



Agriculture & Natural Resources Appropriations Subcommittee

**Wednesday, January 31, 2024
2:00 PM - 6:00 PM
Webster Hall (212 Knott)**

Meeting Packet

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Agriculture & Natural Resources Appropriations Subcommittee

Start Date and Time: Wednesday, January 31, 2024 02:00 pm

End Date and Time: Wednesday, January 31, 2024 06:00 pm

Location: Webster Hall (212 Knott)

Duration: 4.00 hrs

Consideration of the following bill(s):

HB 367 Household Moving Services by Tant

HB 455 Comprehensive Waste Reduction and Recycling Plan by Casello

CS/HB 789 Environmental Management by Water Quality, Supply & Treatment Subcommittee, Overdorf

CS/HB 873 Dangerous Dogs by Local Administration, Federal Affairs & Special Districts Subcommittee, Payne

CS/HB 1557 Department of Environmental Protection by Water Quality, Supply & Treatment Subcommittee, Chaney

To submit an electronic appearance form, and for information about attending or testifying at a committee meeting, please see the "Visiting the House" tab at www.myfloridahouse.gov.

NOTICE FINALIZED on 01/29/2024 4:11PM by DAD

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 367 Household Moving Services
SPONSOR(S): Tant
TIED BILLS: **IDEN./SIM. BILLS:** SB 304

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	14 Y, 0 N	Larkin	Anstead
2) Agriculture & Natural Resources Appropriations Subcommittee		Byrd	Pigott
3) Commerce Committee			

SUMMARY ANALYSIS

In order for an intrastate mover to operate in Florida, the mover must register with the Department of Agriculture and Consumer Services (DACS) and comply with the provisions of ch. 507, F.S., which applies to the operations of any mover or moving broker engaged in the intrastate transportation or shipment of household goods originating in this state and terminating in this state. Movers and brokers engaged in the interstate transportation of household goods are regulated by the Federal Motor Carrier Safety Administration within the United States Department of Transportation.

The bill:

- Revises requirements related to estimates and contracts for moving services prepared by a registered mover.
- Provides certain requirements for moving broker advertisements.
- Requires each moving broker to provide the DACS a list of registered movers that the broker is associated with in some capacity.
- Requires DACS to publish and maintain a list of all moving brokers and registered movers each moving broker is contracted with on its website.
- Revises alternative coverages for movers and moving brokers.
- Provides that DACS must immediately suspend the registration of a moving broker or registered mover that does not maintain a performance bond, certificate of deposit, or liability insurance.
- Requires the shipper, mover, and moving broker, if applicable, to sign or electronically acknowledge, and date an estimate or contract, and provide other detailed information.
- Provides that a broker may only arrange a move with a registered mover and cannot give estimates or provide a consumer with a contract for services; only a registered mover may provide those documents.
- Amends s. 507.11(1), F.S., relating to criminal penalties, for movers who refuse to relinquish a shipper's household goods under certain circumstances.

The bill has no fiscal impact on local governments but may have an indeterminate fiscal impact on the state.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Moving Scams

The Better Business Bureau (BBB) has seen a marked increase in complaints and negative reviews about movers in recent years.¹ Moving scams were projected to have increased 35% year over year in 2023, according to analysis by Hire-A-Helper, which researches and analyzes Better Business Bureau complaints filed about movers. Scams are being blamed for bilking consumers out of an expected \$1.59 million in 2023, a 42% jump over 2022. The average victim says they've lost \$836 in a moving scam this year, the survey shows.

The most common scams are:

- No-shows: Incidents of movers not showing up for a scheduled move accounted for 26% of the scams reported. This is when a moving company asks the customer to make a deposit or to pay an upfront fee but then fails to show up for the job. Often, the so-called moving company is later unreachable, too.
- Mover fraud: This is when fake moving companies pose as real businesses and perform the work of moving people's possessions—but then demand a ransom for consumers to get their belongings back. This is also known as "hostage load," as these movers extort customers for additional charges. These comprised 24% of BBB complaints in 2023. The growth in these reports has prompted the Federal Motor Carrier Safety Administration to launch a crackdown this spring.
- Change-of-address scam: This is when scammers trick people who have recently moved into paying a fee (usually around \$100 or more) in order to have their address changed to their new residence. Victims are directed to a website disguised to look like the U.S. Postal Service. (The USPS offers a change-of-address service for free in person or at a modest fee of \$1.05 online.) Change of address scams accounted for 31% of complaints—the highest percentage—but that is down from 37% last year, the report notes.²

The report warns of other scams, like movers who fail to adhere to the terms of the contract, overcharge or bribe customers with discounts for positive reviews. The report notes that moving scams this year are the most prevalent in Wyoming (among one in every 4,426 moves), followed by Vermont, South Dakota and Oregon.

To avoid being duped by a moving scam, researchers offer the following tips:

- Compare multiple quotes from moving companies, and be skeptical of significantly lower or higher quotes, lack of details, absence of written contracts and excessive down payments.
- Check the company's online presence, and look up verified customer reviews on websites such as the Better Business Bureau.
- Keep a detailed inventory, including photos, of your possessions in case anything goes missing. Lock up your most expensive valuables.
- Consider buying moving insurance as added protection.

¹ Melissa Dittmann Tracey, National Association of Realtors, Realtor Magazine, Real Estate News, *Moving Costs, Scams Create Relocation Challenges*, Aug. 1, 2023, <https://www.nar.realtor/magazine/real-estate-news/moving-costs-scams-create-relocation-challenges> (last visited Jan. 18, 2024).

² *Id.*

In 2022, nearly 15,198 complaints were filed with the BBB against moving companies,³ which also reported the following frequent scams:

- An initial low-ball estimate (usually provided without an in-person visit to review the belongings that need to be moved) that turns into a demand for a much higher price once all of the household belongings are on the moving truck and awaiting delivery. The truck driver can simply drive away if the consumer refuses to pay the higher price.^{4,5}
- Requiring the shipper to sign a blank or incomplete estimate or contract, which results in a higher than expected price demanded at the time of delivery.⁶

In March of 2021, the Florida Consumer Protection Division within the Office of the Attorney General secured four judgments against moving companies that used deceptive advertising, failed to provide proper estimates, failed to relinquish household goods, and failed to provide timely pick-up or delivery of goods in accordance with service contracts.

In December, 2022, Attorney General Moody filed legal action against three individuals, two holding companies, and multiple fraudulent moving brokerage businesses.⁷ According to the consumer protection investigation, the businesses acted as a common enterprise to deceive more than 400 Floridians into believing the company professionally handled moving services, and promised to provide refunds if anything went wrong. Instead, the companies hired third parties to complete the moving services at subpar quality and refused to provide refunds.⁸

Mover Regulations

In order for an intrastate mover to operate in Florida, the mover must register with the Department of Agriculture and Consumer Services (DACS) and comply with the provisions of ch. 507, which applies to the operations of any mover or moving broker engaged in the intrastate transportation or shipment of household goods originating in this state and terminating in this state. Movers and brokers engaged in the interstate transportation of household goods are regulated by the Federal Motor Carrier Safety Administration within the United States Department of Transportation.

Movers and moving brokers who do business in Florida must register annually with DACS.⁹ As of December 4, 2023, there were 1,348 movers and 39 moving brokers with active Florida registrations.¹⁰ In order to obtain a registration certificate, the mover or moving broker must file an application, pay a

³ Better Business Bureau, *BBB Scam Alert: Avoid Moving Scams this National Moving Month* (May 17, 2023) <https://www.bbb.org/article/scams/24198-bbb-scam-alert-avoid-moving-scams-this-national-moving-month> (last visited Jan. 18, 2024).

⁴ Better Business Bureau, *Know Your Mover: BBB Study Reveals Scammers Price Gouge, Take Belongings Hostage, and Destroy Goods* (Jun. 30, 2020), <https://www.bbb.org/article/news-releases/22659-know-your-mover-bbb-study-reveals-scammers-price-gouge-take-belongings-hostage-and-destroy-goods> (last visited Jan. 18, 2024).

⁵ See, e.g., Jackie Callaway, *Record Number of People File Complaints About Florida Movers in 2021; BBB rates 1,300 Companies 'F'*, (Dec. 2, 2021), available at <https://www.abcactionnews.com/money/consumer/taking-action-for-you/record-number-of-people-file-complaints-about-florida-movers-in-2021-bbb-rates-1-300-companies-f> (last visited Jan. 18, 2024).

⁶ Florida Attorney General's Office, *Scams at a Glance: On the Move*, [http://myfloridalegal.com/webfiles.nsf/WF/TDGT-BYLQQL/\\$file/Movers_Scams+at+a+Glance_English.pdf](http://myfloridalegal.com/webfiles.nsf/WF/TDGT-BYLQQL/$file/Movers_Scams+at+a+Glance_English.pdf) (last visited Jan. 18, 2024).

⁷ See Office of Attorney General Ashley Moody, *Attorney General Moody Takes Action to Shut Down Massive Moving Scam* (Dec. 8, 2022), [News Release - Attorney General Moody Takes Action to Shut Down Massive Moving Scam \(myfloridalegal.com\)](https://www.myfloridalegal.com/news-releases/attorney-general-moody-takes-action-to-shut-down-massive-moving-scam) (last visited Jan. 18, 2024).

⁸ *Id.*

⁹ Florida Department of Agriculture and Consumer Services (FDACS), *Moving Companies: Who has to Register?*, <https://www.fdacs.gov/Business-Services/Moving-Companies> (last visited Jan. 18, 2024).

¹⁰ FDACS, *License/Complaint Lookup*, available at <https://csapp.fdacs.gov/cspublicapp/businesssearch/businesssearch.aspx> (last visited Jan. 18, 2024). Search by "program."

\$300 annual registration fee, and meet certain statutory qualifications, including proof of insurance coverage.¹¹

Chapter 507, F.S., governs the loading, transportation, shipment, unloading, and affiliated storage of household goods as part of intrastate household moves. The chapter applies to any mover or moving broker engaged in intrastate transportation or shipment of household goods that originates and terminates in Florida.¹² These regulations co-exist with federal law, which governs interstate moving of household goods.¹³

A “mover” is a person who, for compensation, contracts for or engages in the loading, transportation, shipment, or unloading of household goods as part of a household move.¹⁴ A “moving broker” arranges for another person to load, transport, ship, or unload household goods as part of a household move or who refers a shipper to a mover by telephone, postal, or electronic mail, website, or other means.¹⁵

‘Household move’ means the loading of household goods into a mode of transportation or shipment; the transportation or shipment of those household goods; and the unloading of those household goods, when the transportation or shipment originates and terminates at one of the following ultimate locations:

- From one dwelling to another;
- From a dwelling to a storehouse or warehouse that is owned or rented by the shipper or the shipper’s agent; or
- From a storehouse or warehouse that is owned or rented by the shipper or the shipper’s agent to a dwelling.

Application for Registration

An applicant for a mover registration must provide:

- its legal business and trade name, mailing address, and business locations;
- the full names, addresses, and telephone numbers of its owners or corporate officers and directors and the Florida agent of the corporation;
- a statement whether it is a domestic or foreign corporation, its state and date of incorporation, its charter number, and, if a foreign corporation, the date it registered with the Department of State;
- the date on which the mover or broker registered its fictitious name if the mover or broker is operating under a fictitious or trade name;
- the name of all other corporations, business entities, and trade names through which each owner of the mover or broker operated, was known, or did business as a mover or moving broker within the preceding 5 years;
- proof of the required insurance or alternative coverages;
- statements attesting to the current and pending history of any mover owners, officers, directors, managing members, or general partners regarding:
 - crimes involving fraud, dishonest dealings, or any act of moral turpitude; and
 - civil fines or penalties arising out of any administrative or enforcement action brought by any government agency or private person based upon conduct involving fraud, dishonest dealing, or any violation of ch. 507, F.S.

DACS may deny, refuse to renew, or revoke the registration of any mover or broker when it determines that the mover or broker, or any of the mover’s or broker’s directors, officers, owners, or general partners has:

¹¹ Section 507.03, F.S.

¹² Section 507.02, F.S.

¹³ Interstate movers in the U.S. must be licensed by the Department of Transportation’s Federal Motor Carrier Safety Administration (FMCSA).

¹⁴ Section 507.01(9), F.S.

¹⁵ Section 507.01(10), F.S.

- failed to meet the requirements for registration as provided in ch. 507, F.S.;
- been convicted of a crime involving fraud, dishonest dealing, or any other act of moral turpitude¹⁶;
- not satisfied a civil fine or penalty arising out of any administrative or enforcement action brought by any governmental agency or private person based upon conduct involving fraud, dishonest dealing, or any violation of this chapter;
- pending against him or her any criminal, administrative, or enforcement proceedings in any jurisdiction, based upon conduct involving fraud, dishonest dealing, or any other act of moral turpitude; or
- had a judgment entered against him or her in any action brought by DACS or the Department of Legal Affairs under this chapter or the Florida Deceptive and Unfair Trade Practices Act.

Contracts and Estimate Requirements

Section 507.05, F.S., requires an intrastate mover to provide an **estimate and contract** to the perspective shipper in writing and must be signed and dated by the shipper and mover **before commencing the move**. The contract and estimate must include:

- The name, telephone number, and physical address where the mover's employees are available during normal business hours.
- The date prepared and any proposed date of the move.
- The name and address of the shipper, the addresses where the articles are to be picked up and delivered, and a telephone number where the shipper may be reached.
- The name, telephone number, and physical address of any location where the goods will be held pending further transportation, including situations where the mover retains possession of goods pending resolution of a fee dispute with the shipper.
- An itemized breakdown and description and total of all costs and services for loading, transportation or shipment, unloading, and accessorial services to be provided during a household move or storage of household goods;
- acceptable forms of payment, and
- a phrase signifying that the mover is state-registered and identifying the mover's registration number.

A mover must clearly and conspicuously disclose to the shipper in the estimate and contract for services the forms of payments the mover will accept. A mover shall accept a minimum of two of the three following forms of payment:

- Cash, cashier's check, money order, or traveler's check;
- Valid personal check; or
- Valid credit card.

Should a dispute arise over payment or costs, s. 507.06, F.S., provides that the mover may place the shipper's goods in a storage unit until payment is tendered. Because of ambiguity regarding what payment may legally be demanded, some shippers have been taken advantage of by deceptive or fraudulent moving practices. Often, moving fraud manifests as an increased fee assessed by the mover, who then refuses to relinquish the shipper's goods until the inflated price has been paid in full.

While administrative, civil, and criminal penalties exist in ch. 507, F.S., for such fraudulent moving practices and other violations, the aggrieved shipper is not guaranteed the return of his or her goods until after such remedies have been finalized.

¹⁶ Crimes of moral turpitude have not been defined by statute. Applicable case law has generally defined them as acts of "baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." The determination that a crime involves moral turpitude is made based on the statutory definition or nature of the crime, not the specific conduct predicated a particular conviction.

Administrative Remedies and Penalties

DACS is authorized to issue an order for one or more of the following administrative remedies if it finds that a mover or broker, or a person employed or contracted by a mover or broker, has violated ch. 507, F.S., or rules or orders issued pursuant thereunder:

- issuing a notice of noncompliance,
- imposing a Class II administrative fine for each act or omission,
- directing that the person cease and desist specified activities,
- refusing to register or revoking or suspending a registration, and/or
- placing the registrant on probation, subject to the conditions specified by DACS.

Rule 5J-15.002 of the Florida Administrative Code provides the specific penalty guidelines for violations of ch. 507, F.S., or rules promulgated thereunder. DACS may issue a notice of noncompliance for certain first violations. DACS may impose fines for “minor violations” that range from \$1,000 to \$2,500. For “major violations,” DACS may impose an administrative fine that ranges from \$1,000 to \$5,000 or impose any of the other penalties provided in s. 507.09(1)(b)-(e), F.S.

Insurance Coverage and Liability Limitations

Movers and moving brokers must maintain liability and motor vehicle insurance. A mover who operates more than two vehicles is required to maintain liability insurance of at least \$10,000 per shipment, and not less than 60 cents per pound, per article.¹⁷ Movers who operate fewer than two vehicles are required only to carry either a \$25,000 performance bond or a \$25,000 certificate of deposit in lieu of liability insurance.¹⁸

Any contractual limitation to a mover’s liability for loss incurred to a shipper’s goods must be disclosed in writing to the shipper, along with the valuation rate, but a mover’s attempt to limit its liability beyond the minimum 60 cents per pound, per article rate is void under s. 507.04(4), F.S. If the mover offers valuation insurance, it must inform the shipper of the opportunity to purchase valuation coverage to compensate the shipper for household goods that are lost or damaged during a household move, prior to execution of the contract for moving services.¹⁹

Local Ordinances and Regulations

Chapter 507, F.S., preempts local ordinances or regulations that relate to household moving, unless the local regulation was adopted prior to January 1, 2011.²⁰ Broward,²¹ Miami-Dade,²² Palm Beach,²³ and Pinellas²⁴ counties currently have such ordinances. Movers or moving brokers whose principal place of business is located in a county or municipality with such an ordinance are required to register under local and state laws. State law also allows for local taxes, fees, and bonding related to movers and

¹⁷ Sections 507.04(1)(a)1. and 507.04(4), F.S.

¹⁸ Section 507.04(1)(b), F.S.

¹⁹ Section 507.04(5), F.S.

²⁰ Section 507.13, F.S.

²¹ Broward County Government, *Movers*,

<https://www.broward.org/Consumer/ConsumerProtection/Movers/Pages/default.aspx> (last visited Dec. 4, 2023).

²² Miami-Dade County, *Moving Companies—Laws & Tips*, <https://www.miamidade.gov/global/economy/consumer-protection/moving-companies.page#:~:text=Movers%20must%20insure%20your%20property,the%20value%20of%20your%20property.&text=The%20amount%20of%20added%20value%20you%20purchase%20is%20up%20to%20you>. (last visited Jan. 18, 2024).

²³ Palm Beach County, *Moving*, available at <https://discover.pbcgov.org/publicsafety/consumeraffairs/pages/moving.aspx> (last visited Dec. 4, 2023).

²⁴ Pinellas County, *Moving*, <https://www.pinellascounty.org/consumer/moving.htm> (last visited Jan. 18, 2024).

moving brokers, so long as any local registration fees are reasonable and do not exceed the cost of administering the ordinance or regulation.²⁵

Effect of the Bill

The bill requires contracts and estimates to be prepared by registered movers, which prohibits such documents from being prepared by moving brokers. It also updates the following definition:

- “Moving broker” or “broker” means a person who, for compensation, arranges **with a registered mover for loading, transporting or shipping, or unloading of** household goods as part of a household move or who, for compensation, refers a shipper to a **registered** mover.

The bill clarifies that each estimate or contract of a “mover” must include a phrase that contains the following:

- The name of the firm;
- A statement that indicates the firm is registered with the State of Florida as a mover; and
- A Florida mover registration number.

The bill requires all moving brokers to be registered and clarifies that any document from a “moving broker” must include:

- The name of the firm;
- A statement that indicates the firm is registered with the State of Florida as a moving broker; and
- A Florida moving broker registration number.

Each advertisement of a “moving broker” must include the following:

- A Florida moving broker registration number;
- The name of the firm; and
- A phrase that states the firm is paid by a shipper to arrange, or offer to arrange, the transportation of property by a registered mover.

The bill requires each moving broker to provide DACS with:

- a complete list of registered movers that the moving broker has contracted or is affiliated with, advertises on behalf of, arranges moves for, or refers shippers to, including each mover’s complete name, address, telephone number, email address, and registration number and the name of each mover’s owners, corporate officers, and directors.
- any changes to the provided information.

DACS must publish and maintain a list of all moving brokers and the registered movers each moving broker contracts with on its website.

The bill requires DACS to immediately issue a cease and desist order to a person upon finding that such person is operating as a mover or moving broker without registering. Additionally, DACS may seek an immediate injunction from the appropriate circuit court that prohibits the person from operating in Florida until the person complies with the registration requirement, and may impose a civil penalty not to exceed \$5,000, and court costs.

The bill authorizes a mover that operates two or fewer vehicles to maintain one of the following alternative coverages, in lieu of maintaining liability insurance coverage:

- A performance bond in the amount of **\$50,000**, up from the current \$25,000, by a Florida-approved surety company; or
- A certificate of deposit in a Florida banking institution in the amount of **\$50,000**, up from the current \$25,000.

The bill also requires a moving broker to maintain alternative coverages similar to a mover.

The bill requires DACS to immediately suspend a mover's or moving broker's registration if the mover or moving broker fails to maintain the required performance bond, certificate of deposit, or the appropriate insurance. In such cases, the mover or moving broker must immediately cease operating as a mover or moving broker in Florida. Additionally, DACS may seek an immediate injunction from the appropriate circuit court that prohibits the person from operating in Florida until the person complies with the aforementioned requirements, a civil penalty not to exceed \$5,000, and court costs.

Estimates and Contracts for Service

The bill requires that an estimate and a contract must be prepared by a registered mover and provided to a prospective shipper in writing, and **the shipper, mover, and moving broker must sign** or electronically acknowledge and date the estimate and contract.

The bill requires the estimate and contract for service to include the following:

- The name, telephone number, and physical address where the mover's and moving broker's employees are available during normal business hours;
- The date the **estimate and contract** were prepared **by the mover** and the proposed date **or dates** of the **shipper's household** move, **including, but not limited to, loading, transportation, shipment, and unloading of household goods and accessorial services**;
- The name and address of the shipper, the addresses where the articles are to be picked up and delivered, and a telephone number where the shipper may be reached;
- The name, telephone number, and physical address of the location where the household goods will be held pending further transportation, including situations in which the mover retains possession of household goods pending resolution of a fee dispute with the shipper;
- An itemized breakdown and description and total of all costs and services for loading, transportation or shipment, unloading, and accessorial services to be provided during a household move or storage of household goods, including the fees of a moving broker, if used; and
- Acceptable forms of payment, which must be clearly and conspicuously disclosed to the shipper on the binding estimate and the contract for services.

The bill:

- Limits a moving broker to only arrange with a registered mover for the loading, transportation, shipment, or unloading of household goods as part of a household move or refer a shipper to a registered mover.
- Prohibits moving brokers from giving a verbal estimate or preparing a written estimate or contract for services that sets forth the total costs and describes the basis of those costs relating to a shipper's household move, including, but not limited to, the loading, transportation, shipment, or unloading of household goods and accessorial services.
- Requires a moving broker, before providing any service to a prospective shipper, to disclose to the shipper that the broker may only arrange, or offer to arrange, the transportation of property by a registered mover.
- Prohibits a moving broker's fees from including the cost of the shipper's household move, including, but not limited to, the loading, transportation, shipment, or unloading of household goods and accessorial services.

The bill requires any document provided to a shipper by a moving broker to include the following:

- The name of the moving broker and the moving broker's registration number;
- The following statement displayed at the top of the document:
 - The name of the moving broker firm and that the firm is not a mover; and

- The name of the moving broker firm and a phrase stating the moving broker is paid by the shipper to arrange, or offer to arrange, the transportation of property by a registered mover and that the moving broker's fees do not include the cost of the shipper's household move, including, but not limited to, the loading, transportation, shipment, or unloading of household goods and accessorial services;
- The name, telephone number, and physical address where the moving broker's employees are available during normal business hours;
- An itemized breakdown and description and total of all costs for the moving broker's fees to arrange with a registered mover for the loading, transportation, shipment, or unloading of household goods as part of a household move or to refer the shipper to a registered mover;
- A list of all of the registered movers the moving broker has contracted with or is affiliated with, advertises on behalf of, arranges moves for, or refers shippers to, including each mover's complete name, address, telephone number, email address, Florida Intrastate Registration Number, and the name of each mover's owners, corporate officers, and directors; and
- A list of acceptable forms of payment, which must include all of the forms of payment listed in at least two of the following subparagraphs:
 - Cash, cashier's check, money order, or traveler's check;
 - Valid personal check; and
 - Valid credit card.

The bill provides that upon notification and subsequent written verification by a law enforcement agency, a court, a state attorney, or the Department of Law Enforcement, the DACS must immediately suspend a registration or the processing of an application for a registration if the registrant, applicant, or officer or director of the registrant or applicant is formally charged with a crime involving:

- Fraud;
- Theft;
- Larceny;
- Embezzlement;
- Fraudulent conversion;
- Misappropriation of property; or
- A crime arising from conduct during a movement of household goods until final disposition of the case or removal or resignation of that officer or director.

The bill amends the criminal penalties section to clarify that it is a felony of the third degree, if a mover or mover's employee, agent, or contractor refuses to comply with an order from a law enforcement officer to relinquish a shipper's household goods in the following scenarios:

- After the officer determines that the shipper has tendered payment of the amount of a written estimate or contract, and, if applicable, amendments to the contract for services reflecting the price adjustment signed by the shipper; or
- If the officer determines that the mover did not produce a signed or electronically acknowledged binding estimate or contract for service and, if applicable, amendments to the contract for services reflecting the price adjustment signed by the shipper.

B. SECTION DIRECTORY:

Section 1: amends s. 507.01, F.S., relating to definitions.

Section 2: amends s. 507.02, F.S., relating to intent.

Section 3: amends s. 507.03, F.S., relating to registration.

Section 4: amends s. 507.04, F.S., relating to liability insurance.

Section 5: amends s. 507.05, F.S., relating to estimates and contracts for service.

Section 6: amends s. 507.06, F.S., relating to moving brokers and services.

Section 7: amends s. 507.07, F.S., relating to violations.

Section 8: amends s. 507.09, F.S., relating to administrative remedies and penalties.

Section 9: amends s. 507.10, F.S., relating to liability insurance and registration suspension.

Section 10: amends s. 507.11, F.S., relating to criminal penalties.

Section 11: Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill allows DACS to impose a civil penalty up to \$5,000 upon finding that a person is operating as a mover or moving broker without meeting the provisions of the bill.

2. Expenditures:

The bill may have an insignificant negative fiscal related to rulemaking which can be absorbed by DACS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The public may see a faster resolution to moving disputes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Rulemaking may be necessary for DACS to update applications to reflect the bill changes.²⁶

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that upon notification and subsequent written verification by a law enforcement agency, a court, a state attorney, or the Department of Law Enforcement that a registrant, applicant, or

officer or director of the registrant or applicant is formally charged with a crime involving fraud, theft, larceny, embezzlement, or fraudulent conversion, DACS is required to suspend a registration or the processing of an application for registration until final disposition of the case or removal or resignation of that officer or director. However, it is unclear if DACS is receiving notification and subsequent written verification by a law enforcement agency, a court, a state attorney, or the Department of Law Enforcement, or alternatively, if DACS is receiving notification from any person or entity, and then getting a subsequent written verification from one of the aforementioned entities. DACS stated that “notification of exclusionary offenses usually occurs through complaints or news stories that become known to division staff.”²⁷

In several places throughout the bill, the term “mover” has been modified to “registered mover.” These revisions may create unintended consequences.²⁸

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

²⁷ *Id.*, DACS Agency Analysis at 4.

²⁸ *Id.*

26 providing limitations and prohibitions for moving
27 brokers; requiring moving brokers to make a specified
28 disclosure to shippers before providing any services;
29 prohibiting moving brokers' fees from including
30 certain costs; requiring that documents provided to
31 shippers by moving brokers contain specified
32 information; amending s. 507.07, F.S.; providing that
33 it is a violation of ch. 507, F.S., for moving brokers
34 to provide estimates or enter into contracts or
35 agreements that were not prepared and signed or
36 electronically acknowledged by a mover; amending s.
37 507.09, F.S.; conforming a cross-reference; requiring
38 the department, upon verification by certain entities,
39 to immediately suspend a registration or the
40 processing of an application for a registration in
41 certain circumstances; amending s. 507.10, F.S.;
42 conforming a cross-reference; amending s. 507.11,
43 F.S.; conforming provisions to changes made by the
44 act; providing an effective date.

45
46 Be It Enacted by the Legislature of the State of Florida:

47
48 Section 1. Subsections (4), (6), and (10) of section
49 507.01, Florida Statutes, are amended to read:

50 507.01 Definitions.—As used in this chapter, the term:

51 (4) "Contract for service" or "bill of lading" means a
52 written document prepared by a registered mover which is
53 approved and electronically acknowledged or signed by the
54 shipper in writing before the performance of any service by the
55 mover and which authorizes ~~services from~~ the named mover to
56 perform and lists the services and lists all costs associated
57 with the household move and accessorial services to be
58 performed.

59 (6) "Estimate" means a written document prepared by a
60 registered mover that sets forth the total costs and describes
61 the basis of those costs, relating to a shipper's household
62 move, including, but not limited to, the loading, transportation
63 or shipment, and unloading of household goods and accessorial
64 services.

65 (10) "Moving broker" or "broker" means a person who, for
66 compensation, arranges with a registered mover for loading,
67 transporting or shipping, or unloading of ~~for another person to~~
68 ~~load, transport or ship, or unload~~ household goods as part of a
69 household move or who, for compensation, refers a shipper to a
70 registered mover by telephone, postal or electronic mail,
71 ~~Internet website, or other means.~~

72 Section 2. Present paragraph (b) of subsection (1) of
73 section 507.02, Florida Statutes, is redesignated as paragraph
74 (c), and a new paragraph (b) is added to that subsection, to
75 read:

76 507.02 Construction; intent; application.—

77 (1) This chapter shall be construed liberally to:

78 (b) Establish the law of this state governing the
 79 brokering of moves of household goods by moving brokers.

80 Section 3. Subsections (1), (2), (5), (6), (7), (9), and
 81 (11) of section 507.03, Florida Statutes, are amended, and
 82 subsections (12) and (13) are added to that section, to read:

83 507.03 Registration.—

84 (1) Each mover and moving broker must register with the
 85 department, providing its legal business and trade name, mailing
 86 address, and business locations; the full names, addresses, and
 87 telephone numbers of its owners, ~~or~~ corporate officers, and
 88 directors and the Florida agent of the corporation; a statement
 89 whether it is a domestic or foreign corporation, its state and
 90 date of incorporation, its charter number, and, if a foreign
 91 corporation, the date it registered with the Department of
 92 State; the date on which the mover or moving broker registered
 93 its fictitious name if the mover or moving broker is operating
 94 under a fictitious or trade name; the name of all other
 95 corporations, business entities, and trade names through which
 96 each owner of the mover or moving broker operated, was known, or
 97 did business as a mover or moving broker within the preceding 5
 98 years; and proof of the insurance or alternative coverages
 99 required under s. 507.04.

100 (2) A certificate evidencing proof of registration shall

101 be issued by the department and must be prominently displayed in
 102 the mover's or moving broker's primary place of business.

103 (5) (a) Each estimate or contract of a mover ~~or moving~~
 104 ~~broker~~ must include the phrase "... (NAME OF FIRM)... is
 105 registered with the State of Florida as a Mover ~~or Moving~~
 106 ~~Broker~~. Fla. Mover Registration No."

107 (b) Any document from a moving broker must include the
 108 phrase "... (NAME OF FIRM)... is registered with the State of
 109 Florida as a Moving Broker. Fla. Moving Broker Registration No.
 110"

111 (6) (a) Each advertisement of a mover ~~or moving broker~~ must
 112 include the phrase "Fla. Mover Reg. No." or "Fla. IM No.
 113" Each of the mover's vehicles must clearly and
 114 conspicuously display a sign on the driver's side door which
 115 includes at least one of these phrases in lettering of at least
 116 1.5 inches in height.

117 (b) Each advertisement of a moving broker must include the
 118 phrase "Fla. Moving Broker Reg. No. (NAME OF MOVING
 119 BROKER)... is a moving broker. ... (NAME OF MOVING BROKER)... is
 120 paid by a shipper to arrange, or offer to arrange, the
 121 transportation of property by a registered mover."

122 (7) A registration is not valid for any mover or moving
 123 broker transacting business at any place other than that
 124 designated in the mover's or moving broker's application, unless
 125 the department is first notified in writing before any change of

126 location. A registration issued under this chapter is not
127 assignable, and the mover or moving broker may not conduct
128 business under more than one name except as registered. A mover
129 or moving broker desiring to change its registered name or
130 location or designated agent for service of process at a time
131 other than upon renewal of registration must notify the
132 department of the change.

133 (9) The department shall deny or refuse to renew the
134 registration of a mover or a moving broker or deny a
135 registration or renewal request by any of the mover's or moving
136 broker's directors, officers, owners, or general partners if the
137 mover or moving broker has not satisfied a civil penalty or
138 administrative fine for a violation of s. 507.07(10) ~~s.~~
139 ~~507.07(9)~~.

140 (11) ~~At the request of the department,~~ Each moving broker
141 shall provide the department with a complete list of the
142 registered movers that the moving broker has contracted or is
143 affiliated with, advertises on behalf of, arranges moves for, or
144 refers shippers to, including each mover's complete name,
145 address, telephone number, ~~and~~ e-mail address, and registration
146 number and the name of each mover's owners, corporate officers,
147 and directors ~~owner or other principal~~. A moving broker must
148 notify the department of any changes to the provided
149 information. The department shall publish and maintain a list of
150 all moving brokers and the registered movers each moving broker

151 is contracted with on its website.

152 (12) A person required to register pursuant to this
 153 section may not operate as or hold itself out to be a mover or
 154 moving broker without first registering with the department
 155 pursuant to this section.

156 (13) The department must immediately issue a cease and
 157 desist order to a person upon finding that such person is
 158 operating as a mover or moving broker without registering
 159 pursuant to this section. In addition, and notwithstanding the
 160 availability of any administrative relief under chapter 120, the
 161 department may seek from the appropriate circuit court an
 162 immediate injunction prohibiting the person from operating in
 163 this state until the person complies with this section, a civil
 164 penalty not to exceed \$5,000, and court costs.

165 Section 4. Present subsections (3), (4), and (5) of
 166 section 507.04, Florida Statutes, are redesignated as
 167 subsections (4), (5), and (6), respectively, a new subsection
 168 (3) is added to that section, and subsection (1) and present
 169 subsections (4) and (5) of that section are amended, to read:

170 507.04 Required insurance coverages; liability
 171 limitations; valuation coverage.—

172 (1) LIABILITY INSURANCE.—

173 (a)1. Except as provided in paragraph (b), each mover
 174 operating in this state must maintain current and valid
 175 liability insurance coverage of at least \$10,000 per shipment

176 | for the loss or damage of household goods resulting from the
 177 | negligence of the mover or its employees or agents.

178 | 2. The mover must provide the department with evidence of
 179 | liability insurance coverage before the mover is registered with
 180 | the department under s. 507.03. All insurance coverage
 181 | maintained by a mover must remain in effect throughout the
 182 | mover's registration period. A mover's failure to maintain
 183 | insurance coverage in accordance with this paragraph constitutes
 184 | an immediate threat to the public health, safety, and welfare.

185 | (b) A mover that operates two or fewer vehicles, in lieu
 186 | of maintaining the liability insurance coverage required under
 187 | paragraph (a), ~~may, and each moving broker must,~~ maintain one of
 188 | the following alternative coverages:

189 | 1. A performance bond in the amount of \$50,000 ~~\$25,000~~,
 190 | for which the surety of the bond must be a surety company
 191 | authorized to conduct business in this state; or

192 | 2. A certificate of deposit in a Florida banking
 193 | institution in the amount of \$50,000 ~~\$25,000~~.

194 | (c) A moving broker must maintain one of the following
 195 | coverages:

196 | 1. A performance bond in the amount of \$50,000, for which
 197 | the surety of the bond must be a surety company authorized to
 198 | conduct business in this state; or

199 | 2. A certificate of deposit in a Florida banking
 200 | institution in the amount of \$50,000.

201
202 The original bond or certificate of deposit must be filed with
203 the department and must designate the department as the sole
204 beneficiary. The department must use the bond or certificate of
205 deposit exclusively for the payment of claims to consumers who
206 are injured by the fraud, misrepresentation, breach of contract,
207 misfeasance, malfeasance, or financial failure of the mover or
208 moving broker or by a violation of this chapter by the mover or
209 moving broker. Liability for these injuries may be determined in
210 an administrative proceeding of the department or through a
211 civil action in a court of competent jurisdiction. However,
212 claims against the bond or certificate of deposit must only be
213 paid, in amounts not to exceed the determined liability for
214 these injuries, by order of the department in an administrative
215 proceeding. The bond or certificate of deposit is subject to
216 successive claims, but the aggregate amount of these claims may
217 not exceed the amount of the bond or certificate of deposit.

218 (3) REGISTRATION SUSPENSION.—The department must
219 immediately suspend a mover's or moving broker's registration if
220 the mover or moving broker fails to maintain the required
221 performance bond or the certificate of deposit under subsection
222 (1) or the insurance required under subsection (2), and the
223 mover or moving broker must immediately cease operating as a
224 mover or moving broker in this state. In addition, and
225 notwithstanding the availability of any administrative relief

226 pursuant to chapter 120, the department may seek from a circuit
227 court an immediate injunction prohibiting the mover or moving
228 broker from operating in this state until the mover or moving
229 broker complies with subsections (1) and (2), a civil penalty
230 not to exceed \$5,000, and court costs.

231 (5)-(4) LIABILITY LIMITATIONS; VALUATION RATES.—A mover may
232 not limit its liability for the loss or damage of household
233 goods to a valuation rate that is less than 60 cents per pound
234 per article. A provision of a contract for moving services is
235 void if the provision limits a mover's liability to a valuation
236 rate that is less than the minimum rate under this subsection.
237 If a mover limits its liability for a shipper's goods, the mover
238 must disclose the limitation, including the valuation rate, to
239 the shipper in writing at the time that the estimate and
240 contract for services are executed and before any moving or
241 accessorial services are provided. The disclosure must also
242 inform the shipper of the opportunity to purchase valuation
243 coverage if the mover offers that coverage under subsection (6)
244 ~~(5)~~.

245 (6)-(5) VALUATION COVERAGE.—A mover may offer valuation
246 coverage to compensate a shipper for the loss or damage of the
247 shipper's household goods that are lost or damaged during a
248 household move. If a mover offers valuation coverage, the
249 coverage must indemnify the shipper for at least the minimum
250 valuation rate required under subsection (5) ~~(4)~~. The mover must

251 disclose the terms of the coverage to the shipper in writing at
 252 the time that the estimate and contract for services are
 253 executed and before any moving or accessorial services are
 254 provided. The disclosure must inform the shipper of the cost of
 255 the valuation coverage, the valuation rate of the coverage, and
 256 the opportunity to reject the coverage. If valuation coverage
 257 compensates a shipper for at least the minimum valuation rate
 258 required under subsection (5) ~~(4)~~, the coverage satisfies the
 259 mover's liability for the minimum valuation rate.

