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1                                   A bill to be entitled  
 2           An act relating to water quality credit trading;  
 3           amending s. 403.067, F.S.; declaring the policy of the  
 4           state with regard to water quality credit trading;  
 5           providing for the South Florida Water Management  
 6           District to coordinate with the Department of  
 7           Environmental Protection to establish public-private  
 8           partnerships for the development of water quality  
 9           enhancement projects and water quality credit trading  
 10          pilot programs in the Caloosahatchee Basin, the St.  
 11          Lucie Basin, and the Lake Okeechobee Basin; requiring  
 12          the department to amend specified rules; conforming  
 13          provisions; providing an effective date.

14  
 15 Be It Enacted by the Legislature of the State of Florida:

16  
 17           Section 1. Paragraph (a) of subsection (7) and subsections  
 18           (8), (10), and (14) of section 403.067, Florida Statutes, are  
 19           amended to read:

20           403.067 Establishment and implementation of total maximum  
 21           daily loads.—

22           (7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND  
 23           IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

24           (a) Basin management action plans.—

25           1. In developing and implementing the total maximum daily  
 26           load for a water body, the department, or the department in  
 27           conjunction with a water management district, may develop a  
 28           basin management action plan that addresses some or all of the

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29 | watersheds and basins tributary to the water body. Such a plan  
30 | must integrate the appropriate management strategies available  
31 | to the state through existing water quality protection programs  
32 | to achieve the total maximum daily loads and may provide for  
33 | phased implementation of these management strategies to promote  
34 | timely, cost-effective actions as provided for in s. 403.151.  
35 | The plan must establish a schedule for implementing the  
36 | management strategies, establish a basis for evaluating the  
37 | plan's effectiveness, and identify feasible funding strategies  
38 | for implementing the plan's management strategies. The  
39 | management strategies may include regional treatment systems or  
40 | other public works, where appropriate, and, in the basins ~~basin~~  
41 | listed in subsection (10) for which ~~a~~ basin management action  
42 | plans have ~~plan has~~ been adopted, voluntary trading of water  
43 | quality credits to achieve the needed pollutant load reductions.

44 |       2. A basin management action plan must equitably allocate,  
45 | pursuant to paragraph (6) (b), pollutant reductions to individual  
46 | basins, as a whole to all basins, or to each identified point  
47 | source or category of nonpoint sources, as appropriate. For  
48 | nonpoint sources for which best management practices have been  
49 | adopted, the initial requirement specified by the plan must be  
50 | those practices developed pursuant to paragraph (c). Where  
51 | appropriate, the plan may take into account the benefits of  
52 | pollutant load reduction achieved by point or nonpoint sources  
53 | that have implemented management strategies to reduce pollutant  
54 | loads, including best management practices, before ~~prior~~ to the  
55 | development of the basin management action plan. The plan must  
56 | also identify the mechanisms that will address potential future

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57 | increases in pollutant loading.

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

80 |         4. The department shall adopt all or any part of a basin  
81 | management action plan and any amendment to such plan by  
82 | secretarial order pursuant to chapter 120 to implement ~~the~~  
83 | ~~provisions~~ of this section.

84 |         5. The basin management action plan must include

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85 milestones for implementation and water quality improvement, and  
86 an associated water quality monitoring component sufficient to  
87 evaluate whether reasonable progress in pollutant load  
88 reductions is being achieved over time. An assessment of  
89 progress toward these milestones shall be conducted every 5  
90 years, and revisions to the plan shall be made as appropriate.  
91 Revisions to the basin management action plan shall be made by  
92 the department in cooperation with basin stakeholders. Revisions  
93 to the management strategies required for nonpoint sources must  
94 follow the procedures set forth in subparagraph (c)4. Revised  
95 basin management action plans must be adopted pursuant to  
96 subparagraph 4.

97 6. In accordance with procedures adopted by rule under  
98 paragraph (9)(c), basin management action plans may allow point  
99 or nonpoint sources that will achieve greater pollutant  
100 reductions than required by an adopted total maximum load or  
101 wasteload allocation to generate, register, and trade water  
102 quality credits for the excess reductions to enable other  
103 sources to achieve their allocation; however, the generation of  
104 water quality credits does not remove the obligation of a source  
105 or activity to meet applicable technology requirements or  
106 adopted best management practices. Such plans must allow trading  
107 between NPDES permittees, and trading that may or may not  
108 involve NPDES permittees, where the generation or use of the  
109 credits involve an entity or activity not subject to department  
110 water discharge permits whose owner voluntarily elects to obtain  
111 department authorization for the generation and sale of credits.

112 7. The provisions of the department's rule relating to the

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113 equitable abatement of pollutants into surface waters may ~~shall~~  
 114 not be applied to water bodies or water body segments for which  
 115 a basin management plan that takes into account future new or  
 116 expanded activities or discharges has been adopted under this  
 117 section.

118 (8) WATER QUALITY CREDIT TRADING.—

119 (a) It is the policy of the state to encourage the  
 120 development of a robust water quality credit trading program.  
 121 The Legislature recognizes that water quality credit trading can  
 122 lead to increased environmental benefits at reduced costs and  
 123 encourages the creation of water quality credits through public-  
 124 private partnerships when at all possible.

125 (b) ~~(a)~~ Water quality credit trading must be consistent  
 126 with federal law and regulation.

