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 Environment and Natural Resources

BILL:	SPB 7002
INTRODUCER:	Environment and Natural Resources Committee
SUBJECT:	Ratification of Rules of the Department of Environmental Protection
DATE:	February 21, 2023 REVISED:

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Carroll	Rogers		**EN Submitted as Comm.Bill/Fav**

I. Summary:

SPB 7002 ratifies Florida Administrative Code Rule 62-6.001, which incorporates more stringent permitting requirements for onsite sewage treatment and disposal systems (OSTDSs), commonly referred to as septic systems, in areas where the Department of Environmental Protection has adopted an OSTDS remediation plan as part of a basin management action plan.

The bill also ratifies Florida Administrative Code Rules 62-600.405, 62-600.705, and 62-600.720, relating to domestic wastewater facilities, which:

- Require a pipe assessment, repair, and replacement plan and an annual report on the plan;
- Include statutory requirements for a power outage contingency plan;
- Include statutory requirements for an annual report on utilities' expenditures on pollution mitigation efforts; and
- Require certain domestic wastewater facilities' emergency response plans to address cybersecurity.

II. Present Situation:

The Clean Waterways Act

The Florida Legislature passed the Clean Waterways Act in 2020 to address a number of environmental issues relating to water quality improvement.[1] Major topics in the Act included onsite sewage treatment and disposal systems (OSTDSs), wastewater, stormwater, agriculture, and biosolids, and it directed the Department of Environmental Protection (DEP) to make rules to implement these policies.

The Act expanded OSTDS remediation plan requirements by requiring a remediation plan to be included in the development of a basin management action plan (BMAP) for nutrient-impaired water bodies if OSTDSs contribute at least 20 percent of the nutrient pollution or if DEP

[1] Chapter 2020-150, Laws of Fla.

determines that remediation is necessary to achieve the total maximum daily load (TMDL). The Act authorized DEP to adopt rules to administer the requirements of an OSTDS remediation plan.

The Act also addressed prevention of sanitary sewer overflows (SSOs), underground pipe leaks, and inflow and infiltration (I&I). DEP's rules must reasonably limit, reduce, and eliminate domestic wastewater collection and transmission system pipe leakages and I&I. The Act authorized DEP to adopt rules relating to pipe assessment, repair, and replacement action plans, power outage contingency plans, and reports relating to expenditures on pollution mitigation and prevention.[2]

Legislative Ratification of Agency Rules

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.[3]

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.[4]

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. A 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.[5]

A 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;

[2] *Id.*
[3] Section 120.541(2)(a), F.S.
[4] Section 120.541(3), F.S.
[5] 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.[6]

Statement of Estimated Regulatory Costs for Rule 62-6.001, F.A.C.

DEP determined that a SERC was required for rule 62-6.001, Florida Administrative Code, and prepared one in advance of rule adoption.[7] DEP found that the rule will increase regulatory costs for OSTDS upgrades in excess of existing required costs.[8] DEP estimates that the total cost impact over five years will be approximately $5.7 million.[9] Over a five-year period:

- The cost to upgrade 8,940 residential properties to nutrient-reducing OSTDSs will be approximately $5.1 million;
- The cost to upgrade 470 OSTDSs for commercial properties will be approximately $2.7 million; and
- The state government cost impacts for staffing to manage the increased workload will be approximately $3.5 million.[10]

Statement of Estimated Regulatory Costs for Chapter 62-600, F.A.C.

DEP determined that a SERC was required for chapter 62-600, Florida Administrative Code, and prepared one in advance of rule adoption.[11] DEP found that the rules will increase regulatory costs for 1,647 wastewater facilities, including the largest municipal wastewater treatment facilities, facilities in small rural towns, and even small privately-owned wastewater treatment facilities that serve a mobile home park or similar business.[12] The key costs related to the primary rule revisions include the cost to:

- Prepare and submit an annual report for pollution mitigation;
- Prepare a power outage contingency plan;
- Develop and implement the initial collection system action plan;
- Prepared and submit annual report(s) for the collection system action plan; and
- For large facilities, update the facility emergency response plan to address cybersecurity.[13]

[6] Section 120.541(2), F.S.
[7] DEP, *SERC, Rule 62-6.001, F.A.C.* (on file with the Senate Committee on Environment and Natural Resources).
[8] *Id.* at 4.
[9] *Id.*
[10] *Id.* at 5.
[11] DEP, *SERC, Chapter 62-600, F.A.C.* (on file with the Senate Committee on Environment and Natural Resources).
[12] *Id.* at 3.
[13] *Id.* at 5.

