

Bill No. SB 594

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CHAMBER ACTION

Senate

House

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The Committee on Environmental Preservation and Conservation
(Saunders) recommended the following **amendment to amendment**
(754116):

Senate Amendment (with title amendment)

On page 15, between lines 11 and 12,

insert:

Section 5. Subsections (7) and (8) of section 403.067,
Florida Statutes, are 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 a plan
must ~~shall~~ integrate the appropriate management strategies

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1 available to the state through existing water quality
2 protection programs to achieve the total maximum daily loads
3 and may provide for phased implementation of these management
4 strategies to promote timely, cost-effective actions as
5 provided for in s. 403.151. The plan must ~~shall~~ establish a
6 schedule for implementing the management strategies, establish
7 a basis for evaluating the plan's effectiveness, and identify
8 feasible funding strategies for implementing the plan's
9 management strategies. The management strategies may include
10 regional treatment systems or other public works, where
11 appropriate, and voluntary trading of water quality credits in
12 areas that have adopted a basin management action plan to
13 achieve the needed pollutant load reductions.

14 2. A basin management action plan must ~~shall~~ equitably
15 allocate, pursuant to paragraph (6)(b), pollutant reductions
16 to individual basins, as a whole to all basins, or to each
17 identified point source or category of nonpoint sources, as
18 appropriate. For nonpoint sources for which best management
19 practices have been adopted, the initial requirement specified
20 by the plan must ~~shall~~ be those practices developed pursuant
21 to paragraph (c). In accordance with procedures adopted by
22 rule under paragraph (8)(c), the plan must allow point or
23 nonpoint sources that will achieve greater pollutant
24 reductions than required by an adopted total maximum load or
25 wasteload allocation to generate, register, and trade water
26 quality credits for the excess reductions to enable other
27 sources to achieve their allocation if the generation of water
28 quality credits does not remove the obligation of a source or
29 activity to meet applicable technology requirements or adopted
30 best-management practices. The plan must allow trading between
31 NPDES permittees and trading that may or may not involve NPDES

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1 permittees, where the generation or use of the credits involve
2 an entity or activity not subject to department water
3 discharge permits whose owner voluntarily elects to become
4 subject to the requirements of this section. Where
5 appropriate, the plan may take into account the benefits of
6 ~~provide~~ pollutant load reduction achieved by point or nonpoint
7 sources ~~credits to dischargers~~ that have implemented
8 management strategies to reduce pollutant loads, including
9 best management practices, prior to the development of the
10 basin management action plan. The plan must ~~shall~~ also
11 identify the mechanisms that will address ~~by which~~ potential
12 future increases in pollutant loading ~~will be addressed~~.

13 3. The basin management action planning process is
14 intended to involve the broadest possible range of interested
15 parties, with the objective of encouraging the greatest amount
16 of cooperation and consensus possible. In developing a basin
17 management action plan, the department shall assure that key
18 stakeholders, including, but not limited to, applicable local
19 governments, water management districts, the Department of
20 Agriculture and Consumer Services, other appropriate state
21 agencies, local soil and water conservation districts,
22 environmental groups, regulated interests, and affected
23 pollution sources, are invited to participate in the process.
24 The department shall hold at least one public meeting in the
25 vicinity of the watershed or basin to discuss and receive
26 comments during the planning process and shall otherwise
27 encourage public participation to the greatest practicable
28 extent. Notice of the public meeting must ~~shall~~ be published
29 in a newspaper of general circulation in each county in which
30 the watershed or basin lies not less than 5 days nor more than
31 15 days before the public meeting. A basin management action

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1 plan may ~~shall~~ not supplant or otherwise alter any assessment
2 made under subsection (3) or subsection (4) or any calculation
3 or initial allocation.

4 4. The department shall adopt all or any part of a
5 basin management action plan and any amendment to such plan by
6 secretarial order pursuant to chapter 120 to implement the
7 provisions of this section.

