

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Environment and Natural Resources

BILL: SB 336

INTRODUCER: Senator Rouson

SUBJECT: Large-scale Agricultural Pollution Reduction Pilot Program

DATE: February 12, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Argote</u>	<u>Becker</u>	<u>AG</u>	Favorable
2.	<u>Anderson</u>	<u>Rogers</u>	<u>EN</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 336 creates a large-scale agricultural pollution reduction pilot program within the Department of Environmental Protection (DEP) in partnership with dairy farms to develop and maintain regional pollution reduction projects that eliminate water pollution in the state.

The bill establishes pilot program application and project selection requirements. All aspects of projects planned and developed must be available for inspection by the DEP, the Department of Agriculture and Consumer Services, and water management districts. The bill specifies that pilot program participants are presumed to comply with water quality standards and are eligible for certain permit terms and funding. The bill requires the DEP to adopt rules to implement the pilot program.

The DEP is given discretionary authority to adopt rules to provide a general permit for the construction of systems and projects under certain circumstances. The bill authorizes the DEP to grant general permits for certain pilot program participants.

The bill requires that the Office of Program Policy Analysis and Government Accountability evaluate the pilot program using specified minimum criteria and report its findings to the Legislature by June 30, 2024.

The pilot program is repealed as of October 2, 2025, unless reviewed and continued by the Legislature.

The bill provides for a nonrecurring appropriation in the 2021-2022 fiscal year of \$1.3 million for the initial implementation of the pilot program, of which \$800,000 is to be spent on projects in the Lake Okeechobee Basin Management Action Plan and \$500,000 on projects in the Suwannee Basin Management Action Plan.

II. Present Situation:

Water Quality and Nutrients

Phosphorus and nitrogen are naturally present in water and are essential nutrients for the healthy growth of plant and animal life. The correct balance of both nutrients is necessary for a healthy ecosystem; however, excessive nitrogen and phosphorus can cause significant water quality issues. Animal manure contains high concentrations of organic material, nitrogen, phosphorus, and fecal bacteria, which can be harmful when absorbed into wastewater. Excessive nutrient loads may result in harmful algal blooms, nuisance aquatic weeds, and the alteration of the natural community of plants and animals. Dense, harmful algal blooms can also cause human health problems, fish kills, problems for water treatment plants, and impairment of the aesthetics and taste of water. Growth of nuisance aquatic weeds tends to increase in nutrient enriched waters, which can impact recreational activities.¹

Total Maximum Daily Loads

A total maximum daily load (TMDL), which must be adopted by rule, is a scientific determination of the maximum amount of a given pollutant that can be absorbed by a waterbody and still meet water quality standards.² Waterbodies or sections of waterbodies that do not meet the established water quality standards are deemed impaired. Pursuant to the federal Clean Water Act, the DEP is required to establish a TMDL for impaired waterbodies.³ A TMDL for an impaired waterbody is defined as the sum of the individual waste load allocations for point sources and the load allocations for nonpoint sources and natural background.⁴ Point sources are discernible, confined, and discrete conveyances including pipes, ditches, and tunnels.⁵ Nonpoint sources are unconfined sources that include runoff from agricultural lands or residential areas.⁶

Concentrated Agricultural Feeding Operations

Concentrated agricultural feeding operations (CAFOs) are facilities where large numbers of livestock or poultry animals are confined for various purposes which include feeding, breeding, training, milking, egg production, meat production, and more.⁷ Facilities that do not meet the

¹ U.S. Environmental Protection Agency (EPA), *The Problem*, <https://www.epa.gov/nutrientpollution/problem> (last visited Jan. 26, 2021).

² Florida Department of Environmental Protection (DEP), *Total Maximum Daily Loads Program*, <https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program> (last visited Jan. 26, 2021).

³ Section 403.067(1), F.S.

⁴ Section 403.031(21), F.S.

⁵ Fla. Admin. Code R. 62-620.200(37). “Point source” is defined as “any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.” Nonpoint sources of pollution are sources of pollution that are not point sources. Nonpoint sources can include runoff from agricultural lands or residential areas; oil, grease and toxic materials from urban runoff; and sediment from improperly managed construction sites.

