

By Senator Gaetz

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1 A bill to be entitled

2 An act relating to water pollution control; amending s.
3 403.067, F.S.; providing requirements for basin management
4 action plans; allowing such plans to take into account the
5 benefits of pollutant load reduction achieved by point or
6 nonpoint sources, where appropriate; requiring that the
7 Department of Environmental Protection adopt all or part
8 of any such plan, or any amendment thereto, by secretarial
9 order as provided by state law; providing that the
10 provisions of the department's rule relating to the
11 equitable abatement of pollutants into surface waters may
12 not be applied to water bodies or water body segments for
13 which a basin management plan that takes into account
14 future or new expanded activities or discharges has been
15 adopted; authorizing water quality protection programs to
16 include the trading of water quality credits; authorizing
17 the department to adopt rules related to the trading of
18 water quality credits; requiring that such rulemaking
19 include certain provisions; specifying basins within which
20 the trading of water quality credits shall be authorized;
21 requiring that the department provide the Legislature with
22 an annual report regarding the status of the trading
23 program; correcting cross-references to conform to changes
24 made by the act; amending s. 403.088, F.S.; authorizing
25 the department to revise a water pollution operation
26 permit under certain circumstances; authorizing the
27 department to revise, renew, issue, or reissue such a
28 permit if a water quality credit trade that meets the
29 requirements of a total maximum daily load allocation has

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30 | been approved in a final order issued pursuant to state
31 | law; requiring that revised permits be accompanied by an
32 | order establishing a schedule for achieving compliance
33 | with all permit conditions; providing an effective date.
34 |

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

36 |
37 | Section 1. Subsections (7) and (8) of section 403.067,
38 | Florida Statutes, are amended to read:

39 | 403.067 Establishment and implementation of total maximum
40 | daily loads.--

41 | (7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND
42 | IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.--

43 | (a) Basin management action plans.--

44 | 1. In developing and implementing the total maximum daily
45 | load for a water body, the department, or the department in
46 | conjunction with a water management district, may develop a basin
47 | management action plan that addresses some or all of the
48 | watersheds and basins tributary to the water body. Such a plan
49 | must ~~shall~~ integrate the appropriate management strategies
50 | available to the state through existing water quality protection
51 | programs to achieve the total maximum daily loads and may provide
52 | for phased implementation of these management strategies to
53 | promote timely, cost-effective actions as provided for in s.
54 | 403.151. The plan must ~~shall~~ establish a schedule for
55 | implementing the management strategies, establish a basis for
56 | evaluating the plan's effectiveness, and identify feasible
57 | funding strategies for implementing the plan's management
58 | strategies. The management strategies may include regional

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59 treatment systems or other public works, where appropriate, and,
60 in basins listed in paragraph (8)(f) for which a basin management
61 action plan has been adopted, voluntary trading of water quality
62 credits to achieve the needed pollutant load reductions.

63 2. A basin management action plan must ~~shall~~ equitably
64 allocate, pursuant to paragraph (6)(b), pollutant reductions to
65 individual basins, as a whole to all basins, or to each
66 identified point source or category of nonpoint sources, as
67 appropriate. For nonpoint sources for which best management
68 practices have been adopted, the initial requirement specified by
69 the plan must ~~shall~~ be those practices developed pursuant to
70 paragraph (c). In accordance with procedures adopted by rule
71 under paragraph (8)(c), plans for basins listed in paragraph
72 (8)(f) must allow point or nonpoint sources that will achieve
73 greater pollutant reductions than required by an adopted total
74 maximum load or wasteload allocation to generate, register, and
75 trade water quality credits for the excess reductions to enable
76 other sources to achieve their allocation if the generation of
77 water quality credits does not remove the obligation of a source
78 or activity to meet applicable technology requirements or adopted
79 best-management practices. Such plans must allow trading between
80 NPDES permittees, and trading that may or may not involve NPDES
81 permittees, where the generation or use of the credits involve an
82 entity or activity not subject to department water discharge
83 permits whose owner voluntarily elects to become subject to the
84 requirements of this section. Where appropriate, the plan may
85 take into account the benefits of ~~provide~~ pollutant load
86 reduction achieved by point or nonpoint sources ~~credits to~~
87 ~~dischargers~~ that have implemented management strategies to reduce

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88 pollutant loads, including best management practices, prior to
89 the development of the basin management action plan. The plan
90 must ~~shall~~ also identify the mechanisms that will address by
91 ~~which~~ potential future increases in pollutant loading ~~will be~~
92 addressed.