260 Section 5. Section 507.05, Florida Statutes, is amended to
 261 read:

262 507.05 Estimates and contracts for service.—Before
 263 providing any moving or accessorial services, an estimate and a
 264 contract ~~and estimate~~ must be prepared by a registered mover and
 265 provided to a prospective shipper in writing, and the shipper,
 266 mover, and, if applicable, moving broker must sign or
 267 electronically acknowledge and date the estimate and contract.
 268 At a minimum, the estimate and contract for service ~~must be~~
 269 ~~signed and dated by the shipper and the mover, and~~ must include:

270 (1) The name, telephone number, and physical address where
 271 the mover's and, if applicable, moving broker's employees are
 272 available during normal business hours.

273 (2) The date the estimate and contract were ~~or estimate is~~
 274 prepared by the mover and the any proposed date or dates of the
 275 shipper's household move, including, but not limited to,

276 loading, transportation, shipment, and unloading of household
 277 goods and accessorial services.

278 (3) The name and address of the shipper, the addresses
 279 where the articles are to be picked up and delivered, and a
 280 telephone number where the shipper may be reached.

281 (4) The name, telephone number, and physical address of
 282 the any location where the household goods will be held pending
 283 further transportation, including situations in which ~~where~~ the
 284 mover retains possession of household goods pending resolution
 285 of a fee dispute with the shipper.

286 (5) An itemized breakdown and description and total of all
 287 costs and services for loading, transportation or shipment,
 288 unloading, and accessorial services to be provided during a
 289 household move or storage of household goods, including the fees
 290 of a moving broker, if used.

291 (6) Acceptable forms of payment, which must be clearly and
 292 conspicuously disclosed to the shipper on the binding estimate
 293 and the contract for services. A mover must ~~shall~~ accept at
 294 least ~~a minimum of~~ two of the three following forms of payment:

295 (a) Cash, cashier's check, money order, or traveler's
 296 check;

297 (b) Valid personal check, showing upon its face the name
 298 and address of the shipper or authorized representative; or

299 (c) Valid credit card, which shall include, but not be
 300 limited to, Visa or MasterCard.

301
302 A mover must clearly and conspicuously disclose to the shipper
303 in the estimate and contract for services the forms of payments
304 the mover will accept, including the forms of payment described
305 in paragraphs (a)-(c).

306 Section 6. Section 507.056, Florida Statutes, is created
307 to read:

308 507.056 Moving brokers; services.—

309 (1) A moving broker may only arrange with a registered
310 mover for the loading, transportation, shipment, or unloading of
311 household goods as part of a household move or refer a shipper
312 to a registered mover. Moving brokers may not give a verbal
313 estimate or prepare a written estimate or contract for services
314 that sets forth the total costs and describes the basis of those
315 costs relating to a shipper's household move, including, but not
316 limited to, the loading, transportation, shipment, or unloading
317 of household goods and accessorial services.

318 (2) Before providing any service to a prospective shipper,
319 a moving broker must disclose to the shipper that the broker may
320 only arrange, or offer to arrange, the transportation of
321 property by a registered mover. A moving broker's fees may not
322 include the cost of the shipper's household move, including, but
323 not limited to, the loading, transportation, shipment, or
324 unloading of household goods and accessorial services. Any
325 document provided to a shipper by a moving broker must include

326 all of the following:

327 (a) The name of the moving broker and the moving broker's
328 registration number.

329 (b) The following statement displayed at the top of the
330 document: "... (Name of Moving Broker)... is not a mover.
331 ... (Name of Moving Broker)... is paid by the shipper to arrange,
332 or offer to arrange, the transportation of property by a
333 registered mover. The moving broker's fees do not include the
334 cost of the shipper's household move, including, but not limited
335 to, the loading, transportation, shipment, or unloading of
336 household goods and accessorial services."

337 (c) The name, telephone number, and physical address where
338 the moving broker's employees are available during normal
339 business hours.

340 (d) An itemized breakdown and description and total of all
341 costs for the moving broker's fees to arrange with a registered
342 mover for the loading, transportation, shipment, or unloading of
343 household goods as part of a household move or to refer the
344 shipper to a registered mover.

345 (e) A list of all of the registered movers the moving
346 broker has contracted with or is affiliated with, advertises on
347 behalf of, arranges moves for, or refers shippers to, including
348 each mover's complete name, address, telephone number, e-mail
349 address, Florida Intrastate Registration Number, and the name of
350 each mover's owners, corporate officers, and directors.

351 (f) A list of acceptable forms of payment, which must
352 include all of the forms of payment listed in at least two of
353 the following subparagraphs:

354 1. Cash, cashier's check, money order, or traveler's
355 check.

356 2. Valid personal check, showing upon its face the name
357 and address of the shipper or authorized representative.

358 3. Valid credit card, which shall include, but not be
359 limited to, Visa or MasterCard.

360 Section 7. Present subsections (8) and (9) of section
361 507.07, Florida Statutes, are redesignated as subsections (9)
362 and (10), respectively, and a new subsection (8) is added to
363 that section, to read:

364 507.07 Violations.—It is a violation of this chapter:

365 (8) For a moving broker to provide an estimate or enter
366 into a contract or agreement for moving, loading, shipping,
367 transporting, or unloading services with a shipper which was not
368 prepared and electronically acknowledged or signed by a mover
369 who is registered with the department pursuant to this chapter.

370 Section 8. Section 507.09, Florida Statutes, is amended to
371 read:

372 507.09 Administrative remedies; penalties.—

373 (1) The department may enter an order doing one or more of
374 the following if the department finds that a mover or moving
375 broker, or a person employed or contracted by a mover or broker,

376 | has violated or is operating in violation of this chapter or the
 377 | rules or orders issued pursuant to this chapter:

378 | (a) Issuing a notice of noncompliance under s. 120.695.

379 | (b) Imposing an administrative fine in the Class II
 380 | category pursuant to s. 570.971 for each act or omission.
 381 | However, the department must impose an administrative fine in
 382 | the Class IV category for each violation of s. 507.07(10) ~~s.~~
 383 | ~~507.07(9)~~ if the department does not seek a civil penalty for
 384 | the same offense.

385 | (c) Directing that the person cease and desist specified
 386 | activities.

387 | (d) Refusing to register or revoking or suspending a
 388 | registration.

389 | (e) Placing the registrant on probation, subject to the
 390 | conditions specified by the department.

391 | (2) The department, upon notification and subsequent
 392 | written verification by a law enforcement agency, a court, a
 393 | state attorney, or the Department of Law Enforcement, must
 394 | immediately suspend a registration or the processing of an
 395 | application for a registration if the registrant, applicant, or
 396 | officer or director of the registrant or applicant is formally
 397 | charged with a crime involving fraud, theft, larceny,
 398 | embezzlement, or fraudulent conversion or misappropriation of
 399 | property or a crime arising from conduct during a movement of
 400 | household goods until final disposition of the case or removal

401 or resignation of that officer or director.

402 (3) The administrative proceedings that ~~which~~ could result
 403 in the entry of an order imposing any of the penalties specified
 404 in subsection (1) or subsection (2) are governed by chapter 120.

405 ~~(4)-(3)~~ The department may adopt rules under ss. 120.536(1)
 406 and 120.54 to administer this chapter.

407 Section 9. Subsection (2) of section 507.10, Florida
 408 Statutes, is amended to read:

409 507.10 Civil penalties; remedies.—

410 (2) The department may seek a civil penalty in the Class
 411 II category pursuant to s. 570.971 for each violation of this
 412 chapter. However, the department must seek a civil penalty in
 413 the Class IV category for each violation of s. 507.07(10) ~~s.~~
 414 ~~507.07(9)~~ if the department does not impose an administrative
 415 fine for the same offense.

416 Section 10. Subsection (1) of section 507.11, Florida
 417 Statutes, is amended to read:

418 507.11 Criminal penalties.—

419 (1) The refusal of a mover or a mover's employee, agent,
 420 or contractor to comply with an order from a law enforcement
 421 officer to relinquish a shipper's household goods after the
 422 officer determines that the shipper has tendered payment of the
 423 amount of a written estimate or contract for service, including
 424 any amendments to the estimate or contract reflecting price
 425 adjustments signed by the shipper, or after the officer

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426 | determines that the mover did not produce such ~~a~~ signed or
427 | electronically acknowledged binding estimate or contract for
428 | service upon which demand is being made for payment, is a felony
429 | of the third degree, punishable as provided in s. 775.082, s.
430 | 775.083, or s. 775.084. A mover's compliance with an order from
431 | a law enforcement officer to relinquish goods to a shipper is
432 | not a waiver or finding of fact regarding any right to seek
433 | further payment from the shipper.

434 | Section 11. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 455 Comprehensive Waste Reduction and Recycling Plan

SPONSOR(S): Casello and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 36

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture, Conservation & Resiliency Subcommittee	14 Y, 0 N	Gawin	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee		Byrd	Pigott
3) Infrastructure Strategies Committee			

SUMMARY ANALYSIS

Recycling is any process by which solid waste, or materials that would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or intermediate or final products. In 2008, the Legislature set a statewide goal to recycle at least 75 percent of municipal solid waste (MSW) by 2020. The Department of Environmental Protection (DEP) established numerous programs and initiatives to reach the 75 percent recycling goal. In 2010, the Legislature built on this goal by requiring counties to implement local recycling programs with interim goals of recycling MSW. Each Florida county has the authority and responsibility to provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas of the county.

While Florida achieved the interim goals for 2012 and 2014, the state's recycling rates did not meet the 2020 75 percent recycling goal. DEP was required to submit a report to the President of the Senate and the Speaker of the House of Representatives each year in which the interim recycling goals were not met. In 2021, DEP released its final report titled "Florida and the 2020 75% Recycling Goal" (2020 report). The 2020 report outlines various recommendations to increase recycling within the state.

The bill requires DEP, by July 1, 2025, to develop a comprehensive waste reduction and recycling plan (plan) for the state based on recommendations from the 2020 report. DEP must also convene a technical assistance group to help develop the plan. At a minimum, the bill requires the plan to identify recycling goals based on sustainable materials management and waste diversion and include a three-year plan to implement certain specified policies.

Upon completion of the plan, the bill requires DEP to provide a report to the President of the Senate and the Speaker of the House of Representatives. The report must include an update on the status of the plan and any recommendations for statutory changes necessary to achieve the recycling goals or strategies identified in the plan.

The bill may have an insignificant negative fiscal impact on the state.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Recycling

Recycling is any process by which solid waste, or materials that would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or intermediate or final products.¹ These materials or products include, but are not limited to, crude oil, fuels, and fuel substitutes.² Local governments are responsible for collecting and transporting solid waste to solid waste processing facilities where the recyclables are separated by category.³

Florida's Recycling Goal

In 2008, the Legislature set a statewide goal to recycle at least 75 percent of municipal solid waste (MSW)⁴ by 2020.⁵ The Department of Environmental Protection (DEP) established numerous programs and initiatives to reach the 75 percent recycling goal.⁶ In 2010, the Legislature built on this goal by requiring counties to implement local recycling programs with interim goals of recycling MSW as follows:⁷

Recycling Goal	Goal Date
40 percent	December 31, 2012
50 percent	December 31, 2014
60 percent	December 31, 2016
70 percent	December 31, 2018
75 percent	December 31, 2020

While Florida achieved the interim goals for 2012 and 2014, the state's recycling rate for 2016 was 56 percent, falling short of the 60 percent goal.⁸ Between 2016 and 2020, Florida's statewide recycling rate continued to decline, with a rate of 52 percent in 2019 and 50 percent in 2020.⁹ Only three of Florida's 36 large counties—Charlotte, Lee, and Pinellas—successfully met the 75 percent recycling goal by 2020.¹⁰ In 2022, the single-family recycling participation rate was 48 percent, which was a 4 percent increase from 2020 but a 3 percent decrease from 2021.¹¹ Commercial recycling participation rates also showed a slight increase (approximately 1 percent) during the same timeframe.¹²

¹ Section 403.703(31), F.S.

² *Id.*

³ Section 403.706(1), F.S.; Municipalities are also authorized to construct and operate solid waste disposal facilities if certain statutory requirements are met. Rule 62-701, F.A.C.; City of Fort Lauderdale, *What Really Happens to Our Recycling*, <https://gyr.fortlauderdale.gov/greener-government/recycling-waste-reduction/our-waste-stream/what-really-happens-to-our-recycling#:~:text=The%20recyclables%20are%20placed%20on,and%20paper%20and%20cardboard%20remain>. (last visited Jan. 12, 2024).

⁴ "MSW" means any solid waste, except for sludge, resulting from the operation of residential, commercial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. MSW also includes yard trash but does not include solid waste from industrial, mining, or agricultural operations. Section 403.706(5), F.S.

⁵ Section 403.7032, F.S.; MSW is measured by weight. DEP, *Florida and the 2020 75% Recycling Goal: Final Report*, 3, 8 (2020), available at <https://floridadep.gov/waste/permitting-compliance-assistance/documents/75-recycling-goal-final-report>. (last visited Jan. 12, 2024).

⁶ DEP, *Recycling*, <http://www.dep.state.fl.us/waste/categories/recycling/default.htm> (last visited Jan. 12, 2024).

⁷ Section 403.706(2)(a), F.S.

⁸ DEP, *Florida and the 2020 75% Recycling Goal: Final Report* at 2, available at <https://floridadep.gov/waste/permitting-compliance-assistance/documents/75-recycling-goal-final-report>. (last visited Jan. 12, 2024).

⁹ *Id.* at 6. Prior to the implementation of the 75 percent recycling goal, Florida's recycling rate, which was calculated based on recycling traditional materials, was 30 percent. If the same methodology was applied to 2020, the recycling rate would be only 25 percent. *Id.*

¹⁰ *Id.* at 9. "Large counties" are those with a population of over 100,000. *Id.*

¹¹ DEP, *2022 Single-Family Participation in Recycling (2023)*, available at https://floridadep.gov/sites/default/files/2022_Single_Family_Participation.pdf (last visited Jan. 12, 2024); DEP, *2021 Single-Family*

Local Government Solid Waste and Recycling Responsibilities

Each Florida county has the authority and responsibility to provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas of the county.¹³ Counties may charge reasonable fees for the handling and disposal of solid waste at their facilities.¹⁴ Municipalities are responsible for collecting and transporting solid waste from their jurisdictions to a solid waste disposal facility operated by a county or county contractor.¹⁵ Local governments are also authorized to provide for the collection of recyclable materials.¹⁶ A market must exist for the recyclable materials, and the local government must specifically intend for them to be recycled.¹⁷

As discussed above, counties are required to implement recycling programs that include the statutory interim goals.¹⁸ These programs must be designed to recover a significant portion of at least four of the following materials from the solid waste stream prior to final disposal at a solid waste disposal facility and to offer these materials for recycling:

- Newspapers;
- Aluminum cans;
- Steel cans;
- Glass;
- Plastic bottles;
- Cardboard;
- Office paper; and
- Yard trash.¹⁹

In addition, each county must ensure, to the maximum extent possible, that municipalities within its boundaries participate in the preparation and implementation of recycling and solid waste management programs through interlocal agreements or other means provided by law.²⁰ Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs,²¹ and must enter into negotiations with a franchisee who is operating to exclusively collect solid waste within a specified service area for a county or municipality.²²

Certain activities are eligible for special credit towards achieving a county's recycling goals, including the use of solid waste as fuel in a renewable energy facility, the innovative use of yard trash or other clean wood waste or paper waste, and providing opportunities to recycle in counties with smaller populations.²³ To assess progress, counties must provide information on their solid waste management programs and recycling activities to DEP by April 1 of each year.²⁴ DEP may reduce or modify a

Participation in Recycling (2022), available at

<https://floridadep.gov/sites/default/files/2021%20Single%20Family%20Recycling%20Participation%20in%20Florida.pdf> (last visited Jan. 12, 2024); DEP, *2020 Single-Family Participation in Recycling* (2021), available at

<https://floridadep.gov/sites/default/files/2020%20Single-Family%20Participation%20in%20Recycling.pdf>. (last visited Jan. 12, 2024).

¹² DEP, *2022 Commercial Participation in Recycling* (2023), available at

https://floridadep.gov/sites/default/files/2022_Commercial_Participation.pdf (last visited Jan. 12, 2024); DEP, *2021 Commercial Participation in Recycling* (2022), available at

<https://floridadep.gov/sites/default/files/2021%20Commercial%20Recycling%20Participation%20in%20Florida.pdf> (last visited Jan. 12, 2024); DEP, *2020 Commercial Participation in Recycling* (2021), available at

<https://floridadep.gov/sites/default/files/2020%20Commercial%20Participation%20in%20Recycling.pdf>. (last visited Jan. 12, 2024).

¹³ Section 403.706(1), F.S. Municipalities are also authorized to construct and operate solid waste disposal facilities if certain statutory requirements are met. Fla. Admin. Code Ch. 62-701.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Section 403.706(21), F.S.

¹⁷ *Id.*

¹⁸ Section 403.706(2)(a), F.S.

¹⁹ Section 403.706(2)(f), F.S.

²⁰ Section 403.706(3), F.S.

²¹ Section 403.706(2)(a), F.S.

²² Section 403.706(9), F.S.

²³ Section 403.706(4), F.S.

²⁴ Section 403.706(7), F.S.; Rule 62-716.450, F.A.C.

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county's recycling goal if the county demonstrates that the achievement of the goal would have an adverse effect on the financial obligations of the county that are directly related to the county's waste-to-energy facility, and the county cannot remove normally combustible materials from solid waste that is to be processed at a waste-to-energy facility because of the need to maintain a sufficient amount of solid waste to ensure the financial viability of the facility.²⁵ However, the goal may only be reduced or modified to the extent necessary to alleviate the adverse effects on the financial viability of a county's waste-to-energy facility.²⁶

Local governments can require all residential properties, multi-family dwellings, apartment complexes, and industrial, commercial, and institutional establishments to create programs for the separation of recyclable materials designated by the local government.²⁷ Local governments can also require a commercial establishment to source-separate the recovered materials generated on the premises.²⁸ However, a local government may not:

- Require a commercial establishment that generates source-separated recovered materials to sell its recovered materials to the local government or to a facility designated by the local government;
- Restrict such a generator's right to sell such recovered materials to any properly certified recovered materials dealer who has satisfied the statutory requirements; or
- Enact any ordinance that prevents such a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.²⁹

DEP's Recycling Report

DEP was required to submit a report to the President of the Senate and the Speaker of the House of Representatives each year in which the interim recycling goals were not met.³⁰ These reports had to identify additional programs or statutory changes needed to achieve the recycling goals.³¹ In 2021, DEP released its final report titled "Florida and the 2020 75% Recycling Goal" (2020 report).³² According to the 2020 report, Florida generated the equivalent to over two tons of MSW per resident in 2020, which is approximately twice the national average.³³ However, there is no universal methodology for measuring progress toward recycling goals. Moreover, Florida's MSW calculations do not account for tourists, while calculations by the U.S. Environmental Protection Agency and other states do.³⁴

In the 2020 report, DEP recommends convening a technical assistance group (TAG) to develop a comprehensive waste reduction and recycling plan for Florida.³⁵ The TAG, if convened, would include the Florida Recycling Workgroup, local governments, and other interested parties, and the comprehensive plan would implement stakeholder recommendations by:

- Identifying a set of recycling goals that use sustainable materials management³⁶ and waste diversion³⁷ concepts;

²⁵ Section 403.706(6), F.S.

²⁶ *Id.*

²⁷ Section 403.706(21), F.S. Such ordinances may include, but are not limited to, prohibiting any person from knowingly disposing of recyclable materials and ensuring the collection of recovered materials as necessary to protect public health and safety. *Id.*

²⁸ Section 403.7046(2)(a), F.S.

²⁹ Section 403.7046(2), F.S.

³⁰ Section 403.706(2)(e), F.S.; *see s. 403.705(3)*, F.S. DEP must evaluate and report biennially to the President of the Senate and the Speaker of the House on the state's success in meeting the solid waste recycling goal.

³¹ Section 403.706(2)(e), F.S.

³² DEP, *Florida and the 2020 75% Recycling Goal: Final Report at 2*, available at <https://floridadep.gov/waste/permitting-compliance-assistance/documents/75-recycling-goal-final-report>. (last visited Jan. 12, 2024).

³³ *Id.* at 8.

³⁴ *Id.*

³⁵ *Id.* at 4.

³⁶ Sustainable materials management is a term for alternative approaches to recycling that recognize the differences among waste components with respect to environmental and resource outcomes. Sustainable materials management focuses on using and reusing materials more productively over their life cycles. *Id.*

³⁷ Waste diversion is the process of diverting waste from landfills; it is the amount of material that is reduced, reused, and/or recycled per capita and can be measured by the amount of waste not being disposed of in landfills. Waste diversion reduces disposal costs and the burden on landfills. United States Environmental Protection Agency (EPA), *Waste Diversion at EPA*,

- Developing objectives and proposing a three-year plan to develop a recycling market, education and outreach, and local government assistance; and
- Proposing statutory language to implement the revised recycling goals and strategies.³⁸

The 2020 report also provides recommendations from the Florida Recycling Workgroup and a group of local governments, including:

- Replacing the current 75 percent weight-based goal with a goal or set of goals that are better indicators of program performance and desired environmental and economic outcomes;³⁹
- Using sustainable materials management to prioritize which materials to recycle based on environmental metrics and market availability and setting recycling goals for these specific materials; and
- Focusing on three strategies: education and outreach, funding and incentives to support local government recycling efforts, and developing recycling markets.⁴⁰

Recycling Education and Outreach

Education on the types of recycling services available, how materials are collected, and which materials are accepted is important for a successful recycling program. Because recycling programs within the state vary significantly, education should be tailored to local recycling programs.⁴¹

Currently, DEP operates several education programs, including:

- The Florida Food Waste Prevention Week, which focuses on engagement with local municipalities, universities, national food recovery networks, and the hospitality industry to raise awareness about food waste;
- Phase Three of the Rethink.Reset.Recycle. Program, which focuses on providing counties and municipalities with a variety of customized digital products illustrating correct preparation of recyclables prior to disposing of them; and
- The Recycling Recognition Program, which encourages private businesses, institutions, schools, organizations, and the public to increase recycling by setting recycling goals.⁴²

According to the 2020 report, the TAG, if convened, would propose an education and outreach approach that evaluates statewide solutions but is customized for local needs, including a possible application for mobile devices that provides recycling information based on location.⁴³

Local Government Assistance

In 1988, the Solid Waste Management Act required counties to initiate recycling programs to address the growing costs and environmental problems associated with solid waste disposal in the state.⁴⁴ To aid counties in setting up recycling programs, the Legislature established the Recycling and Education Grant Program. Under the program, counties received funds for initial capital costs, operations, recycling education, market development, and special projects. The program sunset in 2001.⁴⁵

The 2020 report recommends that the TAG evaluate the benefits and problems of the now defunct Recycling and Education Grant Program, make a recommendation to reinstate the program, or consider other means to provide recycling assistance to local governments.⁴⁶

<https://www.epa.gov/greeningepa/waste-diversion-epa> (last visited Jan. 12, 2024); DEP, *Florida and the 2020 75% Recycling Goal: Final Report* at 4.

³⁸ DEP, *Florida and the 2020 75% Recycling Goal: Final Report* at 5, available at <https://floridadep.gov/waste/permitting-compliance-assistance/documents/75-recycling-goal-final-report>. (last visited Jan. 12, 2024).

³⁹ *Id.* at 3. There is a consensus in Florida's recycling industry (as well as other states and at the federal level) that using a weight-based goal does not result in efficient or effective recycling. *Id.*

⁴⁰ *Id.* at 4.

⁴¹ *Id.* at 5.

⁴² *Id.* at 20-21.

⁴³ *Id.* at 4.

⁴⁴ *Id.* at 5.

⁴⁵ *Id.*

⁴⁶ *Id.*

Recycling Market Development

In order for the recycling industry to operate efficiently and provide reasonable returns on investments, there must be a market for finished goods that are manufactured from recycled materials. When the markets for these finished goods increase, the demand for recycled materials will increase, driving up profitability and incentivizing increased investments in the collection, sorting, processing, and manufacturing sectors.⁴⁷

To increase markets for recyclable materials, DEP recommends in its final report that the following be considered when developing the comprehensive recycling plan:

- Tax incentives for usage of recycled materials as feed stocks in manufacturing processes;
- Tax incentives and credits to support materials recovery plant upgrades;
- Public/private partnerships to invest in new processing technologies;
- Investments in expansion of Recycling Business Assistance Center⁴⁸ activities;
- End-user purchase rebates for Florida Certified Compost; and
- Preference programs to use and purchase products made from recycled content material.⁴⁹

Effect of the Bill

The bill requires DEP, by July 1, 2025, to develop a comprehensive waste reduction and recycling plan (plan) for the state based on recommendations from the 2020 report. DEP must convene a TAG to help develop the plan.

At a minimum, the bill requires the plan to identify recycling goals based on sustainable materials management and waste diversion and include a three-year plan to implement the following strategies:

- Recycling education and outreach. DEP must propose statewide solutions to provide local recycling information and education throughout the state.
- Local government recycling assistance. DEP is required to evaluate the benefits and challenges of the former state Recycling and Education Grant Program and provide recommendations for reinstating the program or considering other means of providing recycling assistance to local governments.
- Recycling materials market development. DEP must consider and recommend plans to develop and promote markets for recycling materials.

Upon completion of the plan, the bill requires DEP to provide a report to the President of the Senate and the Speaker of the House of Representatives. The report must include an update on the status of the plan and any recommendations for statutory changes necessary to achieve the recycling goals or strategies identified in the plan.

B. SECTION DIRECTORY:

Section 1. Amends s. 403.7032, F.S., related to recycling.

Section 2. Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁴⁷ *Id.*

⁴⁸ The Recycling Business Assistance Center was established in 2010 to coordinate between state agencies and the private sector to develop new markets for recyclable materials locally and globally. DEP, *Recycling Business Assistance Center*, <https://floridadep.gov/waste/waste-reduction/content/recycling-business-assistance-center> (last visited Jan 12, 2024).

⁴⁹ DEP, *Florida and the 2020 75% Recycling Goal: Final Report* at 5, available at <https://floridadep.gov/waste/permitting-compliance-assistance/documents/75-recycling-goal-final-report>. (last visited Jan. 12, 2024).

2. Expenditures:

The bill provides for the development of a comprehensive waste reduction and recycling plan that may negatively impact workload within DEP which can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

26 (a) At a minimum, the comprehensive plan must do all of
 27 the following:

28 1. Identify recycling goals based on sustainable materials
 29 management and waste diversion.

30 2. Include a 3-year plan to implement all of the following
 31 strategies:

32 a. Recycling education and outreach. The department shall
 33 propose statewide solutions to provide local recycling
 34 information and education throughout this state.

35 b. Local government recycling assistance. The department
 36 shall evaluate the benefits and challenges of the former state
 37 Recycling and Education Grant Program and provide
 38 recommendations for reinstating the program or considering other
 39 means of providing recycling assistance to local governments.

40 c. Recycling materials market development. The department
 41 shall consider and recommend plans to develop and promote
 42 markets for recycling materials.

43 (b) Upon completion of the comprehensive waste reduction
 44 and recycling plan, the department shall provide a report to the
 45 President of the Senate and the Speaker of the House of
 46 Representatives. The report must include an update on the status
 47 of the plan and any recommendations for statutory changes
 48 necessary to achieve the recycling goals or strategies
 49 identified in the plan.

50 Section 2. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 789 Environmental Management
SPONSOR(S): Water Quality, Supply & Treatment Subcommittee, Overdorf and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 738

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Water Quality, Supply & Treatment Subcommittee	17 Y, 0 N, As CS	Guy-Hudson	Curtin
2) Agriculture & Natural Resources Appropriations Subcommittee		Byrd	Pigott
3) Infrastructure Strategies Committee			

SUMMARY ANALYSIS

Florida averages 40-60 inches of rainfall a year, depending on the location, with approximately two-thirds falling between June and October. Because stormwater runoff contains pollutants including sediment, nutrients (such as nitrogen and phosphorous) and other chemicals, effective stormwater treatment systems should be designed to reduce nonpoint source pollution and protect surface water resources.

Stormwater ponds are one of the most widely used stormwater treatment controls and, in Florida, are often designed with side slopes no steeper than a 4:1 horizontal-to-vertical ratio to a depth of at least two feet below the control elevation. Statewide regulations include this maximum ratio but individual water management districts (WMDs) may include additional or differing requirements.

The Water Quality Assurance Act (Act) creates a private cause of action for all damages resulting from a pollutant discharge or other condition of pollution covered under the Act if the discharge was not authorized by a governmental approval or permit pursuant to ch. 403, F.S., relating to environmental control. The Act defines pollution and pollutants according to ch. 376, F.S., relating to pollutant discharge prevention and removal.

The Act imposes strict liability, meaning it is not necessary to show negligence, only that the prohibited discharge or other pollutive condition occurred. The Act allows for joint and several liability and provides that the only defenses to such a cause of action are those specified in s. 376.308, F.S.: an act of war; an act of government; an act of God; or, an act or omission of a third party.

The bill sets a maximum side slope design requirement of a 4:1 horizontal-to-vertical ratio to a depth of at least two feet below the control elevation for a nonindustrial stormwater management system that is accessible to the general public and is in or adjacent to residential or urban areas. The side slope must be stabilized with vegetation to prevent erosion and provide for pollutant removal. The bill provides that a side slope may be designed with a steeper ratio if the slope incorporates erosion prevention and sediment control tools as well as, for public safety purposes, barriers sufficient to prevent accidental incursion into the system.

The bill limits a cause of action under the Act to damages for real or personal property directly resulting from pollution which was not authorized by any government approval or permit pursuant to ch. 373, F.S., relating to water resources, ch. 376, F.S., relating to pollutant discharge prevention and removal, and ch. 403, F.S. The bill provides that the strict liability exceptions to such a cause of action include those specified in s. 376.308, F.S., and adds s. 376.82, F.S., relating to the rehabilitation of a brownfields site.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2024.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

According to a recent national water quality study, Florida ranks first for lakes impaired for swimming and aquatic life and second for lakes classified as impaired for any use.¹ Nationwide, polluted stormwater runoff is considered to be the greatest threat to clean water.² Nonpoint sources³ associated with stormwater account for over 40 percent of polluted waters.⁴ Stormwater is the flow of water resulting from, and immediately following, a rainfall event.⁵ When stormwater falls on pavement, buildings and other impermeable surfaces, the runoff flows quickly and can pick up sediment, nutrients (such as nitrogen and phosphorous), chemicals and other pollutants.⁶ Florida averages 40-60 inches of rainfall a year, depending on the location, with approximately two-thirds falling between June and October.⁷

A stormwater management system is a system designed "...to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution. . . ."⁸ Most activities that create new impervious surfaces or alter surface water flows involve a stormwater management system.⁹

Effective stormwater management reduces nonpoint source pollution and protects surface water resources from stormwater pollution from existing and new land uses.¹⁰ These pollutants adversely impact drinking water supplies, recreation, fisheries and wildlife.¹¹ Inadequate stormwater management increases stormwater flows and velocities, contributes to erosion, overtaxes the carrying capacity of streams and other conveyances, reduces ground water recharge and threatens public health and

¹ Environmental Integrity Project, *The Clean Water Act at 50*, p. 7 (Mar. 17, 2022), <https://environmentalintegrity.org/wp-content/uploads/2022/03/CWA@50-report-3-17-22.pdf> (last visited Jan. 21, 2024).

² South Florida Water Management District (SFWMD), *Your Impact on the Environment*, <https://www.sfwmd.gov/community-residents/what-can-you-do> (last visited Jan. 21, 2024).

³ Nonpoint source pollution may come from land runoff, rain or hydrologic modification, among other diffuse sources. Environmental Protection Agency (EPA), Polluted Runoff: Nonpoint Source (NPS) Pollution, *Basic Information about Nonpoint Source (NPS) Pollution* (last updated Dec. 24, 2023), [Basic Information about Nonpoint Source \(NPS\) Pollution | US EPA](https://www.epa.gov/basic-information-about-nonpoint-source-nps-pollution) (last visited Jan. 22, 2024).

⁴ Department of Environmental Protection (DEP), *Stormwater Support*, <https://floridadep.gov/water/engineering-hydrology-geology/content/stormwater-support> (last visited Jan. 22, 2024). Traditional point sources (i.e., wastewater treatment plants) account for approximately 10 percent of these polluted or impaired waters.

⁵ DEP, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)*, p. 2-10 (Dec. 22, 2020) Modified Document, 1/6/2021, <https://www.flrules.org/gateway/reference.asp?No=Ref-12078> (last visited Jan. 21, 2024).

⁶ EPA, Source Water Protection, *Urbanization and Stormwater Runoff* (last updated Feb. 28, 2023), <https://www.epa.gov/sourcewaterprotection/urbanization-and-stormwater-runoff#:~:text=Stormwater%20runoff%20is%20generated%20from%20rain%20and%20snowmelt,chemicals%2C%20and%20dirt%2Fsediment%20into%20streams%2C%20lakes%2C%20and%20groundwater> (last visited Jan. 21, 2024).

⁷ University of Florida Institute of Food and Agricultural Sciences (UF/IFAS), *Florida Rainfall Data Sources and Types*, (Oct. 9, 2023), <https://edis.ifas.ufl.edu/publication/AE517> (last visited Jan. 24, 2024).

⁸ S. 373.403(10), F.S. See s. 403.031(18), F.S., relating to pollution control.

⁹ DEP, *Modernizing Florida's Stormwater Rules*, Presentation to the House Water Quality, Supply & Treatment Subcommittee, pp. 1-5 (Jan. 10, 2024), <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3251&Session=2024&DocumentType=Meeting+Packets&FileName=wst+1-10-24.pdf> (last visited Jan. 21, 2024).

¹⁰ R. 62-40.431(1), F.A.C.

¹¹ EPA, Polluted Runoff: Nonpoint Source (NPS) Pollution, *Basic Information about Nonpoint Source (NPS) Pollution*, *supra* note 3.

safety.¹² Stormwater is the primary source of pollutant loading entering Florida’s rivers, lakes and estuaries.¹³

Stormwater ponds

Stormwater ponds are one of the most widely used stormwater treatment controls¹⁴ and are defined as either retention or detention ponds.¹⁵ Wet retention ponds retain all the water within them and allow the water to percolate into the soil and prevent it from moving to other surface waters.¹⁶ Pollutant removal is achieved by biological activity in the pond and associated soil.¹⁷ Wet retention ponds are traditionally used for large scale development projects.¹⁸ A dry detention pond captures stormwater runoff and temporarily stores it before slowly releasing the water downstream.¹⁹ Requiring at least 10 or more acres, dry detention ponds are typically used for flood control and may be less effective for water quality improvement as they allow pollutants to settle.²⁰

While a best management practice for pollutant removal, stormwater ponds may create safety hazards including the risk of drowning.²¹ Retention ponds are often deep because they are designed for maximum rainwater collection.²² As such, if a person falls into a retention pond, steep sides and slippery slopes can make it difficult to climb out.²³ The Department of Environmental Protection (DEP) and water management districts (WMDs) provide requirements, respectively, for side slope horizontal-to-vertical ratio and depth (see *Side Slope Ratios* below).

Environmental Resource Permitting

The Clean Water Act (CWA) is the primary federal law that regulates water pollution in the United States and it prohibits the discharge of any pollutant²⁴ into waters of the United States (WOTUS).²⁵ The discharge of dredged or fill material into WOTUS, including wetlands, is regulated by a program established in Section 404 of the CWA.²⁶ States may apply to the U.S. Environmental Protection Agency (EPA) to assume the federal dredge and fill permitting program; Florida assumed the 404 permitting program in 2020.²⁷ DEP’s Submerged Lands and Environmental Resources Coordination

¹² R. 62-40.431(2)(b), F.A.C.

¹³ *Id.*

¹⁴ EPA, *Stormwater Best Management Practices: Dry Ponds*, (Dec. 2021), [NPDES: Stormwater Best Management Practices, Dry Detention Ponds \(epa.gov\)](#) (last visited Jan. 21, 2024).

¹⁵ EPA, *Stormwater Best Management Practices: Wet Ponds*, (Dec. 2021), [NPDES: Stormwater Best Management Practice, Wet Ponds \(epa.gov\)](#) (last visited Jan. 21, 2024).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ EPA, *Dry Ponds*, *supra* note 14.

²⁰ *Id.*

²¹ Safe Kids World Wide, *Hidden Hazards: An Exploration of Open Water Drowning and Risks for Children*, p. 3 (May 2018) [water_safety_study_2018.pdf \(safekids.org\)](#) (last visited Jan. 21, 2024). See also EPA, *Wet Ponds*, *supra* note 15.

²² Brotherhood Mutual, *Retention Ponds: Attractions or Liabilities?*, [Retention Ponds: Attractions or Liabilities? - Brotherhood Mutual](#) (last visited Jan. 21, 2024).

²³ City of Jacksonville, *Retention Pond Safety*, (June 1, 2020), <https://www.jacksonville.gov/welcome/welcome-news/retention-pond-safety> (last visited Jan. 21, 2024).

²⁴ 33 U.S.C. § 1311(a). The definition of the term “pollutant” is quite broad. 33 U.S.C. § 1362(6).

²⁵ 33 U.S.C. § 1362(12)(A). “The term ‘navigable waters’ means the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

²⁶ EPA, *Section 404 of the Clean Water Act, Permit Program under CWA Section 404* (last updated Mar. 31, 2023), <https://www.epa.gov/cwa-404/permit-program-under-cwa-section-404> (last visited Jan. 21, 2024).

²⁷ 40 C.F.R. § 233.1. See also DEP, *State 404 Program* (last updated Oct. 17, 2023), <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/state-404-program> (last visited Jan. 21, 2024).

