Appropriations Committee

Tuesday, February 11, 2020
4:00 PM – 6:00 PM
Webster Hall (212 Knott Building)

Committee Meeting Packet

Jose Oliva
Speaker

W. Travis Cummings
Chair

The Florida House of Representatives

Appropriations Committee

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AGENDA

Tuesday, February 11, 2020
212 Knott Building (Webster Hall)
4:00 PM – 6:00 PM

I. Call to Order/Roll Call

II. Opening Remarks by Chair Cummings

III. Consideration of the following bills:

CS/HB 1111 Government Integrity by Public Integrity & Ethics Committee, Tomkow

CS/HB 1181 Florida Disaster Volunteer Leave Act by Oversight, Transparency & Public Management Subcommittee, Maggard

CS/HB 1297 Drug-free Workplaces by Workforce Development & Tourism Subcommittee, Robinson

HB 1343 Water Quality Improvements by Payne, Ingoglia

HB 1367 Public Assistance by Tomkow

HB 7045 Prescription Drug Price Transparency by Health Market Reform Subcommittee, Andrade

HB 7057 Appellate Courts Headquarters and Travel by Judiciary Committee, Fernandez-Barquin

HB 7065 School Safety by Education Committee, Massullo

IV. Closing Remarks and Adjournment

221 The Capitol, 402 South Monroe Street, Tallahassee, FL 32399-1300
(850) 717-4810

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1111 Government Integrity
SPONSOR(S): Public Integrity & Ethics Committee, Tomkow
TIED BILLS: **IDEN./SIM. BILLS:** SB 1538

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Public Integrity & Ethics Committee	16 Y, 0 N, As CS	Kiner	Rubottom
2) Appropriations Committee		Keith	Pridgeon
3) State Affairs Committee			

SUMMARY ANALYSIS

The bill includes various provisions designed to promote integrity in government and identify and eliminate fraud, waste, abuse, mismanagement, and misconduct in government. Specifically, the bill:

- Creates the Florida Integrity Office under the Auditor General for the purpose of ensuring accountability and integrity in state and local government and facilitating the elimination of fraud, waste, abuse, mismanagement, and misconduct in government.
- Requires the Chief Inspector General (CIG) and agency inspectors general to determine whether there is reasonable probability that fraud, waste, abuse, mismanagement, or misconduct in government has occurred within six months of initiating an investigation of such activity.
- Provides a mechanism for the state to recover funds when the CIG or an agency inspector general determines a public official, independent contractor, or agency has committed fraud, waste, abuse, mismanagement, or misconduct in government.
- Requires the Chief Financial Officer to regularly forward to the Florida Integrity Officer copies of suggestions and information submitted through the state's 'Get Lean' hotline.
- Provides a financial incentive for agency employees to file 'Whistle-blower's Act' complaints and participate in investigations that lead to the recovery of funds.
- Broadens the competitive solicitation exemption for statewide broadcasting of public service announcements.
- Prohibits state or local tax incentive funds from being used to award or pay a state contractor for services provided or expenditures incurred pursuant to a state contract.
- For agency contracts over $50,000, requires a contractor to include in the contract a good faith estimate of gross profit for each year of the contract, provides a process for the agency to review such estimate, and provides financial penalties for a contractor who misrepresents the estimate.
- Prohibits a state employee from lobbying for an appropriation and also participating in awarding any contract funded by the appropriation. The bill provides an exception for a state employee who is an agency head, employed in the Executive Office of the Governor or the Office of Policy and Budget, or an employee who is required who is required to register as a lobbyist but whose primary job responsibilities do not include lobbying.

The bill is projected to have a significant fiscal impact to expenditures of the Auditor General. Provisions of the bill related to the creation of the Florida Integrity Office under the Auditor General are anticipated to cost approximately $2.5 million to implement. However, the bill authorizes the Auditor General to use existing carryforward funds to cover any projected expenditures. The fiscal impact of other provisions of the bill on other state agencies are indeterminate, but likely insignificant, and are expected to be absorbed within existing agency resources. *See* Fiscal Comments section.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Integrity Office (Sections 1 and 12)

Current Situation

The position of Auditor General is established by Art. III, s. 2 of the State Constitution. The Auditor General is appointed to office to serve at the pleasure of the Legislature, by a majority vote of the members of the Legislative Auditing Committee, subject to confirmation by both houses of the Legislature.[1] The appointment of the Auditor General may be terminated at any time by a majority vote of both houses of the Legislature.[2]

The Auditor General conducts audits, examinations, and reviews of government programs as well as audits the accounts and records of state agencies, state universities, state colleges, district school boards, and others as directed by the Legislative Auditing Committee. The Auditor General conducts operational and performance audits on public records and information technology systems and reviews all audit reports of local governmental entities, charter schools, and charter technical career centers.

Current law authorizes the Legislature, through its committees, to inspect and investigate the books, records, papers, documents, data, operation, and physical plant of any public agency in the state, including any confidential information.[3] Current law also authorizes the Legislature, through its committees, to issue subpoena and other necessary process to compel the attendance of witnesses and issue subpoena duces tecum to compel the production of any books, letters, or other documentary evidence, including any confidential information, in reference to any matter under investigation.[4]

Effect of Proposed Changes

The bill creates the Florida Integrity Office under the Auditor General. The Florida Integrity Office will be led by the Florida Integrity Officer, who will be appointed by and serve at the pleasure of the Auditor General. Pursuant to the bill's provisions, the Florida Integrity Officer may receive and investigate any complaint alleging fraud, waste, abuse, mismanagement, or misconduct in connection with the expenditure of public funds. The following individuals may submit a complaint: the President of the Senate; the Speaker of the House of Representatives; the chair of an appropriations committee of the Senate or House; and the Auditor General.

Upon receipt of a valid complaint, the bill requires the Florida Integrity Officer to determine whether the complaint is supported by sufficient information indicating a reasonable probability of fraud, waste, abuse, mismanagement, or misconduct. If the Florida Integrity Officer determines that the complaint is not supported by sufficient information indicating a reasonable probability of fraud, waste, abuse, mismanagement, or misconduct, the Florida Integrity Officer must notify the complainant in writing, and the complaint must be closed.

If the complaint is supported by sufficient information indicating a reasonable probability of fraud, waste, abuse, mismanagement, or misconduct, the bill requires the Florida Integrity Officer to determine whether the matter is under investigation by a law enforcement agency, the Commission on Ethics, the Chief Financial Officer, the Office of the Chief Inspector General, or the applicable agency inspector general. If such an investigation has been initiated, the Florida Integrity Officer must notify the

[1] Section 11.42(2), F.S.
[2] Section 11.42(5), F.S.
[3] Section 11.143(2), F.S.
[4] Section 11.143(3)(a), F.S.

complainant in writing, and the complaint may be closed. If such an investigation has not been initiated, the bill requires the Florida Integrity Officer to conduct an investigation and issue a report of the investigative findings to the President of the Senate and the Speaker of the House. The Florida Integrity Officer may also refer the matter to the Auditor General, the appropriate law enforcement agency, the Chief Financial Officer, the Office of the Chief Inspector General, or the applicable agency inspector general.

Similar to the current general law authority given to each house of the Legislature through its respective committees,[5] the bill gives the Florida Integrity Officer the authority to inspect and investigate the books, records, papers, documents, data, operation, and physical location of any public agency in the state, including any confidential information. The bill also gives the Florida Integrity Officer the authority to investigate the public records of any entity that has received direct appropriations.

The bill also authorizes the Florida Integrity Officer to request the Legislative Auditing Committee or any legislative committee to exercise existing powers[6] to issue subpoenas and subpoenas duces tecum to compel testimony or the production of evidence when deemed necessary to an authorized investigation. The bill also provides the means of enforcing any subpoena issued pursuant to the bill's provisions.

Beginning with the 2021-2022 fiscal year, the bill requires the Auditor General and Florida Integrity Officer to, within available resources, randomly select and review appropriations projects appropriated in the prior fiscal year and, if appropriate, investigate and recommend an audit of such project. The bill requires that, at a minimum, the investigation or audit must include an evaluation of whether the recipient of the appropriations project administered the project in an efficient and effective manner. Pursuant to the bill, the term, 'appropriations project' means a specific appropriation or proviso providing funding for a specified entity that is a local government, private entity, or privately-operated program that is named or described. The term does not include an appropriation:

- Specifically authorized by statute;
- That is part of a statewide distribution to local governments;
- Recommended by a commission, council, or other similar entity created in statute to make annual funding recommendations, provided that such appropriation does not exceed the amount of funding recommended by the commission, council, or other similar entity;
- For a specific transportation facility that was part of the Department of Transportation's five-year work program submitted pursuant to s. 339.135, F.S.;
- For an education fixed capital outlay project that was submitted pursuant to s. 1013.60, F.S., or s. 1013.64, F.S.; or
- For a specified program, research initiative, institute, center, or similar entity at a specific state college or university recommended by the Board of Governors or the State Board of Education in its Legislative Budget Request.

The bill's definition of 'appropriations project' mirrors the definition of the term in current Senate and House Joint Rule 2.2, adopted for the 2018 – 2020 biennium.

Beginning with the 2021-2022 fiscal year, the bill requires the Auditor General and the Florida Integrity Officer, within available resources, to select and review, audit, or investigate the financial activities of:

- Political subdivisions, special districts, public authorities, public hospitals, state and local councils or commissions, units of local government, or public education entities in the state; and
- Any authorities, councils, commissions, direct-support organizations, institutions, foundations, or similar entities created by law or ordinance to pursue a public purpose, entitled by law or

[5] *See* Section 11.143(2), F.S.
[6] *See* Section 11.143(3), F.S.

ordinance to any distribution of tax or fee revenues, or organized for the sole purpose of supporting one of the public entities listed above.

The bill has a projected annual fiscal impact to the state of approximately $2.5 million associated with the creation and operation of the Florida Integrity Office. The bill authorizes the Auditor General to use carryforward funds to pay projected expenditures. (See the Fiscal Comments Section).

Auditor General Responsibilities (Section 2)

Current Situation

The United States Government Accountability Office is "an independent, nonpartisan agency that works for Congress. Often called the 'congressional watchdog,' the GAO examines how taxpayer dollars are spent and provides Congress and federal agencies with objective, reliable information to help the government save money and work more efficiently."[7] The GAO's publication, 'Government Auditing Standards' (Yellow Book) provides "a framework for performing high-quality audit work with competence, integrity, objectivity, and independence to provide accountability and to help improve government operations and services.[8] Among other things, the Yellow Book provides a standard definition for 'abuse.'[9]

The Florida Department of Management Services (DMS) has promulgated Rule 60L-36.005, F.A.C., which sets forth the minimum standards of conduct that apply to all employees in the State Personnel System and the violation of which may result in dismissal.[10]

Current law requires the Auditor General to conduct operational audits[11] on state agencies, state universities, state colleges, district school boards, the Florida Clerks of Court Operations Corporation, water management districts, and the Florida School for the Deaf and the Blind at least every three years.[12] Current law also requires the Auditor General to conduct a financial audit[13] on all state universities and state colleges on an annual basis.[14] The Auditor General is required to perform a financial audit on district school boards in counties that have populations of 150,000 or more at least once every three years and annually in counties with populations of fewer than 150,000.[15]

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[7] *See* the GAO's website for more information here: https://www.gao.gov/about/.
[8] *See* GAO, 'Government Auditing Standards' (July 2018) at pg. 1.
[9] *Id* at pg. 114. The GAO definition for 'abuse' is "behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary operational practice given the facts and circumstances." The term includes the misuse of authority or position for personal gain or for the gain of an immediate or close family member or business associate.
[10] Rule 60L-36.005, F.A.C. The rule defines misconduct as
[11] An 'operational audit' is an audit "whose purpose is to evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines. Operational audits must be conducted in accordance with government auditing standards. Such audits examine internal controls that are designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of financial records and reports, and safeguarding of assets, and identify weaknesses in those internal controls. *See* Section 11.45(1)(g), F.S.
[12] Section 11.45(2)(f), F.S.
[13] A 'financial audit' is an "examination of financial statements in order to express an opinion on the fairness with which they are presented in conformity with generally accepted accounting principles and an examination to determine whether operations are properly conducted in accordance with legal and regulatory requirements. Financial audits must be conducted in accordance with auditing standards generally accepted in the United States and government auditing standards as adopted by the Board of Accountancy. When applicable, the scope of financial audits shall encompass the additional activities necessary to establish compliance with the Single Audit Act Amendments of 1996, 31 U.S.C. ss. 7501-7507, and other applicable federal law." *See* s. 11.45(1)(c), F.S.
[14] Section 11.45(2)(c), F.S.
[15] Section 11.45(2)(d), (e), F.S.

If an operational or financial audit report indicates a district school board, state university, or state college has failed to take full corrective action in response to a recommendation that was included in the two preceding operational or financial audit reports, the Auditor General is required to notify the Legislative Auditing Committee. In such cases, the Legislative Auditing Committee may initiate actions that require the audited organization to demonstrate the steps it has taken towards corrective action.[16] This reporting cycle may result in the Legislative Auditing Committee not being notified of one of the above referenced entity's failure to take full corrective action for six or more years.

Effect of Proposed Changes

The bill codifies a definition for 'misconduct' and revises the definition for 'abuse'.[17] The definition for 'abuse' mirrors the definition used by GAO in the Yellow Book. The definition for 'misconduct' mirrors the definition promulgated by DMS in Rule 60L-36.005, F.A.C.

The bill revises the Auditor General's notification responsibilities with respect to a district school board, state university, or state college failing to take full corrective action on an audit finding by shortening the cycle from three successive operational audits to two.

The bill requires the Auditor General to publish a report consolidating common operational audit findings for all state agencies, all state universities, all state colleges, and all district school boards at the conclusion of each three year cycle.

Inspectors General (Sections 3 and 6)

Current Situation

The Office of Chief Inspector General (CIG) is responsible for promoting accountability, integrity, and efficiency in agencies under the Governor's jurisdiction.[18] The CIG monitors the activities of the agency inspectors general under the Governor's jurisdiction and is required to do the following:

- Initiate, supervise, and coordinate investigations, recommend policies, and carry out other activities designed to deter, detect, prevent, and eradicate fraud, waste, abuse, mismanagement, and misconduct in government;
- Investigate, upon receipt of a complaint or for cause, any administrative action of any agency the administration of which is under the direct supervision of the Governor;
- Request such assistance and information as may be necessary for the performance of the CIG's duties;
- Examine the records and reports of any agency the administration of which is under the direct supervision of the Governor;
- Coordinate complaint-handling activities with agencies;
- Coordinate the activities of the Whistle-blower's Act and maintain the whistle-blower's hotline to receive complaints and information concerning the possible violation of law or administrative rules, mismanagement, fraud, waste, abuse of authority, malfeasance, or a substantial or specific danger to the health, welfare, or safety of the public;
- Report expeditiously to and cooperate fully with the Department of Law Enforcement, the Department of Legal Affairs, and other law enforcement agencies when there are recognizable grounds to believe that there has been a violation of criminal law or that a civil action should be initiated;

[16] Section 11.45(7)(j), F.S.
[17] The bill defines the term 'abuse' to mean "behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary operational practice given the facts and circumstances." The term includes the misuse of authority or position for personal gain or for the gain of an immediate or close family member or business associate.
[18] Section 14.32(1), F.S.

- Act as liaison with outside agencies and the federal government to promote accountability, integrity, and efficiency in state government;
- Act as liaison and monitor the activities of the inspectors general in the agencies under the Governor's jurisdiction;
- Review, evaluate, and monitor the policies, practices, and operations of the Executive Office of the Governor; and
- Conduct special investigations and management reviews at the request of the Governor.[19]

Authorized under s. 20.055, F.S., an Office of Inspector General (OIG) is established in each state agency[20] to provide a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government. Each agency OIG is responsible for the following:

- Advising in the development of performance measures, standards, and procedures for the evaluation of state agency programs;
- Assessing the reliability and validity of information provided by the agency on performance measures and standards;
- Reviewing the actions taken by the agency to improve agency performance, and making recommendations, if necessary;
- Supervising and coordinating audits, investigations, and reviews relating to the programs and operations of the state agency;
- Conducting, supervising, or coordinating other activities carried out or financed by the agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;
- Providing central coordination of efforts to identify and remedy waste, abuse, and deficiencies to the agency head,[21] or the CIG for agencies under the jurisdiction of the Governor; recommending corrective action concerning fraud, abuses, and deficiencies; and reporting on the progress made in implementing corrective action;
- Coordinating agency-specific audit activities between the Auditor General, federal auditors, and other governmental bodies to avoid duplication;
- Reviewing rules relating to the programs and operations of the agency and making recommendations concerning their impact;
- Ensuring that an appropriate balance is maintained between audit, investigative, and other accountability activities; and
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.[22]

With respect to investigations, each OIG must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement,

[19] Section 14.32(2), F.S.
[20] Section 20.055(1)(d), F.S., defines the term 'state agency' as each department created pursuant to ch. 20, F.S., and also includes the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, the Agency for State Technology, the Office of Early Learning, and the state courts system.
[21] Section 20.055(1)(a), F.S., defines the term 'agency head' as the Governor, a Cabinet officer, a secretary as defined in s. 20.03(5), F.S., or an executive director as defined in s. 20.03(6), F.S. It also includes the chair of the Public Service Commission, the Director of the Office of Insurance Regulation of the Financial Services Commission, the Director of the Office of Financial Regulation of the Financial Services Commission, the board of directors of the Florida Housing Finance Corporation, the executive director of the Office of Early Learning, and the Chief Justice of the State Supreme Court.
[22] Section 20.055(2), F.S.

misconduct, and other abuses in state government. For these purposes, each inspector general must do the following:

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act;
- Receive and consider the complaints that do not meet the criteria for an investigation under the Whistle-blower's Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the inspector general deems appropriate;
- Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, when the inspector general has reasonable grounds to believe there has been a violation of criminal law;
- Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the inspector general or the inspector general's office. This must include freedom from any interference with investigations and timely access to records and other sources of information;
- At the conclusion of an investigation, the subject of which is an entity contracting with the state or an individual substantially affected, submit the findings to the contracting entity or the individual substantially affected, who must be advised that they may submit a written response to the findings. The response and the inspector general's rebuttal to the response, if any, must be included in the final audit report; and
- Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head.[23]

Effect of Proposed Changes

The bill requires the CIG and agency inspectors general to make a reasonable probability determination within six months of initiating an investigation of fraud, waste, abuse, mismanagement, or misconduct in government. Pursuant to the bill's provisions, if the investigation continues in the absence of reasonable probability that fraud, waste, abuse, mismanagement, or misconduct has occurred, the CIG or any agency inspector general must make a new determination every three months until the investigation is closed or reasonable probability is found. The bill provides definitions for the terms 'fraud,'[24] 'waste,'[25] 'abuse,'[26] and 'misconduct.'[27] The definitions for 'fraud,' 'waste,' and 'abuse' mirror the definitions used by GAO, as provided in the Green Book. The definition for 'misconduct' mirrors the definition promulgated by DMS in Rule 60L-36.005, F.A.C.

If the CIG or an agency inspector general determines that there is reasonable probability to believe a public official, independent contractor, or agency has committed fraud, waste, abuse, mismanagement, or misconduct in government, the bill requires the applicable inspector general to report such determination to the Florida Integrity Officer. Pursuant to the bill, such public officer, independent contractor, or agency employee responsible for the fraud, waste, abuse, mismanagement, or misconduct in government is liable for repayment of the funds diverted or lost. If the person liable fails to repay such funds voluntarily and the state does not agree to a settlement, the bill requires the CFO to bring a civil action to recover the funds.

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[23] Section 20.055(7), F.S.

[24] The bill defines the term 'fraud' to mean "obtaining something of value through willful misrepresentation, including, but not limited to, the intentional misstatements or intentional omissions of amounts or disclosures in financial statements to deceive users of financial statements, theft of an entity's assets, bribery, or the use of one's position for personal enrichment through the deliberate misuse or misapplication of an entity's resources."

[25] The bill defines the term 'waste' to mean "the act of using or expending resources unreasonably, carelessly, extravagantly, or for no useful purpose."

[26] The bill defines the term 'abuse' to mean "behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary operational practice given the facts and circumstances." The term includes the misuse of authority or position for personal gain.

[27] The bill defines the term 'misconduct' to mean "conduct which, though not illegal, is inappropriate for a person in his or her specified position."

Chief Financial Officer's Office of Fiscal Integrity (Section 4)

Current Situation

The Chief Financial Officer (CFO) is an elected constitutional Cabinet member.[28] The CFO serves as the chief fiscal officer of the state and is responsible for settling and approving accounts against the state and keeping all state funds and securities.[29] Such responsibilities include, but are not limited to, auditing and adjusting accounts of officers and those indebted to the state,[30] paying state employee salaries,[31] and reporting all disbursements of funds administered by the CFO.[32]

The CFO's Office of Fiscal Integrity's (OFI) mission is to detect and investigate the misappropriation or misuse of state assets in a manner that safeguards the interests of the state and its taxpayers. OFI is a criminal justice agency[33] with full statutory subpoena power.[34]

According to OFI, OFI conducts criminal investigations into misbehavior by state employees that have been under review by their respective agency inspector general. Upon receiving the referral on the state employee, OFI may begin a full criminal investigation. If criminal charges are warranted, OFI will refer the matter to the proper charging authority.

According to OFI, OFI does not currently have the authority to commence an investigation based on a complaint from an employee of a state agency or state contractor.

Effect of Proposed Changes

The bill authorizes the CFO to commence an investigation based on a complaint or referral from any source, including an employee of a state agency or state contractor. The bill also explicitly authorizes an employee of a state agency or state contractor who has knowledge of suspected misuse of state funds to report such information to the CFO.

Chief Financial Officer's 'Get Lean' Program (Section 5)

Current Situation

Florida law requires the CFO to operate a 24-hour statewide toll-free hotline to receive information or suggestions from state residents on how to improve the operation of government, increase governmental efficiency, and eliminate waste in government.[35] The hotline consists of a telephone hotline and website. The CFO is required to advertise the hotline by posting notices in conspicuous places in state agency offices, city halls, county courthouses, and places in which there is exposure to significant numbers of the general public, including, but not limited to, local convenience stores, shopping malls, shopping centers, gas stations, or restaurants.[36] Additionally, the law allows the CFO to advertise the availability of the hotline in newspapers of general circulation within the state.[37] When advertising the hotline, the CFO is required to use the slogan, "Tell us where we can 'Get Lean.'"[38]

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[28] FLA. CONST. art. IV, s. 4,
[29] FLA. CONST. art. IV, s. 4(c); s. 17.001, F.S.
[30] Section 17.04, F.S.
[31] Section 17.09, F.S.
[32] Section 17.11, F.S.
[33] Section 20.121(2)(e), F.S.
[34] Section 17.05(2), F.S.
[35] Section 17.325(1), F.S.
[36] Section 17.325(2), F.S.
[37] *Id.*
[38] *Id.*

Those that provide tips through the hotline may remain anonymous, but if the tipper provides his or her name, the name is kept confidential.[39] By law, the tipper is immune from liability for any use of the information and may not be subject to any retaliation by any state employee for providing the tip.[40]

When a tip comes in to the hotline, the CFO's office is required to conduct an evaluation to determine if the tip is appropriate to be processed.[41] If the tip is appropriate to be processed, the CFO's office is required to keep a record of each suggestion or item of information received in the tip.[42]

If the tipper discloses that he or she is a state employee, the CFO's office may refer any information or suggestion from the tipper to an existing state awards program administered by the impacted agency.[43] If forwarded a suggestion or information from the CFO's office, the impacted agency is required to conduct a preliminary evaluation of the efficacy of the suggestion or information and provide the CFO's office with a preliminary determination of the amount of revenue the state might save by implementing the suggestion or making use of the information.[44]

Effect of Proposed Changes

The bill requires the CFO's office to provide a copy of each suggestion or item of information processed through the 'Get Lean' hotline to the Florida Integrity Officer by the 15th of the month following receipt of the suggestion or item of information.

Savings Sharing Program (Section 7)

Current Situation

Florida law provides a state 'Savings Sharing Program' for the purpose of providing a process by which state agencies can retain a portion of their budget for implementing internally generated program efficiencies and cost reductions and then redirect the savings to employees. By law, DMS is required to adopt rules that prescribe procedures for the program.[45]

Each state agency is eligible to participate in the 'Savings Sharing Program' and each agency head is responsible for recommending employees individually or by group to be awarded an amount of money, which must be directly related to the cost savings realized.[46] All employees within the Career Service and Selected Exempt Service are eligible to receive awards, provided they meet the statutory eligibility criteria.[47]

Additionally, the law allows the Chief Justice to establish a savings sharing program for comparable employees in the judicial branch.[48]

Each proposed award and amount of money must be approved by the Legislative Budget Commission before distribution.[49]

Effect of Proposed Changes

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[39] *Id.*
[40] Section 17.325(4), F.S.
[41] Section 17.325(3), F.S.
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] Section 110.1245(1)(a), F.S.
[46] Section 110.1245(1)(b), (c), F.S.
[47] Section 110.1245(1)(c) and (2)(b), F.S.
[48] *Id.*
[49] Section 110.1245(1)(b), F.S.

The bill creates a reward system for state employees whose reports under the Whistle-blower's Act result in savings or recovery of public funds in excess of $1,000. The amount of the award will be determined by the amount saved or recovered, the employee's employment classification, and when more than one employee makes a relevant report, in proportion to each employee's contribution to the investigation that led to the recovery of such funds. The bill sets the following award amounts:

- Career Service Employee – 10 percent of savings or recovery certified, but not less than $500 and not more than a total of $50,000 in any year.
- Selected Exempt Service Employees and Senior Management Service – 5 percent of savings or recovery certified, but not more than $1,000 in any year.

Pursuant to the bill, the agency head will recommend the employee or employees for awards and requires the funds be paid from the specific appropriation or trust fund from which the savings or recovery resulted.

The bill provides that these awards are not bonuses and do not require approval by the Legislative Budget Commission.

To protect the whistle-blower employee's identity, the bill allows employees to authorize an agent, trustee, or custodian to collect any award for which the employee is eligible on the employee's behalf.

Florida Whistle-blower's Act (Sections 8, 13 - 15)

Current Situation

The 'Florida Whistle-blower's Act' protects government employees from adverse actions from their employers or an independent contractor for reporting any act (or suspected act) of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty; or any violation (or suspected violation) of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor that creates and presents a substantial and specific danger to the public's health, safety, or welfare.[50] The 'Florida Whistle-blower's Act,' codified in ss. 112.3187 – 112.31895, F.S., governs the complaint filing and resolution process, provides investigatory procedures upon receipt of a complaint and in response to prohibited personnel actions, as well as provides for confidentiality of the complainant's name or identity.

Effect of Proposed Changes

The bill provides a definition for 'mismanagement' and defines it to mean "a continuous or repeated pattern of neglect of managerial duty, managerial abuses, wrongful or arbitrary and capricious actions, or deceptive, fraudulent, or criminal conduct which may have a substantial adverse economic impact." The bill also broadens the category of complaints that may be covered by the 'Florida Whistle-blower's Act.' Specifically, the bill covers complaints alleging 'mismanagement,' 'waste of public funds,' and 'neglect of duty' as opposed to 'gross mismanagement,' 'gross waste of public funds,' and 'gross neglect of duty' as under current law. The bill makes conforming changes to other portions of the Whistle-blower's Act consistent with the revised definitions and broader category of complaints.

[50] Section 112.3187(4), (5), F.S.

Procurement of Commodities and Services (Section 9)

Current Situation

Chapter 287, F.S., regulates state agency[51] procurement of personal property and services. DMS is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.[52] DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.[53]

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:[54]

- Invitations to bid – used when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required. In such cases, the contract is awarded to the responsible and responsive vendor who submits the lowest responsive bid;
- Requests for proposal – used when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables. Various combinations or versions of commodities or contractual services may be proposed by a responsive vendor to meet the specifications of the solicitation document. In such cases, the contract is awarded to the responsible and responsive vendor whose proposal is determined in writing to be the most advantageous to the state, taking into consideration the price and other criteria set forth in the request for proposals;
- Invitations to negotiate – used when the agency intends to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value; and
- Single source contracts – used when the agency determines that only one vendor is available to provide a commodity or service at the time of purchase.

For contracts for commodities or services in excess of $35,000, agencies must utilize a competitive solicitation process;[55] however, certain contractual services and commodities are exempt from this requirement,[56] or state or federal law may prescribe with whom the agency must contract,[57] or the rate of payment or the recipient of the fund may be established during the appropriations process.[58]

Current law contains an exemption from the competitive solicitation requirement for statewide public service announcement programs provided by a Florida statewide nonprofit corporation under s. 501(c)(6) of the Internal Revenue Code that have a guaranteed documented match of at least $3 to $1.[59]

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[51] Section 287.012(1), F.S., defines the term 'agency' as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. The term 'agency' does not include the university and college boards of trustees or the state universities and colleges."
[52] *See* ss. 287.032 and 287.042, F.S.
[53] *Id.*
[54] *See ss.* 287.012(6) and 287.057, F.S.
[55] Section 287.057(1), F.S., requires all projects that exceed the Category Two ($35,000) threshold contained in s. 287.017, F.S., to be competitively bid.
[56] *See* s. 287.057(3), F.S.
[57] *See* s. 287.057(10), F.S.
[58] *Id.*
[59] *See* s. 287.057(3)(e)13., F.S.

Effect of Proposed Changes

The bill expands the current law competitive solicitation exemption for statewide public service announcements. Pursuant to the bill's provisions, the exemption will no longer require the public service announcement to be statewide, and will no longer require that it be provided by a 501(c)(6) corporation.

The bill sets new requirements for contracts in excess of $50,000 awarded through the following processes:

- Invitation to negotiate;
- Single-source;
- Competitive solicitation exemption;
- State or federally mandated contracts; and
- Where appropriations process prescribes rate of payment or recipient of funds.

For these contracts in excess of $50,000, the bill requires the contractor to include a good faith estimate of gross profit[60] for each year of the contract. If the contractor includes the cost of products or services expected to be provided by a participant[61] closely associated with the contractor,[62] the contractor must name the participant, describe the association, and must provide a good faith estimate of gross profit for the participant for each year of the contract. Before awarding the contract, the agency must make a written determination that such estimated gross profit is not excessive and specify the reasons for such determination. If a contractor misrepresents the gross profit estimate, the contractor will be liable to the agency for three times the amount or value of the misrepresentation.

The effect of the proposed change will allow the agency, the Legislature, and the public to determine better the reasonable value of non-competitive procurements.

The bill also prohibits a state employee from lobbying for funding for a contract and also participating in the awarding of such contract. This provision of the bill does not apply to an agency head.

Tax Incentives (Section 10)

Current Situation

Chapter 288, F.S., governs the operation of numerous economic development programs, some of which provide tax credits, tax refunds, sales tax exemptions, cash grants, and other similar programs.

Effect of Proposed Changes

Notwithstanding any other law, the bill prohibits a tax incentive from being awarded or paid to a state contractor or any subcontractor for services provided or expenditures incurred pursuant to a state contract.

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[60] Pursuant to the bill, the phrase "good faith estimate of gross profit" means a good faith estimate of the total receipts expected under the contract less the cost of providing contracted commodities and services under the contract, not including overhead costs. "Overhead costs" means all costs not directly related to contract performance, including, but not limited to, marketing and administrative expenses.

[61] Pursuant to the bill, the term 'participant' means a person or entity with whom the contractor expects to subcontract for services or commodities in carrying out a contract with an agency.

[62] Pursuant to the bill, the phrase "closely associated with the contractor" means the contractor, a principal of the contractor, or a family member or business associate of a principal of the contractor is a principal of the participant. The term 'principal' means a person who owns at least 5 percent interest in the business or entity or is a manager of the business or entity. The term 'business associate' means a person or entity with whom a principal of the contractor has substantial investment, employment, or partnership interests.

Department of Education Inspector General Investigations (Section 11)

Current Situation

The Department of Education's Office of Inspector General (DOE IG) is responsible for promoting accountability, efficiency, and effectiveness and detecting fraud and abuse within school districts, the Florida School for the Deaf and the Blind, and Florida College System institutions.[63]

If the Commissioner of Education determines that a district school board, the Board of Trustees for the Florida School for the Deaf and the Blind, or a Florida College System institution board of trustees is unwilling or unable to address substantiated allegations made by any person relating to waste, fraud, or financial mismanagement within the school district, the Florida School for the Deaf and the Blind, or the Florida College System institution, the DOE IG is required to conduct, coordinate, or request investigations into such substantiated allegations.[64]

Additionally, the DOE IG is required to investigate allegations or reports of possible fraud or abuse against a district school board made by any member of the Cabinet; the presiding officer of either house of the Legislature; a chair of a substantive or appropriations committee with jurisdiction; or a member of the board for which an investigation is sought.

Effect of Proposed Changes

To increase accountability, the bill requires the DOE IG to also investigate allegations or reports of possible waste, fraud, abuse, or mismanagement against a Florida College System institution made by any member of the Cabinet; the presiding officer of either house of the Legislature; a chair of a substantive or appropriations committee with jurisdiction; or a member of the board for which an investigation is sought. Additionally, the bill also requires the DOE IG to investigate allegations or reports of possible waste or mismanagement against a district school board made by any of the previously referenced members or officers.

Effective Date

The bill is effective July 1, 2020.

B. SECTION DIRECTORY.

Section 1 creates s. 11.421, F.S., to establish a Florida Integrity Office within the Office of Auditor General.

Section 2 amends s. 11.45, F.S., relating to Auditor General reporting requirements.

Section 3 amends s. 14.32, F.S., relating to the Office of CIG.

Section 4 amends s. 17.04, F.S., relating to the Chief Financial Officer's authority to audit and adjust accounts of officers and those indebted to the state.

Section 5 amends s. 17.325, F.S., relating to Florida's 'Get Lean' hotline established and operated by the Chief Financial Officer.

Section 6 amends s. 20.055, F.S., relating to agency inspectors general.

Section 7 amends s. 110.1245, F.S., relating to the state 'Savings Sharing Program.'

[63] Section 1001.20(4)(e), F.S.
[64] *Id.*

Section 8 amends s. 112.3187, F.S., relating to the 'Whistle-blower's Act'.

Section 9 amends s. 287.057, F.S., relating to the procurement of commodities or contractual services.

Section 10 creates s. 288.00001, F.S., relating to use of state or local incentive funds to pay for services.

Section 11 amends s. 1001.20 F.S., relating to duties of the Inspector General of the Department of Education.

Section 12 provides authority to the Auditor General to use carryforward funds to fund the establishment and operation of the Florida Integrity Office.

Section 13 amends s. 112.3188, F.S., to conform provisions to changes made by the act.

Section 14 amends s. 112.3189, F.S., to conform provisions to changes made by the act.

Section 15 amends s. 112.31895, F.S., to conform provisions to changes made by the act.

Section 16 provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Office of Auditor General, the projected annual fiscal impact is approximately $2.5 million to staff and fund the newly created Florida Integrity Office.[65] However, only a portion of that amount would be needed in the first year as the office ramped up staffing and associated expenses. Additionally, some of the functions of the Office are not fully implemented until Fiscal Year 2021-22. The bill authorizes the Auditor General to use existing carryforward funds to fund the office, which are sufficient to cover such costs for more than three years, therefore no appropriation is necessary.

[65] Florida Auditor General, Agency Analysis of 2020 House Bill 1111, p. 7 (Jan. 13, 2020)

The revisions to the state 'Savings Sharing Program' will have an indeterminate positive fiscal impact on agencies as they provide an incentive for agency employees to file Whistle-blower's Act complaints and participate in investigations that lead to the recovery of state or federal funds. Any award given pursuant to this provision will be paid from the specific appropriation or trust fund from which the savings or recovery resulted.

Additional reporting and tracking requirements assigned to agencies, as well as investigations of complaint referrals and processing whistle-blower complaints, can be absorbed within existing agency resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On Thursday, January 23, 2020, the Public Integrity & Ethics Committee adopted two amendments to HB 1111 and subsequently reported the bill favorably. The amendments revised the bill in the following ways:

- Removed the requirement that the Chief Inspector General and agency inspectors general make referrals to the Commission on Ethics.
- Removed the requirement that the Florida Integrity Officer make referrals to the Commission on Ethics.

With the removal of the referral requirement, the current law process that allows the Governor, Florida Department of Law Enforcement, a state attorney, or a United States Attorney, to make a referral to the Commission on Ethics is maintained. Additionally, a person with knowledge of any alleged ethics violation may still file a complaint with the Commission on Ethics.

This bill analysis is drawn to CS/HB 1111.

A bill to be entitled

An act relating to government integrity; creating s. 11.421, F.S.; creating the Florida Integrity Office under the Auditor General; providing definitions; providing duties and powers of the Florida Integrity Officer and the Auditor General; amending s. 11.45, F.S.; providing a definition; providing and revising Auditor General reporting requirements; amending s. 14.32, F.S.; providing definitions; providing investigative duties of the Chief Inspector General and agency inspectors general; requiring such inspectors general to provide a report to the Chief Financial Officer within a specified timeframe in certain circumstances; providing liability for certain officials, contractors, and persons in certain circumstances; amending s. 17.04, F.S.; authorizing the Chief Financial Officer to commence an investigation based on certain complaints or referrals; authorizing state agency employees and state contractors to report certain information to the Chief Financial Officer; amending s. 17.325, F.S.; requiring certain records to be sent to the Florida Integrity Officer within a specified timeframe; amending s. 20.055, F.S.; requiring agency inspectors general to make certain determinations and reports;

amending s. 110.1245, F.S.; providing requirements for awards given to employees who report under the Whistle-blower's Act; authorizing expenditures for such awards; amending s. 112.3187, F.S.; revising a definition; conforming provisions to changes made by the act; amending s. 287.057, F.S.; revising provisions relating to contractual services and commodities that are not subject to competitive-solicitation requirements; requiring certain state contracts to include a good faith estimate of gross profit; requiring a determination of reasonableness; providing definitions; prohibiting certain state employees from participating in the negotiation or award of state contracts; creating s. 288.00001, F.S.; prohibiting tax incentives from being awarded or paid to a state contractor or subcontractor; amending s. 1001.20, F.S.; requiring the Office of Inspector General of the Department of Education to conduct investigations relating to waste, fraud, abuse, or mismanagement against a district school board or Florida College System institution; authorizing the Office of the Auditor General to use carryforward funds to fund the Florida Integrity Office; amending ss. 112.3188, 112.3189, and 112.31895, F.S.; conforming provisions to changes made by the act;

providing an effective date.

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

Section 1. Section 11.421, Florida Statutes, is created to read:

11.421 Florida Integrity Office.—

(1) There is created under the Auditor General the Florida Integrity Office for the purpose of ensuring integrity in state and local government and facilitating the elimination of fraud, waste, abuse, mismanagement, and misconduct in government.

(2) The Florida Integrity Officer shall be a legislative employee and be appointed by and serve at the pleasure of the Auditor General. The Florida Integrity Officer shall oversee the efficient operation of the office and report to and be under the general supervision of the Auditor General.

(3) The Auditor General shall employ qualified individuals for the office pursuant to s. 11.42.

(4) As used in this section, the term:

(a) "Appropriations project" means a specific appropriation or proviso that provides funding for a specified entity that is a local government, private entity, or privately operated program. The term does not include an appropriation or proviso:

1. Specifically authorized by statute;

2. That is part of a statewide distribution to local governments;

3. Recommended by a commission, council, or other similar entity created in statute to make annual funding recommendations, provided that such appropriation does not exceed the amount of funding recommended by the commission, council, or other similar entity;

4. For a specific transportation facility that is part of the Department of Transportation's 5-year work program submitted pursuant to s. 339.135;

5. For an education fixed capital outlay project that is submitted pursuant to s. 1013.60 or s. 1013.64; or

6. For a specified program, research initiative, institute, center, or similar entity at a specific state college or university recommended by the Board of Governors or the State Board of Education in its legislative budget request.

(b) "Office" means the Florida Integrity Office.

(5) The Florida Integrity Officer may receive and investigate a complaint alleging fraud, waste, abuse, mismanagement, or misconduct in connection with the expenditure of public funds.

(6) A complaint may be submitted to the office by any of the following persons:

(a) The President of the Senate.

(b) The Speaker of the House of Representatives.

(c) The chair of an appropriations committee of the Senate or the House of Representatives.

(d) The Auditor General.

(7)(a) Upon receipt of a complaint, the Florida Integrity Officer shall determine whether the complaint is supported by sufficient information indicating a reasonable probability of fraud, waste, abuse, mismanagement, or misconduct. If the Florida Integrity Officer determines that the complaint is not supported by sufficient information indicating a reasonable probability of fraud, waste, abuse, mismanagement, or misconduct, the Florida Integrity Officer shall notify the complainant in writing and the complaint shall be closed.

(b) If the complaint is supported by sufficient information indicating a reasonable probability of fraud, waste, abuse, mismanagement, or misconduct, the Florida Integrity Officer shall determine whether an investigation into the matter has already been initiated by a law enforcement agency, the Commission on Ethics, the Chief Financial Officer, the Office of Chief Inspector General, or the applicable agency inspector general. If such an investigation has been initiated, the Florida Integrity Officer shall notify the complainant in writing and the complaint may be closed.

(c) If the complaint is supported by sufficient information indicating a reasonable probability of fraud, waste, abuse, mismanagement, or misconduct, and an investigation into

the matter has not already been initiated as described in paragraph (b), the Florida Integrity Officer shall, within available resources, conduct an investigation and issue a report of the investigative findings to the complainant and to the President of the Senate and the Speaker of the House of Representatives. The Florida Integrity Officer may refer the matter to the Auditor General, the appropriate law enforcement agency, the Chief Financial Officer, the Office of the Chief Inspector General, or the applicable agency inspector general. The Auditor General may provide staff and other resources to assist the Florida Integrity Officer.

(8)(a) The Florida Integrity Officer, or his or her designee, may inspect and investigate the books, records, papers, documents, data, operation, and physical location of any public agency in this state, including any confidential information, and the public records of any entity that has received direct appropriations. The Florida Integrity Officer may agree to retain the confidentiality of confidential information pursuant to s. 11.0431(2)(a).

(b) Upon the request of the Florida Integrity Officer, the Legislative Auditing Committee or any other committee of the Legislature may issue subpoenas and subpoenas duces tecum, as provided in s. 11.143, to compel testimony or the production of evidence when deemed necessary to an investigation authorized by this section. Consistent with s. 11.143, such subpoenas and

subpoenas duces tecum may be issued as provided by applicable legislative rules or, in the absence of applicable legislative rules, by the chair of the Legislative Auditing Committee with the approval of the Legislative Auditing Committee and the President of the Senate and the Speaker of the House of Representatives, or with the approval of the President of the Senate or the Speaker of the House of Representatives if such officer alone designated the Legislative Auditing Committee as defined in s. 1.01.

(c) If a witness fails or refuses to comply with a lawful subpoena or subpoena duces tecum issued pursuant to this subsection at a time when the Legislature is not in session, the subpoena or subpoena duces tecum may be enforced as provided in s. 11.143 and, in addition, the Auditor General, on behalf of the committee issuing the subpoena or subpoena duces tecum, may file a complaint before any circuit court of the state to enforce the subpoena or subpoena duces tecum. Upon the filing of such complaint, the court shall take jurisdiction of the witness and the subject matter of the complaint and shall direct the witness to respond to all lawful questions and to produce all documentary evidence in the possession of the witness which is lawfully demanded. The failure of a witness to comply with such order constitutes a direct and criminal contempt of court, and the court shall punish the witness accordingly.

(d) When the Legislature is in session, upon the request

of the Florida Integrity Officer directed to the committee issuing the subpoena or subpoena duces tecum, either house of the Legislature may seek compliance with the subpoena or subpoena duces tecum in accordance with the State Constitution, general law, the joint rules of the Legislature, or the rules of the house of the Legislature whose committee issued the subpoena or subpoena duces tecum.

(9) The Florida Integrity Officer shall receive copies of all reports required by ss. 14.32, 17.325, and 20.055.

(10)(a) Beginning with the 2021-2022 fiscal year, the Auditor General and the Florida Integrity Officer, within available resources, shall randomly select and review appropriations projects appropriated in the prior fiscal year and, if appropriate, investigate and recommend an audit of such projects. The review, investigation, or audit may be delayed on a selected project until a subsequent year if the timeline of the project warrants such delay. Each review, investigation, or audit must include, but is not limited to, evaluating whether the recipient of the appropriations project administered the project in an efficient and effective manner. When an audit is recommended by the Florida Integrity Officer under this subsection, the Auditor General shall determine whether the audit is appropriate.

(b) Beginning with the 2021-2022 fiscal year, the Auditor General and the Florida Integrity Officer, within available

resources, shall select and review, investigate, or audit the financial activities of any political subdivision, special district, public authority, public hospital, state or local council or commission, unit of local government, or public education entity in this state, as well as any authority, council, commission, direct-support organization, institution, foundation, or similar entity created by law or ordinance to pursue a public purpose, entitled by law or ordinance to any distribution of tax or fee revenues, or organized for the sole purpose of supporting one of the public entities listed in this paragraph.

Section 2. Paragraphs (i) through (m) of subsection (1) of section 11.45, Florida Statutes, are redesignated as paragraphs (j) through (n), respectively, paragraphs (a) and (e) of subsection (1), paragraph (f) of subsection (2), and paragraph (j) of subsection (7) are amended, and a new paragraph (i) is added to subsection (1) of that section, to read:

11.45 Definitions; duties; authorities; reports; rules.—

(1) DEFINITIONS.—As used in ss. 11.40-11.51, the term:

(a) "Abuse" means behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary operational practice given the facts and circumstances. The term includes the misuse of authority or position for personal gain or for the gain of an immediate or close family member or business associate.

(e) "Fraud" means obtaining something of value through willful misrepresentation, including, but not limited to, intentional misstatements or intentional omissions of amounts or disclosures in financial statements to deceive users of financial statements, theft of an entity's assets, bribery, or the use of one's position for personal enrichment through the deliberate misuse or misapplication of an entity's ~~organization's~~ resources.

(i) "Misconduct" means conduct which, though not illegal, is inappropriate for a person in his or her specified position.

(2) DUTIES.—The Auditor General shall:

(f) At least every 3 years, conduct operational audits of the accounts and records of state agencies, state universities, state colleges, district school boards, the Florida Clerks of Court Operations Corporation, water management districts, and the Florida School for the Deaf and the Blind. At the conclusion of each 3-year cycle, the Auditor General shall publish a report consolidating common operational audit findings for all state agencies, state universities, state colleges, and district school boards.

The Auditor General shall perform his or her duties independently but under the general policies established by the Legislative Auditing Committee. This subsection does not limit the Auditor General's discretionary authority to conduct other

audits or engagements of governmental entities as authorized in subsection (3).

(7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

(j) The Auditor General shall notify the Legislative Auditing Committee of any financial or operational audit report prepared pursuant to this section which indicates that a district school board, state university, or Florida College System institution has failed to take full corrective action in response to a recommendation that was included in the two preceding financial ~~or operational~~ audit reports or a preceding operational audit report.

1. The committee may direct the district school board or the governing body of the state university or Florida College System institution to provide a written statement to the committee explaining why full corrective action has not been taken or, if the governing body intends to take full corrective action, describing the corrective action to be taken and when it will occur.

2. If the committee determines that the written statement is not sufficient, the committee may require the chair of the district school board or the chair of the governing body of the state university or Florida College System institution, or the chair's designee, to appear before the committee.

3. If the committee determines that the district school board, state university, or Florida College System institution

has failed to take full corrective action for which there is no justifiable reason or has failed to comply with committee requests made pursuant to this section, the committee shall refer the matter to the State Board of Education or the Board of Governors, as appropriate, to proceed in accordance with s. 1008.32 or s. 1008.322, respectively.

Section 3. Subsections (1) through (5) of section 14.32, Florida Statutes, are renumbered as subsections (2) through (6), respectively, and new subsections (1) and (7) are added to that section, to read:

14.32 Office of Chief Inspector General.—

(1) As used in this section, the term:

(a) "Abuse" means behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary operational practice given the facts and circumstances. The term includes the misuse of authority or position for personal gain or for the benefit of another.

(b) "Fraud" means obtaining something of value through willful misrepresentation, including, but not limited to, the intentional misstatements or intentional omissions of amounts or disclosures in financial statements to deceive users of financial statements, theft of an entity's assets, bribery, or the use of one's position for personal enrichment through the deliberate misuse or misapplication of an entity's resources.

(c) "Independent contractor" has the same meaning as in s.

112.3187(3)(d).

(d) "Misconduct" means conduct which, though not illegal, is inappropriate for a person in his or her specified position.

(e) "Waste" means the act of using or expending resources unreasonably, carelessly, extravagantly, or for no useful purpose.

(7)(a) Within 6 months after the initiation of an investigation of fraud, waste, abuse, mismanagement, or misconduct in government, the Chief Inspector General or an agency inspector general must determine whether there is reasonable probability that fraud, waste, abuse, mismanagement, or misconduct in government has occurred. If there has not been a determination of such reasonable probability and the investigation continues, a new determination must be made every 3 months until the investigation is closed or such reasonable probability is found to exist.

(b) If the Chief Inspector General or an agency inspector general determines that there is reasonable probability that a public official, independent contractor, or agency has committed fraud, waste, abuse, mismanagement, or misconduct in government, the inspector general shall report such determination to the Florida Integrity Officer.

(c) If the findings of an investigation conducted pursuant to this subsection conclude that a public official, independent contractor, or agency has committed fraud, waste, abuse,

mismanagement, or misconduct in government, the Chief Inspector General or agency inspector general shall report such findings to the Chief Financial Officer within 30 days after the investigation is closed. Such public official, independent contractor, or person responsible within the agency is personally liable for repayment of the funds that were diverted or lost as a result of the fraud, waste, abuse, mismanagement, or misconduct in government. If the person liable fails to repay such funds voluntarily and the state does not agree to a settlement, the Chief Financial Officer shall bring a civil action to recover the funds within 60 days after receipt of such findings.

Section 4. Section 17.04, Florida Statutes, is amended to read:

17.04 To audit and adjust accounts of officers and those indebted to the state.—The Chief Financial Officer, using generally accepted auditing procedures for testing or sampling, shall examine, audit, adjust, and settle the accounts of all the officers of this state, and any other person in anywise entrusted with, or who may have received any property, funds, or moneys of this state, or who may be in anywise indebted or accountable to this state for any property, funds, or moneys, and require such officer or persons to render full accounts thereof, and to yield up such property or funds according to law, or pay such moneys into the treasury of this state, or to

such officer or agent of the state as may be appointed to receive the same, and on failure so to do, to cause to be instituted and prosecuted proceedings, criminal or civil, at law or in equity, against such persons, according to law. The Chief Financial Officer may conduct investigations within or outside of this state as it deems necessary to aid in the enforcement of this section. The Chief Financial Officer may commence an investigation pursuant to this section based on a complaint or referral from any source. An employee of a state agency or a state contractor having knowledge of suspected misuse of state funds may report such information to the Chief Financial Officer. If during an investigation the Chief Financial Officer has reason to believe that any criminal statute of this state has or may have been violated, the Chief Financial Officer shall refer any records tending to show such violation to state or federal law enforcement or prosecutorial agencies and shall provide investigative assistance to those agencies as required.

Section 5. Subsections (4) and (5) of section 17.325, Florida Statutes, are renumbered as subsections (5) and (6), respectively, and a new subsection (4) is added to that section to read:

17.325 Governmental efficiency hotline; duties of Chief Financial Officer.—

(4) A copy of each suggestion or item of information received through the hotline or website that is logged pursuant

to this section must be reported to the Florida Integrity Officer by the 15th of the month following receipt of the suggestion or item of information.

Section 6. Paragraph (g) is added to subsection (7) of section 20.055, Florida Statutes, to read:

20.055 Agency inspectors general.—

(7) In carrying out the investigative duties and responsibilities specified in this section, each inspector general shall initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government. For these purposes, each inspector general shall:

(g) Make determinations and reports as required by s. 14.32(7).

Section 7. Paragraphs (a) and (b) of subsection (1) and subsection (2) of section 110.1245, Florida Statutes, are amended, and subsections (6) and (7) are added to that section, to read:

110.1245 Savings sharing program; bonus payments; other awards.—

(1)(a) The Department of Management Services shall adopt rules that prescribe procedures and promote a savings sharing program for an individual or group of employees who propose procedures or ideas that are adopted and that result in

eliminating or reducing state expenditures, including employees reporting under the Whistle-blower's Act, if such proposals are placed in effect and may be implemented under current statutory authority.

(b) Each agency head shall recommend employees individually or by group to be awarded an amount of money, which amount shall be directly related to the cost savings realized. Each proposed award and amount of money must be approved by the Legislative Budget Commission, except an award issued under subsection (6).

(2) In June of each year, bonuses shall be paid to employees from funds authorized by the Legislature in an appropriation specifically for bonuses. For purposes of this subsection, awards issued under subsection (6) are not considered bonuses. Each agency shall develop a plan for awarding lump-sum bonuses, which plan shall be submitted no later than September 15 of each year and approved by the Office of Policy and Budget in the Executive Office of the Governor. Such plan shall include, at a minimum, but is not limited to:

(a) A statement that bonuses are subject to specific appropriation by the Legislature.

(b) Eligibility criteria as follows:

1. The employee must have been employed before ~~prior to~~ July 1 of that fiscal year and have been continuously employed through the date of distribution.

2. The employee must not have been on leave without pay consecutively for more than 6 months during the fiscal year.

3. The employee must have had no sustained disciplinary action during the period beginning July 1 through the date the bonus checks are distributed. Disciplinary actions include written reprimands, suspensions, dismissals, and involuntary or voluntary demotions that were associated with a disciplinary action.

4. The employee must have demonstrated a commitment to the agency mission by reducing the burden on those served, continually improving the way business is conducted, producing results in the form of increased outputs, and working to improve processes.

5. The employee must have demonstrated initiative in work and have exceeded normal job expectations.

6. The employee must have modeled the way for others by displaying agency values of fairness, cooperation, respect, commitment, honesty, excellence, and teamwork.

(c) A periodic evaluation process of the employee's performance.

(d) A process for peer input that is fair, respectful of employees, and affects the outcome of the bonus distribution.

(e) A division of the agency by work unit for purposes of peer input and bonus distribution.

(f) A limitation on bonus distributions equal to 35

percent of the agency's total authorized positions. This requirement may be waived by the Office of Policy and Budget in the Executive Office of the Governor upon a showing of exceptional circumstances.

(6) Each agency inspector general shall report employees whose reports under the Whistle-blower's Act resulted in savings or recovery of public funds in excess of $1,000. Awards shall be awarded by each agency to the employee, or his or her designee, whose report led to the savings or recovery, and each agency head is authorized to incur expenditures to provide such awards. The award shall be paid from the specific appropriation or trust fund from which the savings or recovery resulted. The agency inspector general to whom the report was made or referred shall certify the savings or recovery resulting from the investigation. If more than one employee makes a relevant report, the award shall be shared in proportion to each employee's contribution to the investigation as certified by the agency inspector general. Awards shall be made in the following amounts:

(a) A career service employee shall receive 10 percent of the savings or recovery certified, but not less than $500 and not more than a total of $50,000 for whistle-blower reports in any 1 year. If the employee had any fault for the misspending or attempted misspending of public funds identified in the investigation that resulted in the savings or recovery, the

476 award may be denied at the discretion of the agency head. If the
477 award is not denied by the agency head, the award may not exceed
478 $500. The agency inspector general shall certify any fault on
479 the part of the employee.
480 (b) A Senior Management Service employee or an employee in
481 a select exempt position shall receive 5 percent of the savings
482 or recovery certified, but not more than a total of $1,000 for
483 whistle-blower reports in any 1 year. An employee may not
484 receive an award under this paragraph if he or she had any fault
485 for the misspending or attempted misspending of public funds
486 identified in the investigation that resulted in the savings or
487 recovery. The agency inspector general shall certify any fault
488 on the part of the employee.
489 (7) Notwithstanding any other provision of law, an
490 employee whose name or identity is confidential or exempt from
491 disclosure under state or federal law may participate in the
492 savings sharing program authorized in this section. To maintain
493 confidentiality, upon notice of eligibility for an award, such
494 employee may designate an authorized agent, trustee, or
495 custodian to accept an award for which the employee is eligible
496 on behalf of the employee.
497 Section 8. Subsection (2), paragraph (e) of subsection
498 (3), and paragraph (b) of subsection (5) of section 112.3187,
499 Florida Statutes, are amended to read:
500 112.3187 Adverse action against employee for disclosing

information of specified nature prohibited; employee remedy and relief.—

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against an employee who reports to an appropriate agency violations of law on the part of a public employer or independent contractor that create a substantial and specific danger to the public's health, safety, or welfare. It is further the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against any person who discloses information to an appropriate agency alleging improper use of governmental office, ~~gross~~ waste of funds, or any other abuse or ~~gross~~ neglect of duty on the part of an agency, public officer, or employee.

(3) DEFINITIONS.—As used in this act, unless otherwise specified, the following words or terms shall have the meanings indicated:

(e) "~~Gross~~ Mismanagement" means a continuous pattern of managerial abuses, wrongful or arbitrary and capricious actions, or fraudulent or criminal conduct which may have a substantial adverse economic impact.

(5) NATURE OF INFORMATION DISCLOSED.—The information disclosed under this section must include:

(b) Any act or suspected act of ~~gross~~ mismanagement, malfeasance, misfeasance, ~~gross~~ waste of public funds, suspected

or actual Medicaid fraud or abuse, or ~~gross~~ neglect of duty committed by an employee or agent of an agency or independent contractor.

Section 9. Paragraph (e) of subsection (3) and subsection (9) of section 287.057, Florida Statutes, are amended, and subsections (24) and (25) are added to that section, to read:

287.057 Procurement of commodities or contractual services.—

(3) If the purchase price of commodities or contractual services exceeds the threshold amount provided in s. 287.017 for CATEGORY TWO, purchase of commodities or contractual services may not be made without receiving competitive sealed bids, competitive sealed proposals, or competitive sealed replies unless:

(e) The following contractual services and commodities are not subject to the competitive-solicitation requirements of this section:

1. Artistic services. As used in this subsection, the term "artistic services" does not include advertising or typesetting. As used in this subparagraph, the term "advertising" means the making of a representation in any form in connection with a trade, business, craft, or profession in order to promote the supply of commodities or services by the person promoting the commodities or contractual services.

2. Academic program reviews if the fee for such services

does not exceed $50,000.

3. Lectures by individuals.

4. Legal services, including attorney, paralegal, expert witness, appraisal, or mediator services.

5. Health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration. The term also includes, but is not limited to, substance abuse and mental health services involving examination, diagnosis, treatment, prevention, or medical consultation if such services are offered to eligible individuals participating in a specific program that qualifies multiple providers and uses a standard payment methodology. Reimbursement of administrative costs for providers of services purchased in this manner are also exempt. For purposes of this subparagraph, the term "providers" means health professionals and health facilities, or organizations that deliver or arrange for the delivery of health services.

6. Services provided to persons with mental or physical disabilities by not-for-profit corporations that have obtained exemptions under s. 501(c)(3) of the United States Internal Revenue Code or when such services are governed by Office of Management and Budget Circular A-122. However, in acquiring such services, the agency shall consider the ability of the vendor, past performance, willingness to meet time requirements, and price.

7. Medicaid services delivered to an eligible Medicaid

recipient unless the agency is directed otherwise in law.

8. Family placement services.

9. Prevention services related to mental health, including drug abuse prevention programs, child abuse prevention programs, and shelters for runaways, operated by not-for-profit corporations. However, in acquiring such services, the agency shall consider the ability of the vendor, past performance, willingness to meet time requirements, and price.

10. Training and education services provided to injured employees pursuant to s. 440.491(6).

11. Contracts entered into pursuant to s. 337.11.

12. Services or commodities provided by governmental entities.

13. ~~Statewide~~ Public service announcement programs that ~~provided by a Florida statewide nonprofit corporation under s. 501(c)(6) of the Internal Revenue Code which~~ have a guaranteed documented match of at least $3 to $1.

