

By Senator Argenziano

3-547A-03

1                                   A bill to be entitled  
 2           An act relating to nitrate and phosphorus  
 3           fertilizers; amending s. 576.045, F.S.;  
 4           providing legislative findings and intent with  
 5           respect to protecting the state's water  
 6           resources; requiring that persons licensed to  
 7           distribute fertilizer pay a fee on fertilizer  
 8           containing phosphorus; revising the purposes  
 9           for which the Department of Agriculture and  
 10          Consumer Services may use the proceeds of fees  
 11          levied against persons licensed to distribute  
 12          fertilizer; providing that implementation of  
 13          best-management practices or certain other  
 14          measures acts as a release from certain  
 15          requirements and provides a presumption of  
 16          compliance with water quality standards;  
 17          revising requirements for the department with  
 18          respect to adopting rules; revising the dates  
 19          for the expiration of certain provisions;  
 20          providing an effective date.

21  
 22 Be It Enacted by the Legislature of the State of Florida:

23  
 24           Section 1.   Section 576.045, Florida Statutes, is  
 25 amended to read:

26           576.045 Nitrate and phosphorus; findings and intent;  
 27 fees; purpose; best-management practices; waiver of liability;  
 28 compliance; rules; ~~report~~exclusions; expiration.--

29           (1) FINDINGS AND INTENT.--

30           (a) The Legislature finds that nitrate and phosphorus  
 31 residues have been found in groundwater, surface water, and

1 drinking water in various areas throughout the state at levels  
2 in excess of established water quality standards. The  
3 Legislature further finds that some fertilization practices  
4 could be a source of nitrate and phosphorus contamination.

5 (b) It is the intent of the Legislature to improve  
6 fertilization ~~fertilizer-management~~ practices as soon as  
7 practicable in a way that protects the state's water resources  
8 and preserves a viable agricultural industry. This goal is to  
9 be accomplished through research concerning best-management  
10 practices and education and incentives for the agricultural  
11 industry and other major users of fertilizer.

12 (2) FEES.--

13 (a) In addition to the fees imposed under ss. 576.021  
14 and 576.041, the following supplemental fees shall be  
15 collected and paid by licensees for the sole purpose of  
16 implementing this section:

17 1. One hundred dollars for each license to distribute  
18 fertilizer.

19 2. One hundred dollars for each of the first five  
20 specialty fertilizer registrations and \$25 for each  
21 registration after the first five.

22 3. Fifty cents per ton for all fertilizer that  
23 contains nitrogen or phosphorus and that is sold in this  
24 state.

25 (b) All fees paid to the department under this section  
26 are due and payable at the same time and in the same manner as  
27 the fees specified in ss. 576.021 and 576.041 and are subject  
28 to all provisions contained in those sections.

29 (c) All fees paid under this section must be deposited  
30 into the General Inspection Trust Fund and are exempt from the  
31 provisions of s. 215.20. These funds are to be appropriated

1 annually to the department and allocated according to a  
2 memorandum of understanding between the department and the  
3 Department of Environmental Protection ~~to be adopted by~~  
4 ~~October 1, 1994~~. The allocation of indirect costs to these  
5 funds by any state agency is specifically prohibited.

6 (3) PURPOSE.--The funds collected pursuant to  
7 subsection (2) must be used by the department consistent with  
8 the process provided in s. 403.067 ~~for the sole purpose of:~~

9 (a) Research, development, demonstration, and  
10 implementation of suitable best-management practices or other  
11 measures used to achieve water quality standards.

12 Implementation of best-management practices and other measures  
13 may include cost-sharing grants, technical assistance,  
14 implementation tracking, and conservation leases or other  
15 agreements for water quality improvement. ~~Contracting, where~~  
16 ~~appropriate, with the Institute of Food and Agricultural~~  
17 ~~Sciences at the University of Florida and the College of~~  
18 ~~Engineering, Science, Technology, and Agriculture at Florida~~  
19 ~~Agricultural and Mechanical University to conduct research~~  
20 ~~relating to best-management practices designed to prevent~~  
21 ~~nitrates from fertilizers or other soil-applied nutritional~~  
22 ~~materials from entering groundwater at levels in excess of~~  
23 ~~state water quality standards. Such contracts must be for~~  
24 ~~fixed periods of time and must require interim reports~~  
25 ~~concerning the progress of the research.~~

