

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Kreegel offered the following:

3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Subsections (7) and (8) of section 403.067,
6 Florida Statutes, are amended, present subsections (9) through
7 (12) are renumbered as sections (11) through (14), respectively,
8 and new subsections (8) and (10) are added to that section, to
9 read:

10 403.067 Establishment and implementation of total maximum
11 daily loads.--

12 (7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND
13 IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.--

14 (a) Basin management action plans.--

15 1. In developing and implementing the total maximum daily
16 load for a water body, the department, or the department in
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17 conjunction with a water management district, may develop a
18 basin management action plan that addresses some or all of the
19 watersheds and basins tributary to the water body. Such a plan
20 must ~~shall~~ integrate the appropriate management strategies
21 available to the state through existing water quality protection
22 programs to achieve the total maximum daily loads and may
23 provide for phased implementation of these management strategies
24 to promote timely, cost-effective actions as provided for in s.
25 403.151. The plan must ~~shall~~ establish a schedule for
26 implementing the management strategies, establish a basis for
27 evaluating the plan's effectiveness, and identify feasible
28 funding strategies for implementing the plan's management
29 strategies. The management strategies may include regional
30 treatment systems or other public works, where appropriate, and,
31 in the basin listed in subsection (10) for which a basin
32 management action plan has been adopted, voluntary trading of
33 water quality credits to achieve the needed pollutant load
34 reductions.

35 2. A basin management action plan must ~~shall~~ equitably
36 allocate, pursuant to paragraph (6) (b), pollutant reductions to
37 individual basins, as a whole to all basins, or to each
38 identified point source or category of nonpoint sources, as
39 appropriate. For nonpoint sources for which best management
40 practices have been adopted, the initial requirement specified
41 by the plan must ~~shall~~ be those practices developed pursuant to
42 paragraph (c). Where appropriate, the plan may take into account
43 the benefits of ~~provide~~ pollutant load reduction achieved by
44 point or nonpoint sources ~~credits to dischargers~~ that have

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45 implemented management strategies to reduce pollutant loads,
46 including best management practices, prior to the development of
47 the basin management action plan. The plan must ~~shall~~ also
48 identify the mechanisms that will address ~~by which~~ potential
49 future increases in pollutant loading ~~will be addressed~~.

50 3. The basin management action planning process is
51 intended to involve the broadest possible range of interested
52 parties, with the objective of encouraging the greatest amount
53 of cooperation and consensus possible. In developing a basin
54 management action plan, the department shall assure that key
55 stakeholders, including, but not limited to, applicable local
56 governments, water management districts, the Department of
57 Agriculture and Consumer Services, other appropriate state
58 agencies, local soil and water conservation districts,
59 environmental groups, regulated interests, and affected
60 pollution sources, are invited to participate in the process.
61 The department shall hold at least one public meeting in the
62 vicinity of the watershed or basin to discuss and receive
63 comments during the planning process and shall otherwise
64 encourage public participation to the greatest practicable
65 extent. Notice of the public meeting must ~~shall~~ be published in
66 a newspaper of general circulation in each county in which the
67 watershed or basin lies not less than 5 days nor more than 15
68 days before the public meeting. A basin management action plan
69 shall not supplant or otherwise alter any assessment made under
70 subsection (3) or subsection (4) or any calculation or initial
71 allocation.

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

76 5. The basin management action plan must ~~shall~~ include
77 milestones for implementation and water quality improvement, and
78 an associated water quality monitoring component sufficient to
79 evaluate whether reasonable progress in pollutant load
80 reductions is being achieved over time. An assessment of
81 progress toward these milestones shall be conducted every 5
82 years, and revisions to the plan shall be made as appropriate.
83 Revisions to the basin management action plan shall be made by
84 the department in cooperation with basin stakeholders. Revisions
85 to the management strategies required for nonpoint sources must
86 ~~shall~~ follow the procedures set forth in subparagraph (c)4.
87 Revised basin management action plans must ~~shall~~ be adopted
88 pursuant to subparagraph 4.