(9) An agency shall not divide the solicitation of commodities or contractual services so as to avoid the requirements of subsections (1)-(3) or subsection (24).

(24)(a) For any contract in excess of $50,000 that is awarded through an invitation to negotiate or awarded without competitive solicitation under paragraph (3)(c), paragraph (3)(e), or subsection (10), the proposal, offer, or response of the contractor must include a good faith estimate of gross

profit for each year and renewal year of the proposed contract. If, in determining the good faith estimate of gross profit, the contractor includes the cost of products or services expected to be provided by a participant closely associated with the contractor, the contractor must also identify such participant, describe the association, and provide a good faith estimate of gross profit for such participant for each year and renewal year of the proposed contract, which must be attested to by an authorized representative of the participant. The agency must, before awarding the contract, make a written determination that the estimated gross profit is not excessive and specify the reasons for such determination. Notwithstanding any provision of the contract, a contractor is liable to the agency for three times the amount or value of any misrepresentation of estimated gross profit as liquidated damages for such misrepresentation.

(b) For purposes of this subsection, the term:

1. "Closely associated with the contractor" means the contractor, a principal of the contractor, or a family member or business associate of a principal of the contractor is a principal of the participant. As used in this subparagraph, the term "principal" means a person who owns at least 5 percent interest in the business or entity or is a manager of the business or entity. As used in this subparagraph, the term "business associate" means a person or entity with whom a principal of the contractor has substantial investment,

employment, or partnership interests.

2. "Good faith estimate of gross profit" means a good faith estimate of the total receipts expected under the contract less the cost of providing contracted commodities and services under the contract and excluding overhead costs. As used in this subparagraph, the term "overhead costs" means all costs that are not directly related to contract performance, including, but not limited to, marketing and administrative expenses.

3. "Participant" means a person or entity with whom the contractor expects to subcontract for services or commodities in carrying out a contract with an agency.

(25) Notwithstanding any other provision of law, a state employee who is registered to lobby the Legislature, other than an agency head, may not participate in the negotiation or award of any contract required or expressly funded under a specific legislative appropriation or proviso in an appropriation act. This subsection does not apply to a state employee who is:

(a) Registered to lobby the Legislature, but whose primary job responsibilities do not involve lobbying.

(b) Employed by the Executive Office of the Governor.

(c) Employed by the Office of Policy and Budget.

Section 10. Section 288.00001, Florida Statutes, is created to read:

288.00001 Use of state or local incentive funds to pay for services.—Notwithstanding any other provision of law, a tax

incentive may not be awarded or paid to a state contractor or any subcontractor for services provided or expenditures incurred pursuant to a state contract.

Section 11. Paragraph (e) of subsection (4) of section 1001.20, Florida Statutes, is amended to read:

1001.20 Department under direction of state board.—

(4) The Department of Education shall establish the following offices within the Office of the Commissioner of Education which shall coordinate their activities with all other divisions and offices:

(e) Office of Inspector General.—Organized using existing resources and funds and responsible for promoting accountability, efficiency, and effectiveness and detecting fraud and abuse within school districts, the Florida School for the Deaf and the Blind, and Florida College System institutions in Florida. If the Commissioner of Education determines that a district school board, the Board of Trustees for the Florida School for the Deaf and the Blind, or a Florida College System institution board of trustees is unwilling or unable to address substantiated allegations made by any person relating to waste, fraud, abuse, or financial mismanagement within the school district, the Florida School for the Deaf and the Blind, or the Florida College System institution, the office shall conduct, coordinate, or request investigations into such substantiated allegations. The office shall investigate allegations or reports

of possible waste, fraud, ~~or~~ abuse, or mismanagement against a district school board or Florida College System institution made by any member of the Cabinet, ~~,~~ the presiding officer of either house of the Legislature, ~~,~~ a chair of a substantive or appropriations legislative committee with jurisdiction, ~~,~~ or a member of the board for which an investigation is sought. The office shall have access to all information and personnel necessary to perform its duties and shall have all of its current powers, duties, and responsibilities authorized in s. 20.055.

Section 12. The Office of the Auditor General is authorized to use carryforward funds to fund the establishment and operations of the Florida Integrity Office as created by this act.

Section 13. Subsection (1) of section 112.3188, Florida Statutes, is amended to read:

112.3188 Confidentiality of information given to the Chief Inspector General, internal auditors, inspectors general, local chief executive officers, or other appropriate local officials.—

(1) The name or identity of any individual who discloses in good faith to the Chief Inspector General or an agency inspector general, a local chief executive officer, or other appropriate local official information that alleges that an employee or agent of an agency or independent contractor:

(a) Has violated or is suspected of having violated any

federal, state, or local law, rule, or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare; or

(b) Has committed an act of ~~gross~~ mismanagement, malfeasance, misfeasance, ~~gross~~ waste of public funds, or ~~gross~~ neglect of duty

may not be disclosed to anyone other than a member of the Chief Inspector General's, agency inspector general's, internal auditor's, local chief executive officer's, or other appropriate local official's staff without the written consent of the individual, unless the Chief Inspector General, internal auditor, agency inspector general, local chief executive officer, or other appropriate local official determines that: the disclosure of the individual's identity is necessary to prevent a substantial and specific danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime; or the disclosure is unavoidable and absolutely necessary during the course of the audit, evaluation, or investigation.

Section 14. Paragraph (c) of subsection (3), subsection (4), and paragraph (a) of subsection (5) of section 112.3189, Florida Statutes, are amended to read:

112.3189 Investigative procedures upon receipt of whistle-blower information from certain state employees.—

(3) When a person alleges information described in s. 112.3187(5), the Chief Inspector General or agency inspector general actually receiving such information shall within 20 days of receiving such information determine:

(c) Whether the information actually disclosed demonstrates reasonable cause to suspect that an employee or agent of an agency or independent contractor has violated any federal, state, or local law, rule, or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare, or has committed an act of ~~gross~~ mismanagement, malfeasance, misfeasance, ~~gross~~ waste of public funds, or ~~gross~~ neglect of duty.

(4) If the Chief Inspector General or agency inspector general under subsection (3) determines that the information disclosed is not the type of information described in s. 112.3187(5), or that the source of the information is not a person who is an employee or former employee of, or an applicant for employment with, a state agency, as defined in s. 216.011, or that the information disclosed does not demonstrate reasonable cause to suspect that an employee or agent of an agency or independent contractor has violated any federal, state, or local law, rule, or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare, or has committed an act of ~~gross~~ mismanagement, malfeasance, misfeasance, ~~gross~~ waste of public

funds, or ~~gross~~ neglect of duty, the Chief Inspector General or agency inspector general shall notify the complainant of such fact and copy and return, upon request of the complainant, any documents and other materials that were provided by the complainant.

(5)(a) If the Chief Inspector General or agency inspector general under subsection (3) determines that the information disclosed is the type of information described in s. 112.3187(5), that the source of the information is from a person who is an employee or former employee of, or an applicant for employment with, a state agency, as defined in s. 216.011, and that the information disclosed demonstrates reasonable cause to suspect that an employee or agent of an agency or independent contractor has violated any federal, state, or local law, rule, or regulation, thereby creating a substantial and specific danger to the public's health, safety, or welfare, or has committed an act of ~~gross~~ mismanagement, malfeasance, misfeasance, ~~gross~~ waste of public funds, or ~~gross~~ neglect of duty, the Chief Inspector General or agency inspector general making such determination shall then conduct an investigation, unless the Chief Inspector General or the agency inspector general determines, within 30 days after receiving the allegations from the complainant, that such investigation is unnecessary. For purposes of this subsection, the Chief Inspector General or the agency inspector general shall consider

the following factors, but is not limited to only the following factors, when deciding whether the investigation is not necessary:

1. The gravity of the disclosed information compared to the time and expense of an investigation.

2. The potential for an investigation to yield recommendations that will make state government more efficient and effective.

3. The benefit to state government to have a final report on the disclosed information.

4. Whether the alleged whistle-blower information primarily concerns personnel practices that may be investigated under chapter 110.

5. Whether another agency may be conducting an investigation and whether any investigation under this section could be duplicative.

6. The time that has elapsed between the alleged event and the disclosure of the information.

Section 15. Paragraph (a) of subsection (3) of section 112.31895, Florida Statutes, is amended to read:

112.31895 Investigative procedures in response to prohibited personnel actions.—

(3) CORRECTIVE ACTION AND TERMINATION OF INVESTIGATION.—

(a) The Florida Commission on Human Relations, in accordance with this act and for the sole purpose of this act,

is empowered to:

1. Receive and investigate complaints from employees alleging retaliation by state agencies, as the term "state agency" is defined in s. 216.011.

2. Protect employees and applicants for employment with such agencies from prohibited personnel practices under s. 112.3187.

3. Petition for stays and petition for corrective actions, including, but not limited to, temporary reinstatement.

4. Recommend disciplinary proceedings pursuant to investigation and appropriate agency rules and procedures.

5. Coordinate with the Chief Inspector General in the Executive Office of the Governor and the Florida Commission on Human Relations to receive, review, and forward to appropriate agencies, legislative entities, or the Department of Law Enforcement disclosures of a violation of any law, rule, or regulation, or disclosures of ~~gross~~ mismanagement, malfeasance, misfeasance, nonfeasance, neglect of duty, or ~~gross~~ waste of public funds.

6. Review rules pertaining to personnel matters issued or proposed by the Department of Management Services, the Public Employees Relations Commission, and other agencies, and, if the Florida Commission on Human Relations finds that any rule or proposed rule, on its face or as implemented, requires the commission of a prohibited personnel practice, provide a written

comment to the appropriate agency.

7. Investigate, request assistance from other governmental entities, and, if appropriate, bring actions concerning, allegations of retaliation by state agencies under subparagraph 1.

8. Administer oaths, examine witnesses, take statements, issue subpoenas, order the taking of depositions, order responses to written interrogatories, and make appropriate motions to limit discovery, pursuant to investigations under subparagraph 1.

9. Intervene or otherwise participate, as a matter of right, in any appeal or other proceeding arising under this section before the Public Employees Relations Commission or any other appropriate agency, except that the Florida Commission on Human Relations must comply with the rules of the commission or other agency and may not seek corrective action or intervene in an appeal or other proceeding without the consent of the person protected under ss. 112.3187-112.31895.

10. Conduct an investigation, in the absence of an allegation, to determine whether reasonable grounds exist to believe that a prohibited action or a pattern of prohibited action has occurred, is occurring, or is to be taken.

Section 16. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1181 Florida Disaster Volunteer Leave Act
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee, Maggard
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1050

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee	14 Y, 0 N, As CS	Villa	Smith
2) Appropriations Committee		Keith	Pridgeon
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Disaster Volunteer Leave Act (the Act) provides that an employee of a state agency who is a certified disaster service volunteer of the American Red Cross (Red Cross) may be granted a leave of absence with pay for not more than 15 working days in any 12-month period to participate in specialized disaster relief services for the Red Cross. Leave may be granted upon the request of the Red Cross and upon the approval of the employee's employing agency. Such leave may only be granted for services related to a disaster occurring within the state. However, with the approval of the Governor and Cabinet, leave may be granted for services in response to a disaster occurring within the United States.

The bill expands the type of organization through which a state agency employee may provide volunteer service and revises employee and employer requirements for disaster volunteer service. Specifically, the bill broadens volunteer service to include nonpaid services to a nonprofit 501(c)(3) or (4) organization that the employee has entered into an agreement with, not exclusively the Red Cross. A leave of absence with pay may be granted by the employing agency, upon the request of the employee, after the agency verifies the employee's volunteer status. Approval from the head of the employing agency is required for disasters occurring outside the state but within the United States. The bill further requires an employee who was granted leave for disaster volunteer service to provide the head of his or her employing agency, at a minimum, documentation specifying the time period the employee provided volunteer services and a description of the disaster response or recovery services provided.

The bill may have a negative, yet indeterminate fiscal impact to state government expenditures relating to paid leave time for volunteer services granted under provisions in the bill. *See* Fiscal Comments.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Disaster Volunteer Leave Act

The Florida Disaster Volunteer Leave Act[1] (the Act) provides that an employee of a state agency[2] who is a certified disaster service volunteer of the American Red Cross (Red Cross) may be granted a leave of absence with pay for not more than 15 working days in any 12-month period to participate in specialized disaster relief services for the Red Cross.[3] A "disaster" includes disasters designated at level II and above in the American National Red Cross regulations and procedures. Under the Act, a leave of absence may be granted upon the request of the Red Cross and upon the approval of the employee's employing agency. Such leave may only be granted for services related to a disaster occurring within the state. However, with the approval of the Governor and Cabinet, leave may be granted for services in response to a disaster occurring within the United States.

An employee granted leave under the Act is not deemed to be an employee of the state for purposes of workers' compensation during the leave of absence.

Tax-Exempt Nonprofit Organizations and Disaster Relief

Tax-exempt organizations, such as the Red Cross and the Salvation Army, play a critical role in disaster relief and recovery efforts. As recognized by the Internal Revenue Service, "[p]roviding aid to relieve human suffering caused by a natural or civil disaster or an emergency hardship is charity in its most basic form."[4] In the years since the 9/11 terrorist attack, there has been a sharp growth in the creation of tax-exempt nonprofits that receive donations and disburse assistance following a disaster.

To be tax-exempt under s. 501(c)(3) of the Internal Revenue Code, an organization must be operated for an exempt purpose including religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.[5] No part of the net earnings of the organization may inure to the benefit of any private shareholder or individual.[6]

Additionally, certain organizations may be tax-exempt under s. 501(c)(4) of the Internal Revenue Code, if the organization is not organized for profit but operated exclusively for the promotion of social welfare.[7] A local association of employees may also be granted tax-exempt status under s. 501(c)(4) if the membership is limited to the employees of a designated person or persons and the net earnings of the association are devoted exclusively to charitable, educational, or recreational purposes.[8]

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[1] Section 110.120, F.S., is cited as the Florida Disaster Volunteer Leave Act.
[2] The term "state agency" is defined by the Act to mean any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government. Section 110.120(2)(a), F.S.
[3] Section 110.120(3), F.S.
[4] Internal Revenue Service, *Publication 3833, Disaster Relief, Providing Assistance Through Charitable Organizations*, https://www.irs.gov/pub/irs-pdf/p3833.pdf (last visited January 23, 2020).
[5] 26 U.S.C. § 501(c)(3).
[6] *Id.*
[7] 26 U.S.C. § 501(c)(4).
[8] *Id.*

State of Emergency Declaration Process

In Florida, the Governor is responsible for meeting the dangers presented to this state and its people by emergencies.[9] In the event of an emergency[10] beyond local control, the Governor may assume or delegate direct operational control over all or any part of the emergency management functions within this state.[11] If the Governor finds that an emergency has occurred or that the occurrence or threat thereof is imminent, the Governor must declare a state of emergency through an executive order or proclamation.[12] The state of emergency will continue until the Governor finds that the emergency conditions no longer exist.[13] However, a state of emergency cannot continue for longer than 60 days unless renewed by the Governor.[14] The Legislature may terminate a state of emergency at any time by a concurrent resolution.[15] If a state of emergency is terminated by the Legislature, the Governor must issue an executive order or proclamation ending the state of emergency.[16] All executive orders or proclamations must indicate the nature of the emergency, the area or areas threatened, and the conditions which have brought the emergency about or which make its termination possible.[17]

Effect of the Bill

The bill expands the type of organization through which a state agency employee may provide volunteer service and revises employee and employer requirements for disaster volunteer service. Specifically, the bill broadens volunteer service to include nonpaid services to a nonprofit 501(c)(3) or (4) organization that the employee has entered into an agreement with, not exclusively the Red Cross. A leave of absence with pay may be granted by the employing agency, upon the request of the employee, after the agency verifies the employee's volunteer status. Approval from the head of the employing agency is required for disasters occurring outside the state but within the United States. The bill further requires an employee who was granted leave for disaster volunteer service to provide the head of his or her employing agency, at a minimum, documentation specifying the time period the employee provided volunteer services and a description of the disaster response or recovery services provided.

The bill revises the definition of disaster under the Act to no longer mean a disaster designated at certain levels by the Red Cross but to mean an event that has resulted in a state of emergency as declared by the Governor through an executive order under the State Emergency Management Act.[18]

B. SECTION DIRECTORY:

Section 1: Amends s. 110.120, F.S., relating to administrative leave for disaster service volunteers.

Section 2: Provides an effective date of July 1, 2020.

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[9] Section 252.36(1)(a), F.S.

[10] "Emergency" is defined by the State Emergency Management Act to mean any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property. Section 252.34(4), F.S.

[11] Section 252.36(1)(a), F.S.

[12] Section 252.36(2), F.S.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] Sections 252.31 – 252.60, F.S., are cited as the State Emergency Management Act. Section 252.31, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill provides that all state agency employees are eligible to request for paid administrative leave associated with disaster volunteer services provided to any tax-exempt nonprofit under sections 501(c)(3) or 501(c)(4) of the Internal Revenue Code. The number of employees who would request paid administrative leave for disaster volunteer services due to provisions of the bill is unknown at this time. There is the potential for increased leave payouts for employees who would have otherwise used annual leave or compensatory leave to volunteer under declared disasters.[19] Thus the government sector may experience a slight negative impact due to increased number of eligible volunteer opportunities. It is anticipated that any costs incurred by state agencies can be handled within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to effect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[19] Florida Department of Management Services, Agency Analysis of 2020 House Bill 1181, p.4 (Jan. 9, 2020)

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 29, 2020, the Oversight, Transparency & Public Management Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed language adding the legislative and judicial branches of government to the definition of "state agency" because those branches currently have broad discretionary authority to grant leave addressed by the bill.

This analysis is drafted to the committee substitute as passed by the Oversight, Transparency & Public Management Subcommittee.

A bill to be entitled

An act relating to the Florida Disaster Volunteer Leave Act; amending s. 110.120, F.S.; providing and revising definitions; providing that certain employees may be granted a leave of absence with pay for a specified period of time under certain circumstances; providing requirements for such leave to be granted; providing restrictions on the location an employee may provide disaster-related services; providing an exception; requiring certain documentation from an employee; providing an effective date.

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

Section 1. Section 110.120, Florida Statutes, is amended to read:

110.120 Administrative leave for disaster service volunteers.—

(1) SHORT TITLE.—This section shall be known and may be cited as the "Florida Disaster Volunteer Leave Act."

(2) DEFINITIONS.—As used in this section, the <u>term</u> ~~following terms shall apply~~:

(a) "State agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government.

(b) "Disaster" means an event that has resulted in a state of emergency as declared by the Governor through an executive order under chapter 252 ~~includes disasters designated at level II and above in the American National Red Cross regulations and procedures~~.

(c) "Disaster area" means a location under a state of emergency as declared by the Governor through an executive order under chapter 252.

(d) "Volunteer" means a person who has entered into an agreement with a nonprofit organization that is exempt from federal income tax under s. 501(c)(3) or s. 501(c)(4) of the Internal Revenue Code to provide nonpaid services to a disaster area for disaster response or recovery.

(3) LEAVE OF ABSENCE.—An employee of a state agency who is a ~~certified disaster service~~ volunteer ~~of the American Red Cross~~ may be granted a leave of absence with pay for not more than 120 working hours ~~15 working days~~ in any 12-month period to provide ~~participate in specialized~~ disaster relief services ~~for the American Red Cross~~. Such leave of absence may be granted upon the request of the employee ~~American Red Cross~~ and upon the approval of the employee's employing agency after the agency verifies the employee's volunteer status. An employee granted leave under this section is ~~shall~~ not ~~be deemed to be~~ an employee of the state for purposes of workers' compensation. Leave under this section ~~act~~ may be granted only to provide

volunteer ~~for~~ services related to a disaster occurring within the boundaries of the state ~~of Florida~~, except that, with the approval of the head of the employee's employing agency ~~Governor and Cabinet~~, leave may be granted to provide volunteer ~~for~~ services in response to a disaster occurring within the boundaries of the states or territories of the United States. An employee granted leave under this section must provide to the head of his or her employing agency, at a minimum, the following documentation showing he or she completed volunteer services:

(a) Documentation specifying the time period that the employee provided services as a volunteer.

(b) A description of the disaster response or recovery services that the employee provided.

Section 2. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1297 Drug-free Workplaces
SPONSOR(S): Workforce Development & Tourism Subcommittee, Robinson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1186

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Workforce Development & Tourism Subcommittee	9 Y, 5 N, As CS	Willson	Barry
2) Appropriations Committee		Keith	Pridgeon
3) Commerce Committee			

SUMMARY ANALYSIS

The Drug-Free Workplace Act in s. 112.0455, F.S., exists to promote the goal of drug-free workplaces within government through drug-testing, and to provide opportunities for assistance to employees with alcohol or drug problems. The Act, which applies to agencies within state government, specifies requirements for testing standards and procedures, notice, employee and employer protections, and remedies.

Currently, an employer subject to the Workers' Compensation Law who implements a drug-free workforce program pursuant to s. 440.102, F.S., is eligible for a workers' compensation insurance discount of up to 5 percent. If an employee in such a program tests positive for drugs or alcohol, the employee may be terminated, and forfeits his or her eligibility for medical and indemnity benefits.

The bill amends s. 112.0455, F.S., which applies to any agency within state government, to:
- Require prescreening validity tests for urine specimens;
- Require that prescreening and drug-screening tests meet specified standards;
- Prohibit sending urine specimens for out of state testing unless the drug-testing facility meets Florida standards; and
- Require the Agency for Health Care Administration to adopt rules.

The bill makes a number of changes to the drug-free workplace program, including:
- Require prescreening validity tests for urine specimens;
- Amends the definition of "drug" to include substances named in state and federal law;
- Adds additional certification requirements for drug tests and specimens;
- Removes a requirement that an employee be provided a form on which to note medications, which must be taken into account in interpreting drug tests;
- Replaces a list of professions qualified to collect specimens with a requirement that such persons meet qualification standards set by specified federal agencies;
- Requires specimens from positive tests to be preserved for one year after the confirmation test was conducted, instead of 210 days after result was mailed;
- Shortens from 180 to 60 days after notification of a positive result the period during which an employee may have a specimen retested;
- Requires that prescreening and drug-screening tests meet specified standards;
- Prohibits sending urine specimens for out of state testing unless the drug-testing facility meets Florida standards; and
- Requires the Agency for Health Care Administration to adopt rules.

The bill appears to have no fiscal impact on state or local government.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Drug-Free Workplace Act for State Agency Employers

The Drug-Free Workplace Act in s. 112.0455, F.S., exists to promote the goal of drug-free workplaces within government through drug-testing, and to provide opportunities for assistance to employees with alcohol or drug problems. The Act, which applies to agencies within state government,[1] specifies requirements for testing standards and procedures, notice, employee and employer protections, and remedies.

Drug-Free Workplace Program for Workers' Compensation Employers

The Workers' Compensation Law in ch. 440, F.S., includes provisions that incentivize drug-free workplaces, and sets out the notice, educational, and procedural requirements that an employer must follow to implement the employee and applicant drug testing that is a component of such workplaces.[2]

If an employer implements a drug-free workplace program that conforms to applicable law and rules, the employer is eligible for workers' compensation and employer's liability insurance discounts[3] of up to five percent,[4] and the employer may require an employee to submit to a test for the presence of drugs or alcohol. If an employee in a drug-free workplace program tests positive for drugs or alcohol, the employee may be terminated, and forfeits his or her eligibility for medical and indemnity benefits.[5]

For the purposes of the drug-free workplace program under s. 440.102, F.S.:

- "Drug" means alcohol, including a distilled spirit, wine, a malt beverage, or an intoxicating liquor; an amphetamine; a cannabinoid; cocaine; phencyclidine (PCP); a hallucinogen; methaqualone; an opiate; a barbiturate; a benzodiazepine; a synthetic narcotic; a designer drug; or a metabolite of any of the substances listed in this paragraph.
- "Drug test" or "test" means any chemical, biological, or physical instrumental analysis administered, by a laboratory certified by the U.S. Department of Health and Human Services or licensed by the Agency for Health Care Administration (AHCA), for the purpose of determining the presence or absence of a drug or its metabolites.
- "Employer" means a person or entity that employs a person and that is covered by the Workers' Compensation Law.
- "Specimen" means tissue, hair, or a product of the human body capable of revealing the presence of drugs or their metabolites, as approved by the U.S. Food and Drug Administration or the AHCA.[6]

Prior to testing, an employer must give all employees and applicants for employment a written policy statement that contains certain information, including:

- The employer's policy on employee drug use,
- The consequences of refusing to submit to a drug test, and

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[1] S. 112.0455(5)(h), F.S.
[2] *See* ss. 440.101 and 440.102, F.S.
[3] S. 440.102(2), F.S. See s. 627.0915, F.S., providing that the Office of Insurance Regulation must approve rating plans for workers' compensation and employers' liability insurance that give specific identifiable consideration in the setting of rates to employers that implement a drug-free workplace program pursuant to s. 440.102 F.S., and attendant rules.
[4] R. 69L-5.220, F.A.C.
[5] S. 440.101(2), F.S.
[6] S. 440.102(1), F.S.

- A list of all drugs for which the employer will test, described by brand, common and chemical name.

An employer must include notice of drug testing on vacancy announcements for positions for which drug testing is required.[7]

An employer is required to conduct job applicant, reasonable-suspicion, and routine fitness-for-duty drug testing. If an employee in the course of employment enters an employee assistance program for drug-related problems, or a drug rehabilitation program, the employer must require the employee to submit to a drug test as a follow-up to such program, unless the employee voluntarily entered the program. If follow-up testing is required, it must be conducted at least once a year for a 2-year period after completion of the program.[8]

Specimen collection and testing for drugs pursuant to s. 440.102, F.S., must be performed in accordance with the procedures set forth in the statute.

An employee or job applicant whose drug test result is confirmed as positive in accordance with s. 440.102, F.S., must not, by virtue of the result alone, be deemed to have a "handicap" or "disability" as defined under federal, state, or local handicap and disability discrimination laws.

An employer who discharges or disciplines an employee or refuses to hire a job applicant in compliance with this section is considered to have discharged, disciplined, or refused to hire for cause.

Effect of the Bill

The bill adds a new subsection to s. 112.0455, F.S., relating to the Drug-Free Workplace Act, in state agencies, requiring sample prescreening validity tests that can detect drug testing subversion technologies in urine specimens, and requiring screening tests that meet specified criteria as to creatinine, oxidants and detection of adulterants. The bill prohibits sending urine specimens for out of state testing unless the drug-testing facility meets Florida standards, and requires the AHCA to adopt rules for these standards.

The bill makes numerous changes to the definitions, requirements, and procedures relating to drug-free workplaces for Workers' Compensation Law employers under s. 440.102, F.S. Specifically, the bill:

- Amends the definition of "drug" to include any form of alcohol, including ethanol, methanol, propanol, and isopropanol; any controlled substance identified under Schedules I, II, III, IV, or Schedule V of s. 893.03, F.S.;[9] and any controlled substance identified under Schedules I, II, III, IV, or V of the Controlled Substances Act, 21 U.S.C. § 812(c).
- Amends the definition of "drug test," to provide that when testing for alcohol, the drug test must be conducted in accordance with the United States Department of Transportation alcohol testing procedures authorized under 49 C.F.R. part 40, subparts J through M.[10]
- Adds the U.S. Department of Health and Human Services (HHS) and U.S. Department of Transportation (USDOT) to the definition of "specimen".

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[7] S. 440.102(3)(c), F.S.
[8] S. 440.102(4), F.S.
[9] Section 893.03, F.S., classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed in the schedules. The most important factors in determining the schedule classification of a substance are the "potential for abuse" of the substance and whether there is a currently accepted medical use for the substance in the United States.
[10] This rule describes required procedures for conducting workplace drug and alcohol testing for the federally regulated transportation industry. *See* USDOT, *Overview of 49 CFR Part 40*, https://www.transportation.gov/odapc/part40 (last visited January 27, 2020).

- Changes the written policy statement that employers are required to give to all employees and applicants prior to testing by removing from the procedures the requirement that employees and job applicants could confidentially report to a medical review officer their use of medications *both before and after being tested*. The bill also removes the requirement that the policy contain the brand name of drugs being tested for.
- Provides that a specimen container for saliva or breath testing is not required when the specimen is not being transported to a laboratory for analysis.
- Removes a requirement that a form must be provided upon which an employee may provide information considered by the employee to be relevant to the test, including the use of medication, and deletes the requirement that such information be taken into account in interpreting positive confirmed test results.
- Replaces a requirement that a drug test specimen may be taken or collected by a physician, physician assistant, registered professional nurse, licensed practical nurse, nurse practitioner, certified paramedic at scene of accident, or qualified lab employee with a requirement that a specimen may be collected by a person who meets the qualification standards for urine or oral fluid specimen collection as specified by the HHS or the USDOT. For alcohol testing, a person must meet the USDOT for a screening test technician or a breath alcohol technician. A hair specimen may be collected and packaged by a person who has been trained and certified by a drug testing laboratory. A person who directly supervises an employee subject to testing may not serve as the specimen collector for that employee unless there is no other qualified specimen collector available.
- Clarifies that a specimen amount should be sufficient for two independent drug tests - one to screen the specimen and one to confirm the screening results.
- Extends the amount of time that a positive, confirmed test must be preserved, from "210 days after the result of the test was mailed or otherwise delivered to the medical review officer" to one year after the confirmation test was conducted.
- Shortens from 180 days to 60 days the period after a positive test during which an employee or applicant may have the sample retested.
- Provides that a second lab must test the specimen at the limit of detection for the drug or analyte confirmed by the original, and if the drug or analyte is detected by the second laboratory, the result must be reported as reconfirmed positive.
- Removes a requirement that an applicant or employee's explanation or challenge of a positive test must be provided to the applicant or employee.
- Removes the requirement that an employer must verify a positive test result with a confirmation test prior to taking adverse action against an employee or job applicant, and creates an exception when a confirmed positive breath alcohol test was conducted in accordance with U.S. Department of Transportation alcohol testing procedures.
- Allows an employer that performs drug testing or specimen collection to follow chain-of-custody procedures established by HHS or USDOT.
- Removes a provision specifying that, if an initial drug test is negative, the employer may in its sole discretion seek a confirmation test, and removes a provision that only licensed or certified laboratories may conduct confirmation drug tests.
- Provides that all laboratory positive initial tests on a urine, oral fluid, blood, or hair specimen must be confirmed using gas chromatography/mass spectrometry or an equivalent or more accurate scientifically accepted method approved by the HHS or the USDOT, and removes a provision that the tests can be confirmed by methods approved by the AHCA or the U.S. Food and Drug Administration.

- Provides that for a breath alcohol test, an initial positive result must be confirmed by a second breath specimen taken and tested using an evidential breath testing device listed on the conforming products list issued by the National Highway Traffic Safety Administration and conducted in accordance with USDOT alcohol testing procedures.
- The bill creates a new subsection (9) in s. 440.102, F.S., requiring sample prescreening validity tests that can detect drug testing subversion technologies in urine specimens, and requiring screening tests that meet specified criteria as to creatinine, oxidants, and detection of adulterants. The bill prohibits sending urine specimens for out of state testing unless the drug-testing facility meets Florida standards, and requires the AHCA to adopt rules for these standards.
- Removes a requirement that lab reports of drug tests must include any correlation between medication reported by the employee or applicant and the test result.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Amends s. 112.0455, F.S., requiring licensed drug-testing facilities to perform prescreening tests on urine specimens to determine the specimens' validity; specifying requirements for such tests; authorizing such facilities to rely on such tests to determine if confirmation testing is required; providing that urine specimens may not be sent to an out-of-state facility unless the facility complies with certain requirements; authorizing the Agency for Health Care Administration to adopt rules; conforming cross-references

Section 2: Amends s. 440.102, F.S., revising definitions; revising information required in a written policy statement provided to employees and job applicants before drug testing; revising procedures for specimen collection, testing, and preservation; revising qualifications for persons who may take or collect specimens for a drug test; revising requirements and procedures for retesting specimens; deleting and revising confidentiality requirements for employers relating to certain information; revising circumstances under which an employer may take certain actions as to an employee or a job applicant on the sole basis of certain positive test results; revising standards for chain-of-custody procedures; revising requirements and authorized actions relating to confirmation testing; requiring licensed drug-testing facilities to perform prescreening tests on urine specimens to determine the specimens' validity; specifying requirements for such tests; authorizing such facilities to rely on such tests to determine if confirmation testing is required; providing that urine specimens may not be sent to an out-of-state facility unless the facility complies with certain requirements; authorizing the agency to adopt rules; conforming provisions to changes made by the act.

Section 3: Amends s. 443.101, F.S., conforming a cross-reference.

Section 4: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. If the amended testing standards in the bill reduce the number of drug-testing facilities that can comply, those drug-testing facilities that can comply should see an increase in the number of tests they perform.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Workforce Development & Tourism Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Added provisions requiring urine sample validity testing for employees participating in the State Drug-Free Workplace Program under s. 112.0455, F.S., and the Drug-Free Workplace Program under s. 440.102, F.S.
- Added a statement of legislative intent regarding such urine sample validity testing.
- Removed a provision that increased the frequency of required follow-up drug testing for certain employees with a history of drug-related problems.

The analysis is drafted to the committee substitute as passed by the Workforce Development & Tourism Subcommittee.

A bill to be entitled

An act relating to drug-free workplaces; amending s. 112.0455, F.S.; requiring licensed drug-testing facilities to perform prescreening tests on urine specimens to determine the specimens' validity; specifying requirements for such tests; authorizing such facilities to rely on such tests to determine if confirmation testing is required; providing that urine specimens may not be sent to an out-of-state facility unless the facility complies with certain requirements; authorizing the Agency for Health Care Administration to adopt rules; conforming cross-references; amending s. 440.102, F.S.; revising definitions; revising information required in a written policy statement provided to employees and job applicants before drug testing; revising procedures for specimen collection, testing, and preservation; revising qualifications for persons who may take or collect specimens for a drug test; revising requirements and procedures for retesting specimens; deleting and revising confidentiality requirements for employers relating to certain information; revising circumstances under which an employer may take certain actions as to an employee or a job applicant on the sole basis of certain positive test results; revising

standards for chain-of-custody procedures; revising requirements and authorized actions relating to confirmation testing; requiring licensed drug-testing facilities to perform prescreening tests on urine specimens to determine the specimens' validity; specifying requirements for such tests; authorizing such facilities to rely on such tests to determine if confirmation testing is required; providing that urine specimens may not be sent to an out-of-state facility unless the facility complies with certain requirements; authorizing the agency to adopt rules; conforming provisions to changes made by the act; amending s. 443.101, F.S.; conforming a cross-reference; providing an effective date.

WHEREAS, the State of Florida has a profound interest in the health and welfare of its citizens, and

WHEREAS, new and emerging drug-testing subversion technologies represent a significant threat to the ability to properly identify those suffering from addiction and drug abuse, and

WHEREAS, the Legislature, therefore, seeks to require urine sample validity testing, such that those persons being tested can be properly and promptly identified for referral to drug treatment programs and other health care services, NOW,

THEREFORE,

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

Section 1. Present subsections (13) through (17) of section 112.0455, Florida Statutes, are redesignated as subsections (14) through (18), respectively, a new subsection (13) is added to that section, and paragraph (b) of subsection (6) and paragraph (a) of present subsection (15) are amended, to read:

112.0455 Drug-Free Workplace Act.—

(6) NOTICE TO EMPLOYEES.—

(b) Prior to testing, all employees and job applicants for employment shall be given a written policy statement from the employer which contains:

1. A general statement of the employer's policy on employee drug use, which shall identify:

a. The types of testing an employee or job applicant may be required to submit to, including reasonable suspicion or other basis; and

b. The actions the employer may take against an employee or job applicant on the basis of a positive confirmed drug test result.

2. A statement advising the employee or job applicant of the existence of this section.

3. A general statement concerning confidentiality.

4. Procedures for employees and job applicants to confidentially report the use of prescription or nonprescription medications both before and after being tested. Additionally, employees and job applicants shall receive notice of the most common medications by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. A list of such medications shall be developed by the Agency for Health Care Administration.

5. The consequences of refusing to submit to a drug test.

6. Names, addresses, and telephone numbers of employee assistance programs and local alcohol and drug rehabilitation programs.

7. A statement that an employee or job applicant who receives a positive confirmed drug test result may contest or explain the result to the employer within 5 working days after written notification of the positive test result. If an employee or job applicant's explanation or challenge is unsatisfactory to the employer, the person may contest the drug test result as provided by subsections (15) ~~(14)~~ and (16) ~~(15)~~.

8. A statement informing the employee or job applicant of his or her responsibility to notify the laboratory of any administrative or civil actions brought pursuant to this section.

9. A list of all drugs for which the employer will test,

described by brand names or common names, as applicable, as well as by chemical names.

10. A statement regarding any applicable collective bargaining agreement or contract and the right to appeal to the Public Employees Relations Commission.

11. A statement notifying employees and job applicants of their right to consult the testing laboratory for technical information regarding prescription and nonprescription medication.

(13) DRUG-TESTING STANDARDS; SAMPLE VALIDITY PRESCREENING.—Before a drug-testing facility licensed under part II of chapter 408 may perform any drug-screening test on a urine specimen collected in this state, prescreening tests must be performed to determine the validity of the specimen. The prescreening tests must be capable of detecting, or detecting and defeating, novel or emerging urine drug-testing subversion technologies as described in this subsection.

(a) The drug-testing facility shall use urine sample validity screening tests that meet all of the following criteria:

1. A urine sample validity screening test for creatinine must use a 20 mg/dL cutoff concentration and must have minimal interferences from bilirubin and blood in the urine. The urine sample validity screening test must be able to discriminate between a creatinine level from an unadulterated urine sample

and a creatinine level arising from overhydration or creatine or protein loading.

2. A urine sample validity screening test for oxidants must be able to detect the presence or effects of oxidant adulterants up to 6 days after sample collection, under the sample storage conditions outlined in the laboratory standards guideline adopted by rule by the Agency for Health Care Administration, and after any sample transport that is routinely involved.

3. Urine sample validity screening tests must be able to detect synthetic or freeze-dried urine substituted for the donor's urine for drug testing.

4. Urine sample validity screening tests must be validated for the detection of all of the additional adulterant classes represented by glutaraldehyde, salt, heavy metals, cationic detergents, protease, strong alkaline buffers, and strong acidic buffers. The detection limits of these classes must be at a sufficient level to detect a nonphysiologic sample or interference with enzyme immunoassay drug-screening tests.

(b) The drug-testing facility may use only urine sample validity screening tests that have undergone validation studies conducted by the manufacturer to document the product's conformance to the requirements of this subsection.

(c) A drug-testing facility may rely on urine sample validity screening tests to determine if confirmation testing is

required for any urine sample that has been deemed invalid for drug screening.

(d) Urine specimens collected in this state may not be sent for drug-screening tests to a drug-testing facility located outside of this state unless such drug-testing facility complies with all requirements of this subsection.

(e) The Agency for Health Care Administration shall adopt rules necessary for the implementation and enforcement of this subsection.

(16) ~~(15)~~ NONDISCIPLINE REMEDIES.—

(a) Any person alleging a violation of ~~the provisions of~~ this section, that is not remediable by the commission or an arbitrator pursuant to subsection (15) ~~(14)~~, must institute a civil action for injunctive relief or damages, or both, in a court of competent jurisdiction within 180 days of the alleged violation, or be barred from obtaining the following relief. Relief is limited to:

1. An order restraining the continued violation of this section.

2. An award of the costs of litigation, expert witness fees, reasonable attorney ~~attorney's~~ fees, and noneconomic damages provided that damages shall be limited to the recovery of damages directly resulting from injury or loss caused by each violation of this section.

Section 2. Present subsections (9) through (15) of section

440.102, Florida Statutes, are redesignated as subsections (10) through (16), respectively, a new subsection (9) is added to that section, and paragraphs (c), (e), and (q) of subsection (1), paragraph (a) of subsection (3), paragraphs (b) through (h), (j), (k), and (l) of subsection (5), subsection (6), paragraph (a) of subsection (7), and paragraphs (b) and (c) of present subsection (9) of that section are amended, to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(1) DEFINITIONS.—Except where the context otherwise requires, as used in this act:

(c) "Drug" means any form of alcohol, as defined in s. 322.01(2), including a distilled spirit, wine, a malt beverage, or an intoxicating preparation; any controlled substance identified under Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03; any controlled substance identified under Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of the Controlled Substances Act, 21 U.S.C. s. 812(c) ~~liquor; an amphetamine; a cannabinoid; cocaine; phencyclidine (PCP); a hallucinogen; methaqualone; an opiate; a barbiturate; a benzodiazepine; a synthetic narcotic; a designer drug~~; or a metabolite of any of the substances listed in this paragraph. An employer may test an individual for any or all ~~of~~

such drugs.

(e) "Drug test" or "test" means any chemical, biological, or physical instrumental analysis administered~~,~~ by a laboratory certified by the United States Department of Health and Human Services or licensed by the Agency for Health Care Administration~~,~~ for the purpose of determining the presence or absence of a drug or its metabolites. In the case of testing for the presence of alcohol, the test must be conducted in accordance with the United States Department of Transportation alcohol testing procedures authorized under 49 C.F.R. part 40, subparts J through M.

(q) "Specimen" means tissue, hair, or a product of the human body capable of revealing the presence of drugs or their metabolites, as approved by the United States Food and Drug Administration, ~~or~~ the Agency for Health Care Administration, the United States Department of Health and Human Services, or the United States Department of Transportation.

(3) NOTICE TO EMPLOYEES AND JOB APPLICANTS.—

(a) One time only, before ~~prior to~~ testing, an employer shall give all employees and job applicants for employment a written policy statement that ~~which~~ contains:

1. A general statement of the employer's policy on employee drug use, which must identify:

a. The types of drug testing an employee or job applicant may be required to submit to, including reasonable-suspicion

drug testing or drug testing conducted on any other basis.

b. The actions the employer may take against an employee or job applicant on the basis of a positive confirmed drug test result.

2. A statement advising the employee or job applicant of the existence of this section.

3. A general statement concerning confidentiality.

4. Procedures for employees and job applicants to confidentially report to a medical review officer the use of prescription or nonprescription medications ~~to a medical review officer both before and after being tested~~.

5. A list of the most common medications, by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. A list of such medications as developed by the Agency for Health Care Administration shall be available to employers through the department.

6. The consequences of refusing to submit to a drug test.

7. A representative sampling of names, addresses, and telephone numbers of employee assistance programs and local drug rehabilitation programs.

8. A statement that an employee or job applicant who receives a positive confirmed test result may contest or explain the result to the medical review officer within 5 working days after receiving written notification of the test result; that if an employee's or job applicant's explanation or challenge is

unsatisfactory to the medical review officer, the medical review officer shall report a positive test result back to the employer; and that a person may contest the drug test result pursuant to law or to rules adopted by the Agency for Health Care Administration.

9. A statement informing the employee or job applicant of his or her responsibility to notify the laboratory of any administrative or civil action brought pursuant to this section.

10. A list of all drugs for which the employer will test, described by ~~brand name or~~ common name, as applicable, as well as by chemical name.

11. A statement regarding any applicable collective bargaining agreement or contract and the right to appeal to the Public Employees Relations Commission or applicable court.

12. A statement notifying employees and job applicants of their right to consult with a medical review officer for technical information regarding prescription or nonprescription medication.

(5) PROCEDURES AND EMPLOYEE PROTECTION.—All specimen collection and testing for drugs under this section shall be performed in accordance with the following procedures:

(b) Specimen collection must be documented, and the documentation procedures shall include the~~:~~

~~1.~~ labeling of specimen containers so as to reasonably preclude the likelihood of erroneous identification of test

results. For saliva or breath alcohol testing, a specimen container is not required if the specimen is not being transported to a laboratory for analysis

~~2. A form for the employee or job applicant to provide any information he or she considers relevant to the test, including identification of currently or recently used prescription or nonprescription medication or other relevant medical information. The form must provide notice of the most common medications by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. The providing of information shall not preclude the administration of the drug test, but shall be taken into account in interpreting any positive confirmed test result~~.

(c) Specimen collection, storage, and transportation to a laboratory ~~the testing site~~ shall be performed in a manner that reasonably precludes contamination or adulteration of specimens.

(d) Each confirmation test conducted under this section, not including the taking or collecting of a specimen to be tested, shall be conducted by a licensed or certified laboratory as described in subsection (10) ~~(9)~~.

(e) A specimen for a drug test may be taken or collected by any person who meets the qualification standards for urine or oral fluid specimen collection as specified by the United States Department of Health and Human Services or the United States Department of Transportation. For alcohol testing, a person must

meet the United States Department of Transportation standards for a screening test technician or a breath alcohol technician. A hair specimen may be collected and packaged by a person who has been trained and certified by a drug-testing laboratory. A person who directly supervises an employee subject to testing may not serve as the specimen collector for that employee unless there is no other qualified specimen collector available ~~of the following persons:~~

~~1. A physician, a physician assistant, a registered professional nurse, a licensed practical nurse, or a nurse practitioner or a certified paramedic who is present at the scene of an accident for the purpose of rendering emergency medical service or treatment.~~

~~2. A qualified person employed by a licensed or certified laboratory as described in subsection (9)~~.

(f) A person who collects or takes a specimen for a drug test shall collect an amount sufficient for two independent drug tests, one to screen the specimen and one for confirmation of the screening test results, at a laboratory as determined by the Agency for Health Care Administration.

(g) Every specimen that produces a positive, confirmed test result shall be preserved by the licensed or certified laboratory that conducted the confirmation test for a period of at least 1 year after the confirmation test was conducted ~~210 days after the result of the test was mailed or otherwise~~

~~delivered to the medical review officer~~. However, if an employee or job applicant undertakes an administrative or legal challenge to the test result, the employee or job applicant shall notify the laboratory and the sample shall be retained by the laboratory until the case or administrative appeal is settled. During the 60-day ~~180-day~~ period after written notification of a positive test result, the employee or job applicant who has provided the specimen shall be permitted by the employer to have a portion of the specimen retested, at the employee's or job applicant's expense, at another laboratory, licensed and approved by the Agency for Health Care Administration, chosen by the employee or job applicant. The second laboratory must test the specimen at the limit of detection for the drug or analyte confirmed by the original ~~at equal or greater sensitivity for the drug in question as the first~~ laboratory. If the drug or analyte is detected by the second laboratory, the result must be reported as reconfirmed positive. The first laboratory that performed the test for the employer is responsible for the transfer of the portion of the specimen to be retested, and for the integrity of the chain of custody during such transfer.

(h) Within 5 working days after receipt of a positive verified ~~confirmed~~ test result from the medical review officer, an employer shall inform an employee or job applicant in writing of such positive test result, the consequences of such result ~~results~~, and the options available to the employee or job

applicant. The employer shall provide to the employee or job applicant, upon request, a copy of the test results.

(j) ~~The employee's or job applicant's explanation or challenge of the positive test result is unsatisfactory to the employer, a written explanation as to why the employee's or job applicant's explanation is unsatisfactory, along with the report of positive result, shall be provided by the employer to the employee or job applicant; and~~ All ~~such~~ documentation of a positive test shall be kept confidential by the employer pursuant to subsection (8) and shall be retained by the employer for at least 1 year.

(k) An employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been reviewed and verified by ~~a confirmation test and by~~ a medical review officer, except when a confirmed positive breath alcohol test was conducted in accordance with United States Department of Transportation alcohol testing procedures.

(l) An employer that performs drug testing or specimen collection shall use chain-of-custody procedures established by the Agency for Health Care Administration, the United States Department of Health and Human Services, or the United States Department of Transportation to ensure proper recordkeeping, handling, labeling, and identification of all specimens tested.

(6) CONFIRMATION TESTING.—

(a) ~~If an initial drug test is negative, the employer may in its sole discretion seek a confirmation test.~~

~~(b) Only licensed or certified laboratories as described in subsection (9) may conduct confirmation drug tests.~~

~~(c)~~ All laboratory positive initial tests on a urine, oral fluid, blood, or hair specimen shall be confirmed using gas chromatography/mass spectrometry (GC/MS) or an equivalent or more accurate scientifically accepted method approved by the United States Department of Health and Human Services or the United States Department of Transportation ~~Agency for Health Care Administration or the United States Food and Drug Administration as such technology becomes available in a cost-effective form~~.

(b) ~~(d)~~ If a ~~an initial~~ drug test of an employee or job applicant is confirmed by the laboratory as positive, the employer's medical review officer shall provide technical assistance to the employer and to the employee or job applicant for the purpose of interpreting the test result to determine whether the result could have been caused by prescription or nonprescription medication taken by the employee or job applicant.

(c) For a breath alcohol test, an initial positive result must be confirmed by a second breath specimen taken and tested using an evidential breath testing device listed on the

conforming products list issued by the National Highway Traffic Safety Administration and conducted in accordance with United States Department of Transportation alcohol testing procedures authorized under 49 C.F.R. part 40, subparts J through M.

(7) EMPLOYER PROTECTION.—

(a) An employee or job applicant whose drug test result is confirmed or verified as positive in accordance with this section shall not, by virtue of the result alone, be deemed to have a "handicap" or "disability" as defined under federal, state, or local handicap and disability discrimination laws.

(9) DRUG-TESTING STANDARDS; SAMPLE VALIDITY PRESCREENING.—Before a drug-testing facility licensed under part II of chapter 408 may perform any drug-screening test on a urine specimen collected in this state, prescreening tests must be performed to determine the validity of the specimen. The prescreening tests must be capable of detecting, or detecting and defeating, novel or emerging urine drug-testing subversion technologies as described in this subsection.

(a) The drug-testing facility shall use urine sample validity screening tests that meet all of the following criteria:

1. A urine sample validity screening test for creatinine must use a 20 mg/dL cutoff concentration and must have minimal interferences from bilirubin and blood in the urine. The urine sample validity screening test must be able to discriminate

between a creatinine level from an unadulterated urine sample and a creatinine level arising from overhydration or creatine or protein loading.

2. A urine sample validity screening test for oxidants must be able to detect the presence or effects of oxidant adulterants up to 6 days after sample collection, under the sample storage conditions outlined in the laboratory standards guideline adopted by rule by the Agency for Health Care Administration, and after any sample transport that is routinely involved.

3. Urine sample validity screening tests must be able to detect synthetic or freeze-dried urine substituted for the donor's urine for drug testing.

4. Urine sample validity screening tests must be validated for the detection of all of the additional adulterant classes represented by glutaraldehyde, salt, heavy metals, cationic detergents, protease, strong alkaline buffers, and strong acidic buffers. The detection limits of these classes must be at a sufficient level to detect a nonphysiologic sample or interference with enzyme immunoassay drug-screening tests.

(b) The drug-testing facility may use only urine sample validity screening tests that have undergone validation studies conducted by the manufacturer to document the product's conformance to the requirements of this subsection.

(c) A drug-testing facility may rely on urine sample

validity screening tests to determine if confirmation testing is required for any urine sample that has been deemed invalid for drug screening.

(d) Urine specimens collected in this state may not be sent for drug-screening tests to a drug-testing facility located outside of this state unless such drug-testing facility complies with all requirements of this subsection.

(e) The Agency for Health Care Administration shall adopt rules necessary for the implementation and enforcement of this subsection.

(10)~~(9)~~ DRUG-TESTING STANDARDS FOR LABORATORIES.—

(b) A laboratory may analyze initial or confirmation test specimens only if:

1. The laboratory obtains a license under part II of chapter 408 and s. 112.0455(18) ~~s. 112.0455(17)~~. Each applicant for licensure and each licensee must comply with all requirements of this section, part II of chapter 408, and applicable rules.

2. The laboratory has written procedures to ensure the chain of custody.

3. The laboratory follows proper quality control procedures, including, but not limited to:

a. The use of internal quality controls, including the use of samples of known concentrations which are used to check the performance and calibration of testing equipment, and periodic

use of blind samples for overall accuracy.

b. An internal review and certification process for drug test results, conducted by a person qualified to perform that function in the testing laboratory.

c. Security measures implemented by the testing laboratory to preclude adulteration of specimens and drug test results.

d. Other necessary and proper actions taken to ensure reliable and accurate drug test results.

(c) A laboratory shall disclose to the medical review officer a written positive confirmed test result report within 7 working days after receipt of the sample. All laboratory reports of a drug test result must, at a minimum, state:

1. The name and address of the laboratory that performed the test and the positive identification of the person tested.

2. Positive results on confirmation tests only, or negative results, as applicable.

3. A list of the drugs for which the drug analyses were conducted.

4. The type of tests conducted for both initial tests and confirmation tests and the minimum cutoff levels of the tests.

~~5. Any correlation between medication reported by the employee or job applicant pursuant to subparagraph (5)(b)2. and a positive confirmed drug test result.~~

A report must not disclose the presence or absence of any drug

other than a specific drug and its metabolites listed pursuant to this section.

Section 3. Paragraph (b) of subsection (11) of section 443.101, Florida Statutes, is amended to read:

443.101 Disqualification for benefits.—An individual shall be disqualified for benefits:

(11) If an individual is discharged from employment for drug use as evidenced by a positive, confirmed drug test as provided in paragraph (1)(d), or is rejected for offered employment because of a positive, confirmed drug test as provided in paragraph (2)(c), test results and chain of custody documentation provided to the employer by a licensed and approved drug-testing laboratory is self-authenticating and admissible in reemployment assistance hearings, and such evidence creates a rebuttable presumption that the individual used, or was using, controlled substances, subject to the following conditions:

(b) Only laboratories licensed and approved as provided in s. 440.102(10) ~~s. 440.102(9),~~ or as provided by equivalent or more stringent licensing requirements established by federal law or regulation may perform the drug tests.

Section 4. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1343 Water Quality Improvements
SPONSOR(S): Payne and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N	Melkun	Moore
2) Appropriations Committee		White CCW	Pridgeon
3) State Affairs Committee			

SUMMARY ANALYSIS

States are required by the Clean Water Act to maintain the quality of their waters. In Florida, water quality is addressed through water quality standards, total maximum daily loads (TMDLs), basin management action plans (BMAPs), and permits.

The bill addresses water quality impacts. Specifically, the bill addresses water quality issues resulting from onsite sewage treatment and disposal systems (OSTDSs) by:

- Transferring the Onsite Sewage Program from the Department of Health to the Department of Environmental Protection (DEP);
- Requiring the departments to submit recommendations to the Governor and Legislature regarding the transfer of the Onsite Sewage Program;
- Repealing certain advisory committees related to OSTDSs;
- Creating an OSTDS technical advisory committee to make recommendations that increase the availability of nutrient removing OSTDSs and assist DEP in the development of setback distances; and
- Requiring OSTDS remediation plans.

The bill addresses the water quality issues resulting from stormwater by:

- Requiring DEP staff training to include field inspections of stormwater structural controls;
- Requiring DEP and the water management districts to update the stormwater regulations using the most up to date science; and
- Requiring the model stormwater management program to contain model ordinances targeting nutrient reduction.

The bill addresses water quality issues resulting from domestic wastewater facilities by requiring:

- Local governments to create wastewater treatment plans;
- Sanitary sewage facilities to take steps to prevent sanitary sewer overflows;
- DEP to establish real-time water quality monitoring; and
- Advanced wastewater treatment for domestic wastewater discharges to the Indian River Lagoon.

The bill creates a wastewater grant program, subject to appropriation, and requires DEP to provide grants for projects that will reduce excess nutrient pollution.

With respect to agriculture, the bill requires the Department of Agriculture and Consumer Services to conduct inspections of producers enrolled in best management practices (BMPs) and requires the University of Florida to develop research plans for developing new BMPs.

The proposed House of Representatives' Fiscal Year 2020-2021 General Appropriations Act appropriates funding within DEP and DACS for the increase in the number of required site visits to be conducted, water quality improvement cost share grants, water quality monitoring, and TMDLs.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Water Quality

The federal Clean Water Act (CWA) requires states to adopt water quality standards (WQS) for navigable waters.[1] The CWA also requires states to develop lists of water bodies that do not meet WQS, which are called impaired waters. States must then develop a total maximum daily load (TMDL) for the particular pollutants causing the impairment. The TMDL is the maximum allowable amount of the pollutants the water body can receive while still maintaining WQS.[2]

Total Maximum Daily Loads and Basin Management Action Plans

The Florida Watershed Restoration Act guides the development and implementation of TMDLs.[3] 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 WQS.[4] The allocation must consider cost-effective approaches coordinated between contributing point and nonpoint sources of pollution for impaired water bodies and may include both non-regulatory and incentive-based programs.[5] Under the Florida Watershed Restoration Act, DEP is not required to develop a TMDL if there is existing reasonable assurance that there are existing or proposed pollution control mechanisms or programs that will effectively address the impairment.[6]

The Department of Environmental Protection (DEP) is the lead agency coordinating the development and implementation of TMDLs.[7] Once a TMDL is adopted,[8] 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 water body.[9] A BMAP must integrate appropriate management strategies available to the state through existing water quality protection programs to achieve the TMDL.[10] The BMAP must also include milestones for implementation and water quality improvement, and associated water quality monitoring, which determines whether there has been reasonable progress in pollutant load reductions. DEP must conduct an assessment of progress every five years, and revisions to the BMAP must be made as appropriate.[11]

For point source discharges, any management strategies and pollutant reduction requirements associated with a TMDL must be incorporated into subsequent permits or permit modifications. DEP may not impose limits or conditions implementing an adopted TMDL in a permit until the permit expires, the discharge is modified, or the permit is reopened pursuant to an adopted BMAP.[12]

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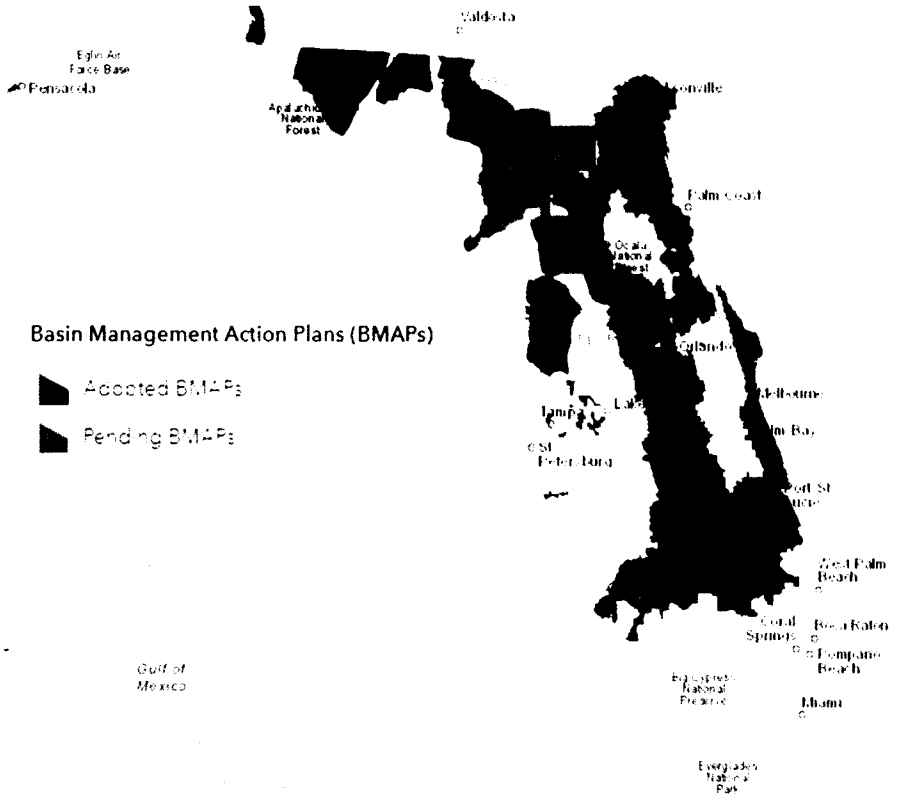
[1] 33 U.S.C. s. 1313.
[2] 33 U.S.C. s. 1313; *see* s. 403.067, F.S.
[3] Section 403.067, F.S.; ch. 99-223, Laws of Fla.
[4] Section 403.067(6)(b), F.S.
[5] Section 403.067(1), F.S.
[6] *Id.* at 2.
[7] Section 403.061, F.S. DEP has the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. Section 403.061(21), F.S., allows DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.
[8] Section 403.067(6)(c), F.S.
[9] Section 403.067(7)(a)1., F.S.
[10] *Id.*
[11] Section 403.067(7)(a)6., F.S.
[12] Section 403.067(7)(b)2., F.S.