26 (b) ~~Approving, adopting, publishing, and distributing~~  
27 ~~best-management practices. In the process of approving and~~  
28 ~~adopting best-management practices, the department shall~~  
29 ~~consult with the Department of Environmental Protection, the~~  
30 ~~Department of Health, the water management districts,~~

31

1 ~~environmental groups, the fertilizer industry, and~~  
2 ~~representatives from the affected farming groups.~~

3 (b)(c) Reimbursing the Water Quality Assurance Trust  
4 Fund for costs incurred by the Department of Environmental  
5 Protection for:

6 1. Monitoring and verifying the effectiveness of the  
7 best-management practices approved and adopted ~~under paragraph~~  
8 ~~(b)~~ at representative sites. The Department of Environmental  
9 Protection shall use its best professional judgment in making  
10 the initial determination of the effectiveness of the  
11 best-management practices.

12 2. Sampling, analysis, and restoration of potable  
13 water supplies, pursuant to s. 376.307, found to contain  
14 levels of nitrate in excess of state water quality standards,  
15 which excess is determined to be the result of the application  
16 of fertilizers or other soil-applied nutritional materials  
17 containing nitrogen.

18  
19 This subsection must be implemented through a memorandum of  
20 understanding between the department and the Department of  
21 Environmental Protection ~~to be adopted by October 1, 1994.~~

22 (4) WAIVER OF LIABILITY AND PRESUMPTION OF  
23 COMPLIANCE.--Implementation of best-management practices or  
24 other measures adopted by rule under this section shall  
25 provide a release from the provisions of s. 376.307(5) and a  
26 presumption of compliance with state water quality standards  
27 as provided in s. 403.067.~~Notwithstanding any provision of~~  
28 ~~law, the Department of Environmental Protection is not~~  
29 ~~authorized to institute proceedings against any person under~~  
30 ~~the provisions of s. 376.307(5) to recover any costs or~~  
31 ~~damages associated with nitrate contamination of groundwater,~~

1 ~~or the evaluation, assessment, or remediation of nitrate~~  
2 ~~contamination of groundwater, including sampling, analysis,~~  
3 ~~and restoration of potable water supplies, where the nitrate~~  
4 ~~contamination of groundwater is determined to be the result of~~  
5 ~~the application of fertilizers or other soil-applied~~  
6 ~~nutritional materials containing nitrogen, provided the~~  
7 ~~property owner or leaseholder:~~

8 ~~(a)1. Provides the department with a notice of intent~~  
9 ~~to implement applicable best-management practices adopted by~~  
10 ~~the department;~~

11 ~~2. Implements applicable best-management practices as~~  
12 ~~soon as practicable according to rules adopted by the~~  
13 ~~department or no longer applies fertilizers or other~~  
14 ~~soil-applied nutritional materials containing nitrogen; and~~

15 ~~3. Implements practicable interim measures identified~~  
16 ~~and adopted by the department which can be implemented~~  
17 ~~immediately or according to rules adopted by the department;~~  
18 ~~or~~

19 ~~(b) No longer applies fertilizers or other~~  
20 ~~soil-applied nutritional materials containing nitrogen as of~~  
21 ~~the effective date of this section.~~

22 ~~(5) COMPLIANCE. If the property owner or leaseholder~~  
23 ~~implements best-management practices that have been verified~~  
24 ~~by the Department of Environmental Protection to be effective~~  
25 ~~at representative sites and complies with the following, there~~  
26 ~~is a presumption of compliance with state nitrate groundwater~~  
27 ~~quality standards:~~

28 ~~(a)1. Provides the department with a notice of intent~~  
29 ~~to implement applicable best-management practices adopted by~~  
30 ~~the department;~~

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1           ~~2. Implements applicable best management practices as~~  
2 ~~soon as practicable according to rules adopted by the~~  
3 ~~department or no longer applies fertilizers or other~~  
4 ~~soil-applied nutritional materials containing nitrogen; and~~

5           ~~3. Implements practicable interim measures identified~~  
6 ~~and adopted by the department which can be implemented~~  
7 ~~immediately or according to rules adopted by the department;~~  
8 ~~or~~

