

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 that a water
20 quality credit trading pilot project be limited to the
21 Lower St. Johns River Basin; requiring that the department
22 provide the Legislature with an annual report regarding
23 the effectiveness of the pilot project; providing report
24 requirements; providing that the department may authorize
25 and establish specific requirements for water quality
26 credit trading as part of the Lower St. Johns River Basin
27 adopted basin management action plan; correcting cross-
28 references to conform to changes made by the act; amending

29 s. 403.088, F.S.; authorizing the department to revise a
 30 water pollution operation permit under certain
 31 circumstances; authorizing the department to revise,
 32 renew, issue, or reissue such a permit if a water quality
 33 credit trade that meets the requirements of a total
 34 maximum daily load allocation has been approved in a final
 35 order issued pursuant to state law; requiring that revised
 36 permits be accompanied by an order establishing a schedule
 37 for achieving compliance with all permit conditions;
 38 providing an effective date.

39

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

41

42 Section 1. Subsections (7) and (8) of section 403.067,
 43 Florida Statutes, are amended, subsections (9) through (12) are
 44 renumbered as sections (10) through (13), respectively, and a
 45 new subsection (9) is added to that section, to read:

46 403.067 Establishment and implementation of total maximum
 47 daily loads.--

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

50 (a) Basin management action plans.--

51 1. In developing and implementing the total maximum daily
 52 load for a water body, the department, or the department in
 53 conjunction with a water management district, may develop a
 54 basin management action plan that addresses some or all of the
 55 watersheds and basins tributary to the water body. Such a plan
 56 must ~~shall~~ integrate the appropriate management strategies

57 available to the state through existing water quality protection
 58 programs to achieve the total maximum daily loads and may
 59 provide for phased implementation of these management strategies
 60 to promote timely, cost-effective actions as provided for in s.
 61 403.151. The plan must ~~shall~~ establish a schedule for
 62 implementing the management strategies, establish a basis for
 63 evaluating the plan's effectiveness, and identify feasible
 64 funding strategies for implementing the plan's management
 65 strategies. The management strategies may include regional
 66 treatment systems or other public works, where appropriate, and,
 67 in the basin listed in subsection (9) for which a basin
 68 management action plan has been adopted, voluntary trading of
 69 water quality credits to achieve the needed pollutant load
 70 reductions.

71 2. A basin management action plan must ~~shall~~ equitably
 72 allocate, pursuant to paragraph (6) (b), pollutant reductions to
 73 individual basins, as a whole to all basins, or to each
 74 identified point source or category of nonpoint sources, as
 75 appropriate. For nonpoint sources for which best management
 76 practices have been adopted, the initial requirement specified
 77 by the plan must ~~shall~~ be those practices developed pursuant to
 78 paragraph (c). Where appropriate, the plan may take into account
 79 the benefits of provide pollutant load reduction achieved by
 80 point or nonpoint sources ~~credits to dischargers~~ that have
 81 implemented management strategies to reduce pollutant loads,
 82 including best management practices, prior to the development of
 83 the basin management action plan. The plan must ~~shall~~ also

84 identify the mechanisms that will address ~~by which~~ potential
85 future increases in pollutant loading ~~will be addressed~~.

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

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

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

125 6. In accordance with procedures adopted by rule under
126 paragraph (8)(c), plans for the basin listed in subsection (9)
127 may allow point or nonpoint sources that will achieve greater
128 pollutant reductions than required by an adopted total maximum
129 load or wasteload allocation to generate, register, and trade
130 water quality credits for the excess reductions to enable other
131 sources to achieve their allocation; however, the generation of
132 water quality credits does not remove the obligation of a source
133 or activity to meet applicable technology requirements or
134 adopted best management practices. Such plans must allow trading
135 between NPDES permittees, and trading that may or may not
136 involve NPDES permittees, where the generation or use of the
137 credits involve an entity or activity not subject to department
138 water discharge permits whose owner voluntarily elects to obtain
139 department authorization for the generation and sale of credits.

