HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1379 Environmental Protection
SPONSOR(S): Water Quality, Supply & Treatment Subcommittee, Steele, Overdorf and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1632

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Water Quality, Supply & Treatment Subcommittee	14 Y, 0 N, As CS	Curtin	Curtin
2) Agriculture & Natural Resources Appropriations Subcommittee		Byrd	Pigott
3) Infrastructure Strategies Committee			

SUMMARY ANALYSIS

The federal Clean Water Act (CWA) establishes the framework to protect and restore the Nation's waters. Each state must establish water quality standards for waters within their borders, and the Department of Environmental Protection (DEP) is responsible for establishing water quality standards in Florida.

The bill:

- Requires any county or municipality with a basin management action plan (BMAP) within its jurisdiction to include within the capital improvement element of its comprehensive plan a list of projects necessary to achieve the pollutant load reductions attributable to the local government as established in the BMAP.
- Requires the applicable 5-year implementation milestone for new or revised BMAPs to include a list of projects that will achieve the pollutant load reductions needed to meet the total maximum daily load (TMDL) or the load allocations established pursuant to s. 403.067(6), F.S., and each project must include a planning-level cost estimate and an estimated date of completion.
- Prohibits the installation of new onsite sewage treatment and disposal systems (OSTDSs) within a BMAP area adopted under s. 403.067, F.S., a reasonable assurance plan, or a pollution reduction plan where connection to a publicly owned or investor-owned sewerage system is available. 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 50 percent nutrient reduction compared to a standard OSTDS.
- Authorizes DEP to provide grants for projects that reduce the amount of nutrients entering waters that: are not attaining nutrient or nutrient-related standards; have an established TMDL; or are located within a BMAP area, a reasonable assurance plan area adopted by final order, an accepted alternative restoration plan area, or a rural area of opportunity.
- Requires DEP, relevant local governments, and relevant local public and private wastewater utilities, as part of a BMAP that includes an Outstanding Florida Spring, to develop an OSTDS remediation plan for a spring if DEP determines OSTDSs within a BMAP contribute at least 20 percent of nonpoint source nitrogen pollution or if DEP determines remediation is necessary to achieve the TMDL.
- Establishes the Indian River Lagoon (IRL) Protection Program within DEP.
- Increases the contract price for a land acquisition agreement under the Florida Forever program that requires approval by the Board of Trustees of the Internal Improvement Trust Fund from $1 million to $5 million.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Phosphorus and nitrogen are naturally present in water and are essential nutrients for the healthy growth of plant and animal life.[1] The correct balance of both nutrients is necessary for a healthy ecosystem; however, excessive nitrogen and phosphorus can cause significant water quality problems.[2] Phosphorus and nitrogen are derived from natural and human-made sources.[3] Human-made sources include sewage disposal systems (wastewater treatment facilities and septic systems), overflows of storm and sanitary sewers (untreated sewage), agricultural production and irrigation practices, and stormwater runoff.[4]

Excessive nutrient loads may result in harmful algal blooms, nuisance aquatic weeds, and the alteration of the natural community of plants and animals.[5] Dense, harmful algal blooms can also cause human health problems, fish kills, problems for water treatment plants, and impairment of the aesthetics and taste of water. Growth of nuisance aquatic weeds tends to increase in nutrient-enriched waters, which may also impact recreational activities.[6]

In order to plan and prioritize projects to protect and restore water quality, the Department of Environmental Protection (DEP) has sorted Florida's water resources into 29 major watersheds and organized those watersheds into 5 basin groups.[7] A watershed is an area of land that contributes to the flow of water into a body of water[8]; it "sheds" water into the receiving body of water. Flowing water carries organic debris and dissolved organic matter that provide food and shelter for aquatic life, but it also carries pollutants such as fertilizers and pesticides over the land and into the receiving body of water.[9]

<u>Water Quality</u>
The federal Clean Water Act (CWA) establishes the framework to protect and restore the Nation's waters.[10] 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 a list of threatened waters that may not meet water quality standards in the following reporting cycle.[11]

The CWA requires states to adopt water quality standards for navigable waters.[12] The CWA also requires states to develop lists of waterbodies that do not meet water quality standards, which are

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[1] U.S. Environmental Protection Agency (EPA), *The Issue*, https://www.epa.gov/nutrientpollution/issue (last visited Mar. 27, 2023).
[2] *Id*.
[3] *Id*.
[4] U.S. EPA, *Sources and Solutions*, https://www.epa.gov/nutrientpollution/sources-and-solutions (last visited Mar. 27, 2023).
[5] EPA, *supra* note 1.
[6] *Id*.; *see also* National Institute of Environmental Health Sciences, *Algal Blooms*, https://www.niehs.nih.gov/health/topics/agents/algal-blooms/index.cfm (last visited Mar. 27, 2023).
[7] Department of Environmental Protection (DEP), *Assessment Lists*, https://floridadep.gov/dear/watershed-assessment-section/content/assessment-lists (last visited Mar. 27, 2023).
[8] S. 403.031(18), F.S.
[9] S. Shukla, *What is a Watershed?*, University of Florida IFAS Extension Ask IFAS (Dec. 2019), https://edis.ifas.ufl.edu/publication/AE265 (last visited Mar. 17, 2023).
[10] EPA, *Overview of Identifying and Restoring Impaired Waters under Section 303(d) of the CWA* (last updated Aug. 31, 2022), https://www.epa.gov/tmdl/overview-identifying-and-restoring-impaired-waters-under-section-303d-cwa (last visited Mar. 27, 2023);
[11] *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); Department of Environmental Protection (DEP), *Total Maximum Daily Loads Program* (last updated Dec. 6, 2022), https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program (last visited Mar. 27, 2023).
[12] 33 U.S.C. s. 1313.

called impaired waters.[13] 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.[14] DEP is the lead agency coordinating the development and implementation of TMDLs.[15]

A TMDL must be adopted by rule and it 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.[16] A waterbody or waterbody segment may be removed from the list at any time during the TMDL process if it attains water quality standards.[17] 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.[18]

The Florida Watershed Restoration Act guides the development and implementation of TMDLs.[19] 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.[20] As of December 2022, 459 TMDLs have been established for impaired waters in Florida, and 8 of those were adopted in calendar year 2022.[21]

Basin Management Action Plans

Once a TMDL is adopted,[22] 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 waterbody[23] 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.[24]

BMAPs are plans that address the entire pollution load, including point[25] and nonpoint discharges, for a watershed. BMAPs generally include:

- Permitting and other existing regulatory programs, including water quality-based effluent limitations;

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[13] 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).

[14] S. 403.067(1), F.S.; DEP, *supra* note 7; DEP, *Verified List Waterbody Ids* (WBIDs), https://geodata.dep.state.fl.us/datasets/FDEP::verified-list-waterbody-ids-wbids/about (last visited Mar. 18, 2023); and s. 403.067(4), F.S.

[15] 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.

[16] DEP, *Total Maximum Daily Loads Program*, https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program (last visited Mar. 27, 2023).

[17] S. 403.067(5), F.S.

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

[19] S. 403.067, F.S.; Ch. 99-223, Laws of Fla.

[20] S. 403.067(6)(b), F.S.

[21] 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 March 26, 2023).

[22] S. 403.067(6)(c), F.S.

[23] S. 403.067(7)(a)1., F.S.

[24] 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 Mar. 27, 2023).

[25] The term "point source" means "any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged." Nonpoint sources of pollution are sources of pollution that are not point sources. Rule 62-620.200(37), F.A.C.

- Best management practices (BMPs, explained below) and non-regulatory and incentive-based programs, including cost-sharing, waste minimization, pollution prevention, agreements, and public education;
- Public works projects, including capital facilities; and
- Land acquisition.[26]

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.[27] 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.[28]

A BMAP must integrate appropriate management strategies available to the state through existing water quality protection programs to achieve the TMDL.[29] 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."[30] Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations. The BMAP development process provides an opportunity for local stakeholders, local government, community leaders, and the public to collectively determine and share water quality cleanup responsibilities.[31] BMAPs are adopted by secretarial order,[32] and thirty-three BMAPs have been developed statewide.[33]

"Each new or revised basin management action plan must include:

- The appropriate management strategies available through existing water quality protection programs to achieve [TMDLs];
- A description of [BMPs] adopted by rule;
- A list of projects in priority ranking 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."[34]

"BMAPs must include milestones for implementation and water quality improvement," as well as a water quality monitoring component to evaluate whether reasonable progress is being achieved over time.[35] An assessment of progress must be conducted every five years, and revisions to the BMAP must be made as appropriate.[36]

A BMAP for a nutrient TMDL must also include a wastewater treatment plan that addresses domestic wastewater if DEP identifies domestic wastewater treatment facilities 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.[37] This plan must provide for the construction, expansion, or upgrades necessary to achieve applicable TMDLs and include information regarding the permitted capacity of the domestic wastewater treatment facility; the average nutrient concentration and the estimated average

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[26] S. 403.067(7), F.S.
[27] 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.
[28] S. 403.067(7)(b)2.h., F.S.
[29] *Id*.
[30] S. 403.067(7)(a)2., F.S.
[31] DEP, *Basin Management Action Plans (BMAPs)*, https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps (last visited Mar. 27, 2023).
[32] S. 403.067(7)(a)5., F.S.
[33] 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 Mar. 27, 2023).
[34] S. 403.067(7)(a)4., F.S.
[35] S. 403.067(7)(a)6., F.S.
[36] *Id*.
[37] S. 403.067(7)(a)9., F.S.

nutrient load of the domestic wastewater; a projected timeline for the construction of any facility improvements; the estimated cost of the improvements; and the identity of responsible parties.[38]

BMAPs must also include an OSTDS remediation plan if DEP identifies OSTDSs as a contributor of at least 20 percent of point source or nonpoint source nutrient pollution or if DEP determines remediation is necessary to achieve a TMDL.[39] This remediation plan must identify cost-effective and financially feasible projects necessary to achieve the nutrient load reductions required for OSTDSs.[40] The plan must also include an inventory of OSTDSs (including those systems that would be eliminated through connection to central domestic wastewater infrastructure or that would be upgraded to an enhanced nutrient-reducing system); the estimated cost of potential OSTDS connections, upgrades, or replacements; and deadlines and milestones for the planning, design, and construction of projects.[41]

