

By the Committee on Natural Resources; and Senators Argenziano and Siplin

312-1957-03

1 A bill to be entitled
2 An act relating to nitrogen 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 nitrogen or phosphorus; revising the
9 purposes for which the Department of
10 Agriculture and Consumer Services may use the
11 proceeds of fees levied against persons
12 licensed to distribute fertilizer; providing
13 that implementation of interim measures,
14 best-management practices, or certain other
15 measures acts as a release from certain
16 requirements and provides a presumption of
17 compliance with state water quality standards;
18 revising requirements for the department with
19 respect to adopting rules; revising the dates
20 for the expiration of certain provisions;
21 providing an effective date.

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

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

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

31 (1) FINDINGS AND INTENT.--

1 (a) The Legislature finds that nitrogen and phosphorus
2 ~~nitrate~~ residues have been found in groundwater, surface
3 water, and drinking water in various areas throughout the
4 state at levels in excess of established water quality
5 standards. The Legislature further finds that some
6 ~~fertilization-management~~ fertilization practices could be a
7 source of such ~~nitrate~~ contamination.

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

15 (2) FEES.--

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

20 1. One hundred dollars for each license to distribute
21 fertilizer.

22 2. One hundred dollars for each of the first five
23 specialty fertilizer registrations and \$25 for each
24 registration after the first five.

25 3. Fifty cents per ton for all fertilizer that
26 contains nitrogen or phosphorus and that is sold in this
27 state.

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

1 (c) All fees paid under this section must be deposited
2 into the General Inspection Trust Fund and are exempt from the
3 provisions of s. 215.20. These funds are to be appropriated
4 annually to the department and allocated according to a
5 memorandum of understanding between the department and the
6 Department of Environmental Protection ~~to be adopted by~~
7 ~~October 1, 1994~~. The allocation of indirect costs to these
8 funds by any state agency is specifically prohibited.

9 (3) PURPOSE.--The funds collected pursuant to
10 subsection (2) must be used by the department for ~~the sole~~
11 ~~purpose of:~~

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

30 (b) Approving, adopting, publishing, and distributing
31 interim measures, best-management practices, or other

1 measures. In the process of developing, approving, and
2 adopting interim measures, best-management practices, or other
3 measures, the department shall consult with the Department of
4 Environmental Protection, the Department of Health, the water
5 management districts, environmental groups, the fertilizer
6 industry, and representatives from the affected farming
7 groups.

8 (c) Reimbursing the ~~Water Quality Assurance Trust Fund~~
9 ~~for costs incurred by the~~ Department of Environmental
10 Protection for costs incurred which are associated with:

11 1. Monitoring and verifying the effectiveness of the
12 interim measures, best-management practices, or other measures
13 approved and adopted under subsection (6) paragraph (b) at
14 representative sites. The Department of Environmental
15 Protection shall use its best professional judgment in making
16 the initial determination of the effectiveness of the interim
17 measures, best-management practices, or other measures.

18 2. Sampling, analysis, and restoration of potable
19 water supplies, pursuant to s. 376.307, found to contain
20 levels of nitrate in excess of state water quality standards,
21 which excess is determined to be the result of the application
22 of fertilizers or other soil-applied nutritional materials
23 containing nitrogen.

24
25 This subsection must be implemented through a memorandum of
26 understanding between the department and the Department of
27 Environmental Protection ~~to be adopted by October 1, 1994.~~

28 (4) WAIVER OF LIABILITY.--Notwithstanding any
29 provision of law, the Department of Environmental Protection
30 is not authorized to institute proceedings against any person
31 under the provisions of s. 376.307(5) to recover any costs or

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

11 (a)1. Provides the department with a notice of intent
12 to implement applicable interim measures, best-management
13 practices, or other measures adopted by the department which
14 practices or measures have been verified by the Department of
15 Environmental Protection to be effective; and

16 2. Implements applicable interim measures,
17 best-management practices, or other measures as soon as
18 practicable according to rules adopted by the department or no
19 longer applies fertilizers or other soil-applied nutritional
20 materials containing nitrogen or phosphorus; or and

21 ~~3. Implements practicable interim measures identified~~
22 ~~and adopted by the department which can be implemented~~
23 ~~immediately or according to rules adopted by the department;~~
24 ~~or~~

25 (b) No longer applies fertilizers or other
26 soil-applied nutritional materials containing nitrogen or
27 phosphorus as of the effective date of this section.