140 Notwithstanding any such water quality credit trades, entities
141 subject to a department water discharge permit shall remain
142 responsible for compliance with the limitations of the
143 department water discharge permit, including any applicable load
144 or wasteload allocation.

145 7. The provisions of the department's rule relating to the
146 equitable abatement of pollutants into surface waters may not be
147 applied to water bodies or water body segments for which a basin
148 management plan that takes into account future new or expanded
149 activities or discharges has been adopted pursuant to this
150 section.

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

152 1. The department shall be the lead agency in coordinating
153 the implementation of the total maximum daily loads through
154 existing water quality protection programs. Application of a
155 total maximum daily load by a water management district must
156 ~~shall~~ be consistent with this section and shall not require the
157 issuance of an order or a separate action pursuant to s.
158 120.536(1) or s. 120.54 for the adoption of the calculation and
159 allocation previously established by the department. Such
160 programs may include, but are not limited to:

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

163 b. Nonregulatory and incentive-based programs, including
164 best management practices, cost sharing, waste minimization,
165 pollution prevention, agreements established pursuant to s.
166 403.061(21), and public education;

167 c. Other water quality management and restoration
 168 activities, for example surface water improvement and management
 169 plans approved by water management districts or basin management
 170 action plans developed pursuant to this subsection;

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

173 e. Public works including capital facilities; or

174 f. Land acquisition.

175 2. For a basin management action plan adopted pursuant to
 176 paragraph (a) ~~subparagraph (a)4.~~, any management strategies and
 177 pollutant reduction requirements associated with a pollutant of
 178 concern for which a total maximum daily load has been developed,
 179 including effluent limits set forth for a discharger subject to
 180 NPDES permitting, if any, must ~~shall~~ be included in a timely
 181 manner in subsequent NPDES permits or permit modifications for
 182 that discharger. The department shall not impose limits or
 183 conditions implementing an adopted total maximum daily load in
 184 an NPDES permit until the permit expires, the discharge is
 185 modified, or the permit is reopened pursuant to an adopted basin
 186 management action plan, unless required by federal law or
 187 regulation.

188 a. Absent a detailed allocation, total maximum daily loads
 189 shall be implemented through NPDES permit conditions that
 190 provide for ~~afford~~ a compliance schedule. In such instances, a
 191 facility's NPDES permit must ~~shall~~ allow time for the issuance
 192 of an order adopting the basin management action plan. The time
 193 allowed for the issuance of an order adopting the plan may ~~shall~~
 194 not exceed 5 years. Upon issuance of an order adopting the plan,

195 the permit must ~~shall~~ be reopened or renewed, as necessary, and
196 permit conditions consistent with the plan must ~~shall~~ be
197 established. Notwithstanding ~~the~~ other provisions of this
198 subparagraph, upon request by a NPDES permittee, the department
199 as part of a permit issuance, renewal, or modification may
200 establish individual allocations prior to the adoption of a
201 basin management action plan.

202 b. For holders of NPDES municipal separate storm sewer
203 system permits and other stormwater sources, implementation of a
204 total maximum daily load or basin management action plan must
205 ~~shall~~ be achieved, to the maximum extent practicable, through
206 the use of best management practices or other management
207 measures.

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

211 d. Management strategies set forth in a basin management
212 action plan to be implemented by a discharger subject to
213 permitting by the department must ~~shall~~ be completed pursuant to
214 the schedule set forth in the basin management action plan. This
215 implementation schedule may extend beyond the 5-year term of an
216 NPDES permit.

217 e. Management strategies and pollution reduction
218 requirements set forth in a basin management action plan for a
219 specific pollutant of concern shall not be subject to challenge
220 under chapter 120 at the time they are incorporated, in an
221 identical form, into a subsequent NPDES permit or permit
222 modification.