In addition, a BMAP must include a cooperative agricultural regional water quality improvement element, but only if:

- Agricultural measures have been adopted by the Department of Agriculture and Consumer Services (DACS) and have been implemented and the waterbody remains impaired;
- Agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges; and
- DEP determines that additional measures are necessary to achieve the TMDL.[42]

The cooperative agricultural regional water quality improvement element must be implemented through the use of cost-sharing projects and include cost-effective and technically and financially practical cooperative regional agricultural nutrient reduction projects that can be implemented on private properties on a site-specific, cooperative basis.[43]

Best Management Practices

BMPs are defined by law,[44] and they are a balance between improvements to water quality and agricultural productivity.[45] 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.[46] Economic and technological matters are also taken into consideration in developing BMPs.[47]

DACS adopts BMPs by rule and "[c]ategories of practices include:

- Nutrient management to determine nutrient needs and sources and manage nutrient applications (including manure) to minimize impacts to water resources.
- Irrigation management to address the method and scheduling of irrigation to reduce water and nutrient losses to the environment.
- Water resource protection using buffers, setbacks and swales to reduce or prevent the transport of sediments and nutrients from production areas to waterbodies."[48]

Alternative Restoration Plans

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[38] S. 403.067(7)(a)9.a., F.S.
[39] S. 403.067(7)(a)9.b., F.S.
[40] *Id*.
[41] *Id*.
[42] S. 403.067(7)(e), F.S.
[43] *Id*. Eligible projects include land acquisition in fee or conservation easements on the lands of willing sellers and site-specific water quality improvement or dispersed water management projects on the lands of project participants.
[44] S. 373.4595(2)(a), F.S.
[45] *Id*.; *see also* Department of Agriculture & Consumer Services (DACS), *Agricultural Best Management Practices*, https://www.fdacs.gov/Agriculture-Industry/Water/Agricultural-Best-Management-Practices (last visited Mar. 27, 2023).
[46] *Id*.
[47] *Id*.
[48] DACS, *Agricultural Best Management Practices*, *supra* note 45; *see also* University of Florida IFAS, *Plant Nutrient Research and Education*, *What are Agricultural Best Management Practices?* (last updated Feb. 13, 2023), https://bmp.ifas.ufl.edu/about-bmps/ (last visited Mar. 27, 2023).

Impaired waterbodies with plans that provide reasonable assurance that they will attain water quality standards may avoid placement on DEP's Verified List.[49] 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.[50] There are two categories of Alternative Restoration Plans, 4b and 4e plans.[51]

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.[52] Impaired waterbodies with plans that provide reasonable assurance that they will attain water quality standards may avoid placement on DEP's Verified List.[53] A reasonable assurance plan (RAP) is a control measure that DEP may implement for category 4b impaired waterbodies.[54]

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."[55] DEP's decision must be based on a plan that provides reasonable assurance that water quality standards will be attained.[56] RAPs are adopted by order of the Secretary of DEP,[57] and they "may obviate the need to use limited state resources to . . . implement BMAPs."[58] Five RAPs have been adopted.[59]

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."[60] 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.[61]

Wastewater Treatment

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 wastewater[62] per day.[63] This wastewater must be managed to protect public health, water quality, recreation, fish, wildlife, and the aesthetic appeal of the state's waterways.[64] The majority of Florida's domestic wastewater is controlled and treated by centralized treatment facilities regulated by DEP. There are approximately 2,000 permitted domestic wastewater treatment facilities in Florida and those facilities have a total treatment capacity of over 2.7 billion gallons per day.[65]

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[49] R. 62-303.600(2), F.A.C.
[50] DEP, *Alternative Restoration Plans*, https://floridadep.gov/DEAR/Alternative-Restoration-Plans (last visited Mar. 27, 2023).
[51] *Id*.
[52] EDR, *supra* note 33, at 14.
[53] R. 62-303.600(2), F.A.C.
[54] DEP, *supra* note 24.
[55] R. 62-303.600(1), F.A.C.
[56] *Id*.
[57] EDR, *supra* note 33, at 29.
[58] *Id*. at 27.
[59] *Id*. at 29.
[60] *Id*.
[61] *Id*.
[62] S. 367.021(5), F.S., defines "domestic wastewater" as wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.
[63] DEP, *Domestic Wastewater Program*, https://floridadep.gov/water/domestic-wastewater (last visited Mar. 26, 2023).
[64] Ss. 381.0065(1) and 403.021, F.S.
[65] DEP, *General Facts and Statistics about Wastewater in Florida* (last updated April 20, 2022) https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida (last visited Mar. 27, 2023).

Facilities or activities which discharge waste into waters of the state or which will reasonably be expected to be a source of water pollution must obtain a permit from DEP, unless specifically exempted from applying for a permit.[66] A wastewater permit is required for:

- The collection, transmission, treatment, disposal, and/or reuse of wastewater.
- The operation of, and certain construction activities associated with, domestic or industrial wastewater facilities or activities.
- The construction of a domestic wastewater collection and transmission system.[67]

Pursuant to section 402 of the federal CWA, any discharge of a pollutant from a point source to surface waters (i.e., the navigable waters of the United States or beyond) must obtain a National Pollution Discharge Elimination System (NPDES) permit.[68] NPDES permit requirements for most wastewater facilities or activities (domestic or industrial) that discharge to surface waters are incorporated into a state-issued permit, which gives the permittee a single set of permitting requirements rather than one state and one federal permit.[69] DEP issues operation permits for a period of five years for facilities regulated under the NPDES program and up to 10 years for other domestic wastewater treatment facilities meeting certain statutory requirements.[70]

Sewage disposal facilities are required to provide advanced waste treatment under certain circumstances or when deemed necessary by DEP.[71] Advanced waste treatment is treatment that provides a reclaimed water product containing no more than the following concentrations of pollutants:

- 5 mg/l of Biochemical Oxygen Demand;
- 5 mg/l of Suspended Solids;
- 3 mg/l of Total Nitrogen; and
- 1 mg/l of Total Phosphorous.[72]

Advanced waste treatment also requires high-level disinfection,[73] and failure to do so is punishable by a civil penalty of $750 for each day the failure continues.[74]

Sewage disposal facilities must provide advanced waste treatment, approved by DEP, prior to disposing any "wastes into Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, Charlotte Harbor Bay, Biscayne Bay, and, beginning July 1, 2025, Indian River Lagoon, or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto . . . ."[75] However, this requirement does not apply to "facilities permitted before February 1987 that discharge secondary treated effluent, followed by water hyacinth treatment, to tributaries of tributaries of these waters or to facilities permitted to discharge to the nontidally influenced portions of the Peace River."[76]

Onsite Sewage Treatment and Disposal Systems

One of the methods utilized to treat domestic wastewater is an onsite sewage treatment and disposal system (OSTDS). OSTDSs, commonly referred to as "septic systems," generally consist of two basic

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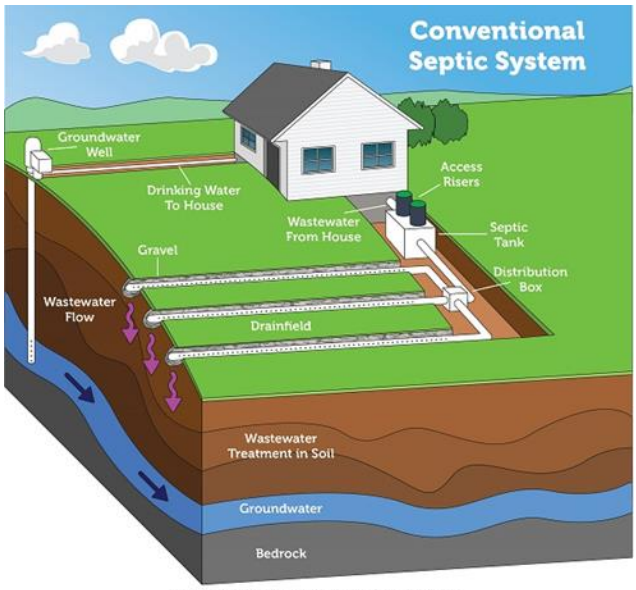
[66] S. 403.087, F.S.
[67] DEP, *Wastewater Permitting*, https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting (last visited Mar. 27, 2023).
[68] 33 U.S.C. § 1342.
[69] Ss. 403.061(32) and 403.087, F.S.
[70] S. 403.087(3), F.S.
[71] S. 403.086(2), F.S.
[72] S. 403.086(4), F.S.
[73] S. 403.086(4)(b), F.S.; R. 62-600.440(6), F.A.C.
[74] S. 403.086(2), F.S.
[75] S. 403.086(1)(c), F.S.
[76] *Id.*

parts: the septic tank and the drainfield.[77] Waste from toilets, sinks, washing machines, and showers flows through a pipe into the septic tank, where anaerobic bacteria break the solids into a liquid form. The liquid portion of the wastewater flows into the drainfield, which is generally a series of perforated pipes or panels surrounded by lightweight materials such as gravel or Styrofoam. The drainfield provides a secondary treatment where aerobic bacteria continue deactivating the germs. The drainfield also provides filtration of the wastewater, as gravity draws the water down through the soil layers.[78]



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

In a conventional OSTDS, a septic tank does not reduce nitrogen from the raw sewage. In Florida, approximately 30-40 percent of the nitrogen levels are reduced in the drainfield of a system that is installed 24 inches or more from groundwater.[79] This still leaves a significant amount of nitrogen to percolate into the groundwater, which makes nitrogen from OSTDSs a potential contaminant in groundwater.[80]

There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state's population.[81] In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.[82] For example, in rural areas and low-density developments, central sewer systems are not cost-effective. Less than 1 percent of OSTDSs in Florida are actively managed under operating permits and maintenance agreements.[83] The remainder of systems are generally serviced only when they fail, often leading to costly repairs that could have been avoided with routine maintenance.[84]

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[77] Department of Health (DOH), *Septic System Information and Care*, http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html (last visited Mar. 27, 2023); EPA, *Types of Septic Systems*, https://www.epa.gov/septic/types-septic-systems (last visited Mar. 27, 2023).
[78] *Id*.
[79] DOH, *Florida Onsite Sewage Nitrogen Reduction Strategies Study, Final Report 2008-2015*, 21 (Dec. 2015), https://www.floridahealth.gov/environmental-health/onsite-sewage/research/finalnitrogenlegislativereportsmall.pdf (last visited Mar. 27, 2023); *see* r. 64E-6.006(2), F.A.C.
[80] University of Florida Institute of Food and Agricultural Sciences (IFAS), *Onsite Sewage Treatment and Disposal Systems: Nitrogen*, 3 (Oct. 2020), http://edis.ifas.ufl.edu/pdffiles/SS/SS55000.pdf (last visited Mar. 27, 2023).
[81] DEP, *Onsite Sewage*, https://floridadep.gov/water/onsite-sewage (last visited Mar. 27, 2023).
[82] DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, § 1.0 (Oct. 1, 2008), http://www.floridahealth.gov/environmental-health/onsite-sewage/research/_documents/rrac/2008-11-06.pdf (last visited Mar. 27, 2023). The report begins on page 56 of the PDF.
[83] *Id*.
[84] *Id*.