⁶ *Id.*

⁷ U.S. Department of Agriculture, Natural Resources Conservation Service, *Animal Feeding Operations*, <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/plantsanimals/livestock/afo/> (last visited Feb. 8, 2021).

threshold number of animals are referred to as Animal Feeding Operations (AFOs).⁸ The confinement of a large number of animals in a relatively small area can cause a manure buildup, which can impact TMDLs. Because of their potential to be significant pollution sources, CAFOs nationwide are subject to federal and state wastewater permitting regulations.⁹

CAFOs are regulated under the National Pollutant Discharge Elimination System (NPDES),¹⁰ which was created under the federal Clean Water Act.¹¹ NPDES rules require CAFOs to obtain a permit, which is issued by the DEP, if they discharge pollutants to surface water. In general, dairies that have fewer than 700 mature cows in confinement on an average annual basis do not need to have an NPDES permit, unless the dairy has a direct discharge of wastewater to surface waters of the state.¹² AFOs are regulated under the DEP's industrial wastewater program and include dairies, poultry, and horse and swine operations.¹³ The DEP has developed wastewater rules for AFOs and provides technical assistance to the livestock industry.¹⁴ Very small dairy operations that do not meet the threshold for a CAFO or AFO do not have to be regulated through the DEP, but are enrolled in the Department of Agriculture and Consumer Services (DACS) Office of Agricultural Water Policy's (OAWP) BMP program.¹⁵

Basin Management Action Plans

Basin management action plans (BMAPs) are one of the primary mechanisms the DEP uses to achieve TMDLs. BMAPs are plans that address the entire pollution load, including point and nonpoint discharges, for a watershed. BMAPs generally include:

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Best Management Practices and non-regulatory and incentive-based programs, including cost-sharing, waste minimization, pollution prevention, agreements, and public education;
- Public works projects, including capital facilities; and

⁸ Facilities that have fewer than 700 mature cows in confinement on an average annual basis are classified as AFOs unless specifically designated. EPA, *Regulatory Definitions of Large CAFOs, Medium CAFOs, and Small CAFOs*, available at https://www.epa.gov/sites/production/files/2015-08/documents/sector_table.pdf.

⁹ Fla. Admin. Code R. 62-670.400; DEP, *Animal Feeding Operations*, <https://floridadep.gov/water/industrial-wastewater/content/animal-feeding-operations> (last visited Feb. 8, 2021).

¹⁰ EPA, *National Pollutant Discharge Elimination System*, <https://www.epa.gov/npdes/npdes-permit-basics> (last visited Feb. 8, 2021).

¹¹ 33 U.S.C. §1251 et seq. (1972).

¹² EPA, *Regulatory Definitions of Large CAFOs, Medium CAFOs, and Small CAFOs*, available at https://www.epa.gov/sites/production/files/2015-08/documents/sector_table.pdf.

¹³ Fla. Admin. Code R. 62-620.910(3); see DEP, *Application to Discharge Wastewater from Concentrated Animal Feeding Operations and Aquatic Animal Production Facilities - Form 2B*, available at https://floridadep.gov/sites/default/files/62-620.910_3.pdf.

¹⁴ Fla. Admin. Code R. 62-670.400; DEP, *Animal Feeding Operations*, <https://floridadep.gov/water/industrial-wastewater/content/animal-feeding-operations> (last visited Feb. 8, 2021).

¹⁵ The threshold for whether an operation is considered to be a CAFO or AFO is when animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and when crops, vegetation, forage growth, or post-harvest residues cannot be sustained in the normal growing season over any portion of the lot or facility due to animal activity. Florida Department of Agriculture and Consumer Services, *Water Quality/Quantity Best Management Practices for Florida Dairy Operations*, available at <https://www.fdacs.gov/ezs3download/download/64582/1525731/Media/Files/Agricultural-Water-Policy-Files/Best-Management-Practices/dairyBMPFinal.pdf>.

- Land acquisition.¹⁶

The Clean Waterways Act required a cooperative agricultural regional water quality improvement element as part of a BMAP.¹⁷ The DEP, the DACS, and owners of agricultural operations in the basin must develop this element as part of a BMAP if agricultural measures have been adopted and implemented by the DACS and the waterbody remains impaired, agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges, and the DEP determines that additional measures are necessary to achieve the total maximum daily load.¹⁸ The element is implemented through cost-sharing projects and must include cost-effective and technically and financially practical agricultural nutrient reduction projects that can be implemented on a site-specific, cooperative basis.¹⁹

Best Management Practices (BMPs)

BMPs are designed to reduce the amount of nutrients, sediments, and pesticides that enter the water system and help reduce water use. BMPs are developed for nutrient management of agricultural operations as well as nonagricultural activities. The DEP, in cooperation with the WMDs, establishes BMPs for nonagricultural nonpoint sources. The DACS establishes BMPs for agricultural nonpoint sources.²⁰