223 f. For nonagricultural pollutant sources not subject to
224 NPDES permitting but permitted pursuant to other state,
225 regional, or local water quality programs, the pollutant
226 reduction actions adopted in a basin management action plan
227 shall be implemented to the maximum extent practicable as part
228 of those permitting programs.

229 g. A nonpoint source discharger included in a basin
230 management action plan must ~~shall~~ demonstrate compliance with
231 the pollutant reductions established under ~~pursuant to~~
232 subsection (6) by either implementing the appropriate best
233 management practices established pursuant to paragraph (c) or
234 conducting water quality monitoring prescribed by the department
235 or a water management district. A nonpoint source discharger
236 may, in accordance with department rules, supplement the
237 implementation of best management practices with water quality
238 credit trades in order to demonstrate compliance with the
239 pollutant reductions established under subsection (6).

240 h. A nonpoint source discharger included in a basin
241 management action plan may be subject to enforcement action by
242 the department or a water management district based upon a
243 failure to implement the responsibilities set forth in sub-
244 subparagraph g.

245 i. A landowner, discharger, or other responsible person
246 who is implementing applicable management strategies specified
247 in an adopted basin management action plan shall not be required
248 by permit, enforcement action, or otherwise to implement
249 additional management strategies to reduce pollutant loads to
250 attain the pollutant reductions established pursuant to

251 subsection (6) and shall be deemed to be in compliance with this
 252 section. This subparagraph does not limit the authority of the
 253 department to amend a basin management action plan as specified
 254 in subparagraph (a)5.

255 (c) Best management practices.--

256 1. The department, in cooperation with the water
 257 management districts and other interested parties, as
 258 appropriate, may develop suitable interim measures, best
 259 management practices, or other measures necessary to achieve the
 260 level of pollution reduction established by the department for
 261 nonagricultural nonpoint pollutant sources in allocations
 262 developed pursuant to subsection (6) and this subsection. These
 263 practices and measures may be adopted by rule by the department
 264 and the water management districts ~~pursuant to ss. 120.536(1)~~
 265 ~~and 120.54~~, and, where adopted by rule, shall be implemented by
 266 those parties responsible for nonagricultural nonpoint source
 267 pollution.

268 2. The Department of Agriculture and Consumer Services may
 269 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54
 270 suitable interim measures, best management practices, or other
 271 measures necessary to achieve the level of pollution reduction
 272 established by the department for agricultural pollutant sources
 273 in allocations developed pursuant to subsection (6) and this
 274 subsection or for programs implemented pursuant to paragraph
 275 (12) ~~(11)~~ (b). These practices and measures may be implemented by
 276 those parties responsible for agricultural pollutant sources and
 277 the department, the water management districts, and the
 278 Department of Agriculture and Consumer Services shall assist

279 | with implementation. In the process of developing and adopting
280 | rules for interim measures, best management practices, or other
281 | measures, the Department of Agriculture and Consumer Services
282 | shall consult with the department, the Department of Health, the
283 | water management districts, representatives from affected
284 | farming groups, and environmental group representatives. Such
285 | rules must ~~shall~~ also incorporate provisions for a notice of
286 | intent to implement the practices and a system to assure the
287 | implementation of the practices, including recordkeeping
288 | requirements.

289 | 3. Where interim measures, best management practices, or
290 | other measures are adopted by rule, the effectiveness of such
291 | practices in achieving the levels of pollution reduction
292 | established in allocations developed by the department pursuant
293 | to subsection (6) and this subsection or in programs implemented
294 | pursuant to paragraph (12) ~~(11)~~ (b) must ~~shall~~ be verified at
295 | representative sites by the department. The department shall use
296 | best professional judgment in making the initial verification
297 | that the best management practices are reasonably expected to be
298 | effective and, where applicable, must ~~shall~~ notify the
299 | appropriate water management district or the Department of
300 | Agriculture and Consumer Services of its initial verification
301 | prior to the adoption of a rule proposed pursuant to this
302 | paragraph. Implementation, in accordance with rules adopted
303 | under this paragraph, of practices that have been initially
304 | verified to be effective, or verified to be effective by
305 | monitoring at representative sites, by the department, shall
306 | provide a presumption of compliance with state water quality