Different types of advanced OSTDSs exist that can remove greater amounts of nitrogen than a typical septic system (often referred to as "advanced" or "nutrient-reducing" septic systems).[85] DEP publishes on its website approved products and resources on advanced systems.[86] Determining which advanced system is the best option depends on site-specific conditions.

The owner of a properly functioning OSTDS must connect to a sewer system within one year of receiving notification that a sewer system is available for connection.[87] Owners of an OSTDS in need of repair or modification must connect within 90 days of notification from DEP.[88] BMAPs may require the connection of new properties to central sewer or upgrade to an enhanced-nitrogen reducing system as part of an OSTDS remediation plan.[89]

The Florida Clean Waterways Act, enacted in 2020, required BMAPs for nutrient TMDLs to include an OSTDS remediation plan if DEP identifies OSTDSs as contributors of at least 20 percent of nutrient pollution or if DEP determines that remediation is necessary to achieve the TMDLs.[90] This was an expansion of the statutory requirement that an OSTDS remediation plan must be developed if DEP determines that OSTDSs within a sensitive spring area contribute at least 20 percent of nonpoint source nitrogen pollution or that remediation is necessary to achieve the TMDL.[91]

The Clean Waterways Act provided for the transfer of the Onsite Sewage Program from the Department of Health (DOH) to DEP, effective July 1, 2021.[92] The Onsite Sewage Program will be transferred over a period of five years, and guidelines for the transfer are provided by an interagency agreement.[93] Per the agreement, DEP has the primary powers and duties of the Onsite Sewage Program, and the county departments of health will implement the OSTDS program under the direction of DEP.[94] The county departments of health still handle permitting and inspection of OSTDSs.[95] 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.[96]

In 2012 the Legislature required each county or municipality that contains a first magnitude spring[97] to develop and adopt OSTDS evaluation and assessment programs by July 1, 2013.[98] Any other counties may develop and adopt OSTDS evaluation and assessment programs.[99] Such programs are required to have evaluation of OSTDSs conducted every five years by a qualified contractor.[100] The inspection must include an evaluation of the tank, drainfield, and, if applicable, any pumps, siphons, or alarms.[101] Upon the completion of the assessment the qualified contractor must provide a copy of a written, signed evaluation report to the property owner and to the county health department within 30 days after

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[85] DOH, *Nitrogen-Reducing Systems for Areas Affected by the Florida Springs and Aquifer Protection Act* (updated May 2021), http://www.floridahealth.gov/environmental-health/onsite-sewage/products/_documents/bmap-n-reducing-tech-18-10-29.pdf (last visited Mar. 27, 2023).
[86] DEP, *Onsite Sewage Program, Product Listings and Approval Requirements*, https://floridadep.gov/water/onsite-sewage/content/product-listings-and-approval-requirements (last visited Mar. 27, 2023).
[87] S. 381.00655, F.S.
[88] *Id*.
[89] Ss. 373.807, 373.811, and 403.067, F.S.
[90] Ch. 2020-150, Laws of Fla.
[91] S. 373.807, F.S.
[92] Ch. 2020-150, s. 2, Laws of Fla.
[93] 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 Mar. 27, 2023).
[94] *Id*. at 14.
[95] *Id*. at 11; DEP, Onsite Sewage Program, https://floridadep.gov/water/onsite-sewage (last visited Mar. 26, 2023).
[96] DOH and DEP, *Interagency Agreement between DEP and DOH in Compliance with Florida's Clean Waterways Act for Transfer of the Onsite Sewage Program, supra* note 49, at 11.
[97] "First magnitude spring" ma3ns a spring that has a median water discharge or greater than or equal to 100 cubic feet per second for the period of record, as determined by DEP. S.381.00651(1), F.S.
[98] Ch. 2012-184, s. 33, Laws of Fla.
[99] S. 381.00651(3), F.S.
[100] S. 381.00651(6)(a)-(b), F.S.
[101] S. 381.00651(7)(a)-(c), F.S.

the evaluation.[102] The county health department, in coordination with DEP, must administer any evaluation program on behalf of any county or municipality that has adopted an evaluation program.[103]

Wastewater Grant Program

The Clean Waterways Act[104] created the wastewater grant program.[105] The wastewater grant program allows DEP, in consultation with the Water Management Districts (WMDs), to award grants to governmental entities for the following:[106]

- Projects to retrofit OSTDSs to upgrade them to enhanced nutrient-reducing OSTDSs;
- Projects to construct, upgrade, or expand facilities to provide advanced waste treatment; and
- Projects to connect OSTDSs to central sewer facilities.

The projects must individually or collectively reduce excess nutrient pollution and they must be located within one of three areas:[107]

- A BMAP.[108]
- A RAP.
- A rural area of opportunity (RAO). A RAO is a community or region of communities which are uniquely distressed and are priority assignments for the Rural Economic Development Initiative.[109] The Governor may designate no more than three RAOs.[110]

DEP coordinates with WMDs to identify grant recipients in each district.[111] DEP must consider the estimated reduction in nutrient load per project; project readiness; the cost-effectiveness of the project; the overall environmental benefit of a project; the location of a project; the availability of local matching funds; and projected water savings or quantity improvements associated with a project.[112]

Projects that subsidize the connection of OSTDS to wastewater treatment facilities are prioritized as follows:

- First priority: subsidizing the connection of OSTDS to existing infrastructure.
- Second priority: any expansion of a collection or transmission system that promotes efficiency by planning the installation of wastewater transmission facilities to be constructed concurrently with other construction projects occurring within or along a transportation facility right-of-way.
- Third priority: all other connections of OSTDS to wastewater treatment facilities.[113]

DEP submits an annual report identifying the projects funded through the grant program to the Governor and Legislature.[114]

The wastewater grant program is funded by documentary stamp tax revenues.[115] After required distributions from documentary stamp tax revenues are disbursed,[116] an amount equaling 5.4175 percent of the remainder is paid into the Water Protection and Sustainability Program Trust Fund to be

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[102] S. 381.00651(7)(d), F.S.
[103] S. 381.00651(8), F.S.
[104] Ch. 2020-150, Laws of Fla.
[105] S. 403.0673, F.S.
[106] S. 403.0673(1) and (4), F.S.
[107] S. 403.0673(1), F.S.
[108] S. 403.067(7)(a)1., F.S.; R. 62-303.100(1), F.A.C.
[109] S. 288.0656(2)(d) and (7)(a), F.S.
[110] S. 288.0656(7)(a), F.S.
[111] S. 403.0673(4), F.S.
[112] S. 403.0673(2), F.S.
[113] *Id*.
[114] S. 403.0673(5), F.S.
[115] S. 201.15(4)(h), F.S. Documentary stamp tax revenues are collected under ch. 201, F.S., which requires an excise tax to be levied on two classes of documents: deeds and other documents related to real property, which are taxed at the rate of 70 cents per $100; and certificates of indebtedness, promissory notes, wage assignments, and retail charge account agreements, which are taxed at 35 cents per $100. *See* ss. 201.02(1)(a) and 201.08(1)(a), F.S.
[116] S. 201.15(4), F.S. (The required distributions are to the Land Acquisition Trust Fund and the service charge representing the estimated pro rata share of the cost of general government paid from the General Revenue Fund.)

used to fund wastewater grants.[117] The Office of Economic and Demographic Research estimates that the distribution for wastewater grants in fiscal year 2023-2024 will be $95.2 million.[118]

Outstanding Florida Springs

"Geologists estimate that there are more than 1,000 springs in the state of Florida, representing what may be the largest concentration of freshwater springs on Earth."[119] In 2016, the Florida Legislature enacted the Florida Springs and Aquifer Protection Act and identified 30 Outstanding Florida Springs (OFSs) that require additional protections to ensure their conservation and restoration for future generations.[120] These springs are a unique part of the state's scenic beauty, provide critical habitat, and have immeasurable natural, recreational, and economic value.[121]

DEP is required to assess the water quality in the OFSs and has determined that 24 of these springs are impaired.[122] For these impaired springs, DEP must adopt (or re-adopt) a BMAP to implement all the protections of the Florida Springs and Aquifer Protection Act, including:

- Prioritized lists of restoration projects along with planning level estimates for cost, schedule, and nutrient load reduction;
- Phased milestones (5-year, 10-year, and 15-year) to achieve water quality restoration targets in 20 years;
- Estimated nutrient pollutant loads, allocated to each source or category of sources;
- Completed remediation plans for OSTDSs where septic loading accounts for at least 20 percent of the estimated nutrient input;[123] and
- Delineated "priority focus areas" where certain activities are prohibited.[124]

A "priority focus area" is the area or areas of a basin where the Floridan Aquifer[125] is generally most vulnerable to pollutant inputs where there is a known connectivity between groundwater pathways and an OFS, as determined by DEP in consultation with the appropriate water management districts and delineated in a BMAP.[126]

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[117] S. 201.15(4)(h), F.S.

[118] Office of Economic and Demographic Research, Conference Results (2022), http://edr.state.fl.us/Content/conferences/docstamp/docstampresults.pdf.

[119] DEP, *Protect and Restore Springs*, https://floridadep.gov/springs/protect-restore (last visited Mar. 27, 2023).