A best management practice (BMP) is a practice or combination of practices adopted by rule by the Department of Agriculture and Consumer Services (DACS), DEP, or the applicable water management district (WMD) as an effective and practicable means for reducing nutrient inputs and improving water quality, taking into account economic and technological considerations.[13] Where there is an adopted BMP for a nonpoint source, the BMAP must require the nonpoint source to implement the applicable BMPs. The nonpoint source discharger must demonstrate compliance with BMP implementation or conduct water quality monitoring prescribed by DEP or the WMD. If the discharger fails to demonstrate compliance, the discharger may be subject to enforcement action.[14]

The adopted and pending BMAPs are illustrated in the graphic below:[15]



Agricultural Best Management Practices

Agricultural BMPs are practical measures that agricultural producers undertake to reduce the impacts of fertilizer and water use and otherwise manage the landscape to further protect water resources. Agricultural BMPs are developed using the best available science with economic and technical consideration and, in certain circumstances, BMPs can maintain or enhance agricultural productivity.[16]

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[13] Rule 62-306.200(2), F.A.C.; r. 62-503.200(4), F.A.C., defines "best management practice" as a control technique used for a given set of conditions to achieve water quality and water quantity enhancement at a feasible cost.

[14] Sections 403.067(7)(b)2.g. and 403.067(7)(b)2.h., F.S.

[15] DEP, *Impaired Waters, TMDLs, and Basin Management Action Plans Interactive Map*, available at https://floridadep.gov/dear/water-quality-restoration/content/impaired-waters-tmdls-and-basin-management-action-plans (last visited Jan. 17, 2020).

[16] DACS, *Status of Implementation of Agricultural Nonpoint Source Best Management Practices* (Jul. 1, 2019), 3, available at https://www.fdacs.gov/ezs3download/download/84080/2481615/Media/Files/Agricultural-Water-Policy-Files/Status-of-Implementation-of-BMPs-Report-2019.pdf (last visited Jan. 17, 2020).

Agricultural BMPs are implemented by DACS. Since the implementation of the BMP program in 1999, DACS has adopted nine BMP manuals that cover nearly all major agricultural commodities in Florida. The University of Florida's Institute of Food and Agricultural Sciences (UF/IFAS) is also involved in the adoption and implementation of agricultural BMPs. UF/IFAS provides expertise to both DACS and agricultural producers, holds summits and workshops on agricultural BMPs,[17] conducts research to issue recommendations for improving agricultural BMPs,[18] and issues training certificates for agricultural BMPs that require licenses, such as Green Industry BMPs.[19] It is estimated that approximately 54 percent of the state's agricultural acreage is enrolled in the DACS BMP program.[20]

Producers implementing agricultural BMPs receive a presumption of compliance with WQS for the pollutants addressed by the BMPs,[21] and those who enroll in the BMP program are eligible for technical assistance and cost-share funding for BMP implementation. To enroll in the BMP program, a producer must meet with the Office of Agricultural Water Policy (OAWP) within DACS to determine the BMPs that are applicable to its operation and must submit a Notice of Intent to Implement the BMPs, along with the BMP checklist from the applicable manual. Where DEP adopts a BMAP that includes agriculture, producers must either implement DACS-adopted BMPs or conduct water quality monitoring (prescribed by DEP or the WMD and paid for by the producer) to show they are not violating WQS.[22]

DACS also has an implementation verification program to follow up with producers and help ensure that BMPs are being implemented properly. Representatives of DACS conduct site visits to enrolled operations, and some producers are asked to complete online surveys.[23]

Wastewater

A person generates approximately 100 gallons of domestic wastewater[24] per day.[25] This wastewater must be managed to protect public health, water quality, recreation, fish, wildlife, and the aesthetic appeal of the state's waterways.[26]

Onsite Sewage Treatment and Disposal Systems

One of the methods utilized to treat domestic wastewater is an onsite sewage treatment and disposal system (OSTDS),[27] commonly referred to as a septic system.[28] Approximately 30 percent of the population in Florida uses an OSTDS.[29]

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[17] UF/IFAS, *Best Management Practices Resource*, available at https://bmp.ifas.ufl.edu/ (last visited Jan. 21, 2020).
[18] UF/IFAS, *Best Management Practices & Water Resources*, available at https://erec.ifas.ufl.edu/featured-3-menus/research-/best-management-practices--water-resources/ (last visited Jan. 21, 2020).
[19] UF/IFAS, *GI-BMP Training Program Overview,* available at https://ffl.ifas.ufl.edu/professionals/BMP_overview.htm (last visited Jan. 21, 2020).
[20] *Id.* at 2.
[21] Section 403.067(7), F.S.
[22] DACS, *Agricultural Best Management Practices*, available at https://www.fdacs.gov/Agriculture-Industry/Water/Agricultural-Best-Management-Practices (last visited Jan. 21, 2020).
[23] DACS, *Agricultural Best Management Practices*, available at https://www.fdacs.gov/Agriculture-Industry/Water/Agricultural-Best-Management-Practices (last visited Jan. 21, 2020).
[24] Section 367.021(5), F.S., defines "domestic wastewater" as wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.
[25] DEP, *Domestic Wastewater Program*, available at https://floridadep.gov/water/domestic-wastewater (last visited Jan. 21, 2020).
[26] Sections 381.0065(1) and 403.021, F.S.
[27] Section 381.0065(2)(k), F.S., defines an "onsite sewage treatment and disposal system" as a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. This term does not include package sewage treatment facilities and other treatment works regulated under ch. 403, F.S.
[28] Sections 381.0065(2)(k) and 381.0065(3), F.S.; chs. 62-600 and 62-701, F.A.C.
[29] DOH, *Onsite Sewage*, available at http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html (last visited Jan. 21, 2020).

An OSTDS must be permitted and inspected by the Department of Health (DOH) before it is placed into operation and must be located and installed so that, along with proper maintenance, the system functions in a sanitary manner, does not create a sanitary nuisance or health hazard, and does not endanger the safety of any domestic water supply, groundwater, or surface water.[30] Sewage waste and effluent from an OSTDS may not be discharged onto the ground surface or directly or indirectly discharged into ditches, drainage structures, groundwaters, surface waters, or aquifers.[31] DOH regulates an estimated 2.6 million OSTDSs.[32] The permitting and inspection of OSTDSs is handled mainly by county health departments with support from the Bureau of Onsite Sewage within DOH.[33]

DOH OSTDS Advisory Committees

DOH operates and serves three advisory organizations related to OSTDSs: the Research Review and Advisory Committee (RRAC),[34] the Technical Review and Advisory Panel (TRAP),[35] and the Variance Review and Advisory Committee (VRAC).[36] The TRAP assists in the adoption of rules for OSTDSs and reviews and comments on any legislation or existing policy related to OSTDSs. All rules proposed by DOH that relate to OSTDSs must be presented to the TRAP for review and comment prior to adoption.[37] The RRAC advises on new research, reviews and ranks proposals for research contracts, and reviews and provides comments on draft research reports regarding the OSTDS industry.[38]

The VRAC recommends agency action on variance requests. A person who applies for an OSTDS construction permit but cannot meet the requirements of the rule or statute will not be issued a permit; however, a person may request a variance from the standards.[39] DOH, in hardship cases, may grant variances, which may be less restrictive than the OSTDS provisions required by statute and rule.[40]

Outstanding Florida Springs

Nutrients, specifically nitrogen and phosphorous, are naturally present in the water and are necessary for the growth of plant and animal life. However, too much nitrogen or phosphorous can harm water quality. In some areas, the wastewater leaving OSTDSs has been identified as a contributor to nitrogen pollution.[41]

In 2016, the Legislature enacted the Springs and Aquifer Protection Act (act), which established additional protections to conserve and protect 30 Outstanding Florida Springs.[42] The act directed DEP to assess the Outstanding Florida Springs for nutrient impairment and, in collaboration with other state

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[30] Section 381.0065(4), F.S.; rr. 64E-6.003 and 64E-6.004, F.A.C.

[31] Rule 64E-6.005, F.A.C.

[32] DOH, *Onsite Sewage*, available at http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html (last visited Jan. 21, 2020).

[33] Sections 381.006(7) and 381.0065, F.S.; r. 62-600.120, F.A.C.; *see* DEP, *Domestic Wastewater - Septic Systems*, available at https://floridadep.gov/water/domestic-wastewater/content/septic-systems (last visited Jan. 21, 2020).

[34] Section 381.0065(4)(o), F.S.

[35] Section 381.0068, F.S.

[36] Section 381.0065(4)(h)2., F.S.; *see also*, DOH, *Boards, Councils and Committees*, available at http://www.floridahealth.gov/provider-and-partner-resources/advisory-councils-stakeholder-groups/index.html (last visited Jan. 21, 2020).

[37] Section 381.0068, F.S.

[38] Section 381.0065(4)(o), F.S.

[39] DOH, *Variances*, available at http://www.floridahealth.gov/environmental-health/onsite-sewage/variances/index.html (last visited Jan. 21, 2020).

[40] Section 381.0065(4)(h), F.S.

[41] DEP, *Meeting the Septic System Permitting Requirements: Springs and Aquifer Protection Act*, available at https://floridadep.gov/sites/default/files/Springs%20and%20Aquifer%20Protection%20Act_0.pdf (last visited Jan. 21, 2020).

[42] Section 373.802(4),F.S., defines an "Outstanding Florida Spring" as all historic first magnitude springs, including their associated spring runs, as determined by DEP using the most recent Florida Geological Survey springs bulletin, and the following additional springs, including their associated spring runs: De Leon Springs, Peacock Springs, Poe Springs, Rock Springs, Wekiwa Springs, and Gemini Springs. The term does not include submarine springs or river rises; ch. 2016-001, Laws of Fla.

agencies and local governments, develop BMAPs by July 1, 2016.[43] Each BMAP was required to identify the sources of nitrogen pollution within the springshed and identify projects and strategies that will achieve the reductions needed to improve water quality in the region, including, as necessary, an OSTDS remediation plan that identifies cost-effective and financially feasible projects to reduce nitrogen contributions from OSTDSs.[44]

Further, the act prohibited new homes or businesses with new OSTDSs on lots less than one acre in priority focus areas[45] from installing conventional non-nitrogen reducing OSTDSs if the installation is inconsistent with a BMAP.[46] Instead, new construction must either connect to available central sewer lines, install a nitrogen-reducing OSTDS, such as "in-ground, passive nitrogen-reducing systems" that use additional soil and media layers to reduce nitrogen flowing into the aquifer, or install nitrogen-reducing Aerobic Treatment Units and Performance-Based Treatment Systems.[47]

Wastewater Treatment Facilities

Because domestic wastewater treatment facilities are stationary installations that are reasonably expected to be sources of water pollution, they must be operated, maintained, constructed, expanded, or modified with a permit issued by DEP.[48] Approximately 2,000 domestic wastewater treatment facilities in the state serve roughly two-thirds of the state's population.[49] Each day over 1.5 billion gallons of treated wastewater effluent[50] and reclaimed water[51] are disposed of from these facilities.[52] Methods of disposal include reuse and land application systems, groundwater disposal by underground injection, groundwater recharge using injection wells, surface water discharges, disposal to coastal and open ocean waters, and wetland discharges.[53]

Most domestic wastewater treatment facilities must meet either basic disinfection or high-level disinfection requirements, depending upon the type of discharge.[54] Basic disinfection requires the effluent to contain less than 200 fecal coliforms per 100 micrograms per milliliter,[55] while high-level disinfection requires fecal coliforms to be reduced below detection.[56] Domestic wastewater treatment facilities that discharge to surface waters[57] must also obtain a National Pollutant Discharge Elimination

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[43] DEP, *Meeting the Septic System Permitting Requirements: Springs and Aquifer Protection Act*, available at https://floridadep.gov/sites/default/files/Springs%20and%20Aquifer%20Protection%20Act_0.pdf (last visited Jan. 21, 2020).
[44] Section 373.807, F.S.; DEP, *Meeting the Septic System Permitting Requirements: Springs and Aquifer Protection Act*, available at https://floridadep.gov/sites/default/files/Springs%20and%20Aquifer%20Protection%20Act_0.pdf (last visited Jan. 21, 2020).
[45] Section 373.802(5), F.S., defines a "priority focus area" as the area or areas of a basin where the Floridan Aquifer is generally most vulnerable to pollutant inputs where there is a known connectivity between groundwater pathways and an Outstanding Florida Spring, as determined by DEP in consultation with the appropriate WMDs, and delineated in a BMAP.
[46] DOH, *OSTDS Permitting in a County affected by the Florida Springs and Aquifer Protection Act* (May 14, 2018), available at http://www.floridahealth.gov/environmental-health/onsite-sewage/_documents/letter-to-builders-springs.pdf (last visited Jan. 21, 2020).
[47] *Id.*
[48] Section 403.087(1), F.S.
[49] DEP, *General Facts and Statistics about Wastewater in Florida*, available at https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida (last visited Jan. 21, 2020).
[50] Rule 62-600.200(22), F.A.C., defines the term "effluent" as, unless specifically stated otherwise, water that is not reused after flowing out of any plant or other works used for the purpose of treating, stabilizing, or holding wastes.
[51] Rule 62-600.200(54), F.A.C., defines the term "reclaimed water" as water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.
[52] DEP, *General Facts and Statistics about Wastewater in Florida*, available at https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida (last visited Jan. 21, 2020).
[53] Rule 62-600.440(4), F.A.C.
[54] DEP, *Ultraviolet Disinfection for Domestic Wastewater*, available at https://floridadep.gov/water/domestic-wastewater/content/ultraviolet-uv-disinfection-domestic-wastewater (last visited Jan. 21, 2020).
[55] Rules 62-600.510(1) and 62-600.440(5), F.A.C.
[56] Rule 62-600.440(6), F.A.C.
[57] Section 373.019(21), F.S., defines the term "surface water" as water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs is classified as surface water when it exits from the spring onto the earth's surface; s. 403.031(13), F.S., defines the term "waters" as rivers, lakes, streams, springs, impoundments, wetlands, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface, or underground waters; r. 62-620.200(56), F.A.C.

System (NPDES) permit, which is established by the CWA to control point source discharges.[58] NPDES permit requirements for most domestic wastewater facilities are incorporated into the DEP-issued permit.[59] 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.[60]

Advanced Waste Treatment

Under Florida law, facilities for sanitary sewage disposal are required to provide for advanced waste treatment, as deemed necessary by DEP.[61] The standard for advanced waste treatment requires high-level disinfection and is defined using the maximum concentrations of nutrients or contaminants that a reclaimed water product may contain, which are outlined in the following table:[62]

Nutrient or Contaminant	Maximum Concentration Annually
Biochemical Oxygen Demand	5 mg/L
Suspended Solids	5 mg/L
Total Nitrogen	3 mg/L
Total Phosphorus	1 mg/L

Facilities for sanitary sewage disposal are prohibited from disposing of waste into certain waters without providing advanced waste treatment approved by DEP.[63]

Sanitary Sewer Overflows, Leakages, and Inflow and Infiltration

Although domestic wastewater treatment facilities are permitted and designed to safely and properly collect and manage a specified wastewater capacity, obstructions or extreme conditions can cause a sanitary sewer overflow (SSO). Any overflow, spill, release, discharge, or diversion of untreated or partially treated wastewater from a sanitary sewer system is considered a SSO.[64] Factors contributing to SSOs may include:

- Build-up of solids, fats, oils, and greases in the wastewater collection system which impedes flow;
- Too much rainfall infiltrating the system through leaky infrastructure, roof drains, or poorly connected wastewater lines;
- Blocked, broken, or cracked pipes and other equipment or power failures that keep the system from functioning properly (e.g., tree roots growing into the system, pipe settling or shifting so pipe joints no longer match, buildup of sediment and other material causing pipes to break or collapse); and
- A deteriorating or aging system.[65]

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[58] 33 U.S.C. s. 1342.

[59] Section 403.0885, F.S.; ch. 62-620, F.A.C.; DEP, *Wastewater Permitting*, available at https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting (last visited Jan. 21, 2020); Florida's Water Permitting Portal, *Types of Permits*, available at http://flwaterpermits.com/typesofpermits.html (last visited Jan. 21, 2020).

[60] Section 403.087(3), F.S.

[61] Section 403.086(2), F.S.

[62] Sections 403.086(4) and 403.086(4)(b), F.S.; r. 62-600.440(6), F.A.C.

[63] Section 403.086(1)(c), F.S. Facilities for sanitary sewage disposal may not dispose of 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, or Charlotte Harbor Bay, or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto, without providing advanced waste treatment approved by DEP. This prohibition does not apply to facilities permitted before February 1, 1987, that discharge secondary treated effluent, followed by water hyacinth treatment, to tributaries of the named waters; or to facilities permitted to discharge to the nontidally influenced portions of the Peace River.

[64] DEP, *SSOs*, available at https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf (last visited Jan. 21, 2020).

[65] DEP, *Preventing SSOs*, available at https://floridadep.gov/sites/default/files/preventing-sanitary-sewer-overflows.pdf (last visited Jan. 21, 2020); DEP, *SSOs*, available at https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf (last visited Jan. 21, 2020).

A SSO may subject the owner or operator of a facility to civil penalties of not more than $10,000 for each offense, a criminal conviction or fines, and additional administrative penalties.[66] Each day during the period in which a violation occurs constitutes a separate offense.[67] However, administrative penalties are capped at $10,000.[68]

A key concern with SSOs entering rivers, lakes, or streams is their negative effect on water quality. Because SSOs contain partially treated or potentially untreated domestic wastewater, ingestion or similar contact may cause illness. People can be exposed through direct contact in areas of high public access, food that has been contaminated, inhalation, and skin absorption. DOH may issue health advisories when bacteria levels present a risk to human health, and may post warning signs when bacteria affect public beaches or other areas where there is a risk of human exposure.[69]

Reduction of SSOs can be achieved through cleaning and maintaining the sewer system; reducing inflow and infiltration through rehabilitation and repairing broken or leaking lines; enlarging or upgrading sewer, pump station, or sewage treatment plant capacity and reliability; and constructing wet weather storage and treatment facilities to treat excess flows.[70]

Inflow and Infiltration (I&I) occurs when groundwater and/or rainwater enters the sanitary sewer system and ends up at the wastewater treatment facility, necessitating its treatment as if it were wastewater.[71] I&I can be caused by groundwater infiltrating the sewer system through faulty pipes or infrastructure, or any inflows of rainwater or non-wastewater into the sewer system.

I&I is a major cause of SSOs in Florida.[72] When domestic wastewater facilities are evaluated for permit renewal, collection systems are not evaluated for issues such as excessive I&I, unless problems result at the treatment plant.[73] Another major cause of SSOs is the loss of electricity to the infrastructure for the collection and transmission of wastewater, such as pump stations, especially during storms.[74] Pump stations receiving flow from another station through a force main, or those discharging through pipes 12 inches or larger, must have emergency generators.[75] All other pump stations must have emergency pumping capability through one of three specified arrangements.[76] These requirements for emergency pumping capacity only apply to domestic wastewater collection/transmission facilities existing after November 6, 2003, unless facilities existing prior to that date are modified.[77]

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[66] Sections 403.121 and 403.141, F.S.
[67] *Id.*
[68] Sections 403.121(2)(b), 403.121(8), and 403.121(9), F.S.
[69] DEP, *SSOs*, available at https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf (last visited Jan. 21, 2020).
[70] *Id.*
[71] City of St. Augustine, *Inflow & Infiltration Elimination Program*, available at https://www.citystaug.com/549/Inflow-Infiltration-Elimination-Program (last visited Jan. 21, 2020).
[72] *See* RS&H, Inc., *Evaluation of Sanitary Sewer Overflows and Unpermitted Discharges Associated with Hurricanes Hermine and Matthew* (Jan. 2017), available at https://floridadep.gov/sites/default/files/Final%20Report_Evaluation%20of%20SSO%20and%20Unpermitted%20Discharges%2001_06_17.pdf (last visited Jan. 21, 2020).
[73] Rule 62-600.735, F.A.C.; *see* r. 62-600.200, F.A.C. "Collection/transmission systems" are defined as sewers, pipelines, conduits, pumping stations, force mains, and all other facilities used for collection and transmission of wastewater from individual service connections to facilities intended for the purpose of providing treatment prior to release to the environment.
[74] *See* RS&H, Inc., *Evaluation of Sanitary Sewer Overflows and Unpermitted Discharges Associated with Hurricanes Hermine and Matthew* (Jan. 2017), available at https://floridadep.gov/sites/default/files/Final%20Report_Evaluation%20of%20SSO%20and%20Unpermitted%20Discharges%2001_06_17.pdf (last visited Jan. 21, 2020).
[75] Rule 62-604.400, F.A.C.
[76] *Id.*
[77] Rule 62-604.100, F.A.C.

Wastewater Asset Management

Asset management is the practice of managing infrastructure capital assets to minimize the total cost of owning and operating these assets while delivering the desired service levels.[78] Many utilities use asset management to pursue and achieve sustainable infrastructure. A high-performing asset management program includes detailed asset inventories, operation and maintenance tasks, and long-range financial planning.[79]

Each utility is responsible for making sure that its system stays in good working order, regardless of the age of its components or the availability of additional funds.[80] Asset management programs with good data can be the most efficient method of meeting this requirement. Some key steps for asset management are making an inventory of critical assets, evaluating the condition and performance of such assets, and developing plans to maintain, repair, and replace assets and to fund these activities.[81] The U.S. Environmental Protection Agency (EPA) provides guidance and reference manuals for utilities to aid in developing asset management plans.[82]

Many states, including Florida, provide financial incentives for the development and implementation of an asset management plan when requesting funding under a State Revolving Fund or other state funding mechanism.[83] Florida's incentives include priority scoring,[84] reduction of interest rates,[85] principal forgiveness for financially disadvantaged small communities,[86] and eligibility for small community wastewater facilities grants.[87]

In 2016, the Legislature authorized the Public Service Commission (PSC) to allow a utility to create a utility reserve fund for repair and replacement of existing distribution and collection infrastructure that is nearing the end of its useful life or is detrimental to water quality or reliability of service. The utility reserve fund is funded by a portion of the rates charged by the utility, by a secured escrow account, or through a letter of credit.

The PSC adopted rules governing the implementation, management, and use of the fund, including expenses for which the fund may be used, segregation of reserve account funds, requirements for a capital improvement plan, and requirements for the PSC authorization before fund disbursements.[88] The PSC requires an applicant to provide a capital improvement plan or an asset management plan in seeking authorization to create a utility reserve fund.[89]

Biosolids

When domestic wastewater is treated, a solid byproduct accumulates in the wastewater treatment plant and must be removed periodically to keep the plant operating properly. The collected material, called

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[78] EPA, *Sustainable Water Infrastructure - Asset Management for Water and Wastewater Utilities*, available at https://www.epa.gov/sustainable-water-infrastructure/asset-management-water-and-wastewater-utilities (last visited Jan. 22, 2020).
[79] *Id.*
[80] *Id.*
[81] *Id.*
[82] EPA, *Asset Management: A Best Practices Guide* (2008), available at https://nepis.epa.gov/Exe/ZyPDF.cgi/P1000LP0.PDF?Dockey=P1000LP0.PDF (last visited Jan. 22, 2020); EPA, *Reference Guide for Asset Management Tools/Asset Management Plan Components and Implementation Tools for Small and Medium Sized Drinking Water and Wastewater Systems* (May 2014), available at https://www.epa.gov/sites/production/files/2016-04/documents/am_tools_guide_may_2014.pdf (last visited Jan. 22, 2020).
[83] EPA, *State Asset Management Initiatives* (Aug. 2012), available at https://www.epa.gov/sites/production/files/2016-04/documents/state_asset_management_initiatives_11-01-12.pdf (last visited Jan. 22, 2020).
[84] Rule 62-503.300(e), F.A.C.
[85] Rules 62-503.300(5)(b)1. and 62-503.700(7), F.A.C.
[86] Rule 62-503.500(4), F.A.C.
[87] Rules 62-505.300(d) and 62-505.350(5)(c), F.A.C.
[88] Rule 25-30.444, F.A.C.
[89] Rules 25-30.444(2)(e) and 25-30.444(2)(m), F.A.C.

biosolids or "sewage sludge," is high in organic content and contains moderate amounts of nutrients.[90] Wastewater facilities can dispose of biosolids by transferring them to another facility, placing them in a landfill, incinerating them, distributing them as fertilizer, or land applying them to permitted sites.[91] The option selected for use or disposal is typically stated in the permit issued to the wastewater treatment facility by DEP.[92] Florida produces a total of 340,000 dry tons of biosolids annually, of which approximately two-thirds are beneficially used and one-third is landfilled.[93]

Three classes of biosolids are regulated for beneficial use and are categorized based on treatment and quality: Class B, Class A, and Class AA.[94] Treatment is required to either reduce or completely eliminate pathogens. Class B treatment significantly reduces pathogens, but does not completely eliminate them. Class AA treatment essentially eliminates pathogens and meets strict concentration limits for heavy metals. The Class A treatment level is between Class B and Class AA. While Class A and Class AA can be used for a variety of beneficial purposes, Class B, the lowest quality of biosolids, is typically only used for land application.[95]

Land application is the use of biosolids at a permitted site, such as agricultural land or a golf course, forest, park, or reclamation site, to provide nutrients or organic matter to the soil. The biosolids are applied in accordance with restrictions based on crop nutrient needs, phosphorus limits in the area, and soil fertility.[96] Biosolids contain macronutrients (such as nitrogen and phosphorus) and micronutrients (such as copper, iron, and manganese) that are utilized by crops. The application of these nutrient-rich biosolids increases the organic content of the soil, fostering more productive plant growth.[97] To prevent odor or the contamination of soils, crops, and livestock, land application sites must meet site management requirements such as constructing site slopes and establishing setbacks.[98] There are approximately 140 permitted land application sites in Florida.[99]

Class AA biosolids can be land applied or can be distributed and marketed as a commercial fertilizer.[100] Class AA biosolids products are also not subject to site management requirements if distributed and marketed as a fertilizer or distributed and marketed to a person or entity that will sell or give away the biosolids products as a fertilizer or component of a fertilizer.[101] There are approximately 39 facilities in

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[90] DEP, *Domestic Wastewater Biosolids*, available at https://floridadep.gov/water/domestic-wastewater/content/domestic-wastewater-biosolids (last visited Jan. 21, 2020); "Biosolids" is defined as the solid, semisolid, or liquid residue generated during the treatment of domestic wastewater in a domestic wastewater treatment facility, formerly known as "domestic wastewater residuals" or "residuals." Rule 62-640.200(6), F.A.C. The treated effluent or reclaimed water from a domestic wastewater treatment plant is not included. Also, solids removed from pump stations and lift stations, screenings and grit removed from the preliminary treatment components of domestic wastewater treatment facilities, other solids as defined in subsection 62-640.200(31), F.A.C., and ash generated during the incineration of biosolids are not included.

[91] DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 3, available at https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf (last visited Jan. 21, 2020).

[92] *Id.* at slide 4.

[93] *Id.* at slide 5.

[94] *Id.* at slide 6.

[95] *Id.* at slide 7.

[96] DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 23, available at https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf (last visited Jan. 21, 2020); *see also,* United States Environmental Protection Agency (EPA), *A Plain English Guide to the EPA Part 503 Biosolids Rule* (Sept. 1994), 26, available at https://www.epa.gov/sites/production/files/2018-12/documents/plain-english-guide-part503-biosolids-rule.pdf (last visited Jan. 21, 2020).

[97] DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 20, available at https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf (last visited Jan. 21, 2020).

[98] *Id.* at slides 8-9.

[99] *Id.* at slide 20.

[100] *Id.* at slide 6.

[101] DEP, *Biosolids in Florida: 2013 Summary* (Dec. 2014), 4, available at https://floridadep.gov/sites/default/files/BiosolidsFlorida-2013-Summary_2.pdf (last visited Jan. 21, 2020).

Florida that produce Class AA biosolids.[102] In 2016, 197,115 dry tons of Class AA biosolids product was distributed and marketed in Florida.[103]

The beneficial use of biosolids is regulated by DEP under ch. 62-640, F.A.C., and by the EPA under Title 40 Code of Federal Regulations Part 503 (Part 503).[104] Adopted in 1993, Part 503 created standards for the final use or disposal of biosolids generated during domestic wastewater treatment. The standards included general requirements, pollutant limits, management practices, and operational standards for biosolids. Standards were also included for biosolids applied to the land, placed on a surface disposal site, or fired in a sewage sludge incinerator.[105]

In 1990, DEP adopted rules governing biosolids based on the draft of Part 503 and previously adopted solid waste rules.[106] DEP's rules were revised in 1998 to be consistent with the final version of Part 503. Part 503, a self-implementing program, did not address phosphorus, a major pollutant in Florida.[107] As a result, DEP amended its rules in 2010 to improve site accountability and nutrient management by requiring site permits for the land application of biosolids, requiring nutrient management plans (NMPs), establishing phosphorus limitations, and specifying site management requirements.[108] Additionally, the rules clarified that the disposal and incineration of biosolids must be in accordance with DEP's solid waste[109] and air[110] rules to protect water quality and human health.

NMPs are site-specific plans that specify the rate at which biosolids can be applied in the area, the method of application allowed (i.e., surface application, injection, incorporation, etc.), the zone in which biosolids can be applied, pollutant concentration targets, and cumulative pollutant loading limits from all sources at the application site.[111] NMPs are submitted to DEP along with the permit application for each agricultural site.

Agricultural sites that are required to have a NMP for the application of biosolids are also often required to participate in DACS's agricultural BMP program if the site is located in an impaired watershed because of the potential impact biosolids may have on water quality.[112] Typical BMP practices include nutrient management, irrigation and water table management, and water resource protection. Nutrient management practices for biosolids land application address appropriate source, rate, timing, and placement of nutrients to minimize impacts to water resources. Irrigation and water table management practices address methods for irrigating to reduce water and nutrient losses to the environment and to maximize the efficient use and distribution of water. Finally, water resource protection practices, such as the site management requirements for biosolids, help to reduce or prevent the transport of nutrients

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[102] DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 13, available at https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf (last visited Jan. 21, 2020).
[103] *Id.* at slide 19.
[104] EPA, *Biosolids Laws and Regulations*, available at https://www.epa.gov/biosolids/biosolids-laws-and-regulations (last visited Jan. 21, 2020).
[105] 40 C.F.R. Part 503.
[106] Chapters 62-701 and 62-709, F.A.C.
[107] DEP, *Biosolids Rule/Permitting* (Nov. 2018), slide 2, available at https://floridadep.gov/water/domestic-wastewater/documents/tac-3-biosolids-rulepermitting (last visited Jan. 21, 2020); *see also*, DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 11, available at https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf (last visited Jan. 21, 2020).
[108] DEP, *Biosolids Rule/Permitting* (Nov. 2018), slide 2, available at https://floridadep.gov/water/domestic-wastewater/documents/tac-3-biosolids-rulepermitting (last visited Jan. 21, 2020); *see* ch. 62-640, F.A.C.
[109] Chapter 62-701, F.A.C.
[110] *See* Chapters 62-204, 62-210, 62-212, 62-213, 62-296, and 62-297, F.A.C.
[111] DEP, *NMPs*, available at https://floridadep.gov/water/domestic-wastewater/documents/nutrient-management-plans-biosolids (last visited Jan. 21, 2020); *see also,* r. 62-640.500, F.A.C.
[112] Rule 62-303.200(7), F.A.C., defines "impaired water" to mean a waterbody or waterbody segment that does not meet its applicable water quality standards [...] due in whole or in part to discharges of pollutants from point or nonpoint sources.

and sediments from production areas to water resources.[113] The BMPs for the site are typically included in facility permits.[114]

Biosolids Technical Advisory Committee
In 2018, DEP created a Biosolids Technical Advisory Committee (Biosolids TAC) to evaluate current management practices and explore opportunities to better protect Florida's water resources.[115] The Biosolids TAC was composed of various stakeholders, including environmental and agricultural industry experts, representatives of large and small utilities, waste haulers, consultants, and academics.[116] The meetings included presentations and public comments as well as discussions among the Biosolids TAC members, the audience, and DEP.

Based on the deliberations of the Biosolids TAC and feedback from public participants, the Biosolids TAC recommended that DEP take the following actions:

- Permit biosolids in a manner that minimizes migration of nutrients to prevent impairment to waterbodies and amend current permitting rules to:
  - Establish the rate of biosolids application based on site specifics, such as soil characteristics/adsorption capacity, water table, hydrogeology, site use, and distance to surface water;
  - Evaluate the percentage of water extractable phosphorus in all biosolids to inform the appropriate application rate; and
  - Establish criteria for low, medium, and high-risk sites that guide application practices and required water quality monitoring.
- Increase the inspection rate of land application.
- Develop site-specific groundwater and surface water monitoring protocols to detect nutrient migration.
- Develop and conduct biosolids and nutrient management research on nutrient run-off through surface and groundwater flow using various application rates, types of biosolids application, and different geologic conditions.
- Promote innovative technology pilot projects for biosolids processing that could provide a wider range of beneficial end products.[117]

DEP published a notice of rule development to amend its biosolids rules[118] on March 22, 2019. DEP held rulemaking workshops on June 25, 26, and 27, 2019, in various locations across the state and accepted public comments until August 15, 2019. A notice of proposed rule was published on October 29, 2019.[119]

The statement of estimated regulatory costs (SERC) for the proposed rule includes the following statewide cost estimates:

- $10 million in capital costs for new permitting and land application sites;
- At least $31 million in recurring costs for additional sites and transportation of wet biosolids; and
- $1 million in additional monitoring costs.[120]

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[113] DACS, *Agriculture and Water Quality*, available at https://www.freshfromflorida.com/content/download/33106/813038/Agriculture_and_water_quality_2018.pdf (last visited Jan. 21, 2020).
[114] Section 403.067(7)(c), F.S.; *see* ch. 2016-1, Laws of Fla.
[115] DEP, *DEP Biosolids Technical Advisory Committee*, available at https://floridadep.gov/water/domestic-wastewater/content/dep-biosolids-technical-advisory-committee (last visited Jan. 21, 2020).
[116] *Id.*
[117] DEP, *Biosolids Technical Advisory Committee Recommendations* (January 2019), available at https://floridadep.gov/water/domestic-wastewater/documents/tac-4-biosolids-tac-considerations (last visited Jan. 21, 2020).
[118] Chapter 62-640, F.A.C.
[119] The public comment period was originally scheduled to end July 29, 2019, but the deadline was extended; *see* Florida Administrative Register, *Notice List: 62-640*, available at https://www.flrules.org/gateway/result.asp (last visited Jan. 21, 2020).
[120] *Id.*

DEP expects more biosolids to be converted to Class AA biosolids/fertilizer as a result of the proposed rule and estimates the capital cost for additional Class AA biosolids projects to be between $300 and $400 million.[121] DEP is currently reviewing lower cost regulatory alternatives that have been submitted. Because the SERC shows that the adverse impact or regulatory cost of the proposed rule exceeds $1 million in the aggregate within five years after implementation, the proposed rule must be submitted to the Legislature for ratification and may not take effect until it is ratified by the Legislature.[122]

Stormwater

Stormwater is the flow of water resulting from, and immediately following, a rainfall event.[123] When stormwater falls on pavement, buildings, and other impermeable surfaces, the runoff flows quickly and can pick up sediment, nutrients (such as nitrogen and phosphorous), chemicals, and other pollutants.[124] A stormwater management system is a system designed to control discharges necessitated by rainfall events, incorporating methods to collect, convey, store, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution.[125] Most activities that create new impermeable surfaces or alter surface water flows will involve a stormwater management system.[126]

Effective stormwater management is essential to reducing nonpoint source pollution.[127] Methods such as low-impact design technologies and BMPs can be implemented to address pollution in stormwater discharges.[128] Low-impact development refers to systems and practices that mimic or preserve natural drainage processes to manage stormwater.[129] This approach is also known as "green infrastructure," and instead of moving stormwater away from the built environment, these methods treat stormwater at its source.[130] Low-impact designs, including green roofs, permeable pavements, or bioswales, can result in stormwater being reused, soaking into vegetation that performs evaporative cooling, or infiltrating the soil and replenishing groundwater.[131]

Since the 1980s, Florida has regulated the discharge of stormwater to prevent pollution of the waters of the state and protect the designated beneficial use of surface waters.[132] Florida has established minimum stormwater treatment performance standards, which require design and performance criteria for new stormwater management systems to achieve at least an 80 percent reduction of the average annual load of pollutants that would cause or contribute to violations of state WQS and further achieve

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[121] *Id.*

[122] Section 120.541, F.S.

[123] DEP, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)* (June 1, 2018), 2-10, available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Appliicant_Hanbook_I_-_Combined.pd_0.pdf (last visited Jan. 21, 2020).

[124] DEP, *Stormwater Management* (2016), 1, available at https://floridadep.gov/sites/default/files/stormwater-management_0.pdf (last visited Jan. 21, 2020). When rain falls on fields, forests, and other areas with naturally permeable surfaces the water not absorbed by plants filters through the soil and replenishes Florida's groundwater supply.

[125] Section 373.403(10), F.S.

[126] DEP, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)* (June 1, 2018), 1-5, available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Appliicant_Hanbook_I_-_Combined.pd_0.pdf (last visited Jan. 21, 2020).

[127] Rule 62-40.431(1), F.A.C.

[128] South Florida WMD, *Quick Facts on the Statewide Unified Stormwater Rule* (2009), available at https://www.sfwmd.gov/sites/default/files/documents/spl_stormwater_rule.pdf (last visited Jan. 21, 2020).

[129] EPA, *Benefits of Low Impact Development* (2012), 1, available at https://www.epa.gov/sites/production/files/2015-09/documents/bbfs1benefits.pdf (last visited Jan. 21, 2020); EPA, *Urban Runoff: Low Impact Development*, available at https://www.epa.gov/nps/urban-runoff-low-impact-development (last visited Jan. 21, 2020).

[130] DEP, *Green Infrastructure*, available at https://floridadep.gov/wra/319-tmdl-fund/content/green-infrastructure (last visited Jan. 21, 2020).

[131] EPA, *Benefits of Low Impact Development* (2012), 1, available at https://www.epa.gov/sites/production/files/2015-09/documents/bbfs1benefits.pdf (last visited Jan. 21, 2020); South Florida WMD, *Quick Facts on the Statewide Unified Stormwater Rule* (2009), available at https://www.sfwmd.gov/sites/default/files/documents/spl_stormwater_rule.pdf (last visited Jan. 21, 2020).

[132] DEP, *Evaluation of Current Stormwater Design Criteria within the State of Florida* (2007), 1-1, available at https://www.sfwmd.gov/sites/default/files/documents/sw%20treatment%20report-final71907.pdf (last visited Jan. 21, 2020).

at least a 95 percent reduction of the average annual load of pollutants that would cause or contribute to violations of state WQS in Outstanding Florida Waters.[133] When a stormwater management system complies with rules establishing applicable design and performance criteria, there is a rebuttable presumption that the system's discharge will comply with WQS.[134]

Through its Environmental Resource Permitting (ERP) Program, DEP regulates activities that create stormwater runoff, as well as dredging and filling in wetlands and other surface waters.[135] ERPs are designed to prevent flooding, protect wetlands and other surface waters, and protect Florida's water quality from stormwater pollution.[136] DEP implements the statewide ERP Program in conjunction with the WMDs and certain local governments. The ERP Applicant Handbook, which is incorporated by reference into DEP rules, provides guidance on DEP's ERP Program, including stormwater topics such as the design of stormwater management systems.[137]

2010 Stormwater Rulemaking

From 2008 to 2010, DEP and the WMDs worked together to develop a statewide unified stormwater rule to protect Florida's surface waters from the effects of excessive nutrients in stormwater runoff.[138] A TAC was established and, in 2010, DEP announced a series of workshops to allow for public comment on the statewide stormwater quality draft rule.[139] The goal of the rule was to increase the level of nutrient treatment in stormwater discharges and provide statewide consistency by establishing revised stormwater quality treatment performance standards and BMP design criteria.[140]

These rulemaking efforts produced a draft document called the "ERP Stormwater Quality Applicant's Handbook: Design Requirements for Stormwater Treatment in Florida."[141] The 2010 draft handbook's stormwater quality permitting requirements:

- Provided for different stormwater treatment performance standards based on various classifications of water quality.[142]
- Included instructions for calculating a project's required nutrient load reduction based on comparing the predevelopment and post-development loadings.[143]
- Provided the required criteria for stormwater BMPs.
- Listed 15 different types of stormwater treatment systems, including low impact design, pervious pavements, and stormwater harvesting.[144]

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[133] Rule 62-40.432(2), F.A.C.; DEP, *Outstanding Florida Waters*, available at https://floridadep.gov/dear/water-quality-standards/content/outstanding-florida-waters (last visited Jan. 21, 2020). Rule 62-302.200(26), F.A.C., defines "Outstanding Florida Water" to mean waters designated by the Environmental Regulation Commission as worthy of special protection because of their natural attributes.

[134] Rule 62-40.432(2), F.A.C.

[135] DEP, *DEP 101: Environmental Resource Permitting*, available at https://floridadep.gov/comm/press-office/content/dep-101-environmental-resource-permitting (last visited Jan. 22, 2020).

[136] South Florida WMD, *Environmental Resource Permits*, available at https://www.sfwmd.gov/doing-business-with-us/permits/environmental-resource-permits (last visited Jan. 22, 2020).

[137] Rule 62-330.010(4), F.A.C.; DEP, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)* (June 1, 2018), 2-10, available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Appliicant_Hanbook_I_-_Combined.pd_0.pdf (last visited Jan. 22, 2020).

[138] South Florida WMD, *Quick Facts on the Statewide Unified Stormwater Rule*, available at https://www.sfwmd.gov/sites/default/files/documents/spl_stormwater_rule.pdf (last visited Jan. 21, 2020).

[139] Chapter 62-347, F.A.C.; Florida Administrative Register, *Notice of Rescheduling* (Apr. 23, 2010), 1885, available at https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2010/3616/3616doc.pdf (last visited Jan. 21, 2020).

[140] *Id.*

[141] DEP, *March 2010 Draft, Environmental Resource Permit Stormwater Quality Applicant's Handbook, Design Requirements for Stormwater Treatment Systems in Florida* (2010), available at https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/content2/roadway/drainage/files/stormwaterqualityapphb-draft.pdf?sfvrsn=579bf184_0 (last visited Jan. 21, 2020).

[142] *Id.* at 6-7.

[143] *Id.* at 8-11.

[144] *Id.* at 3.

The proposed rule and revised handbook were expected to be adopted in 2011; however, neither the rules nor a revised handbook were ever adopted.

Rural Areas of Opportunity

A rural area of opportunity (RAO) is a rural community or region of rural communities that presents a unique economic development opportunity of regional impact or that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster.[145] By executive order, the Governor may designate up to three RAOs, establishing each region as a priority assignment for Rural Economic Development Initiative agencies. The Governor can waive the criteria, requirements, or any similar provisions of any state economic development incentive for projects in a RAO.[146]

The currently designated RAOs are:

- Northwestern RAO: Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington Counties, and part of Walton County.
- South Central RAO: DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee Counties, and the cities of Pahokee, Belle Glade, South Bay (Palm Beach County), and Immokalee (Collier County).
- North Central RAO: Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union Counties.[147]

Indian River Lagoon

The Indian River Lagoon (IRL) system is an estuary[148] that runs along 156 miles of Florida's east coast and borders Volusia, Brevard, Indian River, St. Lucie, and Martin counties.[149] The IRL system is composed of three main waterbodies: Mosquito Lagoon, Banana River, and the Indian River Lagoon.[150] Four BMAPs have been adopted for the IRL region.[151]

The IRL is one of the most biologically diverse estuaries in North America 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.[152] The estimated economic value received from the IRL in 2014 was approximately $7.6 billion.[153] Industry groups that are directly influenced by the IRL support nearly 72,000 jobs.[154]

The IRL ecosystem has been harmed by human activities in the region. Specifically, stormwater runoff from urban and agricultural areas, wastewater treatment facility discharges, canal discharges, septic systems, animal waste, and fertilizer applications have led to harmful levels of nutrients and sediments entering the lagoon.[155] These pollutants create cloudy conditions, feed algal blooms, and lead to muck

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[145] Section 288.0656(2)(d), F.S.

[146] Section 288.0656(7), F.S.

[147] Department of Economic Opportunity, *Rural Areas of Opportunity*, available at http://www.floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity (last visited Jan. 21, 2020).

[148] 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?*, available at https://www.epa.gov/nep/basic-information-about-estuaries (last visited Jan. 21, 2020).

[149] IRL National Estuary Program, *About the Indian River Lagoon*, available at http://www.irlcouncil.com/ (last visited Jan. 21, 2020).

[150] *Id.*

[151] East Central Florida Regional Planning Council and the Treasure Coast Regional Planning Council, *Indian River Lagoon Economic Valuation Update* (Aug. 26, 2016), x, available at http://tcrpc.org/special_projects/IRL_Econ_Valu/FinalReportIRL08_26_2016.pdf (last visited Jan. 21, 2020); DEP, *Basin Management Action Plans (BMAPs)*, available at https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps (last visited Jan. 21, 2020).

[152] IRL National Estuary Program, *About the Indian River Lagoon*, available at http://www.irlcouncil.com/ (last visited Jan. 21, 2020).

[153] East Central Florida Regional Planning Council and the Treasure Coast Regional Planning Council, *Indian River Lagoon Economic Valuation Update* (Aug. 26, 2016), x, available at http://tcrpc.org/special_projects/IRL_Econ_Valu/FinalReportIRL08_26_2016.pdf (last visited Jan. 21, 2020).

[154] *Id.* at ix.

[155] Tetra Tech, Inc. & Closewaters, LLC, *Draft Save Our Indian River Lagoon Project Plan 2019 Update for Brevard County, Florida* (Mar. 2019), xii, available at https://www.dropbox.com/s/j9pxd59mt1baf7q/Revised%202019%20Save%20Our%20Indian%20River%20Lagoon%20Project%20Plan%20Update%20032519.pdf?dl=0 (last visited Jan. 21, 2020).

accumulation, all of which negatively impact the seagrass that provides habitat for much of the IRL's marine life.[156]

Consolidated Annual Reports

By March 1 of each year, the WMDs must submit a consolidated annual report to the Governor, the Legislature, and DEP. The WMDs must also provide copies of the report to the chairs of the legislative committees having substantive or fiscal jurisdiction over the WMDs and to the governing boards of all county entities having jurisdiction or deriving any funds for operations of the district. The report must also be made available to the public in either a printed or an electronic format.[157]

The consolidated annual report includes several legislatively mandated plans and reports regarding the status of water resource programs. The consolidated annual report includes: the Strategic Water Management Plan Annual Work Plan Report; the Minimum Flows and Minimum Water Levels Annual Priority List and Schedule; the Annual Five-Year Capital Improvement Plan; the Alternative Water Supplies Annual Report; the Five-Year Water Resource Development Work Program; the Florida Forever WMD Work Plan Annual Report; the Mitigation Donation Annual Report; the Water Projects in the Five-Year Water Resources Development Work Program; and the Surface Water Improvement and Management Program Annual Report.[158]

The Office of Economic and Demographic Research

The Office of Economic and Demographic Research (EDR) is a research arm of the Legislature that is principally concerned with forecasting economic and social trends that affect policymaking, revenues, and appropriations.[159] EDR publishes all of the official economic, demographic, revenue, and agency workload forecasts that are developed by Consensus Estimating Conferences and makes them available to the Legislature, state agencies, universities, research organizations, and the general public.[160]

Type Two Transfer

A type two transfer is the merging of an existing department, program, or activity into another department.[161] Any program or activity transferred by a type two transfer retains all the statutory powers, duties, and functions it held before the transfer. The program or activity also retains its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, unless otherwise provided by law. The transfer of segregated funds must be made in such a manner that the relation between the program and the revenue source is retained.[162]

Effect of the Bill

Onsite Sewage Program

Effective July 1, 2021, the bill transfers the duties and powers related to regulation of the Onsite Sewage Program from DOH to DEP by a type two transfer and requires DEP and DOH to submit recommendations to the Governor and the Legislature regarding the transfer by December 31, 2020. The bill further requires DOH to submit a report by July 1, 2020, detailing the number of permits issued per year, costs and expenditures related to equipment and contracting, and other employee-related information.

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[156] *Id.*

[157] Northwest Florida WMD, *Consolidated Annual Reports*, available at https://www.nwfwater.com/Data-Publications/Reports-Plans/Consolidated-Annual-Reports (last visited Jan. 21, 2020).

[158] Section 373.036(7), F.S.

[159] EDR, *Welcome*, available at http://edr.state.fl.us/Content/ (last visited Jan. 21, 2020).

[160] EDR, *About Us*, available at http://edr.state.fl.us/Content/about/index.cfm (last visited Jan. 21, 2020).

[161] Section 20.06(2), F.S.

[162] Section 20.06(2), F.S.

The bill requires DEP and DOH, by June 30, 2021, to enter into an interagency agreement that addresses agency cooperation following the transfer. The bill allows employees transferred from DOH to DEP to retain any accrued leave.

OSTDSs

The bill requires the consolidated WMD annual report to be submitted to EDR in addition to DEP, the Governor, and the Legislature and requires the report to include projects to connect OSTDSs to central sewerage systems and to convert OSTDSs to advanced nutrient removing OSTDSs.

The bill requires DOH to determine that a hardship exists when an applicant for a variance demonstrates that the lot is at least 0.85 acres and that lots in the immediate proximity average at least one acre. The bill defines the term "immediate proximity" to mean lots within the same unit or phase of a subdivision as, adjacent or contiguous to, or across the road from the lot subject to the variance request.

The bill repeals the TRAP and the RRAC.

By July 1, 2020, the bill requires DOH to allow the use of American National Standards Institute 245 systems approved by the National Sanitation Foundation International (NSF/ANSI 245).[163]

The bill creates an OSTDS TAC to provide recommendations to increase the availability of nutrient removing OSTDSs in the marketplace, to consider and recommend regulatory options to facilitate the use of nutrient removing OSTDSs approved by a national agency or organization, and provide recommendations on appropriate setback distances for OSTDSs from surface water, groundwater, and wells. The bill requires DEP to use existing and available resources to administer and support the activities of the TAC.

The bill requires DEP, in consultation with DOH, to appoint no more than nine members to the TAC, who must include:

- A professional engineer;
- A septic tank contractor;
- A representative from the home building industry;
- A representative from the real estate industry;
- A representative from the OSTDS industry;
- A representative from local government;
- Two representatives from the environmental community; and
- A representative of the scientific and technical community who has expertise in water pollutants, toxicology, epidemiology, geology, biology, or environmental sciences.

The bill requires the TAC to submit its recommendations to the Governor and the Legislature by January 1, 2022, and requires the TAC to expire August 15, 2022.

The bill requires DEP to adopt rules to locate OSTDSs, including establishing setback distances, to prevent surface water and groundwater contamination. The bill further requires the rulemaking process for such rules to be completed by July 1, 2022, and requires DEP to notify the Division of Law Revision upon adoption of such rules. The bill requires the rules to consider conventional and advanced OSTDS designs, impaired or degraded water bodies, wastewater and drinking water infrastructure, potable water sources, non-potable wells, stormwater infrastructure, OSTDS remediation plans, nutrient

[163] NSF/ANSI 245 is a certification applied to an OSTDS that defines total nitrogen reduction requirements. A NSF/ANSI 245 certified system covers residential wastewater treatment systems with rated capacities between 400 and 1,500 gallons per day. To achieve certification, treatment systems must produce an acceptable quality of effluent during a six-month (26-week) test; *see also*, The Public Health and Safety Organization, *NSF/ANSI 245: Nitrogen Reduction*, available at http://www.nsf.org/services/by-industry/water-wastewater/onsite-wastewater/nitrogen-reduction (last visited Jan. 21, 2020).

pollution, and recommendations by the OSTDS TAC. The bill specifies that OSTDSs permitted before the rules take effect must comply with the statutory setback distances.

Stormwater

The bill requires DEP local pollution control staff training to include coordinating field inspections of public and privately-owned stormwater structural controls.

The bill requires DEP and the WMDs to initiate rulemaking by January 1, 2021, to update the stormwater design and operation regulations using the most up-to-date scientific information. In addition, the bill requires DEP to evaluate inspection data relating to compliance by entities that self-certify for the construction, alteration, and maintenance of a stormwater management system serving a total project area of up to 10 acres. DEP must recommend improvements to the self-certification process to the Legislature.

The bill requires the model stormwater management program to contain model ordinances targeting nutrient reduction practices and utilizing green infrastructure.

Wastewater Treatment Facilities

The bill requires DEP to adopt rules to reasonably limit, reduce, and eliminate leaks, seepages, or inputs into wastewater collection systems' underground pipes.

The bill requires public utilities, or their affiliated companies, that hold or are seeking a wastewater discharge permit to file reports regarding transactions or allocations of common costs among the utility and such affiliates. DEP must adopt rules that specify requirements for the report, which may include data necessary to ensure a permitted entity is reporting expenditures on pollution mitigation and prevention, including, but not limited to, the prevention of SSOs, collection and transmission system pipe leaks, and I&I.

The bill requires DEP, subject to appropriation, to establish a real-time water quality monitoring program to assist in the restoration, preservation, and enhancement of impaired waterbodies and coastal resources. The bill encourages DEP to form public-private partnerships with established scientific entities that have proven existing real-time water quality monitoring equipment in order to expedite creation of the program.

The bill requires BMAPs for nutrient TMDLs to include a wastewater treatment plan developed by a local government in consultation with DEP, the WMD, and the public and private domestic wastewater facilities within the local government's jurisdiction if DEP identifies domestic wastewater facilities or OSTDSs as contributors of at least 20 percent of point source or nonpoint source nutrient pollution or if DEP determines remediation is necessary to achieve nutrient TMDLs. The bill further requires BMAPs to include an OSTDS remediation plan developed by a local government, in consultation with DOH, the WMD, DEP, and public and private domestic wastewater facilities, if DEP determines that OSTDSs contribute to at least 20 percent of nonpoint source nutrient pollution or that the plan is necessary to achieve the TMDL.

The bill requires the OSTDS remediation plans to include an inventory of OSTDSs; identify OSTDSs that would be upgraded to advanced nutrient-removal systems, that would be connected to existing or future central wastewater infrastructure, or that would remain conventional; estimate the cost of these upgrades; and identify deadlines and interim milestones for the planning, design, and construction of projects. The bill further requires DEP to adopt the OSTDS remediation plan as part of a BMAP by July 1, 2025, or as required for Outstanding Florida Springs.

When identifying wastewater projects in a BMAP, the bill prohibits DEP from requiring the higher cost project if a lower cost option achieves the same nutrient load reduction. However, the bill allows the regulated entity to choose a different cost option if it provides additional benefits or meets other water quality or supply requirements.

By July 1, 2021, the bill requires DEP, in consultation with county health departments, wastewater treatment facilities, and other governmental entities, to submit a report to the Governor and the Legislature evaluating the costs of wastewater projects identified in BMAPs, OSTDS remediation plans, and other restoration plans developed to meet TMDLs. The report must include:

- Projects to replace OSTDSs with enhanced nutrient removing OSTDSs; install or retrofit OSTDSs with enhanced nutrient removing technologies; construct, upgrade, or expand domestic wastewater treatment facilities to meet the wastewater treatment plan; and connect OSTDSs to domestic wastewater treatment facilities;
- The estimated costs, nutrient load reduction estimates, and other benefits of each project;
- The estimated implementation timeline for each project;
- A proposed five-year funding plan for each project and the source and amount of financial assistance DEP, the WMD, or other project partner will make available to fund the project; and
- The projected costs of installing enhanced nutrient removing OSTDSs on buildable lots in priority focus areas to comply with statutory restrictions on the activities allowed in such areas.

The bill requires DEP to submit a report to the Governor and the Legislature by July 1, 2021, that provides an assessment of the water quality monitoring being conducted for each BMAP implementing a nutrient TMDL. The bill specifies that DEP may coordinate with the WMDs and any applicable university in developing the report. The bill requires the report to:

- Evaluate the water quality monitoring prescribed for each BMAP to determine if it is sufficient to detect changes in water quality caused by the implementation of a project;
- Identify gaps in water quality monitoring; and
- Recommend water quality needs.

The bill requires DEP, beginning January 1, 2022, to submit annual cost estimates for projects listed in the wastewater treatment plans or OSTDS remediation plans to EDR, and requires EDR to include the estimates in its annual assessment of water resources and conservation lands.

The bill creates a wastewater grant program and allows DEP, in consultation with the WMDs, to provide grants, subject to appropriation, for projects within BMAPs, alternative restoration plans adopted by final order, or RAOs that will reduce excess nutrient pollution. Projects eligible for funding include projects to retrofit OSTDSs to upgrade them to nutrient-reducing OSTDSs; projects to provide advanced waste treatment; and projects to connect OSTDSs to central sewer facilities. The bill requires each grant for a project to have a minimum 50 percent local match, but allows DEP to waive such match for projects within an area designated as a RAO. Priority must be given to projects that subsidize the connection of OSTDSs to a wastewater treatment plant. The bill further requires DEP, in determining priorities, to consider the estimated reduction in nutrient load per project; project readiness; cost-effectiveness of the project; 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. The bill requires DEP, beginning January 1, 2021, and each January 1 thereafter, to submit a report to the Governor and the Legislature regarding the projects funded pursuant to the grant program.

Beginning July 1, 2025, the bill prohibits wastewater treatment facilities from discharging into the IRL without providing advanced waste treatment.

The bill requires DEP, by July 1, 2020, to submit a report to the Governor and the Legislature that provides the status of upgrades made by each wastewater treatment facility discharging into specified waterbodies to meet the advanced waste treatment requirements. The report must include a list of wastewater treatment facilities that will be required to upgrade to advanced waste treatment, the preliminary cost estimates for the upgrades, and a projected timeline for the upgrades.

The bill requires any facility for sanitary sewage disposal to have a power outage contingency plan that mitigates the impacts of power outages on the utility's collection system and pump stations.

The bill requires sanitary sewage facilities that control a collection or transmission system of pipes and pumps to collect or transmit wastewater to the facility to take steps to prevent SSOs or underground pipe leaks and ensure collected wastewater reaches the facility. The bill further requires these facilities to develop pipe assessment, repair, and replacement action plans using I&I studies and leakage surveys. The facilities must report such plans to DEP and include information regarding the annual expenditures dedicated to the I&I studies and replacement action plans as well as expenditures dedicated to pipe assessment, repair, and replacement. The bill requires DEP to adopt rules regarding the implementation of I&I studies and leakage surveys. The bill specifies that substantial compliance with these replacement action plan requirements must be considered evidence in mitigation for the purposes of assessing penalties.

The bill requires DEP to issue an operation permit for a domestic wastewater treatment facility not regulated under the NPDES program for a term of up to 10 years if the facility is meeting the goals stated in its action plan.

The bill requires water pollution operation permits to include procedures to investigate or survey the wastewater collection system to determine pipe integrity. The bill further requires the permittee to submit an annual report to DEP including annual facility revenues and expenditures and detailing any deviation from annual expenditures related to I&I studies; model pipe assessment, repair, and replacement action plans; and pipe assessment, repair, and replacement. The bill directs DEP to adopt rules establishing requirements for the annual report. The bill specifies that substantial compliance with these requirements must be considered evidence in mitigation for the purposes of assessing penalties.

The bill requires DEP, by March 1 of each year, to submit a report to the Governor and the Legislature identifying all wastewater utilities that experienced a SSO in the preceding calendar year. The report must include the utility name, operator, number of overflows, and total quantity released. The bill further requires that, for each facility that experienced an overflow, DEP submit with the SSO report the annual report required for water pollution operation permits regarding facility revenues and expenditures.