8 5. The basin management action plan must ~~shall~~ include
9 milestones for implementation and water quality improvement,
10 and an associated water quality monitoring component
11 sufficient to evaluate whether reasonable progress in
12 pollutant load reductions is being achieved over time. An
13 assessment of progress toward these milestones must ~~shall~~ be
14 conducted every 5 years, and revisions to the plan must ~~shall~~
15 be made as appropriate. Revisions to the basin management
16 action plan shall be made by the department in cooperation
17 with basin stakeholders. Revisions to the management
18 strategies required for nonpoint sources must ~~shall~~ follow the
19 procedures set forth in subparagraph (c)4. Revised basin
20 management action plans must ~~shall~~ be adopted pursuant to
21 subparagraph 4.

22 6. The provisions of the department's rule relating to
23 the equitable abatement of pollutants into surface waters may
24 not be applied to water bodies or water body segments for
25 which a basin management plan that takes into account future
26 new or expanded activities or discharges has been adopted
27 pursuant to this section.

28 (b) Total maximum daily load implementation.--

29 1. The department shall be the lead agency in
30 coordinating the implementation of the total maximum daily
31 loads through existing water quality protection programs.

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1 Application of a total maximum daily load by a water
 2 management district must ~~shall~~ be consistent with this section
 3 and may ~~shall~~ not require the issuance of an order or a
 4 separate action pursuant to s. 120.536(1) or s. 120.54 for the
 5 adoption of the calculation and allocation previously
 6 established by the department. Such programs may include, but
 7 are not limited to:

8 a. Permitting and other existing regulatory programs,
 9 including water-quality-based effluent limitations;

10 b. Nonregulatory and incentive-based programs,
 11 including best management practices, cost sharing, waste
 12 minimization, pollution prevention, agreements established
 13 pursuant to s. 403.061(21), and public education;

14 c. Other water quality management and restoration
 15 activities, for example surface water improvement and
 16 management plans approved by water management districts or
 17 basin management action plans developed pursuant to this
 18 subsection;

19 d. Trading of water quality credits ~~Pollutant trading~~
 20 or other equitable economically based agreements;

21 e. Public works including capital facilities; or

22 f. Land acquisition.

23 2. For a basin management action plan adopted pursuant
 24 to paragraph (a) ~~subparagraph (a)4.~~, any management strategies
 25 and pollutant reduction requirements associated with a
 26 pollutant of concern for which a total maximum daily load has
 27 been developed, including effluent limits set forth for a
 28 discharger subject to NPDES permitting, if any, must ~~shall~~ be
 29 included in a timely manner in subsequent NPDES permits or
 30 permit modifications for that discharger. The department may
 31 ~~shall~~ not impose limits or conditions implementing an adopted

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1 total maximum daily load in an NPDES permit until the permit
2 expires, the discharge is modified, or the permit is reopened
3 pursuant to an adopted basin management action plan.

4 a. Absent a detailed allocation, total maximum daily
5 loads must ~~shall~~ be implemented through NPDES permit
6 conditions that provide for ~~afford~~ a compliance schedule. In
7 such instances, a facility's NPDES permit must ~~shall~~ allow
8 time for the issuance of an order adopting the basin
9 management action plan. The time allowed for the issuance of
10 an order adopting the plan must ~~shall~~ not exceed 5 years. Upon
11 issuance of an order adopting the plan, the permit must ~~shall~~
12 be reopened, as necessary, and permit conditions consistent
13 with the plan must ~~shall~~ be established. Notwithstanding ~~the~~
14 other provisions of this subparagraph, upon request by a NPDES
15 permittee, the department as part of a permit issuance,
16 renewal, or modification may establish individual allocations
17 prior to the adoption of a basin management action plan.

18 b. For holders of NPDES municipal separate storm sewer
19 system permits and other stormwater sources, implementation of
20 a total maximum daily load or basin management action plan
21 must ~~shall~~ be achieved, to the maximum extent practicable,
22 through the use of best management practices or other
23 management measures.

24 c. The basin management action plan does not relieve
25 the discharger from any requirement to obtain, renew, or
26 modify an NPDES permit or to abide by other requirements of
27 the permit.