[120] DEP, *Springs*, https://floridadep.gov/springs/ (last visited Mar.27, 2023). OFSs include all historic first magnitude springs and the following additional springs, including their associated spring runs: De Leon Springs, Peacock Springs, Poe Springs, Rock Springs, Wekiwa Springs, and Gemini Springs. S. 373.802(4), F.S.

[121] DEP, *supra* note 119.

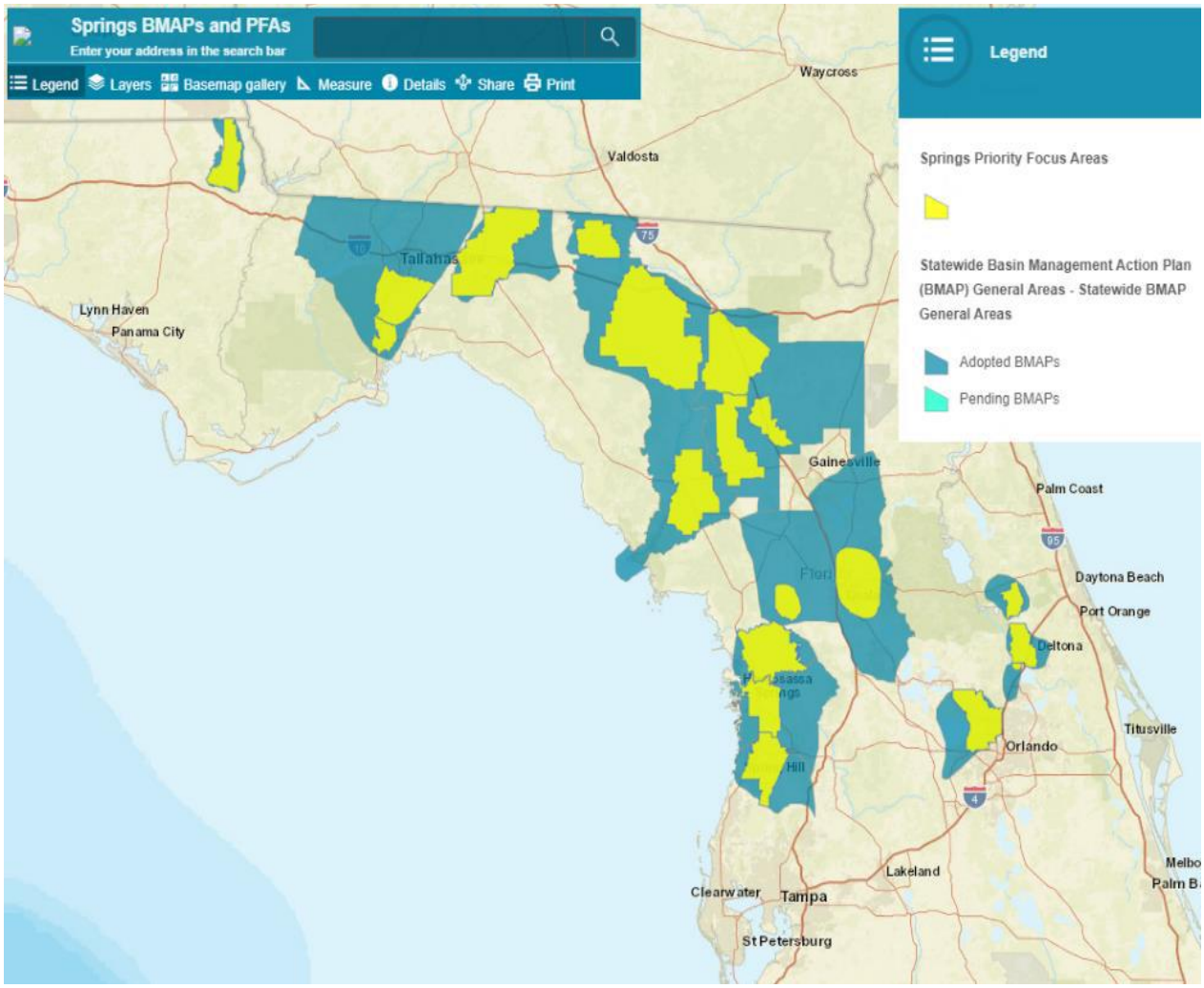
[122] *Id*.

[123] Although OSTDS remediation plans were first only required for springs, in 2020, the requirement was expanded to BMAPs statewide as part of the Clean Waterways Act. *See* Chapters 2016-1, s. 27 and 2020-150, s. 13, Laws of Fla. Notably, OSTDS remediation plans for springs are only required within the priority focus areas, whereas the laws governing BMAPs require OSTDS remediation plans more generally within the entire BMAP.

[124] DEP, *supra* note 119.

[125] The Floridan Aquifer is the largest aquifer in the southeastern United States and one of the most productive aquifer systems in the world. The aquifer underlies an area of about 100,000 square miles that includes all of Florida and extends into parts of Alabama, Georgia and South Carolina, as well as parts of the Atlantic Ocean and the Gulf of Mexico. St. Johns River Water Management District, *Florida's aquifers*, https://www.sjrwmd.com/water-supply/aquifer/#:~:text=Aquifer%20facts%201%20More%20than%2090%20percent%20of,2%2C000%20feet%20below%20land%20surface.%20...%20More%20items (last visited Mar. 27, 2023).

[126] S. 373.802(5), F.S.; DEP, *Map of Priority Focus Areas in BMAPs*, https://fdep.maps.arcgis.com/apps/View/index.html?appid=1afdd97c67584c06840019241becde74 (last visited Mar. 27, 2023).



The activities prohibited within priority focus areas include:

- New domestic wastewater disposal facilities with permitted capacities of 100,000 gallons per day or more, except for those facilities that meet an advanced wastewater treatment standard of no more than 3 mg/l total nitrogen, on an annual permitted basis, or a more stringent treatment standard if necessary to attain a TMDL;
- New OSTDSs on lots of less than one acre, if the addition of the specific systems conflicts with an OSTDS remediation plan incorporated into a BMAP;
- New facilities for the disposal of hazardous waste;
- The land application of Class A or Class B domestic wastewater biosolids not in accordance with a DEP-approved nutrient management plan; and
- New agriculture operations that do not implement BMPs, measures necessary to achieve pollution reduction levels established by DEP, or groundwater monitoring plans.[127]

When a BMAP is being developed for an OFS, if DEP identifies OSTDSs as contributors of at least 20 percent of nonpoint source pollution or if DEP determines remediation is necessary to achieve the TMDL, then the BMAP is required to include an OSTDS remediation plan for systems identified as requiring remediation.[128]

There have been recent legal challenges to DEP's development of BMAPs for OFSs. In *Sierra Club v. DEP*, the court held that DEP failed to comply with ss. 403.067(6)(b) and 373.801(1)(b), F.S., in creating the BMAPs because the BMAPs failed to include an identification of each specific point source or category of nonpoint sources and an estimated allocation of the pollutant for each point source or

[127] S. 373.811, F.S.
[128] S. 373.807(1)(a), F.S.

category of nonpoint sources.[129] Instead, the BMAPs included pie charts that showed current estimated nitrogen loading in the various springsheds by source and allocations to entire basins, not to any point or nonpoint source.[130]

The Indian River Lagoon

The Indian River Lagoon (IRL) system is an estuary[131] that runs along 156 miles of Florida's east coast[132] and borders Volusia, Brevard, Indian River, St. Lucie, Martin, and Palm Beach counties.[133] The IRL extends from Ponce de Leon Inlet near New Smyrna Beach in Volusia County to the southern border of Jupiter Inlet in Martin County.[134] The IRL system is composed of three main interconnected waterbodies: the Banana River, the Indian River, and the Mosquito Lagoon.[135]

The IRL is one of the most biologically diverse estuaries in North America[136] and is home to more than 2,000 species of plants, 600 species of fish, 300 species of birds, and 53 endangered or threatened species.[137] The estimated economic value received from the IRL in 2014 was approximately $7.6 billion.[138] Industry groups that are directly influenced by the IRL support nearly 72,000 jobs.[139]

The IRL ecosystem has been harmed by human activities in the region. Stormwater runoff from urban and agricultural areas, discharges from wastewater treatment facilities, canal discharges, septic systems, animal waste, and fertilizer applications have led to harmful levels of nutrients and sediments entering the lagoon.[140] These pollutants create cloudy conditions, feed algal blooms, and lead to muck accumulation, all of which negatively impact the seagrass that provides habitat for much of the IRL's marine life.[141] During the 2011 "Superbloom," intense algal blooms of phytoplankton occurred throughout most of the IRL, lasting for seven months and resulting in massive losses of seagrass that have yet to fully recover.[142] There have also been recurring brown tides; unusual mortalities of dolphins, manatees, and shorebirds; and large fish kills due to low dissolved oxygen from decomposing algae.[143]

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[129] *Sierra Club v. DEP*, No. 1D21-1667, *2 (Fla. 1st DCA 2023).
[130] *Id.* at *5.
[131] An estuary is a partially enclosed coastal waterbody where freshwater from rivers and streams mixes with saltwater from the ocean. EPA, *What Is An Estuary?*, https://www.epa.gov/nep/basic-information-about-estuaries (last visited Mar. 15, 2023).
[132] DEP, *Indian River Lagoon Basin, Central Indian River Lagoon Basin Management Action Plan*, (Feb. 2021) https://publicfiles.dep.state.fl.us/DEAR/BMAP/IndianRiverLagoon/BMAP_Documents/2021_IRL_BMAP_Final/CIRL/Final_CIRL_BMAP_02102021.pdf; DEP, *Florida State Parks, Ecology of the Indian River Lagoon*, https://www.floridastateparks.org/learn/ecology-indian-river-lagoon (last visited Mar. 15, 2023).
[133] Indian River Lagoon National Estuary Program, *About the Indian River Lagoon*, https://onelagoon.org/irlnep/ (last visited Mar. 15, 2023).
[134] *Id.*
[135] DEP, *Florida State Parks*, *supra* note 132.
[136] DEP, *Indian River Lagoon Basin, Central Indian River Lagoon Basin Management Action Plan*, *supra* note 132, at 45.
[137] Indian River Lagoon Species Inventory, *Biodiversity*, https://www.irlspecies.org/misc/Total_Biodiv.php#:~:text=Home%20to%20over%204%2C200%20species%20of%20plants%2C%20birds%2C,species%20of%20fish%20and%20370%20species%20of%20birds (last visited Mar. 27, 2023).
[138] East Central Florida Regional Planning Council and Treasure Coast Regional Planning Council, *Indian River Lagoon Economic Valuation Update*, vi, ix (Aug. 26, 2016), https://files.tcrpc.org/portfolio%20of%20work/Economic%20Development/IRL%20Valuation/FinalReportIRL08_26_2016.pdf.
[139] *Id.* at ix.
[140] Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update* at xi; Marine Resources Council, Indian River Lagoon Health Update, 4-7 (2018), https://savetheirl.org/wp-content/uploads/mrc-report-card-2018-min.pdf.
[141] *Id.* at xi.
[142] IRL 2011 Consortium, *Indian River Lagoon 2011 Superbloom - Plan of Investigation*, 2-3 (2012), https://www.sjrwmd.com/static/waterways/irl-technical//2011superbloom_investigationplan_June_2012.pdf; Marine Resources Council, Indian River Lagoon Coastal Community Report Card, 2,4 (2022), https://savetheirl.org/wp-content/uploads/IRLReportCard2022-opt.pdf.
[143] Tetra Tech, Inc. & Closewaters, LLC, *supra* note 140, at xi.