The bill requires DEP to assess a penalty of $2,000 for the failure to survey the wastewater collection system and take steps to reduce SSOs, pipe leaks, and I&I for a wastewater violation not involving a surface water or groundwater violation.

The bill requires DEP to give funding priority to grant proposals submitted by a domestic wastewater utility under the water projects grant program that implement the replacement action plans and water pollution operation permit conditions.

Agricultural BMPs

The bill requires DACS to conduct onsite inspections at least every two years for agricultural producers enrolled in a BMP to ensure proper implementation of BMPs. The bill further requires verification to include a review of BMP documentation, including nitrogen and phosphorus fertilizer application records. The bill requires DACS to provide all documentation regarding BMPs to DEP.

The bill requires UF/IFAS, in cooperation with DACS, to annually develop research plans and legislative budget requests related to evaluating and developing BMPs. The bill further requires UF/IFAS to submit such research plans to DEP and DACS by August 1 of each year to be considered for funding.

Biosolids

The bill requires DEP to adopt rules for biosolids management and specifies that such rules may not take effect until ratified by the Legislature.

Important State Interest

The bill specifies that the Legislature determines that the bill fulfills an important state interest.

B. SECTION DIRECTORY:

Section 1. Transfers the authority of the Onsite Sewage Program from DOH to DEP via a type two transfer.

Section 2. Amends s. 373.036, F.S., relating to consolidated annual reports.

Section 3. Amends s. 373.4131, F.S., relating to statewide ERP rules.

Section 4. Effective July 1, 2020, amends s. 381.0065, F.S., relating to OSTDSs.

Section 5. Amends s. 381.0065, F.S., relating to OSTDSs.

Section 6. Amends s. 381.00651, F.S., relating to periodic evaluation and assessment of OSTDSs.

Section 7. Effective July 1, 2020, creates s. 381.00652, F.S., to create the OSTDS TAC.

Section 8. Repeals s. 381.0068, F.S., relating to the TRAP.

Section 9. Amends s. 381.0101, F.S., to make conforming changes.

Section 10. Amends s. 403.061, F.S., relating to DEP powers and duties.

Section 11. Creates s. 403.0616, F.S., to create a real-time water quality monitoring program.

Section 12. Amends s. 403.067, F.S., relating to the development of BMAPs and implementation of TMDLs.

Section 13. Effective July 1, 2020, creates s. 403.0671, F.S., relating to BMAP wastewater reports.

Section 14. Creates s. 403.0673, F.S., relating to the wastewater grant program.

Section 15. Creates s. 403.0855, F.S., relating to biosolids management.

Section 16. Amends s. 403.086, F.S., relating to sewage disposal facilities.

Section 17. Amends s. 403.087, F.S., relating to permits.

Section 18. Amends s. 403.088, F.S., relating to water pollution operation permits.

Section 19. Amends s. 403.0891, F.S., relating to state, regional, and local stormwater management plans and programs.

Section 20. Amends s. 403.121, F.S., relating to enforcement, procedure, and remedies.

Section 21. Amends s. 403.885, F.S., relating to the Water Projects Grant Program.

Section 22. Provides an important state interest.

Section 23. Amends s. 153.54, F.S., to make conforming changes.

Section 24. Amends s. 153.73, F.S., to make conforming changes.

Section 25. Amends s. 163.3180, F.S., to make conforming changes.

Section 26. Amends s. 180.03, F.S., to make conforming changes.

Section 32. Amends s. 311.105, F.S., to make conforming changes.

Section 27. Amends s. 327.46, F.S., to make conforming changes.

Section 28. Amends s. 373.250, F.S., to make conforming changes.

Section 29. Amends s. 373.414, F.S., to make conforming changes.

Section 30. Amends s. 373.707, F.S., to make conforming changes.

Section 31. Amends s. 373.705, F.S., to make conforming changes.

Section 32. Amends s. 373.709, F.S., to make conforming changes.

Section 33. Amends s. 373.807, F.S., to make conforming changes.

Section 34. Amends s. 376.307, F.S., to make conforming changes.

Section 35. Amends s. 380.0552, F.S., to make conforming changes.

Section 36. Amends s. 381.006, F.S., to make conforming changes.

Section 37. Amends s. 381.0061, F.S., to make conforming changes.

Section 38. Amends s. 381.0064, F.S., to make conforming changes.

Section 39. Amends s. 403.08601, F.S., to make conforming changes.

Section 40. Amends s. 403.0871, F.S., to make conforming changes.

Section 41. Amends s. 403.0872, F.S., to make conforming changes.

Section 42. Amends s. 403.1835, F.S., to make conforming changes.

Section 43. Amends s. 403.707, F.S., to make conforming changes.

Section 44. Amends s. 403.861, F.S., to make conforming changes.

Section 45. Amends s. 489.551, F.S., to make conforming changes.

Section 46. Amends s. 590.02, F.S., to make conforming changes.

Section 47. Provides an effective date of July 1, 2021, except as otherwise expressly provided in the bill, and except for the effective date, which takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may have an indeterminate positive impact on state government revenues because some revenue could be realized from enforcement citations and fines, but this revenue stream would likely be insignificant.

2. Expenditures:

   The bill may have an insignificant negative fiscal impact on DEP and DOH that can be absorbed within existing resources to complete recommendations on the type two transfer. The bill transfers all of the resources and personnel for the OSTDS program by a type two transfer from DOH to DEP, so DEP would use these resources to regulate the OSTDS program beginning July 1, 2021. There may also be an insignificant negative fiscal impact on DEP that can be absorbed within existing resources to administer and support the OSTDS TAC.

   The bill requires DEP to make changes to multiple regulatory programs, update BMAPs, and develop, submit, and review multiple new reports.

   The bill requires DEP to establish a real-time water quality monitoring program. The bill also requires DEP to create a wastewater grant program. These requirements are subject to appropriation, so there is no fiscal impact.

   The bill requires DACS to conduct onsite inspections at least every two years for agricultural producers enrolled in a BMP

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   The proposed House of Representatives' Fiscal Year 2020-2021 General Appropriations Act appropriates $955,592 in trust funds and 8.00 FTE to DACS for the expected increase in the number of required site visits to be conducted; $122 million in nonrecurring general revenue funds for water quality improvement cost share grants; $10.8 million in nonrecurring general revenue funds for water quality improvements and monitoring; and $50 million in nonrecurring general revenue and trust funds for TMDLs.

   FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an indeterminate negative fiscal impact on local governments because they will be required to create wastewater treatment plans and OSTDS remediation plans.

   The bill may have an indeterminate negative fiscal impact to any local government-owned wastewater facilities discharging into the IRL because they must upgrade to provide advanced waste treatment.

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

   It is unclear whether the transfer of the OSTDS program to DEP on July 1, 2021, will result in changes to the program that could affect the private sector, such as changes in the cost of permit fees or the approval of using lower cost, nutrient reducing OSTDSs.

   The bill may have an indeterminate negative fiscal impact to the private sector because the bill requires updates to stormwater rules and the adoption of new OSTDS and wastewater rules. However, if that impact exceeds $1 million over 5 years, the rules will require legislative ratification.

   The additional requirements of OSTDS remediation plans and wastewater treatment plans may result in a negative fiscal impact on the private sector entities within BMAPs that must address OSTDS or wastewater pollution to meet the TMDL.

The bill may have an indeterminate negative fiscal impact to any private wastewater facilities discharging into the IRL because the facility must make facility improvements to provide advanced waste treatment.

C. FISCAL COMMENTS:

None.

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 requires local governments to develop wastewater treatment plans and OSTDS remediation plans. An exemption may apply if the requirement results in an insignificant fiscal impact. In addition, an exception may apply because the requirement applies to similarly situated persons and the bill provides a legislative finding that the requirements of the bill fulfill an important state interest.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DEP and the WMDs to adopt rules to implement the various programs, reports, and other requirements related to water quality that are established by the bill. DEP and the WMDs appear to have sufficient rulemaking authority to adopt the rules required by the bill. In addition, the bill requires the rules for biosolids management to be ratified by the Legislature; as such, the biosolids rules will not take effect until ratified.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In Section 21 of the bill, it is unclear whether the utilities at issue get priority funding for the Water Projects Grant Program or grants under the State Revolving Loan fund program under s. 403.1835, F.S., or both.

On line 2272 of the bill, the bill section that amends s. 311.105, F.S., is designated as Section 32; however, this section should be designated as Section 27, and each subsequent section should be renumbered.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to water quality improvements; requiring the Department of Health to provide a report regarding the Onsite Sewage Program to the Governor and Legislature by a specified date; directing the Department of Health and the Department of Environmental Protection to submit recommendations regarding the transfer of the program to the Governor and Legislature by a specified date; requiring the departments to enter into an interagency agreement that meets certain requirements by a specified date; transferring the Onsite Sewage Program in the Department of Health to the Department of Environmental Protection; providing that certain employees retain and transfer certain types of leave upon the transfer; amending s. 373.036, F.S.; directing water management districts to submit consolidated annual reports to the Office of Economic and Demographic Research; requiring such reports to include connection and conversion projects for onsite sewage treatment and disposal systems; amending s. 373.4131, F.S.; requiring the Department of Environmental Protection to include stormwater structural control inspections as part of its regular staff training; requiring the department and the water

management districts to adopt rules regarding stormwater design and operation by a specified date; requiring the department to evaluate data relating to self-certification and provide the Legislature with recommendation amending s. 373.811, F.S.; providing criteria for calculating lot size within priority focus areas for Outstanding Florida Springs; amending s. 381.0065, F.S.; requiring the department to adopt rules for the location of onsite sewage treatment and disposal systems and complete such rulemaking by a specified date; requiring the department to evaluate certain data relating to the self-certification process for statewide environmental resource permits and provide the Legislature with recommendations by a specified date; providing that certain provisions relating to existing setback requirements are applicable to permits only until the adoption of certain rules by the department; directing the Department of Health to determine that a hardship exists for certain onsite sewage treatment and disposal system variance requests and to allow the use of specified nutrient removing onsite sewage treatment and disposal systems to meet water quality protection and restoration requirements; providing a definition; conforming provisions to changes made by the act;

removing provisions requiring certain onsite sewage treatment and disposal system research projects to be approved by a Department of Health technical review and advisory panel; removing provisions prohibiting the award of research projects to certain entities; removing provisions establishing a Department of Health onsite sewage treatment and disposal system research review and advisory committee; amending s. 381.00651, F.S.; directing county health departments to coordinate with the Department of Environmental Protection to administer onsite sewage treatment and disposal system evaluation and assessment programs; conforming provisions to changes made by the act; creating s. 381.00652, F.S.; authorizing the Department of Environmental Protection, in consultation with the Department of Health, to appoint an onsite sewage treatment and disposal systems technical advisory committee; providing for committee purpose, membership, and expiration; requiring the committee to submit its recommendations to the Governor and Legislature; repealing s. 381.0068, F.S., relating to the Department of Health onsite sewage treatment and disposal systems technical review and advisory panel; amending s. 403.061, F.S.; requiring the department to adopt rules relating to the

underground pipes of wastewater collection systems; requiring the department to adopt rules to require public utilities or their affiliated companies that hold or are seeking a wastewater discharge permit to file certain reports and data with the department; creating s. 403.0616, F.S.; requiring the department, subject to legislative appropriation, to establish a real-time water quality monitoring program; encouraging the formation of public-private partnerships; amending s. 403.067, F.S.; requiring basin management action plans for nutrient total maximum daily loads to include wastewater treatment and onsite sewage treatment and disposal system remediation plans that meet certain requirements; requiring the Department of Agriculture and Consumer Services to collect fertilization and nutrient records from certain agricultural producers and provide the information to the department annually by a specified date; requiring the Department of Agriculture and Consumer Services to perform onsite inspections of the agricultural producers at specified intervals; authorizing certain entities to develop research plans and legislative budget requests relating to best management practices by a specified date; requiring the University of Florida Institute of Food and

Agricultural Sciences to submit such plans to the department and the Department of Agriculture and Consumer Services by a specific date; creating s. 403.0671, F.S.; directing the Department of Environmental Protection, in coordination with the county health departments, wastewater treatment facilities, and other governmental entities, to submit a report to the Governor and Legislature by a specified date and to submit certain wastewater project cost estimates to the Office of Economic and Demographic Research; creating s. 403.0673, F.S.; establishing a wastewater grant program within the Department of Environmental Protection; authorizing the department to distribute appropriated funds for certain projects; providing requirements for the distribution; requiring the department to coordinate with each water management district to identify grant recipients; requiring an annual report to the Governor and Legislature by a specified date; creating s. 403.0855, F.S.; providing legislative findings regarding the regulation of biosolids management in this state; requiring the department to adopt rules for biosolids management; providing that such rules are not effective until ratified by the Legislature; amending s. 403.086, F.S.; prohibiting sewage disposal

facilities from disposing waste into the Indian River Lagoon beginning on a specified date without certain advanced waste treatment; directing the Department of Environmental Protection, in consultation with the water management districts and sewage disposal facilities, to submit a report to the Governor and Legislature by a specified date; requiring sewage disposal facilities to have a power outage contingency plan, to take steps to prevent overflows and leaks and ensure that the wastewater reaches the facility for appropriate treatment, and to provide the Department of Environmental Protection with certain information; requiring the department to adopt rules; providing that specified compliance is evidence in mitigation for assessment of certain penalties; amending s. 403.087, F.S.; requiring the department to issue operation permits for certain domestic wastewater treatment facilities under certain circumstances; amending s. 403.088, F.S.; revising the permit conditions for a water pollution operation permit; requiring the department to submit a report identifying all wastewater utilities that experienced sanitary sewer overflows to the Governor and Legislature by a specified date; amending s. 403.0891, F.S.; requiring model stormwater management programs

to contain model ordinances for nutrient reduction practices and green infrastructure; amending s. 403.121, F.S.; providing a civil penalty for failure to conduct certain surveys of wastewater collection systems and to take steps to reduce overflows, pipe leaks, and inflow and infiltration; amending s. 403.885, F.S.; requiring the department to give certain domestic wastewater utilities funding priority within the Water Projects Grant Program; providing a determination and declaration of important state interest; amending ss. 153.54, 153.73, 163.3180, 180.03, 311.105, 327.46, 373.250, 373.414, 373.705, 373.707, 373.709, 373.807, 376.307, 380.0552, 381.006, 381.0061, 381.0064, 403.08601, 403.0871, 403.0872, 403.1835, 403.707, 403.861, 489.551, and 590.02, F.S.; conforming cross-references and provisions to changes made by the act; providing effective dates.

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

Section 1. (1) By July 1, 2020, the Department of Health must provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing the following information regarding the Onsite Sewage Program:

(a) The average number of permits issued each year;

(b) The number of department employees conducting work on or related to the program each year; and

(c) The program's costs and expenditures, including, but not limited to, salaries and benefits, equipment costs, and contracting costs.

(2) By December 31, 2020, the Department of Health and the Department of Environmental Protection shall submit recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding the type two transfer of the Onsite Sewage Program in subsection (4). The recommendations must address all aspects of the type two transfer, including the continued role of the county health departments in the permitting, inspection, and tracking of onsite sewage treatment and disposal systems under the direction of the Department of Environmental Protection.

(3) By June 30, 2021, the Department of Health and the Department of Environmental Protection shall enter into an interagency agreement based on the recommendations required under subsection (2) and on recommendations from a plan that must address all agency cooperation for a period of not less than 5 years after the transfer, including:

(a) The continued role of the county health departments in the permitting, inspection, data management, and tracking of onsite sewage treatment and disposal systems under the direction

of the Department of Environmental Protection.

(b) The appropriate proportionate number of administrative, auditing, inspector general, attorney, and operational support positions, and their related funding levels and sources and assigned property, to be transferred from the Office of General Counsel, the Office of Inspector General, and the Division of Administrative Services or other relevant offices or divisions within the Department of Health to the Department of Environmental Protection.

(c) The development of a recommended plan to address the transfer or shared use of buildings, regional offices, and other facilities used or owned by the Department of Health.

(d) Any operating budget adjustments that are necessary to implement the requirements of this act. Adjustments made to the operating budgets of the agencies in the implementation of this act must be made in consultation with the appropriate substantive and fiscal committees of the Senate and the House of Representatives. The revisions to the approved operating budgets for the 2021-2022 fiscal year which are necessary to reflect the organizational changes made by this act must be implemented pursuant to s. 216.292(4)(d), Florida Statutes, and are subject to s. 216.177, Florida Statutes. Subsequent adjustments between the Department of Health and the Department of Environmental Protection which are determined necessary by the respective agencies and approved by the Executive Office of the Governor

are authorized and subject to s. 216.177, Florida Statutes. The appropriate substantive committees of the Senate and the House of Representatives must also be notified of the proposed revisions to ensure their consistency with legislative policy and intent.

(4) Effective July 1, 2021, all powers, duties, functions, records, offices, personnel, associated administrative support positions, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds for the regulation of onsite sewage treatment and disposal systems relating to the Onsite Sewage Program in the Department of Health are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, to the Department of Environmental Protection.

(5) Notwithstanding chapter 60L-34, Florida Administrative Code, or any law to the contrary, employees who are transferred from the Department of Health to the Department of Environmental Protection to fill positions transferred by this act retain and transfer any accrued annual leave, sick leave, and regular and special compensatory leave balances.

Section 2. Paragraphs (a) and (b) of subsection (7) of section 373.036, Florida Statutes, are amended to read:

373.036 Florida water plan; district water management plans.—

(7) CONSOLIDATED WATER MANAGEMENT DISTRICT ANNUAL REPORT.—

(a) By March 1, annually, each water management district shall prepare and submit to the Office of Economic and Demographic Research, the department, the Governor, the President of the Senate, and the Speaker of the House of Representatives a consolidated water management district annual report on the management of water resources. In addition, copies must be provided by the water management districts to the chairs of all legislative committees having substantive or fiscal jurisdiction over the districts and the governing board of each county in the district having jurisdiction or deriving any funds for operations of the district. Copies of the consolidated annual report must be made available to the public, either in printed or electronic format.

(b) The consolidated annual report shall contain the following elements, as appropriate to that water management district:

1. A district water management plan annual report or the annual work plan report allowed in subparagraph (2)(e)4.

2. The department-approved minimum flows and minimum water levels annual priority list and schedule required by s. 373.042(3).

3. The annual 5-year capital improvements plan required by s. 373.536(6)(a)3.

4. The alternative water supplies annual report required

by s. 373.707(8)(n).

5. The final annual 5-year water resource development work program required by s. 373.536(6)(a)4.

6. The Florida Forever Water Management District Work Plan annual report required by s. 373.199(7).

7. The mitigation donation annual report required by s. 373.414(1)(b)2.

8. Information on all projects related to water quality or water quantity as part of a 5-year work program, including:

a. A list of all specific projects identified to implement a basin management action plan, including any projects to connect onsite sewage treatment and disposal systems to central sewerage systems and convert onsite sewage treatment and disposal systems to advanced nutrient removing onsite sewage treatment and disposal systems, or a recovery or prevention strategy;

b. A priority ranking for each listed project for which state funding through the water resources development work program is requested, which must be made available to the public for comment at least 30 days before submission of the consolidated annual report;

c. The estimated cost for each listed project;

d. The estimated completion date for each listed project;

e. The source and amount of financial assistance to be made available by the department, a water management district,

or other entity for each listed project; and

f. A quantitative estimate of each listed project's benefit to the watershed, water body, or water segment in which it is located.

9. A grade for each watershed, water body, or water segment in which a project listed under subparagraph 8. is located representing the level of impairment and violations of adopted minimum flow or minimum water levels. The grading system must reflect the severity of the impairment of the watershed, water body, or water segment.

Section 3. Subsection (5) of section 373.4131, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

373.4131 Statewide environmental resource permitting rules.—

(5) To ensure consistent implementation and interpretation of the rules adopted pursuant to this section, the department shall conduct or oversee regular assessment and training of its staff and the staffs of the water management districts and local governments delegated local pollution control program authority under s. 373.441. The training must include coordinating field inspections of publicly and privately owned stormwater structural controls, such as stormwater retention and detention ponds.

(6) By January 1, 2021:

(a) The department and the water management districts shall initiate rulemaking to update the stormwater design and operation regulations using the most recent scientific information available; and

(b) The department shall evaluate inspection data relating to compliance by those entities that submit a self-certification under s. 403.814(12) and provide the Legislature with recommendations for improvements to the self-certification process.

Section 4. Effective July 1, 2020, paragraph (h) of subsection (4) of section 381.0065, Florida Statutes, is amended, and subsection (7) is added to that section, to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system without first obtaining a permit approved by the department. The department may issue permits to carry out this section, but shall not make the issuance of such permits contingent upon prior approval by the Department of Environmental Protection, except that the issuance of a permit for work seaward of the coastal construction control line established under s. 161.053 shall be contingent upon receipt of any required coastal construction control line permit from the Department of Environmental Protection. A construction

permit is valid for 18 months from the issuance date and may be extended by the department for one 90-day period under rules adopted by the department. A repair permit is valid for 90 days from the date of issuance. An operating permit must be obtained prior to the use of any aerobic treatment unit or if the establishment generates commercial waste. Buildings or establishments that use an aerobic treatment unit or generate commercial waste shall be inspected by the department at least annually to assure compliance with the terms of the operating permit. The operating permit for a commercial wastewater system is valid for 1 year from the date of issuance and must be renewed annually. The operating permit for an aerobic treatment unit is valid for 2 years from the date of issuance and must be renewed every 2 years. If all information pertaining to the siting, location, and installation conditions or repair of an onsite sewage treatment and disposal system remains the same, a construction or repair permit for the onsite sewage treatment and disposal system may be transferred to another person, if the transferee files, within 60 days after the transfer of ownership, an amended application providing all corrected information and proof of ownership of the property. There is no fee associated with the processing of this supplemental information. A person may not contract to construct, modify, alter, repair, service, abandon, or maintain any portion of an onsite sewage treatment and disposal system without being

registered under part III of chapter 489. A property owner who personally performs construction, maintenance, or repairs to a system serving his or her own owner-occupied single-family residence is exempt from registration requirements for performing such construction, maintenance, or repairs on that residence, but is subject to all permitting requirements. A municipality or political subdivision of the state may not issue a building or plumbing permit for any building that requires the use of an onsite sewage treatment and disposal system unless the owner or builder has received a construction permit for such system from the department. A building or structure may not be occupied and a municipality, political subdivision, or any state or federal agency may not authorize occupancy until the department approves the final installation of the onsite sewage treatment and disposal system. A municipality or political subdivision of the state may not approve any change in occupancy or tenancy of a building that uses an onsite sewage treatment and disposal system until the department has reviewed the use of the system with the proposed change, approved the change, and amended the operating permit.

(h)1. The department may grant variances in hardship cases which may be less restrictive than the provisions specified in this section. If a variance is granted and the onsite sewage treatment and disposal system construction permit has been issued, the variance may be transferred with the system

construction permit, if the transferee files, within 60 days after the transfer of ownership, an amended construction permit application providing all corrected information and proof of ownership of the property and if the same variance would have been required for the new owner of the property as was originally granted to the original applicant for the variance. A ~~There is no~~ fee is not associated with the processing of this supplemental information. A variance may not be granted under this section until the department is satisfied that:

a. The hardship was not caused intentionally by the action of the applicant;

b. A ~~No~~ reasonable alternative, taking into consideration factors such as cost, does not exist ~~exists~~ for the treatment of the sewage; and

c. The discharge from the onsite sewage treatment and disposal system will not adversely affect the health of the applicant or the public or significantly degrade the groundwater or surface waters.

Where soil conditions, water table elevation, and setback provisions are determined by the department to be satisfactory, special consideration must be given to those lots platted before 1972.

2. The department shall determine that a hardship exists when an applicant for a variance demonstrates that the lot

subject to the variance request is at least 0.85 acres and that other lots in the immediate proximity average at least 1 acre. For purposes of this subparagraph, the term "immediate proximity" means within the same unit or phase of a subdivision as, adjacent or contiguous to, or across the road from, the lot subject to the variance request.

3.~~2.~~ The department shall appoint and staff a variance review and advisory committee, which shall meet monthly to recommend agency action on variance requests. The committee shall make its recommendations on variance requests at the meeting in which the application is scheduled for consideration, except for an extraordinary change in circumstances, the receipt of new information that raises new issues, or when the applicant requests an extension. The committee shall consider the criteria in subparagraph 1. in its recommended agency action on variance requests and shall also strive to allow property owners the full use of their land where possible. The committee consists of the following:

a. The State Surgeon General or his or her designee.

b. A representative from the county health departments.

c. A representative from the home building industry recommended by the Florida Home Builders Association.

d. A representative from the septic tank industry recommended by the Florida Onsite Wastewater Association.

e. A representative from the Department of Environmental

Protection.

f. A representative from the real estate industry who is also a developer in this state who develops lots using onsite sewage treatment and disposal systems, recommended by the Florida Association of Realtors.

g. A representative from the engineering profession recommended by the Florida Engineering Society.

Members shall be appointed for a term of 3 years, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members shall serve without remuneration, but if requested, shall be reimbursed for per diem and travel expenses as provided in s. 112.061.

(7) USE OF NUTRIENT REMOVING ONSITE SEWAGE TREATMENT AND DISPOSAL SYSTEMS.-In addition to allowing the use of other department-approved nutrient removing onsite sewage treatment and disposal systems to meet the requirements of a total maximum daily load or basin management action plan adopted pursuant to s. 403.067, a reasonable assurance plan, or other water quality protection and restoration requirements, the department shall allow the use of American National Standards Institute 245 systems approved by the National Sanitation Foundation International before July 1, 2020.

Section 5. Paragraphs (d) and (e) and (g) through (q) of subsection (2) of section 381.0065, Florida Statutes, are

redesignated as paragraphs (e) and (g) and (h) through (r), respectively, paragraph (j) of subsection (3) and subsection (4), as amended by this act, are amended, and a new paragraph (d) is added to subsection (2) of that section, to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(2) DEFINITIONS.—As used in ss. 381.0065-381.0067, the term:

(d) "Department" means the Department of Environmental Protection.

(3) DUTIES AND POWERS OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION ~~HEALTH~~.—The department shall:

(j) Supervise research on, demonstration of, and training on the performance, environmental impact, and public health impact of onsite sewage treatment and disposal systems within this state. Research fees collected under s. 381.0066(2)(k) must be used to develop and fund hands-on training centers designed to provide practical information about onsite sewage treatment and disposal systems to septic tank contractors, master septic tank contractors, contractors, inspectors, engineers, and the public and must also be used to fund research projects which focus on improvements of onsite sewage treatment and disposal systems, including use of performance-based standards and reduction of environmental impact. Research projects shall be ~~initially approved by the technical review and advisory panel~~

~~and shall be~~ applicable to and reflect the soil conditions specific to the state ~~Florida~~. Such projects shall be awarded through competitive negotiation, using the procedures provided in s. 287.055, to public or private entities that have experience in onsite sewage treatment and disposal systems in the state ~~Florida~~ and that are principally located in the state ~~Florida~~. ~~Research projects shall not be awarded to firms or entities that employ or are associated with persons who serve on either the technical review and advisory panel or the research review and advisory committee.~~

(4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system without first obtaining a permit approved by the department. The department may issue permits to carry out this section, but may ~~shall~~ not make the issuance of such permits contingent upon prior approval by the department ~~of Environmental Protection~~, except that the issuance of a permit for work seaward of the coastal construction control line established under s. 161.053 shall be contingent upon receipt of any required coastal construction control line permit from the department ~~of Environmental Protection~~. A construction permit is valid for 18 months after ~~from~~ the date of issuance ~~date~~ and may be extended by the department for one 90-day period under rules adopted by the department. A repair permit is valid for 90 days after ~~from~~ the date of issuance. An operating permit

must be obtained before ~~prior to~~ the use of any aerobic treatment unit or if the establishment generates commercial waste. Buildings or establishments that use an aerobic treatment unit or generate commercial waste shall be inspected by the department at least annually to assure compliance with the terms of the operating permit. The operating permit for a commercial wastewater system is valid for 1 year after ~~from~~ the date of issuance and must be renewed annually. The operating permit for an aerobic treatment unit is valid for 2 years after ~~from~~ the date of issuance and must be renewed every 2 years. If all information pertaining to the siting, location, and installation conditions or repair of an onsite sewage treatment and disposal system remains the same, a construction or repair permit for the onsite sewage treatment and disposal system may be transferred to another person, if the transferee files, within 60 days after the transfer of ownership, an amended application providing all corrected information and proof of ownership of the property. A fee is not associated with the processing of this supplemental information. A person may not contract to construct, modify, alter, repair, service, abandon, or maintain any portion of an onsite sewage treatment and disposal system without being registered under part III of chapter 489. A property owner who personally performs construction, maintenance, or repairs to a system serving his or her own owner-occupied single-family residence is exempt from registration requirements for

performing such construction, maintenance, or repairs on that residence, but is subject to all permitting requirements. A municipality or political subdivision of the state may not issue a building or plumbing permit for any building that requires the use of an onsite sewage treatment and disposal system unless the owner or builder has received a construction permit for such system from the department. A building or structure may not be occupied and a municipality, political subdivision, or any state or federal agency may not authorize occupancy until the department approves the final installation of the onsite sewage treatment and disposal system. A municipality or political subdivision of the state may not approve any change in occupancy or tenancy of a building that uses an onsite sewage treatment and disposal system until the department has reviewed the use of the system with the proposed change, approved the change, and amended the operating permit.

(a) Subdivisions and lots in which each lot has a minimum area of at least one-half acre and either a minimum dimension of 100 feet or a mean of at least 100 feet of the side bordering the street and the distance formed by a line parallel to the side bordering the street drawn between the two most distant points of the remainder of the lot may be developed with a water system regulated under s. 381.0062 and onsite sewage treatment and disposal systems, provided the projected daily sewage flow does not exceed an average of 1,500 gallons per acre per day,

and provided satisfactory drinking water can be obtained and all distance and setback, soil condition, water table elevation, and other related requirements of this section and rules adopted under this section can be met.

(b) Subdivisions and lots using a public water system as defined in s. 403.852 may use onsite sewage treatment and disposal systems, provided there are no more than four lots per acre, provided the projected daily sewage flow does not exceed an average of 2,500 gallons per acre per day, and provided that all distance and setback, soil condition, water table elevation, and other related requirements that are generally applicable to the use of onsite sewage treatment and disposal systems are met.

(c) Notwithstanding paragraphs (a) and (b), for subdivisions platted of record on or before October 1, 1991, when a developer or other appropriate entity has previously made or makes provisions, including financial assurances or other commitments, acceptable to the department ~~of Health~~, that a central water system will be installed by a regulated public utility based on a density formula, private potable wells may be used with onsite sewage treatment and disposal systems until the agreed-upon densities are reached. In a subdivision regulated by this paragraph, the average daily sewage flow may not exceed 2,500 gallons per acre per day. This section does not affect the validity of existing prior agreements. After October 1, 1991, the exception provided under this paragraph is not available to

a developer or other appropriate entity.

(d) Paragraphs (a) and (b) do not apply to any proposed residential subdivision with more than 50 lots or to any proposed commercial subdivision with more than 5 lots where a publicly owned or investor-owned sewage treatment ~~sewerage~~ system is available. ~~It is the intent of~~ This paragraph does not ~~to~~ allow development of additional proposed subdivisions in order to evade the requirements of this paragraph.

(e) The department shall adopt rules to locate onsite sewage treatment and disposal systems, including establishing setback distances, to prevent groundwater contamination and surface water contamination and to preserve the public health. The rulemaking process for such rules must be completed by July 1, 2022, and the department shall notify the Division of Law Revision of the date such rules are adopted. The rules must consider conventional and advanced onsite sewage treatment and disposal system designs, impaired or degraded water bodies, wastewater and drinking water infrastructure, potable water sources, nonpotable wells, stormwater infrastructure, the onsite sewage treatment and disposal system remediation plans developed pursuant to s. 403.067(7)(a)9.b., nutrient pollution, and the recommendations of the onsite sewage treatment and disposal systems technical advisory committee established pursuant to s. 381.00652.

(f) ~~(e)~~ Onsite sewage treatment and disposal systems that

are permitted before the rules in paragraph (e) take effect may ~~must~~ not be placed closer than:

1. Seventy-five feet from a private potable well.

2. Two hundred feet from a public potable well serving a residential or nonresidential establishment having a total sewage flow of greater than 2,000 gallons per day.

3. One hundred feet from a public potable well serving a residential or nonresidential establishment having a total sewage flow of less than or equal to 2,000 gallons per day.

4. Fifty feet from any nonpotable well.

5. Ten feet from any storm sewer pipe, to the maximum extent possible, but in no instance shall the setback be less than 5 feet.

6. Seventy-five feet from the mean high-water line of a tidally influenced surface water body.

7. Seventy-five feet from the mean annual flood line of a permanent nontidal surface water body.

8. Fifteen feet from the design high-water line of retention areas, detention areas, or swales designed to contain standing or flowing water for less than 72 hours after a rainfall or the design high-water level of normally dry drainage ditches or normally dry individual lot stormwater retention areas.

~~(f) Except as provided under paragraphs (c) and (t), no limitations shall be imposed by rule, relating to the distance~~

~~between an onsite disposal system and any area that either permanently or temporarily has visible surface water.~~

(g) ~~All provisions of~~ This section and rules adopted under this section relating to soil condition, water table elevation, distance, and other setback requirements must be equally applied to all lots, with the following exceptions:

1. Any residential lot that was platted and recorded on or after January 1, 1972, or that is part of a residential subdivision that was approved by the appropriate permitting agency on or after January 1, 1972, and that was eligible for an onsite sewage treatment and disposal system construction permit on the date of such platting and recording or approval shall be eligible for an onsite sewage treatment and disposal system construction permit, regardless of when the application for a permit is made. If rules in effect at the time the permit application is filed cannot be met, residential lots platted and recorded or approved on or after January 1, 1972, shall, to the maximum extent possible, comply with the rules in effect at the time the permit application is filed. At a minimum, however, those residential lots platted and recorded or approved on or after January 1, 1972, but before January 1, 1983, shall comply with those rules in effect on January 1, 1983, and those residential lots platted and recorded or approved on or after January 1, 1983, shall comply with those rules in effect at the time of such platting and recording or approval. In determining

the maximum extent of compliance with current rules that is possible, the department shall allow structures and appurtenances thereto which were authorized at the time such lots were platted and recorded or approved.

2. Lots platted before 1972 are subject to a 50-foot minimum surface water setback and are not subject to lot size requirements. The projected daily flow for onsite sewage treatment and disposal systems for lots platted before 1972 may not exceed:

a. Two thousand five hundred gallons per acre per day for lots served by public water systems as defined in s. 403.852.

b. One thousand five hundred gallons per acre per day for lots served by water systems regulated under s. 381.0062.

(h)1. The department may grant variances in hardship cases which may be less restrictive than the provisions specified in this section. If a variance is granted and the onsite sewage treatment and disposal system construction permit has been issued, the variance may be transferred with the system construction permit, if the transferee files, within 60 days after the transfer of ownership, an amended construction permit application providing all corrected information and proof of ownership of the property and if the same variance would have been required for the new owner of the property as was originally granted to the original applicant for the variance. A fee is not associated with the processing of this supplemental

information. A variance may not be granted under this section until the department is satisfied that:

a. The hardship was not caused intentionally by the action of the applicant;

b. A reasonable alternative, taking into consideration factors such as cost, does not exist for the treatment of the sewage; and

c. The discharge from the onsite sewage treatment and disposal system will not adversely affect the health of the applicant or the public or significantly degrade the groundwater or surface waters.

Where soil conditions, water table elevation, and setback provisions are determined by the department to be satisfactory, special consideration must be given to those lots platted before 1972.

2. The department shall determine that a hardship exists when an applicant for a variance demonstrates that the lot subject to the variance request is at least 0.85 acres and that other lots in the immediate proximity average at least 1 acre. For purposes of this subparagraph, the term "immediate proximity" means within the same unit or phase of a subdivision as, adjacent or contiguous to, or across the road from, the lot subject to the variance request.

3. The department shall appoint and staff a variance

review and advisory committee, which shall meet monthly to recommend agency action on variance requests. The committee shall make its recommendations on variance requests at the meeting in which the application is scheduled for consideration, except for an extraordinary change in circumstances, the receipt of new information that raises new issues, or when the applicant requests an extension. The committee shall consider the criteria in subparagraph 1. in its recommended agency action on variance requests and shall also strive to allow property owners the full use of their land where possible. The committee consists of the following:

a. The Secretary of Environmental Protection ~~State Surgeon General~~ or his or her designee.

b. A representative from the county health departments.

c. A representative from the home building industry recommended by the Florida Home Builders Association.

d. A representative from the septic tank industry recommended by the Florida Onsite Wastewater Association.

e. A representative from the Department of Health ~~Environmental Protection~~.

f. A representative from the real estate industry who is also a developer in this state who develops lots using onsite sewage treatment and disposal systems, recommended by the Florida Association of Realtors.

g. A representative from the engineering profession

recommended by the Florida Engineering Society.

Members shall be appointed for a term of 3 years, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members shall serve without remuneration, but if requested, shall be reimbursed for per diem and travel expenses as provided in s. 112.061.

(i) A construction permit may not be issued for an onsite sewage treatment and disposal system in any area zoned or used for industrial or manufacturing purposes, or its equivalent, where a publicly owned or investor-owned sewage treatment system is available, or where a likelihood exists that the system will receive toxic, hazardous, or industrial waste. An existing onsite sewage treatment and disposal system may be repaired if a publicly owned or investor-owned sewage treatment ~~sewerage~~ system is not available within 500 feet of the building sewer stub-out and if system construction and operation standards can be met. This paragraph does not require publicly owned or investor-owned sewage ~~sewerage~~ treatment systems to accept anything other than domestic wastewater.

1. A building located in an area zoned or used for industrial or manufacturing purposes, or its equivalent, when such building is served by an onsite sewage treatment and disposal system, must not be occupied until the owner or tenant has obtained written approval from the department. The

776 department may ~~shall~~ not grant approval when the proposed use of
777 the system is to dispose of toxic, hazardous, or industrial
778 wastewater or toxic or hazardous chemicals.
779 2. Each person who owns or operates a business or facility
780 in an area zoned or used for industrial or manufacturing
781 purposes, or its equivalent, or who owns or operates a business
782 that has the potential to generate toxic, hazardous, or
783 industrial wastewater or toxic or hazardous chemicals, and uses
784 an onsite sewage treatment and disposal system that is installed
785 on or after July 5, 1989, must obtain an annual system operating
786 permit from the department. A person who owns or operates a
787 business that uses an onsite sewage treatment and disposal
788 system that was installed and approved before July 5, 1989, does
789 not need to ~~not~~ obtain a system operating permit. However, upon
790 change of ownership or tenancy, the new owner or operator must
791 notify the department of the change, and the new owner or
792 operator must obtain an annual system operating permit,
793 regardless of the date that the system was installed or
794 approved.
795 3. The department shall periodically review and evaluate
796 the continued use of onsite sewage treatment and disposal
797 systems in areas zoned or used for industrial or manufacturing
798 purposes, or its equivalent, and may require the collection and
799 analyses of samples from within and around such systems. If the
800 department finds that toxic or hazardous chemicals or toxic,

hazardous, or industrial wastewater have been or are being disposed of through an onsite sewage treatment and disposal system, the department shall initiate enforcement actions against the owner or tenant to ensure adequate cleanup, treatment, and disposal.

(j) An onsite sewage treatment and disposal system designed by a professional engineer registered in the state and certified by such engineer as complying with performance criteria adopted by the department must be approved by the department subject to the following:

1. The performance criteria applicable to engineer-designed systems must be limited to those necessary to ensure that such systems do not adversely affect the public health or significantly degrade the groundwater or surface water. Such performance criteria shall include consideration of the quality of system effluent, the proposed total sewage flow per acre, wastewater treatment capabilities of the natural or replaced soil, water quality classification of the potential surface-water-receiving body, and the structural and maintenance viability of the system for the treatment of domestic wastewater. However, performance criteria shall address only the performance of a system and not a system's design.

2. A person electing to use ~~utilize~~ an engineer-designed system shall, upon completion of the system design, submit such design, certified by a registered professional engineer, to the

826 county health department. The county health department may use
827 ~~utilize~~ an outside consultant to review the engineer-designed
828 system, with the actual cost of such review to be borne by the
829 applicant. Within 5 working days after receiving an engineer-
830 designed system permit application, the county health department
831 shall request additional information if the application is not
832 complete. Within 15 working days after receiving a complete
833 application for an engineer-designed system, the county health
834 department ~~either~~ shall issue the permit or, if it determines
835 that the system does not comply with the performance criteria,
836 shall notify the applicant of that determination and refer the
837 application to the department for a determination as to whether
838 the system should be approved, disapproved, or approved with
839 modification. The department engineer's determination shall
840 prevail over the action of the county health department. The
841 applicant shall be notified in writing of the department's
842 determination and of the applicant's rights to pursue a variance
843 or seek review under the provisions of chapter 120.
844 3. The owner of an engineer-designed performance-based
845 system must maintain a current maintenance service agreement
846 with a maintenance entity permitted by the department. The
847 maintenance entity shall inspect each system at least twice each
848 year and shall report quarterly to the department on the number
849 of systems inspected and serviced. The reports may be submitted
850 electronically.

4. The property owner of an owner-occupied, single-family residence may be approved and permitted by the department as a maintenance entity for his or her own performance-based treatment system upon written certification from the system manufacturer's approved representative that the property owner has received training on the proper installation and service of the system. The maintenance service agreement must conspicuously disclose that the property owner has the right to maintain his or her own system and is exempt from contractor registration requirements for performing construction, maintenance, or repairs on the system but is subject to all permitting requirements.

5. The property owner shall obtain a biennial system operating permit from the department for each system. The department shall inspect the system at least annually, or on such periodic basis as the fee collected permits, and may collect system-effluent samples if appropriate to determine compliance with the performance criteria. The fee for the biennial operating permit shall be collected beginning with the second year of system operation.

6. If an engineer-designed system fails to properly function or fails to meet performance standards, the system shall be re-engineered, if necessary, to bring the system into compliance with the provisions of this section.

(k) An innovative system may be approved in conjunction

with an engineer-designed site-specific system that ~~which~~ is certified by the engineer to meet the performance-based criteria adopted by the department.

(l) For the Florida Keys, the department shall adopt a special rule for the construction, installation, modification, operation, repair, maintenance, and performance of onsite sewage treatment and disposal systems which considers the unique soil conditions and water table elevations, densities, and setback requirements. On lots where a setback distance of 75 feet from surface waters, saltmarsh, and buttonwood association habitat areas cannot be met, an injection well, approved and permitted by the department, may be used for disposal of effluent from onsite sewage treatment and disposal systems. The following additional requirements apply to onsite sewage treatment and disposal systems in Monroe County:

1. The county, each municipality, and those special districts established for the purpose of the collection, transmission, treatment, or disposal of sewage shall ensure, in accordance with the specific schedules adopted by the Administration Commission under s. 380.0552, the completion of onsite sewage treatment and disposal system upgrades to meet the requirements of this paragraph.

2. Onsite sewage treatment and disposal systems must cease discharge by December 31, 2015, or must comply with department rules and provide the level of treatment which, on a permitted

annual average basis, produces an effluent that contains no more than the following concentrations:

a. Biochemical Oxygen Demand (CBOD5) of 10 mg/l.

b. Suspended Solids of 10 mg/l.

c. Total Nitrogen, expressed as N, of 10 mg/l or a reduction in nitrogen of at least 70 percent. A system that has been tested and certified to reduce nitrogen concentrations by at least 70 percent shall be deemed to be in compliance with this standard.

d. Total Phosphorus, expressed as P, of 1 mg/l.

In addition, onsite sewage treatment and disposal systems discharging to an injection well must provide basic disinfection as defined by department rule.

3. In areas not scheduled to be served by a central sewerage system ~~sewer~~, onsite sewage treatment and disposal systems must, by December 31, 2015, comply with department rules and provide the level of treatment described in subparagraph 2.

4. In areas scheduled to be served by a central sewerage system ~~sewer~~ by December 31, 2015, if the property owner has paid a connection fee or assessment for connection to the central sewerage ~~sewer~~ system, the property owner may install a holding tank with a high water alarm or an onsite sewage treatment and disposal system that meets the following minimum standards:

a. The existing tanks must be pumped and inspected and certified as being watertight and free of defects in accordance with department rule; and

b. A sand-lined drainfield or injection well in accordance with department rule must be installed.

5. Onsite sewage treatment and disposal systems must be monitored for total nitrogen and total phosphorus concentrations as required by department rule.

6. The department shall enforce proper installation, operation, and maintenance of onsite sewage treatment and disposal systems pursuant to this chapter, including ensuring that the appropriate level of treatment described in subparagraph 2. is met.

7. The authority of a local government, including a special district, to mandate connection of an onsite sewage treatment and disposal system is governed by s. 4, chapter 99-395, Laws of Florida.

8. Notwithstanding any other ~~provision of~~ law, an onsite sewage treatment and disposal system installed after July 1, 2010, in unincorporated Monroe County, excluding special wastewater districts, that complies with the standards in subparagraph 2. is not required to connect to a central sewerage ~~sewer~~ system until December 31, 2020.

(m) A ~~No~~ product sold in the state for use in onsite sewage treatment and disposal systems may not contain any

substance in concentrations or amounts that would interfere with or prevent the successful operation of such system, or that would cause discharges from such systems to violate applicable water quality standards. The department shall publish criteria for products known or expected to meet the conditions of this paragraph. If ~~In the event~~ a product does not meet such criteria, such product may be sold if the manufacturer satisfactorily demonstrates to the department that the conditions of this paragraph are met.

(n) Evaluations for determining the seasonal high-water table elevations or the suitability of soils for the use of a new onsite sewage treatment and disposal system shall be performed by department personnel, professional engineers registered in the state, or such other persons with expertise, as defined by rule, in making such evaluations. Evaluations for determining mean annual flood lines shall be performed by those persons identified in paragraph (2)(k)~~(2)(j)~~. The department shall accept evaluations submitted by professional engineers and such other persons as meet the expertise established by this section or by rule unless the department has a reasonable scientific basis for questioning the accuracy or completeness of the evaluation.

~~(o) The department shall appoint a research review and advisory committee, which shall meet at least semiannually. The committee shall advise the department on directions for new~~

~~research, review and rank proposals for research contracts, and review draft research reports and make comments. The committee is comprised of:~~

~~1. A representative of the State Surgeon General, or his or her designee.~~

~~2. A representative from the septic tank industry.~~

~~3. A representative from the home building industry.~~

~~4. A representative from an environmental interest group.~~

~~5. A representative from the State University System, from a department knowledgeable about onsite sewage treatment and disposal systems.~~

~~6. A professional engineer registered in this state who has work experience in onsite sewage treatment and disposal systems.~~

~~7. A representative from local government who is knowledgeable about domestic wastewater treatment.~~

~~8. A representative from the real estate profession.~~

~~9. A representative from the restaurant industry.~~

~~10. A consumer.~~

~~Members shall be appointed for a term of 3 years, with the appointments being staggered so that the terms of no more than four members expire in any one year. Members shall serve without remuneration, but are entitled to reimbursement for per diem and travel expenses as provided in s. 112.061.~~

(o)~~(p)~~ An application for an onsite sewage treatment and disposal system permit shall be completed in full, signed by the owner or the owner's authorized representative, or by a contractor licensed under chapter 489, and shall be accompanied by all required exhibits and fees. ~~No~~ Specific documentation of property ownership is not ~~shall be~~ required as a prerequisite to the review of an application or the issuance of a permit. The issuance of a permit does not constitute determination by the department of property ownership.

(p)~~(q)~~ The department may not require any form of subdivision analysis of property by an owner, developer, or subdivider before ~~prior to~~ submission of an application for an onsite sewage treatment and disposal system.

(q)~~(r)~~ ~~Nothing in~~ This section does not limit ~~limits~~ the power of a municipality or county to enforce other laws for the protection of the public health and safety.

(r)~~(s)~~ In the siting of onsite sewage treatment and disposal systems, including drainfields, shoulders, and slopes, guttering may ~~shall~~ not be required on single-family residential dwelling units for systems located greater than 5 feet from the roof drip line of the house. If guttering is used on residential dwelling units, the downspouts shall be directed away from the drainfield.

(s)~~(t)~~ Notwithstanding ~~the provisions of~~ subparagraph (g)1., onsite sewage treatment and disposal systems located in

floodways of the Suwannee and Aucilla Rivers must adhere to the following requirements:

1. The absorption surface of the drainfield may ~~shall~~ not be subject to flooding based on 10-year flood elevations. Provided, however, for lots or parcels created by the subdivision of land in accordance with applicable local government regulations before ~~prior to~~ January 17, 1990, if an applicant cannot construct a drainfield system with the absorption surface of the drainfield at an elevation equal to or above 10-year flood elevation, the department shall issue a permit for an onsite sewage treatment and disposal system within the 10-year floodplain of rivers, streams, and other bodies of flowing water if all of the following criteria are met:

a. The lot is at least one-half acre in size;

b. The bottom of the drainfield is at least 36 inches above the 2-year flood elevation; and

c. The applicant installs ~~either:~~ a waterless, incinerating, or organic waste composting toilet and a graywater system and drainfield in accordance with department rules; an aerobic treatment unit and drainfield in accordance with department rules; a system ~~approved by the State Health Office~~ that is capable of reducing effluent nitrate by at least 50 percent in accordance with department rules; or a system other than a system using alternative drainfield materials in accordance with department rules ~~approved by the county health~~

~~department pursuant to department rule other than a system using alternative drainfield materials~~. The United States Department of Agriculture Soil Conservation Service soil maps, State of Florida Water Management District data, and Federal Emergency Management Agency Flood Insurance maps are resources that shall be used to identify flood-prone areas.

2. The use of fill or mounding to elevate a drainfield system out of the 10-year floodplain of rivers, streams, or other bodies of flowing water may ~~shall~~ not be permitted if such a system lies within a regulatory floodway of the Suwannee and Aucilla Rivers. In cases where the 10-year flood elevation does not coincide with the boundaries of the regulatory floodway, the regulatory floodway will be considered for the purposes of this subsection to extend at a minimum to the 10-year flood elevation.

(t)1.~~(u)1.~~ The owner of an aerobic treatment unit system shall maintain a current maintenance service agreement with an aerobic treatment unit maintenance entity permitted by the department. The maintenance entity shall inspect each aerobic treatment unit system at least twice each year and shall report quarterly to the department on the number of aerobic treatment unit systems inspected and serviced. The reports may be submitted electronically.

2. The property owner of an owner-occupied, single-family residence may be approved and permitted by the department as a

maintenance entity for his or her own aerobic treatment unit system upon written certification from the system manufacturer's approved representative that the property owner has received training on the proper installation and service of the system. The maintenance entity service agreement must conspicuously disclose that the property owner has the right to maintain his or her own system and is exempt from contractor registration requirements for performing construction, maintenance, or repairs on the system but is subject to all permitting requirements.

3. A septic tank contractor licensed under part III of chapter 489, if approved by the manufacturer, may not be denied access by the manufacturer to aerobic treatment unit system training or spare parts for maintenance entities. After the original warranty period, component parts for an aerobic treatment unit system may be replaced with parts that meet manufacturer's specifications but are manufactured by others. The maintenance entity shall maintain documentation of the substitute part's equivalency for 2 years and shall provide such documentation to the department upon request.

4. The owner of an aerobic treatment unit system shall obtain a system operating permit from the department and allow the department to inspect during reasonable hours each aerobic treatment unit system at least annually, and such inspection may include collection and analysis of system-effluent samples for

performance criteria established by rule of the department.

(u) ~~(v)~~ The department may require the submission of detailed system construction plans that are prepared by a professional engineer registered in this state. The department shall establish by rule criteria for determining when such a submission is required.

(v) ~~(w)~~ Any permit issued and approved by the department for the installation, modification, or repair of an onsite sewage treatment and disposal system shall transfer with the title to the property in a real estate transaction. A title may not be encumbered at the time of transfer by new permit requirements by a governmental entity for an onsite sewage treatment and disposal system which differ from the permitting requirements in effect at the time the system was permitted, modified, or repaired. An inspection of a system may not be mandated by a governmental entity at the point of sale in a real estate transaction. This paragraph does not affect a septic tank phase-out deferral program implemented by a consolidated government as defined in s. 9, Art. VIII of the State Constitution (1885).

(w) ~~(x)~~ A governmental entity, including a municipality, county, or statutorily created commission, may not require an engineer-designed performance-based treatment system, excluding a passive engineer-designed performance-based treatment system, before the completion of the Florida Onsite Sewage Nitrogen

Reduction Strategies Project. This paragraph does not apply to a governmental entity, including a municipality, county, or statutorily created commission, which adopted a local law, ordinance, or regulation on or before January 31, 2012. Notwithstanding this paragraph, an engineer-designed performance-based treatment system may be used to meet the requirements of the variance review and advisory committee recommendations.

(x)1.~~(y)1.~~ An onsite sewage treatment and disposal system is not considered abandoned if the system is disconnected from a structure that was made unusable or destroyed following a disaster and if the system was properly functioning at the time of disconnection and was not adversely affected by the disaster. The onsite sewage treatment and disposal system may be reconnected to a rebuilt structure if:

a. The reconnection of the system is to the same type of structure which contains the same number of bedrooms or fewer, if the square footage of the structure is less than or equal to 110 percent of the original square footage of the structure that existed before the disaster;

b. The system is not a sanitary nuisance; and

c. The system has not been altered without prior authorization.

2. An onsite sewage treatment and disposal system that serves a property that is foreclosed upon is not considered

abandoned.

(y) ~~(z)~~ If an onsite sewage treatment and disposal system permittee receives, relies upon, and undertakes construction of a system based upon a validly issued construction permit under rules applicable at the time of construction but a change to a rule occurs within 5 years after the approval of the system for construction but before the final approval of the system, the rules applicable and in effect at the time of construction approval apply at the time of final approval if fundamental site conditions have not changed between the time of construction approval and final approval.

(z) ~~(aa)~~ An existing-system inspection or evaluation and assessment, or a modification, replacement, or upgrade of an onsite sewage treatment and disposal system is not required for a remodeling addition or modification to a single-family home if a bedroom is not added. However, a remodeling addition or modification to a single-family home may not cover any part of the existing system or encroach upon a required setback or the unobstructed area. To determine if a setback or the unobstructed area is impacted, the local health department shall review and verify a floor plan and site plan of the proposed remodeling addition or modification to the home submitted by a remodeler which shows the location of the system, including the distance of the remodeling addition or modification to the home from the onsite sewage treatment and disposal system. The local health

department may visit the site or otherwise determine the best means of verifying the information submitted. A verification of the location of a system is not an inspection or evaluation and assessment of the system. The review and verification must be completed within 7 business days after receipt by the local health department of a floor plan and site plan. If the review and verification is not completed within such time, the remodeling addition or modification to the single-family home, for the purposes of this paragraph, is approved.

Section 6. Paragraph (d) of subsection (7) and subsections (8) and (9) of section 381.00651, Florida Statutes, are amended to read:

381.00651 Periodic evaluation and assessment of onsite sewage treatment and disposal systems.—

(7) The following procedures shall be used for conducting evaluations:

(d) Assessment procedure.—All evaluation procedures used by a qualified contractor shall be documented in the environmental health database of the department ~~of Health~~. The qualified contractor shall provide a copy of a written, signed evaluation report to the property owner upon completion of the evaluation and to the county health department within 30 days after the evaluation. The report shall contain the name and license number of the company providing the report. A copy of the evaluation report shall be retained by the local county

health department for a minimum of 5 years and until a subsequent inspection report is filed. The front cover of the report must identify any system failure and include a clear and conspicuous notice to the owner that the owner has a right to have any remediation of the failure performed by a qualified contractor other than the contractor performing the evaluation. The report must further identify any crack, leak, improper fit, or other defect in the tank, manhole, or lid, and any other damaged or missing component; any sewage or effluent visible on the ground or discharging to a ditch or other surface water body; any downspout, stormwater, or other source of water directed onto or toward the system; and any other maintenance need or condition of the system at the time of the evaluation which, in the opinion of the qualified contractor, would possibly interfere with or restrict any future repair or modification to the existing system. The report shall conclude with an overall assessment of the fundamental operational condition of the system.

(8) The county health department, in coordination with the department, shall administer any evaluation program on behalf of a county, or a municipality within the county, that has adopted an evaluation program pursuant to this section. In order to administer the evaluation program, the county or municipality, in consultation with the county health department, may develop a reasonable fee schedule to be used solely to pay for the costs

of administering the evaluation program. Such a fee schedule shall be identified in the ordinance that adopts the evaluation program. When arriving at a reasonable fee schedule, the estimated annual revenues to be derived from fees may not exceed reasonable estimated annual costs of the program. Fees shall be assessed to the system owner during an inspection and separately identified on the invoice of the qualified contractor. Fees shall be remitted by the qualified contractor to the county health department. The county health department's administrative responsibilities include the following:

(a) Providing a notice to the system owner at least 60 days before the system is due for an evaluation. The notice may include information on the proper maintenance of onsite sewage treatment and disposal systems.

(b) In consultation with the department ~~of Health~~, providing uniform disciplinary procedures and penalties for qualified contractors who do not comply with the requirements of the adopted ordinance, including, but not limited to, failure to provide the evaluation report as required in this subsection to the system owner and the county health department. Only the county health department may assess penalties against system owners for failure to comply with the adopted ordinance, consistent with existing requirements of law.

(9)(a) A county or municipality that adopts an onsite sewage treatment and disposal system evaluation and assessment

program pursuant to this section shall notify the Secretary of Environmental Protection, the Department of Health, and the applicable county health department upon the adoption of its ordinance establishing the program.

(b) Upon receipt of the notice under paragraph (a), the department ~~of Environmental Protection~~ shall, within existing resources, notify the county or municipality of the potential use of, and access to, program funds under the Clean Water State Revolving Fund or s. 319 of the Clean Water Act, provide guidance in the application process to receive such moneys, and provide advice and technical assistance to the county or municipality on how to establish a low-interest revolving loan program or how to model a revolving loan program after the low-interest loan program of the Clean Water State Revolving Fund. This paragraph does not obligate the department ~~of Environmental Protection~~ to provide any county or municipality with money to fund such programs.

(c) The department ~~of Health~~ may not adopt any rule that alters the provisions of this section.

(d) The department ~~of Health~~ must allow county health departments and qualified contractors access to the environmental health database to track relevant information and assimilate data from assessment and evaluation reports of the overall condition of onsite sewage treatment and disposal systems. The environmental health database must be used by

contractors to report each service and evaluation event and by a county health department to notify owners of onsite sewage treatment and disposal systems when evaluations are due. Data and information must be recorded and updated as service and evaluations are conducted and reported.

Section 7. Effective July 1, 2020, section 381.00652, Florida Statutes, is created to read:

381.00652 Onsite sewage treatment and disposal systems technical advisory committee.—

(1) An onsite sewage treatment and disposal systems technical advisory committee, a committee as defined in s. 20.03(8), is created within the department. The committee shall:

(a) Provide recommendations to increase the availability of nutrient removing onsite sewage treatment and disposal systems in the marketplace, including such systems that are cost-effective, low maintenance, and reliable.

(b) Consider and recommend regulatory options, such as fast-track approval, prequalification, or expedited permitting, to facilitate the introduction and use of nutrient removing onsite sewage treatment and disposal systems that have been reviewed and approved by a national agency or organization, such as the American National Standards Institute 245 systems approved by the National Sanitation Foundation International.

(c) Provide recommendations for appropriate setback distances for onsite sewage treatment and disposal systems from

surface water, groundwater, and wells.

(2) The department shall use existing and available resources to administer and support the activities of the committee.

(3)(a) By August 1, 2021, the department, in consultation with the Department of Health, shall appoint no more than nine members to the committee, including, but not limited to, the following:

1. A professional engineer.

2. A septic tank contractor.

3. A representative from the home building industry.

4. A representative from the real estate industry.

5. A representative from the onsite sewage treatment and disposal system industry.

6. A representative from local government.

7. Two representatives from the environmental community.

8. A representative of the scientific and technical community who has substantial expertise in the areas of the fate and transport of water pollutants, toxicology, epidemiology, geology, biology, or environmental sciences.