The DACS works with multiple partners, including the U.S. Department of Agriculture's Natural Resources Conservation Service, the DEP, water management districts, and soil and water conservation districts, to provide funding to assist producers in implementing BMPs. The DACS prioritizes the use of cost-share funding for projects and practices that provide the greatest benefits to water resources.²¹ The utilization of cost-share funding has greatly enhanced the implementation of BMPs and assists agricultural producers that face economic challenges in adopting BMPs.²²

Agricultural BMPs

Agricultural BMPs are practical measures that agricultural producers undertake to reduce the impacts of fertilizer and water use and otherwise manage the landscape to further protect water resources. BMPs are developed using the best available science with economic and technical consideration and, in certain circumstances, can maintain or enhance agricultural productivity.²³ BMPs are adopted by the DACS by rule and are implemented by agricultural producers.²⁴ Since

¹⁶ Section 403.067(7), F.S.

¹⁷ Ch. 2020-150, Laws of Fla.

¹⁸ Section 403.067(7)(e), F.S.

¹⁹ *Id.*

²⁰ Section 403.067(7)(c), F.S.

²¹ DACS, *Agricultural Best Management Practices*, <https://www.fdacs.gov/Agriculture-Industry/Water/Agricultural-Best-Management-Practices> (last visited Feb. 8, 2021).

²² DACS Office of Agricultural Water Policy, *Status of Implementation of Agricultural Nonpoint Source Best Management Practices*, 9, (Jul. 1, 2019), available at <https://www.fdacs.gov/ezs3download/download/84080/2481615/Media/Files/Agricultural-Water-Policy-Files>.

²³ *Id.* at 3.

²⁴ DACS, *Agricultural Best Management Practices*, <https://www.fdacs.gov/Agriculture-Industry/Water/Agricultural-Best-Management-Practices> (last visited Feb. 8, 2021).

the BMP program was implemented in 1999,²⁵ the DACS has adopted 11 BMP manuals that cover nearly all major agricultural commodities in Florida. According to the annual report on BMPs prepared by the DACS, approximately 54 percent of agricultural acreage is enrolled in the DACS BMP program statewide.²⁶

Producers implementing BMPs receive a presumption of compliance with state water quality standards for the pollutants addressed by BMPs.²⁷ Producers who enroll in the BMP program become eligible for technical assistance and cost-share funding for BMP implementation. To enroll in the BMP program, producers must meet with the OAWP to determine the BMPs that are applicable to their operation and submit a Notice of Intent to Implement the BMPs, along with the BMP checklist from the applicable BMP manual.²⁸

The University of Florida's Institute of Food and Agricultural Sciences (IFAS) is heavily involved in the adoption and implementation of BMPs and conducts research to issue recommendations for improving BMPs.²⁹ The DACS, in cooperation with IFAS and universities and institutions with agricultural research programs annually develop research plans and legislative budget requests to evaluate and enhance existing BMPs, develop new BMPs, and develop agricultural nutrient reduction projects that could be implemented and included under the cooperative agricultural regional water quality improvement element of a BMAP.³⁰

Self-Certification

The DEP currently offers self-certification for submission of projects that qualify for a general environmental resource permit for stormwater discharges.³¹ These permits are provided for stormwater management systems serving a total project area of up to 10 acres and less than two acres of impervious surface.³² The DEP allows construction of these systems to proceed without any agency action if an electronic self-certification is submitted before construction begins, which certifies that the proposed system will not impact wetlands or other surface waters when conducted in compliance with their terms and conditions.³³

²⁵ The program was voluntary from 1999-2005. In 2005, the Florida Legislature modified the law requiring agricultural producers to adopt BMPs or conduct water quality monitoring.

²⁶ DACS Office of Agricultural Water Policy, *Status of Implementation of Agricultural Nonpoint Source Best Management Practices*, 2, (Jul. 1, 2019), available at <https://www.fdacs.gov/ezs3download/download/84080/2481615/Media/Files/Agricultural-Water-Policy-Files/Status-of-Implementation-of-BMPs-Report-2019.pdf>.

²⁷ Section 403.067(7)(c), F.S.

²⁸ DACS Office of Agricultural Water Policy, *Status of Implementation of Agricultural Nonpoint Source Best Management Practices*, 3, (Jul. 1, 2019), available at <https://www.fdacs.gov/ezs3download/download/84080/2481615/Media/Files/Agricultural-Water-Policy-Files/Status-of-Implementation-of-BMPs-Report-2019.pdf>.

