

By the Committee on Environmental Preservation and Conservation;
and Senator Grimsley

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1 A bill to be entitled
2 An act relating to water quality credit trading;
3 reenacting s. 373.4595(1)(n), F.S., relating to water
4 quality credit trading, to incorporate the amendments
5 made to s. 403.067, F.S., in a reference thereto;
6 amending s. 403.067, F.S.; authorizing the department
7 to implement water quality credit trading in adopted
8 basin management action plans on an ongoing basis;
9 deleting a requirement that voluntary trading of water
10 credits be limited to the Lower St. Johns River Basin;
11 authorizing additional water quality protection
12 programs to participate in water quality credit
13 trading; revising provisions relating to rulemaking
14 for water quality credit trading programs; eliminating
15 a requirement that water quality credit trading be
16 limited to the Lower St. Johns River Basin as a pilot
17 project; deleting a required report; making technical
18 changes; reenacting s. 403.088(2)(e), F.S., relating
19 to water pollution operation permits, to incorporate
20 the amendments made to s. 403.067, F.S., in a
21 reference thereto; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. For the purpose of incorporating the amendment
26 made by this act to section 403.067, Florida Statutes, in a
27 reference thereto, paragraph (n) of subsection (1) of section
28 373.4595, Florida Statutes, is reenacted to read:

29 373.4595 Northern Everglades and Estuaries Protection

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30 Program.—

31 (1) FINDINGS AND INTENT.—

32 (n) It is the intent of the Legislature that the
33 coordinating agencies encourage and support the development of
34 creative public-private partnerships and programs, including
35 opportunities for water storage and quality improvement on
36 private lands and water quality credit trading, to facilitate or
37 further the restoration of the surface water resources of the
38 Lake Okeechobee watershed, the Caloosahatchee River watershed,
39 and the St. Lucie River watershed, consistent with s. 403.067.

40 Section 2. Paragraphs (a) and (b) of subsection (7) and
41 subsections (8) through (14) of section 403.067, Florida
42 Statutes, are amended to read:

43 403.067 Establishment and implementation of total maximum
44 daily loads.—

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

47 (a) *Basin management action plans.*—

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

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59 management strategies, establish a basis for evaluating the
60 plan's effectiveness, and identify feasible funding strategies
61 for implementing the plan's management strategies. The
62 management strategies may include regional treatment systems or
63 other public works, where appropriate, and, ~~in the basin listed~~
64 ~~in subsection (10) for which a basin management action plan has~~
65 ~~been adopted,~~ voluntary trading of water quality credits to
66 achieve the needed pollutant load reductions.

67 2. A basin management action plan must equitably allocate,
68 pursuant to paragraph (6) (b), pollutant reductions to individual
69 basins, as a whole to all basins, or to each identified point
70 source or category of nonpoint sources, as appropriate. For
71 nonpoint sources for which best management practices have been
72 adopted, the initial requirement specified by the plan must be
73 those practices developed pursuant to paragraph (c). Where
74 appropriate, the plan may take into account the benefits of
75 pollutant load reduction achieved by point or nonpoint sources
76 that have implemented management strategies to reduce pollutant
77 loads, including best management practices, before ~~prior to~~ the
78 development of the basin management action plan. The plan must
79 also identify the mechanisms that will address potential future
80 increases in pollutant loading.

81 3. The basin management action planning process is intended
82 to involve the broadest possible range of interested parties,
83 with the objective of encouraging the greatest amount of
84 cooperation and consensus possible. In developing a basin
85 management action plan, the department shall assure that key
86 stakeholders, including, but not limited to, applicable local
87 governments, water management districts, the Department of

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88 Agriculture and Consumer Services, other appropriate state
89 agencies, local soil and water conservation districts,
90 environmental groups, regulated interests, and affected
91 pollution sources, are invited to participate in the process.
92 The department shall hold at least one public meeting in the
93 vicinity of the watershed or basin to discuss and receive
94 comments during the planning process and shall otherwise
95 encourage public participation to the greatest practicable
96 extent. Notice of the public meeting must be published in a
97 newspaper of general circulation in each county in which the
98 watershed or basin lies not less than 5 days nor more than 15
99 days before the public meeting. A basin management action plan
100 does ~~shall~~ not supplant or otherwise alter any assessment made
101 under subsection (3) or subsection (4) or any calculation or
102 initial allocation.