(b) Members shall serve without compensation and are not entitled to reimbursement for per diem or travel expenses.

(4) By January 1, 2022, the committee shall submit its recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(5) This section expires August 15, 2022.

Section 8. Section 381.0068, Florida Statutes, is repealed.

Section 9. Paragraphs (g) of subsection (1) of section 381.0101, Florida Statutes, is amended to read:

381.0101 Environmental health professionals.—

(1) DEFINITIONS.—As used in this section:

(g) "Primary environmental health program" means those programs determined by the department to be essential for providing basic environmental and sanitary protection to the public. At a minimum, these programs shall include food protection program work ~~and onsite sewage treatment and disposal system evaluations~~.

Section 10. Subsections (14) through (44) of section 403.061, Florida Statutes, are renumbered as subsections (15) through (45), respectively, subsection (7) is amended, and a new subsection (14) is added to that section, to read:

403.061 Department; powers and duties.—The department shall have 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 and, for this purpose, to:

(7) Adopt rules ~~pursuant to ss. 120.536(1) and 120.54~~ to implement ~~the provisions of~~ this act. Any rule adopted pursuant to this act must ~~shall~~ be consistent with the provisions of federal law, if any, relating to control of emissions from motor

vehicles, effluent limitations, pretreatment requirements, or standards of performance. A ~~No~~ county, municipality, or political subdivision may not ~~shall~~ adopt or enforce any local ordinance, special law, or local regulation requiring the installation of Stage II vapor recovery systems, as currently defined by department rule, unless such county, municipality, or political subdivision is or has been in the past designated by federal regulation as a moderate, serious, or severe ozone nonattainment area. Rules adopted pursuant to this act may ~~shall~~ not require dischargers of waste into waters of the state to improve natural background conditions. The department shall adopt rules to reasonably limit, reduce, and eliminate leaks, seepages, or inputs into the underground pipes of wastewater collection systems. Discharges from steam electric generating plants existing or licensed under this chapter on July 1, 1984, may ~~shall~~ not be required to be treated to a greater extent than may be necessary to assure that the quality of nonthermal components of discharges from nonrecirculated cooling water systems is as high as the quality of the makeup waters; that the quality of nonthermal components of discharges from recirculated cooling water systems is no lower than is allowed for blowdown from such systems; or that the quality of noncooling system discharges which receive makeup water from a receiving body of water which does not meet applicable department water quality standards is as high as the quality of the receiving body of

water. The department may not adopt standards more stringent than federal regulations, except as provided in s. 403.804.

(14) In order to promote resilient wastewater utilities, require public utilities or their affiliated companies that hold or are seeking a wastewater discharge permit to file with the department reports and other data regarding transactions or allocations of common costs among the utility or entity and such affiliated companies. The department may require such reports or other data necessary to ensure a permitted entity is reporting expenditures on pollution mitigation and prevention, including, but not limited to, the prevention of sanitary sewer overflows, collection and transmission system pipe leaks, and inflow and infiltration. The department shall adopt rules to implement this subsection.

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Section 11. Section 403.0616, Florida Statutes, is created to read:

403.0616 Real-time water quality monitoring program.-

(1) Subject to appropriation, the department shall establish a real-time water quality monitoring program to assist in the restoration, preservation, and enhancement of impaired

water bodies and coastal resources.

(2) In order to expedite the creation and implementation of the program, the department is encouraged to form public-private partnerships with established scientific entities that have proven existing real-time water quality monitoring equipment and experience in deploying the equipment.

Section 12. Subsection (7) of section 403.067, Florida Statutes, is amended to read:

403.067 Establishment and implementation of total maximum daily loads.—

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

(a) *Basin management action plans.*—

1. In developing and implementing the total maximum daily load for a water body, the department, or the department in conjunction with a water management district, may develop a basin management action plan that addresses some or all of the watersheds and basins tributary to the water body. Such plan must integrate the appropriate management strategies available to the state through existing water quality protection programs to achieve the total maximum daily loads and may provide for phased implementation of these management strategies to promote timely, cost-effective actions as provided for in s. 403.151. The plan must establish a schedule implementing the management strategies, establish a basis for evaluating the plan's

effectiveness, and identify feasible funding strategies for implementing the plan's management strategies. The management strategies may include regional treatment systems or other public works, when ~~where~~ appropriate, and voluntary trading of water quality credits to achieve the needed pollutant load reductions.

2. A basin management action plan must equitably allocate, pursuant to paragraph (6)(b), pollutant reductions to individual basins, as a whole to all basins, or to each identified point source or category of nonpoint sources, as appropriate. For nonpoint sources for which best management practices have been adopted, the initial requirement specified by the plan must be those practices developed pursuant to paragraph (c). When ~~Where~~ appropriate, the plan may take into account the benefits of pollutant load reduction achieved by point or nonpoint sources that have implemented management strategies to reduce pollutant loads, including best management practices, before the development of the basin management action plan. The plan must also identify the mechanisms that will address potential future increases in pollutant loading.

3. The basin management action planning process is intended to involve the broadest possible range of interested parties, with the objective of encouraging the greatest amount of cooperation and consensus possible. In developing a basin management action plan, the department shall assure that key

stakeholders, including, but not limited to, applicable local governments, water management districts, the Department of Agriculture and Consumer Services, other appropriate state agencies, local soil and water conservation districts, environmental groups, regulated interests, and affected pollution sources, are invited to participate in the process. The department shall hold at least one public meeting in the vicinity of the watershed or basin to discuss and receive comments during the planning process and shall otherwise encourage public participation to the greatest practicable extent. Notice of the public meeting must be published in a newspaper of general circulation in each county in which the watershed or basin lies at least ~~not less than~~ 5 days, but not ~~nor~~ more than 15 days, before the public meeting. A basin management action plan does not supplant or otherwise alter any assessment made under subsection (3) or subsection (4) or any calculation or initial allocation.

4. Each new or revised basin management action plan shall include:

a. The appropriate management strategies available through existing water quality protection programs to achieve total maximum daily loads, which may provide for phased implementation to promote timely, cost-effective actions as provided for in s. 403.151;

b. A description of best management practices adopted by

rule;

c. A list of projects in priority ranking with a planning-level cost estimate and estimated date of completion for each listed project;

d. The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project, if applicable; and

e. A planning-level estimate of each listed project's expected load reduction, if applicable.

5. The department shall adopt all or any part of a basin management action plan and any amendment to such plan by secretarial order pursuant to chapter 120 to implement ~~the provisions of~~ this section.

6. The basin management action plan must include milestones for implementation and water quality improvement, and an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones shall be conducted every 5 years, and revisions to the plan shall be made as appropriate. Revisions to the basin management action plan shall be made by the department in cooperation with basin stakeholders. Revisions to the management strategies required for nonpoint sources must follow the procedures ~~set forth~~ in subparagraph (c)4. Revised basin management action plans must be adopted pursuant to

subparagraph 5.

7. In accordance with procedures adopted by rule under paragraph (9)(c), basin management action plans, and other pollution control programs under local, state, or federal authority as provided in subsection (4), may allow point or nonpoint sources that will achieve greater pollutant reductions than required by an adopted total maximum daily load or wasteload allocation to generate, register, and trade water quality credits for the excess reductions to enable other sources to achieve their allocation; however, the generation of water quality credits does not remove the obligation of a source or activity to meet applicable technology requirements or adopted best management practices. Such plans must allow trading between NPDES permittees, and trading that may or may not involve NPDES permittees, where the generation or use of the credits involve an entity or activity not subject to department water discharge permits whose owner voluntarily elects to obtain department authorization for the generation and sale of credits.

8. ~~The provisions of~~ The department's rule relating to the equitable abatement of pollutants into surface waters do not apply to water bodies or water body segments for which a basin management plan that takes into account future new or expanded activities or discharges has been adopted under this section.

9. In order to promote resilient wastewater utilities, if the department identifies domestic wastewater treatment

facilities or onsite sewage treatment and disposal systems as contributors of at least 20 percent of point source or nonpoint source nutrient pollution or if the department determines remediation is necessary to achieve the total maximum daily load, a basin management action plan for a nutrient total maximum daily load must include the following:

a. A wastewater treatment plan developed by each local government, in cooperation with the department, the water management district, and the public and private domestic wastewater treatment facilities within the jurisdiction of the local government, that addresses domestic wastewater . The wastewater treatment plan must:

(I) Provide for construction, expansion, or upgrades necessary to achieve the total maximum daily load requirements applicable to the domestic wastewater treatment facility.

(II) Include the permitted capacity in gallons per day for the domestic wastewater treatment facility; the average nutrient concentration and the estimated average nutrient load of the domestic wastewater; a projected timeline of the dates by which the construction of any facility improvements will begin and be completed and the date by which operations of the improved facility will begin; the estimated cost of the improvements; and the identity of responsible parties.

The wastewater treatment plan must be adopted as part of the

basin management action plan no later than July 1, 2025. A local government that does not have a domestic wastewater treatment facility in its jurisdiction is not required to develop a wastewater treatment plan unless there is a demonstrated need to establish a domestic wastewater treatment facility within its jurisdiction to improve water quality necessary to achieve a total maximum daily load.

b. An onsite sewage treatment and disposal system remediation plan developed by each local government in cooperation with the department, the Department of Health, water management districts, and public and private domestic wastewater treatment facilities.

(I) The onsite sewage treatment and disposal system remediation plan must identify cost-effective and financially feasible projects necessary to achieve the nutrient load reductions required for onsite sewage treatment and disposal systems. To identify cost-effective and financially feasible projects for remediation of onsite sewage treatment and disposal systems, the local government shall:

(A) Include an inventory of onsite sewage treatment and disposal systems based on the best information available;

(B) Identify onsite sewage treatment and disposal systems that would be eliminated through connection to existing or future central wastewater infrastructure, that would be replaced with or upgraded to enhanced nutrient removing systems, or that

would remain on conventional onsite sewage treatment and disposal systems;

(C) Estimate the costs of potential onsite sewage treatment and disposal system connections, upgrades, or replacements; and

(D) Identify deadlines and interim milestones for the planning, design, and construction of projects.

(II) The department shall adopt the onsite sewage treatment and disposal system remediation plan as part of the basin management action plan no later than July 1, 2025, or as required for Outstanding Florida Springs under s. 373.807.

10. When identifying wastewater projects in a basin management action plan, the department may not require the higher cost option if it achieves the same nutrient load reduction as a lower cost option. A regulated entity may choose a different cost option if it provides additional benefits or meets other water quality or water supply requirements.

(b) *Total maximum daily load implementation.*—

1. The department shall be the lead agency in coordinating the implementation of the total maximum daily loads through existing water quality protection programs. Application of a total maximum daily load by a water management district must be consistent with this section and does not require the issuance of an order or a separate action pursuant to s. 120.536(1) or s. 120.54 for the adoption of the calculation and allocation

previously established by the department. Such programs may include, but are not limited to:

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

b. Nonregulatory and incentive-based programs, including best management practices, cost sharing, waste minimization, pollution prevention, agreements established pursuant to s. 403.061(22) ~~s. 403.061(21)~~, and public education;

c. Other water quality management and restoration activities, for example surface water improvement and management plans approved by water management districts or basin management action plans developed pursuant to this subsection;

d. Trading of water quality credits or other equitable economically based agreements;

e. Public works including capital facilities; or

f. Land acquisition.

2. For a basin management action plan adopted pursuant to paragraph (a), any management strategies and pollutant reduction requirements associated with a pollutant of concern for which a total maximum daily load has been developed, including effluent limits ~~set forth~~ for a discharger subject to NPDES permitting, if any, must be included in a timely manner in subsequent NPDES permits or permit modifications for that discharger. The department may not impose limits or conditions implementing an adopted total maximum daily load in an NPDES permit until the

permit expires, the discharge is modified, or the permit is reopened pursuant to an adopted basin management action plan.

a. Absent a detailed allocation, total maximum daily loads must be implemented through NPDES permit conditions that provide for a compliance schedule. In such instances, a facility's NPDES permit must allow time for the issuance of an order adopting the basin management action plan. The time allowed for the issuance of an order adopting the plan may not exceed 5 years. Upon issuance of an order adopting the plan, the permit must be reopened or renewed, as necessary, and permit conditions consistent with the plan must be established. Notwithstanding the other provisions of this subparagraph, upon request by an NPDES permittee, the department as part of a permit issuance, renewal, or modification may establish individual allocations before the adoption of a basin management action plan.

b. For holders of NPDES municipal separate storm sewer system permits and other stormwater sources, implementation of a total maximum daily load or basin management action plan must be achieved, to the maximum extent practicable, through the use of best management practices or other management measures.

c. The basin management action plan does not relieve the discharger from any requirement to obtain, renew, or modify an NPDES permit or to abide by other requirements of the permit.

d. Management strategies ~~set forth~~ in a basin management action plan to be implemented by a discharger subject to

permitting by the department must be completed pursuant to the schedule ~~set forth~~ in the basin management action plan. This implementation schedule may extend beyond the 5-year term of an NPDES permit.

e. Management strategies and pollution reduction requirements ~~set forth~~ in a basin management action plan for a specific pollutant of concern are not subject to challenge under chapter 120 at the time they are incorporated, in an identical form, into a subsequent NPDES permit or permit modification.

f. For nonagricultural pollutant sources not subject to NPDES permitting but permitted pursuant to other state, regional, or local water quality programs, the pollutant reduction actions adopted in a basin management action plan must be implemented to the maximum extent practicable as part of those permitting programs.

g. A nonpoint source discharger included in a basin management action plan must demonstrate compliance with the pollutant reductions established under subsection (6) by implementing the appropriate best management practices established pursuant to paragraph (c) or conducting water quality monitoring prescribed by the department or a water management district. A nonpoint source discharger may, in accordance with department rules, supplement the implementation of best management practices with water quality credit trades in order to demonstrate compliance with the pollutant reductions

established under subsection (6).

h. A nonpoint source discharger included in a basin management action plan may be subject to enforcement action by the department or a water management district based upon a failure to implement the responsibilities ~~set forth~~ in sub-subparagraph g.

i. A landowner, discharger, or other responsible person who is implementing applicable management strategies specified in an adopted basin management action plan may not be required by permit, enforcement action, or otherwise to implement additional management strategies, including water quality credit trading, to reduce pollutant loads to attain the pollutant reductions established pursuant to subsection (6) and shall be deemed to be in compliance with this section. This subparagraph does not limit the authority of the department to amend a basin management action plan as specified in subparagraph (a)6.

(c) *Best management practices.*—

1. The department, in cooperation with the water management districts and other interested parties, as appropriate, may develop suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for nonagricultural nonpoint pollutant sources in allocations developed pursuant to subsection (6) and this subsection. These practices and measures may be adopted by rule by the department

and the water management districts and, where adopted by rule, shall be implemented by those parties responsible for nonagricultural nonpoint source pollution.

2. The Department of Agriculture and Consumer Services may develop and adopt by rule pursuant to ss. 120.536(1) and 120.54 suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for agricultural pollutant sources in allocations developed pursuant to subsection (6) and this subsection or for programs implemented pursuant to paragraph (12)(b). These practices and measures may be implemented by those parties responsible for agricultural pollutant sources and the department, the water management districts, and the Department of Agriculture and Consumer Services shall assist with implementation. In the process of developing and adopting rules for interim measures, best management practices, or other measures, the Department of Agriculture and Consumer Services shall consult with the department, the Department of Health, the water management districts, representatives from affected farming groups, and environmental group representatives. Such rules must also incorporate provisions for a notice of intent to implement the practices and a system to assure the implementation of the practices, including site inspection and recordkeeping requirements.

3. When ~~Where~~ interim measures, best management practices,

or other measures are adopted by rule, the effectiveness of such practices in achieving the levels of pollution reduction established in allocations developed by the department pursuant to subsection (6) and this subsection or in programs implemented pursuant to paragraph (12)(b) must be verified at representative sites by the department. The department shall use best professional judgment in making the initial verification that the best management practices are reasonably expected to be effective and, when ~~where~~ applicable, shall ~~must~~ notify the appropriate water management district or the Department of Agriculture and Consumer Services of its initial verification before the adoption of a rule proposed pursuant to this paragraph. Implementation, in accordance with rules adopted under this paragraph, of practices that have been initially verified to be effective, or verified to be effective by monitoring at representative sites, by the department, shall provide a presumption of compliance with state water quality standards and release from ~~the provisions of~~ s. 376.307(5) for those pollutants addressed by the practices, and the department is not authorized to institute proceedings against the owner of the source of pollution to recover costs or damages associated with the contamination of surface water or groundwater caused by those pollutants. Research projects funded by the department, a water management district, or the Department of Agriculture and Consumer Services to develop or demonstrate interim measures or

best management practices shall be granted a presumption of compliance with state water quality standards and a release from ~~the provisions of~~ s. 376.307(5). The presumption of compliance and release is limited to the research site and only for those pollutants addressed by the interim measures or best management practices. Eligibility for the presumption of compliance and release is limited to research projects on sites where the owner or operator of the research site and the department, a water management district, or the Department of Agriculture and Consumer Services have entered into a contract or other agreement that, at a minimum, specifies the research objectives, the cost-share responsibilities of the parties, and a schedule that details the beginning and ending dates of the project.

4. When ~~Where~~ water quality problems are demonstrated, despite the appropriate implementation, operation, and maintenance of best management practices and other measures required by rules adopted under this paragraph, the department, a water management district, or the Department of Agriculture and Consumer Services, in consultation with the department, shall institute a reevaluation of the best management practice or other measure. If ~~Should~~ the reevaluation determines ~~determine~~ that the best management practice or other measure requires modification, the department, a water management district, or the Department of Agriculture and Consumer Services, as appropriate, shall revise the rule to require

implementation of the modified practice within a reasonable time period as specified in the rule.

5. Subject to the provisions of subparagraph 6., the Department of Agriculture and Consumer Services shall provide to the department information obtained pursuant to subparagraph (d)3.

6.~~5.~~ Agricultural records relating to processes or methods of production, and costs of production, profits, or other financial information held by the Department of Agriculture and Consumer Services pursuant to subparagraphs 3.-5. ~~3. and 4.~~ or pursuant to any rule adopted pursuant to subparagraph 2. are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Upon request, records made confidential and exempt pursuant to this subparagraph shall be released to the department or any water management district provided that the confidentiality specified by this subparagraph for such records is maintained.

7.~~6.~~ ~~The provisions of~~ Subparagraphs 1. and 2. do not preclude the department or water management district from requiring compliance with water quality standards or with current best management practice requirements ~~set forth~~ in any applicable regulatory program authorized by law for the purpose of protecting water quality. Additionally, subparagraphs 1. and 2. are applicable only to the extent that they do not conflict with any rules adopted by the department that are necessary to

maintain a federally delegated or approved program.

(d) *Enforcement and verification of basin management action plans and management strategies.*—

1. Basin management action plans are enforceable pursuant to this section and ss. 403.121, 403.141, and 403.161. Management strategies, including best management practices and water quality monitoring, are enforceable under this chapter.

2. No later than January 1, 2017:

a. The department, in consultation with the water management districts and the Department of Agriculture and Consumer Services, shall initiate rulemaking to adopt procedures to verify implementation of water quality monitoring required in lieu of implementation of best management practices or other measures pursuant to sub-subparagraph (b)2.g.;

b. The department, in consultation with the water management districts and the Department of Agriculture and Consumer Services, shall initiate rulemaking to adopt procedures to verify implementation of nonagricultural interim measures, best management practices, or other measures adopted by rule pursuant to subparagraph (c)1.; and

c. The Department of Agriculture and Consumer Services, in consultation with the water management districts and the department, shall initiate rulemaking to adopt procedures to verify implementation of agricultural interim measures, best management practices, or other measures adopted by rule pursuant

to subparagraph(c)2.

The rules required under this subparagraph shall include enforcement procedures applicable to the landowner, discharger, or other responsible person required to implement applicable management strategies, including best management practices or water quality monitoring as a result of noncompliance.

3. At least every 2 years, the Department of Agriculture and Consumer Services shall perform onsite inspections of each agricultural producer that enrolls in a best management practice to ensure that such practice is being properly implemented. Such verification must include a review of the best management practice documentation required by rules adopted pursuant to subparagraph (c)2., including, but not limited to, nitrogen and phosphorus fertilizer application records, which must be collected and retained pursuant to subparagraph (c)5.

(e) *Data collection and research.*—

1. The University of Florida Institute of Food and Agricultural Sciences, in cooperation with the Department of Agriculture and Consumer Services, shall develop research plans and legislative budget requests to:

a. Evaluate and suggest enhancements to the existing adopted agricultural best management practices to reduce nutrients;

b. Develop new best management practices that, if proven

effective, the Department of Agriculture and Consumer Services may adopt by rule pursuant to paragraph (c)2.; and

c. Develop agricultural nutrient reduction projects that willing participants could implement on a site-specific, cooperative basis, in addition to best management practices. The department may consider these projects for inclusion in a basin management action plan. These nutrient reduction projects must reduce the nutrient impacts from agricultural operations on water quality when evaluated with the projects and management strategies currently included in the basin management action plan.

2. To be considered for funding, the University of Florida Institute of Food and Agricultural Sciences must submit such plans to the department and the Department of Agriculture and Consumer Services by August 1 of each year.

Section 13. Effective July 1, 2020, section 403.0671, Florida Statutes, is created to read:

403.0671 Basin management action plan wastewater reports.—

(1) By July 1, 2021, the department, in coordination with the county health departments, wastewater treatment facilities, and other governmental entities, shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives evaluating the costs of wastewater projects identified in the basin management action plans developed pursuant to ss. 373.807 and 403.067(7) and the onsite

sewage treatment and disposal system remediation plans and other restoration plans developed to meet the total maximum daily loads required under s. 403.067. The report must include:

(a) Projects to:

1. Replace onsite sewage treatment and disposal systems with enhanced nutrient removing onsite sewage treatment and disposal systems.

2. Install or retrofit onsite sewage treatment and disposal systems with enhanced nutrient removing technologies.

3. Construct, upgrade, or expand domestic wastewater treatment facilities to meet the wastewater treatment plan required under s. 403.067(7)(a)9.

4. Connect onsite sewage treatment and disposal systems to domestic wastewater treatment facilities;

(b) The estimated costs, nutrient load reduction estimates, and other benefits of each project;

(c) The estimated implementation timeline for each project;

(d) A proposed 5-year funding plan for each project and the source and amount of financial assistance the department, a water management district, or other project partner will make available to fund the project; and

(e) The projected costs of installing enhanced nutrient removing onsite sewage treatment and disposal systems on buildable lots in priority focus areas to comply with s.

373.811.

(2) By July 1, 2021, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that provides an assessment of the water quality monitoring being conducted for each basin management action plan implementing a nutrient total maximum daily load. In developing the report, the department may coordinate with water management districts and any applicable university. The report must:

(a) Evaluate the water quality monitoring prescribed for each basin management action plan to determine if it is sufficient to detect changes in water quality caused by the implementation of a project.

(b) Identify gaps in water quality monitoring.

(c) Recommend water quality monitoring needs.

(3) Beginning January 1, 2022, and each January 1 thereafter, the department shall submit to the Office of Economic and Demographic Research the cost estimates for projects required in s. 403.067(7)(a)9. The office shall include the project cost estimates in its annual assessment conducted pursuant to s. 403.928.

Section 14. Section 403.0673, Florida Statutes, is created to read:

403.0673 Wastewater grant program.—A wastewater grant program is established within the Department of Environmental

Protection.

(1) Subject to the appropriation of funds by the Legislature, the department may provide grants for the following projects within a basin management action plan, an alternative restoration plan adopted by final order, or a rural area of opportunity under s. 288.0656 which will individually or collectively reduce excess nutrient pollution:

(a) Projects to retrofit onsite sewage treatment and disposal systems to upgrade such systems to enhanced nutrient removing onsite sewage treatment and disposal systems.

(b) Projects to construct, upgrade, or expand facilities to provide advanced waste treatment, as defined in s. 403.086(4).

(c) Projects to connect onsite sewage treatment and disposal systems to central sewer facilities.

(2) In allocating such funds, priority must be given to projects that subsidize the connection of onsite sewage treatment and disposal systems to a wastewater treatment facility. In determining priorities, the department shall consider the estimated reduction in nutrient load per project; project readiness; cost-effectiveness of the project; 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.

(3) Each grant for a project described in subsection (1)

must require a minimum of a 50 percent local match of funds. However, the department may, at its discretion, waive, in whole or in part, this consideration of the local contribution for proposed projects within an area designated as a rural area of opportunity under s. 288.0656.

(4) The department shall coordinate with each water management district, as necessary, to identify grant recipients in each district.

(5) Beginning January 1, 2021, and each January 1 thereafter, the department shall 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.

Section 15. Section 403.0855, Florida Statutes, is created to read:

403.0855 Biosolids management.—The Legislature finds that it is in the best interest of this state to regulate biosolids management in order to minimize the migration of nutrients that impair water bodies. The Legislature further finds that permitting according to site-specific application conditions, an increased inspection rate, groundwater and surface water monitoring protocols, and nutrient management research, will improve biosolids management and assist in protecting this state's water resources and water quality. The department shall adopt rules for biosolids management. Rules adopted by the

department pursuant to this section may not take effect until ratified by the Legislature.

Section 16. Subsections (7) through (10) of section 403.086, Florida Statutes, are renumbered as subsections (8) through (11), respectively, subsections (1) and (2), and paragraph (h) of subsection (9) are amended, and a new subsection (7) is added to that section, to read:

403.086 Sewage disposal facilities; advanced and secondary waste treatment.—

(1)(a) ~~Neither~~ The Department of Health or ~~nor~~ any other state agency, county, special district, or municipality may not ~~shall~~ approve construction of any sewage disposal facilities ~~for sanitary sewage disposal~~ which do not provide for secondary waste treatment and~~, in addition thereto,~~ advanced waste treatment as deemed necessary and ordered by the department.

(b) Sewage disposal ~~No~~ facilities ~~for sanitary sewage disposal~~ constructed after June 14, 1978, may not ~~shall~~ dispose of any wastes by deep well injection without providing for secondary waste treatment and~~, in addition thereto,~~ advanced waste treatment deemed necessary by the department to protect adequately the beneficial use of the receiving waters.

(c) Notwithstanding ~~any other provisions of~~ this chapter or chapter 373, sewage disposal facilities ~~for sanitary sewage disposal~~ may not dispose of 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, ~~or~~ Charlotte Harbor Bay, or, beginning July 1, 2025, Indian River Lagoon, or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto, without providing advanced waste treatment, as defined in subsection (4), approved by the department. This paragraph does ~~shall~~ not apply to facilities which were permitted by February 1, 1987, and which discharge secondary treated effluent, followed by water hyacinth treatment, to tributaries of tributaries of the named waters; or to facilities permitted to discharge to the nontidally influenced portions of the Peace River.

(d) By July 1, 2020, the department, in consultation with the water management districts and sewage disposal facilities, shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a progress report on the status of upgrades made by each facility to meet the advanced waste treatment requirements under paragraph (c). The report must include a list of sewage disposal facilities required to upgrade to advanced waste treatment, the preliminary cost estimates for the upgrades, and a projected timeline of the dates by which the upgrades will begin and be completed and the date by which operations of the upgraded facility will begin.

(2) All sewage disposal ~~Any~~ facilities ~~for sanitary sewage disposal~~ shall provide for secondary waste treatment, a power outage contingency plan that mitigates the impacts of power

outages on the utility's collection system and pump stations, and~~, in addition thereto,~~ advanced waste treatment as deemed necessary and ordered by the Department of Environmental Protection. Failure to conform is ~~shall be~~ punishable by a civil penalty of $500 for each 24-hour day or fraction thereof that such failure is allowed to continue thereafter.

(7) All sewage disposal facilities under subsection (2) which control a collection or transmission system of pipes and pumps to collect and transmit wastewater from domestic or industrial sources to the facility shall take steps to prevent sanitary sewer overflows or underground pipe leaks and ensure that collected wastewater reaches the facility for appropriate treatment. Facilities must use inflow and infiltration studies and leakage surveys to develop pipe assessment, repair, and replacement action plans that comply with department rule to limit, reduce, and eliminate leaks, seepages, or inputs into wastewater treatment systems' underground pipes. The pipe assessment, repair, and replacement action plans must be reported to the department. The facility report must include information regarding the annual expenditures dedicated to the inflow and infiltration studies and the required replacement action plans, as well as expenditures that are dedicated to pipe assessment, repair, and replacement. The department shall adopt rules regarding the implementation of inflow and infiltration studies and leakage surveys. Substantial compliance with this

subsection is evidence in mitigation for the purposes of assessing penalties pursuant to ss. 403.121 and 403.141.

Section 17. Subsections (4) through (10) of section 403.087, Florida Statutes, are renumbered as subsections (5) through (11), respectively, and a new subsection (4) is added to that section to read:

403.087 Permits; general issuance; denial; revocation; prohibition; penalty.—

(4) The department shall issue an operation permit for a domestic wastewater treatment facility other than a facility regulated under the National Pollutant Discharge Elimination System Program under s. 403.0885 for a term of up to 10 years if the facility is meeting the stated goals in its action plan adopted pursuant to s. 403.086(7).

Section 18. Subsections (3) and (4) of section 403.088, Florida Statutes, are renumbered as subsections (4) and (5), respectively, paragraph (c) of subsection (2) is amended, and a new subsection (3) is added to that section, to read:

403.088 Water pollution operation permits; conditions.—

(2)

(c) A permit shall:

1. Specify the manner, nature, volume, and frequency of the discharge permitted;

2. Require proper operation and maintenance of any pollution abatement facility by qualified personnel in

accordance with standards established by the department;

3. Require a deliberate, proactive approach to investigating or surveying a significant percentage of the wastewater collection system throughout the duration of the permit to determine pipe integrity, which must be accomplished in an economically feasible manner. The permittee shall submit an annual report to the department which details facility revenues and expenditures in a manner prescribed by department rule. The report must detail any deviation from annual expenditures related to inflow and infiltration studies; model plans for pipe assessment, repair, and replacement; and pipe assessment, repair, and replacement required under s. 403.086(7). Substantial compliance with this subsection is evidence in mitigation for the purposes of assessing penalties pursuant to ss. 403.121 and 403.141;

4.~~3.~~ Contain such additional conditions, requirements, and restrictions as the department deems necessary to preserve and protect the quality of the receiving waters;

5.~~4.~~ Be valid for the period of time specified therein; and

6.~~5.~~ Constitute the state National Pollutant Discharge Elimination System permit when issued pursuant to the authority in s. 403.0885.

(3) No later than March 1 of each year, the department shall submit a report to the Governor, the President of the

Senate, and the Speaker of the House of Representatives which identifies all wastewater treatment facilities that experienced a sanitary sewer overflow in the preceding calendar year. The report must identify the utility name, operator, number of overflows, and total quantity of discharge released. The department shall include with this report the annual report specified under s. 403.088(2)(c)3. for each utility that experienced an overflow.

Section 19. Subsection (6) of section 403.0891, Florida Statutes, is amended to read:

403.0891 State, regional, and local stormwater management plans and programs.—The department, the water management districts, and local governments shall have the responsibility for the development of mutually compatible stormwater management programs.

(6) The department and the Department of Economic Opportunity, in cooperation with local governments in the coastal zone, shall develop a model stormwater management program that could be adopted by local governments. The model program must contain model ordinances that target nutrient reduction practices and use green infrastructure. The model program shall contain dedicated funding options, including a stormwater utility fee system based upon an equitable unit cost approach. Funding options shall be designed to generate capital to retrofit existing stormwater management systems, build new

treatment systems, operate facilities, and maintain and service debt.

Section 20. Paragraph (b) of subsection (3) of section 403.121, Florida Statutes, is amended to read:

403.121 Enforcement; procedure; remedies.—The department shall have the following judicial and administrative remedies available to it for violations of this chapter, as specified in s. 403.161(1).

(3) Except for violations involving hazardous wastes, asbestos, or underground injection, administrative penalties must be calculated according to the following schedule:

(b) For failure to obtain a required wastewater permit, other than a permit required for surface water discharge, the department shall assess a penalty of $1,000. For a domestic or industrial wastewater violation not involving a surface water or groundwater quality violation, the department shall assess a penalty of $2,000 for an unpermitted or unauthorized discharge or effluent-limitation exceedance or for failure to survey an adequate portion of the wastewater collection system and take steps to reduce sanitary sewer overflows, underground pipe leaks, and inflow and infiltration. For an unpermitted or unauthorized discharge or effluent-limitation exceedance that resulted in a surface water or groundwater quality violation, the department shall assess a penalty of $5,000.

Section 21. Subsection (3) is added to section 403.885,

Florida Statutes, to read:

403.885 Water Projects Grant Program.—

(3) The department shall give funding priority to grant proposals submitted by a domestic wastewater facility in accordance with s. 403.1835 which implement the requirements of s. 403.086(7) or s. 403.088(2)(c).

Section 22. The Legislature determines and declares that this act fulfills an important state interest.

Section 23. Subsection (5) of section 153.54, Florida Statutes, is amended to read:

153.54 Preliminary report by county commissioners with respect to creation of proposed district.—Upon receipt of a petition duly signed by not less than 25 qualified electors who are also freeholders residing within an area proposed to be incorporated into a water and sewer district pursuant to this law and describing in general terms the proposed boundaries of such proposed district, the board of county commissioners if it shall deem it necessary and advisable to create and establish such proposed district for the purpose of constructing, establishing or acquiring a water system or a sewer system or both in and for such district (herein called "improvements"), shall first cause a preliminary report to be made which such report together with any other relevant or pertinent matters, shall include at least the following:

(5) For the construction of a new proposed central

sewerage system or the extension of an existing central sewerage system that was not previously approved, the report shall include a study that includes the available information from the Department of Environmental Protection ~~Health~~ on the history of onsite sewage treatment and disposal systems currently in use in the area and a comparison of the projected costs to the owner of a typical lot or parcel of connecting to and using the proposed central sewerage system versus installing, operating, and properly maintaining an onsite sewage treatment and disposal system that is approved by the Department of Environmental Protection ~~Health~~ and that provides for the comparable level of environmental and health protection as the proposed central sewerage system; consideration of the local authority's obligations or reasonably anticipated obligations for water body cleanup and protection under state or federal programs, including requirements for water bodies listed under s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq.; and other factors deemed relevant by the local authority.

Such report shall be filed in the office of the clerk of the circuit court and shall be open for the inspection of any taxpayer, property owner, qualified elector or any other interested or affected person.

Section 24. Paragraph (c) of subsection (2) of section

153.73, Florida Statutes, is amended to read:

153.73 Assessable improvements; levy and payment of special assessments.—Any district may provide for the construction or reconstruction of assessable improvements as defined in s. 153.52, and for the levying of special assessments upon benefited property for the payment thereof, under the provisions of this section.

(2)

(c) For the construction of a new proposed central sewerage system or the extension of an existing central sewerage system that was not previously approved, the report shall include a study that includes the available information from the Department of Environmental Protection ~~Health~~ on the history of onsite sewage treatment and disposal systems currently in use in the area and a comparison of the projected costs to the owner of a typical lot or parcel of connecting to and using the proposed central sewerage system versus installing, operating, and properly maintaining an onsite sewage treatment and disposal system that is approved by the Department of Environmental Protection ~~Health~~ and that provides for the comparable level of environmental and health protection as the proposed central sewerage system; consideration of the local authority's obligations or reasonably anticipated obligations for water body cleanup and protection under state or federal programs, including requirements for water bodies listed under s. 303(d)

of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq.; and other factors deemed relevant by the local authority.

Section 25. Subsection (2) of section 163.3180, Florida Statutes, is amended to read:

163.3180 Concurrency.—

(2) Consistent with public health and safety, sanitary sewer, solid waste, drainage, adequate water supplies, and potable water facilities shall be in place and available to serve new development no later than the issuance by the local government of a certificate of occupancy or its functional equivalent. Before ~~Prior to~~ approval of a building permit or its functional equivalent, the local government shall consult with the applicable water supplier to determine whether adequate water supplies to serve the new development will be available no later than the anticipated date of issuance by the local government of a certificate of occupancy or its functional equivalent. A local government may meet the concurrency requirement for sanitary sewer through the use of onsite sewage treatment and disposal systems approved by the Department of Environmental Protection ~~Health~~ to serve new development.

Section 26. Subsection (3) of section 180.03, Florida Statutes, is amended to read:

180.03 Resolution or ordinance proposing construction or extension of utility; objections to same.—

(3) For the construction of a new proposed central sewerage system or the extension of an existing central sewerage system that was not previously approved, the report shall include a study that includes the available information from the Department of Environmental Protection ~~Health~~ on the history of onsite sewage treatment and disposal systems currently in use in the area and a comparison of the projected costs to the owner of a typical lot or parcel of connecting to and using the proposed central sewerage system versus installing, operating, and properly maintaining an onsite sewage treatment and disposal system that is approved by the Department of Environmental Protection ~~Health~~ and that provides for the comparable level of environmental and health protection as the proposed central sewerage system; consideration of the local authority's obligations or reasonably anticipated obligations for water body cleanup and protection under state or federal programs, including requirements for water bodies listed under s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq.; and other factors deemed relevant by the local authority. The results of the ~~such a~~ study shall be included in the resolution or ordinance required under subsection (1).

Section 32. Subsections (2), (3), and (6) of section 311.105, Florida Statutes, are amended to read:

311.105 Florida Seaport Environmental Management Committee; permitting; mitigation.—

(2) Each application for a permit authorized pursuant to s. 403.061(38) ~~s. 403.061(37)~~ must include:

(a) A description of maintenance dredging activities to be conducted and proposed methods of dredged-material management.

(b) A characterization of the materials to be dredged and the materials within dredged-material management sites.

(c) A description of dredged-material management sites and plans.

(d) A description of measures to be undertaken, including environmental compliance monitoring, to minimize adverse environmental effects of maintenance dredging and dredged-material management.

(e) Such scheduling information as is required to facilitate state supplementary funding of federal maintenance dredging and dredged-material management programs consistent with beach restoration criteria of the Department of Environmental Protection.

(3) Each application for a permit authorized pursuant to s. 403.061(39) ~~s. 403.061(38)~~ must include ~~the provisions of~~ paragraphs (2)(b)-(e) and the following:

(a) A description of dredging and dredged-material management and other related activities associated with port development, including the expansion of navigation channels, dredged-material management sites, port harbors, turning basins, harbor berths, and associated facilities.

(b) A discussion of environmental mitigation as is proposed for dredging and dredged-material management for port development, including the expansion of navigation channels, dredged-material management sites, port harbors, turning basins, harbor berths, and associated facilities.

(6) Dredged-material management activities authorized pursuant to s. 403.061(38) or (39) ~~s. 403.061(37) or (38)~~ shall be incorporated into port master plans developed pursuant to s. 163.3178(2)(k).

Section 27. Paragraph (d) of subsection (1) of section 327.46, Florida Statutes, is amended to read:

327.46 Boating-restricted areas.—

(1) Boating-restricted areas, including, but not limited to, restrictions of vessel speeds and vessel traffic, may be established on the waters of this state for any purpose necessary to protect the safety of the public if such restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards or to protect seagrasses on privately owned submerged lands.

(d) Owners of private submerged lands that are adjacent to Outstanding Florida Waters, as defined in s. 403.061(28) ~~s. 403.061(27)~~, or an aquatic preserve established under ss. 258.39-258.399 may request that the commission establish boating-restricted areas solely to protect any seagrass and

contiguous seagrass habitat within their private property boundaries from seagrass scarring due to propeller dredging. Owners making a request pursuant to this paragraph must demonstrate to the commission clear ownership of the submerged lands. The commission shall adopt rules to implement this paragraph, including, but not limited to, establishing an application process and criteria for meeting the requirements of this paragraph. Each approved boating-restricted area shall be established by commission rule. For marking boating-restricted zones established pursuant to this paragraph, owners of privately submerged lands shall apply to the commission for a uniform waterway marker permit in accordance with ss. 327.40 and 327.41, and shall be responsible for marking the boating-restricted zone in accordance with the terms of the permit.

Section 28. Paragraph (d) of subsection (3) of section 373.250, Florida Statutes, is amended to read:

373.250 Reuse of reclaimed water.—

(3)

(d) The South Florida Water Management District shall require the use of reclaimed water made available by the elimination of wastewater ocean outfall discharges as provided for in s. 403.086(10) ~~s. 403.086(9)~~ in lieu of surface water or groundwater when the use of reclaimed water is available; is environmentally, economically, and technically feasible; and is of such quality and reliability as is necessary to the user.

Such reclaimed water may also be required in lieu of other alternative sources. In determining whether to require such reclaimed water in lieu of other alternative sources, the water management district shall consider existing infrastructure investments in place or obligated to be constructed by an executed contract or similar binding agreement as of July 1, 2011, for the development of other alternative sources.

Section 29. Subsection (9) of section 373.414, Florida Statutes, is amended to read:

373.414 Additional criteria for activities in surface waters and wetlands.—

(9) The department and the governing boards, on or before July 1, 1994, shall adopt rules to incorporate ~~the provisions of~~ this section, relying primarily on the existing rules of the department and the water management districts, into the rules governing the management and storage of surface waters. Such rules shall seek to achieve a statewide, coordinated and consistent permitting approach to activities regulated under this part. Variations in permitting criteria in the rules of individual water management districts or the department shall only be provided to address differing physical or natural characteristics. Such rules adopted pursuant to this subsection shall include the special criteria adopted pursuant to s. 403.061(30) ~~s. 403.061(29)~~ and may include the special criteria adopted pursuant to s. 403.061(35) ~~s. 403.061(34)~~. Such rules

shall include a provision requiring that a notice of intent to deny or a permit denial based upon this section shall contain an explanation of the reasons for such denial and an explanation, in general terms, of what changes, if any, are necessary to address such reasons for denial. Such rules may establish exemptions and general permits, if such exemptions and general permits do not allow significant adverse impacts to occur individually or cumulatively. Such rules may require submission of proof of financial responsibility which may include the posting of a bond or other form of surety prior to the commencement of construction to provide reasonable assurance that any activity permitted pursuant to this section, including any mitigation for such permitted activity, will be completed in accordance with the terms and conditions of the permit once the construction is commenced. Until rules adopted pursuant to this subsection become effective, existing rules adopted under this part and rules adopted pursuant to the authority of ss. 403.91-403.929 shall be deemed authorized under this part and shall remain in full force and effect. Neither the department nor the governing boards are limited or prohibited from amending any such rules.

Section 30. Paragraph (f) of subsection (8) of section 373.707, Florida Statutes, is amended to read:

373.707 Alternative water supply development.—

(8)

(f) The governing boards shall determine those projects that will be selected for financial assistance. The governing boards may establish factors to determine project funding; however, significant weight shall be given to the following factors:

1. Whether the project provides substantial environmental benefits by preventing or limiting adverse water resource impacts.

2. Whether the project reduces competition for water supplies.

3. Whether the project brings about replacement of traditional sources in order to help implement a minimum flow or level or a reservation.

4. Whether the project will be implemented by a consumptive use permittee that has achieved the targets contained in a goal-based water conservation program approved pursuant to s. 373.227.

5. The quantity of water supplied by the project as compared to its cost.

6. Projects in which the construction and delivery to end users of reuse water is a major component.

7. Whether the project will be implemented by a multijurisdictional water supply entity or regional water supply authority.

8. Whether the project implements reuse that assists in

the elimination of domestic wastewater ocean outfalls as provided in s. 403.086(10) ~~s. 403.086(9)~~.

9. Whether the county or municipality, or the multiple counties or municipalities, in which the project is located has implemented a high-water recharge protection tax assessment program as provided in s. 193.625.

Section 31. Paragraph (b) of subsection (4) of section 373.705, Florida Statutes, is amended to read:

373.705 Water resource development; water supply development.—

(4)

(b) Water supply development projects that meet the criteria in paragraph (a) and that meet one or more of the following additional criteria shall be given first consideration for state or water management district funding assistance:

1. The project brings about replacement of existing sources in order to help implement a minimum flow or minimum water level;

2. The project implements reuse that assists in the elimination of domestic wastewater ocean outfalls as provided in s. 403.086(10) ~~s. 403.086(9)~~; or

3. The project reduces or eliminates the adverse effects of competition between legal users and the natural system.

Section 32. Subsection (4) of section 373.709, Florida Statutes, is amended to read:

373.709 Regional water supply planning.—

(4) The South Florida Water Management District shall include in its regional water supply plan water resource and water supply development projects that promote the elimination of wastewater ocean outfalls as provided in s. 403.086(10) ~~s. 403.086(9)~~.

Section 33. Subsection (3) of section 373.807, Florida Statutes, is amended to read:

373.807 Protection of water quality in Outstanding Florida Springs.—By July 1, 2016, the department shall initiate assessment, pursuant to s. 403.067(3), of Outstanding Florida Springs or spring systems for which an impairment determination has not been made under the numeric nutrient standards in effect for spring vents. Assessments must be completed by July 1, 2018.

(3) As part of a basin management action plan that includes an Outstanding Florida Spring, the department, ~~the Department of Health,~~ relevant local governments, and relevant local public and private wastewater utilities shall develop an onsite sewage treatment and disposal system remediation plan for a spring if the department determines onsite sewage treatment and disposal systems within a priority focus area contribute at least 20 percent of nonpoint source nitrogen pollution or if the department determines remediation is necessary to achieve the total maximum daily load. The plan shall identify cost-effective and financially feasible projects necessary to reduce the

nutrient impacts from onsite sewage treatment and disposal systems and shall be completed and adopted as part of the basin management action plan no later than the first 5-year milestone required by subparagraph (1)(b)8. The department is the lead agency in coordinating the preparation of and the adoption of the plan. The department shall:

(a) Collect and evaluate credible scientific information on the effect of nutrients, particularly forms of nitrogen, on springs and springs systems; and

(b) Develop a public education plan to provide area residents with reliable, understandable information about onsite sewage treatment and disposal systems and springs.

In addition to the requirements in s. 403.067, the plan shall include options for repair, upgrade, replacement, drainfield modification, addition of effective nitrogen reducing features, connection to a central sewerage system, or other action for an onsite sewage treatment and disposal system or group of systems within a priority focus area that contribute at least 20 percent of nonpoint source nitrogen pollution or if the department determines remediation is necessary to achieve a total maximum daily load. For these systems, the department shall include in the plan a priority ranking for each system or group of systems that requires remediation and shall award funds to implement the remediation projects contingent on an appropriation in the

General Appropriations Act, which may include all or part of the costs necessary for repair, upgrade, replacement, drainfield modification, addition of effective nitrogen reducing features, initial connection to a central sewerage system, or other action. In awarding funds, the department may consider expected nutrient reduction benefit per unit cost, size and scope of project, relative local financial contribution to the project, and the financial impact on property owners and the community. The department may waive matching funding requirements for proposed projects within an area designated as a rural area of opportunity under s. 288.0656.

Section 34. Paragraph (k) of subsection (1) of section 376.307, Florida Statutes, is amended to read:

376.307 Water Quality Assurance Trust Fund.—

(1) The Water Quality Assurance Trust Fund is intended to serve as a broad-based fund for use in responding to incidents of contamination that pose a serious danger to the quality of groundwater and surface water resources or otherwise pose a serious danger to the public health, safety, or welfare. Moneys in this fund may be used:

(k) For funding activities described in s. 403.086(10) ~~s. 403.086(9)~~ which are authorized for implementation under the Leah Schad Memorial Ocean Outfall Program.

Section 35. Paragraph (i) of subsection (2), paragraph (b) of subsection (4), paragraph (j) of subsection (7), and

paragraph (a) of subsection (9) of section 380.0552, Florida Statutes, are amended to read:

380.0552 Florida Keys Area; protection and designation as area of critical state concern.—

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature to:

(i) Protect and improve the nearshore water quality of the Florida Keys through federal, state, and local funding of water quality improvement projects, including the construction and operation of wastewater management facilities that meet the requirements of ss. 381.0065(4)(l) and 403.086(11) ~~403.086(10)~~, as applicable.

(4) REMOVAL OF DESIGNATION.—

(b) Beginning November 30, 2010, the state land planning agency shall annually submit a written report to the Administration Commission describing the progress of the Florida Keys Area toward completing the work program tasks specified in commission rules. The land planning agency shall recommend removing the Florida Keys Area from being designated as an area of critical state concern to the commission if it determines that:

1. All of the work program tasks have been completed, including construction of, operation of, and connection to central wastewater management facilities pursuant to s. 403.086(11) ~~s. 403.086(10)~~ and upgrade of onsite sewage

treatment and disposal systems pursuant to s. 381.0065(4)(l);

2. All local comprehensive plans and land development regulations and the administration of such plans and regulations are adequate to protect the Florida Keys Area, fulfill the legislative intent specified in subsection (2), and are consistent with and further the principles guiding development; and

3. A local government has adopted a resolution at a public hearing recommending the removal of the designation.

(7) PRINCIPLES FOR GUIDING DEVELOPMENT.—State, regional, and local agencies and units of government in the Florida Keys Area shall coordinate their plans and conduct their programs and regulatory activities consistent with the principles for guiding development as specified in chapter 27F-8, Florida Administrative Code, as amended effective August 23, 1984, which is adopted and incorporated herein by reference. For the purposes of reviewing the consistency of the adopted plan, or any amendments to that plan, with the principles for guiding development, and any amendments to the principles, the principles shall be construed as a whole and specific provisions may not be construed or applied in isolation from the other provisions. However, the principles for guiding development are repealed 18 months from July 1, 1986. After repeal, any plan amendments must be consistent with the following principles:

(j) Ensuring the improvement of nearshore water quality by

requiring the construction and operation of wastewater management facilities that meet the requirements of ss. 381.0065(4)(l) and s. 403.086(11) ~~403.086(10)~~, as applicable, and by directing growth to areas served by central wastewater treatment facilities through permit allocation systems.

(9) MODIFICATION TO PLANS AND REGULATIONS.—

(a) Any land development regulation or element of a local comprehensive plan in the Florida Keys Area may be enacted, amended, or rescinded by a local government, but the enactment, amendment, or rescission becomes effective only upon approval by the state land planning agency. The state land planning agency shall review the proposed change to determine if it is in compliance with the principles for guiding development specified in chapter 27F-8, Florida Administrative Code, as amended effective August 23, 1984, and must approve or reject the requested changes within 60 days after receipt. Amendments to local comprehensive plans in the Florida Keys Area must also be reviewed for compliance with the following:

1. Construction schedules and detailed capital financing plans for wastewater management improvements in the annually adopted capital improvements element, and standards for the construction of wastewater treatment and disposal facilities or collection systems that meet or exceed the criteria in s. 403.086(11) ~~s. 403.086(10)~~ for wastewater treatment and disposal facilities or s. 381.0065(4)(l) for onsite sewage treatment and

disposal systems.

2. Goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours. The hurricane evacuation clearance time shall be determined by a hurricane evacuation study conducted in accordance with a professionally accepted methodology and approved by the state land planning agency.

Section 36. Section 381.006, Florida Statutes, is amended to read:

381.006 Environmental health.—The Department <u>of Health</u> shall conduct an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. The environmental health program shall include, but not be limited to:

(1) A drinking water function.

(2) An environmental health surveillance function which shall collect, compile, and correlate information on public health and exposure to hazardous substances through sampling and testing of water, air, or foods. Environmental health surveillance shall include a comprehensive assessment of drinking water under the department's supervision and an indoor air quality testing and monitoring program to assess health risks from exposure to chemical, physical, and biological agents

in the indoor environment.

(3) A toxicology and hazard assessment function which shall conduct toxicological and human health risk assessments of exposure to toxic agents, for the purposes of:

(a) Supporting determinations by the State Health Officer of safe levels of contaminants in water, air, or food if applicable standards or criteria have not been adopted. These determinations shall include issuance of health advisories to protect the health and safety of the public at risk from exposure to toxic agents.

(b) Provision of human toxicological health risk assessments to the public and other governmental agencies to characterize the risks to the public from exposure to contaminants in air, water, or food.

(c) Consultation and technical assistance to the Department of Environmental Protection and other governmental agencies on actions necessary to ameliorate exposure to toxic agents, including the emergency provision by the Department of Environmental Protection of drinking water in cases of drinking water contamination that present an imminent and substantial threat to the public's health, as required by s. 376.30(3)(c)1.a.

(d) Monitoring and reporting the body burden of toxic agents to estimate past exposure to these toxic agents, predict future health effects, and decrease the incidence of poisoning

by identifying and eliminating exposure.

(4) A sanitary nuisance function, as that term is defined in chapter 386.

(5) A migrant labor function.

(6) A public facilities function, including sanitary practices relating to state, county, municipal, and private institutions serving the public; jointly with the Department of Education, publicly and privately owned schools; all places used for the incarceration of prisoners and inmates of state institutions for the mentally ill; toilets and washrooms in all public places and places of employment; any other condition, place, or establishment necessary for the control of disease or the protection and safety of public health.

~~(7) An onsite sewage treatment and disposal function.~~

(7)~~(8)~~ A biohazardous waste control function.

(8)~~(9)~~ A function to control diseases transmitted from animals to humans, including the segregation, quarantine, and destruction of domestic pets and wild animals having or suspected of having such diseases.

(9)~~(10)~~ An environmental epidemiology function which shall investigate food-borne disease, waterborne disease, and other diseases of environmental causation, whether of chemical, radiological, or microbiological origin. A $10 surcharge for this function shall be assessed upon all persons permitted under chapter 500. This function shall include an educational program

for physicians and health professionals designed to promote surveillance and reporting of environmental diseases, and to further the dissemination of knowledge about the relationship between toxic substances and human health which will be useful in the formulation of public policy and will be a source of information for the public.

(10) ~~(11)~~ Mosquito and pest control functions as provided in chapters 388 and 482.

(11) ~~(12)~~ A radiation control function as provided in chapter 404 and part IV of chapter 468.

(12) ~~(13)~~ A public swimming and bathing facilities function as provided in chapter 514.

(13) ~~(14)~~ A mobile home park, lodging park, recreational vehicle park, and recreational camp function as provided in chapter 513.

(14) ~~(15)~~ A sanitary facilities function, which shall include minimum standards for the maintenance and sanitation of sanitary facilities; public access to sanitary facilities; and fixture ratios for special or temporary events and for homeless shelters.

(15) ~~(16)~~ A group-care-facilities function. As used in this subsection, the term "group care facility" means any public or private school, assisted living facility, adult family-care home, adult day care center, short-term residential treatment center, residential treatment facility, home for special

services, transitional living facility, crisis stabilization unit, hospice, prescribed pediatric extended care center, intermediate care facility for persons with developmental disabilities, or boarding school. The department may adopt rules necessary to protect the health and safety of residents, staff, and patrons of group care facilities. Rules related to public and private schools shall be developed by the Department of Education in consultation with the department. Rules adopted under this subsection may include definitions of terms; provisions relating to operation and maintenance of facilities, buildings, grounds, equipment, furnishings, and occupant-space requirements; lighting; heating, cooling, and ventilation; food service; water supply and plumbing; sewage; sanitary facilities; insect and rodent control; garbage; safety; personnel health, hygiene, and work practices; and other matters the department finds are appropriate or necessary to protect the safety and health of the residents, staff, students, faculty, or patrons. The department may not adopt rules that conflict with rules adopted by the licensing or certifying agency. The department may enter and inspect at reasonable hours to determine compliance with applicable statutes or rules. In addition to any sanctions that the department may impose for violations of rules adopted under this section, the department shall also report such violations to any agency responsible for licensing or certifying the group care facility. The licensing or certifying

agency may also impose any sanction based solely on the findings of the department.

(16) ~~(17)~~ A function for investigating elevated levels of lead in blood. Each participating county health department may expend funds for federally mandated certification or recertification fees related to conducting investigations of elevated levels of lead in blood.

(17) ~~(18)~~ A food service inspection function for domestic violence centers that are certified by the Department of Children and Families and monitored by the Florida Coalition Against Domestic Violence under part XII of chapter 39 and group care homes as described in subsection (15) ~~(16)~~, which shall be conducted annually and be limited to the requirements in department rule applicable to community-based residential facilities with five or fewer residents.

The department may adopt rules to carry out ~~the provisions of~~ this section.

Section 37. Subsection (1) of section 381.0061, Florida Statutes, is amended to read:

381.0061 Administrative fines.—

(1) In addition to any administrative action authorized by chapter 120 or by other law, the department may impose a fine, which shall not exceed $500 for each violation, for a violation of s. 381.006(15) ~~s. 381.006(16)~~, s. 381.0065, s. 381.0066, s.

381.0072, or part III of chapter 489, for a violation of any rule adopted under this chapter, or for a violation of any of the provisions of chapter 386. Notice of intent to impose such fine shall be given by the department to the alleged violator. Each day that a violation continues may constitute a separate violation.

Section 38. Subsection (1) of section 381.0064, Florida Statutes, is amended to read:

381.0064 Continuing education courses for persons installing or servicing septic tanks.—

(1) The Department of Environmental Protection ~~Health~~ shall establish a program for continuing education which meets the purposes of ss. 381.0101 and 489.554 regarding the public health and environmental effects of onsite sewage treatment and disposal systems and any other matters the department determines desirable for the safe installation and use of onsite sewage treatment and disposal systems. The department may charge a fee to cover the cost of such program.

Section 39. Section 403.08601, Florida Statutes, is amended to read:

403.08601 Leah Schad Memorial Ocean Outfall Program.—The Legislature declares that as funds become available the state may assist the local governments and agencies responsible for implementing the Leah Schad Memorial Ocean Outfall Program pursuant to s. 403.086(10) ~~s. 403.086(9)~~. Funds received from

other sources provided for in law, the General Appropriations Act, from gifts designated for implementation of the plan from individuals, corporations, or other entities, or federal funds appropriated by Congress for implementation of the plan, may be deposited into an account of the Water Quality Assurance Trust Fund.

Section 40. Section 403.0871, Florida Statutes, is amended to read:

403.0871 Florida Permit Fee Trust Fund.—There is established within the department a nonlapsing trust fund to be known as the "Florida Permit Fee Trust Fund." All funds received from applicants for permits pursuant to ss. 161.041, 161.053, 161.0535, 403.087(7) ~~403.087(6)~~, and 403.861(7)(a) shall be deposited in the Florida Permit Fee Trust Fund and shall be used by the department with the advice and consent of the Legislature to supplement appropriations and other funds received by the department for the administration of its responsibilities under this chapter and chapter 161. In no case shall funds from the Florida Permit Fee Trust Fund be used for salary increases without the approval of the Legislature.

Section 41. Paragraph (a) of subsection (11) of section 403.0872, Florida Statutes, is amended to read:

403.0872 Operation permits for major sources of air pollution; annual operation license fee.—Provided that program approval pursuant to 42 U.S.C. s. 7661a has been received from

the United States Environmental Protection Agency, beginning January 2, 1995, each major source of air pollution, including electrical power plants certified under s. 403.511, must obtain from the department an operation permit for a major source of air pollution under this section. This operation permit is the only department operation permit for a major source of air pollution required for such source; provided, at the applicant's request, the department shall issue a separate acid rain permit for a major source of air pollution that is an affected source within the meaning of 42 U.S.C. s. 7651a(1). Operation permits for major sources of air pollution, except general permits issued pursuant to s. 403.814, must be issued in accordance with the procedures contained in this section and in accordance with chapter 120; however, to the extent that chapter 120 is inconsistent with ~~the provisions of~~ this section, the procedures contained in this section prevail.

(11) Each major source of air pollution permitted to operate in this state must pay between January 15 and April 1 of each year, upon written notice from the department, an annual operation license fee in an amount determined by department rule. The annual operation license fee shall be terminated immediately in the event the United States Environmental Protection Agency imposes annual fees solely to implement and administer the major source air-operation permit program in Florida under 40 C.F.R. s. 70.10(d).