DEP estimates that the total increase in cost within five years of the implementation of the rules will be $328 million.[14] The cost to each wastewater treatment facility will vary according to the size of the facility.[15] DEP provided the following estimates:

- A one-time cost to develop an initial collection system action plan with an asset management plan between $4.5 million and $74 million;
- Annual costs to implement and manage a collection system action plan between $5.9 million and $17 million;
- Annual costs to prepare a report for the collection system action plan between $1.8 million and $17 million; and
- A cost for large Type I domestic wastewater facilities to address cybersecurity concerns of $11 million.[16]

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.[17] The correct balance of both nutrients is necessary for a healthy ecosystem; however, excessive nitrogen and phosphorus can cause significant water quality problems.[18]

Phosphorus and nitrogen are derived from natural and human-made sources.[19] 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.[20]

Excessive nutrient loads may result in harmful algal blooms, nuisance aquatic weeds, and the alteration of the natural community of plants and animals.[21] Dense, harmful algal blooms can also cause human health problems, fish kills, problems for water treatment plants, and impairment of the aesthetics and taste of waters. Growth of nuisance aquatic weeds tends to increase in nutrient-enriched waters, which can impact recreational activities.[22]

Total Maximum Daily Loads

A TMDL, which must be adopted by rule, 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.[23] Waterbodies or sections of waterbodies that do not meet the established water quality standards

[14] *Id.* at 3.
[15] *Id.* at 7.
[16] *Id.* at 6-7.
[17] U.S. Environmental Protection Agency, *The Issue*, https://www.epa.gov/nutrientpollution/issue (last visited Feb. 10, 2023).
[18] *Id.*
[19] *Id.*
[20] U.S. Environmental Protection Agency (EPA), *Sources and Solutions*, https://www.epa.gov/nutrientpollution/sources-and-solutions (last visited Feb 10, 2023).
[21] EPA, *The Issue*, https://www.epa.gov/nutrientpollution/issue (last visited Feb. 10, 2023).
[22] *Id.*
[23] Department of Environmental Protection (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).

are deemed impaired. Pursuant to the federal Clean Water Act, DEP must establish a TMDL for impaired waterbodies.[24]

Basin Management Action Plans

DEP is the lead agency in coordinating the development and implementation of TMDLs.[25] BMAPs are one of the primary mechanisms DEP uses to achieve TMDLs. BMAPs are plans that address the entire pollution load, including point and nonpoint discharges,[26] for a watershed. BMAPs generally include:

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Best management practices 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.[27]

DEP may establish a BMAP as part of the development and implementation of a TMDL for a specific waterbody. First, the BMAP equitably allocates pollutant reductions to individual basins, to all basins as a whole, or to each identified point source or category of nonpoint sources.[28] 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, community leaders, and the public to collectively determine and share water quality cleanup responsibilities.[29] BMAPs are adopted by secretarial order.[30]

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, and revisions to the BMAP must be made as appropriate.[31]

In 2020, the Clean Waterways Act required BMAPs for nutrient TMDLs to include an OSTDS remediation plan if DEP identifies OSTDSs as contributors of at least 20 percent of nutrient

[24] Section 403.067(1), F.S.
[25] 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. 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.
[26] Fla. Admin. Code R. 62-620.200(37). "Point source" is defined as "any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged." Nonpoint sources of pollution are sources of pollution that are not point sources.
[27] Section 403.067(7), F.S.
[28] *Id*.
[29] DEP, *Basin Management Action Plans (BMAPs)*, https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps (last visited Feb. 10, 2023).
[30] Section 403.067(7)(a)5., F.S.
[31] Section 403.067(7)(a)6., F.S.

pollution or if DEP determines that remediation is necessary to achieve the TMDLs.[32] This was an expansion of the statutory requirement that an OSTDS remediation plan must be developed if DEP determines that OSTDSs within a spring priority focus area contribute at least 20 percent of nonpoint source nitrogen pollution or that remediation is necessary to achieve the TMDL.[33] OSTDS remediation plans for springs BMAPs can be found in Appendix D of the BMAPs.[34] Appendix D remediation plan elements include requirements for the installation of new OSTDSs, modification and repair of existing OSTDSs, and other plan elements, such as:

- An evaluation of credible scientific information on the effect of nutrients on springs and spring systems;
- Options for repair, upgrade, replacement, drain field modification, the addition of effective nitrogen-reducing features, connection to a central sewer system, or other action;
- A public education plan to provide area residents with reliable, understandable information about OSTDSs and springs;
- Cost-effective and financially feasible projects necessary to reduce the nutrient impacts of OSTDSs; and
- A priority ranking for each project for funding contingent on appropriations in the General Appropriations Act.[35]