Program is responsible for the consistent implementation of both the State 404 Program and the Environmental Resource Permit (ERP) Program.²⁸

DEP regulates surface water flows via the ERP Program, a permitting process that addresses and regulates impacts to the landscape including clearing, grading, construction of structures and filling and dredging, whether the work occurs in uplands, wetlands or other surface waters.²⁹ An ERP permit may be issued by DEP, a WMD or a local government to which DEP delegated ERP permitting authority.³⁰ ERPs are designed to prevent flooding, protect wetlands and other surface waters and protect Florida's water quality from stormwater pollution.³¹

While the State 404 Program and the ERP Program are separate programs, approximately 85 percent of review requirements of the two programs overlap.³² Both programs require avoidance and minimization measures to reduce impacts to wetlands and any remaining adverse impacts to be offset by mitigation. The methodology ratified by the Legislature for identifying and delineating the extent of wetlands and surface waters³³ is also the methodology used to establish the boundary of state-assumed waters under the State 404 Program.³⁴ Provisions of state law that conflict with federal requirements under the CWA do not apply to state-administered 404 permits.³⁵

ERP permitting for stormwater management systems as well as dams, reservoirs and water impoundment is governed by s. 373.4131, F.S. DEP implements this section of law in ch. 62-330, F.A.C., which provides for the permitting rules, application process and standards by which applications are considered and approved or denied. The ERP Applicant's Handbook, which is incorporated by reference into DEP rules, provides guidance on DEP's ERP program, which includes all permitted activities governed by ch. 373, part IV, F.S., relating to management and storage of surface waters, as well as stormwater management systems-specific activities.³⁶ Applicants for an ERP must adhere to requirements in both the Applicant's Handbook, Volume I, which governs general permitting while WMD-specific permitting requirements are contained in the Applicant's Handbook, Volume II, for which there is one per WMD.³⁷

Side Slope Ratios

In Florida, generally, stormwater ponds are designed with side slopes no steeper than a 4:1 horizontal-to-vertical ratio to a depth of at least two feet below the control elevation.³⁸ Florida's Clean Waterways

²⁸ DEP, *Submerged Lands and Environmental Resources Coordination Program*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination> (last visited Jan. 21, 2024).

²⁹ DEP, *Environmental Resource Permitting Online Help* (last updated Feb. 8, 2022), <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/environmental-resource-0> (last visited Jan. 21, 2024).

³⁰ *Id.*

³¹ *Id.*

³² DEP, *State 404 Program*, *supra* note 27.

³³ S. 373.4211, F.S.

³⁴ R. 62-331.010(3), F.A.C.

³⁵ S. 373.4146(3), F.S.

³⁶ R. 62-330.010(4), F.A.C. See DEP, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)*, *supra* note 5, p. 1-4.

³⁷ DEP, *ERP Stormwater* (last updated June 7, 2022), [ERP Stormwater | Florida Department of Environmental Protection](https://floridadep.gov/water/erp-stormwater) (last visited Jan. 21, 2024).

³⁸ Northwest Florida Water Management District (NFWFMD), *ERP Applicant's Handbook: Vol. II*, Figure 5.1-1, p.8-10 (Sept. 30, 2013), <https://www.flrules.org/Gateway/reference.asp?No=Ref-03172> (last visited Jan. 22, 2024); SFWMD, *ERP Applicant's Handbook: Vol. II*, s. 5.4.2, p. 27 (Dec. 16, 2013), <https://www.flrules.org/Gateway/reference.asp?No=Ref-02528> (last visited Jan. 22, 2024); St. Johns River Water Management District (SJRWMD), *ERP Applicant's Handbook: Vol. II*, s. 2.6.1, p. 2-7 (Feb. 27, 2014) <https://www.flrules.org/Gateway/reference.asp?No=Ref-03181> (last visited Jan. 22, 2024); Suwannee River Water Management District (SRWMD), *ERP Applicant's Handbook: Vol. II*, s. 4.5.1, (Aug. 30, 2013), <https://www.flrules.org/Gateway/reference.asp?No=Ref-03182> (last visited Jan. 22, 2024); Southwest Florida Water Management District (SWFWMD), *ERP Applicant's Handbook: Vol. II*, s. 5.4.1 (Sept. 24, 2014) <https://www.flrules.org/Gateway/reference.asp?No=Ref-03176> (last visited Jan. 22, 2024).

Act³⁹ required DEP and the WMDs to initiate rulemaking for Rule Chapter 62-330, F.A.C., to update stormwater design and operation regulations and the ERP Applicant's Handbook using the most recent scientific information available.⁴⁰ The adopted ERP Applicant Handbook, Vol. I, includes a maximum of 4:1 horizontal-to-vertical ratio for side slopes of stormwater treatment system easements.⁴¹ Graphics included in the appendices depict a typical side slope ratio of: 4:1 for dry retention systems; 6:1 for wet detention systems; and, 2:1 for wet detention slopes below the control elevation.⁴²

Each WMD has specific side slope requirements contained within the ERP Applicant Handbook, Vol. II. With respect to side slope requirements, some of the WMDs' Applicant Handbook, Vol II, contain additional and/or differing requirements despite state law requiring statewide, consistent ERP regulations.⁴³ For example, the South Florida WMD (SFWMD) provides alternative criteria for golf courses,⁴⁴ while other WMDs include exceptions for fenced ponds⁴⁵ or ponds with slopes that incorporate erosion and sediment control best management practices.⁴⁶ In addition, some WMDs require the stabilization of pond side slopes with vegetation⁴⁷ or the creation of vegetative littoral zones.⁴⁸ Where necessary, littoral zones are generally required to have slopes with a horizontal-to-vertical ratio of 6:1 or flatter.⁴⁹

Water Quality Assurance Act

The Water Quality Assurance Act (Act)⁵⁰ creates a private cause of action for all damages resulting from a discharge⁵¹ or other condition of pollution covered under the Act if the discharge was not authorized pursuant to ch. 403, F.S., relating to environmental control.⁵² The Act defines pollution as "the presence on the land or in the waters of the state of pollutants in quantities that are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation."⁵³ The definition of pollutants includes any commodity made from oil or gas, pesticides, ammonia, chlorine and derivatives thereof, excluding liquefied petroleum gas.⁵⁴

The Act imposes strict liability, meaning it is not necessary to show negligence; it is only necessary to show the prohibited discharge or other pollutive condition occurred.⁵⁵ The Act allows for joint and

³⁹ Ch. 2020-150, Laws of Fla.

⁴⁰ Rule Chapter 62-300, F.A.C., requires legislative ratification to become effective.

⁴¹ DEP, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)*, p. 12-9, [TABLE OF CONTENTS \(state.fl.us\)](#) (last visited Jan. 22, 2024).

⁴² DEP, *Environmental Resource Permit Applicant's Handbook Volume I (Appendix L through Appendix P)*, ss. P-5, P-6, [Appendices L-P_1.pdf \(floridadep.gov\)](#) (last visited Jan. 22, 2024).

⁴³ S. 373.4131(1)(a), F.S.

⁴⁴ SFWMD, *ERP Applicant's Handbook: Vol. II*, s. 5.4.2(e), *supra* note 38, p. 27.

⁴⁵ SJRWMD, *ERP Applicant's Handbook, Vol. II*, *supra* note 38.

⁴⁶ SRWMD, *ERP Applicant's Handbook: Vol. II*, *supra* note 38.

⁴⁷ *Id.*

⁴⁸ A littoral zone is a portion of a wet detention pond which is designed to contain rooted aquatic plants. SJRWMD, *ERP Applicant's Handbook: Vol. II*, s. 2.1, *supra* note 38, p. 2-4. See SJRWMD, *ERP Applicant's Handbook: Vol. II*, s. 8.6, *supra* note 38, p. 8-8; NFWMD, *ERP Applicant's Handbook: Vol. II*, s. 8.6, *supra* note 38, p. 8-3.

⁴⁹ *Id.*

⁵⁰ Ss. 376.30-376.317, F.S.

⁵¹ S. 376.301(13), F.S. "Discharge" includes, but is not limited to, any spilling, leaking, seeping, pouring, misapplying, emitting, emptying, releasing, or dumping of any pollutant or hazardous substance which occurs and which affects lands and the surface and ground waters of the state not regulated by the Water Quality Assurance Act."

⁵² S. 376.313(3), F.S. Chapter 403, F.S., relates to environmental control, including pollution control, environmental regulation, water supply and water treatment plants, among other things.

⁵³ S. 376.301(37), F.S.

⁵⁴ S. 376.301(36), F.S.

⁵⁵ S. 376.313(3), F.S. Certain exceptions exist for suits involving petroleum storage systems or drycleaning facility or wholesale supply facility; see *Irizarry v. Orlando Utilities Commission*, 393 F. Supp. 3d 1110, 1116 (M.D. Fla. 2019) (explaining that to state a

several liability⁵⁶ and provides that the only defenses to such a cause of action are those specified in s. 376.308, F.S.: an act of war; an act of government;⁵⁷ an act of God;⁵⁸ or, an act or omission of a third party.⁵⁹

The Act does not define the term “damages.” In a 2010 case involving a claim arising under s. 376.313(3), F.S., the Florida Supreme Court applied a definition from a different section of ch. 376, F.S., which defines damages as “the documented extent of any destruction to or loss of any real or personal property, or the documented extent, pursuant to s. 376.121, of any destruction of the environment and natural resources, including all living things except human beings, as the direct result of the discharge of a pollutant.”⁶⁰

In 2019, the Court receded from this definition and held the meaning of “all damages” in s. 376.313(3), F.S., includes personal injury damages.⁶¹ The Court relied on the plain meaning of the term “all damages” together with the Legislature’s directive that the Act be liberally construed.⁶² In this case, the appellee suggested the Act was overly broad but the Court rejected this interpretation and said it would be “...an issue for the Legislature to address.”⁶³

Effect of the Bill

The bill requires side slope design for a nonindustrial stormwater management system that is accessible to the general public and is in or adjacent to residential or urban areas have a horizontal-to-vertical ratio no steeper than 4:1 to a depth of at least two feet below the control elevation. The side slope must be stabilized with vegetation to prevent erosion and provide for pollutant removal.

The bill provides that a side slope may be designed with a steeper ratio than a 4:1 horizontal-to-vertical ratio if the slope incorporates adequate temporary and permanent erosion and sediment control best management practices. For purposes of public safety, the bill requires a stormwater management system designed or authorized with a side slope steeper than a 4:1 ratio to be fenced, greenscaped⁶⁴ or other barriers installed, sufficient to prevent accidental incursion into the system.

The bill provides that all side slope rules adopted by DEP, WMDs or delegated local programs as of July 1, 2024, are superseded by the bill’s requirements and may be repealed without further rulemaking by publication of a notice of repeal in the Florida Administrative Register and subsequent filing of a list of the rules repealed with the Department of State.

plausible claim under s. 376.313(3), F.S., a plaintiff must allege: (1) a prohibited discharge or other pollutive condition occurred; and, (2) damages).

⁵⁶ S. 376.313(3), F.S. Joint and several liability generally means liability that may be apportioned among two or more parties. *See* BLACK’S LAW DICTIONARY 997 (9th ed. 2009).

⁵⁷ S. 376.308(2)(b), F.S. This includes state, federal, or local acts of government, unless the person claiming the defense is a governmental body, in which case the defense is available only by acts of other governmental bodies.

⁵⁸ S. 376.308(2)(c), F.S. This includes only unforeseeable acts exclusively occasioned by the violence of nature without the interference of any human agency.

⁵⁹ S. 376.308(2)(d), F.S. This does not include acts or omissions by an employee or agent of the defendant or one whose act or omission occurs in connection with a contractual relationship. An exception may apply when the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier or by rail.

⁶⁰ *Curd v. Mosaic Fertilizer, LLC*, 39 So. 3d 1216, 1221 (Fla. 2010); s. 376.031(5), F.S.

⁶¹ *Lieupo v. Simon’s Trucking, Inc.*, 286 So. 3d 143, 147 (Fla. 2019).

⁶² *Id.* *See also* s. 376.315, F.S.

⁶³ *Id.*

⁶⁴ “Greenscaping” refers to environmentally beneficial lawncare practices that help to preserve natural resources and prevent waste and pollution. EPA, *Green Scaping: The Easy Way to a Greener, Healthier Yard*, (June 2006), [Green Scaping - The Easy Way to a Greener, Healthier Yard \(epa.gov\)](#) (last visited Jan. 21, 2024). At one time the EPA operated a Greenscapes program but appears to no longer do so. Instead, the EPA provides recommendations to individuals performing lawncare in the *Pesticides and Consumers* section of the EPA website. EPA, *GreenScapes: Environmentally Beneficial Landscaping* (last updated Feb. 21, 2016), [Resource Conservation | GreenScapes: Environmentally Beneficial Landscaping | US EPA](#) (last visited Jan. 21, 2024).

The bill narrows the cause of action for damages under the Water Quality Assurance Act (the Act) to permit damages only *to real or personal property* directly resulting from a discharge or other condition of pollution covered under the Act. Damages under the Act derive from the absence of governmental approval or permit activities. The bill expands the aforementioned government activities to include *Ch. 373, F.S., relating to water resources, as well as ch. 376, F.S., relating to pollutant discharge prevention and removal* in addition to ch. 403, F.S., relating to environmental control.

The bill removes “defenses” to a Water Quality Assurance Act cause of action and requires only *strict-liability exceptions* to be those specified in s. 376.308, F.S., relating to an act of war; an act of government; an act of God; an act or omission of a third party; and adds s. 376.82, F.S., *relating to eligibility criteria and liability protection for the successful completion of a brownfield site rehabilitation agreement*.

B. SECTION DIRECTORY:

Section 1: Amends section 373.4131, F.S., relating to statewide environmental resource permitting rules.

Section 2: Amends section 376.313, F.S., relating to nonexclusiveness of remedies and individual cause of action for damages under ss. 376.30-376.317.

Section 3: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 24, 2024, the Water Quality, Supply and Treatment Subcommittee adopted a Proposed Committee Substitute (PCS) and reported the bill favorably as a committee substitute. The PCS:

- Removes revisions to s. 120.595, F.S., relating to attorneys' fees that would entitle a prevailing party to recover reasonable costs and fees when challenging or defending a DEP or WMD authorization issued pursuant to chs. 403 or 373, F.S., respectively.
- Removes a mandated review and specific reporting requirements for DEP and each WMD relating to their respective coastal permitting processes and programs.

This analysis is drafted to the committee substitute as approved by the Water Quality, Supply and Treatment Subcommittee.

26 (a) A nonindustrial stormwater management system, in or
 27 adjacent to residential or urban areas that are accessible to
 28 the general public, side slope may be designed with a steeper
 29 than 4:1 horizontal-to-vertical ratio if the slope incorporates
 30 adequate temporary and permanent erosion and sediment control
 31 best management practices. A system designed or authorized to be
 32 steeper than 4:1 must be fenced, greenscaped, or other barriers
 33 installed sufficiently to prevent accidental incursion into the
 34 system.

35 (b) All side slope rules adopted by the department, water
 36 management districts, or delegated local programs under this
 37 part as of July 1, 2024, are superseded by this subsection and
 38 may be repealed without further rulemaking pursuant to s. 120.54
 39 by publication of a notice of repeal in the Florida
 40 Administrative Register and subsequent filing of a list of the
 41 rules repealed with the Department of State.

42 Section 2. Subsection (3) of section 376.313, Florida
 43 Statutes, is amended to read:

44 376.313 Nonexclusiveness of remedies and individual cause
 45 of action for damages under ss. 376.30-376.317.—

46 (3) Except as provided in s. 376.3078(3) and (11), ~~nothing~~
 47 ~~contained in~~ ss. 376.30-376.317 do not prohibit a ~~prohibits any~~
 48 person from bringing a cause of action in a court of competent
 49 jurisdiction for all damages to real or personal property
 50 directly resulting from a discharge or other condition of

51 pollution covered by ss. 376.30-376.317 and which was not
52 authorized by any government approval or permit issued pursuant
53 to chapter 373, chapter 376, or chapter 403. ~~Nothing in~~ This
54 chapter does not ~~shall~~ prohibit or diminish a party's right to
55 contribution from other parties jointly or severally liable for
56 a prohibited discharge of pollutants or hazardous substances or
57 other pollution conditions. Except as otherwise provided in
58 subsection (4) or subsection (5), in any such suit, it is not
59 necessary for such person to plead or prove negligence in any
60 form or manner. Such person need only plead and prove the fact
61 of the prohibited discharge or other pollutive condition and
62 that it has occurred. The only strict-liability exceptions
63 ~~defenses~~ to such cause of action are ~~shall be~~ those specified in
64 s. 376.308 or s. 376.82.

65 Section 3. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 873 Dangerous Dogs

SPONSOR(S): Local Administration, Federal Affairs & Special Districts Subcommittee, Payne and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1156

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	14 Y, 0 N, As CS	Burgess	Darden
2) Agriculture & Natural Resources Appropriations Subcommittee		Byrd	Pigott
3) Judiciary Committee			

SUMMARY ANALYSIS

Local governments may adopt ordinances to address safety and welfare concerns stemming from dog attacks on people or domestic animals, placing restrictions and additional requirements on owners of dangerous dogs, provided that no regulations may be specific to breed, weight, or size.

An animal control officer is typically the person who investigates an incident involving a dog. In areas unserved by an animal control authority, the sheriff assumes the duties required of an animal control officer.

Upon receiving a report of a potentially dangerous dog, the animal control authority must investigate the incident, interview the owner, and require a sworn affidavit from any person who seeks to have a dog classified as dangerous. An animal that is the subject of a dangerous dog investigation because of a severe injury to a human being may be immediately confiscated by an animal control authority, may be placed in quarantine, or impounded and held. A dog being investigated as a dangerous dog that is not impounded with the animal control authority must be humanely and safely confined by the owner pending the outcome of the investigation.

After investigating, the animal control authority must initially determine whether sufficient cause exists to classify the dog as dangerous, and if sufficient cause is found, provide the owner with an opportunity for a hearing before making a final determination regarding the classification or penalty. The owner has seven calendar days from receiving the notice to file a written request for a hearing. Within 14 days after the classification of the dog as dangerous by the animal control authority, the owner must register the dog with the animal control authority and renew the certification annually.

The bill creates the "Pam Rock Act," revising provisions relating to dangerous dogs by requiring:

- A dog owner who has knowledge of a dog's dangerous propensities to securely confine the dog in a proper enclosure as if the dog had been determined to be dangerous;
- Dogs to be held during the course of a dangerous dog investigation in certain instances;
- Dogs that have been declared dangerous to be spayed or neutered;
- The owner of a dangerous dog to obtain liability insurance.

The bill requires the Department of Agriculture and Consumer Services to create a statewide Dangerous Dog Registry and requires animal control authorities to provide specified information for inclusion in the database. The bill increases the maximum fine for violations of the dangerous dog statute to \$1,000.

The bill may have an indeterminate negative fiscal impact on state and local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Local governments may adopt ordinances to address safety and welfare concerns stemming from dog attacks on people or domestic animals, placing restrictions and additional requirements on owners of dangerous dogs, provided that no regulations may be specific to breed, weight, or size.¹

Current law defines a dangerous dog as any dog that, according to the records of the appropriate authority:

- Has aggressively bitten, attacked, endangered or inflicted severe injury² on a human being on public or private property;
- Has more than once severely injured or killed a domestic animal while off the owner's property; or
- Has, when unprovoked,³ chased or approached a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, provided such actions are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority.⁴

Incidents involving a potentially dangerous dog are investigated by animal control officers.⁵ In areas unserved by an animal control authority, the sheriff assumes the duties required of an animal control officer.⁶

Upon receiving a report of a potentially dangerous dog, the animal control authority must investigate the incident, interview the owner, and require a sworn affidavit from any person who seeks to have a dog classified as dangerous.⁷ An animal that is the subject of a dangerous dog investigation because of severe injury to a human being may be immediately confiscated by an animal control authority, placed in quarantine, if necessary, for the proper length of time, or impounded and held.⁸ The owner of the dog is responsible for all boarding costs and other fees required to humanely and safely keep the animal pending any appeal or hearing. A dog being investigated as a dangerous dog that is not impounded with the animal control authority must be humanely and safely confined by the owner in a securely fenced or enclosed area pending the outcome of the investigation.⁹ The owner must provide the address at which the animal resides to the animal control authority and may not relocate or transfer ownership of the animal pending the outcome of the investigation, including any hearing or appeals.

The animal control authority may not declare a dog as dangerous if:

- The injured person was unlawfully on the property or, if lawfully on the property, was tormenting, abusing, or assaulting the dog, or its owner or a family member; or

¹ S. 767.14, F.S.

² "Severe injury" is defined as any physical injury resulting in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery. S. 767.11(3), F.S.

³ "Unprovoked" is defined as a victim who conducted himself or herself peacefully and lawfully was bitten or chased in a menacing fashion or attacked by a dog. S. 767.11(2), F.S.

⁴ S. 767.11(1), F.S.

⁵ "Animal control officer" means any individual employed, contracted with, or appointed by the animal control authority for the purpose of aiding in the enforcement of this act or any other law or ordinance relating to the licensure of animals, control of animals, or seizure and impoundment of animals and includes any state or local law enforcement officer or other employee whose duties in whole or in part include assignments that involve seizure and impoundment of any animal. See s. 767.11(6), F.S.

⁶ S. 767.11(5), F.S.

⁷ S. 767.12(1), F.S.

⁸ S. 767.12(1)(a), F.S.

⁹ S. 767.12(1)(b), F.S.

- The dog was protecting a person within the immediate vicinity of the dog from an unjustified attack or assault.¹⁰

After investigating, the animal control authority must initially determine whether sufficient cause exists to classify the dog as dangerous, and if sufficient cause is found, provide the owner with an opportunity for a hearing before making a final determination regarding the classification or penalty.¹¹ The animal control authority must provide written notice of sufficient cause and proposed penalty to the owner by registered mail, certified hand delivery, or service in conformity with how service of process is made.

The owner has seven calendar days from receiving the notice to file a written request for a hearing. If the owner requests a hearing, the hearing officer must hold the hearing as soon as possible, but no later than 21 calendar days and no sooner than five days after receiving the request for a hearing.¹² If a hearing is not timely requested, the authority's determination becomes final.

If a dog is classified as a dangerous dog due to an incident that causes severe injury to a human being, based upon the nature and circumstances of the injury and the likelihood of a future threat to public safety, health, and welfare, the dog may be destroyed in an expeditious and humane manner.¹³

Otherwise, within 14 days after the classification of the dog as a dangerous dog by the animal control authority, the owner must register the dog with the animal control authority and renew the certification annually.¹⁴ An animal control authority may only issue a certificate or renewal to a person 18 years of age or older who provides sufficient evidence of:

- A current certificate of rabies vaccination;
- A proper enclosure to confine a dangerous dog and the posting of the premises with a clearly visible warning sign at all entry points that informs both children and adults of the presence of a dangerous dog on the property; and
- Permanent identification of the dog, such as a tattoo on the inside thigh or electronic implantation.¹⁵

The owner must immediately notify the animal control authority if the dog:

- Is loose or unconfined;
- Bites a person or attacks another animal
- Is sold, given away, or dies; or
- Is moved to another address.¹⁶

If a dangerous dog is sold or given away, the owner must provide the name, address, and telephone number of the new owner to the animal control authority.¹⁷ The new owner must abide by these requirements. If the dog is moved to another jurisdiction, the owner is responsible for informing the local animal control officer.

A dangerous dog must remain in its enclosure at all times unless it is muzzled and restrained by a chain or leash.¹⁸

Any violation of these requirements is a noncriminal infraction punishable by a fine not to exceed \$500.¹⁹

¹⁰ S. 767.12(2)(a)-(b), F.S.

¹¹ S. 767.12(3), F.S.

¹² S. 767.12(3), F.S.

¹³ S. 767.12(5)(b), F.S.

¹⁴ S. 767.12(5)(a)1., F.S.

¹⁵ *Id.*

¹⁶ S. 767.12(5)(a)2., F.S.

¹⁷ S. 767.12(5)(a), F.S.

¹⁸ S. 767.12(5)(a)3., F.S.

¹⁹ S. 767.12 (7), F.S.

In addition to civil penalties, the owner of a dog can be charged with the following criminal violations:

- First degree misdemeanor, if the dog has previously been declared dangerous and attacks or bites a person or domestic animal without provocation.²⁰
- Second degree misdemeanor, if the dog has not previously been declared dangerous but causes severe injury to or death of any human and the owner had prior knowledge of, but recklessly disregarded, the dog's dangerous propensities.²¹
- Third degree felony, if the dog has previously been declared dangerous, attacks and causes severe injury to or death of any human.²²

According to the Florida Department of Health, each year more than 600 Floridians are hospitalized because of injuries from dog bites, and about two people die from them. In August 2022, a postal worker was delivering mail when she was attacked by five dogs in Putnam County and died the next day.²³ An 86-year-old veteran had to have her leg amputated after being attacked by a neighbor's dog in early 2023 in Hawthorne.²⁴

Effect of Proposed Changes

Statewide Dangerous Dog Registry

The bill requires the Department of Agriculture and Consumer Services (DACS) to create and maintain a statewide Dangerous Dog Registry that provides the public with an online database of dogs declared dangerous by local authorities. The bill requires each animal control authority to report the following information concerning dangerous dogs within its jurisdiction to be listed in the registry:

- A current certificate of rabies vaccination for the dog;
- Evidence of a proper enclosure where the dog will be confined and the posting of a warning sign at all entry points that informs children and adults a dangerous dog is present on the property;
- Evidence of permanent identification of the dog, such as a tattoo on the inside thigh or an implantation of a microchip;
- Evidence of the dog having been spayed or neutered;
- Evidence that the owner has obtained the required liability insurance;
- The dog's name and a photograph of the dog;
- The county in which the dog is located;
- The owner's name and address.

The bill authorizes DACS to adopt rules to administer the statewide Dangerous Dog Registry.

Dangerous Dogs

The bill revises the definition of "proper enclosure" to include a locked, fenced yard suitable to prevent the entry of young children and designed to prevent the dog from escaping over, under, or through the fence. The bill provides that if a dog owner has knowledge of the dog's dangerous propensities, the owner must securely confine the dog in a proper enclosure as if the dog had been determined to be dangerous.

²⁰ S. 767.13(1), F.S.

²¹ S. 767.136(1), F.S.

²² S. 767.13(2), F.S.

²³ Senait Gebregiorgis, *Florida bill aims to make 'dangerous dogs' registry, add tougher penalties for owners*, KTVZ News Channel 21, (Jan. 5, 2024), <https://ktvz.com/cnn-regional/2024/01/05/florida-bill-aims-to-make-dangerous-dogs-registry-add-tougher-penalties-for-owners/> (last visited Jan. 17, 2024).

²⁴ Anne Maxwell, *State senator's office drafting legislation to address dangerous dogs after attacks*, News4Jax, (July 18, 2023), <https://www.news4jax.com/news/local/2023/07/18/state-senators-office-drafting-legislation-to-address-dangerous-dogs-after-attacks/> (last visited Jan. 17, 2024).

The bill requires dogs subject to a dangerous dog investigation for acts toward a person to be confiscated by the animal control authority, placed in quarantine as necessary, impounded, and held. The dog must be held until the conclusion of the investigation, including any hearings or appeals. The bill provides that the owner is responsible for all boarding costs and other fees required to humanely and safely keep the animal pending any investigation or appeal, unless it is determined the dog is not dangerous.

During a dangerous dog investigation arising from the severe injury or killing of a domestic animal while off the owner's property, the dog may be immediately confiscated by an animal control authority, placed in quarantine, impounded, and held. If the dog is not impounded, the owner must keep the dog within a proper enclosure pending the outcome of the investigation.

Once a dog is classified as dangerous, the animal control authority must provide DACS with the information for the dangerous dog's inclusion in the statewide Dangerous Dog Registry.

The bill removes the requirement that animal control authorities consider the nature and circumstances of the injury and the likelihood of a future threat to public safety, health, and welfare before humanely and expeditiously destroying a dog classified as dangerous due to an incident that caused severe injury to a human.

The bill requires the owner to obtain a registration certificate for a dog declared dangerous upon the issuance of the final order and requires:

- The dog to be spayed or neutered;
- The owner must obtain liability insurance coverage of at least \$100,000 to cover damages resulting from an attack by the dangerous dog causing bodily injury to a person; and
- Provide proof of insurance to the animal control authority.

The bill increases the maximum fine for violations of provisions relating to dangerous dogs to \$1,000.

The bill provides that the owner of a dog commits a second-degree misdemeanor if a dog that has not previously been declared dangerous causes severe injury to or death of any human, the owner had prior knowledge of the dog's dangerous propensities, and the owner failed to secure a dog in a proper enclosure.

B. SECTION DIRECTORY:

- Section 1: Provides the bill may be cited as the "Pam Rock Act."
- Section 2: Amends s. 767.01, F.S., concerning the dog owner's liability for damages to persons, domestic animals, or livestock.
- Section 3: Amends s. 767.10, F.S., concerning legislative findings relating to dangerous dogs.
- Section 4: Amends s. 767.11, F.S., defining and revising definitions.
- Section 5: Amends s. 767.12, F.S., revising stipulations regarding dangerous dogs.
- Section 6: Creates s. 767.125, F.S., relating to a statewide Dangerous Dog Registry.
- Section 7: Amends s. 763.13, F.S., to make conforming and technical changes.
- Section 8: Amends s. 763.135, F.S., to make conforming and technical changes.
- Section 9: Amends s. 767.136, F.S., relating to attack or bite by unclassified dog that causes severe injury of death.

Section 10: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may increase expenditures by DACS to the extent additional resources are needed to create and maintain a statewide Dangerous Dog Registry. According to DACS, the cost of technology to support this new registration will depend on the quantity of registrant data. The department will need to develop a registration process and monitor the first year workload of the law's implementation to assess the level of technology and automation that may be required to support this new regulation. Future resources can be requested through the Legislative Budget Request process if needed.

The bill authorizes DACS to adopt rules in order to administer the statewide dangerous dog registry which may have an insignificant negative fiscal impact that can be absorbed by the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have a positive indeterminate fiscal impact resulting from an increase in the maximum fine for violations of provisions relating to dangerous dogs from \$500 to \$1,000.

2. Expenditures:

The bill may have an insignificant negative fiscal impact on local governments to implement new and revised criminal and civil provisions as well as costs related to providing information to DACS for the statewide Dangerous Dog Registry.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DACS to adopt rules in order to administer the statewide dangerous dog registry.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments provide the bill may be cited as the "Pam Rock Act" and restore language from current law concerning hunting dogs and police canines.

This analysis is drafted to the committee substitute adopted by the Local Administration, Federal Affairs, & Special Districts Subcommittee.

26 Dangerous Dog Registry; providing the purpose of the
 27 registry; requiring animal control authorities to
 28 provide the department with certain information;
 29 requiring the department to adopt rules; amending ss.
 30 767.13 and 767.135, F.S.; conforming provisions to
 31 changes made by the act; amending s. 767.136, F.S.;
 32 revising the circumstances under which the owner of a
 33 dog that has not been declared dangerous is liable for
 34 such dog's severe injury to, or the death of, a human;
 35 providing an effective date.

36
 37 Be It Enacted by the Legislature of the State of Florida:

38
 39 Section 1. This act may be cited as the "Pam Rock Act."

40 Section 2. Section 767.01, Florida Statutes, is amended to
 41 read:

42 767.01 Dog owner's liability for damages to persons,
 43 domestic animals, or livestock.—

44 (1) A dog owner is ~~Owners of dogs shall be~~ liable for any
 45 damage done by the owner's dog ~~their dogs~~ to a person or to any
 46 animal included in the definitions of "domestic animal" and
 47 "livestock" as provided by s. 585.01.

48 (2) If a dog owner has knowledge of the dog's dangerous
 49 propensities, the owner must securely confine the dog in a
 50 proper enclosure as defined in s. 767.11.

51 Section 3. Section 767.10, Florida Statutes, is amended to
 52 read:

53 767.10 Legislative findings.—The Legislature finds that
 54 dangerous dogs are an increasingly serious and widespread threat
 55 to the safety and welfare of the people of this state because of
 56 unprovoked attacks which cause injury to persons and domestic
 57 animals; that such attacks are in part attributable to the
 58 failure of owners to confine and properly train and control
 59 their dogs; that existing laws inadequately address this growing
 60 problem; and that it is appropriate and necessary to impose
 61 uniform requirements for the owners of dogs and dangerous dogs.

62 Section 4. Section 767.11, Florida Statutes, is amended to
 63 read:

64 767.11 Definitions.—As used in this part ~~act~~, unless the
 65 context clearly requires otherwise:

66 (3)~~(1)~~ "Dangerous dog" means a ~~any~~ dog that according to
 67 the records of the appropriate authority:

68 (a) Has aggressively bitten, attacked, or endangered or
 69 has inflicted severe injury on a human being on public or
 70 private property;

71 (b) Has more than once severely injured or killed a
 72 domestic animal while off the owner's property; or

73 (c) Has, when unprovoked, chased or approached a person
 74 upon the streets, sidewalks, or any public grounds in a menacing
 75 fashion or apparent attitude of attack, provided that such

76 | actions are attested to in a sworn statement by one or more
 77 | persons and dutifully investigated by the appropriate authority.

78 | (4) "Department" means the Department of Agriculture and
 79 | Consumer Services.

80 | (8)-(2) "Unprovoked" means that the victim who has been
 81 | conducting himself or herself peacefully and lawfully has been
 82 | bitten or chased in a menacing fashion or attacked by a dog.

83 | (7)-(3) "Severe injury" means any physical injury that
 84 | results in broken bones, multiple bites, or disfiguring
 85 | lacerations requiring sutures or reconstructive surgery.

86 | (6)-(4) "Proper enclosure ~~of a dangerous dog~~" means, while
 87 | on the owner's property, a ~~dangerous~~ dog is securely confined:

88 | (a) Indoors;

89 | (b) In a locked, fenced yard, suitable to prevent the
 90 | entry of young children and designed to prevent the dog from
 91 | escaping over, under, or through the fence; or

92 | (c) In a securely enclosed and locked pen or structure,
 93 | suitable to prevent the entry of young children and designed to
 94 | prevent the dog animal from escaping. The ~~Such~~ pen or structure
 95 | must ~~shall~~ have secure sides and a secure top to prevent the dog
 96 | from escaping over, under, or through the structure and must
 97 | ~~shall~~ also provide protection from the elements.

98 | (1)-(5) "Animal control authority" means an entity acting
 99 | alone or in concert with other local governmental units and
 100 | authorized by them to enforce the animal control laws of the

101 city, county, or state. In those areas not served by an animal
 102 control authority, the sheriff shall carry out the duties of the
 103 animal control authority under this part ~~act~~.

104 (2)~~(6)~~ "Animal control officer" means any individual
 105 employed, contracted with, or appointed by the animal control
 106 authority for the purpose of aiding in the enforcement of this
 107 part ~~act~~ or any other law or ordinance relating to the licensure
 108 of animals, control of animals, or seizure and impoundment of
 109 animals and includes any state or local law enforcement officer
 110 or other employee whose duties in whole or in part include
 111 assignments that involve the seizure and impoundment of an ~~any~~
 112 animal.

113 (5)~~(7)~~ "Owner" means a ~~any~~ person, a firm, a corporation,
 114 or an organization possessing, harboring, keeping, or having
 115 control or custody of an animal or, if the animal is owned by a
 116 person ~~under the age of 18~~ years of age or younger, that
 117 person's parent or guardian.

118 Section 5. Section 767.12, Florida Statutes, is amended to
 119 read:

120 767.12 Classification of dogs as dangerous; owner
 121 requirements; penalty certification of registration; notice and
 122 hearing requirements; confinement of animal; exemption; appeals;
 123 unlawful acts.—

124 (1) An animal control authority shall investigate reported
 125 incidents involving any dog that may be dangerous and, if

126 possible, shall interview the owner and require a sworn
 127 affidavit from any person, including any animal control officer
 128 or enforcement officer, desiring to have a dog classified as
 129 dangerous.

130 (a) An animal that is the subject of a dangerous dog
 131 investigation for behavior described in s. 767.11(3)(a) or (c)
 132 must ~~because of severe injury to a human being~~ may be
 133 immediately confiscated by an animal control authority; placed
 134 in quarantine, if necessary, for the proper length of time; ~~or~~
 135 impounded; and held. The animal must ~~may~~ be held pending the
 136 outcome of the investigation and any hearings or appeals related
 137 to the dangerous dog classification or any penalty imposed under
 138 this section. If the dog is to be destroyed, the dog may not be
 139 destroyed while an appeal is pending. The owner is responsible
 140 for payment of all boarding costs and other fees as may be
 141 required to humanely and safely keep the animal pending any
 142 hearing or appeal, unless it is determined that the dog is not
 143 dangerous.

144 (b) An animal that is the subject of a dangerous dog
 145 investigation for behavior described in s. 767.11(3)(b) may be
 146 immediately confiscated by an animal control authority; placed
 147 in quarantine, if necessary, for the proper length of time; or
 148 impounded and held. An animal that ~~which~~ is not impounded with
 149 the animal control authority must be ~~humanely and safely~~
 150 confined by the owner in a proper enclosure ~~securely fenced or~~

151 ~~enclosed area. The animal shall be confined in such manner~~
152 pending the outcome of the investigation and the resolution of
153 any hearings or appeals related to the dangerous dog
154 classification or any penalty imposed under this section. The
155 owner shall provide the address at which the animal resides
156 ~~shall be provided~~ to the animal control authority. A dog that is
157 the subject of a dangerous dog investigation may not be
158 relocated or have its ownership transferred pending the outcome
159 of the investigation and any hearings or appeals related to the
160 dangerous dog classification or any penalty imposed under this
161 section. If a dog is to be destroyed, the dog may not be
162 relocated or have its ownership transferred.

163 (2) A dog may not be declared dangerous if either of the
164 following apply:

165 (a) The threat, injury, or damage was sustained by a
166 person who, at the time, was unlawfully on the property or who,
167 while lawfully on the property, was tormenting, abusing, or
168 assaulting the dog or its owner or a family member.

169 (b) The dog was protecting or defending a human being
170 within the immediate vicinity of the dog from an unjustified
171 attack or assault.

172 (3) After the investigation, the animal control authority
173 shall make an initial determination as to whether there is
174 sufficient cause to classify the dog as dangerous and, if
175 sufficient cause is found, as to the appropriate penalty ~~under~~

176 ~~subsection (5)~~. The animal control authority shall afford the
177 owner an opportunity for a hearing before ~~prior to~~ making a
178 final determination regarding the classification or penalty. The
179 animal control authority shall provide written notification of
180 the sufficient cause finding and proposed penalty to the owner
181 by registered mail or ~~certified hand delivery~~ or service in
182 conformance with ~~the provisions of~~ chapter 48 relating to
183 service of process. The owner may file a written request for a
184 hearing regarding the dangerous dog classification, penalty, or
185 both, within 7 calendar days after receipt of the notification
186 of the sufficient cause finding and proposed penalty. If the
187 owner requests a hearing, the hearing must ~~shall~~ be held as soon
188 as possible, but not later than 21 calendar days and not sooner
189 than 5 days after receipt of the request from the owner. If a
190 hearing is not timely requested regarding the dangerous dog
191 classification or proposed penalty, the determination of the
192 animal control authority as to such matter is ~~shall become~~
193 final. Each applicable local governing authority shall establish
194 hearing procedures that conform to this subsection.