103 4. The department shall adopt all or any part of a basin
104 management action plan and any amendment to such plan by
105 secretarial order pursuant to chapter 120 to implement the
106 provisions of this section.

107 5. The basin management action plan must include milestones
108 for implementation and water quality improvement, and an
109 associated water quality monitoring component sufficient to
110 evaluate whether reasonable progress in pollutant load
111 reductions is being achieved over time. An assessment of
112 progress toward these milestones shall be conducted every 5
113 years, and revisions to the plan shall be made as appropriate.
114 Revisions to the basin management action plan shall be made by
115 the department in cooperation with basin stakeholders. Revisions
116 to the management strategies required for nonpoint sources must

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117 follow the procedures set forth in subparagraph (c)4. Revised
118 basin management action plans must be adopted pursuant to
119 subparagraph 4.

120 6. In accordance with procedures adopted by rule under
121 paragraph (9)(c), basin management action plans, and other
122 pollution control programs under local, state, or federal
123 authority as provided in subsection (4), may allow point or
124 nonpoint sources that will achieve greater pollutant reductions
125 than required by an adopted total maximum load or wasteload
126 allocation to generate, register, and trade water quality
127 credits for the excess reductions to enable other sources to
128 achieve their allocation; however, the generation of water
129 quality credits does not remove the obligation of a source or
130 activity to meet applicable technology requirements or adopted
131 best management practices. Such plans must allow trading between
132 NPDES permittees, and trading that may or may not involve NPDES
133 permittees, where the generation or use of the credits involve
134 an entity or activity not subject to department water discharge
135 permits whose owner voluntarily elects to obtain department
136 authorization for the generation and sale of credits.

137 7. The provisions of the department's rule relating to the
138 equitable abatement of pollutants into surface waters do not
139 apply ~~shall not be applied~~ to water bodies or water body
140 segments for which a basin management plan that takes into
141 account future new or expanded activities or discharges has been
142 adopted under this section.

143 (b) *Total maximum daily load implementation.*—

144 1. The department shall be the lead agency in coordinating
145 the implementation of the total maximum daily loads through

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146 existing water quality protection programs. Application of a
147 total maximum daily load by a water management district must be
148 consistent with this section and does ~~shall~~ not require the
149 issuance of an order or a separate action pursuant to s.
150 120.536(1) or s. 120.54 for the adoption of the calculation and
151 allocation previously established by the department. Such
152 programs may include, but are not limited to:

- 153 a. Permitting and other existing regulatory programs,
154 including water-quality-based effluent limitations;
- 155 b. Nonregulatory and incentive-based programs, including
156 best management practices, cost sharing, waste minimization,
157 pollution prevention, agreements established pursuant to s.
158 403.061(21), and public education;
- 159 c. Other water quality management and restoration
160 activities, for example surface water improvement and management
161 plans approved by water management districts or basin management
162 action plans developed pursuant to this subsection;
- 163 d. Trading of water quality credits or other equitable
164 economically based agreements;
- 165 e. Public works including capital facilities; or
- 166 f. Land acquisition.
- 167 2. For a basin management action plan adopted pursuant to
168 paragraph (a), any management strategies and pollutant reduction
169 requirements associated with a pollutant of concern for which a
170 total maximum daily load has been developed, including effluent
171 limits set forth for a discharger subject to NPDES permitting,
172 if any, must be included in a timely manner in subsequent NPDES
173 permits or permit modifications for that discharger. The
174 department may ~~shall~~ not impose limits or conditions

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175 implementing an adopted total maximum daily load in an NPDES
176 permit until the permit expires, the discharge is modified, or
177 the permit is reopened pursuant to an adopted basin management
178 action plan.

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

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

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

201 d. Management strategies set forth in a basin management
202 action plan to be implemented by a discharger subject to
203 permitting by the department must be completed pursuant to the

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204 schedule set forth in the basin management action plan. This
205 implementation schedule may extend beyond the 5-year term of an
206 NPDES permit.

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

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

219 g. A nonpoint source discharger included in a basin
220 management action plan must demonstrate compliance with the
221 pollutant reductions established under subsection (6) by ~~either~~
222 implementing the appropriate best management practices
223 established pursuant to paragraph (c) or conducting water
224 quality monitoring prescribed by the department or a water
225 management district. A nonpoint source discharger may, in
226 accordance with department rules, supplement the implementation
227 of best management practices with water quality credit trades in
228 order to demonstrate compliance with the pollutant reductions
229 established under subsection (6).