89 6. In accordance with procedures adopted by rule under
90 paragraph (9)(c), basin management action plans may allow point
91 or nonpoint sources that will achieve greater pollutant
92 reductions than required by an adopted total maximum load or
93 wasteload allocation to generate, register, and trade water
94 quality credits for the excess reductions to enable other
95 sources to achieve their allocation; however, the generation of
96 water quality credits does not remove the obligation of a source
97 or activity to meet applicable technology requirements or
98 adopted best management practices. Such plans must allow trading
99 between NPDES permittees, and trading that may or may not

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100 involve NPDES permittees, where the generation or use of the
101 credits involve an entity or activity not subject to department
102 water discharge permits whose owner voluntarily elects to obtain
103 department authorization for the generation and sale of credits.

104 7. The provisions of the department's rule relating to the
105 equitable abatement of pollutants into surface waters shall not
106 be applied to water bodies or water body segments for which a
107 basin management plan that takes into account future new or
108 expanded activities or discharges has been adopted under this
109 section.

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

111 1. The department shall be the lead agency in coordinating
112 the implementation of the total maximum daily loads through
113 existing water quality protection programs. Application of a
114 total maximum daily load by a water management district must
115 ~~shall~~ be consistent with this section and shall not require the
116 issuance of an order or a separate action pursuant to s.
117 120.536(1) or s. 120.54 for the adoption of the calculation and
118 allocation previously established by the department. Such
119 programs may include, but are not limited to:

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

122 b. Nonregulatory and incentive-based programs, including
123 best management practices, cost sharing, waste minimization,
124 pollution prevention, agreements established pursuant to s.
125 403.061(21), and public education;

126 c. Other water quality management and restoration
127 activities, for example surface water improvement and management

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128 plans approved by water management districts or basin management
129 action plans developed pursuant to this subsection;

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

132 e. Public works including capital facilities; or

133 f. Land acquisition.

134 2. For a basin management action plan adopted pursuant to
135 paragraph (a) subparagraph (a)4., any management strategies and
136 pollutant reduction requirements associated with a pollutant of
137 concern for which a total maximum daily load has been developed,
138 including effluent limits set forth for a discharger subject to
139 NPDES permitting, if any, must ~~shall~~ be included in a timely
140 manner in subsequent NPDES permits or permit modifications for
141 that discharger. The department shall not impose limits or
142 conditions implementing an adopted total maximum daily load in
143 an NPDES permit until the permit expires, the discharge is
144 modified, or the permit is reopened pursuant to an adopted basin
145 management action plan, unless required by federal law or
146 regulation.

147 a. Absent a detailed allocation, total maximum daily loads
148 shall be implemented through NPDES permit conditions that
149 provide for ~~afford~~ a compliance schedule. In such instances, a
150 facility's NPDES permit must ~~shall~~ allow time for the issuance
151 of an order adopting the basin management action plan. The time
152 allowed for the issuance of an order adopting the plan shall not
153 exceed 5 years. Upon issuance of an order adopting the plan, the
154 permit must ~~shall~~ be reopened or renewed, as necessary, and
155 permit conditions consistent with the plan must ~~shall~~ be

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156 established. Notwithstanding the other provisions of this
157 subparagraph, upon request by a NPDES permittee, the department
158 as part of a permit issuance, renewal, or modification may
159 establish individual allocations prior to the adoption of a
160 basin management action plan.

161 b. For holders of NPDES municipal separate storm sewer
162 system permits and other stormwater sources, implementation of a
163 total maximum daily load or basin management action must ~~plan~~
164 shall be achieved, to the maximum extent practicable, through
165 the use of best management practices or other management
166 measures.