195 (4) Upon a dangerous dog classification and penalty
196 becoming final after a hearing or by operation of law pursuant
197 to subsection (3), the animal control authority shall do all of
198 the following:

199 (a) Provide a written final order to the owner by
200 registered mail or ~~certified hand delivery~~ or service. The

201 owner may appeal the classification ~~or~~ penalty, or both, to the
 202 circuit court in accordance with the Florida Rules of Appellate
 203 Procedure after receipt of the final order. If the dog is not
 204 held by the animal control authority, the owner must confine the
 205 dog in a proper enclosure ~~securely fenced or enclosed area~~
 206 pending resolution of the appeal. Each applicable local
 207 governing authority must establish appeal procedures that
 208 conform to this paragraph ~~subsection~~.

209 (b) Provide the information required by s. 767.125(2) to
 210 the department for the dangerous dog's inclusion in the
 211 statewide Dangerous Dog Registry.

212 (c) If the dog is classified as a dangerous dog due to an
 213 incident that caused severe injury to a human being, destroy the
 214 dog in an expeditious and humane manner.

215 (5)~~(a)~~ Except as otherwise provided in paragraph (4)(c)
 216 ~~(b)~~, the owner of a dog classified as a dangerous dog shall do
 217 all of the following:

218 (a)1. Upon ~~Within 14 days after~~ issuance of the final
 219 order classifying the dog as dangerous or the conclusion of any
 220 appeal that affirms such final order, obtain a certificate of
 221 registration for the dog from the animal control authority
 222 serving the area in which he or she resides, and renew the
 223 certificate annually. Animal control authorities may ~~are~~
 224 ~~authorized to~~ issue such certificates of registration, and
 225 renewals thereof, only to persons who are at least 18 years of

226 | age and who present to the animal control authority sufficient
 227 | evidence of all of the following:

228 | ~~1.a.~~ A current certificate of rabies vaccination for the
 229 | dog.

230 | ~~2.b.~~ A proper enclosure to confine the a dangerous dog and
 231 | the posting of the premises with a clearly visible warning sign
 232 | at all entry points which informs both children and adults of
 233 | the presence of a dangerous dog on the property.

234 | ~~3.e.~~ Permanent identification of the dog, such as a tattoo
 235 | on the inside thigh or an ~~electronic~~ implantation of a
 236 | microchip.

237 | 4. The dog having been spayed or neutered.

238 | 5. Liability insurance as required by paragraph (b).

239 |
 240 | The appropriate governmental unit may impose an annual fee for
 241 | the issuance of certificates of registration required by this
 242 | section.

243 | (b) Upon issuance of the final order classifying the dog
 244 | as dangerous or the conclusion of any appeal that affirms such
 245 | final order, obtain liability insurance coverage in an amount of
 246 | at least \$100,000 to cover damages resulting from an attack by
 247 | the dangerous dog causing bodily injury to a person and provide
 248 | proof of the required liability insurance coverage to the animal
 249 | control authority for the area in which the dog is kept.

250 | ~~(c)2.~~ Immediately notify the appropriate animal control

251 authority when the dog:

252 ~~1.a.~~ Is loose or unconfined;~~;~~

253 ~~2.b.~~ Has bitten a human being or attacked another animal;~~;~~

254 ~~3.c.~~ Is sold, given away, or dies; ~~or~~

255 ~~4.d.~~ Is moved to another address.

256 (d) Before selling or giving away the a dangerous dog, ~~is~~
 257 ~~sold or given away, the owner shall~~ provide the name, address,
 258 and telephone number of the new owner to the animal control
 259 authority. The new owner must comply with ~~all of the~~
 260 ~~requirements of~~ this section and any implementing local
 261 ordinances, even if the animal is moved from one local
 262 jurisdiction to another within this ~~the~~ state. The animal
 263 control officer must be notified by the owner of a dog
 264 classified as dangerous that the dog is in his or her
 265 jurisdiction.

266 (e)3. Not allow ~~permit~~ the dog to be outside a proper
 267 enclosure unless the dog is muzzled and restrained by a
 268 substantial chain or leash and under control of a competent
 269 person. The muzzle must be made in a manner that will not cause
 270 injury to the dog or interfere with its vision or respiration
 271 but will prevent it from biting a person or an animal. The owner
 272 may exercise the dog on the owner's property in a proper
 273 enclosure ~~securely fenced or enclosed area that does not have a~~
 274 ~~top,~~ without a muzzle or leash, if the dog remains within the
 275 owner's ~~his or her~~ sight and only members of the immediate

276 household or persons 18 years of age or older, if applicable,
 277 are allowed in the enclosure when the dog is present. When being
 278 transported, such dogs must be safely and securely restrained
 279 within a vehicle.

280 ~~(b) If a dog is classified as a dangerous dog due to an~~
 281 ~~incident that causes severe injury to a human being, based upon~~
 282 ~~the nature and circumstances of the injury and the likelihood of~~
 283 ~~a future threat to the public safety, health, and welfare, the~~
 284 ~~dog may be destroyed in an expeditious and humane manner.~~

285 (6) Hunting dogs are exempt from this section when engaged
 286 in any legal hunt or training procedure. Dogs engaged in
 287 training or exhibiting in legal sports such as obedience trials,
 288 conformation shows, field trials, hunting/retrieving trials, and
 289 herding trials are exempt from this section when engaged in any
 290 legal procedures. However, such dogs at all other times in all
 291 other respects are subject to this and local laws. Dogs that
 292 have been classified as dangerous may not be used for hunting
 293 purposes.

294 (7) A person who violates ~~any provision of~~ this section
 295 commits a noncriminal infraction, punishable by a fine not to
 296 exceed \$1,000 per violation ~~\$500~~.

297 Section 6. Section 767.125, Florida Statutes, is created
 298 to read:

299 767.125 Statewide Dangerous Dog Registry.—

300 (1) The department shall create and maintain a statewide

301 Dangerous Dog Registry that provides the public with a
302 searchable online database of dogs throughout this state which
303 have been declared dangerous by local authorities.

304 (2) Each animal control authority shall, at a minimum,
305 report all of the following information regarding a dangerous
306 dog within its jurisdiction to the department for inclusion in
307 the registry:

308 (a) A current certificate of rabies vaccination for the
309 dog.

310 (b) Evidence of a proper enclosure within which the
311 dangerous dog will be confined and of the posting of the
312 premises with a clearly visible warning sign at all entry points
313 which informs both children and adults of the presence of a
314 dangerous dog on the property.

315 (c) Evidence of permanent identification of the dog, such
316 as a tattoo on the inside thigh or an implantation of a
317 microchip.

318 (d) Evidence of the dog having been spayed or neutered.

319 (e) Evidence that the owner has obtained the required
320 liability insurance.

321 (f) The dog's name and a photograph of the dog.

322 (g) The county in which the dog is located.

323 (h) The owner's name and address.

324 (3) The department shall adopt rules to administer this
325 section.

326 Section 7. Subsections (1) and (2) of section 767.13,
 327 Florida Statutes, are amended to read:

328 767.13 Attack or bite by dangerous dog; penalties;
 329 confiscation; destruction.—

330 (1) If a dog that has previously been declared dangerous
 331 attacks or bites a person or a domestic animal without
 332 provocation, the owner commits ~~is guilty of~~ a misdemeanor of the
 333 first degree, punishable as provided in s. 775.082 or s.
 334 775.083. ~~In addition,~~ The dangerous dog must ~~shall~~ be
 335 immediately confiscated by an animal control authority; it ~~is~~ placed
 336 in quarantine, if necessary, for the proper length of time; it ~~or~~
 337 impounded; and held for 10 business days after the owner is
 338 given written notification under s. 767.12, and thereafter
 339 destroyed in an expeditious and humane manner. ~~This 10-day time~~
 340 ~~period shall allow~~ The owner may ~~to~~ request a hearing under s.
 341 767.12 during the 10-day time period. The owner is ~~shall be~~
 342 responsible for payment of all boarding costs and other fees as
 343 may be required to humanely and safely keep the animal during
 344 any appeal procedure.

345 (2) If a dog that has previously been declared dangerous
 346 attacks and causes severe injury to or death of any human, the
 347 owner commits ~~is guilty of~~ a felony of the third degree,
 348 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 349 ~~In addition,~~ The dog must ~~shall~~ be immediately confiscated by an
 350 animal control authority; it ~~is~~ placed in quarantine, if necessary,

351 for the proper length of time; impounded; and ~~or~~ held for 10
352 business days after the owner is given written notification
353 under s. 767.12, and thereafter destroyed in an expeditious and
354 humane manner. ~~This 10-day time period shall allow~~ The owner may
355 ~~to~~ request a hearing under s. 767.12 during the 10-day time
356 period. The owner is ~~shall be~~ responsible for payment of all
357 boarding costs and other fees as may be required to humanely and
358 safely keep the animal during any appeal procedure.

359 Section 8. Section 767.135, Florida Statutes, is amended
360 to read:

361 767.135 Attack or bite by unclassified dog that causes
362 death; confiscation; destruction.—If a dog that has not been
363 declared dangerous attacks and causes the death of a human, the
364 dog must ~~shall~~ be immediately confiscated by an animal control
365 authority; and placed in quarantine, if necessary, for the proper
366 length of time; impounded; and ~~or~~ held for 10 business days
367 after the owner is given written notification under s. 767.12,
368 and thereafter destroyed in an expeditious and humane manner.
369 ~~This 10-day time period shall allow~~ The owner may ~~to~~ request a
370 hearing under s. 767.12 during the 10-day time period. If the
371 owner files a written appeal under s. 767.12 or this section,
372 the dog must be held and may not be destroyed while the appeal
373 is pending. The owner is responsible for payment of all boarding
374 costs and other fees as may be required to humanely and safely
375 keep the animal during any appeal procedure.

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376 Section 9. Subsection (1) of section 767.136, Florida
377 Statutes, is amended to read:

378 767.136 Attack or bite by unclassified dog that causes
379 severe injury or death; penalties.—

380 (1) If a dog that has not been declared dangerous attacks
381 and causes severe injury to, or the death of, a human, and the
382 owner of the dog had knowledge of the dog's dangerous
383 propensities, yet failed to secure the dog in a proper enclosure
384 pursuant to s. 767.01(2) ~~demonstrated a reckless disregard for~~
385 ~~such propensities under the circumstances~~, the owner of the dog
386 commits a misdemeanor of the second degree, punishable as
387 provided in s. 775.082 or s. 775.083.

388 Section 10. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1557 Department of Environmental Protection
SPONSOR(S): Water Quality, Supply & Treatment Subcommittee, Chaney and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1386

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Water Quality, Supply & Treatment Subcommittee	18 Y, 0 N, As CS	Curtin	Curtin
2) Agriculture & Natural Resources Appropriations Subcommittee		Byrd	Pigott
3) Infrastructure Strategies Committee			

SUMMARY ANALYSIS

Each state must establish water quality standards for waters within their borders. The Department of Environmental Protection (DEP) is the state's lead agency for protecting and managing Florida's water resources at the state level. DEP works closely with each of the state's five water management districts (WMDs), which are responsible for protecting and managing Florida's water resources at the regional level.

The bill:

- Designates the Kristin Jacobs Coral Reef Ecosystem Conservation Area as an aquatic preserve.
- Requires each WMD, in coordination with DEP, to develop rules by December 31, 2025, that promote the reuse of reclaimed water.
- Expands the types of projects undertaken by municipalities and counties that may be awarded funding by the Resilient Florida Grant Program, and expands the information that must be submitted to DEP when vulnerability assessments are funded.
- Requires DEP to coordinate with the Chief Resilience Officer as well as the Florida Flood Hub for Applied Research and Innovation (Florida Flood Hub) in developing and maintaining the sea level rise data set and in updating the comprehensive statewide flood vulnerability and sea level rise data set and requires that the assessment be updated at least every 5 years.
- Requires the Chief Science Officer to coordinate with the Chief Resilience Officer and the Florida Flood Hub when developing statewide sea level rise projections.
- Clarifies that the Legislature intends that the transfer of the regulation of the Onsite Sewage Program from the Department of Health (DOH) to DEP be completed in a phased approach, and requires that before the phased transfer, DEP shall coordinate with DOH to identify equipment and vehicles that were previously used to carry out the program in each county and that are no longer needed for such purpose and further requires DOH to transfer the agreed-upon equipment and vehicles to DEP to the extent that each county agrees to relinquish ownership of such equipment and vehicles to DOH.
- Requires DEP to adopt rules establishing and implementing a program of general permits for certain onsite sewage treatment and disposal systems (OSTDSs).
- Requires DEP to establish an enhanced nutrient-reducing OSTDS approval program that will expeditiously evaluate and approve such systems for use in this state.
- Requires that the annual report submitted by DEP regarding the Water Quality Improvement Grant Program must also include a status report on each project funded since 2021.
- Requires DEP to create a water quality dashboard.

The bill may have an indeterminate negative fiscal impact on local government and an insignificant fiscal impact on state government. The bill may have an indeterminate positive fiscal impact on the private sector.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Department of Environmental Protection (DEP) is the state's lead agency for protecting and managing Florida's water resources at the state level. DEP works closely with each of the state's five water management districts, which are responsible for protecting and managing Florida's water resources at the regional level.¹ All state agencies are required to, upon direction of DEP, make available scientific, technical, research, administrative, and operational services and facilities to facilitate DEP's protection and management of Florida's water resources.² In order to ensure compliance with the law and its rules and regulations, a representative of DEP may enter and inspect certain facilities and operators which it is required by law to regulate.³

Sovereign Submerged Lands

Title to, ownership of, and the right to manage and use lands beneath navigable waters within a state's boundaries are vested in that state.⁴ In Florida, the title to such lands "is held by the state, by virtue of its sovereignty, in trust for all the people."⁵ The trustees of the Board of Trustees of the Internal Improvement Trust Fund (BOT) are the custodians of this trust.⁶ Title to sovereign submerged lands is vested in the BOT,⁷ and the BOT is responsible for managing, protecting and administering those lands.⁸

Aquatic Preserves

Recognizing the environmental diversity and beauty of Florida's waters, the Florida Aquatic Preserve Act of 1975 was enacted to forever preserve state-owned submerged lands which have exceptional biological, aesthetic, and/or scientific value.⁹ An aquatic preserve is "maintained essentially in its natural or existing condition"¹⁰ "for the benefit of future generations."¹¹ These areas provide many benefits, such as serving as nurseries for aquatic life; providing seagrasses for manatees to feed on; providing habitat on which shorebirds thrive; and, providing residents and visitors alike with opportunities for fishing, swimming, boating, and many other recreational activities.¹²

¹ "Because water constitutes a public resource benefiting the entire state, it is the policy of the Legislature that the waters in the state be managed on a state and regional basis." S. 373.016(4)(a), F.S.

² S. 403.061(4), F.S. These services and facilities are made available via interagency agreement, contract, or otherwise.

³ S. 403.091(1), F.S.

⁴ 43 U.S.C. § 1311. Florida acquired title to, ownership of, and the right to manage and use lands beneath navigable waters upon statehood on March 3, 1845.

⁵ Art. X, s. 11, Fla. Const.

⁶ *Hayes v. Bowman*, 91 So. 2d 795, 800 (Fla. 1957).

⁷ S. 253.12(1), F.S.

⁸ Ss. 253.03(1) and 253.04, F.S.

⁹ Ss. 258.36 and 258.38, F.S.

¹⁰ S. 258.37(1), F.S.

¹¹ S. 258.36, F.S.

¹² Department of Environmental Protection (DEP), *Aquatic Preserve Program*, <https://floridadep.gov/rcp/aquatic-preserve> (last visited Jan. 5, 2024).

Coastal landscapes and several inland waters throughout Florida have been declared aquatic preserves.¹³ In maintaining the preserves, the BOT is subject to a number of provisions, including:

- “No further sale, lease, or transfer of sovereignty submerged lands shall be approved or consummated by the trustees except when such sale, lease, or transfer is in the public interest¹⁴.”¹⁵
- “The trustees shall not approve the waterward relocation or setting of bulkhead lines waterward of the line of mean high water within the preserve except when public road and bridge construction projects have no reasonable alternative and it is shown to be not contrary to the public interest.”¹⁶
- Further dredging or filling of submerged lands shall not be approved by the trustees except in certain limited circumstances.¹⁷

DEP’s Office of Resilience and Coastal Protection manages the Aquatic Preserve Program and oversees 42 aquatic preserves.¹⁸ The Nature Coast Aquatic Preserve, the last preserve to have been designated by the Legislature, was designated in 2020 and it was the state’s first new designation of an aquatic preserve in 32 years.¹⁹

Coral Reefs

Coral reefs have tremendous biodiversity and they are some of the most diverse ecosystems in the world.²⁰ Almost all corals are made up of hundreds to hundreds of thousands of individual animals.²¹ Healthy coral reefs provide numerous benefits, such as protecting against coastal flooding, tropical storms and shoreline erosion,²² and providing opportunities for education, recreation and commercial fishing.²³ In addition, some animals found on reefs produce chemical compounds that are used in medicines.²⁴

Florida’s Coral Reef and the Kristin Jacobs Coral Reef Ecosystem Conservation Area

Florida is unique in that it “is the only state in the continental United States with extensive shallow coral reef formations near its coasts.”²⁵ Florida’s coral reef, which came into existence 10,000 years ago, is approximately 350 miles long, beginning in Dry Tortugas National Park²⁶ and ending at the St. Lucie Inlet in Martin County.²⁷ “A study of natural and artificial reefs along Southeast Florida and the Florida

¹³ Ch. 258, part II, F.S.

¹⁴ “‘Public interest’ means demonstrable environmental, social, and economic benefits which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social, and economic costs of the proposed action. In determining the public interest in a request for use, sale, lease, or transfer of interest in sovereignty lands or severance of materials from sovereignty lands, the Board shall consider the ultimate project and purpose to be served by said use, sale, lease, or transfer of lands or materials.” R. 18-20.003(46), F.A.C.

¹⁵ S. 258.42(1)(a), F.S.

¹⁶ S. 258.42(2), F.S.

¹⁷ S. 258.42(3)(a), F.S.

¹⁸ DEP, *Office of Resilience and Coastal Protection*, <https://floridadep.gov/orcp> (last visited Jan. 5, 2024).

¹⁹ CS/CS/HB 1061 (2020); DEP, *Nature Coast Aquatic Preserve* (last updated Aug. 14, 2023), <https://floridadep.gov/NatureCoastAP> (last visited Jan. 5, 2023).

²⁰ DEP, *Florida’s Coral Reefs* (last updated Aug. 14, 2023), <https://floridadep.gov/rcp/rcp/content/floridas-coral-reefs> (last visited Jan. 3, 2024); National Oceanic and Atmospheric Administration (NOAA), National Ocean Service, *Corals Tutorial*, https://oceanservice.noaa.gov/education/tutorial_corals/ (last visited Jan. 3, 2024).

²¹ NOAA, National Ocean Service, *What are corals?*, https://oceanservice.noaa.gov/education/tutorial_corals/coral01_intro.html (last visited Jan. 3, 2024).

²² DEP, *Coral Reef Conservation Program*, <https://floridadep.gov/rcp/coral> (last visited Jan. 4, 2024).

²³ DEP CRCP, *Coral Reef Conservation Program 2020 – 2025 Strategic Plan*, https://floridadep.gov/sites/default/files/CRCP%20Strategic%20Plan%202020-2025_FINAL_508%20compliant.pdf, p.3 (last visited Jan 4, 2024).

²⁴ Coral Reef Alliance, *Coral Reefs: The Medicine Chests of the Sea* (Nov. 24, 2016), <https://coral.org/en/blog/coral-reefs-the-medicine-chests-of-the-sea/> (last visited Jan. 4, 2024).

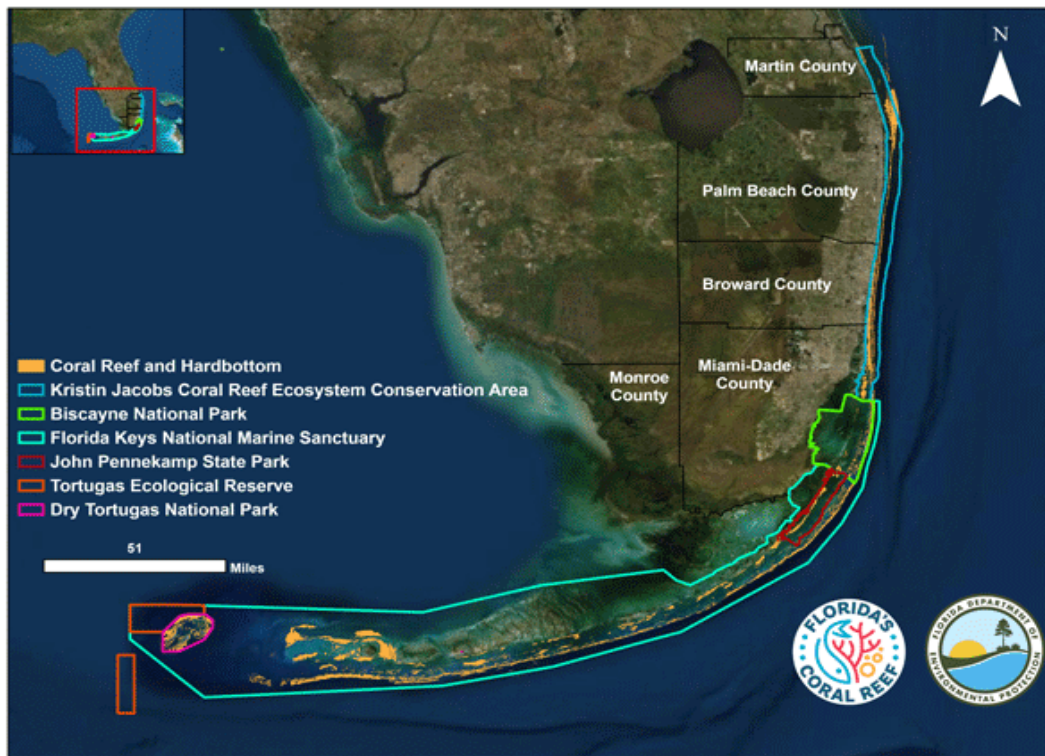
²⁵ DEP, *supra* note 20.

²⁶ The Dry Tortugas National Park is approximately 70 miles west of Key West; 99% of the park is open water. Florida’s Coral Reef, *Facts and History*, <https://floridascoralreef.org/the-reef/facts-and-history> (last visited Jan. 3, 2024).

²⁷ *Id.*

Keys showed that fishing, diving, and boating-related expenditures generate \$6.3 billion in sales and income, and sustain more than 71,000 jobs annually.”²⁸

The reefs north of the Florida Keys National Marine Sanctuary and Biscayne National Park are managed by DEP’s Coral Reef Conservation Program (CRCP) with input from the Southeast Florida Coral Reef Initiative.²⁹ In 2021, the Legislature designated the area managed by the CRCP the Kristin Jacobs Coral Reef Ecosystem Conservation Area, in honor of the late Representative Jacobs, who was a champion of protecting the environment, waterways, and wildlife.³⁰



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Wastewater

The proper treatment and disposal or reuse of domestic wastewater is an important part of protecting Florida’s water resources. A person generates approximately 100 gallons of domestic wastewater³² per day.³³ This wastewater must be managed to protect public health, water quality, recreation, fish, wildlife, and the aesthetic appeal of the state’s waterways.³⁴

Domestic Wastewater Treatment Facilities

The majority of Florida’s domestic wastewater is controlled and treated by centralized treatment facilities regulated by DEP. DEP regulates approximately 2,000 domestic wastewater facilities which treat over 1.5 billion gallons per day of effluent³⁵ and reclaimed water^{36, 37}. Methods of disposal include

²⁸ DEP CRCP, *supra* note 23.

²⁹ DEP, *supra* note 20. “The Southeast Florida Coral Reef Initiative was developed through the collaborative effort of many government agencies, non-governmental organizations, universities and private partners and is coordinated by the CRCP.”

³⁰ WUSF, *Broward Lawmaker Kristin Jacobs Dies After Cancer Battle* (Apr. 11, 2020), <https://www.wusf.com/2020-04-11/broward-lawmaker-kristin-jacobs-dies-after-cancer-battle> (last visited Jan. 4, 2024).

³¹ DEP, *supra* note 20.

³² S. 367.021(5), F.S., defines “domestic wastewater” as wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.

³³ DEP, *Domestic Wastewater Program*, <https://floridadep.gov/water/domestic-wastewater> (last visited Jan. 4, 2024).

³⁴ Ss. 381.0065(1) and 403.021, F.S.

³⁵ “‘Effluent,’ unless specifically stated otherwise, means water that is not reused after flowing out of any plant or other works used for the purpose of treating, stabilizing, or holding wastes.” R. 62-600.200(22), F.A.C.

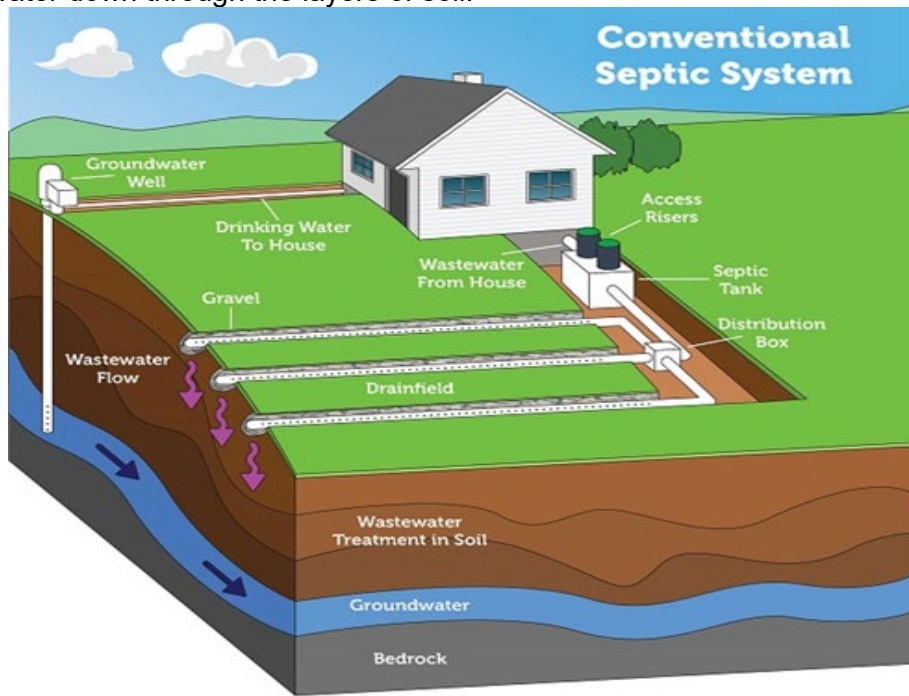
³⁶ “‘Reclaimed water,’ except as specifically provided in Chapter 62-610, F.A.C., means water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.” R. 62-600.200(57), F.A.C.

reuse and land application; groundwater disposal by underground injection; groundwater recharge and aquifer storage and recovery projects using injection wells; surface water discharges; and wetland discharges.³⁸

Onsite Sewage Treatment and Disposal Systems

Another method utilized to treat domestic wastewater is an onsite sewage treatment and disposal system (OSTDS); there are an estimated 2.6 million OSTDSs in Florida, which represents 12 percent of the septic systems in the United States.³⁹ These 2.6 million OSTDSs, commonly referred to as “septic systems,” provide wastewater disposal for 30 percent of the state’s population.⁴⁰

An OSTDS generally consists of two basic parts: the septic tank and the drainfield.⁴¹ 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 and it also provides filtration of the wastewater as gravity draws the water down through the layers of soil.⁴²



Please note: Septic systems vary. Diagram is not to scale.

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Septic systems have been widely used since the 1940s; however, they were not designed to remove nutrients.⁴⁴ During the 2023 legislative session the Legislature passed House Bill 1379, which was comprehensive legislation relating to Florida’s water and land resources. Included amongst the bill’s

³⁷ DEP, *General Facts and Statistics About Wastewater in Florida* (last updated Apr. 20, 2022), <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Jan. 5, 2023).

³⁸ R. 62-600.440(4), F.A.C.

³⁹ DEP, *Onsite Sewage Program*, <https://floridadep.gov/water/onsite-sewage> (last visited Jan. 11, 2024).

⁴⁰ *Id.*

⁴¹ Department of Health (DOH), *Septic System Information and Care* (last updated Oct. 17, 2014), <http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html> (last visited Jan. 4, 2024); EPA, *Types of Septic Systems* (last updated Aug. 7, 2023), <https://www.epa.gov/septic/types-septic-systems> (last visited Jan. 4, 2024).

⁴² *Id.*

⁴³ EPA, *supra* note 41.

⁴⁴ Andrea Albertin, *Reducing the Impact of Septic Systems Through Advanced Nitrogen Treatment*, University of Florida Institute of Food and Agricultural Sciences (Apr. 9, 2021), <https://nwdistrict.ifas.ufl.edu/nat/2021/04/09/reducing-the-impact-of-septic-systems-through-advanced-nitrogen-treatment/> (last visited Jan. 13, 2024).

many provisions are prohibitions on the installation of new OSTDSs constructed within certain areas⁴⁵ where connection to a publicly owned or investor-owned sewerage system is available.⁴⁶ In addition, on lots of 1 acre or less within such areas where a publicly owned or investor-owned sewerage system is not available, the bill requires the installation of enhanced nutrient-reducing OSTDSs or other wastewater treatment systems that achieve at least 65 percent nitrogen reduction.⁴⁷

Enhanced Nutrient-Reducing OSTDSs

Florida's groundwater supplies 90 percent of the state's drinking water⁴⁸ and it is imperative that groundwater is protected. Enhanced nutrient-reducing (ENR) OSTDSs facilitate the protection of Florida's water resources by reducing the amount of nitrogen in groundwater and surface waters. "There are three types of ENR-OSTDS: NSF 245 aerobic treatment units; nitrogen-reducing performance based treatment system (nitrogen-reducing PBTs), and inground nitrogen-reducing biofilters (INRBs)."⁴⁹

Aerobic treatment units, unlike conventional systems, introduce air into the sewage in the tank using a pump so that the organic matter in the tank is broken down faster than in a conventional system.⁵⁰ Like a conventional septic system, effluent from an aerobic treatment unit is discharged into a drainfield for further treatment in the soil.⁵¹ Nitrogen-reducing PBTs "are specialized systems designed by professional engineers to meet specific levels of contaminant removal based on site and/or situation requirements."⁵² INRBs, also referred to as modified drainfields, "are nitrogen-reducing media layers placed underneath a conventional drainfield."⁵³

Onsite Sewage Program

The Onsite Sewage Program helps ensure that OSTDSs are properly designed, constructed, and maintained to help protect Florida's groundwater resources. The Florida Clean Waterways Act, enacted in 2020, was a significant piece of legislation that addressed a number of environmental issues relating to the maintenance and improvement of water quality in Florida. Section two of the Clean Waterways Act provided for the transfer of the Onsite Sewage Program (Program) from the Department of Health (DOH) to DEP, effective July 1, 2021.⁵⁴

The Program is being transferred over a period of five years, and guidelines for the transfer are provided by an interagency agreement.⁵⁵ Per the agreement, DEP has the primary powers and duties of the Program, and the county departments of health will implement the OSTDS program under the direction of DEP.⁵⁶ The county departments of health continue to handle permitting and inspection of OSTDSs.⁵⁷ 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.⁵⁸

⁴⁵ The areas are those within a basin management action plan area adopted under section 403.067, F.S., a reasonable assurance plan, a pollution reduction plan, and Outstanding Florida Springs.

⁴⁶ Ch. 23-169, Laws of Fla.

⁴⁷ *Id.*

⁴⁸ DEP, *supra* note 39.

⁴⁹ DEP, *Frequently Asked Questions (FAQs) House Bill (HB) 1379 Requirements for Enhanced Nutrient-Reducing Systems* (v.1 – July 18, 2023), p.1, <https://floridadep.gov/sites/default/files/Public%20ENR%20FAQ.pdf> (last visited Jan. 13, 2024).

⁵⁰ Albertin, *supra* note 44.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Ch. 2020-150, s. 2, Laws of Fla.

⁵⁵ S. 381.0065(3)(b), F.S.; DOH and DEP, *Interagency Agreement between DEP and DOH in Compliance with Florida's Clean Waterways Act for Transfer of the Onsite Sewage Program*, 5 (2021), <http://www.floridahealth.gov/environmental-health/onsite-sewage/documents/interagency-agreement-between-fdoh-fdep-onsite-signed-06302021.pdf> (last visited Dec. 27, 2023).

⁵⁶ *Id.* at 14.

⁵⁷ *Id.* at 11; DEP, *supra* note 39.

⁵⁸ DOH and DEP, *supra* note 55, at 11.

Reclaimed Water

Reclaimed water is wastewater that has been disinfected⁵⁹ and received treatment sufficient to achieve certain effluent limitations⁶⁰ so that the resulting high-quality water may then be reused for beneficial purposes.⁶¹ Effluent limitations are established by DEP and there are limits on “chemical, physical, biological, or other constituents” which are discharged into waters of the state.⁶² Florida’s physical geography – with limited groundwater supplies near coastal areas and slow flowing, warm streams that are unable to assimilate large discharges of wastewater – necessitate the continued development and management of sophisticated wastewater facilities.⁶³

Reuse of Reclaimed Water

Florida is a national leader in water reuse and in 2021 at least 908 million gallons per day of reclaimed water was used for beneficial purposes.⁶⁴ Reuse can help meet the groundwater management, as well as the water supply, needs of Florida’s growing population.⁶⁵ The Legislature has long recognized the potential and necessity of reusing reclaimed water:

The encouragement and promotion of water conservation, and reuse of reclaimed water, as defined by [DEP], are state objectives and are considered to be in the public interest. The Legislature finds that the reuse of reclaimed water is a critical component of meeting the state’s existing and future water supply needs while sustaining natural systems. The Legislature further finds that for those wastewater treatment plants permitted and operated under an approved reuse program by [DEP], the reclaimed water shall be considered environmentally acceptable and not a threat to public health and safety.⁶⁶

Reclaimed water may be reused for a number of purposes, including:

- “Irrigation of golf courses, parks, residential properties, highway medians and other landscaped areas.
- Urban uses such as toilet flushing, car washing, dust control and aesthetic purposes (i.e., decorative lakes, ponds and fountains).
- Agricultural uses such as irrigation of edible food crops such as citrus, corn and soybeans; pasture lands, grasslands, and other feed and fodder crops; and irrigation at nurseries.
- Wetlands creation, restoration and enhancement.
- Recharging groundwater with the use of rapid infiltration basins (percolation ponds), absorption fields and direct injection to groundwaters.
- Augmentation of surface waters that are used for drinking water supplies.
- Industrial uses including plant wash down, processing water, and cooling water purposes.”⁶⁷

“All applicants for permits to construct or operate a domestic wastewater treatment facility located within, serving a population located within, or discharging within a water resource caution area shall prepare a reuse feasibility study as part of their application for the permit.”⁶⁸ Water resource caution areas are identified by WMDs as areas where in the near future demand for water will exceed supply

⁵⁹ R. 62-610.200(11) and R. 62-600.200(18), F.A.C.

⁶⁰ R. 62-610.200(45) and R. 62-600.200(57), F.A.C.

⁶¹ S. 373.019(17), F.S.

⁶² S. 403.031(3), F.S.

⁶³ DEP, *Why Reuse Water?*, (last updated Jan. 5, 2023), <https://floridadep.gov/water/domestic-wastewater/content/reuse-facts> (last visited Jan. 8, 2024).

⁶⁴ DEP, Division of Water Resource Management, *2021 Reuse Inventory*, p. 2 (March 2022), <https://floridadep.gov/sites/default/files/2021%20Reuse%20Inventory.pdf>. (Domestic wastewater facilities with permitted capacities of .1 million gallons per day (mgd) and greater that provide reclaimed water for reuse are required to submit an annual reuse report to DEP. p. 1. DEP received 91% of the required 2021 annual reuse reports. P.1. Thus, at least 908 mgd of reclaimed water was used in 2021.)

⁶⁵ DEP, *supra* note 63.

⁶⁶ S. 403.064(1), F.S.; *see also* S. 373.250(1)(a), F.S.

⁶⁷ DEP, *Uses of Reclaimed Water* (last updated Sept. 6, 2023), <https://floridadep.gov/water/domestic-wastewater/content/uses-reclaimed-water> (last visited Jan. 8, 2024).

⁶⁸ S. 403.064(2), F.S.

and that water conservation will help meet future water demand.⁶⁹ Also known as water use caution areas, these areas require a regional approach to address cumulative water withdrawals.⁷⁰ Domestic wastewater treatment facilities that dispose of effluent by Class I deep well injection⁷¹ are required to implement reuse to the degree that it is feasible as determined by the reuse feasibility study.⁷²

Florida's Water Resources

All groundwater and surface water in Florida is a public resource.⁷³ It is this state's policy to promote the conservation and proper utilization of surface and groundwater;⁷⁴ "promote the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems;"⁷⁵ and "to protect, maintain, and improve the quality [of the waters of the state] for public water supplies, for the propagation of wildlife and fish and other aquatic life, and for domestic, agricultural, industrial, recreational, and other beneficial uses and to provide that no wastes be discharged into any waters of the state without first being given the degree of treatment necessary to protect the beneficial uses of such water."⁷⁶

Consumptive Use Permits

"[A]ny use of water that reduces the supply from which it is withdrawn or diverted" is referred to as the consumptive use of water.⁷⁷ With certain exceptions, a permit must be obtained prior to the consumptive use of water in Florida.⁷⁸ Consumptive Use Permits (CUPs) are issued by the WMDs. In order to obtain a CUP, the applicant must pass what has been referred to as the three-prong test⁷⁹ and "establish that the proposed use of water: [i]s a reasonable-beneficial use as defined in s. 373.019⁸⁰; [w]ill not interfere with any presently existing legal use of water; and [i]s consistent with the public interest."⁸¹ CUPs require water conservation and limit how much water may be withdrawn.⁸²

To ensure that consumptive use does not lower the amount of water in a waterbody to the point that the resource is harmed, the WMDs are required to establish minimum flows or minimum water levels (MFLs) to protect those resources.⁸³ Scientific assessments of the resource values associated with each unique water system are conducted to determine the point at which further withdrawals would significantly harm the water resources or ecology of the area; this point is the MFL.⁸⁴

⁶⁹ S. 373.228(1), F.S.