Brown tide is a type of algal bloom dominated by a brown, microscopic marine algae, which can be harmful to ecosystems in high concentrations, and was first documented in state waters in 2012.[144] The St. Lucie Estuary is a major tributary to the southern IRL, so freshwater discharges from Lake Okeechobee, which can include toxic cyanobacteria ("blue-green algae"), also impact the IRL.[145]

The St. Johns River WMD, South Florida WMD, and local governments implement projects that address water quality issues in the IRL.[146] Brevard County established the Save Our Indian River Lagoon Project Plan, which outlines local projects to meet water quality targets and improve the health, productivity, aesthetic appeal, and economic value of the IRL.[147] In 2016, Brevard County passed a referendum, approved by 62.4 percent of voters, to authorize the issuance of a half-cent infrastructure sales tax to pay for a portion of the plan.[148] The sales tax will generate an estimated $542 million over ten years.[149]

OSTDSs account for much of the nitrogen enrichment in groundwater in the IRL watersheds because the six counties adjacent to the IRL rely heavily on OSTDS for wastewater management.[150] As of 2021, there were approximately 300,000 permitted OSTDSs within the IRL watershed.[151] Indian River and Martin counties used OSTDSs for over 50 percent of their wastewater management, and there were approximately 31,000 septic systems in each county.[152] As of 2019, Brevard County, which borders nearly half of the IRL, had an estimated 53,204 OSTDSs and contributed approximately 17,863 pounds per year of total nitrogen from failing OSTDSs.[153]

IRL National Estuary Program

Established in 1991, the IRL National Estuary Program is part of a national network of 28 estuary programs established under the CWA and administered nationally by the U.S. Environmental Protection Agency (EPA).[154] The program was established to assist with the development a comprehensive plan to restore and protect the IRL.[155]

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[144] SJRWMD, *Renewing the Lagoon - Frequently Asked Questions*, https://www.sjrwmd.com/waterways/renew-lagoon/#faq-01 (last visited Mar. 27, 2023); FWC, *Effects of Brown Tide in the Indian River Lagoon* (2012), https://myfwc.com/research/redtide/monitoring/historical-events/brown-tide/ (last visited Mar. 27, 2023).

[145] DEP, *Basin Management Action Plan, St. Lucie River and Estuary Basin*, 15 (2020), https://publicfiles.dep.state.fl.us/DEAR/DEARweb/BMAP/NEEP_2020_Updates/St_Lucie_BMAP_01-31-20.pdf ; DEP, Basin Management Action Plan, *Lake Okeechobee*, 14 (2020), https://publicfiles.dep.state.fl.us/DEAR/DEARweb/BMAP/NEEP_2020_Updates/Lake%20Okeechobee%20BMAP_01-31-20.pdf.

[146] SJRWMD, *The Indian River Lagoon*, https://www.sjrwmd.com/waterways/indian-river-lagoon/ (last visited Mar. 13, 2023); SFWMD, *Celebrating the Indian River Lagoon-South C-23/24 Stormwater Treatment Area Groundbreaking*, https://www.sfwmd.gov/news-events/news/celebrating-indian-river-lagoon-south-c-2324-stormwater-treatment-area (last visited Mar. 27, 2023).

[147] Tetra Tech, Inc. & Closewaters, LLC, *supra* note 140, at xi.

[148] Brevard County Supervisor of Elections, 2016 *General Election Official Results*, https://enr.electionsfl.org/BRE/1616/Summary/ (last visited Mar. 13, 2023); Brevard County, *Save our Indian River Lagoon Project Plan*, https://www.brevardfl.gov/SaveOurLagoon/ProjectPlan (last visited Mar. 27, 2023).

[149] *Id.*

[150] L.W. Herren, et al., *Septic systems drive nutrient enrichment of groundwaters and eutrophication in the urbanized Indian River Lagoon, Florida, Marine Pollution Bulletin*, 2 (2021), https://reader.elsevier.com/reader/sd/pii/S0025326X21009620?token=1384E4307B3A786FC65C7DD3270D91440566F5E2793CAE8F859A2139CF19FE68102D54027EEFF164F8492399C7F65B49&originRegion=us-east-1&originCreation=20230217141616.

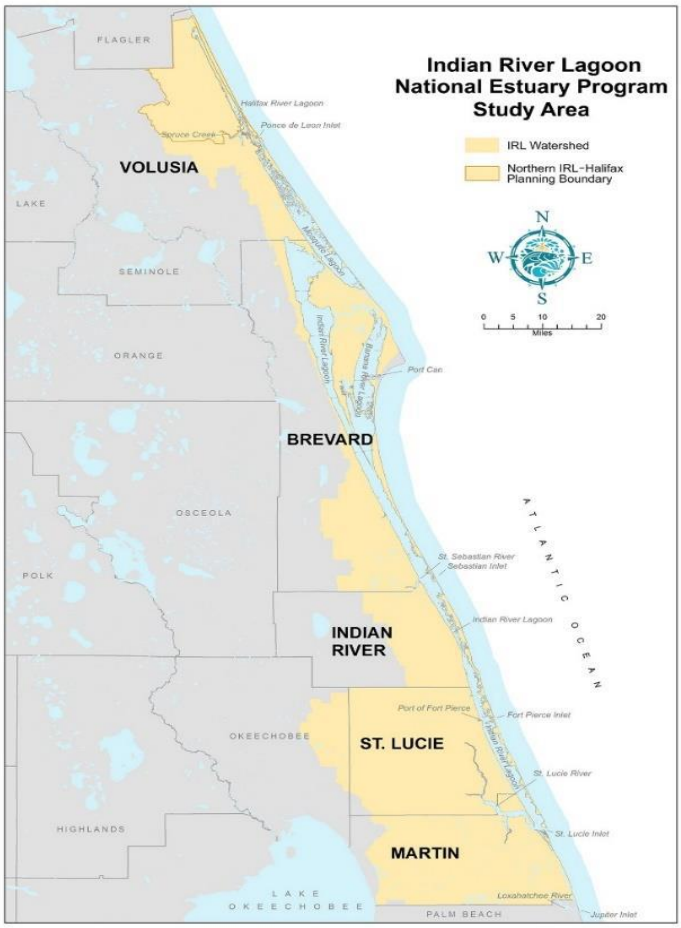
[151] *Id.*

[152] *Id.*

[153] Tetra Tech, Inc. & Closewaters, LLC, *supra* note 140, at 22-23.

[154] One Lagoon, *The Indian River Lagoon NEP*, https://onelagoon.org/irlnep/ (last visited Mar. 12, 2023); IRL National Estuary Program, *Second Amended and Restated IRL National Estuary Program Interlocal Agreement*, 1 (2017), https://onelagoon.org/wp-content/uploads/2017-2ndAmendedInterlocal__20200201.pdf.

[155] *Id.*



Today, the program is sponsored by the IRL Council, which was established in February 2015 as a special district of Florida.[156] The IRL Council includes representatives of five counties bordering the lagoon (Volusia, Brevard, the Indian River County Lagoon Coalition, St. Lucie and Martin counties), the St. Johns River and South Florida Water Management Districts, and DEP. The council's goals include (1) attaining and maintaining water and sediment of sufficient quality to support a healthy estuarine lagoon ecosystem; (2) attaining and maintaining a functioning, healthy ecosystem which supports endangered and threatened species, fisheries, commerce, and recreation; (3) promoting public awareness and coordinated interagency management of the IRL ecosystem; and (4) developing long-term funding sources for prioritized projects to preserve, protect, restore, and enhance the IRL.[157] EPA provides guidance to the council and, every five years, evaluates the program's progress.[158]

The IRL National Estuary Program identifies and implements projects to improve wastewater infrastructure, reduce reliance on conventional OSTDSs, retain and treat stormwater, rehabilitate habitats, and enhance planning for resilient communities.[159] A list of eligible projects is evaluated and revised annually by the program's Management Conference.[160] The program also developed strategies to, among other things:

- Remove or reduce nutrient-loading to the IRL watershed to meet water quality standards pursuant to a TMDL, BMAP, or RAP;[161]

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[156] One Lagoon, *The Indian River Lagoon NEP*, *supra* note 154.
[157] IRL Program, *Looking Ahead to 2030: A 10-Year Comprehensive Conservation and Management Plan for the IRL, Florida*, 12 (2019), https://onelagoon.org/wp-content/uploads/IRLNEP_Final-Draft-CCMP-REVISION_2018-12-07_LowRes__20200204.pdf.
[158] *Id*. at 13.
[159] *Id*. at ix.
[160] *Id*. The IRL National Estuary Program's Management Conference represents a more than 100-member citizen and scientist oversight committee that advises the IRL Council Board of Directors as they adopt policies and make annual budget and appropriation decisions to implement the comprehensive plan.
[161] *Id*. at 20-21.