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

170 d. Management strategies set forth in a basin management
171 action plan to be implemented by a discharger subject to
172 permitting by the department must ~~shall~~ be completed pursuant to
173 the schedule set forth in the basin management action plan. This
174 implementation schedule may extend beyond the 5-year term of an
175 NPDES permit.

176 e. Management strategies and pollution reduction
177 requirements set forth in a basin management action plan for a
178 specific pollutant of concern shall not be subject to challenge
179 under chapter 120 at the time they are incorporated, in an
180 identical form, into a subsequent NPDES permit or permit
181 modification.

182 f. For nonagricultural pollutant sources not subject to
183 NPDES permitting but permitted pursuant to other state,

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184 regional, or local water quality programs, the pollutant
185 reduction actions adopted in a basin management action plan
186 shall be implemented to the maximum extent practicable as part
187 of those permitting programs.

188 g. A nonpoint source discharger included in a basin
189 management action plan must ~~shall~~ demonstrate compliance with
190 the pollutant reductions established under ~~pursuant to~~
191 subsection (6) by either implementing the appropriate best
192 management practices established pursuant to paragraph (c) or
193 conducting water quality monitoring prescribed by the department
194 or a water management district. A nonpoint source discharger
195 may, in accordance with department rules, supplement the
196 implementation of best-management practices with water quality
197 credit trades in order to demonstrate compliance with the
198 pollutant reductions established under subsection (6).

199 h. A nonpoint source discharger included in a basin
200 management action plan may be subject to enforcement action by
201 the department or a water management district based upon a
202 failure to implement the responsibilities set forth in sub-
203 subparagraph g.

204 i. A landowner, discharger, or other responsible person
205 who is implementing applicable management strategies specified
206 in an adopted basin management action plan shall not be required
207 by permit, enforcement action, or otherwise to implement
208 additional management strategies to reduce pollutant loads to
209 attain the pollutant reductions established pursuant to
210 subsection (6) and shall be deemed to be in compliance with this
211 section. This subparagraph does not limit the authority of the

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212 department to amend a basin management action plan as specified
213 in subparagraph (a)5.

214 (c) Best management practices.--

215 1. The department, in cooperation with the water
216 management districts and other interested parties, as
217 appropriate, may develop suitable interim measures, best
218 management practices, or other measures necessary to achieve the
219 level of pollution reduction established by the department for
220 nonagricultural nonpoint pollutant sources in allocations
221 developed pursuant to subsection (6) and this subsection. These
222 practices and measures may be adopted by rule by the department
223 and the water management districts ~~pursuant to ss. 120.536(1)~~
224 ~~and 120.54~~, and, where adopted by rule, shall be implemented by
225 those parties responsible for nonagricultural nonpoint source
226 pollution.

227 2. The Department of Agriculture and Consumer Services may
228 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54
229 suitable interim measures, best management practices, or other
230 measures necessary to achieve the level of pollution reduction
231 established by the department for agricultural pollutant sources
232 in allocations developed pursuant to subsection (6) and this
233 subsection or for programs implemented pursuant to paragraph
234 (13)(b) ~~(11)(b)~~. These practices and measures may be implemented
235 by those parties responsible for agricultural pollutant sources
236 and the department, the water management districts, and the
237 Department of Agriculture and Consumer Services shall assist
238 with implementation. In the process of developing and adopting
239 rules for interim measures, best management practices, or other

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240 measures, the Department of Agriculture and Consumer Services
241 shall consult with the department, the Department of Health, the
242 water management districts, representatives from affected
243 farming groups, and environmental group representatives. Such
244 rules must ~~shall~~ also incorporate provisions for a notice of
245 intent to implement the practices and a system to assure the
246 implementation of the practices, including recordkeeping
247 requirements.