⁷⁰ Southwest Florida WMD, *Southern Water Use Caution Area*, <https://www.swfwmd.state.fl.us/projects/southern-water-use-caution-area> (last visited Jan. 13, 2024).

⁷¹ Class I injection wells include: "(1) Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within one-quarter mile of the well bore, an underground source of drinking water. (2) Other industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing, within one quarter mile of the well bore, an underground source of drinking water. (3) Radioactive waste disposal wells which inject fluids below the lowermost formation containing an underground source of drinking water within one quarter mile of the well bore." 40 C.F.R. § 144.6(a).

⁷² S. 403.064(14), F.S.

⁷³ Ch. 373, F.S.

⁷⁴ S. 373.016(3)(b), F.S.

⁷⁵ S. 373.016(3)(d), F.S.

⁷⁶ Ss. 373.016(3)(h) and 403.021(2), F.S.

⁷⁷ R. 62-40.210(4), F.A.C.

⁷⁸ S. 373.219(1), F.S.; R. 40B-2.041(1), F.A.C.; R. 40E-2.041(a), F.A.C.

⁷⁹ *Marion Cnty. v. Greene*, 5 So. 3d 775, 777 (Fla. 5th DCA 2009) (en banc) (citing *Sw. Fla. Water Mgmt. Dist. v. Charlotte Cnty.*, 774 So. 2d 903 (Fla. 2d DCA 2001)).

⁸⁰ "'Reasonable-beneficial use' means the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest." S. 373.019(16), F.S.

⁸¹ S. 373.223(1), F.S.

⁸² South Florida WMD, *Consumptive Water Use Permits*, <https://www.sfwmd.gov/doing-business-with-us/permits/water-use-permits> (last visited Jan. 9, 2024).

⁸³ S. 373.042, F.S.

⁸⁴ DEP, *Minimum Flows and Minimum Water Levels and Reservations* (last updated Sept. 23, 2023),

<https://floridadep.gov/owper/water-policy/content/minimum-flows-and-minimum-water-levels-and-reservations> (last visited Jan. 16, 2024).

Water Quality Standards

Each state must establish water quality standards for waters within their borders and then develop a list of impaired waters that do not meet the established water quality standards and develop a list of threatened waters that may not meet water quality standards in the following reporting cycle.⁸⁵ Waterbodies that do not meet water quality standards are called impaired waters.⁸⁶

Total Maximum Daily Load

If DEP determines that any waters are impaired, the waterbody or segment must be placed on the verified list of impaired waters (Verified List) and a total maximum daily load (TMDL) must be calculated.⁸⁷ A TMDL is based on science and it is the maximum amount of a pollutant that the waterbody or segment may take in and still maintain water quality standards.⁸⁸

DEP is the lead agency coordinating the development and implementation of TMDLs.⁸⁹ A waterbody or waterbody segment may be removed from the list at any time during the TMDL process if the waterbody or waterbody segment attains water quality standards.⁹⁰ If DEP determines that a waterbody is impaired, but further study is needed to determine the causative pollutants or other factors contributing to impairment before the waterbody is placed on the Verified List, the waterbody or segment will be placed on the statewide comprehensive study list.⁹¹

The Florida Watershed Restoration Act guides the development and implementation of TMDLs.⁹² TMDLs must include reasonable and equitable pollutant load allocations between or among point sources (e.g., pipes and culverts discharging from a permitted facility, such as a domestic wastewater treatment facility) and nonpoint sources (e.g., agriculture, septic tanks, golf courses) that will alone, or in conjunction with other management and restoration activities, reduce pollutants and achieve water quality standards.⁹³ As of December 2022, 459 TMDLs had been established for impaired waters in Florida, and 8 of those were adopted in calendar year 2022.⁹⁴

⁸⁵ *Id.*; 40 C.F.R. § 130.7 (Following the development of the list of impaired waters, states must develop a total maximum daily load for every pollutant/waterbody combination on the list. 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, *Watershed Evaluation and Total Maximum Daily Loads (TMDL) Section* (last updated Oct. 12, 2023), <https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program> (last visited Jan. 14, 2024).

⁸⁶ R. 62-300.200(7), F.A.C. (“‘Impaired water’ shall mean a waterbody or waterbody segment that does not meet its applicable water quality standards as set forth in Chapters 62-302 and 62-4, F.A.C. . . . due in whole or in part to discharges of pollutants from point or nonpoint sources.”)

⁸⁷ S. 403.067(1), F.S.; DEP, *Verified List Waterbody Ids (WBIDs)*, <https://geodata.dep.state.fl.us/datasets/FDEP::verified-list-waterbody-ids-wbids/about> (last visited Jan. 14, 2023); and s. 403.067(4), F.S.

⁸⁸ S. 403.031(20), F.S.

⁸⁹ S. 403.061, F.S. DEP has the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. S. 403.061(22), F.S., allows DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.

⁹⁰ S. 403.067(5), F.S.

⁹¹ S. 403.067(2), F.S.; R. 62-303.150(1), F.A.C.

⁹² S. 403.067, F.S.; Ch. 99-223, Laws of Fla.

⁹³ S. 403.067(6)(b), F.S.

⁹⁴ EDR, *Annual Assessment of Florida’s Water Resources: Quality*, 5 (2023), http://edr.state.fl.us/Content/natural-resources/2023_AnnualAssessmentWaterResources_Chapter4.pdf (last visited Jan. 13, 2024).

Basin Management Action Plans

Once a TMDL is adopted,⁹⁵ DEP may develop and implement a basin management action plan (BMAP), which is a restoration plan for the watersheds and basins connected to the impaired waterbody⁹⁶ that is included on DEP's Verified List. BMAPs are one of the primary mechanisms DEP utilizes to achieve TMDLs, and a BMAP addresses the pollutant causing the impairment.⁹⁷

"Each new or revised [BMAP] must include:

- The appropriate management strategies available through existing water quality protection programs to achieve [TMDLs];
- A description of best management practices [BMPs]⁹⁸ adopted by rule;
- For the applicable 5-year milestone, a list of projects that will achieve the pollutant load reductions needed to meet the TMDL or established load allocations with a planning-level cost estimate and estimated date of completion for each listed project;
- The source and amount of financial assistance to be made available by DEP, a water management district, or other entity for each listed project, if applicable; and
- A planning-level estimate of each listed project's expected load reduction, if applicable."⁹⁹

Producers of nonpoint source pollution included in a BMAP must comply with the established pollutant reductions by either implementing the appropriate BMPs or by conducting water quality monitoring.¹⁰⁰ A nonpoint source discharger may be subject to enforcement action by DEP or a water management district based on a failure to implement these requirements.¹⁰¹

A BMAP must integrate appropriate management strategies available to the state through existing water quality protection programs to achieve the TMDL.¹⁰² 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."¹⁰³ 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 governments, community leaders, and the public to collectively determine and share water quality cleanup responsibilities.¹⁰⁴ BMAPs are adopted by secretarial order,¹⁰⁵ and thirty-three BMAPs have been developed statewide.¹⁰⁶

"[BMAPs] must include 5-year milestones for implementation and water quality improvement," as well as a water quality monitoring component to evaluate whether reasonable progress is being achieved

⁹⁵ S. 403.067(6)(c), F.S.

⁹⁶ S. 403.067(7)(a)1., F.S.

⁹⁷ DEP, Division of Environmental Assessment and Restoration, *Guidance on Developing Restoration Plans as Alternatives to TMDLs – Assessment Category 4b and 4e Plans*, p. 2 (June 2015) <https://floridadep.gov/sites/default/files/4b4ePlansGuidance.pdf> (last visited Jan. 14, 2024).

⁹⁸ BMPs are defined by law, and they are a balance between improvements to water quality and agricultural productivity. They are based on research, field-testing, and expert review, and they are a practice or practices determined by the coordinating agencies to be the most effective and practicable means by which to improve water quality in agricultural and urban discharges. Economic and technological matters are also taken into consideration in developing BMPs. S. 373.4595(2)(a), F.S.; see also Department of Agriculture & Consumer Services, *Agricultural Best Management Practices*, <https://www.fdacs.gov/Agriculture-Industry/Water/Agricultural-Best-Management-Practices> (last visited Jan. 14, 2024).

⁹⁹ S. 403.067(7)(a)4., F.S.

¹⁰⁰ S. 403.067(7)(b)2.g., F.S. Examples of BMPs for agriculture include activities such as managing irrigation water to minimize losses and limiting the use of fertilizers.

¹⁰¹ S. 403.067(7)(b)2.h., F.S.

¹⁰² *Id.*

¹⁰³ S. 403.067(7)(a)2., F.S.

¹⁰⁴ DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Jan. 14, 2024).

¹⁰⁵ S. 403.067(7)(a)5., F.S.

¹⁰⁶ Office of Economic & Demographic Research (EDR), *Annual Assessment of Florida's Water Resources: Quality*, p. 5 (2023), http://edr.state.fl.us/Content/natural-resources/2023_AnnualAssessmentWaterResources_Chapter4.pdf (last visited Jan. 14, 2024).

over time.¹⁰⁷ An assessment of progress must be conducted every five years, and revisions to the BMAP must be made as appropriate.¹⁰⁸

A BMAP for a nutrient TMDL must also include a wastewater treatment plan that addresses domestic wastewater if DEP identifies domestic wastewater treatment facilities or OSTDSs as contributors of at least 20 percent of point source or nonpoint source nutrient pollution or if DEP determines remediation is necessary to achieve the TMDL.¹⁰⁹ This plan must be developed by the respective local government along with DEP, the applicable WMD, and public and private domestic wastewater facilities located within the jurisdiction.¹¹⁰ Special districts and private domestic wastewater facilities providing wastewater services to a local government are not currently required to provide information to that local government or DEP to assist in preparing wastewater treatment plans.

Alternative Restoration Plans

Impaired waterbodies with plans that provide reasonable assurance that they will attain water quality standards may avoid placement on DEP's Verified List.¹¹¹ Alternative Restoration Plans employ the early implementation of restoration activities to avoid being placed on the Verified List and the development of TMDLs and BMAPs.¹¹² There are two categories of Alternative Restoration Plans, 4b and 4e plans.¹¹³

Category 4b plans include waterbodies that are impaired, but do not require development of a TMDL because existing or proposed measures will allow the waterbody to attain water quality standards.¹¹⁴ A reasonable assurance plan (RAP) is a control measure that DEP may implement for category 4b impaired waterbodies.¹¹⁵

If DEP determines a waterbody is impaired or is likely to become impaired within five years, it must evaluate whether "existing or proposed technology-based effluent limitations and other pollution control programs . . . are sufficient to result in the attainment of water quality standards . . . [and] [i]f the waterbody is expected to attain water quality standards in the future and to make reasonable progress towards attainment of those standards in a certain timeframe, the waterbody will not be placed on the Verified List."¹¹⁶ DEP's decision must be based on a plan that provides reasonable assurance that water quality standards will be attained.¹¹⁷ RAPs are adopted by order of the Secretary of DEP,¹¹⁸ and they "may obviate the need to use limited state resources to . . . implement BMAPs."¹¹⁹ Five RAPs have been adopted.¹²⁰

A waterbody may "be placed in category 4e if it is impaired but recently completed restoration activities or ongoing restoration activities are underway to restore the designated uses of the waterbody."¹²¹ Waterbodies placed in the 4e category have their placement on the Verified List postponed for four years to allow for implementation of the plan and progress toward restoration to be evaluated.¹²²

¹⁰⁷ S. 403.067(7)(a)6., F.S.

¹⁰⁸ *Id.*

¹⁰⁹ S. 403.067(7)(a)9., F.S.

¹¹⁰ S. 403.067(7)(a)9.a., F.S.

¹¹¹ R. 62-303.600(2), F.A.C.

¹¹² DEP, *Alternative Restoration Plans*, <https://floridadep.gov/DEAR/Alternative-Restoration-Plans> (last visited Jan. 14, 2024).

¹¹³ *Id.*

¹¹⁴ EDR, *supra* note 106, at 14.

¹¹⁵ DEP, *supra* note 112.

¹¹⁶ R. 62-303.600(1), F.A.C.

¹¹⁷ *Id.*

¹¹⁸ EDR, *supra* note 106, at 29.

¹¹⁹ *Id.* at 27.

¹²⁰ *Id.* at 29.

¹²¹ *Id.*

¹²² *Id.*

Water Quality Improvement Grant Program

The Water Quality Improvement Grant Program (WQIP), previously known as the Wastewater Grant Program, is managed by DEP.¹²³ Projects eligible for funding by WQIP must reduce the amount of nutrients entering “waterbodies that: are not attaining nutrient or nutrient-related standards; have an established TMDL; or are located within a BMAP area, a RAP area adopted by final order, an accepted alternative restoration plan area, or a rural area of opportunity” (RAO)^{124, 125}.

DEP is required to coordinate with the WMDs to identify grant recipients in each district¹²⁶ and to coordinate with local governments and other stakeholders to identify the most effective and beneficial projects.¹²⁷ DEP must consider and prioritize the estimated reduction in nutrient load per project; project readiness; the cost-effectiveness of the project; the cost share identified by the applicant, except for RAOs; the overall environmental benefit of a project; the location of a project; and previous state involvement in the project.¹²⁸

DEP is required to submit a report to the Governor and the Legislature each year regarding the projects funded by WQIP.¹²⁹ “The report must include a list of those projects receiving funding and include the following information for each project:

- A description of the project;
- The cost of the project;
- The estimated nutrient load reduction;
- The location of the project;
- The waterbody or waterbodies where the project would reduce nutrients; and
- The total cost-share being provided.”¹³⁰

Sea Level Rise and Flooding

With 1,350 miles of coastline and relatively low elevations, Florida is particularly vulnerable to coastal flooding.¹³¹ There are three primary causes of coastal flooding: sea level rise, storm surge intensity, and rainfall intensity and frequency.¹³² Sea level rise is an observed increase in the average local sea level or global sea level trend.¹³³

The two major causes of global sea level rise are thermal expansion caused by the warming of the oceans and the loss of land-based ice due to melting.¹³⁴ Since 1880, the average global sea level has risen approximately eight to nine inches, and the rate of global sea level rise has been accelerating.¹³⁵ The National Oceanic and Atmospheric Administration (NOAA) utilizes tide gauges to measure changes in sea level and provides data on local sea level rise trends.¹³⁶ Analysis of this data shows

¹²³ S. 403.0673, F.S.

¹²⁴ A RAO is a community or region of communities which are uniquely distressed and are priority assignments for the Rural Economic Development Initiative. S. 288.0656(2)(d) and (7)(a), F.S. The Governor may designate no more than three RAOs. S. 288.0656(7)(a), F.S.

¹²⁵ S. 403.0673(1), F.S.

¹²⁶ S. 403.0673(4), F.S.

¹²⁷ S. 403.067(5), F.S.

¹²⁸ S. 403.0673(3), F.S.

¹²⁹ S. 403.0673(7), F.S.

¹³⁰ *Id.*

¹³¹ Florida Division of Emergency Management (DEM), *Enhanced State Hazard Mitigation Plan, State of Florida* [hereinafter “SHMP”] (2018), 107-108, 162, https://www.floridadisaster.org/globalassets/dem/mitigation/mitigate-fl--shmp/shmp-2018-full_final_approved.6.11.2018.pdf (last visited Jan. 8, 2024).

¹³² *Id.* at 107.

¹³³ DEP, *Florida Adaptation Planning Guidebook: Glossary* [“DEP Guidebook”] (2018), <https://floridadep.gov/sites/default/files/AdaptationPlanningGuidebook.pdf> (last visited Jan. 8, 2024).

¹³⁴ National Aeronautics and Space Administration (NASA), *Facts: Sea Level*, <https://climate.nasa.gov/vital-signs/sea-level/> (last visited Jan. 8, 2024).

¹³⁵ U.S. Global Change Research Program, *Fourth National Climate Assessment* [NCA4] (2018), 757, https://nca2018.globalchange.gov/downloads/NCA4_2018_FullReport.pdf (last visited Jan. 8, 2024).

¹³⁶ NOAA, *What is a Tide Gauge?*, <https://oceanservice.noaa.gov/facts/tide-gauge.html> (last visited Jan. 8, 2024); NOAA, *Tides and Currents, Sea Level Trends*, <https://tidesandcurrents.noaa.gov/sltrends/> (last visited Jan. 8, 2024).

that some low-lying areas in the southeastern United States experience higher local rates of sea level rise than the global average.¹³⁷

Florida's coastal communities are experiencing high-tide flooding events with increasing frequency because sea level rise increases the height of high tides.¹³⁸ In the U.S., sea level rise and flooding threaten an estimated \$1 trillion in coastal real estate value, and analysts estimate that Florida could lose more than \$300 billion in property value by the year 2100.¹³⁹ Sea level rise further affects the salinity of both surface water and groundwater through saltwater intrusion, posing a particular risk for shallow coastal aquifers.¹⁴⁰ Sea level rise also pushes saltwater further upstream in tidal rivers and streams, raises coastal groundwater tables, and pushes saltwater further inland at the margins of coastal wetlands.¹⁴¹

Storm surge intensity and the intensity and precipitation rates of hurricanes are generally projected to increase,¹⁴² and higher sea levels will cause storm surges to travel farther inland and impact more properties than in the past.¹⁴³ Stronger storms and sea level rise are likely to lead to increased coastal erosion.¹⁴⁴

Increases in evaporation rates and water vapor in the atmosphere increase rainfall intensity and extreme precipitation events, and the sudden onset of water can overwhelm stormwater infrastructure.¹⁴⁵ As sea levels and groundwater levels rise, low areas drain more slowly, and the combined effects of rising sea levels and extreme rainfall events are increasing the frequency and magnitude of coastal and lowland flood events.¹⁴⁶

¹³⁷ NCA4 at 757.

¹³⁸ SHMP at 108, 101; NOAA, *High-Tide Flooding*, <https://toolkit.climate.gov/topics/coastal-flood-risk/shallow-coastal-flooding- nuisance-flooding> (last visited Jan. 8, 2024).

¹³⁹ NCA4 at 324, 758.

¹⁴⁰ SHMP at 106.

¹⁴¹ *Id.* at 108.

¹⁴² SHMP at 106, 141; NCA4 at 95, 97, 116-117, 1482.

¹⁴³ NCA4 at 758; SHMP at 107.

¹⁴⁴ NCA4 at 331, 340-341, 833, 1054, 1495; SHMP at 108, 221.

¹⁴⁵ SHMP at 99, 106, 116, 141, 181; NCA4 at 88, 762-763.

¹⁴⁶ SHMP at 106; NCA4 at 763.

Sea Level Rise Projections

The following table displays projections for future sea level rise, both globally and in regions of Florida:

Sea Level Rise Projections				
Source	Scale	Years	Low (feet)	High (feet)
Intergovernmental Panel on Climate Change ¹⁴⁷	Global	2046-2065	0.79	1.05
		2081-2100	1.28	2.32
		2100	1.41	2.76
U.S. Global Change Research Program ¹⁴⁸	Global	2030	0.3	0.6
		2050	0.5	1.2
		2100	1	4.3
Southeast Florida Regional Climate Change Compact Sea Level Rise Work Group ¹⁴⁹	Southeast Florida	2040	0.83	1.42
		2070	1.75	4.5
		2120	3.33	11.33
Tampa Bay Climate Science Advisory Panel ¹⁵⁰	Tampa Bay Region	2050	1	2.5
		2100	2	8.5

¹⁴⁷ Intergovernmental Panel on Climate Change (IPCC), *The Ocean and Cryosphere in a Changing Climate*, SPM-7, 4-4, CCB9-21, AI-23, https://www.ipcc.ch/site/assets/uploads/sites/3/2019/12/SROCC_FullReport_FINAL.pdf (last visited Jan. 8, 2024). These projected ranges are based on climate models using “representative concentration pathways (RCPs),” which are scenarios of future emissions and concentrations of the full suite of greenhouse gases and aerosols, and chemically active gases, as well as land use/land cover.

¹⁴⁸ NCA4 at 406, 758.

¹⁴⁹ Southeast Florida Regional Climate Change Compact Sea Level Rise Work Group (SFRCCC), *Unified Sea Level Rise Projection: Southeast Florida* (2019), 9, https://southeastfloridaclimatecompact.org/wp-content/uploads/2020/04/Sea-Level-Rise-Projection-Guidance-Report_FINAL_02212020.pdf (last visited Jan. 8, 2024). These projections have been accepted or adopted by all four of the Compact counties. See SFRCCC, *Unified Sea Level Rise Projections*, <https://southeastfloridaclimatecompact.org/unified-sea-level-rise-projections/> (last visited Jan. 8, 2024).

¹⁵⁰ Tampa Bay Climate Science Advisory Panel, *Recommended Projections of Sea Level Rise in the Tampa Bay Region* (Apr. 2019), 1, 7, https://www.mymanatee.org/gisapps/pm/climateAdaptation/CSAP_SLR_Recommendation_2019.pdf (last visited Jan. 8, 2024).

The following table displays the NOAA 2022 Global and Regional Sea Level Rise Scenarios for the United States:¹⁵¹

NOAA Sea Level Rise Projections				
Scale	Years	Low (feet)	Intermediate (feet)	High (feet)
Global	2030	.3	.43	.49
	2040	.39	.62	.89
	2050	.49	.92	1.41
	2100	.98	3.28	6.56
	2150	1.31	6.23	12.14
Contiguous United States	2030	.59	.69	.72
	2040	.82	.98	1.15
	2050	1.02	1.31	1.71
	2100	1.97	3.94	7.22
	2150	2.62	7.22	12.80

State, Regional, and Local Programs

Many state, regional, and local programs and policies are in place that address issues relating to sea level rise and coastal flooding.

State Programs

In January 2019, Governor DeSantis issued Executive Order 19-12, creating the Office of Resilience and Coastal Protection within DEP to help prepare Florida’s coastal communities and habitats for impacts from sea level rise by providing funding, technical assistance, and coordination among state, regional, and local entities.¹⁵² In August 2019, the Governor appointed Florida’s first Chief Resilience Officer, who collaborates with state agencies, local communities, and stakeholders to prepare for the impacts of sea level rise and climate change.¹⁵³

DEP’s Office of Resilience and Coastal Protection implements numerous programs related to sea level rise and coastal issues, including the Coastal Construction Control Line Program and the Beach Management Funding Assistance Program.¹⁵⁴ In addition, DEP implements the Florida Resilient Coastlines Program, which helps prepare coastal communities and habitats for the effects of climate change, especially sea level rise, by offering technical assistance and funding to communities dealing with coastal flooding, erosion, and ecosystem changes.¹⁵⁵

DEP also operates the Florida Coastal Management Program, which implements the Coastal Partnership Initiative. This initiative makes funding from NOAA available to Florida’s 35 coastal counties, and cities therein, that are required to include a coastal zone protection element in their comprehensive plans.¹⁵⁶ Grant applications must benefit the management of coastal resources and

¹⁵¹ NOAA, *2022 Global and Regional Sea Level Rise Scenarios for the United States: Updated Mean Projections and Extreme Water Level Probabilities Along U.S. Coastlines*, 15, 20,

<https://aambpublicoceanservice.blob.core.windows.net/oceanserviceprod/hazards/sealevelrise/noaa-nos-techrpt01-global-regional-SLR-scenarios-US.pdf> (last visited Jan. 8, 2024).

¹⁵² Office of the Governor, *Executive Order Number 19-12*, 5 (2019), <https://www.flgov.com/wp-content/uploads/2019/01/EO-19-12-.pdf> (last visited Jan. 8, 2024).

¹⁵³ Governor Ron DeSantis, *News Releases: Governor Ron DeSantis Announces Dr. Julia Nesheiwat as Florida’s First Chief Resilience Officer* (Aug. 1, 2019), <https://flgov.com/2019/08/01/governor-ron-desantis-announces-dr-julia-nesheiwat-as-floridas-first-chief-resilience-officer/> (last visited Jan. 9, 2024); Governor DeSantis appointed Wesley Brooks as the third Chief Resilience Officer in November 2021. Associated Press, *DeSantis Appoints New Florida Chief Resilience Officer*, <https://apnews.com/article/climate-donald-trump-florida-environment-ron-desantis-e40102bdc145f0b739897a91bf5da63> (last visited Jan. 8, 2024).

¹⁵⁴ DEP, *Beaches: About Us*, <https://floridadep.gov/rcp/beaches> (last visited Jan. 8, 2024).

¹⁵⁵ DEP, *Florida Resilient Coastlines Program*, <https://floridadep.gov/rcp/florida-resilient-coastlines-program> (last visited Jan. 8, 2024).

¹⁵⁶ DEP, *Florida Coastal Management Program*, <https://floridadep.gov/rcp/fcmp> (last visited Jan. 8, 2024); DEP, *Coastal Partnership Initiative*, <https://floridadep.gov/rcp/fcmp/content/coastal-partnership-initiative> (last visited Jan. 8, 2024).

meet the purpose of at least one of the initiative's priority areas, which are resilient communities, coastal resource stewardship, access to coastal resources, and working waterfronts.¹⁵⁷

Additionally, DEP incentivizes the use of living shorelines as an alternative to traditional permits for coastal armoring, which is defined as manmade structures, such as seawalls or bulkheads, that protect upland properties and structures from erosion, wave action, or currents.¹⁵⁸ Living shorelines are a nature-based approach to coastal protection, using natural elements such as ecosystems, vegetation, stone, or organic materials to increase coastal resilience and adapt to sea level rise.¹⁵⁹ DEP provides exemptions from environmental resource permitting for small-scale shoreline stabilization projects, including living shorelines projects.¹⁶⁰

Coastal resilience in Florida is being addressed by several state agencies other than DEP utilizing a number of strategies:

- The Department of Transportation (FDOT) prepares Florida's transportation system for potential hazards by creating and updating a long-range resilience plan that provides policy guidance for all transportation partners and establishes a framework for expenditure of state and federal funding.¹⁶¹ Additionally, FDOT has developed a resilience action plan for the State Highway System.¹⁶²
- The Department of Commerce works with DEP on the Community Resiliency Initiative, assisting communities with adaptation planning.¹⁶³
- The Fish and Wildlife Conservation Commission works as Florida's lead agency on addressing the impacts of climate change on fish and wildlife, including adaptation strategies for Florida's coastal ecosystems.¹⁶⁴
- The Division of Emergency Management maintains a statewide emergency management program, which administers federal mitigation grant programs, and serves as Florida's state coordinating agency for the National Flood Insurance Program.¹⁶⁵

Regional Programs

The WMDs address flood protection as a core part of their respective missions, and many of their activities are related to resilience efforts. For example, the St. Johns River WMD provides resources and cost-sharing to increase community resilience,¹⁶⁶ and the South Florida WMD is implementing comprehensive plans for addressing sea level rise, including a flood protection level of service program, incorporating sea level rise projections into planning, conducting vulnerability assessments, and assisting local governments.¹⁶⁷

¹⁵⁷ R. Ch. 62S-4, F.A.C.

¹⁵⁸ Ss. 161.053 and 161.085, F.S.; rr. 62B-33.0051, 62B-34.010(4), and 62B-41.002(4), F.A.C.

¹⁵⁹ Bilkovic et. al., *Living Shorelines: The Science and Management of Nature-Based Coastal Protection*, Taylor & Francis Group, 11-25 (2017); Florida Living Shorelines, *Home*, <http://floridalivingshorelines.com/> (last visited Jan. 8, 2024).

¹⁶⁰ R. 62-330.051(12)(e), F.A.C.

¹⁶¹ FDOT, *Florida Transportation Plan (FTP): Resilience*, <http://www.floridatransportationplan.com/resilience.htm> (last visited Jan. 8, 2024); FDOT, *What is the Florida Transportation Plan?*, <http://floridatransportationplan.com/policyelement2020.pdf> (last visited Jan. 8, 2024).

¹⁶² S. 339.157, F.S.; FDOT, Resilience Action Plan State Highway System (June 2023),

https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/planning/policy/resilience/report_fdot_resilienceactionplan_final-main.pdf?sfvrsn=3a61b390_2 (last visited Jan. 8, 2024).

¹⁶³ Florida Commerce, *Adaptation Planning – Planning for Coastal Flooding and Sea Level Rise*, <https://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/adaptation-planning> (last visited Jan. 8, 2024).

¹⁶⁴ Fish and Wildlife Conservation Commission (FWC), *What FWC is Doing*, <https://myfwc.com/conservation/special-initiatives/climate-change/fwc/> (last visited Jan. 8, 2024); FWC, *A Guide to Climate Change Adaptation for Conservation*, 6-81–6-108, 9-35–9-51 (2016), <https://myfwc.com/media/5864/adaptation-guide.pdf> (last visited Jan. 8, 2024).

¹⁶⁵ DEM, *Mitigation*, <https://www.floridadisaster.org/dem/mitigation/> (last visited Jan. 8, 2024); DEM, *State Flood Plain Management Program*, <https://www.floridadisaster.org/dem/mitigation/floodplain/> (last visited Jan. 8, 2024).

¹⁶⁶ St. John's River WMD, *Sea-Level Rise*, <https://www.sjrwm.com/localgovernments/sea-level-rise/#projects> (last visited Jan. 8, 2024).

¹⁶⁷ South Florida WMD, *Resiliency and Flood Protection*, <https://www.sfwmd.gov/our-work/resiliency-and-flood-protection> (last visited Jan. 8, 2024).

In 2010, through a proactive regional collaboration to address climate change, four counties - Broward, Miami-Dade, Monroe, and Palm Beach - signed on to the Southeast Florida Regional Climate Change Compact (Compact).¹⁶⁸ The Compact has developed a regional climate action plan as well as a Unified Sea Level Rise Projection.¹⁶⁹ One of the many recommendations in the regional plan is for local governments in the region to incorporate resilience and sustainability objectives, inclusive of the Regionally Unified Sea Level Rise Projections in city, county and regional agency comprehensive plans, transportation and other infrastructure plans and capital improvement plans.¹⁷⁰

Local Governments

Florida law requires local governments located in coastal areas to include a coastal management element in their comprehensive plans.¹⁷¹ In 2015, the Legislature passed Senate Bill 1094, known as the “peril of flood law,” which required local governments to include a redevelopment component in the coastal management element of their comprehensive plans.¹⁷² The redevelopment component must:

- Include development and redevelopment principles, strategies, and engineering solutions that reduce the flood risk in coastal areas resulting from high-tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea level rise.
- Encourage the use of best practices development and redevelopment principles, strategies, and engineering solutions that will result in the removal of coastal real property from flood zone designations established by the Federal Emergency Management Agency (FEMA).
- Identify site development techniques and best practices that may reduce losses due to flooding and claims made under flood insurance policies issued in the state.
- Be consistent with, or more stringent than, the flood-resistant construction requirements in the Florida Building Code and applicable federal flood plain management regulations.
- Require that any construction activities seaward of the coastal construction control line be consistent with chapter 161, F.S., which regulates coastal construction.
- Encourage local governments to participate in the National Flood Insurance Program Community Rating System administered by FEMA to achieve flood insurance premium discounts for their residents.¹⁷³

Additionally, Florida’s Community Planning Act authorizes local governments to establish an “adaptation action area” designation in their comprehensive plans for low-lying coastal zones that are experiencing coastal flooding and are vulnerable to the impacts of sea level rise.¹⁷⁴ This enables local governments to develop policies and funding priorities that improve coastal resilience and to plan for sea level rise.

Resilient Florida Legislation

In 2021, the Legislature passed SB 1954,¹⁷⁵ which established several new programs and initiatives aimed at addressing the impacts of flooding and sea level rise on the state. To assist local governments in resilience planning, the Legislature created the Resilient Florida Grant Program, which authorized DEP to provide grants to cities or counties to fund the costs of community resilience planning and necessary data collection for such planning. Upon completion of a vulnerability assessment, the city or county must submit to DEP a report detailing the findings of the assessment, all electronic mapping data used to illustrate the sea level rise impacts identified in the vulnerability

¹⁶⁸ Regional Climate Leadership Summit, *SFRCCC* (2010), <http://southeastfloridaclimatecompact.org/wp-content/uploads/2014/09/compact.pdf> (last visited Jan. 8, 2024); SFRCCC, *What is the Compact?*, <http://southeastfloridaclimatecompact.org/about-us/what-is-the-compact/> (last visited Jan. 8, 2024).

¹⁶⁹ SFRCCC, *Regional Climate Action Plan 3.0* (Nov. 2022), https://southeastfloridaclimatecompact.org/wp-content/uploads/2023/10/SEFL_RCAP3_Final.1.pdf (last visited Jan. 8, 2024); SFRCCC, *Unified Sea Level Rise Projection, Southeast Florida* (2015), 5, 11, 13, 33, <http://www.southeastfloridaclimatecompact.org/wp-content/uploads/2015/10/2015-Compact-Unified-Sea-Level-Rise-Projection.pdf> (last visited Jan. 8, 2024).

¹⁷⁰ SFRCCC, *Regional Climate Action Plan 3.0* (November 2022), 89, https://southeastfloridaclimatecompact.org/wp-content/uploads/2023/10/SEFL_RCAP3_Final.1.pdf (last visited Jan. 8, 2024).

¹⁷¹ Ss. 380.24 and 163.3177(6)(g), F.S.

¹⁷² Ch. 2015-69, Laws of Fla.

¹⁷³ S. 163.3178(2)(f), F.S.

¹⁷⁴ Ss. 163.3177(6)(g), 163.3177(10) and 163.3164(1), F.S.; ch. 2011-139, Laws of Fla.

¹⁷⁵ Ch. 2021-28, Laws of Fla.

assessment, and a list of critical assets,¹⁷⁶ including regionally significant assets, that are impacted by sea level rise.¹⁷⁷

In an effort to begin developing a coordinated statewide approach to addressing risks to the state,¹⁷⁸ SB 1954 required DEP, by July 1, 2022, to complete the development of a comprehensive flood vulnerability and sea level rise data set.¹⁷⁹ In addition, DEP must, by July 1, 2023, use the data set to complete a comprehensive statewide flood vulnerability and sea level rise assessment that identified inland and coastal infrastructure, geographic areas, and communities that are vulnerable to flooding and sea level rise and the associated risks.¹⁸⁰

SB 1954 also directed DEP to annually develop a three-year Statewide Flooding and Sea Level Rise Resilience Plan and submit it to the Legislature, which must review and approve funding for the plan, subject to appropriation.¹⁸¹ The plan must consist of ranked projects that address risks of flooding and sea level rise to coastal and inland communities.¹⁸² DEP is required to implement a scoring system for assessing each project submitted for inclusion in the plan, and each project must have a minimum 50 percent cost-share, with certain exceptions.¹⁸³ The bill specified that the first two annual plans (which were required to be submitted before DEP was required to complete development of the comprehensive statewide vulnerability assessment) must be preliminary plans that address risks identified in local government vulnerability assessments.¹⁸⁴ The first plan was submitted to the Legislature in December 2021 and proposed funding for projects beginning in Fiscal Year 2022-23.¹⁸⁵ DEP provided a list categorizing those projects by county.¹⁸⁶ DEP publishes the Statewide Resilience Plan on its website each December.¹⁸⁷

Finally, SB 1954 created the Florida Flood Hub for Applied Research and Innovation (Florida Flood Hub) within the University of South Florida College of Marine Science¹⁸⁸ to organize existing data needs, establish community-based programs to improve flood monitoring, and develop opportunities to partner with other flood and sea level rise research and innovation leaders.¹⁸⁹

Building off of SB 1954, the Legislature passed HB 7053¹⁹⁰ in 2022. HB 7053 codified the Statewide Office of Resilience and moved it within the Executive Office of the Governor, which is headed by the Chief Resilience Officer, who is appointed by the Governor.¹⁹¹ Additionally, HB 7053 authorized DEP to provide grants to cities or counties to fund preconstruction activities¹⁹² for projects to then be submitted for inclusion in the Statewide Flooding and Sea Level Rise Resilience Plan that are located in

¹⁷⁶ S. 380.93(2)(a), F.S.

¹⁷⁷ S. 380.93(3)(c), F.S.

¹⁷⁸ S. 380.93(1)(c), F.S.

¹⁷⁹ S. 380.93(4)(a), F.S.

¹⁸⁰ S. 380.93(4)(b), F.S.

¹⁸¹ S. 380.93(5)(a), F.S.

¹⁸² *Id.*

¹⁸³ S. 380.93(5)(e), F.S.

¹⁸⁴ S. 380.93(5)(b), F.S.

¹⁸⁵ Governor Ron DeSantis, *News Releases: Governor Ron DeSantis Announces First Ever Statewide Flooding Resilience Plan* (Dec. 8, 2021), <https://www.flgov.com/2021/12/08/governor-ron-desantis-announces-first-ever-statewide-flooding-resilience-plan/> (last visited Jan. 8, 2024).

¹⁸⁶ DEP, *Protecting Florida Together: 2022-23 Statewide Flooding and Sea Level Rise Resilience Plan*, <https://protectingfloridatogether.gov/sites/default/files/documents/RF%20statewide%20plan%20PFT%5B2%5D.pdf> (last visited Jan. 8, 2024).

¹⁸⁷ The fiscal year 2024-2025 Statewide Resilience Plan is the most up to date plan, published in December 2023. DEP, *Statewide Resilience Plan 2024-2025*, <https://floridadep.gov/sites/default/files/2024-2025%20Statewide%20Resilience%20Plan-FINAL.pdf> (last visited Jan. 9, 2024).

¹⁸⁸ S. 380.0933, F.S.

¹⁸⁹ S. 380.0933(2), F.S.

¹⁹⁰ Ch. 2022-89, Laws of Fla.

¹⁹¹ S. 14.2031, F.S.

