite Sewage Program will be transferred over a period of five years, and guidelines for the transfer are provided by an interagency agreement.<sup>28</sup> Per the agreement, DEP has the primary powers and duties of the Onsite Sewage Program, meaning that the county departments of health will implement the OSTDS program under the direction of DEP instead of DOH.<sup>29</sup> The county departments of health still handle permitting and inspection of OSTDSs.<sup>30</sup> In the event of an alleged violation of OSTDS laws, county departments of health will be responsible for conducting an inspection to gather information regarding the allegations.<sup>31</sup>

### **Wastewater Treatment Facilities**

The proper treatment and disposal or reuse of domestic wastewater is an important part of protecting Florida's water resources. The majority of Florida's domestic wastewater is controlled and treated by centralized treatment facilities regulated by DEP. Florida has approximately 2,000 permitted domestic wastewater treatment facilities.<sup>32</sup>

Chapter 403, F.S., requires that any facility or activity which discharges waste into waters of the state or which will reasonably be expected to be a source of water pollution must obtain a permit from DEP.<sup>33</sup> Generally, persons who intend to collect, transmit, treat, dispose, or reuse wastewater are required to obtain a wastewater permit. A wastewater permit issued by DEP is required for both operation and certain construction activities associated with domestic or industrial wastewater facilities or activities. A DEP permit must also be obtained prior to construction of a domestic wastewater collection and transmission system.<sup>34</sup>

Under section 402 of the federal Clean Water Act, any discharge of a pollutant from a point source to surface waters (i.e., the navigable waters of the United States or beyond) must obtain a National Pollution Discharge Elimination System (NPDES) permit.<sup>35</sup> NPDES permit

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<sup>25</sup> Section 381.00655, F.S.

<sup>26</sup> *Id.*

<sup>27</sup> DEP, *Program Transfer*, <https://floridadep.gov/water/onsite-sewage/content/program-transfer> (last visited Feb. 10, 2023).

<sup>28</sup> DOH, DEP, *Interagency Agreement between DEP and DOH in Compliance with Florida's Clean Waterways Act for Transfer of the Onsite Sewage Program*, 5 (June 30, 2021), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/documents/interagency-agreement-between-fdoh-fdep-onsite-signed-06302021.pdf> (last visited Feb. 10, 2023).

<sup>29</sup> *Id.* at 14.

<sup>30</sup> *Id.* at 11; and DEP, *Onsite Sewage Program*, <https://floridadep.gov/water/onsite-sewage> (last visited Feb. 10, 2023).

<sup>31</sup> DOH, DEP, *Interagency Agreement between DEP and DOH in Compliance with Florida's Clean Waterways Act for Transfer of the Onsite Sewage Program* at 11.

<sup>32</sup> 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 Feb. 10, 2023).

<sup>33</sup> Section 403.087, F.S.

<sup>34</sup> DEP, *Wastewater Permitting*, <https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting> (last visited Feb. 10, 2023).

<sup>35</sup> 33 U.S.C. s. 1342.

requirements for most wastewater facilities or activities (domestic or industrial) that discharge to surface waters are incorporated into a state-issued permit, thus giving the permittee one set of permitting requirements rather than one state and one federal permit.<sup>36</sup> DEP issues operation permits for a period of five years for facilities regulated under the NPDES program and up to 10 years for other domestic wastewater treatment facilities meeting certain statutory requirements.<sup>37</sup>

### Florida's Wastewater Grant Program

The Legislature created the wastewater grant program with the passage of the Clean Waterways Act in 2020.<sup>38</sup> The legislation authorized DEP to provide grants to governmental entities for wastewater projects that reduce excess nutrient pollution within a basin management action plan,<sup>39</sup> alternative restoration plan adopted by final order,<sup>40</sup> or rural area of opportunity.<sup>41</sup> The program requires at least a 50 percent local match for each grant, although the requirement may be waived for rural areas of opportunity. Eligible projects include:

- Projects to retrofit OSTDSs to upgrade such systems to enhanced nutrient-reducing OSTDSs;
- Projects to construct, upgrade, or expand facilities to provide advanced waste treatment;<sup>42</sup> and
- Projects to connect OSTDSs to central sewer facilities.<sup>43</sup>

DEP coordinates with the water management districts to identify grant recipients in each district.<sup>44</sup> DEP must consider the estimated reduction in nutrient load per project; project readiness; the cost-effectiveness of the project; the overall environmental benefit of the project; the location of the project; the availability of local matching funds; and projected water savings or quantity improvements associated with the project.<sup>45</sup> Projects that subsidize the connection of OSTDSs to wastewater treatment facilities are given priority in the following order:

- First priority: subsidizing the connection of OSTDSs to existing infrastructure.
- Second priority: any expansion of a collection or transmission system that promotes efficiency by planning the installation of wastewater transmission facilities to be constructed

<sup>36</sup> Sections 403.061 and 403.087, F.S.

<sup>37</sup> Section 403.087(3), F.S.

<sup>38</sup> Chapter 2020-150, Laws of Fla, and section 403.0673, F.S.

<sup>39</sup> Basin management action plans are one of the primary mechanisms DEP uses to achieve TMDLs; they are plans that address the entire pollution load for a watershed. S. 403.067(7), F.S.

<sup>40</sup> An alternative restoration plan is a strategy developed and implemented to quickly address water quality issues to postpone or prevent a waterbody from being listed on the verified list of impaired waters. There are two types of alternative restoration plans: reasonable assurance plans and pollutant reduction plans. DEP, *FAQs for the Alternative Restoration Plan Webpage*, <https://floridadep.gov/dear/alternative-restoration-plans/content/alternative-restoration-plan-webpage-faqs#:~:text=What%20is%20an%20Alternative%20Restoration%20Plan%3F%20It%20is,being%20on%20the%20Verified%20List%20of%20Impaired%20Waters> (last visited Feb. 28, 2023).

<sup>41</sup> Section 403.0673(1), F.S. Rural areas of opportunity are rural communities, or a region composed of rural communities that have been adversely affected by extraordinary economic events of natural disasters. Florida Department of Economic Opportunity, *Rural Areas of Opportunity*, <https://floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity> (last visited Feb. 24, 2023).

<sup>42</sup> Advanced waste treatment is defined in s. 403.086(4), F.S. as treatment that has received high level disinfection and that will provide a reclaimed water product that contains not more on a permitted annual basis than 5 mg/l of biochemical oxygen demand and suspended solids, 3 mg/l of total nitrogen, and 1 mg/l of total phosphorus.

<sup>43</sup> *Id.*

<sup>44</sup> Section 403.0673(4), F.S.

<sup>45</sup> Section 403.0673(2), F.S.



concurrently with other construction projects occurring within or along a transportation facility right-of-way.

- Third priority: all other connections of OSTDSs to wastewater treatment facilities.<sup>46</sup>

DEP is required to submit an annual report identifying the projects funded through the grant program to the Governor, the President of the Senate, and the Speaker of the House of Representatives.<sup>47</sup>

The wastewater grant program is funded by documentary stamp tax revenues.<sup>48</sup> After required distributions from documentary stamp tax revenues are disbursed,<sup>49</sup> an amount equaling 5.4175 percent of the remainder is paid into the Water Protection and Sustainability Program Trust Fund to be used to fund wastewater grants.<sup>50</sup> The Office of Economic and Demographic Research estimates that the distribution for wastewater grants in fiscal year 2023-2024 will be \$134.5 million.<sup>51</sup>

### **Other Funding for Wastewater Projects**

DEP helps fund domestic wastewater projects through the Clean Water State Revolving Fund Loan, the State Small Community Wastewater Construction Grants, and the State Bond Loan programs.<sup>52</sup>