28 (5) COMPLIANCE.--If the property owner or leaseholder
29 implements interim measures, best-management practices, or
30 other measures adopted by the department which practices or
31 measures ~~that~~ have been verified by the Department of

1 Environmental Protection to be effective ~~at representative~~
2 ~~sites~~ and complies with the following, there is a presumption
3 of compliance with state water ~~nitrate groundwater~~ quality
4 standards for such criteria with respect to the application of
5 fertilizers or other soil-applied nutritional materials
6 containing nitrogen or phosphorus:

7 (a)1. Provides the department with a notice of intent
8 to implement applicable interim measures, best-management
9 practices, or other measures adopted by the department; and

10 2. Implements applicable interim measures,
11 best-management practices, or other measures as soon as
12 practicable according to rules adopted by the department or no
13 longer applies fertilizers or other soil-applied nutritional
14 materials containing nitrogen or phosphorus; or ~~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 or
21 phosphorus as of the effective date of this section.

22 (6) RULEMAKING.--

23 ~~(a)~~ The department, in consultation with the
24 Department of Environmental Protection, the Department of
25 Health, the water management districts, environmental groups,
26 the fertilizer industry, and representatives from the affected
27 farming groups, shall adopt rules to:

28 ~~(a)1.~~ Specify the requirements of interim measures,
29 best-management practices, or other measures to be implemented
30 by property owners and leaseholders.

31

1 ~~(b)2.~~ Establish procedures for property owners and
2 leaseholders to submit the notice of intent to implement and
3 comply with interim measures, best-management practices, or
4 other measures.

5 ~~(c)3.~~ Establish schedules for implementation of
6 interim measures, best-management practices, or other measures
7 ~~and of interim measures that can be taken prior to adoption of~~
8 ~~best-management practices.~~

9 ~~(d)4.~~ Establish a system to assure the implementation
10 of best-management practices, including recordkeeping
11 requirements.

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

22 (7) OTHER PROVISIONS.--

23 (a) This section does not limit the authority of the
24 Department of Environmental Protection to regulate discharges
25 associated with the commercial feeding of livestock and
26 poultry defined in chapter 585, including that of dairy farm
27 and egg production operations, or the disposal of sludge,
28 residuals, or septage. This paragraph does not grant
29 additional authority to regulate these discharges.

30 (b) This section does not limit federally delegated
31 regulatory authority.

1 (c) The Department of Environmental Protection may
2 adopt rules to establish criteria for dairy farms which
3 provide reasonable assurance that state nitrate groundwater
4 quality standards will not be violated and which, provided
5 such criteria are met, shall prohibit the Department of
6 Environmental Protection from instituting proceedings against
7 any dairy farmer under the provisions of s. 376.307(5) and
8 shall provide a presumption of compliance with safe nitrate
9 groundwater quality standards.

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

13 (8) EXPIRATION OF PROVISIONS.--Subsections (1), (2),
14 (3), (4), and (6) expire on December 31, 2012 ~~2003~~.
15 Subsections (5) and (7) expire on December 31, 2017 ~~2008~~.

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

17
18 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
19 COMMITTEE SUBSTITUTE FOR
20 Senate Bill 1644

21 The committee substitute revises the uses of the funds
22 collected by the 50-cent fee on fertilizers to include
23 activities related to the implementation of suitable interim
24 measures, best-management practices, or other measures used to
25 achieve state water quality standards for nitrogen and
26 phosphorus criteria. The various provisions relating to
27 fertilizers containing nitrogen and phosphorus are amended to
28 include interim measures and other measures, as well as,
29 best-management practices.

30 The provisions relating to reimbursement to the Department of
31 Environmental Protection for certain cost are clarified and
revised.