248 3. Where interim measures, best management practices, or
249 other measures are adopted by rule, the effectiveness of such
250 practices in achieving the levels of pollution reduction
251 established in allocations developed by the department pursuant
252 to subsection (6) and this subsection or in programs implemented
253 pursuant to paragraph (13)(b) must ~~(11)(b) shall~~ be verified at
254 representative sites by the department. The department shall use
255 best professional judgment in making the initial verification
256 that the best management practices are reasonably expected to be
257 effective and, where applicable, must ~~shall~~ notify the
258 appropriate water management district or the Department of
259 Agriculture and Consumer Services of its initial verification
260 before ~~prior to~~ the adoption of a rule proposed pursuant to this
261 paragraph. Implementation, in accordance with rules adopted
262 under this paragraph, of practices that have been initially
263 verified to be effective, or verified to be effective by
264 monitoring at representative sites, by the department, shall
265 provide a presumption of compliance with state water quality
266 standards and release from the provisions of s. 376.307(5) for
267 those pollutants addressed by the practices, and the department

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268 is not authorized to institute proceedings against the owner of
269 the source of pollution to recover costs or damages associated
270 with the contamination of surface water or groundwater caused by
271 those pollutants. Research projects funded by the department, a
272 water management district, or the Department of Agriculture and
273 Consumer Services to develop or demonstrate interim measures or
274 best management practices shall be granted a presumption of
275 compliance with state water quality standards and a release from
276 the provisions of s. 376.307(5). The presumption of compliance
277 and release is ~~shall be~~ limited to the research site and only
278 for those pollutants addressed by the interim measures or best
279 management practices. Eligibility for the presumption of
280 compliance and release is ~~shall be~~ limited to research projects
281 on sites where the owner or operator of the research site and
282 the department, a water management district, or the Department
283 of Agriculture and Consumer Services have entered into a
284 contract or other agreement that, at a minimum, specifies the
285 research objectives, the cost-share responsibilities of the
286 parties, and a schedule that details the beginning and ending
287 dates of the project.

288 4. Where water quality problems are demonstrated, despite
289 the appropriate implementation, operation, and maintenance of
290 best management practices and other measures required by
291 ~~according to~~ rules adopted under this paragraph, the department,
292 a water management district, or the Department of Agriculture
293 and Consumer Services, in consultation with the department,
294 shall institute a reevaluation of the best management practice
295 or other measure. Should the reevaluation determine that the

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296 best management practice or other measure requires modification,
297 the department, a water management district, or the Department
298 of Agriculture and Consumer Services, as appropriate, shall
299 revise the rule to require implementation of the modified
300 practice within a reasonable time period as specified in the
301 rule.

302 5. Agricultural records relating to processes or methods
303 of production, costs of production, profits, or other financial
304 information held by the Department of Agriculture and Consumer
305 Services pursuant to subparagraphs 3. and 4. or pursuant to any
306 rule adopted pursuant to subparagraph 2. are confidential and
307 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
308 Constitution. Upon request, records made confidential and exempt
309 pursuant to this subparagraph shall be released to the
310 department or any water management district provided that the
311 confidentiality specified by this subparagraph for such records
312 is maintained.

313 6. The provisions of subparagraphs 1. and 2. ~~do shall~~ not
314 preclude the department or water management district from
315 requiring compliance with water quality standards or with
316 current best management practice requirements set forth in any
317 applicable regulatory program authorized by law for the purpose
318 of protecting water quality. Additionally, subparagraphs 1. and
319 2. are applicable only to the extent that they do not conflict
320 with any rules adopted by the department that are necessary to
321 maintain a federally delegated or approved program.

322 (8) WATER QUALITY CREDIT TRADING.--

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323 (a) Water quality credit trading must be consistent with
324 federal law and regulation.

325 (b) Water quality credit trading must be implemented
326 through permits, including water quality credit trading permits,
327 other authorizations, or other legally binding agreements as
328 established by department rule.

329 (c) The department shall establish the pollutant load-
330 reduction value of water quality credits and shall be
331 responsible for authorizing their use.