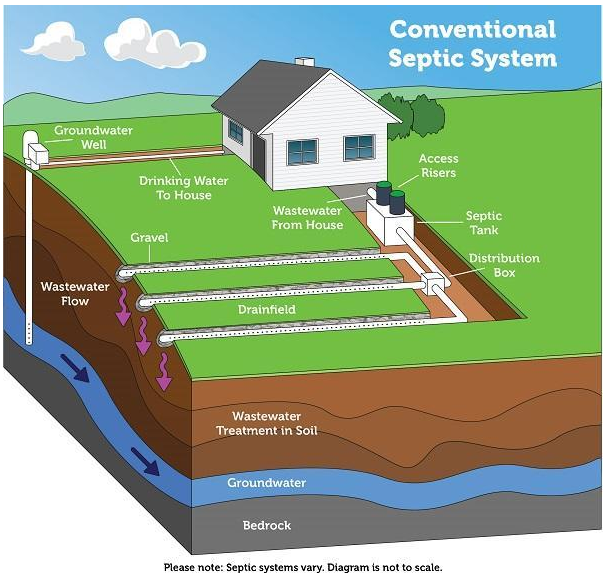
Onsite Sewage Treatment and Disposal Systems

OSTDSs, commonly referred to as "septic systems," generally consist of two basic parts: the septic tank and the drainfield.[36] 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.[37]

There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state's population.[38] In Florida, development in some areas is dependent on

[32] Chapter 2020-150, Laws of Fla.
[33] Section 373.807, F.S.
[34] *See, e.g.*, DEP, *Wacissa River and Wacissa Spring Group Basin Management Action Plan*, 56-61 (June 2018) *available at* https://floridadep.gov/sites/default/files/Wacissa%20Final%202018.pdf.
[35] *Id.* at 56-57.
[36] 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).
[37] *Id.*
[38] 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%E2%80%99%20septic%20systems (last visited Feb. 10, 2023).

OSTDSs due to the cost and time it takes to install central sewer systems.[39] 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.[40] The remainder of systems are generally serviced only when they fail, often leading to costly repairs that could have been avoided with routine maintenance.[41]



In a conventional OSTDS, a septic tank does not reduce nitrogen from the raw sewage. In Florida, 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.[42] This still leaves a significant amount of nitrogen to percolate into the groundwater, which makes nitrogen from OSTDSs a potential contaminant in groundwater.[43]

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).[44] DEP publishes on its website approved products and resources on advanced systems.[45] Determining which advanced system is the best option can depend on site-specific conditions.

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.[46] Owners of an OSTDS in need of repair or modification must connect within 90 days of notification from DEP.[47]

In 2020, the Clean Waterways Act provided for the transfer of the Onsite Sewage Program from the Department of Health (DOH) to DEP.[48] The Onsite Sewage Program will be transferred over

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[39] 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).
[40] *Id*.
[41] *Id*.
[42] 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).
[43] 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/pdffiles/SS/SS55000.pdf (last visited Feb. 10, 2023).
[44] 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.
[45] 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).
[46] Section 381.00655, F.S.
[47] *Id*.
[48] DEP, *Program Transfer*, https://floridadep.gov/water/onsite-sewage/content/program-transfer (last visited Feb. 10, 2023).

a period of five years, and guidelines for the transfer are provided by an interagency agreement.[49] 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.[50] The county departments of health still handle permitting and inspection of OSTDS.[51] 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.[52]

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.[53]

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.[54] 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.[55]

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.[56] NPDES permit 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.[57] 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.[58]

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[49] 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).
[50] *Id.* at 14.
[51] *Id.* at 11; and DEP, *Onsite Sewage Program*, https://floridadep.gov/water/onsite-sewage (last visited Feb. 10, 2023).
[52] 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.
[53] 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).
[54] Section 403.087, F.S.
[55] DEP, *Wastewater Permitting*, https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting (last visited Feb. 10, 2023).
[56] 33 U.S.C. s. 1342.
[57] Sections 403.061 and 403.087, F.S.
[58] Section 403.087(3), F.S.