¹⁹² “‘Preconstruction activities’ means activities associated with a project that occur before construction begins, including, but not limited to, design of the project, permitting for the project, surveys and data collection, site development, solicitation, public hearings, local code or comprehensive plan amendments, establishing local funding sources, and easement acquisition.” S. 380.093(2)(c), F.S.

a city that has a population of 10,000 or fewer or a county that has a population of 50,000 or fewer according to the most recent April 1 population estimates posted on the Office of Economic & Demographic Research's website.¹⁹³

With respect to the Statewide Flooding and Sea Level Rise Resilience Plan, HB 7053 required DEP to rank and include in the plan all eligible projects that were submitted for the plan and to include a detailed narrative overview describing how the plan was developed.¹⁹⁴ In addition, HB 7053 specified that the plan submitted in 2023 must be an update to the preliminary plan submitted in 2021 and clarified that the preliminary plan and updates to the preliminary plan submitted in 2021, 2022, and 2023 may include projects submitted by WMDs that mitigate the risks of flooding or sea level rise on water supplies or water resources of the state.¹⁹⁵ HB 7053 also authorized drainage districts, erosion control districts, regional water supply authorities, and certain special districts to submit proposed projects for the plan under certain circumstances.¹⁹⁶

HB 7053 also required the Florida Flood Hub to provide tidal and storm surge flooding data to cities and counties for vulnerability assessments that are conducted pursuant to the grant program.¹⁹⁷

In 2023, the Legislature continued to expand on the Resilient Florida Grant Program by authorizing counties and municipalities to use Resilient Florida Grant Program funds for feasibility studies and permitting costs for nature-based solutions that reduce the impact of flooding and sea level rise.¹⁹⁸ The 2023 legislation also authorized WMDs to use Resilient Florida Grant funds to support local government adaptation planning.¹⁹⁹

Flood Insurance

FEMA administers the National Flood Insurance Program (NFIP), which was created to offer federally subsidized flood insurance to property owners and to encourage land use controls in floodplains.²⁰⁰ The NFIP makes flood insurance available to communities that adopt and enforce a floodplain management ordinance to reduce future flood risk to new construction in floodplains.²⁰¹ Communities eligible to participate in the NFIP Community Rating System receive discounts on flood insurance premiums.²⁰²

An important aspect of the NFIP are the flood maps that FEMA creates to support the program.²⁰³ A Flood Insurance Rate Map is an official map of a community on which FEMA has delineated both the special hazard areas and the risk premium zones applicable to the community.²⁰⁴ These maps have many applications relevant to resilience planning, including communicating base flood elevations and flood risk, establishing special flood hazard areas where flood insurance is required, and setting local floodplain and building standards.²⁰⁵

To demonstrate the elevation of property which has been developed pursuant to FEMA floodplain management regulations, a surveyor and mapper completes an elevation certificate.²⁰⁶ Surveyors and

¹⁹³ S. 380.093(3)(b)1.d., F.S.

¹⁹⁴ S. 380.093(5), F.S.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ S. 380.0933(3), F.S.

¹⁹⁸ Ch. 2023-231, Laws of Fla.

¹⁹⁹ *Id.*

²⁰⁰ 42 U.S.C. § 4001 *et seq.*; 44 C.F.R. Ch. I, Subchap. B.; FEMA, *Flood Insurance*, <https://www.fema.gov/national-flood-insurance-program> (last visited Jan. 8, 2024).

²⁰¹ FEMA, *Flood Insurance*, <https://www.fema.gov/national-flood-insurance-program> (last visited Jan. 8, 2024).

²⁰² FEMA, *National Flood Insurance Program Community Rating System*, <https://www.fema.gov/floodplain-management/community-rating-system> (last visited Jan. 8, 2024).

²⁰³ FEMA, *FEMA Flood Map Service Center: Welcome!*, <https://msc.fema.gov/portal/home> (last visited Jan. 8, 2024).

²⁰⁴ 44 C.F.R. § 59.1.

²⁰⁵ FEMA, *Flood Maps*, available at https://www.fema.gov/media-library-data/1516468489259-8eb4bfef27ab35159b2f140a29226e809/What_Goes_Into_a_Flood_Map.pdf (last visited Jan. 8, 2024); SHMP at 102-103; DEP Guidebook at 40-41.

²⁰⁶ S. 472.0366(1)(a), F.S.

mappers must, within 30 days after completion, submit to the Division of Emergency Management a copy of each elevation certificate that they complete.²⁰⁷ The copy must be unaltered, except that the surveyor and mapper may redact the name of the property owner.²⁰⁸

Office of Economic and Demographic Research

The Office of Economic and Demographic Research (EDR) is a research arm of the Legislature which forecasts economic and social trends that affect revenues, policy making, and appropriations.²⁰⁹ EDR is required to conduct an annual assessment of Florida's water resources and conservation lands²¹⁰ and submit the assessment to the President of the Senate and the Speaker of the House of Representatives each year.²¹¹

Each county, municipality, or special district (collectively "providers") that provides wastewater or stormwater services is required to create a 20-year needs analysis.²¹² Beginning June 30, 2022, and every 5 years thereafter, providers must submit their respective needs analysis "to the county within which the largest portion of its service area is located."²¹³ Each county must compile the analyses into a single document, include its own analysis in the document, and submit the document to EDR no later than July 31, 2022, and every 5 years thereafter.²¹⁴ EDR then evaluates the submissions and develops a statewide needs analysis, which must be included in EDR's annual assessment of Florida's water resources and conservation lands.²¹⁵

Effect of the Bill

Aquatic Preserves

The bill designates the Kristin Jacobs Coral Reef Ecosystem Conservation Area as an aquatic preserve.

Reuse of Reclaimed Water

The bill requires each of the state's five WMDs, in coordination with DEP, to develop rules by December 31, 2025, that promote the reuse of reclaimed water and encourage potable water offsets that produce significant water savings beyond those required in a CUP. The rules must provide all of the following:

- If an applicant for a CUP proposes a water supply development or water resource development project using reclaimed water as part of their application, then the applicant is eligible for a permit duration of up to 30 years if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit.
- Authorization for a CUP permittee to seek a permit extension of up to 10 years if the permittee proposes a water supply development or water resource development project using reclaimed water during the term of its permit which results in the reduction of groundwater or surface water withdrawals or is completed to benefit a waterbody with a MFL with a recovery or prevention strategy.

Resilient Florida Grant Program

The bill defines and redefines terms and expands the types of projects undertaken by municipalities and counties that may be awarded funding by the program to include:

²⁰⁷ S. 472.0366(2), F.S.

²⁰⁸ *Id.*

²⁰⁹ EDR, *About Us* (last updated Oct. 25, 2001),

<http://edr.state.fl.us/Content/about/index.cfm#:~:text=The%20Office%20of%20Economic%20and%20Demographic%20Research%20%28EDR%29,trends%20that%20affect%20policy%20making%2C%20revenues%2C%20and%20appropriations.> (last visited Dec. 27, 2023).

²¹⁰ S. 403.928, F.S.

²¹¹ S. 403.928(6), F.S.

²¹² Ss. 403.9301 and 403.9302, F.S.

²¹³ Ss. 403.9301(3)-(4) and 403.9302(3)-(4), F.S.

²¹⁴ Ss. 403.9301(4)

²¹⁵ S. 403.9301(5), F.S.

- Updates to the county's or municipality's inventory of critical assets, including regionally significant assets that are currently or reasonably expected to be impacted by flooding and sea level rise. Requires the updated inventory, at the time of submission to DEP, to reflect all such assets that are currently, or within 50 years may reasonably be expected to be, impacted by flooding and sea level rise.
- The development of strategies, as well as the development of projects, plans, and policies, that enhance community preparations for threats from flooding and sea level rise, and includes adaptation plans that help local governments prioritize project development and implementation across one or more jurisdictions in a manner consistent with DEP guidance.

The bill requires that municipalities and counties eligible for funding by the program for preconstruction activities for projects which are then submitted for inclusion in the Statewide Flooding and Sea Level Rise Resilience Plan also have a per capita annual income that is less than the state's per capita annual income.

The bill clarifies the date each year by which entities eligible to submit to DEP a list of proposed projects that address risks of flooding or sea level rise must do so. The bill allows such entities, for plans submitted by December 1, 2024, to submit projects identified in existing vulnerability assessments that do not comply with certain requirements if the existing vulnerability assessment was completed utilizing previously compliant statutory requirements, and clarifies that projects identified from this category of vulnerability assessments will be eligible for submittal until the prior vulnerability assessment has been updated to meet current statutory requirements.

The bill expands the information that must be submitted to DEP when vulnerability assessments are funded by the program as well as requirements for conducting vulnerability assessments funded under the program, including:

- Upon completion of vulnerability assessments funded by the program, local governments, in addition to providing information regarding critical assets, must include assets that are within 50 years reasonably expected to be impacted by flooding and sea level rise.
- Vulnerability assessments must make use of the best available information through the Florida Flood Hub as certified by the Chief Science Officer²¹⁶ in consultation with the Chief Resilience Officer.

The bill requires DEP to:

- Develop and maintain (not just complete) a comprehensive statewide flood vulnerability and sea level rise data set;
- Coordinate with the Chief Resilience Officer as well as the Florida Flood Hub in developing and maintaining the sea level rise data set;
- Coordinate with the Chief Resilience Officer and the Florida Flood Hub in completing a comprehensive statewide flood vulnerability and sea level rise assessment that identifies inland and coastal infrastructure, geographic areas, and communities in Florida which are vulnerable to flooding and sea level rise and the associated risks;
- Coordinate with the Chief Resilience Officer and the Florida Flood Hub in updating the comprehensive statewide flood vulnerability and sea level rise data set with the best available information each year and update the assessment at least every 5 years.

The bill requires the Chief Science Officer to coordinate with the Chief Resilience Officer and the Florida Flood Hub when developing statewide sea level rise projections.

²¹⁶ “Immediately upon taking office in 2019, Governor DeSantis announced major water policy reforms for the state by signing Executive Order 19-12 (Achieving More Now for Florida’s Environment). Among many other initiatives, the executive order called for the appointment of a C[hief] S[cience] O[fficer] to coordinate and prioritize scientific data, research, monitoring and analysis needs to ensure alignment with current and emerging environmental concerns most pressing to Floridians.” Governor Ron DeSantis, *News Releases: Governor Ron DeSantis Appoints Dr. Mark Rains as Florida’s Next Chief Science Officer* (Mar. 30, 2021), <https://www.flgov.com/2021/03/30/governor-ron-desantis-appoints-dr-mark-rains-as-floridas-next-chief-science-officer/> (last visited Jan. 16, 2024)

Regarding the Statewide Flooding and Sea Level Rise Resilience Plan, the bill:

- Allows DEP, in consultation with the Chief Resilience Officer, to include projects which address risks of flooding and sea level rise to critical assets not yet identified in the comprehensive statewide flood vulnerability and sea level rise assessment.
- Allows regional resilience entities acting on behalf of one or more member counties or municipalities to submit plans and provides restrictions on the submittal of such plans.
- Expands the types of communities that are not required to provide a 50 percent cost share for projects included in the plan to include cities and counties that have a per capita annual income that is 75 percent less than the state's per capita annual income.
- Clarifies the date each year by which DEP must develop and submit to the plan to the Legislature and the Governor.

The bill removes the requirement that DEP initiate certain rulemaking by August 1, 2021, and simply requires DEP to engage in rulemaking.

The bill clarifies that regional planning councils and estuary partnerships whose responsibilities include planning for the resilience needs of communities and coordinating intergovernmental solutions to mitigate adverse impacts of flooding and sea level rise are eligible for funding.

Onsite Sewage Program

The bill clarifies that the Legislature intends that the transfer of the regulation of the Onsite Sewage Program from DOH to DEP be completed in a phased approach.

The bill requires that before the phased transfer, DEP must coordinate with DOH to identify equipment and vehicles that were previously used to carry out the program in each county and that are no longer needed for such purpose and further requires DOH to transfer the agreed-upon equipment and vehicles to DEP to the extent that each county agrees to relinquish ownership of such equipment and vehicles to DOH.

The bill prohibits DOH, once DEP has begun implementing the program within a county, from implementing or collecting fees for the program unless specified by separate delegation or contract with DEP.

Onsite Sewage Treatment and Disposal Systems

The bill clarifies that all references to part I of chapter 386 in s. 381.0065, F.S., onsite sewage treatment and disposal systems, relate solely to nuisances involving improperly built or maintained OSTDSs and untreated or improperly treated or transported waste from OSTDSs.

The bill provides that DEP:

- Has all of the duties and authorities of DOH in part I of chapter 386 for nuisances involving OSTDSs, and declares that DEP's authority under part I of chapter 386 is in addition to and may be pursued independently of or simultaneously with certain other enforcement remedies.
- Has all of the judicial and administrative remedies available to it pursuant to the Florida Air and Water Pollution Control Act and removes provisions regarding the ability of DEP to issue citations and how it may issue citations.
- Has certain judicial and administrative remedies available to it for violations of laws and rules governing OSTDSs.

The bill requires DEP to:

- Adopt rules establishing and implementing a program of general permits for OSTDSs for projects, or categories of projects, which have, individually or cumulatively, a minimal adverse impact on public health or the environment, and provides certain matters which must be addressed in the rules.
- Deposit certain damages, costs or penalties it collects in the Water Quality Assurance Trust Fund, and deposit certain funds it collects in the Florida Permit Fee Trust Fund.
- Establish an enhanced nutrient-reducing OSTDS approval program that will expeditiously evaluate and approve such systems for use in this state.

- Assess a penalty of \$2,000 for failure to obtain an OSTDS permit or comply with certain laws and rules governing OSTDSs, and specifies that each day the cause of a sanitary nuisance is not addressed constitutes a separate offense.

The bill authorizes DEP to:

- Contract with or delegate certain of its powers and duties to a county.
- Upon proper affidavit being made, issue an inspection warrant:
 - When it appears that the properties to be inspected may be connected with or contain evidence of the violation of laws, rules and standards governing OSTDSs; or
 - When the inspection sought is an integral part of a larger scheme of systematic routine inspections which are necessary to, and consistent with, the continuing efforts of DEP to ensure compliance with laws, rules and standards governing OSTDSs.

Reuse of Reclaimed Water

The bill requires:

- All applicants for permits to construct or operate a domestic wastewater treatment facility, not just applicants located within, serving a population located within, or discharging within a water resource caution area, to prepare a reuse feasibility study as part of their application for the permit.
- A domestic wastewater treatment facility, after preparing the reuse feasibility study, to implement reuse to the degree that reuse is feasible, with consideration given to direct ecological or public water supply benefits afforded by any disposal of effluent.

BMAPs and TMDLs

A BMAP for a nutrient TMDL must also include a wastewater treatment plan that addresses domestic wastewater if DEP identifies domestic wastewater treatment facilities or OSTDSs as contributors of at least 20 percent of point source or nonpoint source nutrient pollution or if DEP determines remediation is necessary to achieve the TMDL. The bill requires private domestic wastewater facilities and special districts providing domestic wastewater services to provide the required wastewater facility information to the applicable local governments.

The bill requires, by July 1, 2034, within a BMAP or a RAP area, any wastewater treatment facility providing reclaimed water that will be used for commercial or residential irrigation or be otherwise land applied to meet the standards for advanced waste treatment set forth in s. 403.086(4), F.S., as approved by DEP, or a more stringent treatment standard if DEP determines the more stringent standard is necessary to achieve the TMDL or applicable water quality criteria.

Cooperation by Counties

The bill requires counties to make scientific, technical, research, administrative, and operational services and facilities available to DEP by interagency agreement, contract, or otherwise.

Transparency and Return on Investment of Water Programs and Projects

The bill requires the annual report submitted by DEP regarding WQIP to include a status report on each project funded since 2021 and requires the status report to, at a minimum, identify which projects have been completed and, if such information is available, provide information regarding nutrient-load improvements or water quality testing data for the waterbody.

The bill requires DEP, by July 1, 2025, to include projects funded by WQIP on a user-friendly website or dashboard. The website or dashboard must allow users to see the information required to be included in the annual report and the website or dashboard must be updated at least annually.

The bill requires EDR to provide a publicly-accessible data visualization tool on its website that allows for comparative analyses of key information contained in its statewide wastewater and stormwater needs analysis.

B. SECTION DIRECTORY:

- Section 1. Amends s. 253.04, F.S., relating to the duty of the Board of Trustees of the Internal Improvement Trust Fund to protect, etc., state lands; state may join in any action brought.
- Section 2. Amends s. 258.39, F.S., relating to boundaries of Aquatic Preserves.
- Section 3. Amends s. 373.250, F.S., relating to the reuse of reclaimed water.
- Section 4. Redesignates, creates, and amends provisions in s. 380.093, F.S., relating to the Resilient Florida Grant Program.
- Section 5. Amends s. 381.0061, F.S., relating to administrative fines.
- Section 6. Creates provisions relating to the Onsite Sewage Program.
- Section 7. Creates and amends provisions in s. 381.0065, F.S., relating to the regulation of onsite sewage and disposal systems; regulation.
- Section 8. Amends s. 381.0066, F.S., relating to onsite sewage and disposal systems; fees.
- Section 9. Amends s. 403.061, F.S., relating to the powers and duties of the Department of Environmental Protection.
- Section 10. Amends s. 403.064, F.S., relating to the reuse of reclaimed water.
- Section 11. Amends s. 403.067, F.S., relating to the establishment and implementation of total maximum daily loads.
- Section 12. Amends s. 403.0673, F.S., relating to the water quality improvement grant program.
- Section 13. Amends s. 403.086, F.S., relating to sewage disposal facilities; advanced and secondary waste treatment.
- Section 14. Amends s. 403.121, F.S., relating to enforcement by the Department of Environmental Protection.
- Section 15. Amends s. 403.0671, F.S., relating to basin management action plan wastewater reports.
- Section 16. Amends s. 403.0673, F.S., relating to the water quality improvement grant program.
- Section 17. Amends s. 403.9301, F.S., relating to wastewater services projections.
- Section 18. Amends s. 403.9302, F.S., relating to stormwater management projections.
- Section 19. Reenacts paragraph (x) of subsection (1) of s. 327.73, F.S., relating to noncriminal infractions.
- Section 20. Reenacts paragraph (a) of subsection (4) and paragraph (a) of subsection (6) of s. 381.0072, F.S., relating to food service protection.
- Section 21. Reenacts subsection (4) of s. 381.0086, F.S., relating to rules.
- Section 22. Reenacts subsection (7) of s. 381.0098, F.S., relating to biomedical waste.
- Section 23. Reenacts subsection (2) of s. 513.10, F.S., relating to operating without a permit.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill includes a number of provisions that may have a negative fiscal impact as follows:

- Maintain a comprehensive statewide flood vulnerability and sea level rise data set;
- Create a user-friendly website or dashboard for projects funded by WQIP; and
- Coordination with the Florida Flood Hub when developing statewide sea level rise projections.

The department has indicated the additional workload can be absorbed within existing resources²¹⁷.

The bill requires DEP to establish an enhanced nutrient-reducing onsite sewage treatment and disposal system approval program. The department included a request of 41 FTE and \$7.4 million in its Fiscal Year 2024-2025 Legislative Budget Request to support the onsite sewage treatment and disposal system approval program. This can be addressed in the budget process.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative impact on counties associated with requiring counties which apply for permits to construct or operate a domestic wastewater treatment facility to prepare a reuse feasibility study as part of their application for the permit and requiring counties, after preparing the reuse feasibility study, to implement reuse to the degree that reuse is feasible.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate positive fiscal impact on businesses which facilitate the preparation of reuse feasibility studies.

D. FISCAL COMMENTS:

The bill requires DEP and the governing boards of the WMDs to adopt rules that promote the reuse of reclaimed water and encourage potable water offsets that produce significant water savings beyond those required in a CUP, which may require those agencies to expend funds to promulgate rules.

The bill requires DEP to adopt rules establishing and implementing a program of general permits for OSTDSs for projects, or categories of projects, which have, individually or cumulatively, a minimal adverse impact on public health or the environment, which may require DEP to expend funds to promulgate rules.

However, such rulemaking provisions will have an insignificant negative fiscal impact on DEP and the WMDs and may be absorbed within existing resources.

²¹⁷ Based on phone call with the Department of Environmental Protection on January 30, 2024.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires each of the state's five WMDs, in coordination with DEP, to develop rules by December 31, 2025, that promote the reuse of reclaimed water and encourage potable water offsets that produce significant water savings beyond those required in a consumptive use permit.

The bill requires DEP to adopt rules establishing and implementing a program of general permits for OSTDSs for projects, or categories of projects, which have, individually or cumulatively, a minimal adverse impact on public health or the environment.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 24, 2024, the Water Quality, Supply & Treatment Subcommittee considered four amendments, which were adopted, and reported the bill favorably as a committee substitute.

Amendment 221333: The amendment adds a requirement that municipalities and counties eligible for funding from the Resilient Florida Grant Program for preconstruction activities for projects which are then submitted for inclusion in the Statewide Flooding and Sea Level Rise Resilience Plan also have a per capita annual income that is less than the state's per capita annual income.

The amendment expands the types of communities that are not required to provide a 50 percent cost share for projects included in the Statewide Flooding and Sea Level Rise Resilience Plan to include cities and counties that have a per capita annual income that is 75 percent less than the state's per capita annual income.

Amendment 720215: The amendment clarifies the date each year by which DEP must develop and submit to the Legislature and the Governor the Statewide Flooding and Sea Level Rise Resilience Plan.

The amendment clarifies the date each year by which entities eligible to submit to DEP a list of proposed projects that address risks of flooding or sea level rise must do so. The amendment allows such entities, for plans submitted by December 1, 2024, to submit projects identified in existing vulnerability assessments that do not comply with certain requirements if the existing vulnerability assessment was completed utilizing previously compliant statutory requirements, and clarifies that projects identified from this category of

vulnerability assessments will be eligible for submittal until the prior vulnerability assessment has been updated to meet current statutory requirements.

Amendment 202077: The amendment requires the annual report submitted by DEP regarding WQIP to include a status report on each project funded since 2021 and requires the status report to, at a minimum, identify which projects have been completed and, if such information is available, provide information regarding nutrient-load improvements or water quality testing data for the waterbody.

The amendment requires DEP, by July 1, 2025, to include projects funded by WQIP on a user-friendly website or dashboard. The website or dashboard must allow users to see the information required to be included in the annual report and the website or dashboard must be updated at least annually.

Amendment 975541: The amendment requires EDR to provide a publicly-accessible data visualization tool on its website that allows for comparative analyses of key information contained in its statewide wastewater and stormwater needs analysis.

The staff analysis has been updated to reflect the committee substitute as approved by the Water Quality, Supply & Treatment Subcommittee.

1 A bill to be entitled
2 An act relating to the Department of Environmental
3 Protection; amending s. 253.04, F.S.; revising the
4 aquatic preserves within which a person may not
5 operate a vessel outside a lawfully marked channel
6 under certain circumstances; amending s. 258.39, F.S.;
7 declaring the Kristin Jacobs Coral Reef Ecosystem
8 Conservation Area an aquatic preserve area; amending
9 s. 373.250, F.S.; requiring each water management
10 district, in coordination with the department, to
11 develop rules that promote the use of reclaimed water
12 and encourage potable water offsets; providing
13 requirements for such rules; providing construction;
14 amending s. 380.093, F.S.; defining the term "Florida
15 Flood Hub"; revising the definition of the term
16 "preconstruction activities"; revising the purposes
17 for which counties and municipalities may use
18 Resilient Florida Grant Program funds; providing that
19 only certain communities are eligible for
20 preconstruction activities; revising vulnerability
21 assessment requirements; revising requirements for the
22 development and maintenance of the comprehensive
23 statewide flood vulnerability and sea level rise data
24 set and assessment; requiring the department to
25 coordinate with the Chief Resilience Officer and the

26 Florida Flood Hub to update the data set and
27 assessment at specified intervals; revising
28 requirements for the Statewide Flooding and Sea Level
29 Rise Resilience Plan; revising the purposes of the
30 funding for regional resilience entities; replacing
31 the term "financially disadvantaged small community"
32 with the term "community eligible for a reduced cost
33 share"; revising the definition of such term; making
34 technical changes; amending s. 381.0061, F.S.;
35 revising the violations for which the department may
36 impose a specified fine; providing legislative intent
37 regarding a phased transfer of the Department of
38 Health's Onsite Sewage Program to the Department of
39 Environmental Protection; requiring the Department of
40 Environmental Protection to coordinate with the
41 Department of Health regarding the identification and
42 transfer of certain equipment and vehicles under
43 certain circumstances; prohibiting the Department of
44 Health from implementing or collecting fees for the
45 program when the Department of Environmental
46 Protection begins implementing the program; providing
47 exceptions; amending s. 381.0065, F.S.; requiring the
48 Department of Environmental Protection to conduct
49 enforcement activities for violations of certain
50 onsite sewage treatment and disposal system

51 regulations in accordance with specified provisions;
52 specifying the department's authority with respect to
53 specific provisions; requiring the department to adopt
54 rules for a program for general permits for certain
55 projects; providing requirements for such rules;
56 revising department enforcement provisions; deleting
57 certain criminal penalties; requiring the damages,
58 costs, or penalties collected to be deposited into the
59 Water Quality Assurance Trust Fund rather than the
60 relevant county health department trust fund;
61 requiring the department to establish an enhanced
62 nutrient-reducing onsite sewage treatment and disposal
63 system approval program; authorizing the department to
64 contract with or delegate certain powers and duties to
65 a county; amending s. 381.0066, F.S.; requiring
66 certain fees to be deposited into the Florida Permit
67 Fee Trust Fund after a specified timeframe; amending
68 s. 403.061, F.S.; requiring counties to make certain
69 services and facilities available upon the direction
70 of the department; amending s. 403.064, F.S.; revising
71 legislative findings; revising the domestic wastewater
72 treatment facilities required to submit a reuse
73 feasibility study as part of a permit application;
74 revising the contents of a required reuse feasibility
75 study; revising the domestic wastewater facilities

76 required to implement reuse under certain
77 circumstances; revising applicability; revising
78 construction; amending s. 403.067, F.S.; requiring
79 certain facilities and systems to include a domestic
80 wastewater treatment plan as part of a basin
81 management action plan for nutrient total maximum
82 daily loads; amending s. 403.0673, F.S.; requiring the
83 department to include specified information in the
84 water quality improvement grant program annual report
85 and to include projects funded by the grant program on
86 a user friendly website or dashboard by a specified
87 date; providing requirements for the website or
88 dashboard; amending s. 403.086, F.S.; requiring
89 wastewater treatment facilities within a basin
90 management action plan or reasonable assurance plan
91 area which provide reclaimed water for specified
92 purposes to meet advanced waste treatment or a more
93 stringent treatment standard under certain
94 circumstances; amending s. 403.121, F.S.; revising
95 department enforcement provisions; revising
96 administrative penalty calculations for failure to
97 obtain certain required permits and for certain
98 violations; amending ss. 403.0671 and 403.0673, F.S.;
99 conforming provisions to changes made by the act;
100 amending ss. 403.9301 and 403.9302, F.S.; requiring

101 the Office of Economic and Demographic Research to
 102 provide a specified publicly accessible data
 103 visualization tool on its website; reenacting s.
 104 327.73(1)(x), F.S., relating to noncriminal
 105 infractions, to incorporate the amendment made to s.
 106 253.04, F.S., in a reference thereto; reenacting ss.
 107 381.0072(4)(a) and (6)(a), 381.0086(4), 381.0098(7),
 108 and 513.10(2), F.S., relating to food service
 109 protection, penalties, biomedical waste, and operating
 110 without a permit, respectively, to incorporate the
 111 amendment made to s. 381.0061, F.S., in references
 112 thereto; providing an effective date.

113

114 Be It Enacted by the Legislature of the State of Florida:

115

116 Section 1. Paragraph (a) of subsection (3) of section
 117 253.04, Florida Statutes, is amended to read:

118 253.04 Duty of board to protect, etc., state lands; state
 119 may join in any action brought.—

120 (3)(a) The duty to conserve and improve state-owned lands
 121 and the products thereof includes ~~shall include~~ the preservation
 122 and regeneration of seagrass, which is deemed essential to the
 123 oceans, gulfs, estuaries, and shorelines of the state. A person
 124 operating a vessel outside a lawfully marked channel in a
 125 careless manner that causes seagrass scarring within an aquatic

126 | preserve established in ss. 258.39-258.3991 ~~ss. 258.39-258.399~~,
 127 | with the exception of the Lake Jackson, Oklawaha River, Wekiva
 128 | River, and Rainbow Springs aquatic preserves, commits a
 129 | noncriminal infraction, punishable as provided in s. 327.73.
 130 | Each violation is a separate offense. As used in this
 131 | subsection, the term:

132 | 1. "Seagrass" means Cuban shoal grass (*Halodule wrightii*),
 133 | turtle grass (*Thalassia testudinum*), manatee grass (*Syringodium*
 134 | *filiforme*), star grass (*Halophila engelmannii*), paddle grass
 135 | (*Halophila decipiens*), Johnson's seagrass (*Halophila johnsonii*),
 136 | or widgeon grass (*Ruppia maritima*).

137 | 2. "Seagrass scarring" means destruction of seagrass
 138 | roots, shoots, or stems that results in tracks on the substrate
 139 | commonly referred to as prop scars or propeller scars caused by
 140 | the operation of a motorized vessel in waters supporting
 141 | seagrasses.

142 | Section 2. Subsection (33) is added to section 258.39,
 143 | Florida Statutes, to read:

144 | 258.39 Boundaries of preserves.—The submerged lands
 145 | included within the boundaries of Nassau, Duval, St. Johns,
 146 | Flagler, Volusia, Brevard, Indian River, St. Lucie, Charlotte,
 147 | Pinellas, Martin, Palm Beach, Miami-Dade, Monroe, Collier, Lee,
 148 | Citrus, Franklin, Gulf, Bay, Okaloosa, Marion, Santa Rosa,
 149 | Hernando, and Escambia Counties, as hereinafter described, with
 150 | the exception of privately held submerged lands lying landward

151 of established bulkheads and of privately held submerged lands
 152 within Monroe County where the establishment of bulkhead lines
 153 is not required, are hereby declared to be aquatic preserves.

154 Such aquatic preserve areas include:

155 (33) Kristin Jacobs Coral Reef Ecosystem Conservation
 156 Area, as designated by chapter 2021-107, Laws of Florida, the
 157 boundaries of which consist of the sovereignty submerged lands
 158 and waters of the state offshore of Broward, Martin, Miami-Dade,
 159 and Palm Beach Counties from the St. Lucie Inlet to the northern
 160 boundary of the Biscayne National Park.

161
 162 Any and all submerged lands theretofore conveyed by the Trustees
 163 of the Internal Improvement Trust Fund and any and all uplands
 164 now in private ownership are specifically exempted from this
 165 dedication.

166 Section 3. Subsection (9) is added to section 373.250,
 167 Florida Statutes, to read:

168 373.250 Reuse of reclaimed water.—

169 (9) To promote the use of reclaimed water and encourage
 170 potable water offsets that produce significant water savings
 171 beyond those required in a consumptive use permit, each water
 172 management district, in coordination with the department, shall
 173 develop rules by December 31, 2025, which provide all of the
 174 following:

175 (a) If an applicant proposes a water supply development or

176 water resource development project using reclaimed water as part
177 of an application for consumptive use, the applicant is eligible
178 for a permit duration of up to 30 years if there is sufficient
179 data to provide reasonable assurance that the conditions for
180 permit issuance will be met for the duration of the permit.
181 Rules developed pursuant to this paragraph must include, at a
182 minimum:

183 1. A requirement that the permittee demonstrate how
184 quantifiable groundwater or surface water savings associated
185 with the new water supply development or water resource
186 development project helps meets water demands beyond a 20-year
187 permit duration or is completed to benefit a waterbody with a
188 minimum flow or minimum water level with a recovery or
189 prevention strategy; and

190 2. Guidelines for a district to follow in determining the
191 permit duration based on the project's implementation.

192
193 This paragraph does not limit the existing authority of a water
194 management district to issue a shorter duration permit to
195 protect from harm the water resources or ecology of the area, or
196 to otherwise ensure compliance with the conditions for permit
197 issuance.

198 (b) Authorization for a consumptive use permittee to seek
199 a permit extension of up to 10 years if the permittee proposes a
200 water supply development or water resource development project

201 using reclaimed water during the term of its permit which
202 results in the reduction of groundwater or surface water
203 withdrawals or is completed to benefit a waterbody with a
204 minimum flow or minimum water level with a recovery or
205 prevention strategy. Rules associated with this paragraph must
206 include, at a minimum:

207 1. A requirement that the permittee be in compliance with
208 the permittee's consumptive use permit;

209 2. A requirement that the permittee demonstrate how the
210 quantifiable groundwater or surface water savings associated
211 with the new water supply development or water resource
212 development project helps meet water demands beyond the issued
213 permit duration or benefits a waterbody with a minimum flow or
214 minimum water level with a recovery or prevention strategy;

215 3. A requirement that the permittee demonstrate a water
216 demand for the permit's allocation through the term of the
217 extension; and

218 4. Guidelines for a district to follow in determining the
219 number of years extended, including a minimum year requirement,
220 based on the project implementation.

221
222 This paragraph does not limit the existing authority of a water
223 management district to protect from harm the water resources or
224 ecology of the area, or to otherwise ensure compliance with the
225 conditions for permit issuance.

226 Section 4. Present paragraphs (c) and (d) of subsection
 227 (2) of section 380.093, Florida Statutes, are redesignated as
 228 paragraphs (d) and (e), respectively, a new paragraph (c) is
 229 added to that subsection, and present paragraph (c) of
 230 subsection (2), paragraphs (b), (c), and (d) of subsection (3),
 231 and subsections (4), (5), and (6) of that section are amended,
 232 to read:

233 380.093 Resilient Florida Grant Program; comprehensive
 234 statewide flood vulnerability and sea level rise data set and
 235 assessment; Statewide Flooding and Sea Level Rise Resilience
 236 Plan; regional resilience entities.—

237 (2) DEFINITIONS.—As used in this section, the term:

238 (c) "Florida Flood Hub" means the Florida Flood Hub for
 239 Applied Research and Innovation established pursuant to s.
 240 380.0933.

241 (d)~~(e)~~ "Preconstruction activities" means activities
 242 associated with a project that addresses the risks of flooding
 243 and sea level rise that occur before construction begins,
 244 including, but not limited to, design of the project, permitting
 245 for the project, surveys and data collection, site development,
 246 solicitation, public hearings, local code or comprehensive plan
 247 amendments, establishing local funding sources, and easement
 248 acquisition.

249 (3) RESILIENT FLORIDA GRANT PROGRAM.—

250 (b) Subject to appropriation, the department may provide

251 grants to each of the following entities:

252 1. A county or municipality to fund:

253 a. The costs of community resilience planning and

254 necessary data collection for such planning, including

255 comprehensive plan amendments and necessary corresponding

256 analyses that address the requirements of s. 163.3178(2)(f).

257 b. Vulnerability assessments that identify or address

258 risks of inland or coastal flooding and sea level rise.

259 c. Updates to the county's or municipality's inventory of

260 critical assets, including regionally significant assets that

261 are currently or reasonably expected to be impacted by flooding

262 and sea level rise. The updated inventory must be submitted to

263 the department and, at the time of submission, must reflect all

264 such assets that are currently, or within 50 years may

265 reasonably be expected to be, impacted by flooding and sea level

266 rise.

267 d. The development of projects, plans, strategies, and

268 policies that enhance community preparations ~~allow communities~~

269 ~~to prepare~~ for threats from flooding and sea level rise,

270 including adaptation plans that help local governments

271 prioritize project development and implementation across one or

272 more jurisdictions in a manner consistent with departmental

273 guidance.

274 ~~e.d.~~ Preconstruction activities for projects to be

275 submitted for inclusion in the Statewide Flooding and Sea Level

276 Rise Resilience Plan. Only communities eligible for a reduced
277 cost share as defined in paragraph (5) (e) are eligible for such
278 preconstruction activities ~~that are located in a municipality~~
279 ~~that has a population of 10,000 or fewer or a county that has a~~
280 ~~population of 50,000 or fewer, according to the most recent~~
281 ~~April 1 population estimates posted on the Office of Economic~~
282 ~~and Demographic Research's website.~~

283 f.e. Feasibility studies and ~~the cost of permitting~~ for
284 nature-based solutions that reduce the impact of flooding and
285 sea level rise.

286 g. The cost of permitting for projects designed to achieve
287 reductions in the risks or impacts of flooding and sea level
288 rise using nature-based solutions.

289 2. A water management district identified in s. 373.069 to
290 support local government adaptation planning, which may be
291 conducted by the water management district or by a third party
292 on behalf of the water management district. Such grants must be
293 used for the express purpose of supporting the Florida Flood Hub
294 ~~for Applied Research and Innovation~~ and the department in
295 implementing this section through data creation and collection,
296 modeling, and the implementation of statewide standards.
297 Priority must be given to filling critical data gaps identified
298 by the Florida Flood Hub ~~for Applied Research and Innovation~~
299 under s. 380.0933(2) (a).

300 (c) A vulnerability assessment conducted pursuant to

301 paragraph (b) must encompass the entire county or municipality;
302 include all critical assets owned or maintained by the grant
303 applicant; and use the most recent publicly available Digital
304 Elevation Model and generally accepted analysis and modeling
305 techniques. An assessment may encompass a smaller geographic
306 area or include only a portion of the critical assets owned or
307 maintained by the grant applicant with appropriate rationale and
308 upon approval by the department. Locally collected elevation
309 data may also be included as part of the assessment as long as
310 it is submitted to the department pursuant to this paragraph.

311 1. The assessment must include an analysis of the
312 vulnerability of and risks to critical assets, including
313 regionally significant assets, owned or managed by the county or
314 municipality.

315 2. Upon completion of a vulnerability assessment, the
316 county or municipality shall submit to the department all of the
317 following:

318 a. A report detailing the findings of the assessment.

319 b. All electronic mapping data used to illustrate flooding
320 and sea level rise impacts identified in the assessment. When
321 submitting such data, the county or municipality shall include:

322 (I) Geospatial data in an electronic file format suitable
323 for input to the department's mapping tool.

324 (II) Geographic information system (GIS) data that has
325 been projected into the appropriate Florida State Plane

326 Coordinate System and that is suitable for the department's
 327 mapping tool. The county or municipality must also submit
 328 metadata using standards prescribed by the department.

329 c. An inventory ~~A list~~ of critical assets, including
 330 regionally significant assets, that are currently, or within 50
 331 years are reasonably expected to be, impacted by flooding and
 332 sea level rise.

333 (d) A vulnerability assessment conducted pursuant to
 334 paragraph (b) must do ~~include~~ all of the following:

335 1. Include peril of flood comprehensive plan amendments
 336 that address the requirements of s. 163.3178(2) (f), if the
 337 county or municipality is subject to such requirements and has
 338 not complied with such requirements as determined by the
 339 Department of Commerce ~~Economic Opportunity~~.