93 3. The basin management action planning process is intended
94 to involve the broadest possible range of interested parties,
95 with the objective of encouraging the greatest amount of
96 cooperation and consensus possible. In developing a basin
97 management action plan, the department shall assure that key
98 stakeholders, including, but not limited to, applicable local
99 governments, water management districts, the Department of
100 Agriculture and Consumer Services, other appropriate state
101 agencies, local soil and water conservation districts,
102 environmental groups, regulated interests, and affected pollution
103 sources, are invited to participate in the process. The
104 department shall hold at least one public meeting in the vicinity
105 of the watershed or basin to discuss and receive comments during
106 the planning process and shall otherwise encourage public
107 participation to the greatest practicable extent. Notice of the
108 public meeting must ~~shall~~ be published in a newspaper of general
109 circulation in each county in which the watershed or basin lies
110 not less than 5 days nor more than 15 days before the public
111 meeting. A basin management action plan shall not supplant or
112 otherwise alter any assessment made under subsection (3) or
113 subsection (4) or any calculation or initial allocation.

114 4. The department shall adopt all or any part of a basin
115 management action plan and any amendment to such plan by

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116 secretarial order pursuant to chapter 120 to implement the
117 provisions of this section.

118 5. The basin management action plan must ~~shall~~ include
119 milestones for implementation and water quality improvement, and
120 an associated water quality monitoring component sufficient to
121 evaluate whether reasonable progress in pollutant load reductions
122 is being achieved over time. An assessment of progress toward
123 these milestones shall be conducted every 5 years, and revisions
124 to the plan shall be made as appropriate. Revisions to the basin
125 management action plan shall be made by the department in
126 cooperation with basin stakeholders. Revisions to the management
127 strategies required for nonpoint sources must ~~shall~~ follow the
128 procedures set forth in subparagraph (c)4. Revised basin
129 management action plans must ~~shall~~ be adopted pursuant to
130 subparagraph 4.

131 6. The provisions of the department's rule relating to the
132 equitable abatement of pollutants into surface waters may not be
133 applied to water bodies or water body segments for which a basin
134 management plan that takes into account future new or expanded
135 activities or discharges has been adopted pursuant to this
136 section.

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

138 1. The department shall be the lead agency in coordinating
139 the implementation of the total maximum daily loads through
140 existing water quality protection programs. Application of a
141 total maximum daily load by a water management district must
142 ~~shall~~ be consistent with this section and shall not require the
143 issuance of an order or a separate action pursuant to s.
144 120.536(1) or s. 120.54 for the adoption of the calculation and

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145 allocation previously established by the department. Such
146 programs may include, but are not limited to:

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

149 b. Nonregulatory and incentive-based programs, including
150 best management practices, cost sharing, waste minimization,
151 pollution prevention, agreements established pursuant to s.
152 403.061(21), and public education;

153 c. Other water quality management and restoration
154 activities, for example surface water improvement and management
155 plans approved by water management districts or basin management
156 action plans developed pursuant to this subsection;

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

159 e. Public works including capital facilities; or

160 f. Land acquisition.

161 2. For a basin management action plan adopted pursuant to
162 paragraph (a) subparagraph (a)4., any management strategies and
163 pollutant reduction requirements associated with a pollutant of
164 concern for which a total maximum daily load has been developed,
165 including effluent limits set forth for a discharger subject to
166 NPDES permitting, if any, must ~~shall~~ be included in a timely
167 manner in subsequent NPDES permits or permit modifications for
168 that discharger. The department shall not impose limits or
169 conditions implementing an adopted total maximum daily load in an
170 NPDES permit until the permit expires, the discharge is modified,
171 or the permit is reopened pursuant to an adopted basin management
172 action plan.