- Improve wastewater infrastructure to achieve advanced wastewater treatment and to increase capacity to accommodate septic-to-sewer conversions and the region's growing population;[162] and
- Research innovative technologies and the emergence of commercial opportunities that will assist with restoration and stewardship of the IRL.[163]

Florida Forever

The Florida Forever Program is the state's conservation and recreation lands acquisition program.[164] Since 2001, the state has purchased more than 899,574 acres of land for approximately $3.3 billion.[165] Florida Forever supports a wide range of goals, including water resource protection, coastal resiliency, preservation of cultural resources, public access to outdoor recreation, and the restoration and maintenance of public lands.[166]

The Acquisition and Restoration Council (ARC) is a 10-member body that makes recommendations on the acquisition, management, and disposal of state-owned lands.[167] DEP provides primary staff to support ARC. ARC is responsible for developing the Florida Forever priority list, which consists of ranked land acquisition projects that are deemed suitable as conservation property and meet Florida Forever goals.[168] ARC members determine the priority of lands based on weighted criteria for all of the following: the coordination and completion of projects; biodiversity; protection, restoration, and maintenance of natural functions; water quality; recreation; archaeological and historical resources; sustainable agriculture and forest lands; and urban open spaces.[169] In addition to these factors, the members must give increased priority to certain projects.[170]

Anyone may propose a project for consideration for the priority list. To develop the list, ARC accepts applications from state agencies, local governments, nonprofit and for-profit organizations, private land trusts, and private individuals for project proposals eligible for Florida Forever funding.[171] ARC then submits the list to the Board of Trustees of the Internal Improvement Trust Fund (Board) for approval.[172] The Board comprises the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture and Consumer Services. The Florida Forever priority list is used by DEP to prioritize projects with the available Florida Forever funds allocated annually by the Legislature. To be considered for acquisition, a project must have a willing seller and be on the list.

Before a parcel may be approved for acquisition by the Board or DEP, an appraisal must be conducted.[173] Where the estimated value of a parcel exceeds $1 million, two appraisals must be done.[174] If both appraisals of a parcel exceed $1 million and differ significantly, a third appraisal may be conducted.[175] Fees associated with the appraisal process are paid by the agency proposing the acquisition of lands.[176] Appraisal reports are confidential and exempt from public records disclosure until an option contract is executed, if applicable, or until two weeks before a contract or agreement for purchase is considered for approval by the Board.[177] However, DEP may disclose an appraisal report to a private landowner during negotiations for acquisitions using alternatives to fee simple techniques if

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[162] *Id*. at 24, 26-27.
[163] *Id*. at 140.
[164] S. 259.105, F.S. Such acquisitions include less-than-fee agreements.
[165] DEP, *Florida Forever*, https://floridadep.gov/floridaforever (last visited Mar. 22, 2023).
[166] *See* s. 259.105(2)(a), F.S.
[167] S. 259.035(3), F.S.
[168] S. 259.105(8)-(9), F.S.
[169] S. 259.105(9), F.S.
[170] S. 259.105(10), F.S.
[171] S. 259.105(7)(a), F.S.
[172] S. 259.04(1)(c), F.S.
[173] S. 253.025(8), F.S.
[174] S. 253.025(8)(b), F.S.
[175] *Id*.
[176] S. 253.025(8)(c), F.S.
[177] S. 253.025(8)(f), F.S.

DEP determines doing so will bring a proposed acquisition to closure.[178] A landowner must agree to maintain the confidentiality of such reports.[179]

The Board must approve any agreement to acquire land where the contract price agreed to by the seller and the acquiring agency exceeds $1 million, or if the acquisition is the initial purchase in a Florida Forever project.[180]

Florida Wildlife Corridor

The ability to migrate plays an important role in supporting biodiversity by enabling animals to safely travel in order to find mates, food, and shelter. Due to human development, many habitats have become fragmented, creating blockades such as residential areas, industrial parks, and roads.[181] Wildlife corridors are sections of land that connect two or more wildlife habitats together and allow animals to avoid roads and other developments.[182]

The Florida Wildlife Corridor (Corridor), depicted below,[183] is a geographically defined area comprising over 18 million acres of land, which include 10 million acres of conservation lands and 8 million acres of opportunity areas that do not have conservation status.[184]

In 2021, the Legislature created the Wildlife Corridor Act to codify the Corridor and recognize that lands and waters that provide the state's green infrastructure and vital habitat for wide-ranging wildlife need

[178] *Id*.
[179] *Id*.
[180] S. 253.025(4)(b)-(c), F.S.
[181] Esri, *Importance of Wildlife Corridors*, https://www.arcgis.com/apps/Cascade/index.html?appid=6b87112414f84c8392c842dabab9f9a1 (last visited Mar. 22, 2023).
[182] University of Florida, *Connecting Nature to Nature: Wildlife Corridors*, http://blogs.ifas.ufl.edu/pinellasco/2015/04/03/connecting-nature-to-nature-wildlife-corridors/ (last visited Mar. 22, 2023).
[183] Florida Wildlife Corridor, *FL Wildlife Corridor*, https://floridawildlifecorridor.org/wp-content/uploads/2021/08/FLWildlifeCorridor.pdf (last visited Mar. 22, 2023).
[184] DEP, *Florida Wildlife Corridor*, https://floridadep.gov/sites/default/files/Florida_Wildlife_Corridor.pdf (last visited Mar. 22, 2023).

to be preserved and protected.[185] The purpose of the Wildlife Corridor Act was to create incentives for conservation and sustainable development while preserving the green infrastructure.[186]

The Wildlife Corridor Act, in pertinent part, directed DEP to promote and encourage various methods of investing in and protecting the Corridor, including encouraging all agencies that acquire lands to include in their land-buying efforts the acquisition of sufficient legal interest in opportunity areas to ensure the continued viability of the Corridor; encouraging investment in conservation easements voluntarily entered into by private landowners to conserve opportunity areas; and encouraging private landowners, through existing and future incentives and liability protections, to continue to allow their private property to be used for the preservation and enhancement of the Corridor.[187] Because there is no land acquisition program specifically for acquiring lands that are located within the Wildlife Corridor, initiatives such as the Florida Forever Program and the Rural and Family Lands Protection Program are used to acquire such lands.

Executive Order 23-06

Executive Order 23-06 (the Order) includes several directives regarding environmental protection.[188] The Order directs DEP to strengthen BMAPs for nutrient-impaired waterbodies by:

- Updating all BMAPs to include the specific projects necessary to meet the requisite water quality standards to achieve restoration goals. The projects most likely to yield maximum pollutant reductions should be prioritized;
- Requiring local governments to identify and expedite high priority projects to meet the nutrient load allocations required under a BMAP; and
- Working with DACS to identify and seek funding for regional projects that address excess nutrient impacts from agricultural nonpoint sources in BMAP areas where agriculture has been identified as a significant source of nutrient pollution.[189]

The Order also directs DEP to identify and prioritize strategies and projects to expedite water quality restoration in the IRL by:

- Working with the Legislature to establish the IRL Protection Program and secure at least $100 million annually for priority projects to improve water quality in the IRL;
- Coordinating with stakeholders, including federal agencies, local governments, WMDs, and the IRL Estuary Program, to identify and prioritize projects for water quality restoration;
- Undertaking enhanced water quality monitoring in the IRL to better identify sources of nutrient loading to inform project prioritization and improve water quality in the IRL;
- Taking actions to reduce nutrient contributions to the IRL from OSTDSs and wastewater facilities, stormwater discharges, and agriculture nonpoint sources; and
- Supporting innovative nature-based solutions including living shorelines, freshwater and coastal wetland restoration, and seagrass recovery utilizing strategic propagation and planting efforts.[190]

The Order also directs DEP to continue to seek consistent and meaningful annual funding for the Florida Forever Program, and take all necessary steps to expedite the state's land conservation efforts, including a strategic focus on acquisitions within the Wildlife Corridor and acquisitions that benefit vulnerable ecosystems, water quality, and resilience.[191]

Comprehensive Plans

Each local government[192] is required to adopt and update a comprehensive plan to guide their "future economic, social, physical, environmental, and fiscal"[193] development and growth.[194] Comprehensive

[185] Ch. 2021-181, Laws of Fla.
[186] S. 259.1055(3), F.S.
[187] S. 259.1055(5), F.S.
[188] Office of the Governor, Executive Order 23-06 (2023), https://www.flgov.com/wp-content/uploads/2023/01/EO-23-06.pdf.
[189] *Id*. at 5-6.
[190] *Id*. at 6-7.
[191] *Id*. at 8-9.
[192] S. 163.3164(29), F.S. (Local governments include counties and municipalities.)
[193] S. 163.3177(1), F.S.
[194] S. 163.3167(1)(a)-(b), F.S.

plans are required to include certain elements,[195] one of which is a capital improvements element.[196] The capital improvements element addresses the need for and location of public facilities,[197] which are major capital improvements including sanitary sewer, drainage, potable water, and transportation facilities.[198] Comprehensive plans are also required to include an element that addresses and identifies ways to "provide for future potable water, drainage, sanitary sewer, solid waste, and aquifer recharge protection . . .",[199] and this element must address coordinating the extension of or increase in capacity of facilities providing these services.[200]

Effect of the Bill

Comprehensive Plans

The bill requires any county or municipality with a BMAP within its jurisdiction to include within the capital improvement element of its comprehensive plan a list of projects necessary to achieve the pollutant load reductions attributable to the local government as established in the BMAP.

The bill requires the future potable water, drainage, sanitary sewer, solid waste, and aquifer recharge protection element of comprehensive plans to:

- Address coordinating the treatment or upgrade of facilities providing such services and to prioritize advanced waste treatment;
- Include an element to consider the feasibility of providing sanitary sewer services within a 10-year planning horizon to any group of more than 50 built or unbuilt residential lots with a density of more than one OSTDS per acre; and
- Identify the name of the intended wastewater facility receiving sanitary sewer flows after connection, the capacity of the facility and any associated transmission facilities, the projected wastewater flow at the facility for the next 20 years including septic-to-sewer conversions and new construction, and a timeline for the construction of sanitary sewer service.

Each comprehensive plan must be updated to include this element by July 1, 2024, and as needed thereafter to account for future applicable developments. This provision does not apply to a local government designated as a RAO.