28 d. Management strategies set forth in a basin
29 management action plan to be implemented by a discharger
30 subject to permitting by the department must ~~shall~~ be
31 completed pursuant to the schedule set forth in the basin

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1 management action plan. This implementation schedule may
2 extend beyond the 5-year term of an NPDES permit.

3 e. Management strategies and pollution reduction
4 requirements set forth in a basin management action plan for a
5 specific pollutant of concern may ~~shall~~ not be subject to
6 challenge under chapter 120 at the time they are incorporated,
7 in an identical form, into a subsequent NPDES permit or permit
8 modification.

9 f. For nonagricultural pollutant sources not subject
10 to NPDES permitting but permitted pursuant to other state,
11 regional, or local water quality programs, the pollutant
12 reduction actions adopted in a basin management action plan
13 must ~~shall~~ be implemented to the maximum extent practicable as
14 part of those permitting programs.

15 g. A nonpoint source discharger included in a basin
16 management action plan must ~~shall~~ demonstrate compliance with
17 the pollutant reductions established under ~~pursuant to~~
18 subsection (6) by either implementing the appropriate best
19 management practices established pursuant to paragraph (c) or
20 conducting water quality monitoring prescribed by the
21 department or a water management district.

22 h. A nonpoint source discharger included in a basin
23 management action plan may be subject to enforcement action by
24 the department or a water management district based upon a
25 failure to implement the responsibilities set forth in
26 sub-subparagraph g.

27 i. A landowner, discharger, or other responsible
28 person who is implementing applicable management strategies
29 specified in an adopted basin management action plan may ~~shall~~
30 not be required by permit, enforcement action, or otherwise to
31 implement additional management strategies to reduce pollutant

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1 loads to attain the pollutant reductions established pursuant
2 to subsection (6) and must ~~shall~~ be deemed to be in compliance
3 with this section. This subparagraph does not limit the
4 authority of the department to amend a basin management action
5 plan as specified in subparagraph (a)5.

6 (c) Best management practices.--

7 1. The department, in cooperation with the water
8 management districts and other interested parties, as
9 appropriate, may develop suitable interim measures, best
10 management practices, or other measures necessary to achieve
11 the level of pollution reduction established by the department
12 for nonagricultural nonpoint pollutant sources in allocations
13 developed pursuant to subsection (6) and this subsection.
14 These practices and measures may be adopted by rule by the
15 department and the water management districts ~~pursuant to ss.~~
16 ~~120.536(1) and 120.54~~, and, where adopted by rule, shall be
17 implemented by those parties responsible for nonagricultural
18 nonpoint source pollution.

19 2. The Department of Agriculture and Consumer Services
20 may develop and adopt by rule pursuant to ss. 120.536(1) and
21 120.54 suitable interim measures, best management practices,
22 or other measures necessary to achieve the level of pollution
23 reduction established by the department for agricultural
24 pollutant sources in allocations developed pursuant to
25 subsection (6) and this subsection or for programs implemented
26 pursuant to paragraph (11)(b). These practices and measures
27 may be implemented by those parties responsible for
28 agricultural pollutant sources and the department, the water
29 management districts, and the Department of Agriculture and
30 Consumer Services must ~~shall~~ assist with implementation. In
31 the process of developing and adopting rules for interim

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1 measures, best management practices, or other measures, the
 2 Department of Agriculture and Consumer Services shall consult
 3 with the department, the Department of Health, the water
 4 management districts, representatives from affected farming
 5 groups, and environmental group representatives. Such rules
 6 must ~~shall~~ also incorporate provisions for a notice of intent
 7 to implement the practices and a system to assure the
 8 implementation of the practices, including recordkeeping
 9 requirements.