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173 a. Absent a detailed allocation, total maximum daily loads
174 shall be implemented through NPDES permit conditions that provide
175 for ~~afford~~ a compliance schedule. In such instances, a facility's
176 NPDES permit must ~~shall~~ allow time for the issuance of an order
177 adopting the basin management action plan. The time allowed for
178 the issuance of an order adopting the plan may ~~shall~~ not exceed 5
179 years. Upon issuance of an order adopting the plan, the permit
180 must ~~shall~~ be reopened, as necessary, and permit conditions
181 consistent with the plan must ~~shall~~ be established.
182 Notwithstanding ~~the~~ other provisions of this subparagraph, upon
183 request by a NPDES permittee, the department as part of a permit
184 issuance, renewal, or modification may establish individual
185 allocations prior to the adoption of a basin management action
186 plan.

187 b. For holders of NPDES municipal separate storm sewer
188 system permits and other stormwater sources, implementation of a
189 total maximum daily load or basin management action plan must
190 ~~shall~~ be achieved, to the maximum extent practicable, through the
191 use of best management practices or other management measures.

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

195 d. Management strategies set forth in a basin management
196 action plan to be implemented by a discharger subject to
197 permitting by the department must ~~shall~~ be completed pursuant to
198 the schedule set forth in the basin management action plan. This
199 implementation schedule may extend beyond the 5-year term of an
200 NPDES permit.

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201 e. Management strategies and pollution reduction
202 requirements set forth in a basin management action plan for a
203 specific pollutant of concern shall not be subject to challenge
204 under chapter 120 at the time they are incorporated, in an
205 identical form, into a subsequent NPDES permit or permit
206 modification.

207 f. For nonagricultural pollutant sources not subject to
208 NPDES permitting but permitted pursuant to other state, regional,
209 or local water quality programs, the pollutant reduction actions
210 adopted in a basin management action plan shall be implemented to
211 the maximum extent practicable as part of those permitting
212 programs.

213 g. A nonpoint source discharger included in a basin
214 management action plan must ~~shall~~ demonstrate compliance with the
215 pollutant reductions established under ~~pursuant to~~ subsection (6)
216 by either implementing the appropriate best management practices
217 established pursuant to paragraph (c) or conducting water quality
218 monitoring prescribed by the department or a water management
219 district.

220 h. A nonpoint source discharger included in a basin
221 management action plan may be subject to enforcement action by
222 the department or a water management district based upon a
223 failure to implement the responsibilities set forth in sub-
224 subparagraph g.

225 i. A landowner, discharger, or other responsible person who
226 is implementing applicable management strategies specified in an
227 adopted basin management action plan may ~~shall~~ not be required by
228 permit, enforcement action, or otherwise to implement additional
229 management strategies to reduce pollutant loads to attain the

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230 pollutant reductions established pursuant to subsection (6) and
231 shall be deemed to be in compliance with this section. This
232 subparagraph does not limit the authority of the department to
233 amend a basin management action plan as specified in subparagraph
234 (a)5.

235 (c) Best management practices.--

236 1. The department, in cooperation with the water management
237 districts and other interested parties, as appropriate, may
238 develop suitable interim measures, best management practices, or
239 other measures necessary to achieve the level of pollution
240 reduction established by the department for nonagricultural
241 nonpoint pollutant sources in allocations developed pursuant to
242 subsection (6) and this subsection. These practices and measures
243 may be adopted by rule by the department and the water management
244 districts ~~pursuant to ss. 120.536(1) and 120.54,~~ and, where
245 adopted by rule, shall be implemented by those parties
246 responsible for nonagricultural nonpoint source pollution.