Cybersecurity

Cyber-attacks on water and wastewater systems are increasingly common.[59] Attacks that target water or wastewater utility business processes or process control systems can result in:

- Malfunctioning treatment and conveyance processes;
- Compromise of a utility's website or email system;
- Stolen personal data or credit card information from a utility's billing system; and
- Installation of malicious programs like ransomware, which can disable operations.[60]

Sanitary Sewer Overflows, Leakages, and Inflow and Infiltration

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 an SSO. Any overflow, spill, release, discharge, or diversion of untreated or partially treated wastewater from a sanitary sewer system is an SSO.[61] An SSO may subject the owner or operator of a facility to civil penalties of not more than $10,000 for each offense, a criminal conviction or fines, and additional administrative penalties.[62] Each day during the period in which a violation occurs constitutes a separate offense.[63] However, administrative penalties are capped at $10,000.[64]

A key concern with SSOs entering rivers, lakes, or streams is their negative effect on water quality. In addition, 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 issues 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.[65]

Reduction of SSOs can be achieved through:

- Cleaning and maintaining the sewer system;
- Reducing I&I through rehabilitation and repairing broken or leaking lines;
- Enlarging or upgrading sewer, pump station, or sewage treatment plant capacity and/or reliability; and
- Constructing wet weather storage and treatment facilities to treat excess flows.[66]

[59] EPA, *Water Sector Cybersecurity Brief for States*, 1 (2018) *available at* https://www.epa.gov/sites/default/files/2018-06/documents/cybersecurity_guide_for_states_final_0.pdf (last visited Feb. 13, 2023).
[60] *Id.*
[61] DEP, *Sanitary Sewer Overflows (SSOs), available at* https://floridadep.gov/sites/default/files/Sanitary%20Sewer%20Overflows.pdf (last visited Feb. 10, 2023).
[62] Sections 403.121 and 403.141, F.S.
[63] *Id.*
[64] Section 403.121(2)(b),(8), and (9), F.S.
[65] DEP, *SSOs, available at* https://floridadep.gov/sites/default/files/Sanitary%20Sewer%20Overflows.pdf.
[66] *Id.*

I&I occurs when groundwater and/or rainwater enters the sanitary sewer system and ends up at the wastewater treatment facility, necessitating its treatment as if it were wastewater.[67] I&I can be caused by groundwater infiltrating the sewer system through faulty pipes or infrastructure, or any inflows of rainwater or non-wastewater into the sewer system.

I&I is a major cause of SSOs in Florida.[68] When domestic wastewater facilities are evaluated for permit renewal, collection systems are not evaluated for issues such as excessive inflow or infiltration unless problems result at the treatment plant.[69] Another major cause of SSOs is the loss of electricity to the infrastructure for the collection and transmission of wastewater, such as pump stations, especially during storms.[70] Pump stations receiving flow from another station through a force main, or those discharging through pipes 12 inches or larger, must have emergency generators.[71] All other pump stations must have emergency pumping capability through one of three specified arrangements.[72] These requirements for emergency pumping capacity only apply to domestic wastewater collection/transmission facilities existing after November 6, 2003, unless facilities existing prior to that date are modified.[73]

In 2020, the Clean Waterways Act required DEP to adopt rules to reasonably limit, reduce, and eliminate leaks, seepages, or inputs into the underground pipes of wastewater collection systems.[74] The Act required facilities for sanitary sewage disposal to have a power outage contingency plan to mitigate the impacts of power outages on the utility's collection system and pump stations. It also required facilities to use I&I studies and leakage surveys to develop pipe assessment, repair, and replacement action plans with at least a five-year planning horizon.[75]

III. Effect of Proposed Changes:

The bill ratifies Florida Administrative Code Rule 62-6.001, titled "General," which is amended to incorporate more stringent permitting requirements for onsite sewage treatment and disposal systems (OSTDSs) in areas where the Department of Environmental Protection (DEP) has adopted an OSTDS remediation plan as part of a basin management action plan. The permitting requirements are projected to assure DEP that the installed system will not cause or contribute to

[67] City of St. Augustine, *Inflow & Infiltration Elimination Program*, https://www.citystaug.com/549/Inflow-Infiltration-Elimination-Program (last visited Jan. 10, 2023).
[68] *See generally* RS&H, Inc., *Evaluation of Sanitary Sewer Overflows and Unpermitted Discharges Associated with Hurricanes Hermine and Matthew* (Jan. 2017), *available at* https://floridadep.gov/sites/default/files/Final%20Report_Evaluation%20of%20SSO%20and%20Unpermitted%20Discharges%2001_06_17.pdf (last visited Feb. 10, 2023).
[69] Fla. Admin. Code R. 62-600.735; *see* Fla. Admin. Code R. 62-600.200. "Collection/transmission systems" are defined as "sewers, pipelines, conduits, pumping stations, force mains, and all other facilities used for collection and transmission of wastewater from individual service connections to facilities intended for the purpose of providing treatment prior to release to the environment."
[70] *See generally* RS&H, Inc., *Evaluation of Sanitary Sewer Overflows and Unpermitted Discharges Associated with Hurricanes Hermine and Matthew* (Jan. 2017), *available at* https://floridadep.gov/sites/default/files/Final%20Report_Evaluation%20of%20SSO%20and%20Unpermitted%20Discharges%2001_06_17.pdf (last visited Feb. 10, 2023).
[71] Fla. Admin. Code R. 62-604.400.
[72] *Id.*
[73] Fla. Admin. Code R. 62-604.100.
[74] Chapter 2020-150, Laws of Fla.
[75] *Id.*

the exceedance of a nutrient total maximum daily load established as of the date of the permit application.