10 3. Where interim measures, best management practices,
 11 or other measures are adopted by rule, the effectiveness of
 12 such practices in achieving the levels of pollution reduction
 13 established in allocations developed by the department
 14 pursuant to subsection (6) and this subsection or in programs
 15 implemented pursuant to paragraph (11)(b) must ~~shall~~ be
 16 verified at representative sites by the department. The
 17 department must ~~shall~~ use best professional judgment in making
 18 the initial verification that the best management practices
 19 are reasonably expected to be effective and, where applicable,
 20 must ~~shall~~ notify the appropriate water management district or
 21 the Department of Agriculture and Consumer Services of its
 22 initial verification prior to the adoption of a rule proposed
 23 pursuant to this paragraph. Implementation, in accordance with
 24 rules adopted under this paragraph, of practices that have
 25 been initially verified to be effective, or verified to be
 26 effective by monitoring at representative sites, by the
 27 department, shall provide a presumption of compliance with
 28 state water quality standards and release from the provisions
 29 of s. 376.307(5) for those pollutants addressed by the
 30 practices, and the department is not authorized to institute
 31 proceedings against the owner of the source of pollution to

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1 recover costs or damages associated with the contamination of
2 surface water or groundwater caused by those pollutants.
3 Research projects funded by the department, a water management
4 district, or the Department of Agriculture and Consumer
5 Services to develop or demonstrate interim measures or best
6 management practices shall be granted a presumption of
7 compliance with state water quality standards and a release
8 from the provisions of s. 376.307(5). The presumption of
9 compliance and release is ~~shall be~~ limited to the research
10 site and only for those pollutants addressed by the interim
11 measures or best management practices. Eligibility for the
12 presumption of compliance and release is ~~shall be~~ limited to
13 research projects on sites where the owner or operator of the
14 research site and the department, a water management district,
15 or the Department of Agriculture and Consumer Services have
16 entered into a contract or other agreement that, at a minimum,
17 specifies the research objectives, the cost-share
18 responsibilities of the parties, and a schedule that details
19 the beginning and ending dates of the project.

20 4. Where water quality problems are demonstrated,
21 despite the appropriate implementation, operation, and
22 maintenance of best management practices and other measures
23 required by ~~according to~~ rules adopted under this paragraph,
24 the department, a water management district, or the Department
25 of Agriculture and Consumer Services, in consultation with the
26 department, shall institute a reevaluation of the best
27 management practice or other measure. Should the reevaluation
28 determine that the best management practice or other measure
29 requires modification, the department, a water management
30 district, or the Department of Agriculture and Consumer
31 Services, as appropriate, shall revise the rule to require

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1 implementation of the modified practice within a reasonable
2 time period as specified in the rule.

3 5. Agricultural records relating to processes or
4 methods of production, costs of production, profits, or other
5 financial information held by the Department of Agriculture
6 and Consumer Services pursuant to subparagraphs 3. and 4. or
7 pursuant to any rule adopted pursuant to subparagraph 2. are
8 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
9 of the State Constitution. Upon request, records made
10 confidential and exempt pursuant to this subparagraph shall be
11 released to the department or any water management district if
12 ~~provided that~~ the confidentiality specified by this
13 subparagraph for such records is maintained.

14 6. The provisions of subparagraphs 1. and 2. do ~~shall~~
15 not preclude the department or water management district from
16 requiring compliance with water quality standards or with
17 current best management practice requirements set forth in any
18 applicable regulatory program authorized by law to protect ~~for~~
19 ~~the purpose of protecting~~ water quality. Additionally,
20 subparagraphs 1. and 2. are applicable only to the extent that
21 they do not conflict with any rules adopted by the department
22 which ~~that~~ are necessary to maintain a federally delegated or
23 approved program.