230 h. A nonpoint source discharger included in a basin
231 management action plan may be subject to enforcement action by
232 the department or a water management district based upon a

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233 failure to implement the responsibilities set forth in sub-
234 subparagraph g.

235 i. A landowner, discharger, or other responsible person who
236 is implementing applicable management strategies specified in an
237 adopted basin management action plan may ~~shall~~ not be required
238 by permit, enforcement action, or otherwise to implement
239 additional management strategies, including water quality credit
240 trading, to reduce pollutant loads to attain the pollutant
241 reductions established pursuant to subsection (6) and shall be
242 deemed to be in compliance with this section. This subparagraph
243 does not limit the authority of the department to amend a basin
244 management action plan as specified in subparagraph (a)5.

245 (8) WATER QUALITY CREDIT TRADING.—

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

248 (b) Water quality credit trading must be implemented
249 through permits, including water quality credit trading permits,
250 other authorizations, or other legally binding agreements as
251 established by department rule.

252 (c) The department shall establish the pollutant load
253 reduction value of water quality credits and is ~~shall be~~
254 responsible for authorizing their use.

255 (d) A person who ~~that~~ acquires water quality credits
256 ("buyer") shall timely submit to the department an affidavit,
257 signed by the buyer and the credit generator ("seller"),
258 disclosing the term of acquisition, number of credits, unit
259 credit price paid, and any state funding received for the
260 facilities or activities that generate the credits. The
261 department may ~~shall~~ not participate in the establishment of

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262 credit prices.

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

267 (f) Buyers of water quality credits are responsible for
268 complying with the terms of the department water discharge
269 permit.

270 (g) The department shall take appropriate action to address
271 the failure of a credit seller to fulfill its obligations,
272 including, as necessary, deeming the seller's credits invalid if
273 the seller cannot achieve the load reductions on which the
274 credits were based in a reasonable time. If the department
275 determines duly acquired water quality credits to be invalid, in
276 whole or in part, thereby causing the credit buyer to be unable
277 to timely meet its pollutant reduction obligations under this
278 section, the department shall issue an order establishing the
279 actions required of the buyer to meet its obligations by
280 alternative means and a reasonable schedule for completing the
281 actions. The invalidation of credits does shall not, in and of
282 itself, constitute a violation of the buyer's water discharge
283 permit.

284 (h) The department may authorize water quality credit
285 trading in adopted basin management action plans. Participation
286 in water quality credit trading is entirely voluntary. Entities
287 that participate in water quality credit trades shall timely
288 report to the department the prices for credits, how the prices
289 were determined, and any state funding received for the
290 facilities or activities that generated the credits. The

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291 department may not participate in the establishment of credit
292 prices.

293 (9) RULES.—The department may ~~is authorized to~~ adopt rules
294 ~~pursuant to ss. 120.536(1) and 120.54~~ for:

295 (a) Delisting water bodies or water body segments from the
296 list developed under subsection (4) pursuant to the guidance
297 under subsection (5).

298 (b) Administering of funds to implement the total maximum
299 daily load and basin management action planning programs.

300 (c) Water quality credit trading among the pollutant
301 sources to a water body or water body segment. ~~By September 1,~~
302 ~~2008, rulemaking must be initiated which provides~~ The rules must
303 provide for the following:

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

306 2. A publicly accessible water quality credit trading
307 registry that tracks water quality credits, trading activities,
308 and prices paid for credits.

309 3. Limitations on the availability and use of water quality
310 credits, including a list of eligible pollutants or parameters
311 and minimum water quality requirements and, where appropriate,
312 adjustments to reflect best management practice performance
313 uncertainties and water-segment-specific location factors.

314 4. The timing and duration of credits and allowance for
315 credit transferability.

316 5. Mechanisms for determining and ensuring compliance with
317 trading procedures, including recordkeeping, monitoring,
318 reporting, and inspections.

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320 At the time of publication of the draft rules on water quality
321 credit trading, the department shall submit a copy to the United
322 States Environmental Protection Agency for review.

323 (d) The total maximum daily load calculation in accordance
324 with paragraph (6) (a) immediately upon the effective date of
325 this act, for those eight water segments within Lake Okeechobee
326 proper as submitted to the United States Environmental
327 Protection Agency pursuant to subsection (2).

328 (e) Implementation of other specific provisions.