247 2. The Department of Agriculture and Consumer Services may
248 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54
249 suitable interim measures, best management practices, or other
250 measures necessary to achieve the level of pollution reduction
251 established by the department for agricultural pollutant sources
252 in allocations developed pursuant to subsection (6) and this
253 subsection or for programs implemented pursuant to paragraph
254 (11) (b). These practices and measures may be implemented by those
255 parties responsible for agricultural pollutant sources and the
256 department, the water management districts, and the Department of
257 Agriculture and Consumer Services shall assist with
258 implementation. In the process of developing and adopting rules

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259 | for interim measures, best management practices, or other
260 | measures, the Department of Agriculture and Consumer Services
261 | shall consult with the department, the Department of Health, the
262 | water management districts, representatives from affected farming
263 | groups, and environmental group representatives. Such rules must
264 | ~~shall~~ also incorporate provisions for a notice of intent to
265 | implement the practices and a system to assure the implementation
266 | of the practices, including recordkeeping requirements.

267 | 3. Where interim measures, best management practices, or
268 | other measures are adopted by rule, the effectiveness of such
269 | practices in achieving the levels of pollution reduction
270 | established in allocations developed by the department pursuant
271 | to subsection (6) and this subsection or in programs implemented
272 | pursuant to paragraph (11)(b) must ~~shall~~ be verified at
273 | representative sites by the department. The department shall use
274 | best professional judgment in making the initial verification
275 | that the best management practices are reasonably expected to be
276 | effective and, where applicable, must ~~shall~~ notify the
277 | appropriate water management district or the Department of
278 | Agriculture and Consumer Services of its initial verification
279 | prior to the adoption of a rule proposed pursuant to this
280 | paragraph. Implementation, in accordance with rules adopted under
281 | this paragraph, of practices that have been initially verified to
282 | be effective, or verified to be effective by monitoring at
283 | representative sites, by the department, shall provide a
284 | presumption of compliance with state water quality standards and
285 | release from the provisions of s. 376.307(5) for those pollutants
286 | addressed by the practices, and the department is not authorized
287 | to institute proceedings against the owner of the source of

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288 | pollution to recover costs or damages associated with the
289 | contamination of surface water or groundwater caused by those
290 | pollutants. Research projects funded by the department, a water
291 | management district, or the Department of Agriculture and
292 | Consumer Services to develop or demonstrate interim measures or
293 | best management practices shall be granted a presumption of
294 | compliance with state water quality standards and a release from
295 | the provisions of s. 376.307(5). The presumption of compliance
296 | and release is ~~shall be~~ limited to the research site and only for
297 | those pollutants addressed by the interim measures or best
298 | management practices. Eligibility for the presumption of
299 | compliance and release is ~~shall be~~ limited to research projects
300 | on sites where the owner or operator of the research site and the
301 | department, a water management district, or the Department of
302 | Agriculture and Consumer Services have entered into a contract or
303 | other agreement that, at a minimum, specifies the research
304 | objectives, the cost-share responsibilities of the parties, and a
305 | schedule that details the beginning and ending dates of the
306 | project.

307 | 4. Where water quality problems are demonstrated, despite
308 | the appropriate implementation, operation, and maintenance of
309 | best management practices and other measures required by
310 | ~~according to~~ rules adopted under this paragraph, the department,
311 | a water management district, or the Department of Agriculture and
312 | Consumer Services, in consultation with the department, shall
313 | institute a reevaluation of the best management practice or other
314 | measure. Should the reevaluation determine that the best
315 | management practice or other measure requires modification, the
316 | department, a water management district, or the Department of

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317 Agriculture and Consumer Services, as appropriate, shall revise
318 the rule to require implementation of the modified practice
319 within a reasonable time period as specified in the rule.

320 5. Agricultural records relating to processes or methods of
321 production, costs of production, profits, or other financial
322 information held by the Department of Agriculture and Consumer
323 Services pursuant to subparagraphs 3. and 4. or pursuant to any
324 rule adopted pursuant to subparagraph 2. are confidential and
325 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
326 Constitution. Upon request, records made confidential and exempt
327 pursuant to this subparagraph shall be released to the department
328 or any water management district if ~~provided that~~ the
329 confidentiality specified by this subparagraph for such records
330 is maintained.