(a) The annual fee must be assessed based upon the source's previous year's emissions and must be calculated by multiplying the applicable annual operation license fee factor times the tons of each regulated air pollutant actually emitted, as calculated in accordance with the department's emissions computation and reporting rules. The annual fee shall only apply to those regulated pollutants, except carbon monoxide and greenhouse gases, for which an allowable numeric emission limiting standard is specified in the source's most recent construction or operation permit; provided, however, that:

1. The license fee factor is $25 or another amount determined by department rule which ensures that the revenue provided by each year's operation license fees is sufficient to cover all reasonable direct and indirect costs of the major stationary source air-operation permit program established by this section. The license fee factor may be increased beyond $25 only if the secretary of the department affirmatively finds that a shortage of revenue for support of the major stationary source air-operation permit program will occur in the absence of a fee factor adjustment. The annual license fee factor may never exceed $35.

2. The amount of each regulated air pollutant in excess of 4,000 tons per year emitted by any source, or group of sources belonging to the same Major Group as described in the Standard Industrial Classification Manual, 1987, may not be included in

the calculation of the fee. Any source, or group of sources, which does not emit any regulated air pollutant in excess of 4,000 tons per year, is allowed a one-time credit not to exceed 25 percent of the first annual licensing fee for the prorated portion of existing air-operation permit application fees remaining upon commencement of the annual licensing fees.

3. If the department has not received the fee by March 1 of the calendar year, the permittee must be sent a written warning of the consequences for failing to pay the fee by April 1. If the fee is not postmarked by April 1 of the calendar year, the department shall impose, in addition to the fee, a penalty of 50 percent of the amount of the fee, plus interest on such amount computed in accordance with s. 220.807. The department may not impose such penalty or interest on any amount underpaid, provided that the permittee has timely remitted payment of at least 90 percent of the amount determined to be due and remits full payment within 60 days after receipt of notice of the amount underpaid. The department may waive the collection of underpayment and may ~~shall~~ not be required to refund overpayment of the fee, if the amount due is less than 1 percent of the fee, up to $50. The department may revoke any major air pollution source operation permit if it finds that the permitholder has failed to timely pay any required annual operation license fee, penalty, or interest.

4. Notwithstanding the computational provisions of this

subsection, the annual operation license fee for any source subject to this section may ~~shall~~ not be less than $250, except that the annual operation license fee for sources permitted solely through general permits issued under s. 403.814 may ~~shall~~ not exceed $50 per year.

5. Notwithstanding s. 403.087(7)(a)5.a., which authorizes ~~the provisions of s. 403.087(6)(a)5.a., authorizing~~ air pollution construction permit fees, the department may not require such fees for changes or additions to a major source of air pollution permitted pursuant to this section, unless the activity triggers permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a. Costs to issue and administer such permits shall be considered direct and indirect costs of the major stationary source air-operation permit program under s. 403.0873. The department shall, however, require fees pursuant to s. 403.087(7)(a)5.a. ~~the provisions of s. 403.087(6)(a)5.a.~~ for the construction of a new major source of air pollution that will be subject to the permitting requirements of this section once constructed and for activities triggering permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a.

Section 42. Paragraph (b) of subsection (7) of section 403.1835, Florida Statutes, is amended to read:

403.1835 Water pollution control financial assistance.—

(7) Eligible projects must be given priority according to the extent each project is intended to remove, mitigate, or prevent adverse effects on surface or ground water quality and public health. The relative costs of achieving environmental and public health benefits must be taken into consideration during the department's assignment of project priorities. The department shall adopt a priority system by rule. In developing the priority system, the department shall give priority to projects that:

(b) Enable compliance with laws requiring the elimination of discharges to specific water bodies, including the requirements of s. 403.086(10) ~~s. 403.086(9)~~ regarding domestic wastewater ocean outfalls;

Section 43. Paragraph (d) of subsection (3) of section 403.707, Florida Statutes, is amended to read:

403.707 Permits.—

(3)

(d) The department may adopt rules to administer this subsection. However, the department is not required to submit such rules to the Environmental Regulation Commission for approval. Notwithstanding the limitations of s. 403.087(7)(a) ~~s. 403.087(6)(a)~~, permit fee caps for solid waste management facilities shall be prorated to reflect the extended permit term authorized by this subsection.

Section 44. Subsections (8) and (21) of section 403.861,

Florida Statutes, are amended to read:

403.861 Department; powers and duties.—The department shall have the power and the duty to carry out the provisions and purposes of this act and, for this purpose, to:

(8) Initiate rulemaking to increase each drinking water permit application fee authorized under s. 403.087(7) ~~s. 403.087(6)~~ and this part and adopted by rule to ensure that such fees are increased to reflect, at a minimum, any upward adjustment in the Consumer Price Index compiled by the United States Department of Labor, or similar inflation indicator, since the original fee was established or most recently revised.

(a) The department shall establish by rule the inflation index to be used for this purpose. The department shall review the drinking water permit application fees authorized under s. 403.087(7) ~~s. 403.087(6)~~ and this part at least once every 5 years and shall adjust the fees upward, as necessary, within the established fee caps to reflect changes in the Consumer Price Index or similar inflation indicator. In the event of deflation, the department shall consult with the Executive Office of the Governor and the Legislature to determine whether downward fee adjustments are appropriate based on the current budget and appropriation considerations. The department shall also review the drinking water operation license fees established pursuant to paragraph (7)(b) at least once every 5 years to adopt, as necessary, the same inflationary adjustments provided for in

this subsection.

(b) The minimum fee amount shall be the minimum fee prescribed in this section, and such fee amount shall remain in effect until the effective date of fees adopted by rule by the department.

(21)(a) Upon issuance of a construction permit to construct a new public water system drinking water treatment facility to provide potable water supply using a surface water that, at the time of the permit application, is not being used as a potable water supply, and the classification of which does not include potable water supply as a designated use, the department shall add treated potable water supply as a designated use of the surface water segment in accordance with s. 403.061(30)(b) ~~s. 403.061(29)(b)~~.

(b) For existing public water system drinking water treatment facilities that use a surface water as a treated potable water supply, which surface water classification does not include potable water supply as a designated use, the department shall add treated potable water supply as a designated use of the surface water segment in accordance with s. 403.061(30)(b) ~~s. 403.061(29)(b)~~.

Section 45. Effective July 1, 2021, subsection (1) of section 489.551, Florida Statutes, is amended to read:

489.551 Definitions.—As used in this part:

(1) "Department" means the Department of Environmental

Protection ~~Health~~.

Section 46. Paragraph (b) of subsection (10) of section 590.02, Florida Statutes, is amended to read:

590.02 Florida Forest Service; powers, authority, and duties; liability; building structures; Withlacoochee Training Center.—

(10)

(b) The Florida Forest Service may delegate to a county, municipality, or special district its authority:

1. As delegated by the Department of Environmental Protection pursuant to ss. 403.061(29) ~~ss. 403.061(28)~~ and 403.081, to manage and enforce regulations pertaining to the burning of yard trash in accordance with s. 590.125(6).

2. To manage the open burning of land clearing debris in accordance with s. 590.125.

Section 47. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1367 Public Assistance
SPONSOR(S): Tomkow
TIED BILLS: **IDEN./SIM. BILLS:** SB 1808

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	11 Y, 4 N	Grabowski	Brazzell
2) Appropriations Committee		Fontaine	Pridgeon
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Medicaid is the health care safety net for low-income Floridians. Medicaid is a partnership of the federal and state governments established to provide coverage for health services for eligible persons. The program is administered by the Agency for Health Care Administration (AHCA) and financed by federal and state funds. AHCA delegates certain functions to other state agencies, including the Department of Children and Families (DCF), the Department of Health, the Agency for Persons with Disabilities, and the Department of Elder Affairs. At present, the Florida Medicaid program does not impose any work requirements on beneficiaries.

Current federal and state law requires recipients of benefits under the Temporary Cash Assistance (TCA) program to engage in work or education activities as a condition for program eligibility, unless they qualify for an explicit exemption from those activities. DCF may sanction TCA recipients who fail to meet work activity requirements by withholding cash assistance for a specified minimum time or until the participant complies, whichever is later.

HB 1367 directs AHCA to request federal approval to require certain Medicaid enrollees to engage in work activities to maintain eligibility for Medicaid.

The bill increases the penalties for the first three instances of noncompliance with the TCA work requirements to align with the food assistance program's sanctions and creates a fourth sanction. The bill:

- Increases the first sanction from 10 days to one month, and permits child-only TCA during the first month of sanction.
- Increases the second sanction from one month or until compliance, whichever is later, to three months or until compliance, whichever is later; and limits child-only TCA to the first three months of the sanction period.
- Increases the third sanction from three months or until compliance, whichever is later, to six months or until compliance, whichever is later; and limits child-only TCA to the first six months of the sanction period.
- Creates a fourth sanction of twelve months or until compliance, whichever is later, and requires that the participant must reapply to the program; and limits child-only TCA to the first twelve months of the sanction period.

The bill requires DCF to refer sanctioned participants to appropriate free and low-cost community services, including food banks. Additionally, the Department of Economic Opportunity (DEO), with DCF and CareerSource Florida, must work with the participant to develop strategies on how to overcome barriers to compliance with the TCA work requirements that the recipient faces through the participant's individual responsibility plan (IRP).

The bill also requires DEO to develop rules for how Local Workforce Development Boards (LWDBs) implement sanctions for failure to comply with work requirements. DEO must report on TCA participation statistics as part of the annual report it submits to the Governor, the House of Representatives, and the Senate.

The bill also prohibits the use of electronic benefits transfer (EBT) cards at certain retailers and requires EBT cardholders to pay a penalty for the fifth and every subsequent EBT card requested within a 12-month span.

The bill will have a significant negative fiscal impact on DCF, and an insignificant negative fiscal impact on AHCA. The bill provides a nonrecurring appropriation of $952,360 from the Federal Grants Trust Fund for the technology modifications related to this act.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Medicaid

Medicaid is the health care safety net for low-income Floridians. Medicaid is a partnership of the federal and state governments established to provide coverage for health services for eligible persons. The program is administered by the Agency for Health Care Administration (AHCA) and financed by federal and state funds. AHCA delegates certain functions to other state agencies, including the Department of Children and Families (DCF), which makes eligibility determinations.

The structure of each state's Medicaid program varies, but what states must pay for is largely determined by the federal government, as a condition of receiving federal funds.[1] Federal law sets the amount, scope, and duration of services offered in the program, among other requirements. These federal requirements create an entitlement that comes with constitutional due process protections. The entitlement means that two parts of the Medicaid cost equation – people and utilization – are largely predetermined for the states. The federal government sets the minimum mandatory populations to be included in every state Medicaid program. The federal government also sets the minimum mandatory benefits to be covered in every state Medicaid program. These benefits include physician services, hospital services, home health services, and family planning.[2] States can add benefits, with federal approval. Florida has added many optional benefits, including prescription drugs, ambulatory surgical center services, and dialysis.[3]

Florida Medicaid does not cover all low-income Floridians. The maximum income limits for programs are illustrated below as a percentage of the federal poverty level (FPL).

Current Medicaid and CHIP Eligibility Levels in Florida[4]
(With Income Disregards and Modified Adjusted Gross Income)

Children's Medicaid			**CHIP (KidCare)** Age 0-18	**Pregnant Women**	**Parents Caretaker Relatives**	**Childless Adults** (non-disabled)
Age 0-1	Age 1-5	Age 6-18				
206% FPL	140% FPL	133% FPL	210% FPL	191% FPL	28% FPL	0% FPL

The Florida Medicaid program covers approximately 3.9 million low-income individuals.[5] Medicaid is the second largest single program in the state, behind public education, representing approximately one-third of the total FY 2019-2020 state budget.[6]

[1] Title 42 U.S.C. §§ 1396-1396w-5; Title 42 C.F.R. Part 430-456 (§§ 430.0-456.725) (2016).
[2] S. 409.905, F.S.
[3] S. 409.906, F.S.
[4] U.S. Centers for Medicare and Medicaid Services, Medicaid.gov, *Florida,* http://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-eligibility-levels/index.html (last accessed Feb. 1, 2020). For calendar year 2020, the federal poverty level (FPL) is $25,750 for a family of 4 residing in Florida.
[5] Agency for Health Care Administration, *Florida Statewide Medicaid Monthly Enrollment Report*, December 2019, available at https://ahca.myflorida.com/medicaid/Finance/data_analytics/enrollment_report/index.shtml (last accessed Feb.1, 202).
[6] Ch. 2019-115, L.O.F. See also *Fiscal Analysis in Brief: 2019 Legislative Session*, available at http://flsenate.gov/UserContent/Committees/Publications/FiscalAnalysisInBrief/2019_Fiscal_Analysis_In_Brief.pdf (last accessed November 4, 2019).

Medicaid Waivers

States have some flexibility in the provision of Medicaid services. Section 1915(b) of the Social Security Act provides authority for the Secretary of the U.S. Department of Health and Human Services to waive requirements to the extent that he or she "finds it to be cost-effective and efficient and not inconsistent with the purposes of this title." Also, Section 1115 of the Social Security Act allows states to use innovative service delivery systems that improve care, increase efficiency, and reduce costs.

States may also ask the federal government to waive federal requirements to expand populations or services, or to try new ways of service delivery. For example, Florida has a Section 1115 waiver to use a comprehensive managed care delivery model for primary and acute care services, the Statewide Medicaid Managed Care (SMMC) Managed Medical Assistance (MMA) program.[7]

MMA Program

The MMA program provides acute health care services through managed care plans contracted with AHCA in the 11 regions across the state. Specialty plans are also available to serve distinct populations, such as the Children's Medical Services Network for children with special health care needs, or those in the child welfare system. Medicaid recipients with HIV/AIDS, serious mental illness, dual enrollment with Medicare, chronic obstructive pulmonary disease, congestive heart failure, or cardiovascular disease may also select from specialized plans.

Most Medicaid recipients must be enrolled in the MMA program. Those individuals who are not required to enroll, but may choose to do so, are:

- Recipients who have other creditable coverage, excluding Medicare;
- Recipients who reside in residential commitment facilities through the Department of Juvenile Justice or mental health treatment facilities;
- Persons eligible for refugee assistance;
- Residents of a developmental disability center;
- Enrollees in the developmental disabilities home- and community-based waiver or those waiting for waiver services; and
- Children in a prescribed pediatric extended care center.[8]

Other Medicaid enrollees are exempt from the MMA program and receive Medicaid services on a fee-for-service basis. Exempt enrollees are:

- Women who are eligible for family planning services only;
- Women who are eligible only for breast and cervical cancer services; and
- Persons eligible for emergency Medicaid for aliens.

Medicaid Work Requirements

Current federal and Florida Medicaid law do not require participation in work or work-related activities as a condition of program eligibility. However, various states now impose such a requirement.

To date, ten states have been granted authority to establish work requirements for selected portions of their Medicaid populations: Arkansas, Arizona, Indiana, Kentucky, Michigan, New Hampshire, Ohio, South Carolina, Utah, and Wisconsin.[9] This authority was granted by the U.S. Centers for Medicare and

[7] S. 409.964, F.S.
[8] S. 409.972, F.S.
[9] Henry J. Kaiser Family Foundation, "Medicaid Waiver Tracker: Approved and Pending Section 1115 Waivers by State," December 16, 2019. Available at https://www.kff.org/medicaid/issue-brief/medicaid-waiver-tracker-approved-and-pending-section-1115-waivers-by-state/ (last accessed December 18, 2019).

Medicaid Services (CMS) under Section 1115 of the Social Security Act as Medicaid demonstration waivers.

However, only one of the ten states granted waiver authority for Medicaid work requirements currently enforces those requirements (Indiana). In three states (Arkansas, Kentucky, and New Hampshire), Medicaid work requirements were invalidated by federal court decisions, and are currently under appeal. Two other states (Michigan and Indiana) are currently awaiting consideration of class action lawsuits challenging their Medicaid work requirements. Five other states have received federal permission to implement work requirements (Arizona, Ohio, South Carolina, Utah, and Wisconsin), but all have chosen to temporarily or permanently postpone implementation of those work requirements in light of the federal court decisions rendered to date.[10]

Temporary Aid for Needy Families

Under the federal welfare reform legislation of 1996, the Temporary Aid for Needy Families (TANF) program replaced the welfare programs known as Aid to Families with Dependent Children, the Job Opportunities and Basic Skills Training program, and the Emergency Assistance program. The law ended federal entitlement to assistance and instead created TANF as a block grant that provides federal funds to states, territories, and tribes each year. These funds cover benefits, administrative expenses, and services targeted to needy families. TANF became effective July 1, 1997, and was reauthorized by the Deficit Reduction Act of 2005. States receive block grants to operate their individual programs and to accomplish the goals of the TANF program.

Florida's Temporary Cash Assistance Program

Florida's temporary cash assistance (TCA) program is one of several programs funded with TANF block grant funds. The purpose of the TCA program is to help families with children become self-supporting while allowing children to remain in their own homes. It provides cash assistance to families that meet the technical, income, and asset requirements.[11] In September 2019, 8,952 adults and 51,098 children received TCA.[12]

Various state agencies and entities work together through a series of contracts or memoranda of understanding to administer the TCA program. DCF receives the federal TANF block grant and administers the TCA program, monitoring eligibility and disbursing benefits. The Department of Economic Opportunity (DEO) is responsible for financial and performance reporting to ensure compliance with federal and state measures, and for providing training and technical assistance to Local Workforce Development Boards (LWDBs). LWDBs provide information about available jobs, on-the-job training, and education and training services within their respective areas and contract with one-stop career centers.[13] CareerSource Florida has planning and oversight responsibilities for all workforce-related programs.

Full-Family and Child-Only TCA

Florida law specifies two categories of families who are eligible for TCA: those families that are work-eligible and may receive TCA for the full-family, and those families who are eligible to receive child-only TCA. Within the full-family cases, the parent or parents are required to comply with work requirements

[10] Id.
[11] Children must be under the age of 18, or under age 19 if they are full time secondary school students. Parents, children and minor siblings who live together must apply together. Additionally, pregnant women may also receive TCA, either in the third trimester of pregnancy if unable to work, or in the 9th month of pregnancy.
[12] Department of Children and Families, Monthly Flash Report Caseload Data: September 2019. http://www.dcf.state.fl.us/programs/access/reports/flash2005.xlsx (last accessed December 16, 2019)
[13] Workforce Investment Act – Workforce Innovation and Opportunity Act Annual Report for 2015-2016 Program Year, CareerSource Florida, Inc., *available at* https://careersourceflorida.com/wp-content/uploads/2016/10/161003_AnnualReport.pdf (last accessed December 16, 2019).

to receive TCA for the parent(s) and child(ren). There were 8,647 families receiving TCA through full-family cases containing an adult, 206 of which were two-parent families; these families are subject to work requirements.[14]

The majority of cash assistance benefits are child-only, through the Relative Caregiver Program, or to work-eligible cases where the adult is ineligible due to sanction for failure to meet TCA work requirements. In September 2019, 29,446 of the 38,093 families receiving TCA were child-only cases; many of these families are not subject to work requirements, by virtue of having an approved exemption.[15]

Administration

Various state agencies and entities work together through a series of contracts or memorandums of understanding to administer the TCA Program. DCF is the recipient of the federal TANF block grant. DCF monitors eligibility and disburses benefits. CareerSource Florida, Inc., the state's workforce policy and investment board, has planning and oversight responsibilities for all workforce-related programs. DEO implements the policy created by CareerSource.[16] DEO submits financial and performance reports ensuring compliance with federal and state measures and provides training and technical assistance to the LWDBs. LWDBs provide a coordinated and comprehensive delivery of local workforce services. The LWDBs focus on strategic planning, policy development and oversight of the local workforce investment system within their respective areas, and contracting with one-stop career centers. The contracts with the LWDBs are performance- and incentive-based.

Eligibility Determination

An applicant must meet all eligibility requirements to receive TCA benefits. To be eligible, an applicant's gross family income must be 185 percent or less of the federal poverty level.[17] The applicant may not have more than $2,000 of counted liquid and nonliquid resources.[18] DCF processes the initial application for TANF. The applicant may submit his or her application in person, online or through the mail. DCF then determines an applicant's eligibility. To be eligible for full-family TCA, applicants must participate in work activities unless they qualify for an exemption.

Exemptions from the work requirement are available for:

- An individual who receives benefits under the Supplemental Security Income program or the Social Security Disability Insurance program.
- An adult who is not defined as a work-eligible individual under federal law.
- A single parent of a child under three months of age, except that the parent may be required to attend parenting classes or other activities to better prepare for raising a child.
- An individual who is exempt from the time limitations of TCA because of a hardship exemption.

If no exemptions from work requirements apply, DCF refers the applicant to DEO.[19] Upon referral, the participant must complete an intake application and undergo assessment by LWDB staff which includes:

- Identifying barriers to employment.
- Identifying the participant's skills that will translate into employment and training opportunities.

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[14] Id.
[15] Agency for Health Care Administration, *SMMC MMA Enrollment by County by Plan* (as of October 2019), available at https://ahca.myflorida.com/medicaid/Finance/data_analytics/enrollment_report/index.shtml (last accessed December 16, 2019).
[16] S. 445.007(13), F.S.
[17] S. 414.085(1)(a), F.S.
[18] Licensed vehicles with a combined value of $8,500 are excluded. S. 414.075, F.S.
[19] This is an electronic referral through a system interface between DCF's computer system and DEO's computer system. Once the referral has been entered into the DEO system, the information may be accessed by any of the LWDBs or One-Stop Career Centers.

- Reviewing the participant's work history.
- Identifying whether a participant needs alternative requirements due to domestic violence, substance abuse, medical problems, mental health issues, hidden disabilities, learning disabilities or other problems which prevent the participant from engaging in full-time employment or activities.

Once the assessment is complete, the staff member and participant create an individual responsibility plan (IRP). The IRP includes:

- The participant's employment goal;
- The participant's assigned activities;
- Services provided through program partners, community agencies and the workforce system;
- The weekly number of hours the participant is expected to complete; and
- Completion dates and deadlines for particular activities.

DCF does not disburse any benefits to the participant until DEO or the LWDB confirms that the participant has registered and attended orientation.

TCA Income Limit and Maximum Benefit[20]

Household Size	Maximum Monthly Income (185% FPL)	Maximum Monthly Benefit, If Shelter Obligation > $50	Maximum Monthly Benefit, If Shelter Obligation ≤ $50	Maximum Monthly Benefit, If No Shelter Obligation
1	$1,926	$180	$153	$95
2	$2,607	$241	$205	$158
3	$3,289	$303	$258	$198
4	$3,970	$364	$309	$254

TCA Work Requirement

To be eligible for full-family TCA, applicants must participate in work activities in accordance with s. 445.024, F.S., unless they qualify for an exemption.[21]

When Congress created TANF in 1996, it allowed states to use their TANF funding in any manner "reasonably calculated to accomplish the purposes of TANF. States were given broad flexibility to determine methods of assistance, benefit levels, and eligibility requirements.[22]

Florida law recognizes that certain participants are not immediately able to engage in work activities for medical reasons. If an individual cannot participate in assigned work activities due to a medical incapacity, the individual may be excepted from the activity for a specific period of time.[23] To be excused from the work activity requirements, the participant's medical incapacity must be verified by a physician, in accordance with the procedures established by DCF.[24]

[20] Email from Lindsey Zander, Deputy Legislative Affairs Director, Department of Children and Families, RE: Updated Information (Mar. 13, 2019) (on file with Children, Families, and Seniors Subcommittee staff); Access Florida Program Policy Manual, Appendix A-5, Temporary Cash Assistance Income Standards, available at https://www.myflfamilies.com/service-programs/access/docs/esspolicymanual/a_05.pdf (accessed Feb. 2, 2020).
[21] S. 414.095(1), F.S.
[22] P.L. 104-193, *Personal Responsibility and Work Opportunity Reconciliation Act of 1996.*
[23] S. 414.065(4)(d), F.S.
[24] Rule 65A-4.206(2),(3), F.A.C.

Individuals receiving TCA who are not otherwise exempt from work activity requirements must participate in work activities for the maximum number of hours allowable under federal law.[25] The number of required work activity hours is determined by calculating the value of the cash benefits and then dividing that number by the hourly minimum wage amount. Federal law requires individuals to participate in work activities for at least:

- 20 hours per week (or attend a secondary school or the equivalent or participate in education directly related to employment) for those under the age of 20 and married or single head-of-household;
- 20 hours per week for single parents with a child under the age of six;
- 30 hours per week for all other single parents;
- 35 hours per week, combined, for two-parent families not receiving subsidized child care; or
- 55 hours per week, combined, for two-parent families receiving subsidized child care.

Pursuant to federal rule[26] and state law,[27] job search, on-the-job training, education, and subsidized and unsubsidized employment, among other things, may be used individually or in combination to satisfy the work requirements for a participant in the TCA program.

LWDBs currently have discretion to assign an applicant to a work activity, including job search, before receiving TCA.[28] Currently, Florida's TANF Work Verification Plan[29] requires participants to record each on-site job contact and a representative of the employer or LWDB provider staff to certify the validity of the log by signing each entry. If the applicant conducts a job search by phone or internet, the activity must be recorded on a job search report form and include detailed, specific information to allow follow-up and verification by the LWDB provider staff.[30]

Sanctions for Noncompliance

LWDBs can sanction TANF recipients who fail to comply with the work requirements by withholding cash assistance for a specified time, which lengthens with repeated lack of compliance.[31] Sanctions for non-compliant participants involve processes at both DEO and DCF. Because DEO administers the work programs, the LWDB first becomes aware of participants' noncompliance and then notifies DCF to request a sanction; DCF then applies the sanctions.[32]

When a participant fails to comply with a mandatory work activity, the LWDB records the non-compliance in DEO's tracking system and sends the recipient a notice of adverse action; the recipient then has 10 days to contact DEO to show good cause[33] for missing the requirement.[34] During the 10-day period, the LWDB must make both oral and written attempts to contact the participant to:[35]

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[25] S. 445.024(2), F.S.
[26] 45 C.F.R. § 261.30.
[27] This information is not required as part of CareerSource Florida's annual report to the Legislature and Governor. *See*, s. 445.024, F.S.
[28] Department of Children and Families, *Temporary Assistance for Needy Families: 2018 Annual Report on TANF and State MOE Programs*, available at https://www.myflfamilies.com/service-programs/access/docs/Florida%20ACF204%20Report-2018.pdf (last accessed December 16, 2019).
[29] Department of Children and Families Economic Self-Sufficiency Program Office, *Temporary Assistance for Needy Families State Plan Renewal October 1, 2017 – September 30, 2020,* available at https://www.myflfamilies.com/service-programs/access/docs/TANF-Plan.pdf (last accessed December 16, 2019).
[30] Department of Children and Families, Agency Analysis of 2016 House Bill 563 (Nov. 20, 2015)(on file with staff of the Children and Families Subcommittee).
[31] Office of Program Policy Analysis & Government Accountability, *Mandatory Work Requirements for Recipients of the Food Assistance and Cash Assistance Programs*, page 4, (Jan. 8, 2018)(on file with the staff of the Children and Families Subcommittee).
[32] Id.
[33] Id. DCF captures limited information regarding good-cause for noncompliance in three categories: temporary illness, household emergency, and temporary transportation unavailable.
[34] Id. at 11, *see also* rule 65A-4.205(3), F.A.C.
[35] Rule 65A-4.205(3), F.A.C.

- Determine if the participant had good cause for failing to meet the work requirement;
- Refer to or provide services to the participant, if appropriate, to assist with the removal of barriers to participation;
- Counsel the participant on the consequences for failure to comply with work or alternative requirement plan activity requirements without good cause;
- Provide information on transitional benefits if the participant subsequently obtained employment; and,
- Make sure the participant understands that compliance with work activity requirements[36] during the 10-day period will avoid the imposition of a sanction.

If the recipient complies within 10 days, the LWDB does not request a sanction. However, if the recipient does not show good cause to the LWDB and does not comply, the LWDB sends DCF a sanction request.[37] Once DCF receives the sanction request from the LWDB, it then sends the recipient a notice of intent to sanction.[38] If the recipient does not show good cause within 10 days, the recipient is sanctioned by DCF, and DCF notifies DEO.[39]

Section 414.065(4), F.S., allows for noncompliance related to the following to constitute exceptions to the penalties for noncompliance with work participation requirements:

- Unavailability of child care in certain circumstances;[40]
- Treatment or remediation of past effects of domestic violence;
- Medical incapacity;
- Outpatient mental health or substance abuse treatment; and
- Decision pending for Supplemental Security Income or Social Security Disability Income.

Section 414.065(4)(g), F.S., grants rulemaking authority to DCF to determine other situations that would constitute good cause for noncompliance with work participation requirements. It specifies that these situations must include caring for a disabled family member when the need for the care has been verified and alternate care is not available.[41] DCF adopted rules stating that other good causes for noncompliance include the temporary inability to participate due to circumstances beyond the participant's control, such as:

- A family emergency due to the inability to find suitable child care for a sick child under age 12;
- Hospitalization, medical emergency or death of an immediate family member;
- Natural disaster;
- Lack of transportation; and
- Court appearance.[42]

In its database, DEO classifies the reasons for sanctions for noncompliance in the following categories:[43]

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[36] The LWDB designee must provide the participant with another work activity within the 10-day period if it is impossible for the participant to comply with the original assigned activity.
[37] *Supra,* note 31. DCF only receives a request for sanction and not the reasons for the sanction. S*ee also* rule 65A-4.205(4), F.A.C.
[38] Id. at 11.
[39] Id., *see also* rule 65A-4.205(4), F.A.C
[40] Specifically, if the individual is a single parent caring for a child who has not attained 6 years of age, and the adult proves to the LWDB an inability to obtain needed child care for one or more of the following reasons, as defined in the Child Care and Development Fund State Plan required by 45 C.F.R. part 98: (1) the unavailability of appropriate child care within a reasonable distance from the individual's home or worksite; (2) the unavailability or unsuitability of informal child care by a relative or under other arrangements; or (3) the unavailability of appropriate and affordable formal child care arrangements. S. 414.065(4)(a), F.S.
[41] S. 414.065(4)(g), F.S.,
[42] Rule 65A-4.205(2), F.A.C.
[43] *Supra*, note 31, at 19.

- Failure to respond to a mandatory letter.[44] Typically, this is the letter recipients receive from DEO upon referral from DCF requiring them to register with DEO.
- Failure to attend a work activity.
- Failure to turn in a timesheet.
- Failure to attend training.
- Failure to turn in necessary documentation.

The consequences of sanctions are as follows:[45]

- First noncompliance - cash assistance is terminated for the full-family for a minimum of 10 days or until the individual complies.
- Second noncompliance - cash assistance is terminated for the full-family for one month or until the individual complies, whichever is later.
- Third noncompliance - cash assistance is terminated for the full-family for three months or until the individual complies, whichever is later.

For the second and subsequent instances of noncompliance, the TCA for the child or children in a family who are under age 16 may be continued (i.e. the case becomes a child-only case). Any such payments must be made through a protective payee, and under no circumstances may temporary cash assistance or food assistance be paid to an individual who has not complied with program requirements.[46]

From November 2017 through October 2018, the number of TCA families sanctioned for noncompliance with the work requirements breaks down as follows:

- 13,709 families were sanctioned for a first instance of non-compliance; 4,252, or 31 percent, of those families complied with work requirements to be reinstated in the program.[47]
- 3,637 families were sanctioned for a second instance of non-compliance; 1,477, or 40.6 percent, of those families complied with the work requirements to be reinstated in the program. An estimated 784 children continued to receive benefits through child-only cases.[48]
- 2,316 families were sanctioned for a third instance of non-compliance; 813, or 35.1 percent, of those families complied with the work requirements to be reinstated in the program. An estimated 435 children in these families continued to receive benefits through child-only cases.[49]

However, if a previously-sanctioned participant fully complies with work activity requirements for at least six months, the participant must be reinstated as being in full compliance with program requirements for the purpose of sanctions imposed under this section.[50] Once the participant has been reinstated, a subsequent instance of noncompliance would be treated as the first violation.

TCA Sanctions Compared to Supplemental Nutrition Assistance Program Sanctions

The Food Assistance Program, Supplemental Nutrition Assistance Program (SNAP), formerly called food stamps, also contains similar sanctions for failure to comply with its Employment and Training Program. However, the SNAP sanctions are a longer duration. For the first instance of noncompliance,

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[44] Id. at 18. For work-eligible individuals with at least one sanction in FFY 2017, over half the sanctions were for failure to respond to a mandatory letter in 14 of 24 LWDBs.
[45] S. 414.065(1), F.S.
[46] S. 414.065(2), F.S.
[47] Email from Lindsey Zander, Deputy Legislative Affairs Director, Department of Children and Families, RE: Information on Noncompliance w Work Requirements (Mar. 11, 2019).
[48] Id.
[49] Id.
[50] S. 414.065(1), F.S.

food assistance benefits are terminated for one month or until compliance, whichever is later; for the second instance, food assistance benefits are terminated for three months or until compliance, whichever is later; and for the third instance, food assistance benefits are terminated for six months or until compliance, whichever is later.[51]

Electronic Benefits Transfer Card Program

Electronic benefits transfer (EBT) is an electronic system that allows a recipient to authorize transfer of their government benefits, including from the SNAP and TCA programs, to a retailer account to pay for products received.[52] The EBT card program is administered on the federal level by the Food and Nutrition Service (FNS) within the United States Department of Agriculture and at the state level by DCF.

In Florida, benefits are deposited into a TCA or SNAP account each month; the benefits in the TCA or SNAP account are accessed using the Florida EBT Automated Community Connection to Economic Self Sufficiency (ACCESS) card.[53] Even though the EBT card is issued in the name of an applicant, any eligible member of the household is allowed to use the EBT card.[54] Additionally, recipients may designate an authorized representative as a secondary cardholder who can receive an EBT card and access the food assistance account. Authorized representatives are often someone responsible for caring for the recipient. The ACCESS Florida system allows recipients to designate one authorized representative per household.

Prohibited Usage

The Middle Class Tax Relief and Job Creation Act of 2012 required states receiving TANF to create policies and practices as necessary to prevent assistance provided under the program from being used in any EBT transaction in the following establishments:

- Any liquor store;
- Any casino, gambling casino, or gaming establishment; or
- Any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment. [55]

In 2013, Florida enacted legislation[56] that prohibits EBT cards from being accepted at the following locations or for the following activities:

- The purchase of an alcoholic beverage as defined in s. 561.01, F.S., and sold pursuant to the Florida Beverage Law.
- An adult entertainment establishment, as defined in s. 847.001, F.S.;
- A pari-mutuel facility, as defined in s. 550.02, F.S.;
- A slot machine facility, as defined in s. 551.102, F.S.;
- A commercial bingo facility that operates outside the provisions of s. 849.0931, F.S.; and
  A casino, gaming facility, or Internet café, including gaming activities authorized under part II of chapter 285.[57]

[51] Rule 65A-1.605(3), F.A.C.
[52] U.S. Department of Agriculture, *Electronic Benefit Transfer (EBT)*, available at https://www.fns.usda.gov/sso/electronic-benefits-transfer-ebt (last accessed January 27, 2020).
[53] Department of Children and Families, *Welcome to EBT,* available at http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash/welcome-ebt (last accessed January 27, 2020).
[54] 7 C.F.R. § 273.2(n)(3).
[55] P.L. 112-96. Section 4004.
[56] S. 1, chapter 2013-88, Laws of Florida.
[57] S. 402.82(4), F.S.

EBT Card Replacement

When a recipient loses an EBT card, he or she must call the EBT vendor's customer service telephone number to request a replacement EBT card.[58] The vendor then deactivates the card, and sends the household a new card.[59] Federal regulations allow recipients to request an unlimited number of replacement EBT cards.[60] While states cannot limit the number of replacement cards, frequent requests for replacement cards can be an indicator of EBT card fraud, such as trafficking, which occurs when an EBT card containing benefits is exchanged for cash. FNS and DCF consider multiple replacement cards a preliminary indicator of trafficking.

FNS aims to preserve food assistance access for vulnerable populations (e.g., mentally ill and homeless people) who are at risk of losing their cards but who are not committing fraud,[61] while preventing others from trafficking and replacing their EBT cards. In the interest of preventing fraud, FNS regulations require states to monitor all client requests for EBT card replacements and send a notice upon the fourth request in a 12-month period alerting the household that its account is being monitored for potential suspicious activity.[62]

In Fiscal Year 2014-15, DCF sent 13,967 letters to households that had requested four or more cards.[63] The letter informs the recipient that the card does not need to be replaced each month and that it is important to keep track of the card.[64] The letter also informs the recipient that this number of replacement requests is not normal and that the household's EBT behavior is being monitored.[65] Additionally, in Fiscal Year 2014-15, less than one-third of the households who requested four cards (4,653 households) requested yet another replacement card after receiving the letter, and the DCF Office of Public Benefits Integrity referred these cases to the Department of Financial Services Division of Public Assistance Fraud (DPAF) for potential fraud investigation.[66]

Federal regulations allow states to charge recipients for the cost to replace an excessive[67] number of cards. FNS allows states to charge for the cost of the EBT card after four replaced cards. In 2018, under DCF's EBT contract, the vendor reported that replacements cost $3.50 per card.[68] A number of other states charge for replacement cards. Those states charge between $2.00 to $5.00[69] per replacement card with some exceptions for good cause or financial hardship.

Effect of Proposed Changes

Medicaid

HB 1367 requires AHCA to request approval from the federal government to impose work requirements as condition of eligibility for Medicaid and enrollment in a MMA plan. The work requirements and the criteria regarding Medicaid recipients subject to them must be consistent with those in the TANF TCA program.

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[58] The Florida Legislature's Office of Program Policy Analysis & Government Accountability, *Supplemental Nutrition Assistance Program: DCF Has Mechanisms in Place to Facilitate Eligibility, Verify Participant Identity, and Monitor Benefit Use*, Dec. 3, 2015, p. 8 (research memorandum on file with staff of the Children and Families Subcommittee).
[59] Id.
[60] 7 C.F.R. § 276.4.
[61] 7 C.F.R. § 274.6(b)(5)(iii).
[62] 7 C.F.R. § 274.6(b)(6); in Florida, after the EBT vendor provides a fourth replacement card to a household within a 12-month span, DCF sends a letter to the household.
[63] *Supra*, note 58.
[64] Id.
[65] Id.
[66] Id.
[67] Defined by federal regulation as in excess of four cards within a 12-month span.
[68] *Supra*, note 58.
[69] By way of example, Louisiana and Maryland charge $2.00, New Mexico charges $2.50, and Massachusetts charges $5.00.

Under the bill, the work requirements would apply to MMA enrollees. Assuming the federal government approves work requirements for Medicaid recipients consistent with those applicable to TCA, the work requirements would not apply to:

- Children;
- An elderly or disabled individual who receives SSI or SSDI benefits;
- An adult who is not defined as a work-eligible individual under federal law[70];
- A single parent of a child under 3 months, except that the parent may be required to attend parenting classes or other activities to better prepare for the responsibilities of raising a child; or
- An individual who is exempt based on hardship, pursuant to s. 414.105, F.S.[71]

Work requirements would apply to able-bodied adults with and without children, who meet the current income eligibility requirements and do not qualify for an exemption. Medicaid recipients who are also TCA beneficiaries are already subject to TANF work requirements. The application of work activities consistent with the TCA requirements would require an estimated 501,554 Medicaid recipients to be subject to work requirements.[72]

Because the bill requires the Medicaid work requirements to be consistent with those for TCA, the medical exception in the TCA program would apply. A participant who cannot participate in assigned work activities due to a medical incapacity may be excepted from the activity for a specific period of time. The participant is required to comply with the course of treatment necessary for the participant to resume participation. The participant's medical incapacity must be verified by a licensed physician, in accordance with the DCF rule.

If approved by the federal government, MMA enrollees would be required to submit proof to DCF of work activities for no more than 40 hours per week, consistent with federal TCA requirements. Assuming the federal government approves work activities consistent with those applicable to TCA, work activities may be in the following categories:

- Unsubsidized employment;
- Subsidized private sector or public sector employment;
- On-the-job training;
- Community service programs;
- Work experience;
- Job search and job readiness assistance;
- Vocational educational training;
- Job skills training directly related to employment;

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[70] 45 CFR 261.2(n):
(1) Work-eligible individual means an adult (or minor child head-of-household) receiving assistance under TANF or a separate State program or a non-recipient parent living with a child receiving such assistance unless the parent is:
(i) A minor parent and not the head-of-household;
(ii) A non-citizen who is ineligible to receive assistance due to his or her immigration status; or
(iii) At State option on a case-by-case basis, a recipient of Supplemental Security Income (SSI) benefits or Aid to the Aged, Blind or Disabled in the Territories.
(2) The term also excludes:
(i) A parent providing care for a disabled family member living in the home, provided that there is medical documentation to support the need for the parent to remain in the home to care for the disabled family member;
(ii) At State option on a case-by-case basis, a parent who is a recipient of Social Security Disability Insurance (SSDI) benefits; and
(iii) An individual in a family receiving MOE-funded assistance under an approved Tribal TANF program, unless the State includes the Tribal family in calculating work participation rates, as permitted under §261.25.

[71] S. 414.105, F.S., provides hardship exemptions for individuals who have diligently participated in activities but have an inability to obtain employment or extraordinary barriers to employment, victims of domestic violence, individuals subject to a time limitation under the Family Transition Act of 1993, individuals who receive SSI or SSDI, and individuals who are totally responsible for the care of a disabled family member.

[72] Department of Children and Families, Agency Analysis of 2020 House Bill 1367 (January 13, 2020)(on file with the Children and Families Subcommittee).

- Education directly related to employment;
- Satisfactory attendance at a secondary school or in a course of study leading to a high school equivalency diploma; or
- Providing child care services.[73]

Temporary Cash Assistance

Sanctions for Noncompliance

HB 1367 increases the sanctions for TCA recipients subject to work requirements for the first three instances of noncompliance and creates a sanction for the fourth instance of noncompliance. The bill amends s. 414.065(1) and (2), F.S., to:

- Increase the first sanction from 10 days to one month or until compliance, whichever is later; and allows child-only TCA during the first month of this sanction.
- Increase the second sanction from one month or until compliance, whichever is later, to three months or until compliance, whichever is later; and allows child-only TCA for a minor child in the family during the first three months of the sanction period even if the participant takes longer to comply.
- Increase the third sanction from three months or until compliance, whichever is later, to six months or until compliance, whichever is later; and allows child-only TCA for a minor child in the family during the first six months of the sanction period even if the participant takes longer to comply.
- Create a fourth sanction of twelve months or until compliance, whichever is later, and require that the individual reapply to the program to resume receiving benefits; and allows child-only TCA for a minor child in the family during the first twelve months of the sanction period even if the participant takes longer to comply.

Because the bill limits the period when a family can receive child-only TCA following noncompliance, it may provide an additional incentive for noncompliant households to comply with work activities once they have served the minimum penalty period.

The bill aligns the sanctions for the first through third occurrences of noncompliance with TCA work requirements with the sanctions for noncompliance with the SNAP program's Employment and Training Program.

The bill also requires DEO to adopt rules that establish uniform standards for compliance with work activity requirements and submitting requests for sanctions for noncompliance with work requirements for TCA and SNAP pursuant to DCF. DEO must also ensure that LWDBs implement sanctions for noncompliance with work activity requirements uniformly.

Additionally, when a participant is sanctioned, the bill requires DCF to refer that person to appropriate free and low-cost community services, including food banks. Additionally, the bill allows participants to comply with the work activity requirements before the end of the minimum penalty period.

Work Plan

The bill requires that, prior to receipt of TCA, DEO, DCF, or CareerSource must inform the participant, in plain language, and have the participant agree to, in writing:

- What is expected of the applicant to continue to receive benefits;
- Under what circumstances the applicant would be sanctioned and what constitutes good cause for noncompliance; and

[73] S. 445.024(1), F.S.

- Potential penalties for noncompliance with work requirements, including how long benefits would not be available to the applicant.

The bill also requires that, prior to receipt of TCA, DEO, DCF, or CareerSource must work with the participant to develop strategies on how to overcome barriers to compliance with the TCA work requirements that the recipient faces through the IRP. The bill specifies that the IRP must be developed jointly by the participant and the participant's case manager pursuant to an initial assessment of, at a minimum, the participant's skills, prior work experience, employability, and barriers to employment. The IRP must:

- Seek to move the participant towards self-sufficiency
- Establish employment goals and a plan to move the participant into unsubsidized employment.
- Place the participant into highest level of employment he or she is capable of, increasing over time the participant's responsibilities and amount of work.
- Clearly state in sufficient detail the participant's obligations; activity requirements; and any services the local workforce development board will provide to enable the participant to satisfy his or her obligations and activity requirements, including, but not limited to, child care and transportation, where available.
- Be specific, sufficient, feasible, and sustainable in response to the realities of any barriers to compliance with work activity requirements that the participant faces, including but not limited to, substance abuse, mental illness, physical or mental disability, domestic violence, a criminal record affecting employment, significant job-skill or soft-skill deficiencies, and lack of child care, stable housing or transportation.

The bill requires LWDBs to provide recipients of TCA a list of local providers of publicly-funded behavioral health services if such services would assist the recipient in complying with work requirements. A LWDB will receive such information from the managing entity contracted by DCF to oversee behavioral health services in its service area.

Reporting Requirements

The bill requires DEO to collect and report on participation statistics and employment outcomes for mandatory workers in SNAP and TCA as a part of the annual report it submits to the Governor, the House of Representatives, and the Senate. For the mandatory work participants in TCA and SNAP served by LWDBs in the prior fiscal year, the report must cover:

- The number of participants referred by DCF who received workforce services; the total time participants received services and, if available, the length of any gaps in services as a result of sanction or program ineligibility; and the number who were referred but did not receive workforce services, with an explanation for why services were not received, if applicable.
- Activities participated in and whether such activities satisfied the work requirements for participants' receipt of TCA or SNAP.
- Participants' barriers to employment identified by the case managers in individual responsibility plans; the services offered to address such barriers; and whether participants availed themselves of such services, with an explanation of why participants did not avail themselves, if applicable.
- A description and summary of information included in the Department of Education's Florida Education and Training Placement Information Program report, including but not limited to the number and percentage of participants securing employment; job sector in which employment was secured and whether full-time or part-time; whether the employment was above minimum wage; whether the participant continued to receive temporary cash assistance or food assistance after securing employment or exited programs due to employment; and any other employment outcomes.

- Number and percentage of participants sanctioned for noncompliance with work requirements; the action or inaction giving rise to the noncompliance; whether the participant identified barriers related to noncompliance; and services offered to prevent future noncompliance.

Additionally, the bill requires the DEO to report on the effectiveness of its communication with participants, options for improving such communication, and any costs associated with such improvements; and the degree to which additional manual registration processes are used by local workforce development boards, a description of such processes, the impact of such processes on sanction rates for noncompliance with work activities, and the benefits and disadvantages of such processes in the first report, which is due December 1, 2020.

EBT Cards

Prohibited Usage

The bill expands the locations where EBT cards may not be used to include:

- Medical marijuana treatment centers or dispensing organizations;
- Cigar stores and stands, pipe stores, smoke shops and tobacco shops; and
- Business establishments primarily engaged in the practice of body piercing, branding or tattooing.

Replacement Penalty

The bill requires EBT cardholders to pay a penalty for the fifth and all subsequent EBT replacement cards requested within a 12-month span. DCF currently sends a letter with the fourth replacement card informing the cardholder that his or her case is being monitored for potential trafficking activity. By charging the penalty beginning with the fifth card, DCF may inform the cardholder in the letter that it sends with the fourth replacement card about the replacement penalty for subsequent new cards.

The bill allows DCF to deduct the penalty from the cardholder's benefits and provides for a waiver of the penalty upon a showing of good cause, such as that the card malfunctioned or the penalty would cause extreme financial hardship.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Amends s. 394.9082, F.S., relating to behavioral health managing entities.
Section 2: Amends s. 414.065, F.S., relating to noncompliance with work requirements.
Section 3: Amends s. 445.024, F.S., relating to work requirements.
Section 4: Amends s. 445.025, F.S., relating to other support services.
Section 5: Amends s. 402.82, F.S., relating to electronic benefits transfer program.
Section 6: Amends s. 409.972, F.S., relating to mandatory and voluntary enrollment.
Section 7: Provides an appropriation.
Section 8: Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill increases the length of time during which TCA recipients are ineligible for benefits when not meeting the program's work requirements. The bill expands three existing penalty periods and creates a new fourth period. It is expected that these provisions will decrease recurring state expenditures for TCA in the amount of $1,584,979.

One-time programming modifications to DCF's public benefits disbursement system are estimated to cost $1,498,380. Should AHCA obtain federal approval to instate working requirements upon Medicaid recipients, an additional $1,863,696 would be required to modify DCF's eligibility determination technology system to incorporate this additional information. The bill contains an appropriation of $952,360 for making all programming changes.

DEO and LWDB information systems will also need to be updated to account for the new fourth sanction, but can likely modify using existing resources.

The bill may have an operational impact on AHCA, but can be supported using existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

DCF may charge the costs of replacement cards against an EBT cardholder's benefits. The cardholder's benefits will be reduced by the cost to replace his or her EBT card. Assuming a replacement cost of $5.00 per card, the estimated card replacement penalties recouped could approach $206,270 based on replacing 41,254 cards. Penalty collections could diminish as the new process affects customer behaviors.

The bill requires the behavioral health Managing Entities to provide each local workforce development board in its service area with information about publicly funded behavioral health providers, including contact info and the specific services provided by each provider, that are accessible to individuals receiving TCA or food assistance. The manner in which this information will be provided to a board is unknown; therefore, the fiscal impact is indeterminate, but likely insignificant as it's reasonable to expect that a Managing Entity would have such information readily available.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides the DEO with rule-making authority to implement the revised TCA noncompliance sanctions. AHCA and DCF have sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public assistance; amending s. 394.9082, F.S.; requiring managing entities to provide local workforce development boards with certain information about publicly funded providers of behavioral health services; amending s. 414.065, F.S.; revising penalties for noncompliance with work requirements for receipt of temporary cash assistance; limiting the receipt of child-only benefits during periods of noncompliance with work requirements; revising the age of minors who are able to receive child-only benefits during periods of noncompliance with work requirements; providing applicability of work requirements before expiration of the minimum penalty period; requiring the Department of Children and Families to refer sanctioned participants to appropriate free and low-cost community services, including food banks; amending s. 445.024, F.S.; requiring the Department of Economic Opportunity, in cooperation with CareerSource Florida, Inc., and the Department of Children and Families, to inform participants in the temporary cash assistance program of work requirements and sanctions and penalties for noncompliance with work requirements; requiring a participant's written assent to receiving such

information; requiring the Department of Economic Opportunity, in cooperation with CareerSource Florida, Inc., and the Department of Children and Families, to develop an individual responsibility plan for participants in the temporary cash assistance program following an initial assessment; establishing criteria for the plan; requiring the plan to establish employment goals and identify obligations, work requirements, and strategies to overcome barriers to meeting work requirements; requiring the Department of Economic Opportunity to establish and implement uniform standards for compliance with, and sanctioning participants for noncompliance with, work requirements; requiring the department to submit an annual report to the Legislature by a specified date; specifying contents of the report; requiring the department to adopt rules; amending s. 445.025, F.S.; requiring local workforce development boards to provide a list of local providers of publicly funded behavioral health services to temporary cash assistance recipients in need of such services; amending s. 402.82, F.S.; prohibiting the use or acceptance of an electronic benefits transfer card at specified locations; providing a penalty; amending s. 409.972, F.S.; directing the Agency for Health Care

Administration to seek federal approval to require Medicaid enrollees to provide proof to the Department of Children and Families of engagement in work activities for receipt of temporary cash assistance as a condition of eligibility and enrollment; providing an appropriation; providing an effective date.

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

Section 1. Paragraph (t) is added to subsection (5) of section 394.9082, Florida Statutes, to read:

394.9082 Behavioral health managing entities.—

(5) MANAGING ENTITY DUTIES.—A managing entity shall:

(t) Provide each local workforce development board created pursuant to s. 445.007 in its service area with information about publicly funded providers of behavioral health services that are accessible to individuals receiving temporary cash assistance or food assistance who are served by the local workforce development board. The information must include contact information for and the specific services provided by each provider.

Section 2. Subsection (1) and paragraph (a) of subsection (2) of section 414.065, Florida Statutes, are amended to read:

414.065 Noncompliance with work requirements.—

(1) PENALTIES FOR NONPARTICIPATION IN WORK REQUIREMENTS

AND FAILURE TO COMPLY WITH ALTERNATIVE REQUIREMENT PLANS.—

(a) The department shall establish procedures for administering penalties for nonparticipation in work requirements and failure to comply with the alternative requirement plan. ~~If an individual in a family receiving temporary cash assistance fails to engage in work activities required in accordance with s. 445.024, the following penalties shall apply.~~ Prior to the imposition of a sanction, the participant shall be notified orally or in writing that the participant is subject to sanction and that action will be taken to impose the sanction unless the participant complies with the work activity requirements. The participant shall be counseled as to the consequences of noncompliance and, if appropriate, shall be referred for services that could assist the participant to fully comply with program requirements. If the participant has good cause for noncompliance or demonstrates satisfactory compliance, the sanction may ~~shall~~ not be imposed. If the participant has subsequently obtained employment, the participant shall be counseled regarding the transitional benefits that may be available and provided information about how to access such benefits.

(b) The department shall administer sanctions related to food assistance consistent with federal regulations.

(c) If an individual in a family receiving temporary cash assistance fails to engage in work activities required in

accordance with s. 445.024, the following penalties shall apply:

~~(a)~~1. First noncompliance:

a. Temporary cash assistance shall be terminated for the family for a minimum of 1 month ~~10 days~~ or until the individual who failed to comply does so, whichever is later. Upon meeting this requirement, temporary cash assistance shall be reinstated to the date of compliance or the first day of the month following the penalty period, whichever is later.

b. Temporary cash assistance for the minor child or children in a family may be continued for the first month of the penalty period through a protective payee as specified in subsection (2).

2. Second noncompliance:

a. Temporary cash assistance shall be terminated for the family for 3 months ~~1 month~~ or until the individual who failed to comply does so, whichever is later. The individual shall be required to comply with the required work activity upon completion of the 3-month penalty period before reinstatement of temporary cash assistance. Upon meeting this requirement, temporary cash assistance shall be reinstated to the date of compliance or the first day of the month following the penalty period, whichever is later.

b. Temporary cash assistance for the minor child or children in a family may be continued for the first 3 months of the penalty period through a protective payee as specified in

subsection (2).

3. Third noncompliance:

a. Temporary cash assistance shall be terminated for the family for 6 ~~3~~ months or until the individual who failed to comply does so, whichever is later. The individual shall be required to comply with the required work activity upon completion of the 6-month ~~3-month~~ penalty period~~.~~ before reinstatement of temporary cash assistance. Upon meeting this requirement, temporary cash assistance shall be reinstated to the date of compliance or the first day of the month following the penalty period, whichever is later.

b. Temporary cash assistance for the minor child or children in a family may be continued for the first 6 months of the penalty period through a protective payee as specified in subsection (2).

4. Fourth noncompliance:

a. Temporary cash assistance shall be terminated for the family for 12 months or until the individual who failed to comply does so, whichever is later. The individual shall be required to comply with the required work activity upon completion of the 12-month penalty period and reapply before reinstatement of temporary cash assistance. Upon meeting this requirement, temporary cash assistance shall be reinstated to the first day of the month following the penalty period.

b. Temporary cash assistance for the minor child or

children in a family may be continued for the first 12 months of the penalty period through a protective payee as specified in subsection (2).

5. The sanctions imposed under subparagraphs 1.-4. do not prohibit a participant from complying with the work activity requirements during the penalty periods imposed by this paragraph.

(d) ~~(b)~~ If a participant receiving temporary cash assistance who is otherwise exempted from noncompliance penalties fails to comply with the alternative requirement plan required in accordance with this section, the penalties provided in paragraph (c) ~~(a)~~ shall apply.

(e) When a participant is sanctioned for noncompliance with this section, the department shall refer the participant to appropriate free and low-cost community services, including food banks.

If a participant fully complies with work activity requirements for at least 6 months, the participant shall be reinstated as being in full compliance with program requirements for purpose of sanctions imposed under this section.

(2) CONTINUATION OF TEMPORARY CASH ASSISTANCE FOR CHILDREN; PROTECTIVE PAYEES.—

(a) Upon ~~the second or third occurrence of~~ noncompliance with the work activity requirements, and subject to the

limitations in paragraph (1)(c), temporary cash assistance and food assistance for the minor child or children in a family ~~who are under age 16~~ may be continued. Any such payments must be made through a protective payee or, in the case of food assistance, through an authorized representative. Under no circumstances shall temporary cash assistance or food assistance be paid to an individual who has failed to comply with program requirements.

Section 3. Subsections (3) through (7) of section 445.024, Florida Statutes, are renumbered as subsections (4) through (8), respectively, and a new subsection (3) and subsections (9), (10), and (11) are added to that section to read:

445.024 Work requirements.—

(3) WORK PLAN AGREEMENT.—For each individual who is not otherwise exempt from work activity requirements, the department, in cooperation with CareerSource Florida, Inc., and the Department of Children and Families, must:

(a) Inform each participant, in plain language, and require the participant to agree in writing to:

1. What is expected of the participant to continue to receive temporary cash assistance benefits.

2. The circumstances under which the participant would be sanctioned for noncompliance and what constitutes good cause for noncompliance.

3. Potential penalties for noncompliance with the work

requirements in s. 414.065, including how long benefits would be unavailable to the participant.

(b) Develop an individual responsibility plan for each participant.

1. The individual responsibility plan shall be developed jointly by the participant and the participant's case manager pursuant to an initial assessment of, at a minimum, the participant's skills, prior work experience, employability, and barriers to employment.

2. The individual responsibility plan shall seek to move the participant towards self-sufficiency and shall:

a. Establish employment goals and a plan for moving the participant into unsubsidized employment.

b. Place the participant into the highest level of employment of which he or she is capable and increase the participant's work responsibilities and amount of work over time.

c. Clearly state in sufficient detail the participant's obligations, work activity requirements, and any services the local workforce development board will provide to enable the participant to satisfy his or her obligations and work activity requirements, including, but not limited to, child care and transportation, if available.

d. Be specific, sufficient, feasible, and sustainable in response to the realities of any barriers to compliance with

work activity requirements that the participant faces, including, but not limited to, substance abuse, mental illness, physical or mental disability, domestic violence, a criminal record affecting employment, significant job-skill or soft-skill deficiencies, and lack of child care, stable housing, or transportation.

(c) Work with each participant to develop strategies to assist the participant in overcoming any barriers to compliance with the work requirements in s. 414.065.

(d) Adopt rules to implement this subsection.

(9) SANCTIONS FOR NONCOMPLIANCE WITH WORK REQUIREMENTS.—

(a) The department shall establish uniform standards for compliance with work activity requirements and submitting requests for sanctions for noncompliance pursuant to s. 414.065 to the Department of Children and Families.

(b) The department shall ensure that all local workforce development boards uniformly implement sanctions for noncompliance with work activity requirements and do not sanction a participant who is temporarily unable to meet work activity requirements due to circumstances beyond his or her control.

(c) When requesting that the Department of Children and Families sanction an individual who has failed to engage in work activities required for food assistance under this section, the department or local workforce development board shall notify the

Department of Children and Families of the reason for the sanction request.

(10) ANNUAL REPORT.—By December 1 of each year, the department shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives an annual report that comprehensively presents participant information and employment outcomes, by program, for individuals subject to mandatory work requirements due to receipt of temporary cash assistance or food assistance under chapter 414. The report shall cover the participants who received services during the prior fiscal year. The report shall include, at a minimum:

(a) The total number of participants referred by the Department of Children and Families who received workforce services; the total length of time for which participants received services and, if available, the length of time of any gaps in the delivery of services as a result of sanctions or program ineligibility; and the total number of participants who were referred for, but did not receive, workforce services, including an explanation of the reason why each participant did not receive services, if applicable.

(b) The number and types of activities undertaken and whether such activities satisfied the work requirements for participants to receive temporary cash assistance or food assistance.

