

CHAPTER 2008-232

Committee Substitute for Committee Substitute for Senate Bill No. 1302

An act relating to wastewater disposal; amending s. 373.0361, F.S., relating to regional water supply planning; requiring the South Florida Water Management District to include water supply development projects that promote the elimination of ocean outfalls in its regional water supply plan; amending s. 373.0831, F.S., relating to water resource and supply development; providing for projects that implement reuse as a means of eliminating ocean outfalls to receive priority funding consideration; amending s. 373.1961, F.S., relating to funding for water supply projects; providing priority funding for projects that implement reuse that assists with the elimination of ocean outfalls; amending s. 373.250, F.S., relating to the reuse of reclaimed water; directing the South Florida Water Management District to require the use of reclaimed water made available through the elimination of ocean outfalls under certain conditions; amending s. 403.085, F.S., relating to waste water treatment; prohibiting the construction of new ocean outfalls; prohibiting the use of ocean outfalls as a method of sanitary sewage disposal; amending s. 403.086, F.S., relating the treatment of wastewater; providing legislative intent; prohibiting the new construction of an expanded discharge to ocean outfalls; defining the term "facility's actual flow on an annual basis"; requiring that domestic wastewater discharges to ocean outfalls meet advanced wastewater treatment and management requirements by a date certain; providing an exemption from meeting advanced wastewater treatment and management requirements under specific conditions; providing wastewater reuse requirements for facilities that discharge through ocean outfalls by a date certain; providing prohibitions for the discharge of domestic wastewater through ocean outfalls under specific conditions by a date certain; providing reporting requirements for permitted ocean outfall facilities; providing reporting requirements for the Department of Environmental Protection; providing a compliance schedule for facilities discharging through ocean outfalls; creating s. 403.08601, F.S., establishing the Leah Schad Memorial Ocean Outfall Program; establishing a funding mechanism and providing a statutory cross reference; amending s. 403.1651, F.S.; providing a dedicated account within the Ecosystem Management and Restoration Trust Fund; amending s. 403.1835, F.S., relating to water pollution control financial assistance; providing for the inclusion of domestic wastewater ocean outfalls in laws requiring the elimination of discharges to specific water bodies; providing an effective date.

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

Section 1. Present subsections (4) through (8) of section 373.0361, Florida Statutes, are renumbered as subsections (5) through (9), respectively, and a new subsection (4) is added to that section, to read:

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

373.0361 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(9).

Section 2. Subsection (4) of section 373.0831, Florida Statutes, is amended to read:

373.0831 Water resource development; water supply development.—

(4)(a) Water supply development projects which are consistent with the relevant regional water supply plans and which meet one or more of the following criteria shall receive priority consideration for state or water management district funding assistance:

1. The project supports establishment of a dependable, sustainable supply of water which is not otherwise financially feasible;
2. The project provides substantial environmental benefits by preventing or limiting adverse water resource impacts, but requires funding assistance to be economically competitive with other options; or
3. The project significantly implements reuse, storage, recharge, or conservation of water in a manner that contributes to the sustainability of regional water sources.

(b) Water supply development projects ~~that which~~ meet the criteria in paragraph (a) and that meet one or more of the following additional criteria also bring about replacement of existing sources in order to help implement a minimum flow or level 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 level; or
2. The project implements reuse that assists in the elimination of domestic wastewater ocean outfalls as provided in s. 403.086(9).

Section 3. Paragraph (f) of subsection (3) of section 373.1961, Florida Statutes, is amended to read:

373.1961 Water production; general powers and duties; identification of needs; funding criteria; economic incentives; reuse funding.—

(3) FUNDING.—

(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(9).

Section 4. Subsection (2) of section 373.250, Florida Statutes, is amended to read:

373.250 Reuse of reclaimed water.—

(2)(a) For purposes of this section, “uncommitted” means the average amount of reclaimed water produced during the three lowest-flow months minus the amount of reclaimed water that a reclaimed water provider is contractually obligated to provide to a customer or user.

(b) Reclaimed water may be presumed available to a consumptive use permit applicant when a utility exists which provides reclaimed water, which has uncommitted reclaimed water capacity, and which has distribution facilities, which are initially provided by the utility at its cost, to the site of the affected applicant’s proposed use.

(c) A water management district may require the use of reclaimed water in lieu of surface water or groundwater when the use of uncommitted reclaimed water is environmentally, economically, and technically feasible and of such quality and reliability as is necessary to the user. However, this paragraph does not authorize a water management district to require a provider of reclaimed water to redirect reclaimed water from one user to another or to provide uncommitted water to a specific user if such water is anticipated to be used by the provider, or a different user selected by the provider, within a reasonable amount of time.