332 (d) A person that acquires water quality credits ("buyer")
333 shall timely submit to the department an affidavit, signed by
334 the buyer and the credit generator ("seller"), disclosing the
335 term of acquisition, number of credits, unit credit price paid,
336 and any state funding received for the facilities or activities
337 that generate the credits. The department shall not participate
338 in the establishment of credit prices.

339 (e) Sellers of water quality credits are responsible for
340 achieving the load reductions on which the credits are based and
341 complying with the terms of the department authorization and any
342 trading agreements into which they may have entered.

343 (f) Buyers of water quality credits are responsible for
344 complying with the terms of the department water discharge
345 permit.

346 (g) The department shall take appropriate action to
347 address the failure of a credit seller to fulfill its
348 obligations, including, as necessary, deeming the seller's
349 credits invalid if the seller cannot achieve the load reductions
350 on which the credits were based in a reasonable time. If the

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351 department determines duly acquired water quality credits to be
352 invalid, in whole or in part, thereby causing the credit buyer
353 to be unable to timely meet its pollutant-reduction obligations
354 under this section, the department shall issue an order
355 establishing the actions required of the buyer to meet its
356 obligations by alternative means and a reasonable schedule for
357 completing the actions. The invalidation of credits shall not
358 itself constitute a violation of the buyer's water discharge
359 permit.

360 (9)(8) RULES.--The department is authorized to adopt rules
361 pursuant to ss. 120.536(1) and 120.54 for:

362 (a) Delisting water bodies or water body segments from the
363 list developed under subsection (4) pursuant to the guidance
364 under subsection (5).

365 (b) Administering Administration of funds to implement the
366 total maximum daily load and basin management action planning
367 programs.

368 (c) Water quality credit Procedures for pollutant trading
369 among the pollutant sources to a water body or water body
370 segment. By September 1, 2008, rulemaking must be initiated
371 which provides for the following:~~including a mechanism for the~~
372 ~~issuance and tracking of pollutant credits. Such procedures may~~
373 ~~be implemented through permits or other authorizations and must~~
374 ~~be legally binding. Prior to adopting rules for pollutant~~
375 ~~trading under this paragraph, and no later than November 30,~~
376 ~~2006, the Department of Environmental Protection shall submit a~~
377 ~~report to the Governor, the President of the Senate, and the~~
378 ~~Speaker of the House of Representatives containing~~

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379 ~~recommendations on such rules, including the proposed basis for~~
380 ~~equitable economically based agreements and the tracking and~~
381 ~~accounting of pollution credits or other similar mechanisms.~~
382 ~~Such recommendations shall be developed in cooperation with a~~
383 ~~technical advisory committee that includes experts in pollutant~~
384 ~~trading and representatives of potentially affected parties;~~

385 1. The process to be used to determine how credits are
386 generated, quantified, and validated.

387 2. A publicly accessible water quality credit trading
388 registry that tracks water quality credits, trading activities,
389 and prices paid for credits.

390 3. Limitations on the availability and use of water
391 quality credits, including a list of eligible pollutants or
392 parameters and minimum water quality requirements and, where
393 appropriate, adjustments to reflect best-management practice
394 performance uncertainties and water-segment-specific location
395 factors.

396 4. The timing and duration of credits and allowance for
397 credit transferability.

398 5. Mechanisms for determining and ensuring compliance with
399 trading procedures, including recordkeeping, monitoring,
400 reporting, and inspections.

401
402 At the time of publication of the draft rules on water quality
403 credit trading, the department shall submit a copy to the United
404 States Environmental Protection Agency for review.

405 (d) The total maximum daily load calculation in accordance
406 with paragraph (6) (a) immediately upon the effective date of
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407 this act, for those eight water segments within Lake Okeechobee
408 proper as submitted to the United States Environmental
409 Protection Agency pursuant to subsection (2) ~~and~~

410 (e) Implementation of other specific provisions.