(c) Participants' barriers to employment identified by the case managers in individual responsibility plans, the services offered to address such barriers, and whether participants availed themselves of such services, including an explanation of the reason why each participant did not avail himself or herself of such services, if applicable.

(d) A description and summary of data in the reports produced by the Florida Education and Training Placement Information Program pursuant to s. 1008.39, including, but not limited to, the total number and percentage of participants securing employment, the job sectors in which employment was secured, whether the employment was full-time or part-time, whether the employment was compensated at a rate above the hourly federal minimum wage rate, whether the participants continued to receive temporary cash assistance or food assistance after securing employment or exited programs due to employment, and any other employment outcomes.

(e) The total number and percentage of participants sanctioned for noncompliance with work requirements, the action or inaction giving rise to the noncompliance, whether the participants identified barriers related to noncompliance, and services offered to prevent future noncompliance.

(f) For the report due December 1, 2020, the information required in paragraphs (a) through (e) and an evaluation of:

1. The effectiveness of the department's communication with participants, options for improving such communication, and any costs associated with such improvements.

2. The degree to which additional manual registration processes are used by local workforce development boards, a description of such processes, the impact of such processes on sanction rates for noncompliance with work activities, and the benefits and disadvantages of such processes.

(11) RULEMAKING.—The department shall adopt rules to implement this section.

Section 4. Subsection (4) of section 445.025, Florida Statutes, is amended to read:

445.025 Other support services.—Support services shall be provided, if resources permit, to assist participants in complying with work activity requirements outlined in s. 445.024. If resources do not permit the provision of needed support services, the local workforce development board may prioritize or otherwise limit provision of support services. This section does not constitute an entitlement to support services. Lack of provision of support services may be considered as a factor in determining whether good cause exists for failing to comply with work activity requirements but does not automatically constitute good cause for failing to comply with work activity requirements, and does not affect any applicable time limit on the receipt of temporary cash

assistance or the provision of services under chapter 414. Support services shall include, but need not be limited to:

(4) PERSONAL AND FAMILY COUNSELING AND THERAPY.—Counseling may be provided to participants who have a personal or family problem or problems caused by substance abuse that is a barrier to compliance with work activity requirements or employment requirements. In providing these services, local workforce development boards shall use services that are available in the community at no additional cost. If these services are not available, local workforce development boards may use support services funds. Each local workforce development board shall provide a list of local providers of publicly funded behavioral health services to temporary cash assistance recipients in need of such services. The list shall include the location of, contact information for, and a description of the specific services provided by each provider. The list shall be available in both print and electronic formats. Personal or family counseling not available through Medicaid may not be considered a medical service for purposes of the required statewide implementation plan or use of federal funds.

Section 5. Paragraphs (g), (h), and (i) are added to subsection (4) of section 402.82, Florida Statutes, and subsection (5) is added to that section, to read:

402.82 Electronic benefits transfer program.—

(4) Use or acceptance of an electronic benefits transfer

card is prohibited at the following locations or for the following activities:

(g) A Medical Marijuana Treatment Center as defined in s. 29(b)(5), Art. X of the State Constitution and licensed pursuant to s. 381.986.

(h) A cigar store or stand, pipe store, smoke shop, or tobacco shop.

(i) A body-piercing salon as defined in s. 381.0075, a tattoo establishment as defined in s. 381.00771, or a business establishment primarily engaged in the practice of branding.

(5) The department shall impose a penalty for the fifth and each subsequent replacement electronic benefits transfer card that a participant requests within a 12-month period. The amount of the penalty must be equal to the cost of replacing the electronic benefits transfer card. The penalty may be deducted from the participant's benefits. The department may waive the penalty upon a showing of good cause, such as the malfunction of the card or extreme financial hardship.

Section 6. Subsection (3) of section 409.972, Florida Statutes, is amended to read:

409.972 Mandatory and voluntary enrollment.—

(3) The agency shall seek federal approval to require enrollees to provide proof to the department of engagement in work activities consistent with the requirements in ss. 414.095 and 445.024 for temporary cash assistance, as defined in s.

414.0252, as a condition of eligibility and enrollment ~~Medicaid recipients enrolled in managed care plans, as a condition of Medicaid eligibility, to pay the Medicaid program a share of the premium of $10 per month~~.

Section 7. For fiscal year 2020-2021, the sum of $952,360 in nonrecurring funds from the Federal Grants Trust Fund is appropriated to the Department of Children and Families for the purpose of performing the technology modifications necessary to implement changes to the disbursement of temporary cash assistance benefits and the replacement of electronic benefits transfer cards pursuant to this act.

Section 8. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7045 PCB HMR 20-02 Prescription Drug Price Transparency
SPONSOR(S): Health Market Reform Subcommittee, Andrade
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health Market Reform Subcommittee	14 Y, 1 N	Grabowski	Calamas
1) Appropriations Committee		Helpling	Pridgeon
2) Health & Human Services Committee			

SUMMARY ANALYSIS

Pharmacy benefit managers (PBMs) represent health insurers, self-insured employers, union health plans, and government purchasers in the selection, purchase, and distribution of pharmaceuticals. Until recently, PBMs operated largely in the absence of federal or state regulation. PBMs earn profits through a combination of revenues, which may include administrative fees charged to health plans, retention of drug rebates paid by pharmaceutical manufacturers, fees charged to network pharmacies, among others.

The bill imposes additional reporting requirements that must be included in contracts between PBMs and health insurers and HMOs. A PBM must disclose information on aggregate pharmaceutical rebates, administrative fees, and spread pricing revenues to each health plan for which it provides services, as well as the Office of Insurance Regulation (OIR).

PBMs routinely audit pharmacies on behalf of health insurers and HMOs. While the parameters of pharmacy audits are generally set in contracts between pharmacies and PBMs or payors, the Florida Pharmacy Act establishes a set of rights for licensed pharmacies that are subject to these audits. However, the Board of Pharmacy has no authority to enforce these rights. The bill reproduces several audit-related provisions of the Florida Pharmacy Act in the context of the Florida Insurance Code, including those that set timelines for onsite audits and require the timely submission of audit reports to pharmacies. The bill would authorize OIR to enforce the pharmacy audit provisions.

Pharmaceutical manufacturers are regulated by a combination of federal and state law. In Florida, the Department of Business and Professional Regulation's (DBPR) Division of Drugs, Devices, and Cosmetics issues permits to manufacturers who produce or sell prescription drugs in the state. The bill requires prescription drug manufacturers to provide notice of upcoming product price increases as a condition of receiving a permit from DBPR. A manufacturer will be required to notify all health plans at least 60 days in advance of a drug price increase, along with the amount of the forthcoming price increase. Manufacturers would also be required to submit an annual report to DBPR and OIR on each drug price increase, along with a justification for the price increase.

DBPR and OIR will need to collect, report, and analyze data from PBMs. Any additional workload or information technology programming modifications necessary to implement the bill can be accomplished within existing resources.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

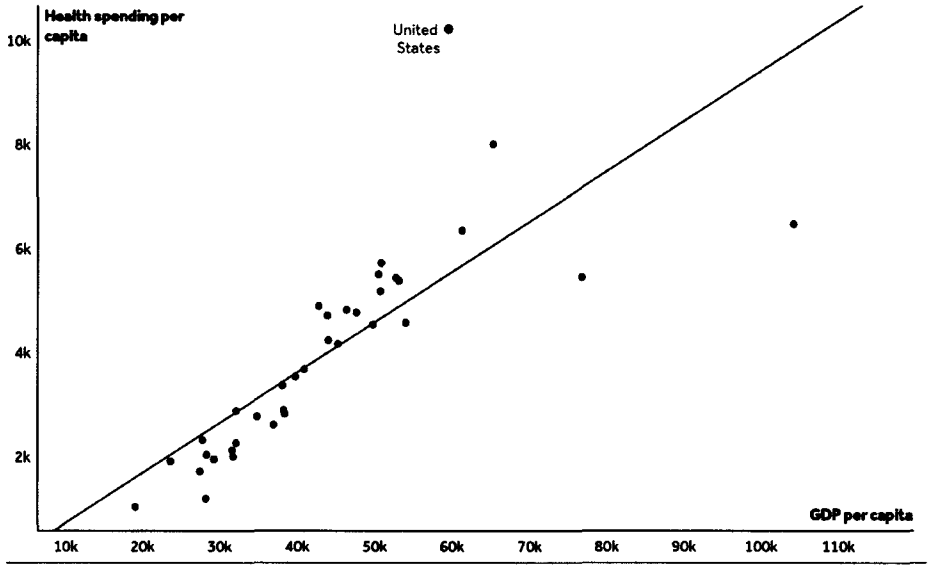
A. EFFECT OF PROPOSED CHANGES:

Background

Prescription Drugs

The United States spends $3.5 trillion on health care, or $10,739 per person, each year. One-tenth of that, approximately $333.4 billion, is spent on retail prescription drugs,[1] with 14 percent ($46.7 billion) paid out-of-pocket by consumers.[2] Relative to the size of its wealth, the United States spends significantly more on healthcare than any country in the world and is an outlier even when compared to other developed and wealthy nations and even after adjusting for drug industry rebates.[3] The United States overall spends 30 to 190 percent more on prescription drugs than other developed countries and pays up to 174 percent more for the same prescription drug.[4]

GDP per Capita and Health Spending per Capita, 2017 (U.S. Dollars, PPP Adjusted)[5]



Source: KFF analysis of data from National Health Expenditure Accounts and OECD

Peterson-Kaiser

[1] U.S. Centers for Medicare & Medicaid Services, *National Health Expenditures 2017 Highlights,* Dec. 6, 2018, *available at* https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/highlights.pdf (last accessed January 3, 2020).

[2] U.S. Centers for Medicare & Medicaid Services, *National Health Expenditures by Type of Service and Source of Funds, CY 1960-2017*, available at https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsHistorical.html (last accessed January 3, 2020).

[3] Peterson-Kaiser Health System Tracker, *How Does Health Spending in the U.S. Compare to Other Countries?*, https://www.healthsystemtracker.org/chart-collection/health-spending-u-s-compare-countries/#item-start (last accessed January 3, 2020); Robert Langreth, *The U.S. Pays a Lot More for Top Drugs Than Other Countries,* BLOOMBERG, (Dec. 18, 2015), https://www.bloomberg.com/graphics/2015-drug-prices/ (last accessed January 3, 2020).

[4] Peterson-Kaiser Health System Tracker, *What Are the Recent and Forecasted Trends in Prescription Drug Spending?, https://www.healthsystemtracker.org/chart-collection/recent-forecasted-trends-prescription-drug-spending/#item-start* (last accessed January 3, 2020); *See also,* David O. Sarnak, et. al, *Paying for Prescription Drugs Around the World: Why is the U.S. an Outlier?*, The Commonwealth Fund, Issue Brief: Oct. 2017, available at: https://www.commonwealthfund.org/sites/default/files/documents/___media_files_publications_issue_brief_2017_oct_sarnak_paying_for_rx_ib_v2.pdf (last accessed January 3, 2020).

[5] Id. Adjusted for purchasing power parity.

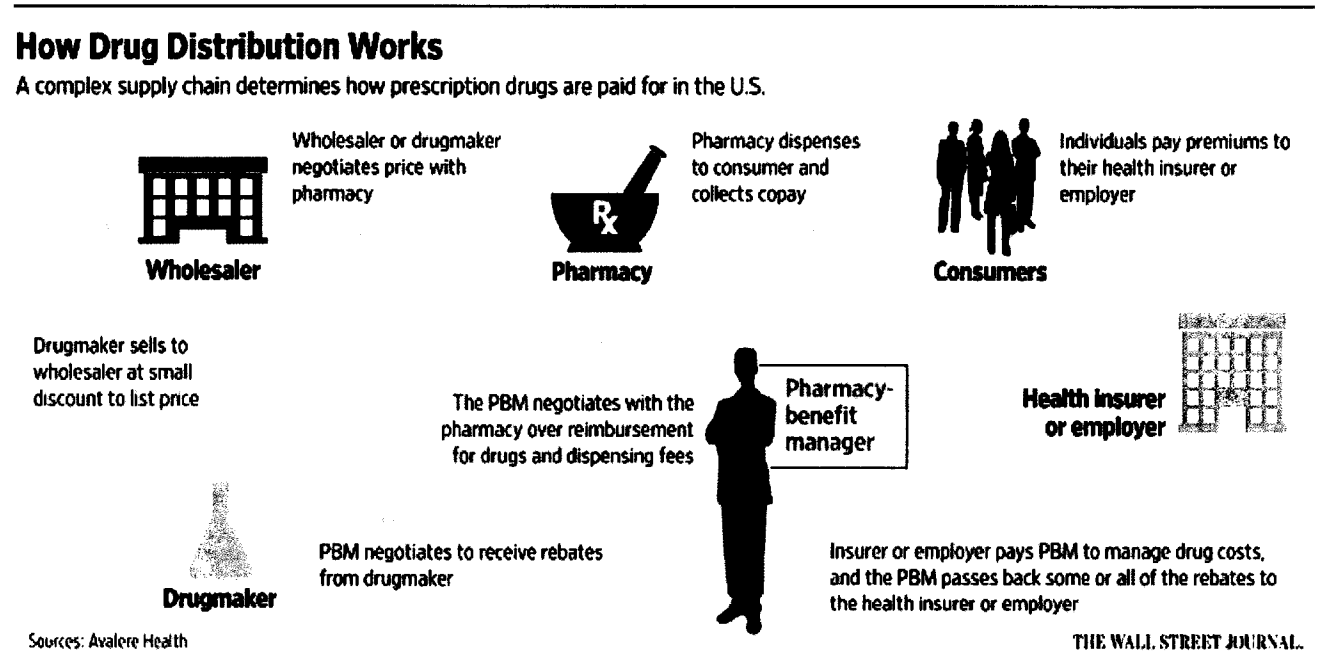
Although many patients are shielded from the high list prices of prescription medications by their insurance coverage, the number of patients with high-deductible health plans is increasing, and the rising prices of drugs mean more costs are being passed on to consumers in the form of deductibles, premiums, or coinsurance.[6] Insurers and other health plan sponsors increasingly rely on pharmacy benefit managers to restrain spending on prescription drugs.

Pharmacy Benefit Managers

Pharmacy benefit managers (PBMs) represent health insurers and plan sponsors, which include self-insured employers, union health plans, and government purchasers, in the selection, purchase, and distribution of pharmaceuticals.[7]

PBMs negotiate with drug manufacturers, on behalf of plan sponsors, in an effort to purchase drugs at reduced prices or with the promise of additional rebates. This negotiation process often involves the development of drug formularies, which are tiered drug lists that incentivize the use of some drugs over others.[8] PBMs simultaneously negotiate with pharmacies to establish reimbursements for dispensing prescription drugs to patients.

The U.S. pharmaceutical supply system is very complex, and involves multiple organizations that play differing, but sometimes overlapping, roles in drug distribution and contracting. PBMs generally do not take physical possession of prescription drugs when performing their core pharmaceutical management functions, but they play an integral role in determining how much a plan sponsor and a patient will pay for a given drug.[9] The following graphic offers a simplified glimpse of the prescription drug supply chain.



[6] Daniel H, Bornstein SS, for the Health and Public Policy Committee of the American College of Physicians, *Policy Recommendations for Pharmacy Benefit Managers to Stem the Escalating Costs of Prescription Drugs: A Position Paper From the American College of Physicians*, Ann Intern Med. 2019;171:823–824. Available at https://annals.org/aim/fullarticle/2755578/policy-recommendations-pharmacy-benefit-managers-stem-escalating-costs-prescription-drugs (last accessed January 9, 2020).
[7] "Health Policy Brief: Pharmacy Benefit Managers," *Health Affairs*, September 14, 2017. https://www.healthaffairs.org/do/10.1377/hpb20171409.000178/full/healthpolicybrief_178.pdf (last accessed January 3, 2020).
[8] Academy of Managed Care Pharmacy (AMCP). *Formulary Management*, available at https://www.amcp.org/about/managed-care-pharmacy-101/concepts-managed-care-pharmacy/formulary-management (last accessed January 2, 2020). See also, Pharmaceutical Care Management Association (PCMA). *Pharmacy Contracting & Reimbursement*, Available at https://www.pcmanet.org/policy-issues/pharmacy-contracting-reimbursement/ (last accessed January 2, 2020).
[9] Henry J. Kaiser Family Foundation, *Follow the Pill: Understanding the U.S. Commercial Pharmaceutical Supply Chain*, March 2005, available at https://www.kff.org/other/report/follow-the-pill-understanding-the-u-s/ (last accessed January 9, 2020).

PBMs have become major participants in the pharmaceutical supply chain. These entities first emerged as claims processors in the late-1960s and early 1970s, but began to assume much more complex responsibilities in the 1990s in concert with advancements in information technology.[10] At present, PBMs are responsible for managing the pharmacy benefits of about 270 million Americans.[11] Around 60 PBMs are currently operational in the United States, and the three largest – Express Scripts, CVS Caremark, and OptumRx – have a combined market share of more than 75%.[12]

PBM Revenue Streams

Broadly, PBMs generate revenue from the following sources:

- Administrative fees from their clients (insurers, self-insured employers, union health plans, and government) for the administration of claims and drug dispensing;
- Rebates negotiated from drug companies – in some cases, the rebates are shared between the PBM and the health insurer or plan sponsor; and,
- Fees charged to pharmacies, which may including per prescription fees from network pharmacies and/or fees associated with participating in a PBM's network.[13]

Each PBM generates revenues from all or some combination of these sources. In theory, the negotiating power of PBMs should translate into savings for patients, employers and insurers in the form of reduced drug costs. In addition, health plan sponsors benefit from sharing in the increased manufacturer rebates that PBMs are often able to realize,[14] which may also reduce costs for consumers and employers.

While the details of contractual agreements between PBMs and their clients are rarely made public, it is clear that some plan sponsors negotiate favorable terms when contracting with a PBM. A recent survey of PBMs indicated that roughly 91% of rebates received from pharmaceutical manufacturers were passed on to health plan sponsors in 2016.[15] However, it is also apparent that some small employers and less engaged plan sponsors may not receive such a large share of rebates negotiated by their contracted PBM.[16]

Some PBMs also generate revenue using spread pricing arrangements. A pricing spread occurs when a PBM is reimbursed by a plan sponsor at one price for a given drug, but pays a dispensing pharmacy a lower price for that drug. In other words, the PBM retains some portion of the plan sponsor reimbursement as earned income.[17] PBM critics contend that this practices increases costs for health plan sponsors, or alternatively, results in lower reimbursements to pharmacies.[18]

Health plan sponsors with sufficient resources can negotiate with PBMs to reach contract terms that may limit the PBMs ability to collect certain revenues. Florida's Division of State Group Insurance

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[10] "The ABCs of PBMs: Issue Brief." National Health Policy Forum. October 27, 1999, available at https://www.nhpf.org/library/issue-briefs/IB749_ABCsofPBMs_10-27-99.pdf (last accessed January 3, 2020).
[11] Pharmaceutical Care Management Association (PCMA). *The Value of PBMs*, available at https://www.pcmanet.org/the-value-of-pbms (last accessed January 3, 2020).
[12] Advisory Board Company, *Pharmacy benefit managers, explained*, November 13, 2019, available at https://www.advisory.com/daily-briefing/2019/11/13/pbms (last accessed January 6, 2020).
[13] Supra note 7.
[14] Id.
[15] Pew Charitable Trusts, *The Prescription Drug Landscape, Explained,* March 2019, available at https://www.pewtrusts.org/en/research-and-analysis/reports/2019/03/08/the-prescription-drug-landscape-explored (last accessed January 7, 2020).
[16] Supra note 7.
[17] Prime Therapeutics, *Can You Follow the Money?*, March 17, 2017, available at https://www.primetherapeutics.com/en/services-solutions/connect/contributors/follow_the_money.html (last accessed January 10, 2020).
[18] "Policy Options To Help Self-Insured Employers Improve PBM Contracting Efficiency," *Health Affairs* Blog, May 29, 2019, available at https://www.healthaffairs.org/do/10.1377/hblog20190529.43197/full/ (last accessed January 11, 2020).

(DSGI)[19], which provides health benefits to state employees and their dependents, has negotiated contract language that prevents its chosen PBM – CVS Caremark – from using spread pricing at retail pharmacies. In addition, the contract stipulates that the PBM will pass through 100% of the rebates received from pharmaceutical manufacturers to DSGI.[20] Private health plan sponsors may also use these types of contract clauses to define which types of revenue may be earned by contracted PBMs.

In a similar vein, the Florida Agency for Health Care Administration (AHCA) recently contracted with a consulting firm to undertake an analysis of PBM practices in the Florida Medicaid program.[21] Managed care plans providing coverage to Medicaid recipients have some flexibility to contract with PBMs, but it is unclear how PBMs may be generating revenues by virtue of serving the Medicaid population.

PBMs assert that their services result in significant savings for both insurers and patients.[22] Alternatively, PBMs have been characterized merely as "middlemen", who are hired by health plans to design formularies, negotiate rebates, set up pharmacy networks, and process claims.[23] Some critics contend that a large share of rebates are retained by PBMs rather than being passed through to payers and policy holders in the form of lower drug prices. Pharmacies and pharmacists have alleged that PBMs use contract clauses to block the flow of pricing information to patients. In a statement prepared for the U.S. House Committee on Oversight and Government Reform, the National Community Pharmacists Association asserted that pharmacies have been subject to "take it or leave it" contracts with PBMs that include "clauses that restrict their (pharmacists) ability to communicate with patients".[24] In addition, PBM contracts with health plan sponsors have been criticized for being confidential and complex in nature.[25]

PBM Regulation

Until recently, PBMs operated largely in the absence of federal or state regulation. In the past five years, a plurality of state legislatures has passed laws to prohibit specific practices by PBMs.[26] Both the Legislature[27] and Congress[28] have prohibited the use of so-called "gag clauses" by PBMs. A gag clause refers to a contractual requirement that prevents a pharmacy or pharmacist from telling a patient when it would cost less to pay cash for a prescription than to pay the copayment under that patient's health insurance.

In 2018, the Legislature created a registration program for PBMs.[29] Since January 1, 2019, PBMs operating in the state are required to register with the Office of Insurance Regulation (OIR) by submitting a completed application form and fee for registration. The registration requires that a PBM provide basic identifying information to the state, but does not authorize state oversight of

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[19] The state group insurance program is governed by Ss. 110.123 through 110.125, F.S.
[20] See *Pharmacy Benefit Management Services*, Contract between CaremarkPCS Health, L.L.C. and Florida Department of Management Services, available at https://www.dms.myflorida.com/content/download/107930/607791/2015_PBM_Contract_REDACTED_FINAL.pdf (last accessed January 22, 2020).
[21] E-mail correspondence from James Kotas, Deputy Chief of Staff for the Agency for Health Care Services, January 22, 2020 (on file with staff of the Health Market Reform Subcommittee). AHCA has awarded the project to Milliman, Inc. The Agency has an existing contract with Milliman for actuarial services that will facilitate the project.
[22] Visante. *The Return on Investment (ROI) on PBM Services*, November 2016, available at https://www.pcmanet.org/wp-content/uploads/2016/11/ROI-on-PBM-Services-FINAL.pdf (last accessed January 3, 2020).
[23] "Rebates, Coupons, PBMs, And The Cost Of The Prescription Drug Benefit," *Health Affairs Blog*, April 26, 2018, available at https://www.healthaffairs.org/do/10.1377/hblog20180424.17957/full/ (last accessed January 7, 2020).
[24] National Community Pharmacists Association. *Statement for the Record: National Community Pharmacists Association.* U.S. House Committee on Oversight and Government Reform. February 4, 2016. Available at http://www.ncpa.co/pdf/ncpa-ogr-statement.pdf (last accessed December 21, 2017).
[25] Supra note 18.
[26] See National Conference of State Legislatures, *PBM State Legislation*, May 16, 2019, available at https://www.ncsl.org/research/health/pbm-state-legislation.aspx (last accessed January 10, 2020).
[27] Ch. 2018-91, L.O.F. Ss. 627.64741, 627.6572, and 641.314, F.S.
[28] Public Law No.115-263.
[29] Ch. 2018-91, L.O.F.

PBM practices.[30] According to OIR, 42 PBMs were registered to operate in Florida during calendar year 2019.[31]

Current law also requires contracts between PBMs and insurers or HMOs to include specific limits on the cost sharing that will be incurred by patients at the pharmacy. Each contract must specify that a patient's cost share shall equal the lower of the following prices:

- The applicable cost sharing obligation under a patient's insurance; or,
- The retail (or "cash") price of the drug prescribed.[32]

This requirement prohibits PBMs from applying any mechanisms that would prevent a patient from paying the lowest applicable price for a particular drug.

Pharmacy Audits

The audit process is one means used by PBMs and health plan sponsors to review payments to pharmacies. The audits are designed to ensure that procedures and reimbursement mechanisms are consistent with contractual and regulatory requirements. Several different types of audits have been developed to address changes in benefit and billing processes:

- Concurrent daily review audit – intended to make immediate changes to a claim before payment is made and is triggered when a PBM or health plan sponsor's computer systems identify an unusual prescription, which can be identified according to the volume dispensed or number of days supplied.
- Retrospective audit – may be conducted as a desktop audit or an in-pharmacy audit. PBM or health plan sponsor staff conduct a desk audit remotely by contacting pharmacies to obtain supporting documentation, such as the written prescription, for a claim the staff are reviewing.
- In-pharmacy audit – most extensive type of audit and can last for days or weeks. During an in-pharmacy audit, audit staff require pharmacies to provide documentation for prescriptions dispensed during a specified time period. When the auditors identify errors or lack of documentation to support the claim, they notify the pharmacy and request repayment of all or a portion of the prescription cost.
- Investigative audit – occurs where there is a suspicion of fraud or abuse.[33]

While the parameters of pharmacy audits are generally set in contracts between pharmacies and PBMs or payors, the Florida Pharmacy Act establishes a set of rights[34] for licensed pharmacies that are subject to audits by these entities. The Act attempts to address many of the complaints expressed by pharmacies in relation to perceived inequity, unfairness, or burdensome practices involved in PBM audits. In particular, the Act provides the following rights to a pharmacy regarding an audit:

- To be given 7 days of notice prior to the initial onsite audit of each audit cycle.
- To have an onsite audit scheduled after the first 3 calendar days of the month, unless the pharmacist consents to an earlier audit date.
- To limit the audit period to 24 months from the date a claim was submitted to or adjudicated by the entity conducting the audit.
- To have an audit which requires clinical or professional judgment conducted by or in consultation with a pharmacist.

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[30] S. 624.490, F.S.
[31] E-mail correspondence from Grant Phillips, Florida Office of Insurance Regulation, September 9, 2019 (on file with staff of the Health Market Reform Subcommittee).
[32] Ss. 627.64741, 627.6572, and 641.314, F.S.
[33] American Pharmacy Cooperative, Inc., *Audit Information – Types of Audits*, available at https://www.apcinet.com/Services/CAPS/AuditInformation/tabid/667/Default.aspx (last accessed January 11, 2020).
[34] S. 465.1885, F.S.

- To use the written and verifiable records of a hospital or authorized practitioner to validate a pharmacy record in accordance with state and federal law.
- To be reimbursed for a claim that was retroactively denied for a clerical, scrivener's, typographical, or computer error if the patient received the correct medication, dose, and instructions for administration, unless a pattern of errors exists or fraud is alleged, or the error results in actual financial loss to the entity.
- To receive a preliminary audit report within 120 days after conclusion of the audit.
- To produce documentation to challenge a discrepancy or finding within 10 days after the preliminary audit report is delivered to the pharmacy.
- To receive the final audit report within 6 months of receiving the preliminary audit report.
- To have penalties and recoupments based on actual overpayments and not according to accounting principles of extrapolation.

However, the Pharmacy Act does not provide a mechanism for the enforcement of these rights. The Board of Pharmacy is tasked with adopting rules to implement the provisions of the Act and setting standards of practice within the state, but the Board has no authority to regulate the actions of PBMs and insurers.[35]

Prescription Drug Manufacturers

Federal Regulation of Drug Manufacturers

The United States Food and Drug Administration (FDA) is the federal agency responsible for ensuring that foods, drugs, biological products, and medical devices are effective and safe for public consumption.[36] The FDA regulates these areas under the authority of the Federal Food, Drug, and Cosmetic Act (FDCA).[37] The FDCA prohibits any drug from being introduced or delivered for introduction into interstate commerce unless approved by the FDA. The FDCA further prohibits adulterated or misbranded drugs and devices from being introduced, delivered for introduction, or received in interstate commerce.

State Regulation of Drug Manufacturers

The Department of Business and Professional Regulation's (DBPR) Division of Drugs, Devices, and Cosmetics and the Department of Health's (DOH) Board of Pharmacy together regulate prescription drugs in the state from manufacture to distribution and dispensing. All entities engaged in any process along this continuum must be either licensed or permitted to engage in such activity, subject to relevant laws and rules and enforcement authority of DBPR or DOH, as applicable. Due to the overlap in these two industries, the law requires entities permitted or licensed under either DBPR or the Board to comply with the laws and rules of both.[38]

The DBPR's Division of Drugs, Devices, and Cosmetics protects the health, safety, and welfare of Floridians from adulterated, contaminated, and misbranded drugs, drug ingredients, and cosmetics by enforcing Part I of ch. 499, F.S., the Florida Drug and Cosmetic Act.[39] The Florida Drug and Cosmetic Act conforms to FDA drug laws and regulations and authorizes DBPR to issue permits to Florida drug manufacturers and wholesale distributors and register drugs manufactured, packaged, repackaged, labeled, or relabeled in Florida.[40]

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[35] Ss. 465.005, 465.0155, and 465.022, F.S. The authority of the Board of Pharmacy is limited to regulation of pharmacies and pharmacists.
[36] U.S. Food & Drug Administration, *What We Do*, available at https://www.fda.gov/AboutFDA/WhatWeDo/default.htm (last accessed January 7, 2020).
[37] 21 U.S.C. § 355(a).
[38] Ss. 499.067 and 465.023, F.S.
[39] Florida Department of Business and Professional Regulation, *Division of Drugs, Devices, and Cosmetics,* available at http://www.myfloridalicense.com/DBPR/drugs-devices-and-cosmetics/ (last visited January 7, 2020).
[40] S. 499.01, F.S.

Florida has 18 distinct permits based on the type of entity and intended activity, and includes permits for entities within the state, out of state, or even outside of the United States.[41] DBPR has broad authority to inspect and discipline permittees for violations of state or federal laws and regulations, which can include seizure and condemnation of adulterated or misbranded drugs or suspension or revocation of a permit.[42]

Prescription Drug Manufacturer Permit

Drug manufacturing includes the preparation, deriving, compounding, propagation, processing, producing, or fabrication of any drug.[43] A prescription drug manufacturer permit is required for any person that is a manufacturer of a prescription drug and that manufactures or distributes such prescription drugs in this state.[44] Such manufacturer must comply with all state and federal good manufacturing practices. A permitted prescription drug manufacturer may engage in distribution of its own manufactured drug without requiring a separate permit.[45] The distribution of drugs includes the selling, purchasing, trading, delivering, handling, storing, and receiving of drugs, but does not include the administration or dispensing of drugs.[46]

Nonresident Prescription Drug Manufacturer Permit

A nonresident prescription drug manufacturer permit is required for any person that is a manufacturer of prescription drugs located outside of this state or outside the United States and that engages in the distribution in this state of such prescription drugs.[47] Such manufacturer must comply with all of the same requirements as prescription drug manufacturers operating in the state. The permittee must also comply with the licensing or permitting requirements of the state or jurisdiction in which it is located and must comply with federal and Florida laws and regulations when distributing any prescription drugs in the state. If the manufacturer intends to distribute prescription drugs for which it is not the original manufacturer, an out-of-state prescription drug wholesale distributor permit is required.[48]

Effect of Proposed Changes

Pharmacy Benefit Managers – Reporting Requirements

The bill imposes additional reporting requirements that must be included in contracts between PBMs and health insurers and HMOs. On an annual basis, a PBM will be required to report the following to health plans with which it contracts:

- The aggregate amount of all rebates received from drug manufacturers in association with claims administered on behalf of the health plan, and the aggregate amount of those rebates that was not passed on to the health plan.
- The aggregate amount of administrative fees paid to the PBM by the health plan for administration of the health plan's drug benefit.
- The types and aggregate amount of any fees paid by pharmacies to the PBM.

[41] A permit is required for a prescription drug manufacturer; a prescription drug repackager; a nonresident prescription drug manufacturer; a prescription drug wholesale distributor; an out-of-state prescription drug wholesale distributor; a retail pharmacy drug wholesale distributor; a restricted prescription drug distributor; a complimentary drug distributor; a freight forwarder; a veterinary prescription drug retail establishment; a veterinary prescription drug wholesale distributor; a limited prescription drug veterinary wholesale distributor; an over-the-counter drug manufacturer; a device manufacturer; a cosmetic manufacturer; a third party logistics provider; or a health care clinic establishment. S. 499.01(1), F.S.
[42] Ss. 499.051, 499.062, 499.065. 499.066, 499.0661, and 499.067, F.S.
[43] S. 499.003(28), F.S.
[44] S. 499.01(2), F.S.
[45] S. 499.01(2), F.S.
[46] S. 499.003(16), F.S.
[47] S. 499.01(2), F.S.
[48] S. 499.01(2), F.S.

- The aggregate amount of revenue generated by the PBM using spread pricing in administration of the health plan's drug benefit.

Beginning June 30, 2021, each health plan will be required to provide this information to OIR as part of an annual report. The OIR is then required to publish the reports on its website, along with an analysis of the reported information.

The reporting of aggregate rebates, administrative fees, and spread pricing may provide additional insight on the nature of PBM revenues in the state. To date, this information has been largely unknown outside the industry.

Pharmacy Audits

The bill reproduces several audit-related provisions of the Florida Pharmacy Act in the context of the Florida Insurance Code. Namely, the bill requires that an entity conducting an audit of a pharmacy licensed under ch. 465, F.S.:

- Notify the pharmacy at least 7 calendar days before the initial onsite audit for each audit cycle.
- Occur after the first 3 calendar days of a month unless the pharmacist consents otherwise.
- Limit the audit period to 24 months after the submission or adjudication of a claim.
- Provide a preliminary audit report to the pharmacy within 120 days of the conclusion of the audit.
- Provide a final audit report to the pharmacy within 6 months of providing the preliminary report.

The OIR would have authority to enforce these provisions and respond to potential violations as necessary. This enforcement could provide pharmacies with additional predictability in their business relationships with PBMs and health plans.

Prescription Drug Manufacturers

The bill requires prescription drug manufacturers to provide notice of upcoming product price increases as a condition of receiving a permit from DBPR. A manufacturer will be required to notify all health plans at least 60 days in advance of a drug price increase, along with the amount of the forthcoming price increase.

The bill also establishes a new reporting requirement for prescription drug manufacturers. On an annual basis, each drug manufacturer must submit a report to both DBPR and the OIR on each drug price increase made during the preceding calendar year. This report must include a list of all the affected drug products and both the dollar amount and the percentage increase of each drug price increase. Manufacturers must also describe the factors contributing to each drug price increase.

The responsibilities placed on drug manufacturers may increase transparency in the pricing of prescription drugs, which could assist health plans in assessing actuarial risk. At present, manufacturers are under no obligation to justify price increases or notify health plans of anticipated price changes.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Amends s. 499.012, F.S., relating to permit application requirements.
Section 2: Creates s. 499.026, F.S., relating to prescription drug price increases.
Section 3: Creates s. 624.491, F.S., relating to pharmacy audits.
Section 4: Amends s. 627.64741, F.S., relating to pharmacy benefit manager contracts.
Section 5: Amends s. 627.6572, F.S., relating to pharmacy benefit manager contracts.

Section 6: Amends s. 641.314, F.S., relating to pharmacy benefit manager contracts.
Section 7: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   DBPR and OIR will need to collect, report, and analyze data from PBMs. Any additional workload or information technology programming modifications necessary to implement the bill can be accomplished within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a negative fiscal impact on PBMs and pharmaceutical manufacturers due to compliance with the bill's reporting requirements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

DBPR and the OIR have sufficient rulemaking authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to prescription drug price transparency; amending s. 499.012, F.S.; providing that permits for prescription drug manufacturers and nonresident prescription drug manufacturers are subject to specified requirements; creating s. 499.026, F.S.; providing definitions; requiring prescription drug manufacturers to provide notice of drug price increases to insurers; requiring prescription drug manufacturers to provide an annual report on drug price increases to the Department of Business and Professional Regulation and the Office of Insurance Regulation; providing report requirements; creating s. 624.491, F.S.; providing timelines and documentation requirements for pharmacy audits conducted by certain health insurers, health maintenance organizations, or their agents; amending s. 627.64741, F.S.; providing definitions; requiring reporting requirements in contracts between health insurers and pharmacy benefit managers; requiring health insurers to submit an annual report to the office; requiring the office to publish such reports and analyses of specified information; revising applicability; amending s. 627.6572, F.S.; providing definitions; requiring reporting requirements in

contracts between health insurers and pharmacy benefit managers; requiring health insurers to submit an annual report to the office; requiring the office to publish such reports and analyses of specified information; revising applicability; amending s. 641.314, F.S.; providing definitions; requiring reporting requirements in contracts between health maintenance organizations and pharmacy benefit managers; requiring health maintenance organizations to submit an annual report to the office; requiring the office to publish such reports and analyses of specified information; revising applicability; providing an effective date.

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

Section 1. Subsection (16) is added to section 499.012, Florida Statutes, to read:

499.012 Permit application requirements.—

(16) A permit for a prescription drug manufacturer or a nonresident prescription drug manufacturer is subject to the requirements of s. 499.026.

Section 2. Section 499.026, Florida Statutes, is created to read:

499.026 Prescription drug price increases.—

(1) As used in this section, the term:

(a) "Health insurer" means a health insurer issuing major medical coverage through an individual or group policy or a health maintenance organization issuing major medical coverage through an individual or group contract, regulated under chapter 627 or chapter 641.

(b) "Manufacturer" means any person holding a prescription drug manufacturer permit or a nonresident prescription drug manufacturer permit under s. 499.01.

(2) At least 60 days before the effective date of any manufacturer drug price increase, a manufacturer must provide notification of the upcoming drug price increase and the amount of the drug price increase to every health insurer that covers the drug.

(3) By April 1 of each year, a manufacturer must submit a report to the department and the Office of Insurance Regulation on each manufacturer drug price increase made during the previous calendar year. At a minimum, the report shall include:

(a) A list of all drugs affected by the drug price increase and both the dollar amount of each drug price increase and the percentage increase of each drug price increase, relative to the previous price of the drug.

(b) A complete description of the factors contributing to the drug price increase.

Section 3. Section 624.491, Florida Statutes, is created

to read:

624.491 Pharmacy audits.—A health insurer or health maintenance organization providing pharmacy benefits through a major medical individual or group health policy or health maintenance contract, respectively, shall comply with the requirements of this section when the insurer or health maintenance organization or any entity acting on behalf of the insurer or health maintenance organization, including, but not limited to, a pharmacy benefit manager, audits the records of a pharmacy licensed under chapter 465. The entity conducting such an audit shall:

(1) Notify the pharmacy at least 7 calendar days before the initial onsite audit for each audit cycle.

(2) Ensure the audit is not initiated during the first 3 calendar days of a month unless the pharmacist consents otherwise.

(3) Limit the audit period to 24 months after the date a claim is submitted to or adjudicated by the entity.

(4) Provide a preliminary audit report to the pharmacy within 120 days after the conclusion of the audit.

(5) Provide a final audit report to the pharmacy within 6 months after having providing the preliminary audit report.

Section 4. Section 627.64741, Florida Statutes, is amended to read:

627.64741 Pharmacy benefit manager contracts.—

(1) As used in this section, the term:

(a) "Administrative fee" means a fee or payment under a contract between a health insurer and a pharmacy benefit manager associated with the pharmacy benefit manager's administration of the insurer's prescription drug benefit programs that is paid by the insurer to the pharmacy benefit manager.

(b) ~~(a)~~ "Maximum allowable cost" means the per-unit amount that a pharmacy benefit manager reimburses a pharmacist for a prescription drug, excluding dispensing fees, prior to the application of copayments, coinsurance, and other cost-sharing charges, if any.

(c) ~~(b)~~ "Pharmacy benefit manager" means a person or entity doing business in this state which contracts to administer or manage prescription drug benefits on behalf of a health insurer to residents of this state.

(d) "Rebate" means all discounts and other negotiated price concessions based on utilization of a prescription drug and paid by the pharmaceutical manufacturer or other entity, other than an insured, to the pharmacy benefit manager after the claim has been adjudicated at the pharmacy.

(e) "Spread pricing" means any amount a pharmacy benefit manager charges or receives from a health insurer for payment of a prescription drug or pharmacy service that is greater than the amount the pharmacy benefit manager paid to the pharmacist or pharmacy that filled the prescription or provided the pharmacy

service.

(2) A contract between a health insurer and a pharmacy benefit manager must require that the pharmacy benefit manager:

(a) Update maximum allowable cost pricing information at least every 7 calendar days.

(b) Maintain a process that will, in a timely manner, eliminate drugs from maximum allowable cost lists or modify drug prices to remain consistent with changes in pricing data used in formulating maximum allowable cost prices and product availability.

(3) A contract between a health insurer and a pharmacy benefit manager must prohibit the pharmacy benefit manager from limiting a pharmacist's ability to disclose whether the cost-sharing obligation exceeds the retail price for a covered prescription drug, and the availability of a more affordable alternative drug, pursuant to s. 465.0244.

(4) A contract between a health insurer and a pharmacy benefit manager must prohibit the pharmacy benefit manager from requiring an insured to make a payment for a prescription drug at the point of sale in an amount that exceeds the lesser of:

(a) The applicable cost-sharing amount; or

(b) The retail price of the drug in the absence of prescription drug coverage.

(5) A contract between a health insurer and a pharmacy benefit manager must require the pharmacy benefit manager to

report annually the following to the insurer:

(a) The aggregate amount of rebates the pharmacy benefit manager received in association with claims administered on behalf of the insurer and the aggregate amount of such rebates the pharmacy benefit manager received that were not passed through to the insurer.

(b) The aggregate amount of administrative fees paid to the pharmacy benefit manager by the insurer for the administration of the insurer's prescription drug benefit programs.

(c) The types and aggregate amounts of any fees or remittances paid to the pharmacy benefit manager by pharmacies.

(d) The aggregate amount of revenue generated by the pharmacy benefit manager through the use of spread pricing in association with the administration of the insurer's pharmacy benefit programs.

(6) Not later than June 30, 2021, and annually thereafter, a health insurer shall submit a report to the office that includes the information provided by its contracted pharmacy benefit managers under subsection (5). The office shall publish the reports and an analysis of the reported information on its website.

(7)~~(5)~~ This section applies to contracts entered into or renewed on or after July 1, 2020 ~~2018~~.

Section 5. Section 627.6572, Florida Statutes, is amended

to read:

627.6572 Pharmacy benefit manager contracts.—

(1) As used in this section, the term:

(a) "Administrative fee" means a fee or payment under a contract between a health insurer and a pharmacy benefit manager associated with the pharmacy benefit manager's administration of the insurer's prescription drug benefit programs that is paid by the insurer to the pharmacy benefit manager.

(b) ~~(a)~~ "Maximum allowable cost" means the per-unit amount that a pharmacy benefit manager reimburses a pharmacist for a prescription drug, excluding dispensing fees, prior to the application of copayments, coinsurance, and other cost-sharing charges, if any.

(c) ~~(b)~~ "Pharmacy benefit manager" means a person or entity doing business in this state which contracts to administer or manage prescription drug benefits on behalf of a health insurer to residents of this state.

(d) "Rebate" means all discounts and other negotiated price concessions based on utilization of a prescription drug and paid by the pharmaceutical manufacturer or other entity, other than an insured, to the pharmacy benefit manager after the claim has been adjudicated at the pharmacy.

(e) "Spread pricing" means any amount a pharmacy benefit manager charges or receives from a health insurer for payment of a prescription drug or pharmacy service that is greater than the

amount the pharmacy benefit manager paid to the pharmacist or pharmacy that filled the prescription or provided the pharmacy service.

(2) A contract between a health insurer and a pharmacy benefit manager must require that the pharmacy benefit manager:

(a) Update maximum allowable cost pricing information at least every 7 calendar days.

(b) Maintain a process that will, in a timely manner, eliminate drugs from maximum allowable cost lists or modify drug prices to remain consistent with changes in pricing data used in formulating maximum allowable cost prices and product availability.

(3) A contract between a health insurer and a pharmacy benefit manager must prohibit the pharmacy benefit manager from limiting a pharmacist's ability to disclose whether the cost-sharing obligation exceeds the retail price for a covered prescription drug, and the availability of a more affordable alternative drug, pursuant to s. 465.0244.

(4) A contract between a health insurer and a pharmacy benefit manager must prohibit the pharmacy benefit manager from requiring an insured to make a payment for a prescription drug at the point of sale in an amount that exceeds the lesser of:

(a) The applicable cost-sharing amount; or

(b) The retail price of the drug in the absence of prescription drug coverage.

(5) A contract between a health insurer and a pharmacy benefit manager must require the pharmacy benefit manager to report annually the following to the insurer:

(a) The aggregate amount of rebates the pharmacy benefit manager received in association with claims administered on behalf of the insurer and the aggregate amount of such rebates the pharmacy benefit manager received that were not passed through to the insurer.

(b) The aggregate amount of administrative fees paid to the pharmacy benefit manager by the insurer for the administration of the insurer's prescription drug benefit programs.

(c) The types and aggregate amounts of any fees or remittances paid to the pharmacy benefit manager by pharmacies.

(d) The aggregate amount of revenue generated by the pharmacy benefit manager through the use of spread pricing in association with the administration of the insurer's pharmacy benefit programs.

(6) Not later than June 30, 2021, and annually thereafter, a health insurer shall submit a report to the office that includes the information provided by its contracted pharmacy benefit managers under subsection (5). The office shall publish the reports and an analysis of the reported information on its website.

(7) ~~(5)~~ This section applies to contracts entered into or

renewed on or after July 1, 2020 ~~2018~~.

Section 6. Section 641.314, Florida Statutes, is amended to read:

641.314 Pharmacy benefit manager contracts.—

(1) As used in this section, the term:

(a) "Administrative fee" means a fee or payment under a contract between a health maintenance organization and a pharmacy benefit manager associated with the pharmacy benefit manager's administration of the health maintenance organization's prescription drug benefit programs that is paid by the health maintenance organization to the pharmacy benefit manager.

(b) ~~(a)~~ "Maximum allowable cost" means the per-unit amount that a pharmacy benefit manager reimburses a pharmacist for a prescription drug, excluding dispensing fees, prior to the application of copayments, coinsurance, and other cost-sharing charges, if any.

(c) ~~(b)~~ "Pharmacy benefit manager" means a person or entity doing business in this state which contracts to administer or manage prescription drug benefits on behalf of a health maintenance organization to residents of this state.

(d) "Rebate" means all discounts and other negotiated price concessions based on utilization of a prescription drug and paid by the pharmaceutical manufacturer or other entity, other than a subscriber, to the pharmacy benefit manager after

the claim has been adjudicated at the pharmacy.

(e) "Spread pricing" means any amount a pharmacy benefit manager charges or receives from a health maintenance organization for payment of a prescription drug or pharmacy service that is greater than the amount the pharmacy benefit manager paid to the pharmacist or pharmacy that filled the prescription or provided the pharmacy service.

(2) A contract between a health maintenance organization and a pharmacy benefit manager must require that the pharmacy benefit manager:

(a) Update maximum allowable cost pricing information at least every 7 calendar days.

(b) Maintain a process that will, in a timely manner, eliminate drugs from maximum allowable cost lists or modify drug prices to remain consistent with changes in pricing data used in formulating maximum allowable cost prices and product availability.

(3) A contract between a health maintenance organization and a pharmacy benefit manager must prohibit the pharmacy benefit manager from limiting a pharmacist's ability to disclose whether the cost-sharing obligation exceeds the retail price for a covered prescription drug, and the availability of a more affordable alternative drug, pursuant to s. 465.0244.

(4) A contract between a health maintenance organization and a pharmacy benefit manager must prohibit the pharmacy

benefit manager from requiring a subscriber to make a payment for a prescription drug at the point of sale in an amount that exceeds the lesser of:

(a) The applicable cost-sharing amount; or

(b) The retail price of the drug in the absence of prescription drug coverage.

(5) A contract between a health maintenance organization and a pharmacy benefit manager must require the pharmacy benefit manager to report annually the following to the health maintenance organization:

(a) The aggregate amount of rebates the pharmacy benefit manager received in association with claims administered on behalf of the health maintenance organization and the aggregate amount of such rebates the pharmacy benefit manager received that were not passed through to the health maintenance organization.

(b) The aggregate amount of administrative fees paid to the pharmacy benefit manager by the health maintenance organization for the administration of the health maintenance organization's prescription drug benefit programs.

(c) The types and aggregate amounts of any fees or remittances paid to the pharmacy benefit manager by pharmacies.

(d) The aggregate amount of revenue generated by the pharmacy benefit manager through the use of spread pricing in association with the administration of the health maintenance

organization's pharmacy benefit programs.

(6) Not later than June 30, 2021, and annually thereafter, a health maintenance organization shall submit a report to the office that includes the information provided by its contracted pharmacy benefit managers under subsection (5). The office shall publish the reports and an analysis of the reported information on its website.

(7) ~~(5)~~ This section applies to contracts entered into or renewed on or after July 1, 2020 ~~2018~~.

Section 7. This act shall take effect July 1, 2020.

HB 7057

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7057 PCB JDC 20-04 Appellate Courts Headquarters and Travel
SPONSOR(S): Judiciary Committee, Fernandez-Barquin
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1392

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee	16 Y, 0 N	Jones	Luczynski
1) Appropriations Committee		Smith	Pridgeon

SUMMARY ANALYSIS

The State Constitution establishes a four-level court system consisting of a supreme court, five district courts of appeal (DCAs), 20 circuit courts, and 67 county courts. After a case is decided by a circuit court, the losing party generally has the right to appeal to the appropriate DCA.

Each DCA has its own official headquarters as provided by general law. In addition, a DCA may designate other locations within its district as branch headquarters for the conduct of the business of the court.

While current law provides an option for Supreme Court justices who live outside Leon County to have an alternate headquarters, DCA judges do not have a similar option if they wish to maintain their residence at a location inconvenient for a daily commute to the DCA or a branch headquarters.

HB 7057 provides that a DCA judge who lives more than 50 miles from his or her DCA courthouse or designated branch location is eligible to have an alternate official headquarters designated within his or her county of residence. The alternate headquarters may be located in any appropriate facility, including a county courthouse, but a county is not required to provide space to a DCA judge for his or her headquarters. The bill prohibits state funds being used for leasing the headquarters space.

The bill also provides for reimbursement of travel-related expenses, including incidental travel expenses, and subsistence incurred on work trips for DCA judges; and it adds reimbursement for incidental travel expenses for Supreme Court justices. Also, with the approval of the Chief Justice, a Supreme Court justice or DCA judge may choose between reimbursement for meals and lodging at the rates set forth in the main state employee reimbursement statute or at a fixed rate prescribed by the Chief Justice.

The bill would have a recurring impact of $125,000 on the State Courts System. Funding for the bill is included in HB 5001, the proposed General Appropriations Act for Fiscal Year 2020-2021.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Court Jurisdiction

The State Constitution establishes a four-level court system consisting of a supreme court, five district courts of appeal (DCAs), 20 circuit courts, and 67 county courts.[1] After a case is decided by a circuit court, the losing party generally has the right to appeal to the appropriate DCA.[2]

DCA Headquarters

Each DCA judge must live within the territorial jurisdiction of his or her DCA.[3] Each DCA has its own official headquarters as provided by general law, as follows:

- First DCA: Second Judicial Circuit, Tallahassee, Leon County.
- Second DCA: Tenth Judicial Circuit, Lakeland, Polk County.
- Third DCA: Eleventh Judicial Circuit, Miami-Dade County.
- Fourth DCA: Fifteenth Judicial Circuit, Palm Beach County.
- Fifth DCA: Seventh Judicial Circuit, Daytona Beach, Volusia County.[4]

In addition, a DCA may designate other locations within its district as a branch headquarters for the conduct of the business of the court and as the official headquarters of its officers or employees.[5]

State Employee and Officer Reimbursement for Work-Related Travel

Section 112.061, F.S., is the main statute governing state employee and officer reimbursement for work-related travel. This section provides for reimbursement of travel and subsistence[6] in differing amounts based on several factors, including the duration and distance of a trip.

A judge of a district court of appeal (DCA) is currently entitled to reimbursement for expenses incurred in work-related trips away from his or her headquarters—which by default is each judge's DCA courthouse or an alternate official headquarters designated pursuant to s. 35.05(2), F.S.[7]

Alternate Headquarters for Supreme Court Justices

In 2019, the Legislature enacted s. 25.025, F.S., authorizing alternate official headquarters for justices who reside outside Leon County. Under this statute, a justice residing outside Leon County may:

- Request that a DCA courthouse, a county courthouse, or another appropriate facility in the justice's district be designated as his or her official headquarters and serve as his or her private chambers; and
- Be reimbursed for certain transportation expenses, not including incidental travel expenses, and subsistence while in Tallahassee to the extent funding is available, as determined by the Chief Justice.[8]

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[1] *See* art. V, ss. 1 – 6, Fla. Const.
[2] *See* art. V, s. 4(b)(1), Fla. Const.
[3] Art. V, s. 8, Fla. Const.
[4] Ss. 35.01 – 35.05, F.S.
[5] S. 35.05(2), F.S.
[6] "Subsistence," for purposes of the bill, refers to the costs of lodging and meals. *See* ss. 25.025 and 112.061(6)(b), F.S.
[7] *See* s. 112.061(4), F.S.
[8] S. 25.025, F.S.

Section 25.025, F.S., also provides that the Chief Justice must coordinate with the justice requesting a headquarters in his or her district and state and local officials, as necessary. The Supreme Court and a county courthouse may agree to establish private chambers at the county courthouse for a justice, but the courthouse is not obligated to provide space for the justice. The Supreme Court may not use state funds to lease space in a county courthouse for use as a private chamber.

While current law provides an option for Supreme Court justices who live outside Leon County to have an alternate headquarters, DCA judges do not have a similar option if they want to live farther away from the main DCA building or a branch headquarters.

Effect of Proposed Changes

DCA Judges

HB 7057 provides that a DCA judge who lives more than 50 miles from his or her DCA courthouse or designated branch DCA location is eligible to have an alternate official headquarters and to be reimbursed for trips between these locations in a manner similar to Supreme Court justices.

The alternate headquarters, which may serve only as judicial chambers and must be used for official judicial business, may be in any appropriate facility, including a county courthouse. However, no county is required to provide space to a DCA judge for his or her headquarters. The DCA may agree with a county regarding the use of courthouse space, but the bill prohibits state funds being used to lease the space.

A DCA judge who is approved for an alternate headquarters is eligible for reimbursement of travel expenses, including incidental travel expenses, and lodging and meals necessitated by his or her travel to the DCA courthouse. The DCA judge must obtain the approval of the chief judge of the DCA for the reimbursement of subsistence. With the authorization of the Chief Justice, a DCA judge may choose between reimbursement for meals and lodging at the rates set forth in the main state employee reimbursement statute or at a fixed rate prescribed by the Chief Justice.

Supreme Court Justices

The bill changes the language in s. 25.05, F.S., to clarify that a Supreme Court justice residing outside Leon County is eligible for the designation of a local headquarters, instead of stating that a justice "shall" have a headquarters designated if he or she so requests. The bill also provides for reimbursement of incidental travel expenses incurred on work-related trips for Supreme Court justices, including taxi fares, toll fees, and parking fees, which are not currently included as authorized travel reimbursements. This gives each Supreme Court justice the same benefit of reimbursements as the bill gives each DCA judge.

Also, with the authorization of the Chief Justice, a justice may choose between reimbursement for meals and lodging at the rates set forth in the main state employee reimbursement statute or at a fixed rate prescribed by the Chief Justice.

General Provisions

The bill states that the Chief Justice:

- Must coordinate with each affected DCA judge and other state and local officials, as necessary.
- May establish parameters governing the provisions of the bill as applied to DCA judges, including:
    - Specifying minimum operational requirements of a designated headquarters.
    - Limiting the number of days for which travel and subsistence reimbursements are permitted.
    - Prescribing activities qualifying as the conduct of court business.

HB 7057 also provides that if any provision within the bill conflicts with the provisions of s. 112.061, F.S., the bill's provisions control to the extent of the conflict.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Amends s. 25.025, F.S., relating to headquarters.
Section 2: Creates s. 35.051, F.S., relating to subsistence and travel reimbursement for judges with alternate headquarters.
Section 3: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill provides that a DCA judge who lives more than 50 miles from his or her DCA headquarters is eligible for an alternate, personal headquarters and for travel reimbursement for trips between his or her personal headquarters and the courthouse. HB 5001, the proposed General Appropriations Act for Fiscal Year 2020-2021, includes a recurring appropriation of $125,000 of trust fund authority for appellate judicial travel. The bill also allows certain Supreme Court justices to be reimbursed for incidental travel expenses, which they currently do not receive. It is anticipated that these expenditures can be absorbed within the Supreme Court's existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have

to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to appellate courts headquarters and travel; amending s. 25.025, F.S.; revising provisions governing the payment of subsistence and travel reimbursement for Supreme Court justices who designate an official headquarters other than the headquarters of the Supreme Court; authorizing the Chief Justice of the Supreme Court to establish certain parameters in administering the act; providing for construction; creating s. 35.051, F.S.; authorizing district court of appeal judges who meet certain criteria to have an appropriate facility in their county of residence designated as their official headquarters; providing restrictions; specifying eligibility for subsistence and travel reimbursement, subject to the availability of funds; requiring the Chief Justice to coordinate with certain officials in implementing the act; providing that a county is not required to provide space for a judge in a county courthouse; authorizing counties to enter into agreements with a district court of appeal for use of county courthouse space; prohibiting a district court of appeal from using state funds to lease space to establish a judge's official headquarters; authorizing the Chief Justice to establish certain parameters in administering the

act; providing for construction; providing an effective date.

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

Section 1. Section 25.025, Florida Statutes, is amended to read:

25.025 Headquarters.—

(1)(a) A Supreme Court justice who permanently resides outside Leon County is eligible for the designation of ~~shall, if he or she so requests, have~~ a district court of appeal courthouse, a county courthouse, or another appropriate facility in his or her district of residence ~~designated~~ as his or her official headquarters for purposes of ~~pursuant to~~ s. 112.061. This official headquarters may serve only as the justice's private chambers.

(b)1. A justice for whom an official headquarters is designated in his or her district of residence under this subsection is eligible for subsistence at a rate to be established by the Chief Justice for each day or partial day that the justice is at the headquarters of the Supreme Court to ~~Building for the~~ conduct court ~~of the~~ business, as authorized by the Chief Justice ~~of the court~~. The Chief Justice may authorize a justice to choose between subsistence based on lodging at a single-occupancy rate and meal reimbursement as provided in s.

112.061 and subsistence at a fixed rate prescribed by the Chief Justice.

2. In addition to ~~the~~ subsistence ~~allowance~~, a justice is eligible for reimbursement for travel ~~transportation~~ expenses as provided in s. 112.061(7) and (8) for travel between the justice's official headquarters and the headquarters of the Supreme Court to ~~Building for the~~ conduct court ~~of the~~ business ~~of the court~~.

(c) Payment of subsistence and reimbursement for travel ~~transportation~~ expenses ~~relating to travel~~ between a justice's official headquarters and the headquarters of the Supreme Court shall ~~Building must~~ be made to the extent that appropriated funds are available, as determined by the Chief Justice.

(2) The Chief Justice shall coordinate with each affected justice and other state and local officials as necessary to implement subsection (1) ~~paragraph (1)(a)~~.

(3)(a) This section does not require a county to provide space in a county courthouse for a justice. A county may enter into an agreement with the Supreme Court governing the use of space in a county courthouse.