24 (8) RULES.--The department is authorized to adopt
25 rules pursuant to ss. 120.536(1) and 120.54 for:

26 (a) Delisting water bodies or water body segments from
27 the list developed under subsection (4) pursuant to the
28 guidance under subsection (5).†

29 (b) Administering ~~Administration of~~ funds to implement
30 the total maximum daily load and basin management action
31 planning programs.†

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1 (c) Water quality credit ~~Procedures for pollutant~~
2 trading among the pollutant sources to a water body or water
3 body segment. By July 1, 2007, rulemaking shall be initiated
4 which provides for the following:~~, including a mechanism for~~
5 ~~the issuance and tracking of pollutant credits. Such~~
6 ~~procedures may be implemented through permits or other~~
7 ~~authorizations and must be legally binding. Prior to adopting~~
8 ~~rules for pollutant trading under this paragraph, and no later~~
9 ~~than November 30, 2006, the Department of Environmental~~
10 ~~Protection shall submit a report to the Governor, the~~
11 ~~President of the Senate, and the Speaker of the House of~~
12 ~~Representatives containing recommendations on such rules,~~
13 ~~including the proposed basis for equitable economically based~~
14 ~~agreements and the tracking and accounting of pollution~~
15 ~~credits or other similar mechanisms. Such recommendations~~
16 ~~shall be developed in cooperation with a technical advisory~~
17 ~~committee that includes experts in pollutant trading and~~
18 ~~representatives of potentially affected parties;~~

19 1. The process to be used to determine how credits are
20 generated, quantified, and validated;

21 2. A publicly accessible water quality credit trading
22 registry that tracks water quality credits and trades and
23 lists the prices paid for such credits and that does not allow
24 the department to participate in the establishment of such
25 prices;

26 3. Limitations on the availability and use of water
27 quality credits, including a list of eligible pollutants or
28 parameters and minimum water quality requirements and, where
29 appropriate, adjustments to reflect best-management practice
30 performance uncertainties and water-segment-specific location
31 factors;

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1 4. The timing and duration of credits and allowance
2 for credit transferability; and

3 5. Mechanisms for determining and ensuring compliance
4 with trading procedures, including recordkeeping, monitoring,
5 reporting, and inspections. Generators of traded credits are
6 responsible for achieving the load reductions upon which the
7 credits are based.

8 (d) The total maximum daily load calculation in
9 accordance with paragraph (6)(a) immediately upon the
10 effective date of this act, for those eight water segments
11 within Lake Okeechobee proper as submitted to the United
12 States Environmental Protection Agency pursuant to subsection
13 (2). ~~7~~ and

14 (e) Implementation of other specific provisions.

15 Section 6. Paragraphs (e) and (f) of subsection (2) of
16 section 403.088, Florida Statutes, are amended to read:

17 403.088 Water pollution operation permits;
18 conditions.--

19 (2)

20 (e) However, if the discharge will not meet permit
21 conditions or applicable statutes and rules, the department
22 may issue, renew, revise, or reissue the operation permit if:

23 1. The applicant is constructing, installing, or
24 placing into operation, or has submitted plans and a
25 reasonable schedule for constructing, installing, or placing
26 into operation, an approved pollution abatement facility or
27 alternative waste disposal system;

28 2. The applicant needs permission to pollute the
29 waters within the state for a period of time necessary to
30 complete research, planning, construction, installation, or
31 operation of an approved and acceptable pollution abatement

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1 facility or alternative waste disposal system;

2 3. There is no present, reasonable, alternative means
3 of disposing of the waste other than by discharging it into
4 the waters of the state;

5 4. The granting of an operation permit will be in the
6 public interest; ~~or~~

7 5. The discharge will not be unreasonably destructive
8 to the quality of the receiving waters; ~~or~~

9 6. A water quality credit trade that meets the
10 requirements of a total maximum daily load allocation has been
11 approved in a final order issued under s. 403.067(7)(a)1.4.

12 (f) A permit issued, renewed, revised, or reissued
13 pursuant to paragraph (e) shall be accompanied by an order
14 establishing a schedule for achieving compliance with all
15 permit conditions. Such permit may require compliance with
16 the accompanying order.

17
18 (Redesignate subsequent sections.)

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21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 On page 16, line 7, after the semicolon

24

25 insert:

26 amending s. 403.067, F.S.; providing for the
27 trading of water quality credits in the total
28 maximum daily load program in areas that have
29 adopted a basin action plan; providing for
30 rules and specifying what the rules must
31 address; amending s. 403.088, F.S.; providing

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1 for the revision of water pollution operation
2 permits; amending s. 403.50663,
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