340 2. Make use of the best available information through the
 341 Florida Flood Hub as certified by the Chief Science Officer, in
 342 consultation with the Chief Resilience Officer, including, as ~~if~~
 343 applicable, analyzing impacts related to the depth of:

344 a. Tidal flooding, including future high tide flooding,
 345 which must use thresholds published and provided by the
 346 department. To the extent practicable, the analysis should also
 347 geographically display the number of tidal flood days expected
 348 for each scenario and planning horizon.

349 b. Current and future storm surge flooding ~~using publicly~~
 350 ~~available National Oceanic and Atmospheric Administration or~~

351 ~~Federal Emergency Management Agency storm surge data.~~ The
352 initial storm surge event used must equal or exceed the current
353 100-year flood event. Higher frequency storm events may be
354 analyzed to understand the exposure of a critical asset or
355 regionally significant asset. Publicly available National
356 Oceanic and Atmospheric Administration (NOAA) or Federal
357 Emergency Management Agency storm surge data may be used in the
358 absence of applicable data from the Florida Flood Hub.

359 c. To the extent practicable, rainfall-induced flooding
360 using a GIS-based spatiotemporal analysis or existing hydrologic
361 and hydraulic modeling results. Future boundary conditions
362 should be modified to consider sea level rise and high tide
363 conditions. Vulnerability assessments for rainfall-induced
364 flooding must include the depth of rainfall-induced flooding for
365 a 100-year storm and a 500-year storm, as defined by the
366 applicable water management district or, if necessary, the
367 appropriate federal agency. Future rainfall conditions should be
368 used, if available. Noncoastal communities must perform a
369 rainfall-induced flooding assessment.

370 d. To the extent practicable, compound flooding or the
371 combination of tidal, storm surge, and rainfall-induced
372 flooding.

373 3. Apply the following scenarios and standards:

374 a. All analyses in the North American Vertical Datum of
375 1988.

376 b. For a vulnerability assessment initiated after July 1,
 377 2024, at a minimum ~~least two local sea level rise scenarios,~~
 378 ~~which must include the 2022 NOAA 2017 National Oceanic and~~
 379 ~~Atmospheric Administration intermediate-low and intermediate~~
 380 ~~intermediate-high sea level rise scenarios or the statewide sea~~
 381 level rise projections developed pursuant to paragraph (4) (a)
 382 projections.

383 c. At least two planning horizons identified in the
 384 following table which correspond with the appropriate
 385 comprehensive statewide flood vulnerability and sea level rise
 386 assessment for which the department, at the time of award,
 387 determines such local vulnerability assessment will be
 388 incorporated:

<u>Year of assessment</u>	<u>20-year planning horizon</u>	<u>50-year planning horizon</u>
<u>2024</u>	<u>2040</u>	<u>2070</u>
<u>2029</u>	<u>2050</u>	<u>2080</u>
<u>2034</u>	<u>2055</u>	<u>2085</u>
<u>2039</u>	<u>2060</u>	<u>2090</u>

418 Resilience Officer and the Florida Flood Hub ~~for Applied~~
 419 ~~Research and Innovation~~, compile, analyze, and incorporate, as
 420 appropriate, information related to vulnerability assessments
 421 and critical asset inventories submitted to the department
 422 pursuant to subsection (3) or any previously completed
 423 assessments that meet the requirements of subsection (3).

424 1. The Chief Science Officer shall, in coordination with
 425 the Chief Resilience Officer and the Florida Flood Hub ~~necessary~~
 426 ~~experts and resources~~, develop statewide sea level rise
 427 projections that incorporate temporal and spatial variability,
 428 to the extent practicable, for inclusion in the data set. This
 429 subparagraph does not supersede regionally adopted projections.

430 2. The data set must include information necessary to
 431 determine the risks to inland and coastal communities,
 432 including, but not limited to, elevation, tidal levels, and
 433 precipitation.

434 (b) ~~By July 1, 2024,~~ The department, in coordination with
 435 the Chief Resilience Officer and the Florida Flood Hub, shall
 436 complete a comprehensive statewide flood vulnerability and sea
 437 level rise assessment that identifies inland and coastal
 438 infrastructure, geographic areas, and communities in this ~~the~~
 439 state which ~~that~~ are vulnerable to flooding and sea level rise
 440 and the associated risks.

441 1. The department shall use the comprehensive statewide
 442 flood vulnerability and sea level rise data set to conduct the

443 assessment.

444 2. The assessment must incorporate local and regional
445 analyses of vulnerabilities and risks, including, as
446 appropriate, local mitigation strategies and postdisaster
447 redevelopment plans.

448 3. The assessment must include an inventory of critical
449 assets, including regionally significant assets, that are
450 essential for critical government and business functions,
451 national security, public health and safety, the economy, flood
452 and storm protection, water quality management, and wildlife
453 habitat management, and must identify and analyze the
454 vulnerability of and risks to such critical assets. When
455 identifying critical assets for inclusion in the assessment, the
456 department shall also take into consideration the critical
457 assets identified by local governments and submitted to the
458 department pursuant to subsection (3).

459 4. The assessment must include the 20-year and 50-year
460 projected sea level rise at each active NOAA tidal gauge off the
461 coast of this state as derived from the statewide sea level rise
462 projections developed pursuant to paragraph (a).

463 (c) The department, in coordination with the Chief
464 Resilience Officer and the Florida Flood Hub, shall update the
465 comprehensive statewide flood vulnerability and sea level rise
466 data set with the best available information each year and shall
467 update the assessment at least every 5 years. ~~The department may~~

468 ~~update the data set and assessment more frequently if it~~
469 ~~determines that updates are necessary to maintain the validity~~
470 ~~of the data set and assessment.~~

471 (5) STATEWIDE FLOODING AND SEA LEVEL RISE RESILIENCE
472 PLAN.—

473 (a) By December 1 of, 2021, and each year ~~December 1~~
474 ~~thereafter,~~ the department shall develop a Statewide Flooding
475 and Sea Level Rise Resilience Plan on a 3-year planning horizon
476 and submit it to the Governor, the President of the Senate, and
477 the Speaker of the House of Representatives. The plan must
478 consist of ranked projects that address risks of flooding and
479 sea level rise to coastal and inland communities in the state.
480 All eligible projects submitted to the department pursuant to
481 this section must be ranked and included in the plan. Each plan
482 must include a detailed narrative overview describing how the
483 plan was developed, including a description of the methodology
484 used by the department to determine project eligibility, a
485 description of the methodology used to rank projects, the
486 specific scoring system used, the project proposal application
487 form, a copy of each submitted project proposal application form
488 separated by eligible projects and ineligible projects, the
489 total number of project proposals received and deemed eligible,
490 the total funding requested, and the total funding requested for
491 eligible projects.

492 (b) ~~The plan submitted by December 1, 2021, before the~~

493 ~~comprehensive statewide flood vulnerability and sea level rise~~
494 ~~assessment is completed, will be a preliminary plan that~~
495 ~~includes projects that address risks of flooding and sea level~~
496 ~~rise identified in available local government vulnerability~~
497 ~~assessments and projects submitted by water management districts~~
498 ~~that mitigate the risks of flooding or sea level rise on water~~
499 ~~supplies or water resources of the state. The plan submitted by~~
500 ~~December 1, 2022, and the plan submitted by December 1, 2023,~~
501 ~~will be updates to the preliminary plan. The plan submitted by~~
502 ~~December 1, 2024, and each plan submitted by December 1~~
503 ~~thereafter:~~

504 1. Shall primarily address risks of flooding and sea level
505 rise identified in the comprehensive statewide flood
506 vulnerability and sea level rise assessment; and

507 2. May include, at the discretion of the department in
508 consultation with the Chief Resilience Officer, other projects
509 submitted pursuant to paragraph (d) which address risks of
510 flooding and sea level rise to critical assets not yet
511 identified in the comprehensive statewide flood vulnerability
512 and sea level rise assessment.

513 (c) Each plan submitted by the department pursuant to this
514 subsection must include all of the following information for
515 each recommended project:

- 516 1. A description of the project.
517 2. The location of the project.

518 3. An estimate of how long the project will take to
 519 complete.

520 4. An estimate of the cost of the project.

521 5. The cost-share percentage available for the project.

522 6. A summary of the priority score assigned to the
 523 project.

524 7. The project sponsor.

525 (d)1. ~~By September 1, 2021, and~~ Each September 1
 526 ~~thereafter,~~ all of the following entities may submit to the
 527 department a list of proposed projects that address risks of
 528 flooding or sea level rise identified in the comprehensive
 529 statewide flood vulnerability and sea level rise assessment or
 530 vulnerability assessments that meet the requirements of
 531 subsection (3):

532 a. Counties.

533 b. Municipalities.

534 c. Special districts as defined in s. 189.012 which ~~that~~
 535 are responsible for the management and maintenance of inlets and
 536 intracoastal waterways or for the operation and maintenance of a
 537 potable water facility, a wastewater facility, an airport, or a
 538 seaport facility.

539 d. Regional resilience entities acting on behalf of one or
 540 more member counties or municipalities.

541

542 For the plans submitted by December 1, 2024, such entities may

543 submit projects identified in existing vulnerability assessments
544 that do not comply with subsection (3) only if the entity is
545 actively developing a vulnerability assessment that is either
546 under a signed grant agreement with the department pursuant to
547 subsection (3) or funded by another state or federal agency, or
548 is self-funded and intended to meet the requirements of
549 paragraph (3)(d) or if the existing vulnerability assessment was
550 completed using previously compliant statutory requirements.
551 Projects identified from this category of vulnerability
552 assessments will be eligible for submittal until the prior
553 vulnerability assessment has been updated to meet most recent
554 statutory requirements 2021; December 1, 2022; and December 1,
555 2023, such entities may submit projects identified in existing
556 vulnerability assessments that do not comply with subsection
557 (3). A regional resilience entity may also submit proposed
558 projects to the department pursuant to this subparagraph on
559 behalf of one or more member counties or municipalities.

560 2. By September 1 ~~of, 2021,~~ and each year September 1
561 ~~thereafter,~~ all of the following entities may submit to the
562 department a list of any proposed projects that address risks of
563 flooding or sea level rise identified in the comprehensive
564 statewide flood vulnerability and sea level rise assessment or
565 vulnerability assessments that meet the requirements of
566 subsection (3), or that mitigate the risks of flooding or sea
567 level rise on water supplies or water resources of the state and

568 | a corresponding evaluation of each project:

569 | a. Water management districts.

570 | b. Drainage districts.

571 | c. Erosion control districts.

572 | d. Flood control districts.

573 | e. Regional water supply authorities.

574 | 3. Each project submitted to the department pursuant to

575 | this paragraph for consideration by the department for inclusion

576 | in the plan must include all of the following information:

577 | a. A description of the project.

578 | b. The location of the project.

579 | c. An estimate of how long the project will take to

580 | complete.

581 | d. An estimate of the cost of the project.

582 | e. The cost-share percentage available for the project.

583 | f. The project sponsor.

584 | (e) Each project included in the plan must have a minimum

585 | 50 percent cost share unless the project assists or is within a

586 | ~~financially disadvantaged small~~ community eligible for a reduced

587 | cost share. For purposes of this section, the term "~~financially~~

588 | ~~disadvantaged small~~ community eligible for a reduced cost share"

589 | means:

590 | 1. A municipality that has a population of 10,000 or

591 | fewer, according to the most recent April 1 population estimates

592 | posted on the Office of Economic and Demographic Research's

593 | website, and a per capita annual income that is less than the
 594 | state's per capita annual income as shown in the most recent
 595 | release from the Bureau of the Census of the United States
 596 | Department of Commerce that includes both measurements; ~~or~~

597 | 2. A county that has a population of 50,000 or fewer,
 598 | according to the most recent April 1 population estimates posted
 599 | on the Office of Economic and Demographic Research's website,
 600 | and a per capita annual income that is less than the state's per
 601 | capita annual income as shown in the most recent release from
 602 | the Bureau of the Census of the United States Department of
 603 | Commerce that includes both measurements; or

604 | 3. A municipality or county that has a per capita annual
 605 | income that is 75 percent less than the state's per capita
 606 | annual income as shown in the most recent release from the
 607 | Bureau of the Census of the United States Department of
 608 | Commerce.

609 | ~~(f) To be eligible for inclusion in the plan, a project~~
 610 | ~~must have been submitted pursuant to paragraph (d) or must have~~
 611 | ~~been identified in the comprehensive statewide flood~~
 612 | ~~vulnerability and sea level rise assessment, as applicable.~~

613 | ~~(g)~~ Expenses ineligible for inclusion in the plan include,
 614 | but are not limited to, expenses associated with any of the
 615 | following:

- 616 | 1. Aesthetic vegetation.
- 617 | 2. Recreational structures such as piers, docks, and

618 boardwalks.

619 3. Water quality components of stormwater and wastewater
620 management systems, except for expenses to mitigate water
621 quality impacts caused by the project or expenses related to
622 water quality which are necessary to obtain a permit for the
623 project.

624 4. Maintenance and repair of over-walks.

625 5. Park activities and facilities, except expenses to
626 control flooding or erosion.

627 6. Navigation construction, operation, and maintenance
628 activities.

629 7. Projects that provide only recreational benefits.

630 (g)~~(h)~~ The department shall implement a scoring system for
631 assessing each project eligible for inclusion in the plan
632 pursuant to this subsection. The scoring system must include the
633 following tiers and associated criteria:

634 1. Tier 1 must account for 40 percent of the total score
635 and consist of all of the following criteria:

636 a. The degree to which the project addresses the risks
637 posed by flooding and sea level rise identified in the local
638 government vulnerability assessments or the comprehensive
639 statewide flood vulnerability and sea level rise assessment, as
640 applicable.

641 b. The degree to which the project addresses risks to
642 regionally significant assets.

643 c. The degree to which the project reduces risks to areas
644 with an overall higher percentage of vulnerable critical assets.

645 d. The degree to which the project contributes to existing
646 flooding mitigation projects that reduce upland damage costs by
647 incorporating new or enhanced structures or restoration and
648 revegetation projects.

649 2. Tier 2 must account for 30 percent of the total score
650 and consist of all of the following criteria:

651 a. The degree to which flooding and erosion currently
652 affect the condition of the project area.

653 b. The overall readiness of the project to proceed in a
654 timely manner, considering the project's readiness for the
655 construction phase of development, the status of required
656 permits, the status of any needed easement acquisition, and the
657 availability of local funding sources.

658 c. The environmental habitat enhancement or inclusion of
659 nature-based options for resilience, with priority given to
660 state or federal critical habitat areas for threatened or
661 endangered species.

662 d. The cost-effectiveness of the project.

663 3. Tier 3 must account for 20 percent of the total score
664 and consist of all of the following criteria:

665 a. The availability of local, state, and federal matching
666 funds, considering the status of the funding award, and federal
667 authorization, if applicable.

668 b. Previous state commitment and involvement in the
 669 project, considering previously funded phases, the total amount
 670 of previous state funding, and previous partial appropriations
 671 for the proposed project.

672 c. The exceedance of the flood-resistant construction
 673 requirements of the Florida Building Code and applicable flood
 674 plain management regulations.

675 4. Tier 4 must account for 10 percent of the total score
 676 and consist of all of the following criteria:

677 a. The proposed innovative technologies designed to reduce
 678 project costs and provide regional collaboration.

679 b. The extent to which the project assists financially
 680 disadvantaged communities.

681 (h)-(i) The total amount of funding proposed for each year
 682 of the plan may not be less than \$100 million. Upon review and
 683 subject to appropriation, the Legislature shall approve funding
 684 for the projects as specified in the plan. Multiyear projects
 685 that receive funding for the first year of the project must be
 686 included in subsequent plans and funded until the project is
 687 complete, provided that the project sponsor has complied with
 688 all contractual obligations and funds are available.

689 (i)-(j) The department shall adopt rules ~~initiate~~
 690 ~~rulemaking by August 1, 2021,~~ to implement this section.

691 (6) REGIONAL RESILIENCE ENTITIES.—Subject to specific
 692 legislative appropriation, the department may provide funding

693 | for all of the following purposes to regional entities,
 694 | including regional planning councils and estuary partnerships,
 695 | that are established by general purpose local governments and
 696 | whose responsibilities include planning for the resilience needs
 697 | of communities and coordinating intergovernmental solutions to
 698 | mitigate adverse impacts of flooding and sea level rise:

699 | (a) Providing technical assistance to counties and
 700 | municipalities.

701 | (b) Coordinating and conducting activities authorized by
 702 | subsection (3) with broad regional benefit or on behalf of
 703 | multiple member counties and municipalities ~~multijurisdictional~~
 704 | ~~vulnerability assessments.~~

705 | (c) Developing project proposals to be submitted for
 706 | inclusion in the Statewide Flooding and Sea Level Rise
 707 | Resilience Plan.

708 | Section 5. Subsection (1) of section 381.0061, Florida
 709 | Statutes, is amended to read:

710 | 381.0061 Administrative fines.—

711 | (1) In addition to any administrative action authorized by
 712 | chapter 120 or by other law, the department may impose a fine,
 713 | which may not exceed \$500 for each violation, for a violation of
 714 | s. 381.006(15) or, ~~s. 381.0065, s. 381.0066,~~ s. 381.0072, ~~or~~
 715 | ~~part III of chapter 489,~~ for a violation of any rule adopted by
 716 | the department under this chapter, or for a violation of chapter
 717 | 386 not involving onsite sewage treatment and disposal systems.

718 The department shall give an alleged violator a notice of intent
 719 to impose such fine shall be given by the department to the
 720 alleged violator. Each day that a violation continues may
 721 constitute a separate violation.

722 Section 6. The Legislature intends that the transfer of
 723 the regulation of the Onsite Sewage Program from the Department
 724 of Health to the Department of Environmental Protection, as
 725 required by the Clean Waterways Act, chapter 2020-150, Laws of
 726 Florida, be completed in a phased approach.

727 (1) Before the phased transfer, the Department of
 728 Environmental Protection shall coordinate with the Department of
 729 Health to identify equipment and vehicles that were previously
 730 used to carry out the program in each county and that are no
 731 longer needed for such purpose. The Department of Health shall
 732 transfer the agreed-upon equipment and vehicles to the
 733 Department of Environmental Protection, to the extent that each
 734 county agrees to relinquish ownership of such equipment and
 735 vehicles to the Department of Health.

736 (2) When the Department of Environmental Protection begins
 737 implementing the program within a county, the Department of
 738 Health may no longer implement or collect fees for the program
 739 unless specified by separate delegation or contract with the
 740 Department of Environmental Protection.

741 Section 7. Paragraph (h) of subsection (3) and subsections
 742 (5) and (7) of section 381.0065, Florida Statutes, are amended,

743 paragraph (o) is added to subsection (3) of that section, and
 744 subsection (9) is added to that section, to read:

745 381.0065 Onsite sewage treatment and disposal systems;
 746 regulation.—

747 (3) DUTIES AND POWERS OF THE DEPARTMENT OF ENVIRONMENTAL
 748 PROTECTION.—The department shall:

749 (h) Conduct enforcement activities in accordance with part
 750 I of chapter 403, including imposing fines, issuing citations,
 751 suspensions, revocations, injunctions, and emergency orders for
 752 violations of this section, part I of chapter 386, or part III
 753 of chapter 489 or for a violation of any rule adopted by the
 754 department under this section, part I of chapter 386, or part
 755 III of chapter 489. All references to part I of chapter 386 in
 756 this section relate solely to nuisances involving improperly
 757 built or maintained septic tanks or other onsite sewage
 758 treatment and disposal systems, and untreated or improperly
 759 treated or transported waste from onsite sewage treatment and
 760 disposal systems. The department shall have all the duties and
 761 authorities of the Department of Health in part I of chapter 386
 762 for nuisances involving onsite sewage treatment and disposal
 763 systems. The department's authority under part I of chapter 386
 764 is in addition to and may be pursued independently of or
 765 simultaneously with the enforcement remedies provided under this
 766 section and chapter 403.

767 (o) Adopt rules establishing and implementing a program of

768 general permits for this section for projects, or categories of
 769 projects, which have, individually or cumulatively, a minimal
 770 adverse impact on public health or the environment. Such rules
 771 must:

772 1. Specify design or performance criteria which, if
 773 applied, would result in compliance with appropriate standards;
 774 and

775 2. Authorize a person who complies with the general permit
 776 eligibility requirements to use the permit 30 days after giving
 777 notice to the department without any agency action by the
 778 department. Within the 30-day notice period, the department
 779 shall determine whether the activity qualifies for a general
 780 permit. If the activity does not qualify or the notice does not
 781 contain all the required information, the department must notify
 782 the person.

783 (5) ENFORCEMENT; RIGHT OF ENTRY; ~~CITATIONS.~~-

784 (a) Department personnel who have reason to believe
 785 noncompliance exists, may at any reasonable time, enter the
 786 premises permitted under ss. 381.0065-381.0066, or the business
 787 premises of any septic tank contractor or master septic tank
 788 contractor registered under part III of chapter 489, or any
 789 premises that the department has reason to believe is being
 790 operated or maintained not in compliance, to determine
 791 compliance with the provisions of this section, part I of
 792 chapter 386, or part III of chapter 489 or rules or standards

793 adopted under ss. 381.0065-381.0067, part I of chapter 386, or
794 part III of chapter 489. As used in this paragraph, the term
795 "premises" does not include a residence or private building. To
796 gain entry to a residence or private building, the department
797 must obtain permission from the owner or occupant or secure an
798 inspection warrant from a court of competent jurisdiction
799 pursuant to the procedures of s. 403.091.

800 (b)~~1.~~ The department has all of the judicial and
801 administrative remedies available to it pursuant to part I of
802 chapter 403 ~~may issue citations that may contain an order of~~
803 ~~correction or an order to pay a fine, or both, for violations of~~
804 ~~ss. 381.0065-381.0067, part I of chapter 386, or part III of~~
805 ~~chapter 489 or the rules adopted by the department, when a~~
806 ~~violation of these sections or rules is enforceable by an~~
807 ~~administrative or civil remedy, or when a violation of these~~
808 ~~sections or rules is a misdemeanor of the second degree. A~~
809 ~~citation issued under ss. 381.0065-381.0067, part I of chapter~~
810 ~~386, or part III of chapter 489 constitutes a notice of proposed~~
811 ~~agency action.~~

812 ~~2. A citation must be in writing and must describe the~~
813 ~~particular nature of the violation, including specific reference~~
814 ~~to the provisions of law or rule allegedly violated.~~

815 ~~3. The fines imposed by a citation issued by the~~
816 ~~department may not exceed \$500 for each violation. Each day the~~
817 ~~violation exists constitutes a separate violation for which a~~

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818 ~~citation may be issued.~~

819 ~~4. The department shall inform the recipient, by written~~
820 ~~notice pursuant to ss. 120.569 and 120.57, of the right to an~~
821 ~~administrative hearing to contest the citation within 21 days~~
822 ~~after the date the citation is received. The citation must~~
823 ~~contain a conspicuous statement that if the recipient fails to~~
824 ~~pay the fine within the time allowed, or fails to appear to~~
825 ~~contest the citation after having requested a hearing, the~~
826 ~~recipient has waived the recipient's right to contest the~~
827 ~~citation and must pay an amount up to the maximum fine.~~

828 ~~5. The department may reduce or waive the fine imposed by~~
829 ~~the citation. In determining whether to reduce or waive the~~
830 ~~fine, the department must consider the gravity of the violation,~~
831 ~~the person's attempts at correcting the violation, and the~~
832 ~~person's history of previous violations including violations for~~
833 ~~which enforcement actions were taken under ss. 381.0065-~~
834 ~~381.0067, part I of chapter 386, part III of chapter 489, or~~
835 ~~other provisions of law or rule.~~

836 ~~6. Any person who willfully refuses to sign and accept a~~
837 ~~citation issued by the department commits a misdemeanor of the~~
838 ~~second degree, punishable as provided in s. 775.082 or s.~~
839 ~~775.083.~~

840 ~~7. The department, pursuant to ss. 381.0065-381.0067, part~~
841 ~~I of chapter 386, or part III of chapter 489, shall deposit any~~
842 ~~damages, costs, or penalties it collects pursuant to this~~

843 section and part I of chapter 403 in the Water Quality Assurance
 844 Trust Fund county health department trust fund for use in
 845 providing services specified in those sections.

846 ~~8. This section provides an alternative means of enforcing~~
 847 ~~ss. 381.0065-381.0067, part I of chapter 386, and part III of~~
 848 ~~chapter 489. This section does not prohibit the department from~~
 849 ~~enforcing ss. 381.0065-381.0067, part I of chapter 386, or part~~
 850 ~~III of chapter 489, or its rules, by any other means. However,~~
 851 ~~the department must elect to use only a single method of~~
 852 ~~enforcement for each violation.~~

853 (7) USE OF ENHANCED NUTRIENT-REDUCING ONSITE SEWAGE
 854 TREATMENT AND DISPOSAL SYSTEMS.—To meet the requirements of a
 855 total maximum daily load, the department shall implement a fast-
 856 track approval process of no longer than 6 months for the
 857 determination of the use of American National Standards
 858 Institute 245 systems approved by NSF International before July
 859 1, 2020. The department shall also establish an enhanced
 860 nutrient-reducing onsite sewage treatment and disposal system
 861 approval program that will expeditiously evaluate and approve
 862 such systems for use in this state to comply with ss.
 863 403.067(7)(a)10. and 373.469(3)(d).

864 (9) CONTRACT OR DELEGATION AUTHORITY.—The department may
 865 contract with or delegate its powers and duties under this
 866 section to a county as provided in s. 403.061 or s. 403.182.

867 Section 8. Subsection (2) of section 381.0066, Florida

868 Statutes, is amended to read:

869 381.0066 Onsite sewage treatment and disposal systems;
870 fees.—

871 (2) The minimum fees in the following fee schedule apply
872 until changed by rule by the department within the following
873 limits:

874 (a) Application review, permit issuance, or system
875 inspection, when performed by the department or a private
876 provider inspector, including repair of a subsurface, mound,
877 filled, or other alternative system or permitting of an
878 abandoned system: a fee of not less than \$25, or more than \$125.

879 (b) Site evaluation, site reevaluation, evaluation of a
880 system previously in use, or a per annum septage disposal site
881 evaluation: a fee of not less than \$40, or more than \$115.

882 (c) Biennial operating permit for aerobic treatment units
883 or performance-based treatment systems: a fee of not more than
884 \$100.

885 (d) Annual operating permit for systems located in areas
886 zoned for industrial manufacturing or equivalent uses or where
887 the system is expected to receive wastewater which is not
888 domestic in nature: a fee of not less than \$150, or more than
889 \$300.

890 (e) Innovative technology: a fee not to exceed \$25,000.

891 (f) Septage disposal service, septage stabilization
892 facility, portable or temporary toilet service, tank

893 manufacturer inspection: a fee of not less than \$25, or more
 894 than \$200, per year.

895 (g) Application for variance: a fee of not less than \$150,
 896 or more than \$300.

897 (h) Annual operating permit for waterless, incinerating,
 898 or organic waste composting toilets: a fee of not less than \$15,
 899 or more than \$30.

900 (i) Aerobic treatment unit or performance-based treatment
 901 system maintenance entity permit: a fee of not less than \$25, or
 902 more than \$150, per year.

903 (j) Reinspection fee per visit for site inspection after
 904 system construction approval or for noncompliant system
 905 installation per site visit: a fee of not less than \$25, or more
 906 than \$100.

907 (k) Research: An additional \$5 fee shall be added to each
 908 new system construction permit issued to be used to fund onsite
 909 sewage treatment and disposal system research, demonstration,
 910 and training projects. Five dollars from any repair permit fee
 911 collected under this section shall be used for funding the
 912 hands-on training centers described in s. 381.0065(3)(j).

913 (l) Annual operating permit, including annual inspection
 914 and any required sampling and laboratory analysis of effluent,
 915 for an engineer-designed performance-based system: a fee of not
 916 less than \$150, or more than \$300.

917

918 | The funds collected pursuant to this subsection for the
 919 | implementation of onsite sewage treatment and disposal system
 920 | regulation and for the purposes of ss. 381.00655 and 381.0067,
 921 | subsequent to any phased transfer of implementation from the
 922 | Department of Health to the department within any county
 923 | pursuant to s. 381.0065, must be deposited in the Florida Permit
 924 | Fee Trust Fund under s. 403.0871, to be administered by the
 925 | department ~~a trust fund administered by the department, to be~~
 926 | ~~used for the purposes stated in this section and ss. 381.0065~~
 927 | ~~and 381.00655.~~

928 | Section 9. Subsection (4) of section 403.061, Florida
 929 | Statutes, is amended to read:

930 | 403.061 Department; powers and duties.—The department
 931 | shall have the power and the duty to control and prohibit
 932 | pollution of air and water in accordance with the law and rules
 933 | adopted and promulgated by it and, for this purpose, to:

934 | (4) Secure necessary scientific, technical, research,
 935 | administrative, and operational services by interagency
 936 | agreement, by contract, or otherwise. All state agencies and
 937 | counties, upon direction of the department, shall make these
 938 | services and facilities available.

939 |
 940 | The department shall implement such programs in conjunction with
 941 | its other powers and duties and shall place special emphasis on
 942 | reducing and eliminating contamination that presents a threat to

943 humans, animals or plants, or to the environment.

944 Section 10. Subsections (1), (2), (14), and (15) of
 945 section 403.064, Florida Statutes, are amended to read:

946 403.064 Reuse of reclaimed water.—

947 (1) The encouragement and promotion of water conservation,
 948 and reuse of reclaimed water, as defined by the department, are
 949 state objectives and are considered to be in the public
 950 interest. The Legislature finds that the reuse of reclaimed
 951 water is a critical component of meeting the state's existing
 952 and future water supply needs while sustaining natural systems
 953 and encouraging its best and most beneficial use. The
 954 Legislature further finds that for those wastewater treatment
 955 plants permitted and operated under an approved reuse program by
 956 the department, the reclaimed water shall be considered
 957 environmentally acceptable and not a threat to public health and
 958 safety. The Legislature encourages the development of incentive-
 959 based programs for reuse implementation.

960 (2) All applicants for permits to construct or operate a
 961 domestic wastewater treatment facility ~~located within, serving a~~
 962 ~~population located within, or discharging within a water~~
 963 ~~resource caution area~~ shall prepare a reuse feasibility study as
 964 part of their application for the permit. Reuse feasibility
 965 studies must ~~shall~~ be prepared in accordance with department
 966 guidelines adopted by rule and shall include, but are not
 967 limited to:

968 (a) Evaluation of monetary costs and benefits for several
 969 levels and types of reuse.

970 (b) Evaluation of the estimated water savings resulting
 971 from different types of ~~if~~ reuse, ~~if is~~ implemented.

972 (c) Evaluation of rates and fees necessary to implement
 973 reuse.

974 (d) Evaluation of environmental and water resource
 975 benefits associated with the different types of reuse.

976 (e) Evaluation of economic, environmental, and technical
 977 constraints associated with the different types of reuse,
 978 including any constraints caused by potential water quality
 979 impacts.

980 (f) A schedule for implementation of reuse. The schedule
 981 must ~~shall~~ consider phased implementation.

982 (14) After conducting a feasibility study under subsection
 983 (2), a domestic wastewater treatment facility ~~facilities~~ that
 984 disposes ~~dispose~~ of effluent by Class I deep well injection, as
 985 defined in 40 C.F.R. s. 144.6(a), surface water discharge, land
 986 application, or other method to dispose of effluent or a portion
 987 thereof must implement reuse to the degree that reuse is
 988 feasible, based upon the applicant's reuse feasibility study,
 989 with consideration given to direct ecological or public water
 990 supply benefits afforded by any disposal. Applicable permits
 991 issued by the department must ~~shall~~ be consistent with the
 992 requirements of this subsection.

993 (a) This subsection does not limit the use of a Class I
 994 deep well injection as defined in 40 C.F.R. s. 144.6(a), surface
 995 water discharge, land application, or another method to dispose
 996 of effluent or a portion thereof for backup use only facility as
 997 backup for a reclaimed water reuse system.

998 (b) ~~This subsection applies only to domestic wastewater~~
 999 ~~treatment facilities located within, serving a population~~
 1000 ~~located within, or discharging within a water resource caution~~
 1001 ~~area.~~

1002 ~~(15) After conducting a feasibility study under subsection~~
 1003 ~~(2), domestic wastewater treatment facilities that dispose of~~
 1004 ~~effluent by surface water discharges or by land application~~
 1005 ~~methods must implement reuse to the degree that reuse is~~
 1006 ~~feasible, based upon the applicant's reuse feasibility study.~~
 1007 This subsection does not apply to surface water discharges or
 1008 land application systems which are currently categorized as
 1009 reuse under department rules. ~~Applicable permits issued by the~~
 1010 ~~department shall be consistent with the requirements of this~~
 1011 ~~subsection.~~

1012 ~~(a) This subsection does not limit the use of a surface~~
 1013 ~~water discharge or land application facility as backup for a~~
 1014 ~~reclaimed water reuse system.~~

1015 ~~(b) This subsection applies only to domestic wastewater~~
 1016 ~~treatment facilities located within, serving a population~~
 1017 ~~located within, or discharging within a water resource caution~~

1018 ~~area.~~

1019 Section 11. Paragraph (a) of subsection (7) of section
1020 403.067, Florida Statutes, is amended to read:

1021 403.067 Establishment and implementation of total maximum
1022 daily loads.—

1023 (7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND
1024 IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

1025 (a) *Basin management action plans.*—

1026 1. In developing and implementing the total maximum daily
1027 load for a waterbody, the department, or the department in
1028 conjunction with a water management district, may develop a
1029 basin management action plan that addresses some or all of the
1030 watersheds and basins tributary to the waterbody. Such plan must
1031 integrate the appropriate management strategies available to the
1032 state through existing water quality protection programs to
1033 achieve the total maximum daily loads and may provide for phased
1034 implementation of these management strategies to promote timely,
1035 cost-effective actions as provided for in s. 403.151. The plan
1036 must establish a schedule implementing the management
1037 strategies, establish a basis for evaluating the plan's
1038 effectiveness, and identify feasible funding strategies for
1039 implementing the plan's management strategies. The management
1040 strategies may include regional treatment systems or other
1041 public works, when appropriate, and voluntary trading of water
1042 quality credits to achieve the needed pollutant load reductions.

1043 2. A basin management action plan must equitably allocate,
 1044 pursuant to paragraph (6) (b), pollutant reductions to individual
 1045 basins, as a whole to all basins, or to each identified point
 1046 source or category of nonpoint sources, as appropriate. For
 1047 nonpoint sources for which best management practices have been
 1048 adopted, the initial requirement specified by the plan must be
 1049 those practices developed pursuant to paragraph (c). When
 1050 appropriate, the plan may take into account the benefits of
 1051 pollutant load reduction achieved by point or nonpoint sources
 1052 that have implemented management strategies to reduce pollutant
 1053 loads, including best management practices, before the
 1054 development of the basin management action plan. The plan must
 1055 also identify the mechanisms that will address potential future
 1056 increases in pollutant loading.

1057 3. The basin management action planning process is
 1058 intended to involve the broadest possible range of interested
 1059 parties, with the objective of encouraging the greatest amount
 1060 of cooperation and consensus possible. In developing a basin
 1061 management action plan, the department shall assure that key
 1062 stakeholders, including, but not limited to, applicable local
 1063 governments, water management districts, the Department of
 1064 Agriculture and Consumer Services, other appropriate state
 1065 agencies, local soil and water conservation districts,
 1066 environmental groups, regulated interests, and affected
 1067 pollution sources, are invited to participate in the process.

1068 The department shall hold at least one public meeting in the
1069 vicinity of the watershed or basin to discuss and receive
1070 comments during the planning process and shall otherwise
1071 encourage public participation to the greatest practicable
1072 extent. Notice of the public meeting must be published in a
1073 newspaper of general circulation in each county in which the
1074 watershed or basin lies at least 5 days, but not more than 15
1075 days, before the public meeting. A basin management action plan
1076 does not supplant or otherwise alter any assessment made under
1077 subsection (3) or subsection (4) or any calculation or initial
1078 allocation.

1079 4. Each new or revised basin management action plan must
1080 include all of the following:

1081 a. The appropriate management strategies available through
1082 existing water quality protection programs to achieve total
1083 maximum daily loads, which may provide for phased implementation
1084 to promote timely, cost-effective actions as provided for in s.
1085 403.151.

1086 b. A description of best management practices adopted by
1087 rule.

1088 c. For the applicable 5-year implementation milestone, a
1089 list of projects that will achieve the pollutant load reductions
1090 needed to meet the total maximum daily load or the load
1091 allocations established pursuant to subsection (6). Each project
1092 must include a planning-level cost estimate and an estimated

1093 | date of completion.

1094 | d. A list of projects developed pursuant to paragraph (e),
1095 | if applicable.

1096 | e. The source and amount of financial assistance to be
1097 | made available by the department, a water management district,
1098 | or other entity for each listed project, if applicable.

1099 | f. A planning-level estimate of each listed project's
1100 | expected load reduction, if applicable.

1101 | 5. The department shall adopt all or any part of a basin
1102 | management action plan and any amendment to such plan by
1103 | secretarial order pursuant to chapter 120 to implement this
1104 | section.

1105 | 6. The basin management action plan must include 5-year
1106 | milestones for implementation and water quality improvement, and
1107 | an associated water quality monitoring component sufficient to
1108 | evaluate whether reasonable progress in pollutant load
1109 | reductions is being achieved over time. An assessment of
1110 | progress toward these milestones shall be conducted every 5
1111 | years, and revisions to the plan shall be made as appropriate.
1112 | Any entity with a specific pollutant load reduction requirement
1113 | established in a basin management action plan shall identify the
1114 | projects or strategies that such entity will undertake to meet
1115 | current 5-year pollution reduction milestones, beginning with
1116 | the first 5-year milestone for new basin management action
1117 | plans, and submit such projects to the department for inclusion

1118 in the appropriate basin management action plan. Each project
1119 identified must include an estimated amount of nutrient
1120 reduction that is reasonably expected to be achieved based on
1121 the best scientific information available. Revisions to the
1122 basin management action plan shall be made by the department in
1123 cooperation with basin stakeholders. Revisions to the management
1124 strategies required for nonpoint sources must follow the
1125 procedures in subparagraph (c)4. Revised basin management action
1126 plans must be adopted pursuant to subparagraph 5.