331 6. The provisions of subparagraphs 1. and 2. do ~~shall~~ not
332 preclude the department or water management district from
333 requiring compliance with water quality standards or with current
334 best management practice requirements set forth in any applicable
335 regulatory program authorized by law to protect ~~for the purpose~~
336 ~~of protecting~~ water quality. Additionally, subparagraphs 1. and
337 2. are applicable only to the extent that they do not conflict
338 with any rules adopted by the department which ~~that~~ are necessary
339 to maintain a federally delegated or approved program.

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

342 (a) Delisting water bodies or water body segments from the
343 list developed under subsection (4) pursuant to the guidance
344 under subsection (5).†

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345 (b) Administering ~~Administration of~~ funds to implement the
346 total maximum daily load and basin management action planning
347 programs.†

348 (c) Water quality credit ~~Procedures for pollutant~~ trading
349 among the pollutant sources to a water body or water body segment
350 in basins listed in paragraph (f) shall be authorized by
351 department rule. By July 1, 2008, rulemaking must be initiated
352 which provides for the following; ~~including a mechanism for the~~
353 ~~issuance and tracking of pollutant credits. Such procedures may~~
354 ~~be implemented through permits or other authorizations and must~~
355 ~~be legally binding. Prior to adopting rules for pollutant trading~~
356 ~~under this paragraph, and no later than November 30, 2006, the~~
357 ~~Department of Environmental Protection shall submit a report to~~
358 ~~the Governor, the President of the Senate, and the Speaker of the~~
359 ~~House of Representatives containing recommendations on such~~
360 ~~rules, including the proposed basis for equitable economically~~
361 ~~based agreements and the tracking and accounting of pollution~~
362 ~~credits or other similar mechanisms. Such recommendations shall~~
363 ~~be developed in cooperation with a technical advisory committee~~
364 ~~that includes experts in pollutant trading and representatives of~~
365 ~~potentially affected parties;~~

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

368 2. A publicly accessible water quality credit trading
369 registry that tracks water quality credits and trades and lists
370 the prices paid for such credits and that does not allow the
371 department to participate in the establishment of such prices;

372 3. Limitations on the availability and use of water quality
373 credits, including a list of eligible pollutants or parameters

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374 and limited water quality requirements and, where appropriate,
375 adjustments to reflect best-management practice performance
376 uncertainties and water-segment-specific location factors;

377 4. The timing and duration of credits and allowance for
378 credit transferability; and

379 5. Mechanisms for determining and ensuring compliance with
380 trading procedures, including recordkeeping, monitoring,
381 reporting, and inspections. Generators of traded credits are
382 responsible for achieving the load reductions on which the
383 credits are based.

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

389 (e) Implementation of other specific provisions.

390 (f) Basins within which trading shall be authorized under
391 paragraph (c) include the Lower St. Johns River Basin, Tampa Bay
392 Basin, and Pensacola Bay Basin. The department shall provide an
393 annual report to the Legislature on the status of the trading
394 program authorized in this section.

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

397 403.088 Water pollution operation permits; conditions.--

398 (2)

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

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402 1. The applicant is constructing, installing, or placing
403 into operation, or has submitted plans and a reasonable schedule
404 for constructing, installing, or placing into operation, an
405 approved pollution abatement facility or alternative waste
406 disposal system;

407 2. The applicant needs permission to pollute the waters
408 within the state for a period of time necessary to complete
409 research, planning, construction, installation, or operation of
410 an approved and acceptable pollution abatement facility or
411 alternative waste disposal system;

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

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

417 5. The discharge will not be unreasonably destructive to
418 the quality of the receiving waters; or.

419 6. A water quality credit trade that meets the requirements
420 of a total maximum daily load allocation has been approved in a
421 final order issued under s. 403.067(7) (a)4.

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

426 Section 3. This act shall take effect July 1, 2008.