307 standards and release from the provisions of s. 376.307(5) for
 308 those pollutants addressed by the practices, and the department
 309 is not authorized to institute proceedings against the owner of
 310 the source of pollution to recover costs or damages associated
 311 with the contamination of surface water or groundwater caused by
 312 those pollutants. Research projects funded by the department, a
 313 water management district, or the Department of Agriculture and
 314 Consumer Services to develop or demonstrate interim measures or
 315 best management practices shall be granted a presumption of
 316 compliance with state water quality standards and a release from
 317 the provisions of s. 376.307(5). The presumption of compliance
 318 and release is ~~shall be~~ limited to the research site and only
 319 for those pollutants addressed by the interim measures or best
 320 management practices. Eligibility for the presumption of
 321 compliance and release is ~~shall be~~ limited to research projects
 322 on sites where the owner or operator of the research site and
 323 the department, a water management district, or the Department
 324 of Agriculture and Consumer Services have entered into a
 325 contract or other agreement that, at a minimum, specifies the
 326 research objectives, the cost-share responsibilities of the
 327 parties, and a schedule that details the beginning and ending
 328 dates of the project.

329 4. Where water quality problems are demonstrated, despite
 330 the appropriate implementation, operation, and maintenance of
 331 best management practices and other measures required by
 332 ~~according to~~ rules adopted under this paragraph, the department,
 333 a water management district, or the Department of Agriculture
 334 and Consumer Services, in consultation with the department,

335 shall institute a reevaluation of the best management practice
 336 or other measure. Should the reevaluation determine that the
 337 best management practice or other measure requires modification,
 338 the department, a water management district, or the Department
 339 of Agriculture and Consumer Services, as appropriate, shall
 340 revise the rule to require implementation of the modified
 341 practice within a reasonable time period as specified in the
 342 rule.

343 5. Agricultural records relating to processes or methods
 344 of production, costs of production, profits, or other financial
 345 information held by the Department of Agriculture and Consumer
 346 Services pursuant to subparagraphs 3. and 4. or pursuant to any
 347 rule adopted pursuant to subparagraph 2. are confidential and
 348 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 349 Constitution. Upon request, records made confidential and exempt
 350 pursuant to this subparagraph shall be released to the
 351 department or any water management district if ~~provided that~~ the
 352 confidentiality specified by this subparagraph for such records
 353 is maintained.

354 6. The provisions of subparagraphs 1. and 2. do ~~shall~~ not
 355 preclude the department or water management district from
 356 requiring compliance with water quality standards or with
 357 current best management practice requirements set forth in any
 358 applicable regulatory program authorized by law to protect ~~for~~
 359 ~~the purpose of protecting~~ water quality. Additionally,
 360 subparagraphs 1. and 2. are applicable only to the extent that
 361 they do not conflict with any rules adopted by the department

362 which ~~that~~ are necessary to maintain a federally delegated or
 363 approved program.

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

366 (a) Delisting water bodies or water body segments from the
 367 list developed under subsection (4) pursuant to the guidance
 368 under subsection (5).†

369 (b) Administering ~~Administration of~~ funds to implement the
 370 total maximum daily load and basin management action planning
 371 programs.†