127 (c) ~~(b)~~ Water quality credit trading must be implemented  
 128 through permits, including water quality credit trading permits,  
 129 other authorizations, or other legally binding agreements as  
 130 established by department rule.

131 (d) ~~(e)~~ The department shall establish the pollutant load  
 132 reduction value of water quality credits and shall be  
 133 responsible for authorizing their use.

134 (e) ~~(d)~~ A person that acquires water quality credits  
 135 ("buyer") shall timely submit to the department an affidavit,  
 136 signed by the buyer and the credit generator ("seller"),  
 137 disclosing the term of acquisition, number of credits, unit  
 138 credit price paid, and any state funding received for the  
 139 facilities or activities that generate the credits. The  
 140 department may ~~shall~~ not participate in the establishment of

141 credit prices.

142 (f)~~(e)~~ Sellers of water quality credits are responsible  
 143 for achieving the load reductions on which the credits are based  
 144 and complying with the terms of the department authorization and  
 145 any trading agreements into which they may have entered.

146 (g)~~(f)~~ Buyers of water quality credits are responsible for  
 147 complying with the terms of the department water discharge  
 148 permit.

149 (h)~~(g)~~ The department shall take appropriate action to  
 150 address the failure of a credit seller to fulfill its  
 151 obligations, including, as necessary, deeming the seller's  
 152 credits invalid if the seller cannot achieve the load reductions  
 153 on which the credits were based in a reasonable time. If the  
 154 department determines duly acquired water quality credits to be  
 155 invalid, in whole or in part, thereby causing the credit buyer  
 156 to be unable to timely meet its pollutant reduction obligations  
 157 under this section, the department shall issue an order  
 158 establishing the actions required of the buyer to meet its  
 159 obligations by alternative means and a reasonable schedule for  
 160 completing the actions. The invalidation of credits does ~~shall~~  
 161 not ~~itself~~ constitute a violation of the buyer's water discharge  
 162 permit.

163 (10) WATER QUALITY CREDIT TRADING PILOT PROJECTS.-

164 (a) Water quality credit trading is ~~shall be~~ limited to  
 165 pilot programs in:

166 1. The Lower St. Johns River Basin~~7~~ as defined by the  
 167 department.~~7~~

168 2. The Caloosahatchee Basin as defined by the South

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169 Florida Water Management District.

170 3. The St. Lucie Basin as defined by the South Florida  
171 Water Management District.

172 4. The Lake Okeechobee Basin as defined by the South  
173 Florida Water Management District.

174 (b) The South Florida Water Management District shall  
175 coordinate with the department in the establishment of public-  
176 private partnerships for the development of water quality  
177 enhancement projects and water quality trading pilot programs in  
178 the Caloosahatchee Basin, the St. Lucie Basin, and the Lake  
179 Okeechobee Basin as a pilot project. The department may  
180 authorize water quality credit trading and establish specific  
181 requirements for trading in the adopted basin management action  
182 plan for the Lower St. Johns River Basin prior to the adoption  
183 of rules under paragraph (9)(c) in order to effectively  
184 implement the pilot project.

185 (c) Entities that participate in water quality credit  
186 trades shall timely report to the department the prices for  
187 credits, how the prices were determined, and any state funding  
188 received for the facilities or activities that generated the  
189 credits. The department shall not participate in the  
190 establishment of credit prices.

191 (d) The department shall amend the rules adopted pursuant  
192 to paragraph (9)(c) under chapter 62-306, Florida Administrative  
193 Code, to reflect the establishment of pilot programs in the  
194 Caloosahatchee Basin, the St. Lucie Basin, and the Lake  
195 Okeechobee Basin. No later than 24 months after adoption of the  
196 basin management action plan for the Lower St. Johns River, the

197 ~~department shall submit a report to the Governor, the President~~  
 198 ~~of the Senate, and the Speaker of the House of Representatives~~  
 199 ~~on the effectiveness of the pilot project, including the~~  
 200 ~~following information:~~

201 ~~(a) A summary of how water quality credit trading was~~  
 202 ~~implemented, including the number of pounds of pollutants~~  
 203 ~~traded.~~

204 ~~(b) A description of the individual trades and estimated~~  
 205 ~~pollutant load reductions that are expected to result from each~~  
 206 ~~trade.~~

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

208 ~~(d) Prices associated with the trades, as reported by the~~  
 209 ~~traders.~~

210 ~~(e) A recommendation as to whether other areas of the~~  
 211 ~~state would benefit from water quality credit trading and, if~~  
 212 ~~so, an identification of the statutory changes necessary to~~  
 213 ~~expand the scope of trading.~~

214 (14) EFFECT OF RULES AND ORDERS.-In order to provide  
 215 adequate due process while ensuring timely development of total  
 216 maximum daily loads, proposed rules and orders authorized by  
 217 this section are ~~act shall be~~ ineffective pending resolution of  
 218 an administrative proceeding under ~~a~~ s. 120.54(3), s. 120.56, s.  
 219 120.569, or s. 120.57 ~~administrative proceeding~~. However, the  
 220 department may go forward before ~~prior to~~ resolution of such  
 221 administrative proceedings with subsequent agency actions  
 222 authorized by subsections (2)-(6), if ~~provided that~~ the  
 223 department can support and substantiate those actions using the  
 224 underlying bases for the rules or orders without the benefit of

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225 | any legal presumption favoring, or in deference to, the  
226 | challenged rules or orders.

227 |       Section 2. This act shall take effect July 1, 2012.