9           ~~(b) No longer applies fertilizers or other~~  
10 ~~soil-applied nutritional materials containing nitrogen as of~~  
11 ~~the effective date of this section.~~

12           ~~(5)(6) RULEMAKING.--~~

13           ~~(a) As provided in s. 403.067(7)(d), the department,~~  
14 ~~in consultation with the Department of Environmental~~  
15 ~~Protection, the Department of Health, the water management~~  
16 ~~districts, and affected parties shall adopt rules for interim~~  
17 ~~measures, best-management practices, conservation plans,~~  
18 ~~nutrient management plans, or other measures necessary for~~  
19 ~~water quality improvement.~~~~environmental groups, the~~  
20 ~~fertilizer industry, and representatives from the affected~~  
21 ~~farming groups, shall adopt rules to:~~

22           ~~1. Specify the requirements of best management~~  
23 ~~practices to be implemented by property owners and~~  
24 ~~leaseholders.~~

25           ~~2. Establish procedures for property owners and~~  
26 ~~leaseholders to submit the notice of intent to comply with~~  
27 ~~best-management practices.~~

28           ~~3. Establish schedules for implementation of~~  
29 ~~best-management practices, and of interim measures that can be~~  
30 ~~taken prior to adoption of best-management practices.~~

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1           ~~4. Establish a system to assure the implementation of~~  
2 ~~best-management practices, including recordkeeping~~  
3 ~~requirements.~~

4           ~~(b) Rules adopted pursuant to this subsection shall~~  
5 ~~become effective pursuant to the applicable provisions of~~  
6 ~~chapter 120, but must be submitted to the President of the~~  
7 ~~Senate and the Speaker of the House of Representatives for~~  
8 ~~review by the Legislature. The rules shall be referred to the~~  
9 ~~appropriate committees of substance and scheduled for review~~  
10 ~~during the first available regular session following adoption.~~  
11 ~~Except as otherwise provided by operation of law, such rules~~  
12 ~~shall remain in effect until rejected or modified by act of~~  
13 ~~the Legislature.~~

14           (6)~~(7)~~ OTHER PROVISIONS.--

15           (a) This section does not limit the authority of the  
16 Department of Environmental Protection to regulate discharges  
17 associated with the commercial feeding of livestock and  
18 poultry defined in chapter 585, including that of dairy farm  
19 and egg production operations, or the disposal of sludge,  
20 residuals, or septage. This paragraph does not grant  
21 additional authority to regulate these discharges.

22           (b) This section does not limit federally delegated  
23 regulatory authority.

24           (c) The Department of Environmental Protection may  
25 adopt rules to establish criteria for dairy farms which  
26 provide reasonable assurance that state nitrate groundwater  
27 quality standards will not be violated and which, provided  
28 such criteria are met, shall prohibit the Department of  
29 Environmental Protection from instituting proceedings against  
30 any dairy farmer under the provisions of s. 376.307(5) and  
31

1 shall provide a presumption of compliance with safe nitrate  
2 groundwater quality standards.

3 (d) This section, except for subsection (2), does not  
4 apply to the manufacture, mixing, or blending of fertilizer,  
5 including fertilizer containing sludge, residuals, or septage.

6 (7)~~(8)~~ EXPIRATION OF PROVISIONS.--Subsection  
7 ~~Subsections (1),(2) expires, (3), (4), and (6) expire~~ on  
8 December 31, 2012 ~~2003~~. Subsections(1), (3), (4),(5) and (6)  
9 ~~(7)~~expire on December 31, 2017 ~~2008~~.

10 Section 2. This act shall take effect July 1, 2003.

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13 SENATE SUMMARY

14 Requires that persons licensed to distribute fertilizer  
15 pay a fee of 50 cents per ton on fertilizer containing  
16 phosphorus. Revises the purposes for which the Department  
17 of Agriculture and Consumer Services may use the proceeds  
18 of fees levied against licensees. Revises compliance  
19 requirements for property owners or leaseholders with  
20 respect to contamination of groundwater from fertilizers.  
21 Provides rulemaking authority. Changes the dates on which  
22 certain provisions will expire. (See bill for details.)  
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