The Clean Water State Revolving Fund (CWSRF) program is administered by DEP through the State Revolving Fund Program. It provides low-interest loans for planning, designing, and constructing water pollution control facilities.<sup>53</sup> DEP receives requests for funding throughout the year for wastewater, stormwater, and certain energy and other types of projects.<sup>54</sup> The information gathered in the request is used to list projects in order of priority for funding at the beginning of each fiscal year and each quarter thereafter, as funds are available.<sup>55</sup> To date, the CWSRF program has provided over \$4 billion in total loans.<sup>56</sup>

The State Small Community Wastewater Construction Grants program is also administered through the State Revolving Fund Program. This grant program assists small communities and wastewater authorities in planning, designing, and constructing wastewater management

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<sup>46</sup> *Id.*

<sup>47</sup> Section 403.0673(5), F.S.

<sup>48</sup> Section 201.15(4)(h), F.S. Documentary stamp tax revenues are collected under ch. 201, F.S., which requires an excise tax to be levied on two classes of documents: deeds and other documents related to real property, which are taxed at the rate of 70 cents per \$100; and certificates of indebtedness, promissory notes, wage assignments, and retail charge account agreements, which are taxed at 35 cents per \$100. *See* ss. 201.02(1)(a) and 201.08(1)(a), F.S.

<sup>49</sup> The required distributions are to the Land Acquisition Trust Fund and the service charge representing the estimated pro rata share of the cost of general government paid from the General Revenue Fund. S. 201.15(4), F.S.

<sup>50</sup> Section 201.15(4)(h), F.S.

<sup>51</sup> Office of Economic and Demographic Research, *Conference Results*, (2022) available at <http://edr.state.fl.us/Content/conferences/docstamp/docstampresults.pdf>.

<sup>52</sup> DEP, *DEP Funding for Domestic Wastewater Projects*, <https://floridadep.gov/water/domestic-wastewater/content/dep-funding-domestic-wastewater-projects> (last visited Feb. 24, 2023).

<sup>53</sup> *Id.*

<sup>54</sup> DEP, *CWSRF Program*, <https://floridadep.gov/wra/srf/content/cwsrf-program> (last visited Feb. 24, 2023).

<sup>55</sup> *Id.*

<sup>56</sup> DEP, *DEP Funding for Domestic Wastewater Projects*.

facilities.<sup>57</sup> A community is eligible if it is a municipality, county, or authority with a total population of no more than 10,000 and a per capita income less than the state average of \$26,503.<sup>58</sup>

### **Executive Order 23-06**

Executive Order 23-06 directs DEP to work with the Legislature to expand the existing wastewater grant program by broadening project eligibility to address impacts from nonpoint sources, such as stormwater and agricultural runoff, and address aging wastewater infrastructure that increases nutrient loading to surface and groundwater.<sup>59</sup> With regard to the wastewater grant program, the executive order also directs DEP to:

- Collaborate with water management districts, local governments, and stakeholders to identify the most effective water quality improvement projects;
- Continue to prioritize grants to local governments for septic-to-sewer conversions and identify ways to minimize the installation of new septic systems in areas with impaired waterways; and
- Ensure that all wastewater facilities discharging to waterbodies within a basin management action plan area or discharging to a waterbody not attaining water quality standards upgrade to advanced wastewater treatment by 2033.<sup>60</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 403.0673, F.S., to provide that projects that are directed at or focused on a water body included on the verified list of impaired waters by the Department of Environmental Protection are eligible for the wastewater grant program.

**Section 2** 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.

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> Office of the Governor, *Executive Order 23-6*, 3 (Jan. 10, 2023), available at <https://www.flgov.com/wp-content/uploads/2023/01/EO-23-06.pdf>.

<sup>60</sup> *Id.* at 3-4.

**D. State Tax or Fee Increases:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill would provide grant funding opportunities to local governments for projects that are directed at or focused on a water body included on the verified list of impaired waters. The grants may pay up to 50 percent of the project costs, although the 50 percent local match may be waived in rural areas of opportunity. Therefore, this bill may have an indeterminate, positive fiscal impact on local governments.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends s. 403.0673 of the Florida Statutes.

**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.