1127 7. In accordance with procedures adopted by rule under
1128 paragraph (9)(c), basin management action plans, and other
1129 pollution control programs under local, state, or federal
1130 authority as provided in subsection (4), may allow point or
1131 nonpoint sources that will achieve greater pollutant reductions
1132 than required by an adopted total maximum daily load or
1133 wasteload allocation to generate, register, and trade water
1134 quality credits for the excess reductions to enable other
1135 sources to achieve their allocation; however, the generation of
1136 water quality credits does not remove the obligation of a source
1137 or activity to meet applicable technology requirements or
1138 adopted best management practices. Such plans must allow trading
1139 between NPDES permittees, and trading that may or may not
1140 involve NPDES permittees, where the generation or use of the
1141 credits involve an entity or activity not subject to department
1142 water discharge permits whose owner voluntarily elects to obtain

1143 department authorization for the generation and sale of credits.

1144 8. The department's rule relating to the equitable
 1145 abatement of pollutants into surface waters do not apply to
 1146 water bodies or waterbody segments for which a basin management
 1147 plan that takes into account future new or expanded activities
 1148 or discharges has been adopted under this section.

1149 9. In order to promote resilient wastewater utilities, if
 1150 the department identifies domestic wastewater treatment
 1151 facilities or onsite sewage treatment and disposal systems as
 1152 contributors of at least 20 percent of point source or nonpoint
 1153 source nutrient pollution or if the department determines
 1154 remediation is necessary to achieve the total maximum daily
 1155 load, a basin management action plan for a nutrient total
 1156 maximum daily load must include the following:

1157 a. A domestic wastewater treatment plan developed by each
 1158 local government, in cooperation with the department, the water
 1159 management district, and the public and private domestic
 1160 wastewater treatment facilities providing services or located
 1161 within the jurisdiction of the local government, ~~which that~~
 1162 addresses domestic wastewater. Private domestic wastewater
 1163 facilities and special districts providing domestic wastewater
 1164 services must provide the required wastewater facility
 1165 information to the applicable local governments. The domestic
 1166 wastewater treatment plan must:

1167 (I) Provide for construction, expansion, or upgrades

1168 necessary to achieve the total maximum daily load requirements
 1169 applicable to the domestic wastewater treatment facility.

1170 (II) Include the permitted capacity in average annual
 1171 gallons per day for the domestic wastewater treatment facility;
 1172 the average nutrient concentration and the estimated average
 1173 nutrient load of the domestic wastewater; a projected timeline
 1174 of the dates by which the construction of any facility
 1175 improvements will begin and be completed and the date by which
 1176 operations of the improved facility will begin; the estimated
 1177 cost of the improvements; and the identity of responsible
 1178 parties.

1179
 1180 The domestic wastewater treatment plan must be adopted as part
 1181 of the basin management action plan no later than July 1, 2025.
 1182 A local government that does not have a domestic wastewater
 1183 treatment facility in its jurisdiction is not required to
 1184 develop a domestic wastewater treatment plan unless there is a
 1185 demonstrated need to establish a domestic wastewater treatment
 1186 facility within its jurisdiction to improve water quality
 1187 necessary to achieve a total maximum daily load. A local
 1188 government is not responsible for a private domestic wastewater
 1189 facility's compliance with a basin management action plan unless
 1190 such facility is operated through a public-private partnership
 1191 to which the local government is a party.

1192 b. An onsite sewage treatment and disposal system

1193 remediation plan developed by each local government in
 1194 cooperation with the department, the Department of Health, water
 1195 management districts, and public and private domestic wastewater
 1196 treatment facilities.

1197 (I) The onsite sewage treatment and disposal system
 1198 remediation plan must identify cost-effective and financially
 1199 feasible projects necessary to achieve the nutrient load
 1200 reductions required for onsite sewage treatment and disposal
 1201 systems. To identify cost-effective and financially feasible
 1202 projects for remediation of onsite sewage treatment and disposal
 1203 systems, the local government shall:

1204 (A) Include an inventory of onsite sewage treatment and
 1205 disposal systems based on the best information available;

1206 (B) Identify onsite sewage treatment and disposal systems
 1207 that would be eliminated through connection to existing or
 1208 future central domestic wastewater infrastructure in the
 1209 jurisdiction or domestic wastewater service area of the local
 1210 government, that would be replaced with or upgraded to enhanced
 1211 nutrient-reducing onsite sewage treatment and disposal systems,
 1212 or that would remain on conventional onsite sewage treatment and
 1213 disposal systems;

1214 (C) Estimate the costs of potential onsite sewage
 1215 treatment and disposal system connections, upgrades, or
 1216 replacements; and

1217 (D) Identify deadlines and interim milestones for the

1218 | planning, design, and construction of projects.

1219 | (II) The department shall adopt the onsite sewage
1220 | treatment and disposal system remediation plan as part of the
1221 | basin management action plan no later than July 1, 2025, or as
1222 | required for Outstanding Florida Springs under s. 373.807.

1223 | 10. The installation of new onsite sewage treatment and
1224 | disposal systems constructed within a basin management action
1225 | plan area adopted under this section, a reasonable assurance
1226 | plan, or a pollution reduction plan is prohibited where
1227 | connection to a publicly owned or investor-owned sewerage system
1228 | is available as defined in s. 381.0065(2)(a). On lots of 1 acre
1229 | or less within a basin management action plan adopted under this
1230 | section, a reasonable assurance plan, or a pollution reduction
1231 | plan where a publicly owned or investor-owned sewerage system is
1232 | not available, the installation of enhanced nutrient-reducing
1233 | onsite sewage treatment and disposal systems or other wastewater
1234 | treatment systems that achieve at least 65 percent nitrogen
1235 | reduction is required.

1236 | 11. When identifying wastewater projects in a basin
1237 | management action plan, the department may not require the
1238 | higher cost option if it achieves the same nutrient load
1239 | reduction as a lower cost option. A regulated entity may choose
1240 | a different cost option if it complies with the pollutant
1241 | reduction requirements of an adopted total maximum daily load
1242 | and meets or exceeds the pollution reduction requirement of the

1243 original project.

1244 12. Annually, local governments subject to a basin
 1245 management action plan or located within the basin of a
 1246 waterbody not attaining nutrient or nutrient-related standards
 1247 must provide to the department an update on the status of
 1248 construction of sanitary sewers to serve such areas, in a manner
 1249 prescribed by the department.

1250 Section 12. Subsection (7) of section 403.0673, Florida
 1251 Statutes, is amended, and subsection (8) is added to that
 1252 section, to read:

1253 403.0673 Water quality improvement grant program.—A grant
 1254 program is established within the Department of Environmental
 1255 Protection to address wastewater, stormwater, and agricultural
 1256 sources of nutrient loading to surface water or groundwater.

1257 (7) Beginning January 15, 2024, and each January 15
 1258 thereafter, the department shall submit a report regarding the
 1259 projects funded pursuant to this section to the Governor, the
 1260 President of the Senate, and the Speaker of the House of
 1261 Representatives.

1262 (a) The report must include a list of those projects
 1263 receiving funding and the following information for each
 1264 project:

1265 1.~~(a)~~ A description of the project;

1266 2.~~(b)~~ The cost of the project;

1267 3.~~(e)~~ The estimated nutrient load reduction of the
 1268 project;

1269 4.~~(d)~~ The location of the project;

1270 5.~~(e)~~ The waterbody or waterbodies where the project will
 1271 reduce nutrients; and

1272 6.~~(f)~~ The total cost share being provided for the project.

1273 (b) The report must also include a status report on each
 1274 project funded since 2021. The status report must, at a minimum,
 1275 identify which projects have been completed and, if such
 1276 information is available, provide nutrient load improvements or
 1277 water quality testing data for the waterbody.

1278 (8) By July 1, 2025, the department must include the
 1279 projects funded pursuant to this section on a user-friendly
 1280 website or dashboard. The website or dashboard must allow the
 1281 user to see the information provided in subsection (7) and must
 1282 be updated at least annually.

1283 Section 13. Paragraph (c) of subsection (1) of section
 1284 403.086, Florida Statutes, is amended to read:

1285 403.086 Sewage disposal facilities; advanced and secondary
 1286 waste treatment.—

1287 (1)

1288 (c)1. Notwithstanding this chapter or chapter 373, sewage
 1289 disposal facilities may not dispose any wastes into the
 1290 following waters without providing advanced waste treatment, as
 1291 defined in subsection (4), as approved by the department or a

1292 more stringent treatment standard if the department determines
 1293 the more stringent standard is necessary to achieve the total
 1294 maximum daily load or applicable water quality criteria:

1295 a. Old Tampa Bay; Tampa Bay; Hillsborough Bay; Boca Ciega
 1296 Bay; St. Joseph Sound; Clearwater Bay; Sarasota Bay; Little
 1297 Sarasota Bay; Roberts Bay; Lemon Bay; Charlotte Harbor Bay;
 1298 Biscayne Bay; or any river, stream, channel, canal, bay, bayou,
 1299 sound, or other water tributary thereto.

1300 b. Beginning July 1, 2025, Indian River Lagoon, or any
 1301 river, stream, channel, canal, bay, bayou, sound, or other water
 1302 tributary thereto.

1303 c. By January 1, 2033, waterbodies that are currently not
 1304 attaining nutrient or nutrient-related standards or that are
 1305 subject to a nutrient or nutrient-related basin management
 1306 action plan adopted pursuant to s. 403.067 or adopted reasonable
 1307 assurance plan.

1308 2. For any waterbody determined not to be attaining
 1309 nutrient or nutrient-related standards after July 1, 2023, or
 1310 subject to a nutrient or nutrient-related basin management
 1311 action plan adopted pursuant to s. 403.067 or adopted reasonable
 1312 assurance plan after July 1, 2023, sewage disposal facilities
 1313 are prohibited from disposing any wastes into such waters
 1314 without providing advanced waste treatment, as defined in
 1315 subsection (4), as approved by the department within 10 years
 1316 after such determination or adoption.

1317 3. By July 1, 2034, within a nutrient basin management
1318 action plan or a reasonable assurance plan area, any wastewater
1319 treatment facility providing reclaimed water that will be used
1320 for commercial or residential irrigation or be otherwise land
1321 applied must meet the advanced waste treatment standards for
1322 total nitrogen and total phosphorous as defined in paragraph
1323 (4)(a) or a more stringent treatment standard if the department
1324 determines the more stringent standard is necessary to achieve
1325 the total maximum daily load or applicable water quality
1326 criteria.

1327 Section 14. Section 403.121, Florida Statutes, is amended
1328 to read:

1329 403.121 Enforcement; procedure; remedies.—The department
1330 shall have the following judicial and administrative remedies
1331 available to it for violations of this chapter, as specified in
1332 s. 403.161(1), ss. 381.0065-381.0067, part I of chapter 386 for
1333 purposes of onsite sewage treatment and disposal systems, part
1334 III of chapter 489, or any rule promulgated thereunder.

1335 (1) Judicial Remedies:

1336 (a) The department may institute a civil action in a court
1337 of competent jurisdiction to establish liability and to recover
1338 damages for any injury to the air, waters, or property,
1339 including animal, plant, and aquatic life, of the state caused
1340 by any violation.

1341 (b) The department may institute a civil action in a court

1342 of competent jurisdiction to impose and to recover a civil
1343 penalty for each violation in an amount of not more than \$15,000
1344 per offense. However, the court may receive evidence in
1345 mitigation. Each day during any portion of which such violation
1346 occurs constitutes a separate offense.

1347 (c) Except as provided in paragraph (2) (c), it is not a
1348 defense to, or ground for dismissal of, these judicial remedies
1349 for damages and civil penalties that the department has failed
1350 to exhaust its administrative remedies, has failed to serve a
1351 notice of violation, or has failed to hold an administrative
1352 hearing before the institution of a civil action.

1353 (2) Administrative Remedies:

1354 (a) The department may institute an administrative
1355 proceeding to establish liability and to recover damages for any
1356 injury to the air, waters, or property, including animal, plant,
1357 or aquatic life, of the state caused by any violation. The
1358 department may order that the violator pay a specified sum as
1359 damages to the state. Judgment for the amount of damages
1360 determined by the department may be entered in any court having
1361 jurisdiction thereof and may be enforced as any other judgment.

1362 (b) If the department has reason to believe a violation
1363 has occurred, it may institute an administrative proceeding to
1364 order the prevention, abatement, or control of the conditions
1365 creating the violation or other appropriate corrective action.
1366 Except for violations involving hazardous wastes, asbestos, or

1367 | underground injection, the department shall proceed
1368 | administratively in all cases in which the department seeks
1369 | administrative penalties that do not exceed \$50,000 per
1370 | assessment as calculated in accordance with subsections (3),
1371 | (4), (5), (6), and (7). Pursuant to 42 U.S.C. s. 300g-2, the
1372 | administrative penalty assessed pursuant to subsection (3),
1373 | subsection (4), or subsection (5) against a public water system
1374 | serving a population of more than 10,000 may not be less than
1375 | \$1,000 per day per violation. The department may not impose
1376 | administrative penalties in excess of \$50,000 in a notice of
1377 | violation. The department may not have more than one notice of
1378 | violation seeking administrative penalties pending against the
1379 | same party at the same time unless the violations occurred at a
1380 | different site or the violations were discovered by the
1381 | department subsequent to the filing of a previous notice of
1382 | violation.

1383 | (c) An administrative proceeding shall be instituted by
1384 | the department's serving of a written notice of violation upon
1385 | the alleged violator by certified mail. If the department is
1386 | unable to effect service by certified mail, the notice of
1387 | violation may be hand delivered or personally served in
1388 | accordance with chapter 48. The notice shall specify the law,
1389 | rule, regulation, permit, certification, or order of the
1390 | department alleged to be violated and the facts alleged to
1391 | constitute a violation thereof. An order for corrective action,

1392 penalty assessment, or damages may be included with the notice.
1393 When the department is seeking to impose an administrative
1394 penalty for any violation by issuing a notice of violation, any
1395 corrective action needed to correct the violation or damages
1396 caused by the violation must be pursued in the notice of
1397 violation or they are waived. However, an order is not effective
1398 until after service and an administrative hearing, if requested
1399 within 20 days after service. Failure to request an
1400 administrative hearing within this time period constitutes a
1401 waiver thereof, unless the respondent files a written notice
1402 with the department within this time period opting out of the
1403 administrative process initiated by the department to impose
1404 administrative penalties. Any respondent choosing to opt out of
1405 the administrative process initiated by the department in an
1406 action that seeks the imposition of administrative penalties
1407 must file a written notice with the department within 20 days
1408 after service of the notice of violation opting out of the
1409 administrative process. A respondent's decision to opt out of
1410 the administrative process does not preclude the department from
1411 initiating a state court action seeking injunctive relief,
1412 damages, and the judicial imposition of civil penalties.

1413 (d) If a person timely files a petition challenging a
1414 notice of violation, that person will thereafter be referred to
1415 as the respondent. The hearing requested by the respondent shall
1416 be held within 180 days after the department has referred the

1417 initial petition to the Division of Administrative Hearings
1418 unless the parties agree to a later date. The department has the
1419 burden of proving with the preponderance of the evidence that
1420 the respondent is responsible for the violation. Administrative
1421 penalties should not be imposed unless the department satisfies
1422 that burden. Following the close of the hearing, the
1423 administrative law judge shall issue a final order on all
1424 matters, including the imposition of an administrative penalty.
1425 When the department seeks to enforce that portion of a final
1426 order imposing administrative penalties pursuant to s. 120.69,
1427 the respondent may not assert as a defense the inappropriateness
1428 of the administrative remedy. The department retains its final-
1429 order authority in all administrative actions that do not
1430 request the imposition of administrative penalties.

1431 (e) After filing a petition requesting a formal hearing in
1432 response to a notice of violation in which the department
1433 imposes an administrative penalty, a respondent may request that
1434 a private mediator be appointed to mediate the dispute by
1435 contacting the Florida Conflict Resolution Consortium within 10
1436 days after receipt of the initial order from the administrative
1437 law judge. The Florida Conflict Resolution Consortium shall pay
1438 all of the costs of the mediator and for up to 8 hours of the
1439 mediator's time per case at \$150 per hour. Upon notice from the
1440 respondent, the Florida Conflict Resolution Consortium shall
1441 provide to the respondent a panel of possible mediators from the

1442 area in which the hearing on the petition would be heard. The
1443 respondent shall select the mediator and notify the Florida
1444 Conflict Resolution Consortium of the selection within 15 days
1445 of receipt of the proposed panel of mediators. The Florida
1446 Conflict Resolution Consortium shall provide all of the
1447 administrative support for the mediation process. The mediation
1448 must be completed at least 15 days before the final hearing date
1449 set by the administrative law judge.

1450 (f) In any administrative proceeding brought by the
1451 department, the prevailing party shall recover all costs as
1452 provided in ss. 57.041 and 57.071. The costs must be included in
1453 the final order. The respondent is the prevailing party when an
1454 order is entered awarding no penalties to the department and
1455 such order has not been reversed on appeal or the time for
1456 seeking judicial review has expired. The respondent is entitled
1457 to an award of attorney fees if the administrative law judge
1458 determines that the notice of violation issued by the department
1459 seeking the imposition of administrative penalties was not
1460 substantially justified as defined in s. 57.111(3)(e). An award
1461 of attorney fees as provided by this subsection may not exceed
1462 \$15,000.

1463 (g) This section does not prevent any other legal or
1464 administrative action in accordance with law and does not limit
1465 the department's authority provided in ss. 403.131, 403.141, and
1466 this section to judicially pursue injunctive relief. When the

1467 department exercises its authority to judicially pursue
1468 injunctive relief, penalties in any amount up to the statutory
1469 maximum sought by the department must be pursued as part of the
1470 state court action and not by initiating a separate
1471 administrative proceeding. The department retains the authority
1472 to judicially pursue penalties in excess of \$50,000 for
1473 violations not specifically included in the administrative
1474 penalty schedule, or for multiple or multiday violations alleged
1475 to exceed a total of \$50,000. The department also retains the
1476 authority provided in ss. 403.131, 403.141, and this section to
1477 judicially pursue injunctive relief and damages, if a notice of
1478 violation seeking the imposition of administrative penalties has
1479 not been issued. The department has the authority to enter into
1480 a settlement, before or after initiating a notice of violation,
1481 and the settlement may include a penalty amount different from
1482 the administrative penalty schedule. Any case filed in state
1483 court because it is alleged to exceed a total of \$50,000 in
1484 penalties may be settled in the court action for less than
1485 \$50,000.

1486 (h) Chapter 120 applies to any administrative action taken
1487 by the department or any delegated program pursuing
1488 administrative penalties in accordance with this section.

1489 (3) Except for violations involving hazardous wastes,
1490 asbestos, or underground injection, administrative penalties
1491 must be calculated according to the following schedule:

1492 (a) For a drinking water contamination violation, the
 1493 department shall assess a penalty of \$3,000 for a Maximum
 1494 Containment Level (MCL) violation; plus \$1,500 if the violation
 1495 is for a primary inorganic, organic, or radiological Maximum
 1496 Contaminant Level or it is a fecal coliform bacteria violation;
 1497 plus \$1,500 if the violation occurs at a community water system;
 1498 and plus \$1,500 if any Maximum Contaminant Level is exceeded by
 1499 more than 100 percent. For failure to obtain a clearance letter
 1500 before placing a drinking water system into service when the
 1501 system would not have been eligible for clearance, the
 1502 department shall assess a penalty of \$4,500.

1503 (b) For failure to obtain a required wastewater permit,
 1504 other than a permit required for surface water discharge, or
 1505 obtain an onsite sewage treatment and disposal system permit, or
 1506 for a violation of s. 381.0065, or the creation of or
 1507 maintenance of a nuisance related to an onsite sewage treatment
 1508 and disposal system under part I of chapter 386, or for a
 1509 violation of part III of chapter 489, or any rule properly
 1510 promulgated thereunder, the department shall assess a penalty of
 1511 \$2,000. For a domestic or industrial wastewater violation, not
 1512 involving a surface water or groundwater quality violation, the
 1513 department shall assess a penalty of \$4,000 for an unpermitted
 1514 or unauthorized discharge or effluent-limitation exceedance or
 1515 for failure to comply with s. 403.061(14) or s. 403.086(7) or
 1516 rules adopted thereunder. For an unpermitted or unauthorized

1517 discharge or effluent-limitation exceedance that resulted in a
1518 surface water or groundwater quality violation, the department
1519 shall assess a penalty of \$10,000. Each day the cause of an
1520 unauthorized discharge of domestic wastewater or sanitary
1521 nuisance is not addressed constitutes a separate offense.

1522 (c) For a dredge and fill or stormwater violation, the
1523 department shall assess a penalty of \$1,500 for unpermitted or
1524 unauthorized dredging or filling or unauthorized construction of
1525 a stormwater management system against the person or persons
1526 responsible for the illegal dredging or filling, or unauthorized
1527 construction of a stormwater management system plus \$3,000 if
1528 the dredging or filling occurs in an aquatic preserve, an
1529 Outstanding Florida Water, a conservation easement, or a Class I
1530 or Class II surface water, plus \$1,500 if the area dredged or
1531 filled is greater than one-quarter acre but less than or equal
1532 to one-half acre, and plus \$1,500 if the area dredged or filled
1533 is greater than one-half acre but less than or equal to one
1534 acre. The administrative penalty schedule does not apply to a
1535 dredge and fill violation if the area dredged or filled exceeds
1536 one acre. The department retains the authority to seek the
1537 judicial imposition of civil penalties for all dredge and fill
1538 violations involving more than one acre. The department shall
1539 assess a penalty of \$4,500 for the failure to complete required
1540 mitigation, failure to record a required conservation easement,
1541 or for a water quality violation resulting from dredging or

1542 filling activities, stormwater construction activities or
1543 failure of a stormwater treatment facility. For stormwater
1544 management systems serving less than 5 acres, the department
1545 shall assess a penalty of \$3,000 for the failure to properly or
1546 timely construct a stormwater management system. In addition to
1547 the penalties authorized in this subsection, the department
1548 shall assess a penalty of \$7,500 per violation against the
1549 contractor or agent of the owner or tenant that conducts
1550 unpermitted or unauthorized dredging or filling. For purposes of
1551 this paragraph, the preparation or signing of a permit
1552 application by a person currently licensed under chapter 471 to
1553 practice as a professional engineer does not make that person an
1554 agent of the owner or tenant.

1555 (d) For mangrove trimming or alteration violations, the
1556 department shall assess a penalty of \$7,500 per violation
1557 against the contractor or agent of the owner or tenant that
1558 conducts mangrove trimming or alteration without a permit as
1559 required by s. 403.9328. For purposes of this paragraph, the
1560 preparation or signing of a permit application by a person
1561 currently licensed under chapter 471 to practice as a
1562 professional engineer does not make that person an agent of the
1563 owner or tenant.

1564 (e) For solid waste violations, the department shall
1565 assess a penalty of \$3,000 for the unpermitted or unauthorized
1566 disposal or storage of solid waste; plus \$1,000 if the solid

1567 waste is Class I or Class III (excluding yard trash) or if the
1568 solid waste is construction and demolition debris in excess of
1569 20 cubic yards, plus \$1,500 if the waste is disposed of or
1570 stored in any natural or artificial body of water or within 500
1571 feet of a potable water well, plus \$1,500 if the waste contains
1572 PCB at a concentration of 50 parts per million or greater;
1573 untreated biomedical waste; friable asbestos greater than 1
1574 cubic meter which is not wetted, bagged, and covered; used oil
1575 greater than 25 gallons; or 10 or more lead acid batteries. The
1576 department shall assess a penalty of \$4,500 for failure to
1577 properly maintain leachate control; unauthorized burning;
1578 failure to have a trained spotter on duty at the working face
1579 when accepting waste; or failure to provide access control for
1580 three consecutive inspections. The department shall assess a
1581 penalty of \$3,000 for failure to construct or maintain a
1582 required stormwater management system.

1583 (f) For an air emission violation, the department shall
1584 assess a penalty of \$1,500 for an unpermitted or unauthorized
1585 air emission or an air-emission-permit exceedance, plus \$4,500
1586 if the emission was from a major source and the source was major
1587 for the pollutant in violation; plus \$1,500 if the emission was
1588 more than 150 percent of the allowable level.

1589 (g) For storage tank system and petroleum contamination
1590 violations, the department shall assess a penalty of \$7,500 for
1591 failure to empty a damaged storage system as necessary to ensure

1592 that a release does not occur until repairs to the storage
1593 system are completed; when a release has occurred from that
1594 storage tank system; for failure to timely recover free product;
1595 or for failure to conduct remediation or monitoring activities
1596 until a no-further-action or site-rehabilitation completion
1597 order has been issued. The department shall assess a penalty of
1598 \$4,500 for failure to timely upgrade a storage tank system. The
1599 department shall assess a penalty of \$3,000 for failure to
1600 conduct or maintain required release detection; failure to
1601 timely investigate a suspected release from a storage system;
1602 depositing motor fuel into an unregistered storage tank system;
1603 failure to timely assess or remediate petroleum contamination;
1604 or failure to properly install a storage tank system. The
1605 department shall assess a penalty of \$1,500 for failure to
1606 properly operate, maintain, or close a storage tank system.

1607 (4) In an administrative proceeding, in addition to the
1608 penalties that may be assessed under subsection (3), the
1609 department shall assess administrative penalties according to
1610 the following schedule:

1611 (a) For failure to satisfy financial responsibility
1612 requirements or for violation of s. 377.371(1), \$7,500.

1613 (b) For failure to install, maintain, or use a required
1614 pollution control system or device, \$6,000.

1615 (c) For failure to obtain a required permit before
1616 construction or modification, \$4,500.

1617 (d) For failure to conduct required monitoring or testing;
1618 failure to conduct required release detection; or failure to
1619 construct in compliance with a permit, \$3,000.

1620 (e) For failure to maintain required staff to respond to
1621 emergencies; failure to conduct required training; failure to
1622 prepare, maintain, or update required contingency plans; failure
1623 to adequately respond to emergencies to bring an emergency
1624 situation under control; or failure to submit required
1625 notification to the department, \$1,500.

1626 (f) Except as provided in subsection (2) with respect to
1627 public water systems serving a population of more than 10,000,
1628 for failure to prepare, submit, maintain, or use required
1629 reports or other required documentation, \$750.

1630 (5) Except as provided in subsection (2) with respect to
1631 public water systems serving a population of more than 10,000,
1632 for failure to comply with any other departmental regulatory
1633 statute or rule requirement not otherwise identified in this
1634 section, the department may assess a penalty of \$1,000.

1635 (6) For each additional day during which a violation
1636 occurs, the administrative penalties in subsections (3)-(5) may
1637 be assessed per day per violation.

1638 (7) The history of noncompliance of the violator for any
1639 previous violation resulting in an executed consent order, but
1640 not including a consent order entered into without a finding of
1641 violation, or resulting in a final order or judgment after the

1642 effective date of this law involving the imposition of \$3,000 or
 1643 more in penalties shall be taken into consideration in the
 1644 following manner:

1645 (a) One previous such violation within 5 years before the
 1646 filing of the notice of violation will result in a 25-percent
 1647 per day increase in the scheduled administrative penalty.

1648 (b) Two previous such violations within 5 years before the
 1649 filing of the notice of violation will result in a 50-percent
 1650 per day increase in the scheduled administrative penalty.

1651 (c) Three or more previous such violations within 5 years
 1652 before the filing of the notice of violation will result in a
 1653 100-percent per day increase in the scheduled administrative
 1654 penalty.

1655 (8) The direct economic benefit gained by the violator
 1656 from the violation, where consideration of economic benefit is
 1657 provided by Florida law or required by federal law as part of a
 1658 federally delegated or approved program, must be added to the
 1659 scheduled administrative penalty. The total administrative
 1660 penalty, including any economic benefit added to the scheduled
 1661 administrative penalty, may not exceed \$15,000.

1662 (9) The administrative penalties assessed for any
 1663 particular violation may not exceed \$10,000 against any one
 1664 violator, unless the violator has a history of noncompliance,
 1665 the economic benefit of the violation as described in subsection
 1666 (8) exceeds \$10,000, or there are multiday violations. The total

1667 administrative penalties may not exceed \$50,000 per assessment
 1668 for all violations attributable to a specific person in the
 1669 notice of violation.

1670 (10) The administrative law judge may receive evidence in
 1671 mitigation. The penalties identified in subsections (3)-(5) may
 1672 be reduced up to 50 percent by the administrative law judge for
 1673 mitigating circumstances, including good faith efforts to comply
 1674 before or after discovery of the violations by the department.
 1675 Upon an affirmative finding that the violation was caused by
 1676 circumstances beyond the reasonable control of the respondent
 1677 and could not have been prevented by respondent's due diligence,
 1678 the administrative law judge may further reduce the penalty.

1679 (11) Penalties collected pursuant to this section must
 1680 ~~shall~~ be deposited into the Water Quality Assurance Trust Fund
 1681 or other trust fund designated by statute and shall be used to
 1682 fund the restoration of ecosystems, or polluted areas of the
 1683 state, as defined by the department, to their condition before
 1684 pollution occurred. The Florida Conflict Resolution Consortium
 1685 may use a portion of the fund to administer the mediation
 1686 process provided in paragraph (2) (e) and to contract with
 1687 private mediators for administrative penalty cases.

1688 (12) The purpose of the administrative penalty schedule
 1689 and process is to provide a more predictable and efficient
 1690 manner for individuals and businesses to resolve relatively
 1691 minor environmental disputes. Subsections (3)-(7) may not be

1692 construed as limiting a state court in the assessment of
 1693 damages. The administrative penalty schedule does not apply to
 1694 the judicial imposition of civil penalties in state court as
 1695 provided in this section.

1696 Section 15. Subsection (1) of section 403.0671, Florida
 1697 Statutes, is amended to read:

1698 403.0671 Basin management action plan wastewater reports.—

1699 (1) By July 1, 2021, the department, in coordination with
 1700 the county health departments, wastewater treatment facilities,
 1701 and other governmental entities, shall submit a report to the
 1702 Governor, the President of the Senate, and the Speaker of the
 1703 House of Representatives evaluating the costs of wastewater
 1704 projects identified in the basin management action plans
 1705 developed pursuant to ss. 373.807 and 403.067(7) and the onsite
 1706 sewage treatment and disposal system remediation plans and other
 1707 restoration plans developed to meet the total maximum daily
 1708 loads required under s. 403.067. The report must include all of
 1709 the following:

1710 (a) Projects to:

1711 1. Replace onsite sewage treatment and disposal systems
 1712 with enhanced nutrient-reducing onsite sewage treatment and
 1713 disposal systems.

1714 2. Install or retrofit onsite sewage treatment and
 1715 disposal systems with enhanced nutrient-reducing technologies.

1716 3. Construct, upgrade, or expand domestic wastewater

1717 treatment facilities to meet the domestic wastewater treatment
 1718 plan required under s. 403.067(7)(a)9.

1719 4. Connect onsite sewage treatment and disposal systems to
 1720 domestic wastewater treatment facilities.†

1721 (b) The estimated costs, nutrient load reduction
 1722 estimates, and other benefits of each project.†

1723 (c) The estimated implementation timeline for each
 1724 project.†

1725 (d) A proposed 5-year funding plan for each project and
 1726 the source and amount of financial assistance the department, a
 1727 water management district, or other project partner will make
 1728 available to fund the project.†~~and~~

1729 (e) The projected costs of installing enhanced nutrient-
 1730 reducing onsite sewage treatment and disposal systems on
 1731 buildable lots in priority focus areas to comply with s.
 1732 373.811.

1733 Section 16. Paragraph (f) of subsection (2) of section
 1734 403.0673, Florida Statutes, is amended to read:

1735 403.0673 Water quality improvement grant program.—A grant
 1736 program is established within the Department of Environmental
 1737 Protection to address wastewater, stormwater, and agricultural
 1738 sources of nutrient loading to surface water or groundwater.

1739 (2) The department may provide grants for all of the
 1740 following types of projects that reduce the amount of nutrients
 1741 entering those waterbodies identified in subsection (1):

1742 (f) Projects identified in a domestic wastewater treatment
 1743 plan or an onsite sewage treatment and disposal system
 1744 remediation plan developed pursuant to s. 403.067(7)(a)9.a. and
 1745 b.

1746 Section 17. Subsection (5) of section 403.9301, Florida
 1747 Statutes, is amended to read:

1748 403.9301 Wastewater services projections.—

1749 (5) The Office of Economic and Demographic Research shall
 1750 evaluate the compiled documents from the counties for the
 1751 purpose of developing a statewide analysis for inclusion in the
 1752 assessment due the following January 1, ~~2023~~, pursuant to s.
 1753 403.928. Beginning July 1, 2024, and by the July 1 following
 1754 subsequent publications of the analysis required by this
 1755 section, the Office of Economic and Demographic Research shall
 1756 provide a publicly accessible data visualization tool on its
 1757 website that allows for comparative analyses of key information.

1758 Section 18. Subsection (5) of section 403.9302, Florida
 1759 Statutes, is amended to read:

1760 403.9302 Stormwater management projections.—

1761 (5) The Office of Economic and Demographic Research shall
 1762 evaluate the compiled documents from the counties for the
 1763 purpose of developing a statewide analysis for inclusion in the
 1764 assessment due the following January 1, ~~2023~~, pursuant to s.
 1765 403.928. Beginning July 1, 2024, and by the July 1 following
 1766 subsequent publications of the analysis required by this

1767 section, the Office of Economic and Demographic Research shall
1768 provide a publicly accessible data visualization tool on its
1769 website that allows for comparative analyses of key information.

1770 Section 19. For the purpose of incorporating the amendment
1771 made by this act to section 253.04, Florida Statutes, in a
1772 reference thereto, paragraph (x) of subsection (1) of section
1773 327.73, Florida Statutes, is reenacted to read:

1774 327.73 Noncriminal infractions.—

1775 (1) Violations of the following provisions of the vessel
1776 laws of this state are noncriminal infractions:

1777 (x) Section 253.04(3)(a), relating to carelessly causing
1778 seagrass scarring, for which the civil penalty upon conviction
1779 is:

1780 1. For a first offense, \$100.

1781 2. For a second offense occurring within 12 months after a
1782 prior conviction, \$250.

1783 3. For a third offense occurring within 36 months after a
1784 prior conviction, \$500.

1785 4. For a fourth or subsequent offense occurring within 72
1786 months after a prior conviction, \$1,000.

1787
1788 Any person cited for a violation of this subsection shall be
1789 deemed to be charged with a noncriminal infraction, shall be
1790 cited for such an infraction, and shall be cited to appear
1791 before the county court. The civil penalty for any such

1792 | infraction is \$100, except as otherwise provided in this
 1793 | section. Any person who fails to appear or otherwise properly
 1794 | respond to a uniform boating citation, in addition to the charge
 1795 | relating to the violation of the boating laws of this state,
 1796 | must be charged with the offense of failing to respond to such
 1797 | citation and, upon conviction, be guilty of a misdemeanor of the
 1798 | second degree, punishable as provided in s. 775.082 or s.
 1799 | 775.083. A written warning to this effect shall be provided at
 1800 | the time such uniform boating citation is issued.

1801 | Section 20. For the purpose of incorporating the amendment
 1802 | made by this act to section 381.0061, Florida Statutes, in
 1803 | references thereto, paragraph (a) of subsection (4) and
 1804 | paragraph (a) of subsection (6) of section 381.0072, Florida
 1805 | Statutes, are reenacted to read:

1806 | 381.0072 Food service protection.—

1807 | (4) LICENSES REQUIRED.—

1808 | (a) *Licenses; annual renewals.*—Each food service
 1809 | establishment regulated under this section shall obtain a
 1810 | license from the department annually. Food service establishment
 1811 | licenses shall expire annually and are not transferable from one
 1812 | place or individual to another. However, those facilities
 1813 | licensed by the department's Office of Licensure and
 1814 | Certification, the Child Care Services Program Office, or the
 1815 | Agency for Persons with Disabilities are exempt from this
 1816 | subsection. It shall be a misdemeanor of the second degree,

1817 | punishable as provided in s. 381.0061, s. 775.082, or s.
 1818 | 775.083, for such an establishment to operate without this
 1819 | license. The department may refuse a license, or a renewal
 1820 | thereof, to any establishment that is not constructed or
 1821 | maintained in accordance with law and with the rules of the
 1822 | department. Annual application for renewal is not required.

1823 | (6) FINES; SUSPENSION OR REVOCATION OF LICENSES;
 1824 | PROCEDURE.—

1825 | (a) The department may impose fines against the
 1826 | establishment or operator regulated under this section for
 1827 | violations of sanitary standards, in accordance with s.
 1828 | 381.0061. All amounts collected shall be deposited to the credit
 1829 | of the County Health Department Trust Fund administered by the
 1830 | department.

1831 | Section 21. For the purpose of incorporating the amendment
 1832 | made by this act to section 381.0061, Florida Statutes, in a
 1833 | reference thereto, subsection (4) of section 381.0086, Florida
 1834 | Statutes, is reenacted to read:

1835 | 381.0086 Rules; variances; penalties.—

1836 | (4) A person who violates any provision of ss. 381.008-
 1837 | 381.00895 or rules adopted under such sections is subject either
 1838 | to the penalties provided in ss. 381.0012 and 381.0061 or to the
 1839 | penalties provided in s. 381.0087.

1840 | Section 22. For the purpose of incorporating the amendment
 1841 | made by this act to section 381.0061, Florida Statutes, in a

1842 reference thereto, subsection (7) of section 381.0098, Florida
 1843 Statutes, is reenacted to read:

1844 381.0098 Biomedical waste.—

1845 (7) ENFORCEMENT AND PENALTIES.—Any person or public body
 1846 in violation of this section or rules adopted under this section
 1847 is subject to penalties provided in ss. 381.0012 and 381.0061.
 1848 However, an administrative fine not to exceed \$2,500 may be
 1849 imposed for each day such person or public body is in violation
 1850 of this section. The department may deny, suspend, or revoke any
 1851 biomedical waste permit or registration if the permittee
 1852 violates this section, any rule adopted under this section, or
 1853 any lawful order of the department.

1854 Section 23. For the purpose of incorporating the amendment
 1855 made by this act to section 381.0061, Florida Statutes, in a
 1856 reference thereto, subsection (2) of section 513.10, Florida
 1857 Statutes, is reenacted to read:

1858 513.10 Operating without permit; enforcement of chapter;
 1859 penalties.—

1860 (2) This chapter or rules adopted under this chapter may
 1861 be enforced in the manner provided in s. 381.0012 and as
 1862 provided in this chapter. Violations of this chapter and the
 1863 rules adopted under this chapter are subject to the penalties
 1864 provided in this chapter and in s. 381.0061.

1865 Section 24. This act shall take effect July 1, 2024.