329 ~~(10) Water quality credit trading shall be limited to the~~
330 ~~Lower St. Johns River Basin, as defined by the department, as a~~
331 ~~pilot project. The department may authorize water quality credit~~
332 ~~trading and establish specific requirements for trading in the~~
333 ~~adopted basin management action plan for the Lower St. Johns~~
334 ~~River Basin prior to the adoption of rules under paragraph~~
335 ~~(9) (c) in order to effectively implement the pilot project.~~
336 ~~Entities that participate in water quality credit trades shall~~
337 ~~timely report to the department the prices for credits, how the~~
338 ~~prices were determined, and any state funding received for the~~
339 ~~facilities or activities that generated the credits. The~~
340 ~~department shall not participate in the establishment of credit~~
341 ~~prices. No later than 24 months after adoption of the basin~~
342 ~~management action plan for the Lower St. Johns River, the~~
343 ~~department shall submit a report to the Governor, the President~~
344 ~~of the Senate, and the Speaker of the House of Representatives~~
345 ~~on the effectiveness of the pilot project, including the~~
346 ~~following information:~~

347 ~~(a) A summary of how water quality credit trading was~~
348 ~~implemented, including the number of pounds of pollutants~~

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349 ~~traded.~~

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

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

354 ~~(d) Prices associated with the trades, as reported by the~~
355 ~~traders.~~

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

360 (10) ~~(11)~~ APPLICATION.—The provisions of this section are
361 intended to supplement existing law, and may not ~~nothing in this~~
362 ~~section shall~~ be construed as altering any applicable state
363 water quality standards or as restricting the authority
364 otherwise granted to the department or a water management
365 district under this chapter or chapter 373. The exclusive means
366 of state implementation of s. 303(d) of the Clean Water Act,
367 Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq. shall be in
368 accordance with the identification, assessment, calculation and
369 allocation, and implementation provisions of this section.

370 (11) ~~(12)~~ CONSTRUCTION.—~~Nothing in~~ This section does not
371 limit ~~shall be construed as limiting~~ the applicability or
372 consideration of any mixing zone, variance, exemption, site
373 specific alternative criteria, or other moderating provision.

374 (12) ~~(13)~~ IMPLEMENTATION OF ADDITIONAL PROGRAMS.—

375 (a) The department may ~~shall~~ not implement, without prior
376 legislative approval, any additional regulatory authority
377 pursuant to s. 303(d) of the Clean Water Act or 40 C.F.R. part

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378 130, if such implementation would result in water quality
379 discharge regulation of activities not currently subject to
380 regulation.

381 (b) Interim measures, best management practices, or other
382 measures may be developed and voluntarily implemented pursuant
383 to paragraph (7)(c) for any water body or segment for which a
384 total maximum daily load or allocation has not been established.
385 The implementation of such pollution control programs may be
386 considered by the department in the determination made pursuant
387 to subsection (4).

388 (13)~~(14)~~ RULE CHALLENGES.—In order to provide adequate due
389 process while ensuring timely development of total maximum daily
390 loads, proposed rules and orders authorized by this act are
391 ~~shall be~~ ineffective pending resolution of a s. 120.54(3), s.
392 120.56, s. 120.569, or s. 120.57 administrative proceeding.
393 However, the department may go forward prior to resolution of
394 such administrative proceedings with subsequent agency actions
395 authorized by subsections (2)-(6) if,~~provided that~~ the
396 department can support and substantiate those actions using the
397 underlying bases for the rules or orders without the benefit of
398 any legal presumption favoring, or in deference to, the
399 challenged rules or orders.

400 Section 3. For the purpose of incorporating the amendment
401 made by this act to section 403.067, Florida Statutes, in a
402 reference thereto, paragraph (e) of subsection (2) of section
403 403.088, Florida Statutes, is reenacted to read:

404 403.088 Water pollution operation permits; conditions.—

405 (2)

406 (e) However, if the discharge will not meet permit

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407 conditions or applicable statutes and rules, the department may
408 issue, renew, revise, or reissue the operation permit if:

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

414 2. The applicant needs permission to pollute the waters
415 within the state for a period of time necessary to complete
416 research, planning, construction, installation, or operation of
417 an approved and acceptable pollution abatement facility or
418 alternative waste disposal system;

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

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

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

426 6. A water quality credit trade that meets the requirements
427 of s. 403.067.

428 Section 4. This act shall take effect July 1, 2013.