(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(9) in lieu of surface water or ground water when the use of uncommitted reclaimed water is environmentally, economically, and technically feasible and 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 or not 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 5. Section 403.085, Florida Statutes, is amended to read:

403.085 Sanitary sewage disposal units; advanced and secondary waste treatment; industrial waste, ~~ocean outfall, inland outfall, or disposal well waste treatment.~~—

(1) Neither the Department of Health nor any other state agency, county, special district, or municipality shall approve construction of any ~~ocean outfall or~~ disposal well for sanitary sewage disposal which does not provide for secondary waste treatment and, in addition thereto, advanced waste treatment as deemed necessary and ordered by the department.

(2) Sanitary sewage disposal treatment plants which discharge effluent through ~~ocean outfalls or~~ disposal wells shall provide for secondary waste treatment and, in addition thereto, advanced waste treatment as deemed necessary and ordered by the ~~former~~ Department of Environmental Protection Regulation. Failure to conform shall be punishable by a fine of \$500 for each 24-hour day or fraction thereof that such failure is allowed to continue thereafter.

(3) Neither the Department of Health nor any other state agency, county, special district, or municipality shall approve construction of any ocean outfall, inland outfall, or disposal well for the discharge of industrial waste of any kind which does not provide for secondary waste treatment or such other treatment as is deemed necessary and ordered by the department.

(4) Industrial plants or facilities which discharge industrial waste of any kind through ocean outfalls, inland outfalls, or disposal wells shall provide for secondary waste treatment or such other waste treatment as deemed necessary and ordered by the former Department of Environmental Regulation. Failure to conform shall be punishable as provided in s. 403.161(2).

Section 6. Subsection (9) is added to section 403.086, Florida Statutes, to read:

403.086 Sewage disposal facilities; advanced and secondary waste treatment.—

(9) The Legislature finds that the discharge of domestic wastewater through ocean outfalls wastes valuable water supplies that should be reclaimed for beneficial purposes to meet public and natural systems demands. The Legislature also finds that discharge of domestic wastewater through ocean outfalls compromises the coastal environment, quality of life, and local economies that depend on those resources. The Legislature declares that more stringent treatment and management requirements for such domestic wastewater and the subsequent, timely elimination of ocean outfalls as a primary means of domestic wastewater discharge are in the public interest.

(a) The construction of new ocean outfalls for domestic wastewater discharge and the expansion of existing ocean outfalls for this purpose, along with associated pumping and piping systems, are prohibited. Each domestic wastewater ocean outfall shall be limited to the discharge capacity specified in the department permit authorizing the outfall in effect on July 1, 2008, which discharge capacity shall not be increased. Maintenance of existing, department-authorized domestic wastewater ocean outfalls and associated pumping and piping systems is allowed, subject to the requirements of this section. The department is directed to work with the United States Environmental Protection Agency to ensure that the requirements of this subsection are implemented consistently for all domestic wastewater facilities in Florida which discharge through ocean outfalls.

(b) The discharge of domestic wastewater through ocean outfalls shall meet advanced wastewater treatment and management requirements no later than December 31, 2018. For purposes of this subsection, the term "advanced wastewater treatment and management requirements" means the advanced waste treatment requirements set forth in subsection (4), a reduction in outfall baseline loadings of total nitrogen and total phosphorus which is equivalent to that which would be achieved by the advanced waste treatment requirements in subsection (4), or a reduction in cumulative outfall loadings of total nitrogen and total phosphorus occurring between December 31, 2008, and December 31, 2025, which is equivalent to that which would be achieved if the advanced waste treatment requirements in subsection (4) were fully implemented beginning December 31, 2018, and continued through December 31, 2025. The department shall establish the average baseline loadings of total nitrogen and total phosphorus for each outfall using monitoring data available for calendar years 2003 through 2007 and shall establish required loading reductions based on this baseline. The baseline loadings and required loading reductions of total nitrogen and total phosphorus shall be expressed as an average annual daily loading value. The advanced wastewater treatment and management requirements of this paragraph shall be deemed to be met for any domestic wastewater facility discharging through an ocean outfall on July 1, 2008, which has installed no later than December 31, 2018, a fully operational reuse system comprising 100 percent of the facility's annual average daily flow for reuse activities authorized by the department.

(c) Each domestic wastewater facility that discharges through an ocean outfall on July 1, 2008, shall install a functioning reuse system no later than December 31, 2025. For purposes of this subsection, a "functioning reuse system" means an environmentally, economically, and technically feasible system that provides a minimum of 60 percent of the facility's actual flow on an annual basis for irrigation of public access areas, residential properties, or agricultural crops; aquifer recharge; groundwater recharge; industrial cooling; or other acceptable reuse purposes authorized by the department. For purposes of this subsection, the term "facility's actual flow on an annual basis" means the annual average flow of domestic wastewater discharging through the facility's ocean outfall, as determined by the department, using monitoring data available for calendar years 2003 through 2007. Diversion of flows from these facilities to other facilities that provide 100 percent reuse of the diverted flows prior to December 31, 2025, shall be

considered to contribute to meeting the 60-percent reuse requirement. For utilities operating more than one outfall, the reuse requirement can be met if the combined actual reuse flows from facilities served by the outfalls is at least 60 percent of the sum of the total actual flows from these facilities, including flows diverted to other facilities for 100 percent reuse prior to December 31, 2025. In the event treatment in addition to the advanced wastewater treatment and management requirements described in paragraph (b) is needed in order to support a functioning reuse system, such treatment shall be fully operational no later than December 31, 2025.