The bill ratifies Florida Administrative Code Rules 62-600.405, 62-600.705, and 62-600.720, titled "Domestic Wastewater Facilities: Planning for Wastewater Facilities Expansion," "Domestic Wastewater Facilities: Collection/Transmission Systems," and "Domestic Wastewater Facilities: Operation and Maintenance Manual," respectively. These rules are amended to:

- Require a pipe assessment, repair, and replacement plan and an annual report on the plan;
- Specify the scope and content of the plan and the content of the annual report;
- Include statutory requirements for a power outage contingency plan;
- Include statutory requirements for an annual report on utilities' expenditures on pollution mitigation efforts;
- Require certain domestic wastewater facilities to address cybersecurity in their emergency response plan.

The bill:

- Serves no other purpose and may not be codified in the Florida Statutes;
- Directs that its enactment and effective dates must be noted in the Florida Administrative Code, the Florida Administrative Register, or both;
- Does not alter rulemaking authority delegated by prior law, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rule cited, and is intended to preserve the status of any cited rule as a rule under ch. 120, F.S.; and
- Does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

The bill will take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, s. 18(a) of the Florida Constitution may not apply to this bill. The Florida Constitution limits the ability of the State to impose unfunded mandates on local governments. However, if a bill merely reauthorizes existing statutory authority, it is exempt from the unfunded mandates provision. This bill likely falls under this exemption and will therefore not be subject to the unfunded mandates prohibition.

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:

Rule 62-6.001, F.A.C., will increase regulatory costs for onsite sewage treatment and disposal system (OSTDS) upgrades for properties in certain areas. The Department of Environmental Protection (DEP) estimates that in one year residential property owners will pay a one-time amount of approximately $9,386,600 and a recurring amount of approximately $250,250. After five years, the total cost to upgrade 8,940 residential properties to nutrient-reducing OSTDSs is approximately $50,686,750.[76]

Rules 62-600.405, 62-600.705, and 62-600.720, F.A.C., will increase costs for small businesses like mobile home parks and RV parks that have their own wastewater treatment facility.[77] DEP estimates that the cost for these small facilities will be approximately $4,000 for the preparation of the plan and $1,600 for preparation of the annual report. The few larger facilities that are privately owned will likely see costs similar to small municipality or small county facilities.[78]

C. Government Sector Impact:

Rule 62-6.001, F.A.C., will increase costs for DEP and the Department of Health (DOH) due to increased staffing. In one year, DEP will pay a one-time amount of approximately $4,474 and a recurring amount of approximately $132,684. In one year, DOH will pay a one-time amount of approximately $22,370 and a recurring amount of approximately $349,758. After five years, DEP will have paid approximately $667,894 and DOH will have paid approximately $2,805,774. The cost to state and local government over five years adds up to approximately $3,473,668.[79]

Rules 62-600.405, 62-600.705, and 62-600.720, F.A.C., will increase regulatory costs for local government entities that own and operate large domestic wastewater treatment facilities. DEP estimates that these local government entities will be required to pay

[76] DEP, *SERC, Rule 62-6.001, F.A.C.*, 5 (on file with the Senate Committee on Environment and Natural Resources).
[77] DEP, *SERC, Chapter 62-600, F.A.C.*, 7 (on file with the Senate Committee on Environment and Natural Resources).
[78] *Id.*
[79] DEP, *SERC, Rule 62-6.001, F.A.C.* at 5.

approximately $120 million for one-time capital costs and recurring costs.[80] A small county or city that owns a small wastewater treatment facility may pay $50,000-$100,000 to prepare an initial collection system action plan, $10,000-$20,000 to implement the plan, and $5,000-$20,000 to prepare the annual report.[81] DEP notes that these estimates may vary widely by facility, especially for extremely large facilities.[82]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates an undesignated section of Florida law.

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.

[80] DEP, *SERC, Chapter 62-600, F.A.C.*, 4, 6-7 (on file with the Senate Committee on Environment and Natural Resources).
[81] *Id.* at 8.
[82] *Id.* at 6.