372 (c) Water quality credit ~~Procedures for pollutant~~ trading
 373 among the pollutant sources to a water body or water body
 374 segment in the basin listed in subsection (9), which shall be
 375 consistent with federal requirements and implemented through
 376 permits, including water quality credit trading permits, other
 377 authorizations, or other legally binding agreements as
 378 established by department rule. By July 1, 2008, rulemaking must
 379 be initiated which provides for the following:~~including a~~
 380 ~~mechanism for the issuance and tracking of pollutant credits.~~
 381 ~~Such procedures may be implemented through permits or other~~
 382 ~~authorizations and must be legally binding. Prior to adopting~~
 383 ~~rules for pollutant trading under this paragraph, and no later~~
 384 ~~than November 30, 2006, the Department of Environmental~~
 385 ~~Protection shall submit a report to the Governor, the President~~
 386 ~~of the Senate, and the Speaker of the House of Representatives~~
 387 ~~containing recommendations on such rules, including the proposed~~
 388 ~~basis for equitable economically based agreements and the~~
 389 ~~tracking and accounting of pollution credits or other similar~~

390 ~~mechanisms. Such recommendations shall be developed in~~
391 ~~cooperation with a technical advisory committee that includes~~
392 ~~experts in pollutant trading and representatives of potentially~~
393 ~~affected parties;~~

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

396 2. A publicly accessible water quality credit trading
397 registry that tracks water quality credits, trading activities,
398 and prices paid for such credits. Entities that participate in
399 water quality credit trades shall timely report to the
400 department the prices for credits and any state funding received
401 for the facilities or activities that generated the credits. The
402 department shall not participate in the establishment of credit
403 prices.

404 3. Limitations on the availability and use of water
405 quality credits, including a list of eligible pollutants or
406 parameters and limited water quality requirements and, where
407 appropriate, adjustments to reflect best management practice
408 performance uncertainties and water-segment-specific location
409 factors.

410 4. The timing and duration of credits and allowance for
411 credit transferability.

412 5. Mechanisms for determining and ensuring compliance with
413 trading procedures, including recordkeeping, monitoring,
414 reporting, and inspections. Generators of traded credits are
415 responsible for achieving the load reductions on which the
416 credits are based and persons or entities acquiring credits are

417 responsible for enforcing the terms of water quality credit
 418 acquisition agreements and meeting applicable permit conditions.

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

424 (e) Implementation of other specific provisions.

425 (9) WATER QUALITY CREDIT TRADING.--Water quality credit
 426 trading shall be limited to the Lower St. Johns River Basin, as
 427 defined by the department, as a pilot project. The department
 428 may authorize water quality credit trading and establish
 429 specific requirements for trading in the adopted basin
 430 management action plan for the Lower St. Johns River Basin prior
 431 to the adoption of rules under paragraph (8) (c) in order to
 432 effectively implement the pilot project. Entities that
 433 participate in water quality credit trades shall timely report
 434 to the department the prices for credits, how the prices were
 435 determined, and any state funding received for the facilities or
 436 activities that generated the credits. The department shall not
 437 participate in the establishment of credit prices. No later than
 438 24 months after adoption of the basin management action plan for
 439 the Lower St. Johns River, the department shall submit a report
 440 to the Governor, the President of the Senate, and the Speaker of
 441 the House of Representatives on the effectiveness of the pilot
 442 project, including the following information:

443 (a) A summary of how water quality credit trading was
 444 implemented, including the number of pounds of pollutants

445 traded.

446 (b) A description of the individual trades and estimated
 447 pollutant load reductions that are expected to result from each
 448 trade.

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

450 (d) Prices associated with the trades, as reported by the
 451 traders.

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

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

458 403.088 Water pollution operation permits; conditions.--

459 (2)

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

463 1. The applicant is constructing, installing, or placing
 464 into operation, or has submitted plans and a reasonable schedule
 465 for constructing, installing, or placing into operation, an
 466 approved pollution abatement facility or alternative waste
 467 disposal system;

468 2. The applicant needs permission to pollute the waters
 469 within the state for a period of time necessary to complete
 470 research, planning, construction, installation, or operation of
 471 an approved and acceptable pollution abatement facility or
 472 alternative waste disposal system;

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

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

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

480 6. A water quality credit trade that meets the
481 requirements of s. 403.067.

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

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