411 (10) Water quality credit trading shall be limited to the
412 Lower St. Johns River Basin, as defined by the department, as a
413 pilot project. The department may authorize water quality credit
414 trading and establish specific requirements for trading in the
415 adopted basin management action plan for the Lower St. Johns
416 River Basin prior to the adoption of rules under paragraph
417 (9) (c) in order to effectively implement the pilot project.

418 Entities that participate in water quality credit trades shall
419 timely report to the department the prices for credits, how the
420 prices were determined, and any state funding received for the
421 facilities or activities that generated the credits. The
422 department shall not participate in the establishment of credit
423 prices. No later than 24 months after adoption of the basin
424 management action plan for the Lower St. Johns River, the
425 department shall submit a report to the Governor, the President
426 of the Senate, and the Speaker of the House of Representatives
427 on the effectiveness of the pilot project, including the
428 following information:

429 (a) A summary of how water quality credit trading was
430 implemented, including the number of pounds of pollutants
431 traded.

432 (b) A description of the individual trades and estimated
433 pollutant load reductions that are expected to result from each
434 trade.

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435 (c) A description of any conditions placed on trades.

436 (d) Prices associated with the trades, as reported by the
437 traders.

438 (e) A recommendation as to whether other areas of the
439 state would benefit from water quality credit trading and, if
440 so, an identification of the statutory changes necessary to
441 expand the scope of trading.

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

444 403.088 Water pollution operation permits; conditions.--

445 (2)

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

449 1. The applicant is constructing, installing, or placing
450 into operation, or has submitted plans and a reasonable schedule
451 for constructing, installing, or placing into operation, an
452 approved pollution abatement facility or alternative waste
453 disposal system;

454 2. The applicant needs permission to pollute the waters
455 within the state for a period of time necessary to complete
456 research, planning, construction, installation, or operation of
457 an approved and acceptable pollution abatement facility or
458 alternative waste disposal system;

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

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

464 5. The discharge will not be unreasonably destructive to
465 the quality of the receiving waters; or-

466 6. A water quality credit trade that meets the
467 requirements of s. 403.067.

468 (f) A permit issued, renewed, or reissued pursuant to
469 paragraph (e) shall be accompanied by an order establishing a
470 schedule for achieving compliance with all permit conditions.
471 Such permit may require compliance with the accompanying order.

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

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

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Remove the entire title and insert:

478

A bill to be entitled

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An act relating to water pollution control; amending s. 403.067,
480 F.S.; providing requirements for basin management action plans;
481 allowing such plans to take into account the benefits of
482 pollutant load reduction achieved by point or nonpoint sources,
483 where appropriate; requiring that the Department of
484 Environmental Protection adopt all or part of any such plan, or
485 any amendment thereto, by secretarial order as provided by state
486 law; providing that the provisions of the department's rule
487 relating to the equitable abatement of pollutants into surface
488 waters may not be applied to water bodies or water body segments
489 for which a basin management plan that takes into account future

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HOUSE AMENDMENT

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490 or new expanded activities or discharges has been adopted;
491 authorizing water quality protection programs to include the
492 trading of water quality credits; authorizing the department to
493 adopt rules related to the trading of water quality credits;
494 requiring that such rulemaking include certain provisions;
495 specifying that a water quality credit trading pilot project be
496 limited to the Lower St. Johns River Basin as a pilot project;
497 requiring that the department provide the Legislature with an
498 annual report regarding the effectiveness of the pilot project;
499 providing report requirements; providing that the department may
500 authorize and establish specific requirements for water quality
501 credit trading as part of the Lower St. Johns River Basin
502 adopted basin management action plan; correcting cross-
503 references to conform to changes made by the act; amending s.
504 403.088, F.S.; authorizing the department to revise a water
505 pollution operation permit under certain circumstances;
506 authorizing the department to issue, renew, or reissue such a
507 permit if a water quality credit trade meets the requirements of
508 403.067, F.S.; requiring that revised permits be accompanied by
509 an order establishing a schedule for achieving compliance with
510 all permit conditions; providing an effective date.

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