Basin Management Action Plans

The bill requires BMAPs to include 5-year implementation milestones.

The bill requires any entity with a specific pollutant load reduction requirement established in a BMAP to identify the projects or strategies that such entity will undertake to meet current 5-year pollution reduction milestones, beginning with the first 5-year milestone for new BMAPs, and submit such projects to DEP for inclusion in the appropriate BMAP, and each project identified must include an estimated amount of nutrient reduction that is reasonably expected to be achieved based on the best scientific information available.

The bill requires the applicable 5-year implementation milestone for new or revised BMAPs to include a list of projects that will achieve the pollutant load reductions needed to meet the TMDL or the load allocations established pursuant to s. 403.067(6), F.S., and each project must include a planning-level cost estimate and an estimated date of completion. The bill also requires each new or revised BMAP to include a list of projects developed in connection with a cooperative agricultural regional water quality improvement element which is part of a BMAP.

The bill prohibits the installation of new OSTDSs constructed within a BMAP plan area adopted under s. 403.067, F.S., a RAP, or a pollution reduction plan where connection to a publicly owned or investor-owned sewerage system is available. In addition, on lots of 1 acre or less within such areas where a

[195] S. 163.3177(1)(a), F.S.
[196] S. 163.3177(3)(a), F.S.
[197] *Id*.
[198] S. 163.3164(39), F.S.
[199] S. 163.3177(6)(c), F.S.
[200] S. 163.3177(6)(c)2., F.S.

publicly owned or investor-owned sewerage system is not available, the bill requires the installation of enhanced nutrient-reducing OSTDSs and disposal systems or other wastewater treatment systems that achieve at least 50 percent nutrient reduction compared to a standard OSTDS.

The bill requires local governments subject to a BMAP or located within the basin of a waterbody not attaining nutrient or nutrient-related standards to annually provide to DEP, in a manner prescribed by DEP, an update on the status of construction of sanitary sewers to serve such areas.

The bill revises the requirements for development of a cooperative agricultural regional water quality improvement element as part of a BMAP by:

- Removing the requirement that agricultural measures must have been adopted by DACS and have been implemented and the water body remains impaired; and
- Removing the requirement that multiple factors must be present to require the development of such element and requiring that only one of two factors must be present to require the development of such element.

The bill requires that a cooperative agricultural regional water quality improvement element that is part of a BMAP be implemented through the use of cost-effective and technically and financially practical regional agricultural nutrient reduction projects and include a list of such projects submitted to DEP by DACS which, in combination with the BMPs, additional measures, and other management strategies, will achieve the needed pollutant load reductions established for agricultural nonpoint sources. The bill also requires the list of projects included in such element to include a planning-level cost estimate of each project along with the estimated amount of nutrient reduction that such project will achieve.

The bill authorizes DACS to submit a legislative budget request to fund projects developed pursuant to s. 403.067(7), F.S., and such projects are eligible for funding in accordance with the Water Quality Improvement Grant Program.

Sewage Disposal Facilities

The bill authorizes DEP to require sewage disposal facilities to provide a more stringent treatment standard than advanced waste treatment previously authorized by DEP if DEP determines the more stringent standard is necessary to achieve the TMDL or applicable water quality criteria for certain waterbodies. In addition, the bill expands the areas to which the advanced waste treatment or more stringent treatment standard apply, and requires that by January 1, 2033, waterbodies that are currently not attaining nutrient or nutrient-related standards or that are subject to a nutrient or nutrient-related BMAP or adopted reasonable assurance plan may be subject to the more stringent treatment standard.

The bill prohibits sewage disposal facilities from disposing any wastes into any waterbody determined not to be attaining nutrient or nutrient-related standards after July 1, 2023, or subject to a nutrient or nutrient-related BMAP or adopted reasonable assurance plan after July 1, 2023, without providing advanced waste treatment as approved by DEP within 10 years after such determination or adoption.

Grants and Loans for Connecting OSTDSs to Sewerage Systems

The bill encourages local governmental agencies that receive grants or loans from DEP to offset the cost of connecting OSTDSs to publicly owned or investor-owned sewerage systems to:

- Identify the owners of OSTDSs within the jurisdiction of the respective local governmental agency who are eligible to apply for the grant or loan funds and notify such owners of the funding availability.
- Maintain a publicly available website with information relating to the availability of the grant or loan funds, including the amount of funds available and information on how the owner of an OSTDS may apply for such funds.

Wastewater Grant Program

The bill renames the wastewater grant program as the water quality improvement grant program and expands the purpose of the grant program.

The bill authorizes DEP to provide grants for projects that reduce the amount of nutrients entering waters 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 RAO. The bill authorizes DEP to provide such grants for the following types of projects:

- Connecting OSTDSs to central sewer facilities.
- Upgrading domestic wastewater treatment facilities to advanced waste treatment or greater.
- Repairing, upgrading, expanding, or constructing stormwater treatment facilities that result in improvements to surface water or groundwater quality.
- Repairing, upgrading, expanding, or constructing domestic wastewater treatment facilities that result in improvements to surface water or groundwater quality, including domestic wastewater reuse and collection systems.
- Those identified pursuant to the development of a BMAP or a cooperative agricultural regional water quality improvement element.
- Those identified in a wastewater treatment plan or an OSTDS remediation plan.
- Those listed in a city or county capital improvement element in their respective comprehensive plans.
- Those retrofitting OSTDSs to upgrade such systems to enhanced nutrient-reducing OSTDSs where central sewerage is unavailable.

The bill requires DEP to consider and prioritize those projects that have the maximum estimated reduction in nutrient load per project; demonstrate project readiness; are cost-effective; have a cost-share identified by the applicant, except for RAOs; provide an overall environmental benefit, including any projected water savings associated with the project; have previous state commitment and involvement in the project, considering previously funded phases, the total amount of previous state funding, and previous partial appropriations for the proposed project; or are in a location where reductions are most needed.

The bill prohibits any project that does not result in reducing nutrient loading to a waterbody from receiving grant funding.

The bill requires DEP to coordinate annually with each WMD to identify potential projects in each district, and to coordinate with governments and stakeholders to identify the most effective and beneficial water quality improvement projects. The bill also requires DEP, beginning January 15, 2024, and each January 15 thereafter, to submit a report regarding the projects funded pursuant to this section to the Governor, the President of the Senate, and the Speaker of the House of Representatives. 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.

<u>Outstanding Florida Springs</u>

The bill requires DEP, relevant local governments, and relevant local public and private wastewater utilities, as part of a BMAP that includes an Outstanding Florida Spring, to develop an OSTDS remediation plan for a spring if DEP determines OSTDSs within a BMAP contribute at least 20 percent of nonpoint source nitrogen pollution or if DEP determines remediation is necessary to achieve the TMDL.

The bill revises the areas within an Outstanding Florida Spring where certain activities are prohibited from priority focus areas to BMAPs in effect for an Outstanding Florida Spring.

The bill prohibits the installation of new OSTDSs where connection to a publicly owned or investor-owned sewerage system is available. On lots of 1 acre or less, if a publicly owned or investor-owned

sewerage system is not available, only the installation of enhanced nutrient-reducing OSTDSs or other wastewater treatment systems that achieve at least 50 percent nutrient reduction compared to a standard OSTDS are authorized.

Indian River Lagoon Protection Program

The bill establishes the IRL Protection Program (IRL Program) within DEP and enumerates Legislative findings and intent, including that:

- The IRL is a critical water resource which provides many economic, natural habitat, and biodiversity functions that benefit the public interest;
- Certain activities have resulted in excess nutrients entering the IRL and adversely impacting the IRL's water quality;
- Improvement to the hydrology, water quality, and associated aquatic habitats within the IRL is essential to the protection of the resource;
- It is imperative for the state, local governments, and agricultural and environmental communities to commit to restoring and protecting the surface water resources of the IRL, and that a holistic approach to address such restoration and protection must be developed and implemented immediately;
- The expeditious implementation of the Banana River Lagoon BMAP, Central Indian River Lagoon BMAP, North Indian River Lagoon BMAP (collectively "IRL BMAPs"), and Mosquito Lagoon RAP are necessary to improve the quality of water in the IRL ecosystem and provide a reasonable means of achieving TMDL requirements and achieving and maintaining compliance with state water quality standards; and
- Implementation of the IRL Program will benefit the public health, safety, and welfare and is in the public interest.

The bill declares the IRL Program consists of the IRL BMAPs and the Mosquito Lagoon RAP, and that they are the components of the IRL Program which achieve phosphorous and nitrogen load reductions for the IRL.

The bill requires:

- DEP to evaluate and update the IRL BMAPs every 5 years and identify any further load reductions necessary to achieve compliance with the relevant TMDLs.
- The IRL BMAPs to include 5-year milestones for implementation and water quality improvement and a water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time.
- DEP, in coordination with the St. Johns River WMD, the South Florida WMD, local governments, the IRL National Estuary Program, and other stakeholders, to identify and prioritize strategies and projects necessary to achieve water quality standards within the IRL watershed and meet the TMDLs, and requires that projects identified from the evaluation be incorporated into the IRL BMAPs and the Mosquito Lagoon RAP as appropriate.
- DEP, in coordination with the with the St. Johns River WMD, the South Florida WMD, local governments, and the IRL National Estuary Program to implement the IRL Watershed Research and Water Quality Monitoring Program to establish a comprehensive water quality monitoring network throughout the IRL and fund research pertaining to water quality, ecosystem restoration, and seagrass impacts and restoration, and use the results from the program to prioritize projects and modify the IRL BMAPs and RAP as appropriate.

The bill prohibits, beginning January 1, 2024, the installation of new OSTDSs within the IRL BMAPs and RAP where a publicly-owned or investor-owned central sewer system is available unless such installation was previously permitted. Where central sewerage is not available, only enhanced nutrient-reducing OSTDSs or other wastewater treatment systems that achieve at least 50 percent nutrient reduction compared to a standard OSTDS are authorized.

The bill requires, by July 1, 2030, any commercial or residential property with an existing OSTDS located within the IRL BMAPs or RAP to connect to central sewer if available or upgrade to an enhanced nutrient-reducing OSTDS or other wastewater treatment system that achieves at least 50 percent nutrient reduction compared to a standard OSTDS.