(b) The Supreme Court may not use state funds to lease space in a district court of appeal courthouse, county courthouse, or other facility to allow a justice to establish an official headquarters pursuant to subsection (1).

(4) The Chief Justice may establish parameters governing

the authority provided in this section, including, but not limited to, specifying minimum operational requirements for the designated headquarters, limiting the number of days for which subsistence and travel reimbursement may be provided, and prescribing activities that qualify as the conduct of court business.

(5) If any term of this section conflicts with s. 112.061, this section shall control to the extent of the conflict.

Section 2. Section 35.051, Florida Statutes, is created to read:

35.051 Subsistence and travel reimbursement for judges with alternate headquarters.—

(1)(a) A district court of appeal judge is eligible for the designation of a county courthouse or another appropriate facility in his or her county of residence as his or her official headquarters for purposes of s. 112.061 if the judge permanently resides more than 50 miles from:

1. The appellate district's headquarters as prescribed under s. 35.05(1), if the judge is assigned to such headquarters; or

2. The appellate district's branch headquarters established under s. 35.05(2), if the judge is assigned to such branch headquarters.

The official headquarters may serve only as the judge's private

chambers.

(b)1. A district court of appeal judge for whom an official headquarters is designated in his or her county of residence under this subsection is eligible for subsistence at a rate to be established by the Chief Justice for each day or partial day that the judge is at the headquarters or branch headquarters of his or her appellate district to conduct court business, as authorized by the chief judge of that district court of appeal. The Chief Justice may authorize a judge to choose between subsistence based on lodging at a single-occupancy rate and meal reimbursement as provided in s. 112.061 and subsistence at a fixed rate prescribed by the Chief Justice.

2. In addition to subsistence, a district court of appeal judge is eligible for reimbursement for travel expenses as provided in s. 112.061(7) and (8) for travel between the judge's official headquarters and the headquarters or branch headquarters of the appellate district to conduct court business.

(c) Payment of subsistence and reimbursement for travel expenses between the judge's official headquarters or branch headquarters and the headquarters of his or her appellate district shall be made to the extent that appropriated funds are available, as determined by the Chief Justice.

(2) The Chief Justice shall coordinate with each affected district court of appeal judge and other state and local

officials as necessary to implement subsection (1).

(3)(a) This section does not require a county to provide space in a county courthouse for a district court of appeal judge. A county may enter into an agreement with a district court of appeal governing the use of space in a county courthouse.

(b) A district court of appeal may not use state funds to lease space in a county courthouse or other facility to allow a district court of appeal judge to establish an official headquarters pursuant to subsection (1).

(4) The Chief Justice may establish parameters governing the authority provided in this section, including, but not limited to, specifying minimum operational requirements for the designated headquarters, limiting the number of days for which subsistence and travel reimbursement may be provided, and prescribing activities that qualify as the conduct of court business.

(5) If any term of this section conflicts with s. 112.061, this section shall control to the extent of the conflict.

Section 3. This act shall take effect July 1, 2020.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 7057 (2020)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Appropriations Committee

Representative Fernandez-Barquin offered the following:

Amendment

Remove lines 120-121 and insert:

expenses between the judge's official headquarters and the headquarters or branch headquarters of his or her appellate

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7065 PCB EDC 20-02 School Safety
SPONSOR(S): Education Committee, Massullo
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Education Committee	15 Y, 0 N	Sleap	Hassell
1) Appropriations Committee		Potvin	Pridgeon

SUMMARY ANALYSIS

In 2018, the Legislature enacted the "Marjory Stoneman Douglas High School Public Safety Act" to address school safety and security and establish the Marjory Stoneman Douglas High School Public Safety Commission. The bill increases school safety and security by:

- Reinforcing the oversight and sanctioning authority Florida's Commissioner of Education has to oversee school safety and security compliance in the state.
- Requiring a district's student code of conduct to include criteria for assigning a student to a civil citation or similar prearrest diversion program and requiring such programs to comply with those established in each judicial circuit, in addition to requiring law enforcement officers to have field access to information on civil citation and prearrest diversion information beginning in fiscal year 2021-2022.
- Authorizing a district school board to continue providing educational services for a student in a civil citation or similar prearrest diversion program at the request of the superintendent.
- Providing that a school safety officer has the power of arrest on property owned or leased by a charter school; requiring all safe-school officers, not just school resource officers, to complete mental health crisis intervention training; and requiring the superintendent or charter school administrator to provide notification after a safe-school officer has been involved in specified incidents.
- Clarifying that training required by the Coach Aaron Feis Guardian Program be conducted only by a sheriff, and that individuals must satisfy screening requirements and be approved by the sheriff before participating in the training program.
- Requiring all members of the threat assessment team to be involved in the threat assessment process and final decision and authorizing accommodations for drills conducted by Exception Student Education (ESE) centers.
- Requiring FortifyFL, effective October 1, 2020, to notify individuals that the IP address of the device on which a false tip is submitted will be provided to law enforcement and the individual may be subject to criminal penalties.
- Requiring the Office of Safe Schools (OSS) to develop, in coordination with the Division of Emergency Management, and other agencies, a model family reunification plan; requiring each school district and charter school governing board to adopt a family reunification plan; and requiring family reunification policies and procedures be included in the Florida Safe Schools Assessment Tool (FSSAT).
- Strengthening school mental health coordination and implementation by requiring district mental health assistance allocation plans to include agreements with a managing entity for the referral of students for care, including the sharing of records and information to assist in the coordination of such care, and policies and procedures that ensure parents are informed of available behavioral health services, the utilization of community action treatment teams by the school district, and referrals for services of other individuals that would contribute to the improved well-being of the student.

The fiscal impact of the bill is indeterminate. See Fiscal Comments, infra.

Except as other provided, the bill has an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In response to the shooting at Marjory Stoneman Douglas High School on February 14, 2018, the Florida Legislature enacted SB 7026, the Marjory Stoneman Douglas High School Public Safety Act (Act) (ch. 2018-3, L.O.F.).[1] The Act included provisions to address school safety and security including establishment of the school guardian program, creation of the Office of Safe Schools (OSS) within the Florida Department of Education (DOE) and increased coordination among state and local agencies serving students with or at-risk of mental illness, among other provisions.

The Act created the Marjory Stoneman Douglas High School Public Safety Commission (Commission) to investigate system failures in the Marjory Stoneman Douglas High School shooting and prior mass violence incidents, and develop recommendations for system improvements. The Commission submitted its initial report on January 2, 2019 containing numerous school safety and security recommendations[2] which the Florida Legislature addressed in SB 7030, Implementation of Legislative Recommendations of the Marjory Stoneman Douglas High School Public Safety Commission (ch. 2019-22, L.O.F.).[3]

The Commission submitted a second report on November 1, 2019 providing findings of failures to implement required school safety improvements as provided in SB 7026 and SB 7030, as well as recommendations related to safe school officers, threat assessments, juvenile diversion programs, and mental health, among other recommendations.[4] The Commission is authorized to issue annual reports and is scheduled to sunset on July 1, 2023.[5]

School Safety Oversight and Compliance

Present Situation

Duties of the Commissioner of Education

Florida's Commissioner of Education (Commissioner) is required by law to oversee compliance with the safety and security requirements of the Act by school districts, district school superintendents, and public schools, including charter schools.[6] The Commissioner must facilitate compliance to the maximum extent provided under law, identify incidents of noncompliance, and impose or recommend to the State Board of Education (SBE), the Governor, or the Legislature enforcement and sanctioning actions.[7]

Office of Safe Schools

The Office of Safe Schools (OSS) within the DOE is fully accountable to the Commissioner, and serves as a central repository for best practices, training standards, and compliance oversight in all matters

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[1] Chapter 2018-3, L.O.F.
[2] Marjory Stoneman Douglas High School Public Safety Commission, *Initial Report* (Jan. 2, 2019), *available at* http://www.fdle.state.fl.us/MSDHS/CommissionReport.pdf
[3] Chapter 2019-22, L.O.F.
[4] Marjory Stoneman Douglas High School Public Safety Commission, *Second Report* (Nov. 1, 2010), *available at* http://www.fdle.state.fl.us/MSDHS/MSD-Report-2-Public-Version.pdf
[5] Section 943.687(9), F.S.
[6] Section 1001.11(9), F.S.
[7] *Id.*

regarding school safety and security, including prevention efforts, intervention efforts, and emergency preparedness planning.[8] The OSS responsibilities include among other duties, collection of school environmental safety incident reporting (SESIR), development and delivery of a School Safety Specialist Training Program, development of a standardized statewide behavioral threat assessment instrument, monitoring of compliance with requirements relating to school safety, and reporting incidents of noncompliance to the Commissioner and SBE.[9]

District School Board Duties

District school boards must provide for the proper accounting for all students, for the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students.[10] Boards must adopt a code of student conduct which provides policies and specific grounds for discipline action, procedures to be followed for acts requiring discipline, and rights and responsibilities of students, among other requirements.[11]

Each district school superintendent must designate a school safety specialist for the district and this individual must earn a certificate of completion of the School Safety Specialist Training provided by the OSS within 1 year after appointment.[12] The school safety specialist is responsible for the supervision and oversight for all school safety and security personnel, policies, and procedures in the school district, including conducting and reporting the recommendations from the annual school security risk assessment at each public school using the Florida Safe Schools Assessment Tool (FSSAT).[13]

Each district school board must adopt policies for the establishment of threat assessment teams at each school.[14] The team's duties include the coordination of resources and assessment and intervention with individuals whose behavior may pose a threat to the safety of school staff or students. The team includes individuals with expertise in counseling, instruction, school administration, and law enforcement.[15] To conduct their work, the team must use the standardized, statewide behavioral threat assessment instrument developed by the OSS[16] along with the Florida Schools Safety Portal (FSSP).[17]

Each district school board must adopt policies to ensure the accurate and timely reporting of incidents related to school safety and discipline and the district school superintendent is responsible for the reporting of these incidents in SESIR.[18]

District school boards are also responsible for formulating and prescribing policies and procedures, in consultation with the appropriate public safety agencies, for emergency drills and for actual emergencies, including, but not limited to, fires, natural disasters, active shooter and hostage situations, and bomb threats, for all students and faculty at all public schools in the district comprised of grades K-12.[19] Drills for active shooter and hostage situations must be conducted in accordance with developmentally appropriate and age-appropriate procedures at least as often as other emergency drills.[20] The active shooter situation training for each school must engage the participation of the district

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[8] Section 1001.212, F.S.
[9] *Id.*
[10] Section 1006.07, F.S.
[11] Section 1006.07(2), F.S.
[12] Section 1006.07(6)(a), F.S.
[13] *Id.*
[14] Section 1006.07(7), F.S.
[15] *Id.*
[16] Section 1006.07(7)(a), F.S.
[17] Section 1006.07(7)(f), F.S.; *See also* Florida Department of Education, *Department of Education Announces the Florida Schools Safety Portal* (Aug. 1, 2019), *available at* http://www.fldoe.org/newsroom/latest-news/department-of-education-announces-the-florida-schools-safety-portal.stml (last visited Jan. 27, 2020).
[18] Section 1006.07(9), F.S.
[19] Section 1006.07(4)(a), F.S.
[20] *Id.*

school safety specialist, threat assessment team members, faculty, staff, and students, and must be conducted by the law enforcement agency or agencies that are designated as first responders to the school's campus.[21]

Charter Schools

Charter schools in Florida are public schools that operate in accordance with the terms of their respective charters and are generally exempt from other requirements in the K-20 Education Code.[22] However, charter schools must comply with statutes relating to student health, safety, and welfare and with the statutory requirements related to safe-school officers at each school, establishment of threat assessment teams, SESIR incident reporting, annual FSSAT completion, adoption of an active assailant response plan, advertisement of the FortifyFL tool, and youth mental health awareness and assistance training.[23]

A charter school may have its charter terminated immediately if the sponsor sets forth in writing the particular facts and circumstances indicating that an immediate and serious danger to the health, safety, or welfare of the charter school's students exists.[24] The sponsor must notify in writing the charter school's governing board, the charter school principal, and the DOE if a charter is terminated immediately.[25] The sponsor must clearly identify the specific issues that resulted in the immediate termination and provide evidence of prior notification of issues resulting in the immediate termination when appropriate.[26]

Effect of Proposed Changes

The bill clarifies the Commissioner's existing authority to oversee compliance with the requirements relating to school safety and security by school districts, district school superintendents, and public schools, including charter schools.

The bill provides that upon notification by the OSS that a district school board has failed to comply with the requirements relating to school safety and security, the Commissioner must require the district school board to withhold further payment of the salary of the superintendent. The Commissioner must also facilitate school safety and security compliance of charter schools, by recommending to the district school board actions for nonrenewal or termination of the charter.

The bill provides for the termination of a charter if the sponsor sets forth in writing the particular facts and circumstances demonstrating that an immediate and serious danger to the health, safety, or welfare of the charter school's students exists, that the immediate and serious danger is likely to continue, and that an immediate termination of the charter is necessary. The charter school sponsor must notify in writing the charter school's governing board, the charter school principal, and the DOE of the facts and circumstances supporting the emergency termination.

The bill requires the OSS to provide ongoing professional development opportunities to both school district and charter school personnel. The bill also requires the OSS to develop, in coordination with the Division of Emergency Management, other federal, state, and local law enforcement agencies, fire and rescue agencies, and first-responder agencies, a model family reunification plan for use by child care facilities, public K-12 schools, and public postsecondary institutions, which are closed or unexpectedly evacuated due to natural or man-made disasters.

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[21] Section 1006.07(4)(b)1., F.S.
[22] Section 1002.33(16)(a), F.S. The K-20 Education Code includes chapters 1000-1013 of the Florida Statutes.
[23] Section 1002.33(16)(b), F.S.
[24] Section 1002.33(16)(c), F.S.
[25] *Id.*
[26] *Id.*

The bill requires each district school board and charter school governing board to adopt, in coordination with local law enforcement agencies, a family reunification plan to reunite students and employees with their families in the event that a school is closed or unexpectedly evacuated due to a natural or man-made disaster.

The bill authorizes district school board policies to provide accommodations for drills conducted by Exceptional Student Education (ESE) centers.

For threat assessment teams, the bill requires that all members of the threat assessment team be involved in the threat assessment process and final decision.

The description of the FSSP tool is revised in the bill to reflect its current capabilities as a unified search tool.

Safe Schools Tools and Resources

Present Situation

FortifyFL

FortifyFL is a mobile suspicious activity reporting tool, launched on October 8, 2018,[27] which allows students and the community to relay information anonymously concerning unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of these activities, to appropriate public safety agencies and school officials.[28] The tool is a computer and mobile phone application that is free to all public and private schools in Florida.[29] A district school board and charter school must promote the use of FortifyFL by advertising it on school campuses and in school publications, by installing it on all mobile devices issued to students, and by bookmarking the website on all computer devices issued to students.[30]

Any tips submitted via FortifyFL are sent to local school, district, and law enforcement officials to take action on the tip.[31] The identity of the reporting party received on FortifyFL is confidential and exempt from public records disclosure requirements.[32]

Florida Safe Schools Assessment Tool (FSSAT)

The FSSAT is the primary physical site security assessment tool used by school officials to conduct security assessments at each school district and public school site in the state.[33] The FSSAT is intended to assist school officials in identifying threats, vulnerabilities, and appropriate safety controls for the schools that they supervise.[34] The FSSAT is required to address certain components of school safety, such as emergency and crisis preparedness planning, physical security measures, and security, crime, and violence prevention policies and procedures.[35]

The OSS, within the DOE, must provide annual training to each school district's school safety specialist and other appropriate district personnel on the assessment of physical site security and completing the

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[27] Florida Department of Education, *FortifyFL School Safety Awareness Program* (Oct. 26, 2018), *available at* https://info.fldoe.org/docushare/dsweb/Get/Document-8397/dps-2018-157.pdf.
[28] Section 943.082(1), F.S.
[29] Florida Department of Education, *supra* note 27.
[30] Section 943.082(4)(b), F.S. and s.1002.33(16)(b)13., F.S.
[31] Florida Department of Education, *supra* note 27.
[32] Section 943.082(6), F.S.
[33] Section 1006.1493(1), F.S.
[34] Section 1006.1493(2), F.S.
[35] Section 1006.1493(2)(a), F.S.

FSSAT.[36] District school boards must conduct a school security risk assessment at each public school using the FSSAT by October 1 of each year.[37] The findings and recommendations to improve school safety and security identified as a result of the assessment, must be received at a publicly noticed district school board meeting providing the public an opportunity to hear the board's discussion and action on the issue.[38] Findings and district school board action must be reported to the OSS within 30 days after the district school board meeting.[39]

Effect of Proposed Changes

The bill requires FortifyFL, effective October 1, 2020, to notify individuals that the IP address of the device on which a false tip is submitted will be provided to law enforcement agencies for further investigation and the individual may be subject to criminal penalties for a false report. In all other circumstances, unless the individual reporting a tip has chosen to disclose his or her identity, the report must remain anonymous.

The bill requires the FSSAT, used to help school officials identify threats and vulnerabilities, include policies and procedures to prepare for and respond to natural and man-made disasters, including plans to reunite students and employees with families after a school is closed or unexpectedly evacuated.

Zero Tolerance and Juvenile Diversion Programs

Present Situation

Zero-Tolerance Policies

District school boards must promote a safe and supportive learning environment in schools by protecting students and staff from conduct that poses a threat to school safety.[40] District school boards must adopt a policy of zero tolerance that among other requirements, defines acts that pose a threat to school safety, defines criteria for reporting acts to law enforcement, and must include requirements for students found to have committed certain offenses to be expelled and referred to the criminal justice or juvenile justice system.[41] A school's threat assessment team may use alternatives to expulsion or referral to law enforcement agencies through restitution, civil citation, teen court, neighborhood restorative justice, or similar programs, unless the use of such alternatives will pose a threat to school safety.[42]

A district school board's zero tolerance policy must require students found to have committed specified offenses to be expelled, with or without continuing educational services, from the student's regular school for a period of not less than one full year, and to be referred to the criminal justice or juvenile justice system.[43] The specified offenses include:

- bringing a firearm or weapon[44] to school, to any function, or onto any school-sponsored transportation or possessing a firearm at school; or

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[36] Section 1006.1493(3), F.S.
[37] Section 1006.07(6)(a)4., F.S.
[38] *Id.*
[39] *Id.*
[40] Section 1006.13(1), F.S.
[41] Section 1006.131(2)-(3), F.S.
[42] Section 1006.13(1) and (8), F.S.
[43] Section 1006.13(3), F.S.
[44] Ch. 790.001 "Firearm" means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime. "Weapon" means any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife.

- making a threat or false report[45] involving school or school personnel's property, school transportation, or a school-sponsored activity.[46]

Students who have committed the specified offenses above may be assigned to a disciplinary program for the purpose of continuing educational services during the period of expulsion at the district school boards discretion.[47] A district school superintendent may consider the 1-year expulsion requirements on a case-by-case basis and request the district school board to modify the requirements by assigning the student to a disciplinary program or second chance school if it is determined to be in the best interest of the student and the school system.[48]

Each district school board must enter into agreements with the county sheriff's office and local police department which specify the guidelines for ensuring that acts that pose a threat to school safety are reported to a law enforcement agency.[49] The agreements must include the role of the school resource officer in handling reported incidents and procedures that require school personnel to consult with school resource officers concerning appropriate delinquent acts and crimes.[50] The school principal must notify all school personnel of their responsibility to report incidents which pose a threat to school safety and crimes to the principal, or his or her designee, and that the disposition of the incident is properly documented.[51]

Juvenile Diversion Programs

A civil citation or similar prearrest diversion program for misdemeanor offenses must be established in each judicial circuit in the state and operated by the state attorney of each circuit.[52] A sheriff, police department, county, municipality, locally authorized entity, or public or private educational institution may continue to operate an independent civil citation or similar prearrest diversion program as long as the program was in operation as of October 1, 2018, and the program was reviewed by the state attorney in the circuit and it was determined to be substantially similar to the civil citation or similar prearrest diversion program developed by the circuit.[53] Each civil citation or similar prearrest diversion program must enter the appropriate youth data into the Juvenile Justice Information System Prevention Web within 7 days after the admission of the youth into the program.[54]

In 2019, Governor DeSantis issued Executive Order 19-45, providing for an immediate statewide audit of all 67 county school districts to determine any and all types of school-based discipline diversion programs in place.[55] The DOE and Department of Juvenile Justice (DJJ) worked together to complete the audit and review of diversion programs.[56] The audit focused on identification of programs serving youth with offenses that could be deemed delinquent.[57] The audit found that as of July 1, 2019, 58[58] of the 67 school districts in Florida do not operate school-based diversion programs for potentially delinquent offenses, 6 school districts operate programs that supplement traditional handling through

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[45] As defined in ss. 790.162 and 790.163
[46] Section 1006.13(3)(a)-(b), F.S.
[47] Section 1006.13 (3)(b), F.S. (flush left provisions at the end of the subparagraph).
[48] *Id.*
[49] Section 1006.13(4)(a), F.S.
[50] *Id.* at (b)
[51] *Id.* at (c)
[52] Section 985.12(2)(a)&(c), F.S.
[53] Section 985.12(2)(c), F.S.
[54] Section 985.12(2)(f), F.S.
[55] Fla. Exec. Order 19-45 (Feb. 13, 2019).
[56] *Id.*
[57] Florida Department of Juvenile Justice, *Statewide Audit of School-Based Diversion Programs* (July 1, 2019), at 6, *available at* http://www.fdle.state.fl.us/MSDHS/Meetings/2019/August/August-14-1015am-Report-on-Statewide-Assessment-DJ.aspx.
[58] *Id.* at 20 The 58 districts indicated that non-criminal infractions are handled through school-based consequences such as in-school suspension or out-of-school suspension, an youth who have committed misdemeanors or felonies are referred to law enforcement, typically the school resource officer.

school-based discipline and/or referral to law enforcement,[59] and 3 school districts operate school-based diversion programs.[60]

Effect of Proposed Changes

The bill requires that beginning in Fiscal Year 2021-2022, law enforcement officers must have field access to civil citation and prearrest diversion information.

The bill provides that the code of student conduct adopted by a district school board include criteria for assigning a student to a civil citation or similar prearrest diversion program that is an alternative to expulsion or referral to law enforcement agencies. The bill requires all civil citation or similar prearrest diversion programs used by a school district to comply with the civil citation or similar prearrest diversion programs established in each judicial circuit in the state as provided in s. 985.12, F.S.

For a student who has brought a weapon or made a threat, the bill authorizes a district school board to assign the student in a civil citation or prearrest diversion program authorized by s. 985.12, F.S. to a disciplinary program to continue providing educational services to the student during the expulsion period.

The bill authorizes a district school superintendent to consider the student's one year expulsion on a case-by-case basis and request the district school board to assign the student in a civil citation or prearrest diversion program authorized by s. 985.12, F.S. to a disciplinary program or a second chance school if it is determined to be in the best interest of the student and the school system.

Safe-School Officers

Present Situation

Florida law requires district school boards and school district superintendents to partner with law enforcement agencies to establish or assign one or more safe-school officers at each school facility within the district, including charter schools.[61] A school district may implement one or more safe-school officer options to best meet the needs of the school district and charter schools.[62] These options include:

1. Establishing a school resource officer (SRO) program, through a cooperative agreement with law enforcement agencies.[63] SROs are certified law enforcement officers[64] who must meet minimum screening requirements[65] and complete mental health crisis intervention training.[66]
2. Commissioning one or more school safety officers (SSO). SSOs are certified law enforcement officers with the power of arrest on district school property, who are employed by either a law enforcement agency or by the district school board.[67]

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[59] *Id.* at 6 The districts indicated that delinquent offenses are referred to law enforcement for handling, and youth may also participate in the overlay program.; *Id.* at 21 The six districts include Duval, Hendry, Hillsborough, Levy, Marion and Martin Counties.
[60] *Id.* at 22-23. The three counties include Franklin, Broward, and Sarasota. The audit found that Sarasota operates a program that could be described as an "overlay" program but the program does not enter data into the Juvenile Justice Information System Prevention Web.
[61] Section 1006.12, F.S.
[62] *Id.*
[63] Section 1006.12(1), F.S.
[64] Section 943.10(1), F.S. defines "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.
[65] Section 1006.12(1)(a), F.S. SROs must undergo criminal background checks, drug testing, and a psychological evaluation.
[66] Section 1006.12(1)(c), F.S.
[67] Section 1006.12(2)(a)-(b), F.S. SSOs must undergo criminal background checks, drug testing, and a psychological evaluation.

3. Participating in the Coach Aaron Feis Guardian Program.[68]
4. Contracting with a security agency[69] to employ as a school security guard an individual who holds a class "D" and class "G" license,[70] who completes the same training required of a school guardian, and passes minimum screening requirements.[71]

School districts must notify the county sheriff and the OSS immediately after, but no later than 72 hours after:

- a safe-school officer is dismissed for misconduct or is otherwise disciplined; or
- a safe-school officer discharges his or her firearm in the exercise of the officer's duties, other than for training purposes.[72]

Effect of Proposed Changes

The bill maintains a school district's flexibility to meet the safe-school officer requirements in law, however, the bill clarifies that any training required for the Coach Aaron Feis Guardian Program only be conducted by a sheriff.

The bill clarifies that an individual must satisfy the background screening, psychological evaluation, and drug test requirements and be approved by the sheriff before participating in any training under the Coach Aaron Feis Guardian Program.

The bill requires a superintendent or charter school administrator to notify the county sheriff and the OSS immediately after, but not later than 72 hours after, a safe-school officer has been involved in specified incidents.

The bill requires all safe-school officers, not just SROs, to complete mental health crisis intervention training using a curriculum developed by a national organization with expertise in the topic. The training must improve the safe-school officers' knowledge and skills as a first responder to incidents involving students with emotional disturbance or mental illness, to include de-escalation skills.

The bill provides that a school safety officer has the power of arrest on district school board property or on property owned or leased by a charter school under the charter contract, as applicable.

School Funding - Mental Health Assistance Allocation

Present Situation

The Act created the Mental Health Assistance Allocation within the Florida Education Finance Program.[73] The allocation is intended to provide funding to assist school districts in establishing or expanding school-based mental health care, train educators and other school staff in detecting and responding to mental health issues, and connecting children, youth, and families who may experience

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[68] Section 30.15(1)(k)2., F.S. The Coach Aaron Feis Guardian Program requires an individual to complete a 144-hour training program, have a license to carry a concealed weapon or firearm, pass a psychological evaluation, pass an initial drug test and subsequent random drug tests, and successfully complete ongoing training, weapon inspection, and firearm qualification on at least an annual basis.

[69] Section 493.6101, F.S. "Security agency" means any person who, for consideration, advertises as providing or is engaged in the business of furnishing security services, armored car services, or transporting prisoners. This includes any person who utilizes dogs and individuals to provide security services.

[70] Ch. 493, F.S. specifies license requirements.

[71] Section 1006.12(4), F.S. A school security guard must pass a psychological evaluation and an initial drug test, and subsequent random drug tests. A school security guard must also successfully complete ongoing training, weapon inspection, and firearm qualification on at least an annual basis and provide documentation.

[72] Section 1006.12(5), F.S.

[73] Section 1011.62(16), F.S.

behavior health issues with appropriate services.[74] For Fiscal Year 2019-2020, $75 million was allocated for Mental Health Assistance Allocation,[75] with each school district receiving a minimum of $100,000 with the remaining balance of funds to be allocated based on each district's proportionate share of the state's total unweighted full-time equivalent student enrollment.[76] Eligible charter schools are entitled to a proportionate share of the school district's allocation.

Section 1011.62, F.S., prohibits school districts from using the funds allocated under this section from supplanting funds from other operating funds used for the provision of mental health services. These funds may not be used for salary increases or bonuses.[77]

In order to receive allocation funds, a school district must develop and submit a detailed plan outlining the local program and planned expenditures to the district school board for approval.[78] A school district's plan must include all district schools, including charter schools, unless a charter school elects to submit a plan independently from the school district.[79]

The plans must be focused on a multitiered system of supports to deliver evidence-based mental health care assessment, diagnosis, intervention, treatment, and recovery services to students with one or more mental health or co-occurring substance abuse diagnoses and to students at high risk of such diagnoses. The provision of these services must be coordinated with a student's primary mental health care provider and with other mental health providers involved in the student's care.[80]

Plans must include elements such as:

- direct employment of school-based mental health service providers to expand and enhance school-based student services and reduce the ratio of students to staff to align with nationally recommended ratio models;
- contracts or interagency agreements with one or more local community behavioral health providers or providers of Community Action Team services to provide behavioral health staff presence and services at district schools; and
- policies and procedures which ensure students who are referred to a school-based or community-based mental health service provider for mental health screening are assessed within 15 days of referral, and that school-based mental health services are initiated within 15 days after identification and assessment and community-based mental health services are initiated within 30 days after school or district referral.[81]

Each approved plan must be submitted to the Commissioner by August 1 each year and school districts are required to annually submit a report to the Department of Education (DOE) on program outcomes and expenditures for the previous fiscal year by September 30.[82]

Effect of Proposed Changes

The bill requires a school district's plan, or if elected, an independently submitted charter school's plan, developed to receive the mental health assistance allocation to include the following:

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[74] *Id.*
[75] Specific Appropriation 6 and 93, s. 2, ch. 2019-115, L.O.F.
[76] Section 1011.62(16),F.S.; *See also* Florida Department of Education, Office of Safe Schools, *2019-20 District Mental Health Assistance Allocation (Conference Report Calculation), available at* http://www.fldoe.org/core/fileparse.php/18612/urlt/1920DistrictMHAssisAllocation.pdf.
[77] Section 1011.62(16), F.S.
[78] Section 1011.62(16)(a)1.-2., F.S.
[79] *Id.*
[80] Section 1011.61(16)(b), F.S.
[81] Section 1011.62(16)(b)1.-3.,F.S.
[82] Section 1011.62(16)(c)-(d),F.S.

- An interagency agreement or memorandum of understanding with a managing entity, as defined in s. 394.9082(2),F.S., that facilitates referrals of students to community-based services and coordinates care for students served by school-based and community-based providers. This agreement or memorandum of understanding must address the sharing of records and information as authorized under s. 1006.07(7)(d), F.S., to coordinate care and increase access to appropriate services for students experiencing or at risk of an emotional disturbance or a mental illness.
- Policies and procedures, including contracts with service providers, which ensure the following:
    - A parent of a student is provided information about available behavioral health services through the school or local community-based behavioral health providers, including, but not limited to, the community action treatment teams. To meet this requirement, a school may provide easily navigated information about and the internet addresses for web-based directories or guides for local behavioral health services, to include contact information for behavioral health providers.
    - Each school district is using the services of the community action treatment team to the extent that such services are available.
    - Referrals to behavioral health services available through other delivery systems or payors for which a student or individuals living in the household of a student receiving services may qualify, if such services appear to be needed or enhancements in those individuals' behavioral health would contribute to the improved well-being of the student.

B. SECTION DIRECTORY:

Section 1: Amends s. 943.082, F.S.; requiring the FortifyFL reporting tool to notify reporting parties that submitting false information may subject them to criminal penalties; providing that certain reports shall remain anonymous.

Section 2: Amends s. 985.12, F.S.; requiring law enforcement officers to have access to specified information by a certain date for specified purposes.

Section 3: Amends s. 1001.11, F.S.; requiring the Commissioner of Education to oversee compliance with requirements relating to school safety and security; requiring the commissioner to take specified actions under certain circumstances relating to noncompliance.

Section 4: Amends s. 1001.212, F.S.; requiring the Office of Safe Schools to provide certain opportunities to charter school personnel; requiring such office to coordinate with specified entities to provide a specified tool for certain purposes and a model family reunification plan for certain purposes.

Section 5: Amends s. 1002.33, F.S.; revising provisions relating to the immediate termination of a charter school's charter.

Section 6: Amends s. 1006.07, F.S.; requiring codes of student conduct to include provisions relating to civil citation or similar prearrest diversion programs for specified purposes; authorizing certain procedures to include accommodations for specified drills; requiring district school boards and charter school governing boards, in coordination with local law enforcement agencies, to adopt a family reunification plan for specified purposes; providing requirements for members of a threat assessment team.

Section 7: Amends s. 1006.12, F.S.; revising provisions relating to the duties of school safety officers; requiring the district school superintendent or charter school administrator to provide certain notifications relating to safe-school officers; requiring safe-school officers to complete a specified training; providing requirements for such training; requiring individuals to meet certain criteria before participating in specified training; providing requirements for such training.

Section 8: Amends s. 1006.13, F.S.; authorizing district school boards to continue providing educational services for certain students.

Section 9: Amends s. 1006.1493, F.S.; requiring the Florida Safe Schools Assessment Tool to address policies and procedures relating to certain disasters.

Section 10: Amends s. 1011.62, F.S.; revising required plans within the mental health assistance allocation to include certain interagency agreements or memoranda of understanding with specified entities to facilitate certain referrals and services; providing requirements for such agreements and memoranda of understanding and policies and procedures; revising such plans to include policies and procedures relating to certain behavioral health services available to such students; requiring schools districts to use specified services from certain teams; providing requirements for referrals to certain behavioral health services.

Section 11: Provides for an effective date of July 1, 2020, except as otherwise provided in the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires all safe-school officers to complete mental health crisis intervention training. Previously just school resource officers were required to complete this training. The fiscal impact of this requirement is indeterminate.

The bill has an indeterminate, but likely insignificant, fiscal impact to managing entities established pursuant to s. 394.9082(2), F.S. The bill requires that each school district's plan, that must be submitted prior to the release of its Mental Health Assistance Allocation, include policies and contracts with services providers for referrals to behavioral health services. To the extent more children and their families are referred to behavioral health services, a managing entity may incur an administrative workload increase.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 30, 2020, the Education Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- clarify the information law enforcement officers must have field access to beginning in fiscal year 2021-2022 as civil citation and prearrest diversion information;
- authorize a district school board to assign a student to a disciplinary program and to continue providing educational services to the student during their expulsion from school when the student is assigned to a civil citation or prearrest diversion program authorized by s. 985.12, F.S.; and
- authorize a district school superintendent to consider a student's expulsion on a case-by-case basis and request the district school board to assign a student in a civil citation or prearrest diversion program authorized by s. 985.12, F.S. to a disciplinary program or a second chance school if it is determined to be in the best interest of the student and the school system.

The analysis is updated to reflect the committee substitute as reported favorable by the Education Committee.

A bill to be entitled

An act relating to school safety; amending s. 943.082, F.S.; requiring the FortifyFL reporting tool to notify reporting parties that submitting false information may subject them to criminal penalties; providing that certain reports shall remain anonymous; amending s. 985.12, F.S.; requiring law enforcement officers to have access to specified information by a certain date for specified purposes; amending s. 1001.11, F.S.; requiring the Commissioner of Education to oversee compliance with requirements relating to school safety and security; requiring the commissioner to take specified actions under certain circumstances relating to noncompliance; amending s. 1001.212, F.S.; requiring the Office of Safe Schools to provide certain opportunities to charter school personnel; requiring such office to coordinate with specified entities to provide a specified tool for certain purposes and a model family reunification plan for certain purposes; amending s. 1002.33, F.S.; revising provisions relating to the immediate termination of a charter school's charter; amending s. 1006.07, F.S.; requiring codes of student conduct to include provisions relating to civil citation or similar prearrest diversion programs for specified purposes;

authorizing certain procedures to include accommodations for specified drills; requiring district school boards and charter school governing boards, in coordination with local law enforcement agencies, to adopt a family reunification plan for specified purposes; providing requirements for members of a threat assessment team; amending s. 1006.12, F.S.; revising provisions relating to the duties of school safety officers; requiring the district school superintendent or charter school administrator to provide certain notifications relating to safe-school officers; requiring safe-school officers to complete a specified training; providing requirements for such training; requiring individuals to meet certain criteria before participating in specified training; providing requirements for such training; amending s. 1006.13, F.S.; authorizing district school boards to continue providing educational services for certain students; amending s. 1006.1493, F.S.; requiring the Florida Safe Schools Assessment Tool to address policies and procedures relating to certain disasters; amending s. 1011.62, F.S.; revising required plans within the mental health assistance allocation to include certain interagency agreements or memoranda of understanding with specified entities to facilitate

certain referrals and services; providing requirements for such agreements and memoranda of understanding and policies and procedures; revising such plans to include policies and procedures relating to certain behavioral health services available to such students; requiring schools districts to use specified services from certain teams; providing requirements for referrals to certain behavioral health services; providing effective dates.

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

Section 1. Effective October 1, 2020, paragraph (c) is added to subsection (2) of section 943.082, Florida Statutes, to read:

943.082 School Safety Awareness Program.—

(2) The reporting tool must notify the reporting party of the following information:

(c) That, if following an investigation, it is determined that a person knowingly submitted a false tip through FortifyFL, the IP address of the device on which the tip was submitted will be provided to law enforcement agencies for further investigation and the reporting party may be subject to criminal penalties under s. 837.05. In all other circumstances, unless the reporting party has chosen to disclose his or her identity,

the report must remain anonymous.

Section 2. Paragraph (f) of subsection (2) of section 985.12, Florida Statutes, is amended to read:

985.12 Civil citation or similar prearrest diversion programs.—

(2) JUDICIAL CIRCUIT CIVIL CITATION OR SIMILAR PREARREST DIVERSION PROGRAM DEVELOPMENT, IMPLEMENTATION, AND OPERATION.—

(f) Each civil citation or similar prearrest diversion program shall enter the appropriate youth data into the Juvenile Justice Information System Prevention Web within 7 days after the admission of the youth into the program. Beginning in fiscal year 2021-2022, law enforcement officers must have field access to civil citation and prearrest diversion information.

Section 3. Subsection (9) of section 1001.11, Florida Statutes, is amended to read:

1001.11 Commissioner of Education; other duties.—

(9) The commissioner shall oversee compliance with the requirements relating to school safety and security ~~requirements of the Marjory Stoneman Douglas High School Public Safety Act, chapter 2018-3, Laws of Florida,~~ by school districts; district school superintendents; and public schools, including charter schools. Upon notification by the Office of Safe Schools that a district school board has failed to comply with the requirements relating to school safety and security, the commissioner shall require the district school board to withhold further payment of

the salary of the superintendent as authorized under s. 1001.42(13)(b). Upon notification by the Office of Safe Schools that a charter school has failed to comply with the requirements relating to school safety and security, the commissioner must facilitate compliance by charter schools by recommending actions to the district school board pursuant to s. 1002.33. The commissioner must facilitate compliance to the maximum extent provided under law, identify incidents of noncompliance, and impose or recommend to the State Board of Education, the Governor, or the Legislature enforcement and sanctioning actions pursuant to s. 1008.32 and other authority granted under law.

Section 4. Subsections (14) and (15) of section 1001.212, Florida Statutes, are renumbered as subsections (15) and (16), respectively, subsections (2), (6), and (8) are amended, and a new subsection (14) is added to that section, to read:

1001.212 Office of Safe Schools.—There is created in the Department of Education the Office of Safe Schools. The office is fully accountable to the Commissioner of Education. The office shall serve as a central repository for best practices, training standards, and compliance oversight in all matters regarding school safety and security, including prevention efforts, intervention efforts, and emergency preparedness planning. The office shall:

(2) Provide ongoing professional development opportunities to school district and charter school personnel.

(6) Coordinate with the Department of Law Enforcement to provide a unified search tool, known as the Florida School Safety Portal, ~~centralized integrated data repository and data analytics resources~~ to improve access to timely, complete, and accurate information ~~integrating data~~ from, at a minimum, ~~but not limited to,~~ the following data sources ~~by August 1, 2019~~:

(a) Social media Internet posts;

(b) Department of Children and Families;

(c) Department of Law Enforcement;

(d) Department of Juvenile Justice;

(e) Mobile suspicious activity reporting tool known as FortifyFL;

(f) School environmental safety incident reports collected under subsection (8); and

(g) Local law enforcement.

Data that is exempt or confidential and exempt from public records requirements retains its exempt or confidential and exempt status when incorporated into the centralized integrated data repository. To maintain the confidentiality requirements attached to the information provided to the centralized integrated data repository by the various state and local agencies, data governance and security shall ensure compliance with all applicable state and federal data privacy requirements through the use of user authorization and role-based security,

data anonymization and aggregation and auditing capabilities. To maintain the confidentiality requirements attached to the information provided to the centralized integrated data repository by the various state and local agencies, each source agency providing data to the repository shall be the sole custodian of the data for the purpose of any request for inspection or copies thereof under chapter 119. The department shall only allow access to data from the source agencies in accordance with rules adopted by the respective source agencies and the requirements of the Federal Bureau of Investigation Criminal Justice Information Services security policy, where applicable.

(8) Provide technical assistance to school districts and charter school governing boards for school environmental safety incident reporting as required under s. 1006.07(9). The office shall collect data through school environmental safety incident reports on incidents involving any person which occur on school premises, on school transportation, and at off-campus, school-sponsored events. The office shall review and evaluate school district reports to ensure compliance with reporting requirements. ~~Upon notification by the department that a superintendent has failed to comply with the requirements of s. 1006.07(9), the district school board shall withhold further payment of his or her salary as authorized under s. 1001.42(13)(b) and impose other appropriate sanctions that the~~

~~commissioner or state board by law may impose.~~

(14) Develop, in coordination with the Division of Emergency Management, other federal, state, and local law enforcement agencies, fire and rescue agencies, and first responder agencies, a model family reunification plan for use by child care facilities, public K-12 schools, and public postsecondary institutions that are closed or unexpectedly evacuated due to a natural or man-made disaster.

Section 5. Paragraph (c) of subsection (8) of section 1002.33, Florida Statutes, is amended to read:

1002.33 Charter schools.—

(8) CAUSES FOR NONRENEWAL OR TERMINATION OF CHARTER.—

(c) A charter may be terminated immediately if the sponsor sets forth in writing the particular facts and circumstances demonstrating ~~indicating~~ that an immediate and serious danger to the health, safety, or welfare of the charter school's students exists, that the immediate and serious danger is likely to continue, and that an immediate termination of the charter is necessary. The sponsor's determination is subject to the procedures set forth in paragraph (b), except that the hearing may take place after the charter has been terminated. The sponsor shall notify in writing the charter school's governing board, the charter school principal, and the department of the facts and circumstances supporting the emergency termination ~~if a charter is terminated immediately~~. The sponsor shall clearly

identify the specific issues that resulted in the immediate termination and provide evidence of prior notification of issues resulting in the immediate termination, if applicable ~~when appropriate~~. Upon receiving written notice from the sponsor, the charter school's governing board has 10 calendar days to request a hearing. A requested hearing must be expedited and the final order must be issued within 60 days after the date of request. The sponsor shall assume operation of the charter school throughout the pendency of the hearing under paragraph (b) unless the continued operation of the charter school would materially threaten the health, safety, or welfare of the students. Failure by the sponsor to assume and continue operation of the charter school shall result in the awarding of reasonable costs and attorney's fees to the charter school if the charter school prevails on appeal.

Section 6. Paragraph (a) of subsection (4) and paragraph (a) of subsection (7) of section 1006.07, Florida Statutes, are amended, paragraph (n) is added to subsection (2) and paragraph (d) is added to subsection (6) of that section, to read:

1006.07 District school board duties relating to student discipline and school safety.—The district school board shall provide for the proper accounting for all students, for the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students, including:

(2) CODE OF STUDENT CONDUCT.—Adopt a code of student conduct for elementary schools and a code of student conduct for middle and high schools and distribute the appropriate code to all teachers, school personnel, students, and parents, at the beginning of every school year. Each code shall be organized and written in language that is understandable to students and parents and shall be discussed at the beginning of every school year in student classes, school advisory council meetings, and parent and teacher association or organization meetings. Each code shall be based on the rules governing student conduct and discipline adopted by the district school board and shall be made available in the student handbook or similar publication. Each code shall include, but is not limited to:

(n) Criteria for assigning a student to a civil citation or similar prearrest diversion program that is an alternative to expulsion or referral to law enforcement agencies. All civil citation or similar prearrest diversion programs that are used by a school district as an alternative to referral to law enforcement must comply with s. 985.12.

(4) EMERGENCY DRILLS; EMERGENCY PROCEDURES.—

(a) Formulate and prescribe policies and procedures, in consultation with the appropriate public safety agencies, for emergency drills and for actual emergencies, including, but not limited to, fires, natural disasters, active shooter and hostage situations, and bomb threats, for all students and faculty at

all public schools of the district comprised of grades K-12. Drills for active shooter and hostage situations shall be conducted in accordance with developmentally appropriate and age-appropriate procedures at least as often as other emergency drills. District school board policies shall include commonly used alarm system responses for specific types of emergencies and verification by each school that drills have been provided as required by law and fire protection codes and may provide accommodations for drills conducted by ESE centers. The emergency response policy shall identify the individuals responsible for contacting the primary emergency response agency and the emergency response agency that is responsible for notifying the school district for each type of emergency.

(6) SAFETY AND SECURITY BEST PRACTICES.—Each district school superintendent shall establish policies and procedures for the prevention of violence on school grounds, including the assessment of and intervention with individuals whose behavior poses a threat to the safety of the school community.

(d) Each district school board and charter school governing board must adopt, in coordination with local law enforcement agencies, a family reunification plan to reunite students and employees with their families in the event that a school is closed or unexpectedly evacuated due to a natural or man-made disaster.

(7) THREAT ASSESSMENT TEAMS.—Each district school board

shall adopt policies for the establishment of threat assessment teams at each school whose duties include the coordination of resources and assessment and intervention with individuals whose behavior may pose a threat to the safety of school staff or students consistent with the model policies developed by the Office of Safe Schools. Such policies must include procedures for referrals to mental health services identified by the school district pursuant to s. 1012.584(4), when appropriate, and procedures for behavioral threat assessments in compliance with the instrument developed pursuant to s. 1001.212(12).

(a) A threat assessment team shall include persons with expertise in counseling, instruction, school administration, and law enforcement. Members of the threat assessment team must be involved in the threat assessment process and final decision. The threat assessment teams shall identify members of the school community to whom threatening behavior should be reported and provide guidance to students, faculty, and staff regarding recognition of threatening or aberrant behavior that may represent a threat to the community, school, or self. Upon the availability of the behavioral threat assessment instrument developed pursuant to s. 1001.212(12), the threat assessment team shall use that instrument.

Section 7. Subsection (6) of section 1006.12, Florida Statutes, is renumbered as subsection (8), paragraph (c) of subsection (1), paragraphs (a) and (b) of subsection (2), and

subsection (5) are amended, and new subsections (6) and (7) are added to that section, to read:

1006.12 Safe-school officers at each public school.—For the protection and safety of school personnel, property, students, and visitors, each district school board and school district superintendent shall partner with law enforcement agencies or security agencies to establish or assign one or more safe-school officers at each school facility within the district, including charter schools. A district school board must collaborate with charter school governing boards to facilitate charter school access to all safe-school officer options available under this section. The school district may implement any combination of the options in subsections (1)-(4) to best meet the needs of the school district and charter schools.

(1) SCHOOL RESOURCE OFFICER.—A school district may establish school resource officer programs through a cooperative agreement with law enforcement agencies.

~~(c) Complete mental health crisis intervention training using a curriculum developed by a national organization with expertise in mental health crisis intervention. The training shall improve officers' knowledge and skills as first responders to incidents involving students with emotional disturbance or mental illness, including de-escalation skills to ensure student and officer safety.~~

(2) SCHOOL SAFETY OFFICER.—A school district may commission one or more school safety officers for the protection and safety of school personnel, property, and students within the school district. The district school superintendent may recommend, and the district school board may appoint, one or more school safety officers.

(a) School safety officers shall undergo criminal background checks, drug testing, and a psychological evaluation and be law enforcement officers, as defined in s. 943.10(1), certified under ~~the provisions of~~ chapter 943 and employed by either a law enforcement agency or by the district school board. If the officer is employed by the district school board, the district school board is the employing agency for purposes of chapter 943, and must comply with ~~the provisions of~~ that chapter.

(b) A school safety officer has and shall exercise the power to make arrests for violations of law on district school board property or on property owned or leased by a charter school under the charter contract, as applicable, and to arrest persons, whether on or off such property, who violate any law on such property under the same conditions that deputy sheriffs are authorized to make arrests. A school safety officer has the authority to carry weapons when performing his or her official duties.

(5) NOTIFICATION.—The district school superintendent or

charter school administrator ~~school district~~ shall notify the county sheriff and the Office of Safe Schools immediately after, but no later than 72 hours after:

(a) A safe-school officer is dismissed for misconduct or is otherwise disciplined.

(b) A safe-school officer discharges his or her firearm in the exercise of the safe-school officer's duties, other than for training purposes.

(6) CRISIS INTERVENTION TRAINING.—Each safe-school officer must complete mental health crisis intervention training using a curriculum developed by a national organization with expertise in mental health crisis intervention. The training shall improve the officer's knowledge and skills as a first responder to incidents involving students with emotional disturbance or mental illness, including de-escalation skills to ensure student and officer safety.

(7) LIMITATIONS.—An individual must satisfy the background screening, psychological evaluation, and drug test requirements and be approved by the sheriff before participating in any training required by s. 30.15(1)(k), which may only be conducted by a sheriff.

If a district school board, through its adopted policies, procedures, or actions, denies a charter school access to any safe-school officer options pursuant to this section, the school

district must assign a school resource officer or school safety officer to the charter school. Under such circumstances, the charter school's share of the costs of the school resource officer or school safety officer may not exceed the safe school allocation funds provided to the charter school pursuant to s. 1011.62(15) and shall be retained by the school district.

Section 8. Subsection (3) of section 1006.13, Florida Statutes, is amended to read:

1006.13 Policy of zero tolerance for crime and victimization.—

(3) Zero-tolerance policies must require students found to have committed one of the following offenses to be expelled, with or without continuing educational services, from the student's regular school for a period of not less than 1 full year, and to be referred to the criminal justice or juvenile justice system.

(a) Bringing a firearm or weapon, as defined in chapter 790, to school, to any school function, or onto any school-sponsored transportation or possessing a firearm at school.

(b) Making a threat or false report, as defined by ss. 790.162 and 790.163, respectively, involving school or school personnel's property, school transportation, or a school-sponsored activity.

District school boards may assign a ~~the~~ student in ~~to~~ a civil

citation or prearrest diversion program authorized by s. 985.12 to a disciplinary program for the purpose of continuing educational services during the period of expulsion. District school superintendents may consider the 1-year expulsion requirement on a case-by-case basis and request the district school board to modify the requirement by assigning a ~~the~~ student in ~~to~~ a civil citation or prearrest diversion program authorized by s. 985.12 to a disciplinary program or second chance school if the request for modification is in writing and it is determined to be in the best interest of the student and the school system. If a student committing any of the offenses in this subsection is a student who has a disability, the district school board shall comply with applicable State Board of Education rules.

Section 9. Paragraph (a) of subsection (2) of section 1006.1493, Florida Statutes, is amended to read:

1006.1493 Florida Safe Schools Assessment Tool.—

(2) The FSSAT must help school officials identify threats, vulnerabilities, and appropriate safety controls for the schools that they supervise, pursuant to the security risk assessment requirements of s. 1006.07(6).

(a) At a minimum, the FSSAT must address all of the following components:

1. School emergency and crisis preparedness planning;

2. Security, crime, and violence prevention policies and

procedures;

3. Physical security measures;

4. Professional development training needs;

5. An examination of support service roles in school safety, security, and emergency planning;

6. School security and school police staffing, operational practices, and related services;

7. School and community collaboration on school safety; ~~and~~

8. Policies and procedures to prepare for and respond to natural and man-made disasters, including family reunification plans to reunite students and employees with their families after a school is closed or unexpectedly evacuated due to such disasters; and

9.~~8.~~ A return on investment analysis of the recommended physical security controls.

Section 10. Paragraph (b) of subsection (16) of section 1011.62, Florida Statutes, is amended to read:

1011.62 Funds for operation of schools.—If the annual allocation from the Florida Education Finance Program to each district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act, it shall be determined as follows:

(16) MENTAL HEALTH ASSISTANCE ALLOCATION.—The mental

health assistance allocation is created to provide funding to assist school districts in establishing or expanding school-based mental health care; train educators and other school staff in detecting and responding to mental health issues; and connect children, youth, and families who may experience behavioral health issues with appropriate services. These funds shall be allocated annually in the General Appropriations Act or other law to each eligible school district. Each school district shall receive a minimum of $100,000, with the remaining balance allocated based on each school district's proportionate share of the state's total unweighted full-time equivalent student enrollment. Charter schools that submit a plan separate from the school district are entitled to a proportionate share of district funding. The allocated funds may not supplant funds that are provided for this purpose from other operating funds and may not be used to increase salaries or provide bonuses. School districts are encouraged to maximize third-party health insurance benefits and Medicaid claiming for services, where appropriate.

(b) The plans required under paragraph (a) must be focused on a multitiered system of supports to deliver evidence-based mental health care assessment, diagnosis, intervention, treatment, and recovery services to students with one or more mental health or co-occurring substance abuse diagnoses and to students at high risk of such diagnoses. The provision of these

services must be coordinated with a student's primary mental health care provider and with other mental health providers involved in the student's care. At a minimum, the plans must include the following elements:

1. Direct employment of school-based mental health services providers to expand and enhance school-based student services and to reduce the ratio of students to staff in order to better align with nationally recommended ratio models. These providers include, but are not limited to, certified school counselors, school psychologists, school social workers, and other licensed mental health professionals. The plan also must identify strategies to increase the amount of time that school-based student services personnel spend providing direct services to students, which may include the review and revision of district staffing resource allocations based on school or student mental health assistance needs.

2. An interagency agreement or memorandum of understanding with a managing entity, as defined in s. 394.9082(2), that facilitates referrals of students to community-based services and coordinates care for students served by school-based and community-based providers. Such agreement or memorandum of understanding must address the sharing of records and information as authorized under s. 1006.07(7)(d) to coordinate care and increase access to appropriate services.

3.~~2.~~ Contracts or interagency agreements with one or more

local community behavioral health providers or providers of Community Action Team services to provide a behavioral health staff presence and services at district schools. Services may include, but are not limited to, mental health screenings and assessments, individual counseling, family counseling, group counseling, psychiatric or psychological services, trauma-informed care, mobile crisis services, and behavior modification. These behavioral health services may be provided on or off the school campus and may be supplemented by telehealth.

4.~~3.~~ Policies and procedures, including contracts with service providers, which will ensure that:

a. A parent of a student is provided information about behavioral health services available through the student's school or local community-based behavioral health services providers, including, but not limited to, the community action treatment team established in s. 394.495 serving the student's area. A school may meet this requirement by providing information about and Internet addresses for web-based directories or guides for local behavioral health services. Such directories or guides must be easily navigated and understood by individuals unfamiliar with behavioral health delivery systems or services and include specific contact information for local behavioral health providers.

b. Each school district uses the services of the community

action treatment team established in s. 394.495 to the extent that such services are available.

c. Students who are referred to a school-based or community-based mental health service provider for mental health screening for the identification of mental health concerns and ensure that the assessment of students at risk for mental health disorders occurs within 15 days of referral. School-based mental health services must be initiated within 15 days after identification and assessment, and support by community-based mental health service providers for students who are referred for community-based mental health services must be initiated within 30 days after the school or district makes a referral.

d. Referrals to behavioral health services available through other delivery systems or payors for which a student or individuals living in the household of a student receiving services under this subsection may qualify, if such services appear to be needed or enhancements in those individuals' behavioral health would contribute to the improved well-being of the student.

5.~~4.~~ Strategies or programs to reduce the likelihood of at-risk students developing social, emotional, or behavioral health problems, depression, anxiety disorders, suicidal tendencies, or substance use disorders.

6.~~5.~~ Strategies to improve the early identification of social, emotional, or behavioral problems or substance use

disorders, to improve the provision of early intervention services, and to assist students in dealing with trauma and violence.

Section 11. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2020.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Appropriations Committee
Representative Massullo offered the following:

Amendment

Between lines 88 and 89, insert:

Section 3. Paragraph (a) of subsection (2) of section 943.687, Florida Statutes, is amended to read:

943.687 Marjory Stoneman Douglas High School Public Safety Commission.—

(2)(a) The commission shall convene no later than June 1, 2018, and shall be composed of 19~~16~~ members. Six ~~Five~~ members shall be appointed by the President of the Senate, six ~~five~~ members shall be appointed by the Speaker of the House of Representatives, and six ~~five~~ members shall be appointed by the Governor. From the members of the commission, the Governor shall appoint the chair. Appointments must be made by April 30, 2018.

Amendment No. 1

The Commissioner of the Department of Law Enforcement shall serve as a member of the commission. The Secretary of Children and Families, the Secretary of Juvenile Justice, the Secretary of Health Care Administration, and the Commissioner of Education shall serve as ex officio, nonvoting members of the commission. Members shall serve at the pleasure of the officer who appointed the member. A vacancy on the commission shall be filled in the same manner as the original appointment and to the maximum extent possible, achieve equal representation of school district, law enforcement, and health care professionals.

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Appropriations Committee
Representative Massullo offered the following:

Amendment

Between lines 111 and 112, insert:

Section 4. Paragraph (e) of subsection (4) of section 1001.20, Florida Statutes, is amended to read:

1001.20 Department under direction of state board.—

(4) The Department of Education shall establish the following offices within the Office of the Commissioner of Education which shall coordinate their activities with all other divisions and offices:

(e) Office of Inspector General.—Organized using existing resources and funds and responsible for promoting accountability, efficiency, and effectiveness and detecting fraud and abuse within school districts, the Florida School for

the Deaf and the Blind, and Florida College System institutions in Florida. If the Commissioner of Education determines that a district school board, the Board of Trustees for the Florida School for the Deaf and the Blind, or a Florida College System institution board of trustees is unwilling or unable to address substantiated allegations made by any person relating to waste, fraud, or financial mismanagement within the school district, the Florida School for the Deaf and the Blind, or the Florida College System institution, the office shall conduct, coordinate, or request investigations into such substantiated allegations. If the Commissioner of Education determines that a district school board is unwilling or unable to address substantiated allegations made by any person relating to compliance with the requirements relating to school safety and security, the office shall conduct, coordinate, or request investigations into such substantiated allegations. The office shall investigate allegations or reports of possible fraud or abuse against a district school board made by any member of the Cabinet; the presiding officer of either house of the Legislature; a chair of a substantive or appropriations committee with jurisdiction; or a member of the board for which an investigation is sought. The office shall have access to all information and personnel necessary to perform its duties and shall have all of its current powers, duties, and responsibilities authorized in s. 20.055. The office may issue

and serve subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of documents, reports, answers, records, accounts, and other data in any medium. In the event of noncompliance with a subpoena or a subpoena duces tecum issued under this section, the inspector general may petition the circuit court of the county in which the person subpoenaed resides or has his or her principal place of business for an order requiring the subpoenaed person to appear and testify and to produce documents, reports, answers, records, accounts, or other data as specified in the subpoena or subpoena duces tecum.

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Appropriations Committee
Representative Massullo offered the following:

Amendment

Remove line 375 and insert:

safe-school officer options pursuant to this section, or if the charter school notifies the school district that it is unable to obtain a school resource officer or school safety officer on the same terms and conditions as the school district or that its employees are unable to complete guardian training in time to meet the requirements of law, the school

Amendment No. 4

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Appropriations Committee
Representative Massullo offered the following:

Amendment

Between lines 441 and 442, insert:

Section 10. Paragraph (e) is added to subsection (4) of section 1008.32, Florida Statutes, to read:

1008.32 State Board of Education oversight enforcement authority.—The State Board of Education shall oversee the performance of district school boards and Florida College System institution boards of trustees in enforcement of all laws and rules. District school boards and Florida College System institution boards of trustees shall be primarily responsible for compliance with law and state board rule.

(4) If the State Board of Education determines that a district school board or Florida College System institution

board of trustees is unwilling or unable to comply with law or state board rule within the specified time, the state board shall have the authority to initiate any of the following actions:

(e) Direct the school district to suspend the salary of the superintendent and, if the superintendent is appointed, the salaries of the district school board members until such time as the noncompliance is remedied where the noncompliance is related to school safety.