

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  
 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  
 47 basin 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  
 52 provide for phased implementation of these management strategies  
 53 to 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

HB 547

2008

57 funding strategies for implementing the plan's management  
58 strategies. The management strategies may include regional  
59 treatment systems or other public works, where appropriate, and,  
60 in basins listed in paragraph (8)(f) for which a basin  
61 management action plan has been adopted, voluntary trading of  
62 water quality credits to achieve the needed pollutant load  
63 reductions.

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

85 subject to the requirements of this section. Where appropriate,  
86 the plan may take into account the benefits of ~~provide~~ pollutant  
87 load reduction achieved by point or nonpoint sources ~~credits to~~  
88 ~~dischargers~~ that have implemented management strategies to  
89 reduce pollutant loads, including best management practices,  
90 prior to the development of the basin management action plan.  
91 The plan must ~~shall~~ also identify the mechanisms that will  
92 address ~~by which~~ potential future increases in pollutant loading  
93 ~~will be addressed.~~

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

HB 547

2008

113 shall not supplant or otherwise alter any assessment made under  
114 subsection (3) or subsection (4) or any calculation or initial  
115 allocation.

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

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

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

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

140           1. The department shall be the lead agency in coordinating  
 141 the implementation of the total maximum daily loads through  
 142 existing water quality protection programs. Application of a  
 143 total maximum daily load by a water management district must  
 144 ~~shall~~ be consistent with this section and shall not require the  
 145 issuance of an order or a separate action pursuant to s.  
 146 120.536(1) or s. 120.54 for the adoption of the calculation and  
 147 allocation previously established by the department. Such  
 148 programs may include, but are not limited to:

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

151           b. Nonregulatory and incentive-based programs, including  
 152 best management practices, cost sharing, waste minimization,  
 153 pollution prevention, agreements established pursuant to s.  
 154 403.061(21), and public education;

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

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

161           e. Public works including capital facilities; or

162           f. Land acquisition.

163           2. For a basin management action plan adopted pursuant to  
 164 paragraph (a) ~~subparagraph (a)4.~~, any management strategies and  
 165 pollutant reduction requirements associated with a pollutant of  
 166 concern for which a total maximum daily load has been developed,  
 167 including effluent limits set forth for a discharger subject to

168 NPDES permitting, if any, must ~~shall~~ be included in a timely  
169 manner in subsequent NPDES permits or permit modifications for  
170 that discharger. The department shall not impose limits or  
171 conditions implementing an adopted total maximum daily load in  
172 an NPDES permit until the permit expires, the discharge is  
173 modified, or the permit is reopened pursuant to an adopted basin  
174 management action plan.

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

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

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

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

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

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

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



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

228 i. A landowner, discharger, or other responsible person  
 229 who is implementing applicable management strategies specified  
 230 in an adopted basin management action plan may ~~shall~~ not be  
 231 required by permit, enforcement action, or otherwise to  
 232 implement additional management strategies to reduce pollutant  
 233 loads to attain the pollutant reductions established pursuant to  
 234 subsection (6) and shall be deemed to be in compliance with this  
 235 section. This subparagraph does not limit the authority of the  
 236 department to amend a basin management action plan as specified  
 237 in subparagraph (a)5.

238 (c) Best management practices.--

239 1. The department, in cooperation with the water  
 240 management districts and other interested parties, as  
 241 appropriate, may develop suitable interim measures, best  
 242 management practices, or other measures necessary to achieve the  
 243 level of pollution reduction established by the department for  
 244 nonagricultural nonpoint pollutant sources in allocations  
 245 developed pursuant to subsection (6) and this subsection. These  
 246 practices and measures may be adopted by rule by the department  
 247 and the water management districts ~~pursuant to ss. 120.536(1)~~  
 248 ~~and 120.547~~, and, where adopted by rule, shall be implemented by  
 249 those parties responsible for nonagricultural nonpoint source  
 250 pollution.

HB 547

2008

251           2. The Department of Agriculture and Consumer Services may  
252 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54  
253 suitable interim measures, best management practices, or other  
254 measures necessary to achieve the level of pollution reduction  
255 established by the department for agricultural pollutant sources  
256 in allocations developed pursuant to subsection (6) and this  
257 subsection or for programs implemented pursuant to paragraph  
258 (11)(b). These practices and measures may be implemented by  
259 those parties responsible for agricultural pollutant sources and  
260 the department, the water management districts, and the  
261 Department of Agriculture and Consumer Services shall assist  
262 with implementation. In the process of developing and adopting  
263 rules for interim measures, best management practices, or other  
264 measures, the Department of Agriculture and Consumer Services  
265 shall consult with the department, the Department of Health, the  
266 water management districts, representatives from affected  
267 farming groups, and environmental group representatives. Such  
268 rules must ~~shall~~ also incorporate provisions for a notice of  
269 intent to implement the practices and a system to assure the  
270 implementation of the practices, including recordkeeping  
271 requirements.