(d) The discharge of domestic wastewater through ocean outfalls is prohibited after December 31, 2025, except as a backup discharge that is part of a functioning reuse system authorized by the department as provided for in paragraph (c). A backup discharge may occur only during periods of reduced demand for reclaimed water in the reuse system, such as periods of wet weather, and shall comply with the advanced wastewater treatment and management requirements of paragraph (b).

(e) The holder of a department permit authorizing the discharge of domestic wastewater through an ocean outfall as of July 1, 2008, shall submit to the secretary of the department the following:

1. A detailed plan to meet the requirements of this subsection, including an identification of all land acquisition and facilities necessary to provide for reuse of the domestic wastewater; an analysis of the costs to meet the requirements; and a financing plan for meeting the requirements, including identifying any actions necessary to implement the financing plan, such as bond issuance or other borrowing, assessments, rate increases, fees, other charges, or other financing mechanisms. The plan shall include a detailed schedule for the completion of all necessary actions and shall be accompanied by supporting data and other documentation. The plan shall be submitted no later than July 1, 2013.

2. No later than July 1, 2016, an update of the plan required in subparagraph 1. documenting any refinements or changes in the costs, actions, or financing necessary to eliminate the ocean outfall discharge in accordance with this subsection or a written statement that the plan is current and accurate.

(f) By December 31, 2009, and by December 31 every 5 years thereafter, the holder of a department permit authorizing the discharge of domestic wastewater through an ocean outfall shall submit to the secretary of the department a report summarizing the actions accomplished to date and the actions remaining and proposed to meet the requirements of this subsection, including progress toward meeting the specific deadlines set forth in paragraphs (b) through (e). The report shall include the detailed schedule for and status of the evaluation of reuse and disposal options, preparation of preliminary design reports, preparation and submittal of permit applications, construction initiation, construction progress milestones, construction completion, initiation of operation, and continuing operation and maintenance.

(g) No later than July 1, 2010, and by July 1 every 5 years thereafter, the department shall submit a report to the Governor, the President of the

Senate, and the Speaker of the House of Representatives on the implementation of this subsection. The report shall summarize progress to date, including the increased amount of reclaimed water provided and potable water offsets achieved, and identify any obstacles to continued progress, including all instances of substantial noncompliance.

(h) The renewal of each permit that authorizes the discharge of domestic wastewater through an ocean outfall as of July 1, 2008, shall be accompanied by an order in accordance with s. 403.088(2)(e) and (f) which establishes an enforceable compliance schedule consistent with the requirements of this subsection.

Section 7. Section 403.08601, Florida Statutes, is created 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 (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 Ecosystem Management and Restoration Trust Fund created pursuant to s. 403.1651.

Section 8. Subsection (1) of section 403.1651, Florida Statutes, is amended to read:

403.1651 Ecosystem Management and Restoration Trust Fund.—

(1) There is created the Ecosystem Management and Restoration Trust Fund to be administered by the Department of Environmental Protection for the purposes of:

(a) Funding the detailed planning for and implementation of programs for the management and restoration of ecosystems.

(b) Funding the development and implementation of surface water improvement and management plans and programs under ss. 373.451-373.4595.

(c) Funding activities to restore polluted areas of the state, as defined by the department, to their condition before pollution occurred or to otherwise enhance pollution control activities.

(d) Funding activities to restore or rehabilitate injured or destroyed coral reefs.

(e) Funding activities by the department to recover moneys as a result of actions against any person for a violation of chapter 373.

(f) Funding activities authorized for the implementation of the Leah Schad Memorial Ocean Outfall Program implemented in s. 403.086(9).

Section 9. 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:

- (a) Eliminate public health hazards;
- (b) Enable compliance with laws requiring the elimination of discharges to specific water bodies, including the requirements of s. 403.086(9) regarding domestic wastewater ocean outfalls;
- (c) Assist in the implementation of total maximum daily loads adopted under s. 403.067;
- (d) Enable compliance with other pollution control requirements, including, but not limited to, toxics control, wastewater residuals management, and reduction of nutrients and bacteria;
- (e) Assist in the implementation of surface water improvement and management plans and pollutant load reduction goals developed under state water policy;
- (f) Promote reclaimed water reuse;
- (g) Eliminate failing onsite sewage treatment and disposal systems or those that are causing environmental damage; or
- (h) Reduce pollutants to and otherwise promote the restoration of Florida's surface and ground waters.

Section 10. This act shall take effect July 1, 2008.

Approved by the Governor June 30, 2008.

Filed in Office Secretary of State June 30, 2008.