The bill authorizes only advanced nutrient-reducing OSTDSs or distributed wastewater treatment systems for new commercial or residential properties located within the IRL BMAPs or RAP where a central sewer system is not available and requires, by July 1, 2030, any commercial or residential property with an existing OSTDS located within the IRL BMAPs or RAP to connect to a central sewer system if available or upgrade to an advanced nutrient reducing OSTDS or distributed wastewater treatment system.

The bill allows DEP and the governing boards of the St. Johns River WMD and the South Florida WMD to adopt rules to implement the IRL Program.

Water Management Districts
The bill requires DEP to transfer to the WMDs funds appropriated to the districts through DEP and requires the WMDs to annually report to DEP on the use of the funds.

Florida Forever
The bill increases the contract price for a land acquisition agreement that requires approval by the Board from $1 million to $5 million. The bill also removes the requirement that an agreement for an acquisition that is the initial purchase in a Florida Forever project must be approved by the Board.

Additionally, the bill revises the appraisal requirements applicable to Florida Forever acquisitions to increase the appraisal amount that requires a second appraisal to be conducted from $1 million to $5 million. If both appraisals of a parcel exceed $5 million and differ significantly, a third appraisal may be conducted.

Florida Wildlife Corridor
The bill specifies that the Board is authorized to acquire lands that complete critical linkages that will help preserve and protect the state's green infrastructure and vital habitat for wide-ranging wildlife, such as the Florida panther, within the Corridor.

B. SECTION DIRECTORY:

Section 1. Amends s. 163.3177, F.S. relating to required and optional elements of comprehensive plans.

Section 2. Amends s. 253.025, F.S., relating to the acquisition of state lands.

Section 3. Amends s. 259.032, F.S., relating to conservation and recreation lands.

Section 4. Creates s. 373.469, F.S., relating to the Indian River Lagoon Protection Program.

Section 5. Amends s. 373.501, F.S., relating to the appropriation of funds to water management districts.

Section 6. Amends s. 373.802, F.S., and provides a definition.

Section 7. Amends s. 373.807, F.S., relating to protection of water quality in Outstanding Florida Springs.

Section 8. Amends s. 373.811, F.S., relating to prohibited activities in Outstanding Florida Springs.

Section 9. Redesignates, creates, and amends provisions in s. 381.0065, F.S., relating to onsite sewage treatment and disposal systems.

Section 10. Amends s. 381.00655, F.S., relating to connection of existing onsite sewage treatment and disposal systems to central sewerage systems.

Section 11. Reorders and amends s. 403.031, F.S., relating to definitions.

Section 12. Amends s. 403.067, F.S., relating to the establishment and implementation of total maximum daily loads.

Section 13. Amends s. 403.0673 F.S., relating to a grant program.

Section 14. Amends s. 403.086, F.S., relating to sewage disposal facilities.

Section 15. Amends s. 201.15, F.S., relating to distribution of taxes collected.

Section 16. Amends s. 259.105, F.S., relating to the Florida Forever Act.

Section 17. Amends s. 373.019, F.S., relating to definitions.
Section 18. Amends s. 373.4132, F.S., relating to dry storage facility permitting.

Section 19. Amends s. 373.414, F.S., relating to additional criteria for activities in surface waters and wetlands.

Section 20. Amends s. 373.4142, F.S., relating to water quality within stormwater treatment systems.

Section 21. Amends s. 373.430, F.S., relating to prohibitions, violation, penalty, intent.

Section 22. Amends s. 373.4592, F.S., relating to Everglades improvement and management.

Section 23. Amends s. 403.890, F.S., relating to the Water Protection and Sustainability Program.

Section 24. Amends s. 403.892, F.S., relating to incentives for the use of graywater technologies.

Section 25. Amends s. 403.9301, F.S., relating to wastewater service projections.

Section 26. Amends s. 403.9302, F.S., relating to stormwater management projections.

Section 27. Reenacts subsection (6) of s. 259.045, F.S., relating to the purchase of lands in areas of critical state concern.

Section 28. Provides that the Legislature determines and declares that this act fulfills an important state interest.

Section 29. Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill provides numerous updates and requirements related to BMAPs that may negatively impact workload in multiple divisions within DEP which can be absorbed with existing resources.

The bill renames the Wastewater Grant Program as the Water Quality Improvement Grant Program, expands the purpose of the program, and eliminates the matching requirement. This may have an indeterminate negative fiscal impact on the program given the potential increase in the volume of applicants and the cost of such projects.

The bill creates the IRL Protection Program within DEP and requires the department to coordinate annually with the St. Johns River Water Management District, the South Florida Water Management District, local governmental agencies and other stakeholders to identify the most effective and beneficial water quality improvement projects. The bill requires DEP to annually report on projects beginning January 15, 2024. The bill also authorizes DEP and the governing boards of the St. Johns River Water Management District and the South Florida Water Management District to adopt rules. To implement these provisions, DEP and the water management districts may have an indeterminate negative fiscal that can be managed within existing resources.

The bill requires DEP to transfer appropriations provided by the Legislature to water management districts and report annually but does not provide a reporting date.

Finally, the provisions of the bill may have an indeterminate positive fiscal impact on workload in the Florida Forever Program as it revises the requirements for second appraisals and approval by the Board for land acquisitions from $1 million to $5 million.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on counties and municipalities by requiring them to update their comprehensive plans to include a list of projects necessary to achieve the pollutant load reductions attributable to the local government as established in the BMAP and an element to consider the feasibility of providing sanitary sewer services within a 10-year planning horizon.

The bill encourages local governmental agencies to utilize opportunities to offset the cost of connecting OSTDSs to publicly owned or investor-owned systems by identifying the owners of such systems within their jurisdiction and notify them of available grant opportunities. It also encourages local governmental agencies to maintain a public website with information relating to grants or loans available for such systems, including the amount of funds and information on how to apply. If implemented, this may have an indeterminate negative fiscal impact on local governmental agencies.

The bill may have an indeterminate negative fiscal impact on local government sewage disposal facilities as it relates to disposal into certain waterbodies without providing advanced waste treatment approved by DEP.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate positive fiscal impact on contractors and businesses associated with the replacement of OSTDSs and an indeterminate negative fiscal impact on property owners.

The bill may have an indeterminate negative fiscal impact on private sewage disposal facilities as it relates to disposal into certain waterbodies without providing advanced waste treatment approved by DEP.

D. FISCAL COMMENTS:

The bill requires DEP, relevant local governments, and relevant local public and private wastewater utilities, as part of a BMAP that includes an Outstanding Florida Spring, to develop an OSTDS remediation plan for a spring if DEP determines OSTDSs within a BMAP contribute at least 20 percent of nonpoint source nitrogen pollution or if DEP determines remediation is necessary to achieve the TMDL.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill may require counties to expend funds; however, an exemption may apply if the fiscal impact is insignificant. An exception may also apply because the act provides that it fulfils an important state interest and similarly situated persons are all required to comply.
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2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DEP and the governing boards of the St. Johns River Water Management District and the South Florida Water Management District to adopt rules to implement the Indian River Lagoon Protection Program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 29, 2023, the Water Quality, Supply & Treatment Subcommittee considered a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS:

- Changes the relating to clause from “pollutant load reduction” to “environmental protection.”
- Removes the requirement that, for any group of 50 or more built or unbuilt parcels with a density of more than one OSTDS within a BMAP or the basin of an impaired water adopted pursuant to s. 403.067, F.S., the local government must submit the comprehensive plan (plan) to DEP for review no less than 180 days before approval of the plan, and removes the authorization for DEP to provide written comments directly to the local government within 90 days after receipt of the plan if there do not appear to be adequate provisions to ensure sanitary sewer services within a 10-year planning horizon.
- Includes the provisions relating to the Florida Forever program.
- Authorizes the Board to acquire lands that complete critical linkages that will help preserve and protect the state’s green infrastructure and vital habitat for wide-ranging wildlife, such as the Florida panther, within the Corridor.
- Defines the term “enhanced nutrient-reducing OSTDS.”
- Removes the requirement that DEP evaluate and update the Mosquito Lagoon Reasonable Assurance Plan as part of the IRL Program.
- Expands the areas in which certain activities are prohibited in an Outstanding Florida Spring from a priority focus area in effect for such a spring to a BMAP in effect for such a spring.
- Encourages local governmental agencies that receive grants or loans from DEP to offset the cost of connecting OSTDSs to publicly owned or investor-owned sewerage systems to identify the owners of OSTDSs within their respective jurisdictions who are eligible to apply for the grant or loan funds and notify such owners of the funding availability, and maintain a publicly available website with

information relating to the availability of the grant or loan funds, including the amount of funds available and information on how the owner of an OSTDS may apply for such funds.

- Defines the terms “nutrient or nutrient-related standards” and “onsite sewage treatment and disposal system.”
- Requires any entity with a specific pollutant load reduction requirement established in a BMAP to identify the projects or strategies that such entity will undertake to meet current 5-year pollution reduction milestones, beginning with the first 5-year milestone for new BMAPs, and submit such projects to the DEP for inclusion in the appropriate BMAP, and requires each project identified to include an estimated amount of nutrient reduction that is reasonably expected to be achieved based on the best scientific information available.
- Prohibits the installation of new OSTDSs constructed within a BMAP area adopted under s. 403.067, F.S., a RAP, or a pollution reduction plan where connection to a publicly owned or investor-owned sewerage system is available.
- Requires, on lots of 1 acre or less within a BMAP area adopted under s. 403.067, F.S., a RAP, or a pollution reduction plan where connection to a publicly owned or investor-owned sewerage system is not available, the installation of enhanced nutrient-reducing OSTDSs or other wastewater treatment systems that achieve at least 50 percent nutrient reduction compared to a standard OSTDS.
- Requires local governments subject to a BMAP or located within the basin of a waterbody not attaining nutrient or nutrient-related standards to provide an annual update to DEP on the status of construction of sanitary sewers to serve such areas, in a manner prescribed by DEP.
- Amends provisions relating to the cooperative agricultural regional water quality improvement element of a BMAP.
- Amends provisions relating to the wastewater grant program to ensure that funded projects reduce nutrient loading in waterbodies and to increase reporting requirements.

The staff analysis has been updated to reflect the committee substitute.