272           3. Where interim measures, best management practices, or  
273 other measures are adopted by rule, the effectiveness of such  
274 practices in achieving the levels of pollution reduction  
275 established in allocations developed by the department pursuant  
276 to subsection (6) and this subsection or in programs implemented  
277 pursuant to paragraph (11)(b) must ~~shall~~ be verified at  
278 representative sites by the department. The department shall use

HB 547

2008

279 best professional judgment in making the initial verification  
280 that the best management practices are reasonably expected to be  
281 effective and, where applicable, must ~~shall~~ notify the  
282 appropriate water management district or the Department of  
283 Agriculture and Consumer Services of its initial verification  
284 prior to the adoption of a rule proposed pursuant to this  
285 paragraph. Implementation, in accordance with rules adopted  
286 under this paragraph, of practices that have been initially  
287 verified to be effective, or verified to be effective by  
288 monitoring at representative sites, by the department, shall  
289 provide a presumption of compliance with state water quality  
290 standards and release from the provisions of s. 376.307(5) for  
291 those pollutants addressed by the practices, and the department  
292 is not authorized to institute proceedings against the owner of  
293 the source of pollution to recover costs or damages associated  
294 with the contamination of surface water or groundwater caused by  
295 those pollutants. Research projects funded by the department, a  
296 water management district, or the Department of Agriculture and  
297 Consumer Services to develop or demonstrate interim measures or  
298 best management practices shall be granted a presumption of  
299 compliance with state water quality standards and a release from  
300 the provisions of s. 376.307(5). The presumption of compliance  
301 and release is ~~shall be~~ limited to the research site and only  
302 for those pollutants addressed by the interim measures or best  
303 management practices. Eligibility for the presumption of  
304 compliance and release is ~~shall be~~ limited to research projects  
305 on sites where the owner or operator of the research site and  
306 the department, a water management district, or the Department

HB 547

2008

307 of Agriculture and Consumer Services have entered into a  
308 contract or other agreement that, at a minimum, specifies the  
309 research objectives, the cost-share responsibilities of the  
310 parties, and a schedule that details the beginning and ending  
311 dates of the project.

312 4. Where water quality problems are demonstrated, despite  
313 the appropriate implementation, operation, and maintenance of  
314 best management practices and other measures required by  
315 ~~according to~~ rules adopted under this paragraph, the department,  
316 a water management district, or the Department of Agriculture  
317 and Consumer Services, in consultation with the department,  
318 shall institute a reevaluation of the best management practice  
319 or other measure. Should the reevaluation determine that the  
320 best management practice or other measure requires modification,  
321 the department, a water management district, or the Department  
322 of Agriculture and Consumer Services, as appropriate, shall  
323 revise the rule to require implementation of the modified  
324 practice within a reasonable time period as specified in the  
325 rule.

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

335 confidentiality specified by this subparagraph for such records  
 336 is maintained.

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

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

349 (a) Delisting water bodies or water body segments from the  
 350 list developed under subsection (4) pursuant to the guidance  
 351 under subsection (5).†

352 (b) Administering ~~Administration of~~ funds to implement the  
 353 total maximum daily load and basin management action planning  
 354 programs.†

355 (c) Water quality credit ~~Procedures for pollutant~~ trading  
 356 among the pollutant sources to a water body or water body  
 357 segment in basins listed in paragraph (f) shall be authorized by  
 358 department rule. By July 1, 2008, rulemaking must be initiated  
 359 which provides for the following: ~~including a mechanism for the~~  
 360 ~~issuance and tracking of pollutant credits. Such procedures may~~  
 361 ~~be implemented through permits or other authorizations and must~~  
 362 ~~be legally binding. Prior to adopting rules for pollutant~~

363 ~~trading under this paragraph, and no later than November 30,~~  
364 ~~2006, the Department of Environmental Protection shall submit a~~  
365 ~~report to the Governor, the President of the Senate, and the~~  
366 ~~Speaker of the House of Representatives containing~~  
367 ~~recommendations on such rules, including the proposed basis for~~  
368 ~~equitable economically based agreements and the tracking and~~  
369 ~~accounting of pollution credits or other similar mechanisms.~~

370 ~~Such recommendations shall be developed in cooperation with a~~  
371 ~~technical advisory committee that includes experts in pollutant~~  
372 ~~trading and representatives of potentially affected parties;~~

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

375 2. A publicly accessible water quality credit trading  
376 registry that tracks water quality credits and trades and lists  
377 the prices paid for such credits and that does not allow the  
378 department to participate in the establishment of such prices;

379 3. Limitations on the availability and use of water  
380 quality credits, including a list of eligible pollutants or  
381 parameters and limited water quality requirements and, where  
382 appropriate, adjustments to reflect best management practice  
383 performance uncertainties and water-segment-specific location  
384 factors;

385 4. The timing and duration of credits and allowance for  
386 credit transferability; and

387 5. Mechanisms for determining and ensuring compliance with  
388 trading procedures, including recordkeeping, monitoring,  
389 reporting, and inspections. Generators of traded credits are

390 responsible for achieving the load reductions on which the  
 391 credits are based.

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

397 (e) Implementation of other specific provisions.

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

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

405 403.088 Water pollution operation permits; conditions.--

406 (2)

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

410 1. The applicant is constructing, installing, or placing  
 411 into operation, or has submitted plans and a reasonable schedule  
 412 for constructing, installing, or placing into operation, an  
 413 approved pollution abatement facility or alternative waste  
 414 disposal system;

415 2. The applicant needs permission to pollute the waters  
 416 within the state for a period of time necessary to complete  
 417 research, planning, construction, installation, or operation of

HB 547

2008

418 an approved and acceptable pollution abatement facility or  
 419 alternative waste disposal system;

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

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

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

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

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

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