²⁹ UF/IFAS Everglades Research & Education Center, *Best Management Practices & Water Resources*, <https://erec.ifas.ufl.edu/featured-3-menus/research/-/best-management-practices--water-resources/> (last visited Feb. 8, 2021).

³⁰ Section 403.067(7)(f), F.S.

³¹ Ch. 2012-205, Laws of Fla.

³² Section 403.814(12), F.S.

³³ *Id.*

Office of Program Policy Analysis and Government Accountability (OPPAGA)

The OPPAGA was created by the Legislature in 1994.³⁴ The OPPAGA describes itself as the “research arm of the Florida Legislature.”³⁵ The OPPAGA provides data, evaluative research, and objective analyses to assist legislative budget and policy deliberations. The OPPAGA conducts research as directed by state law, the presiding officers, or the Joint Legislative Auditing Committee.³⁶ The OPPAGA’s research services include:

- Performance evaluations and policy reviews of government programs;
- Research and technical assistance to legislators and legislative committees;
- Government Program Summaries (GPS), an electronic encyclopedia containing descriptive and evaluative information on all major state programs; and
- Policy Notes, a weekly electronic newsletter of policy research of interest to Florida policymakers.³⁷

III. Effect of Proposed Changes:

Section 1 creates s. 403.068, F.S., to establish a large-scale agricultural pollution reduction pilot program (pilot program) within the DEP which works in conjunction with dairy farms³⁸ to develop and maintain regional pollution reduction projects that eliminate water pollution in the state.

Pilot Program Application and Selection

The bill requires a pilot program applicant to submit an application to the DEP which includes the following information:

- A plan for the design, construction, operation, management, maintenance, and monitoring of pollution reduction;
- A financial plan that includes financial commitments for the development and long-term maintenance of the pollution reduction project(s), which may include a cooperative agreement among multiple dairy farms to collectively pool resources to support systems designed to capture, reuse, and treat all stormwater to reduce nutrient loading to waters of the state; and
- A plan to reduce nutrient loading to waters of the state completely or to insignificant levels for each participating dairy farm.

The DEP has the discretion to select projects to move forward and each of these projects is subject to DEP review and comment. All aspects of projects planned and developed must be available for inspection by the DEP, the DACS, and water management districts.

³⁴ Chapter 94-249, L.O.F.

³⁵ Office of Program Policy Analysis and Government Accountability (OPPAGA), *About OPPAGA*, <https://oppaga.fl.gov/About> (last viewed on February 8, 2021).

³⁶ *Id.*

³⁷ *Id.*

³⁸ Defined as any place or premises where one or more cows, goats, sheep, water buffalo, or other hooved mammals are kept and from which a part or all of the milk is provided, sold, or offered for sale. *See* s. 502.012 (2), F.S.

Participation in the Pilot Program

Participation in the pilot program results in:

- A rebuttable presumption that the dairy farms participating in the project comply with water quality standards;
- Permit issuance of up to 20 years unless inconsistent with federal law;
- Eligibility for state funding under the pilot program and under the cooperative agricultural regional water quality element of a BMAP; and
- Eligibility for self-certification of the pilot program project for a general permit.

The DEP is given discretionary authority to provide a general permit that authorizes the construction of approved pilot program projects. As a part of the general permit, pilot program projects are permitted to proceed without any further agency action if, before construction begins, an electronic self-certification is submitted to the DEP or water management district which certifies that the proposed system was designed by a Florida registered professional who has certified that the proposed system will not:

- Impact wetlands or surface waters;
- Contain activities conducted in, on, or over wetlands or other surface waters;
- Contain drainage facilities that include pipes having diameters greater than 24 inches and will not use pumps in any manner;
- Be a part of a larger common plan, development, or sale;
- Cause or contribute to adverse water quantity or flooding impacts to receiving water and adjacent lands;
- Cause or contribute to adverse impacts to existing surface water storage and conveyance;
- Cause or contribute to violation of state water quality standards; or
- Cause or contribute to an adverse impact to the maintenance of surface or groundwater flows established pursuant to minimum flows and minimum water levels or a work of the district.

The bill requires DEP to adopt rules to implement the pilot program.

Pilot Program Evaluation

The bill requires, by June 30, 2024, the OPPAGA to evaluate the pilot program and report its findings to the President of the Senate and Speaker of the House of Representatives. The report should include, at minimum, costs associated with the pilot program and the level of nutrient loading into the waters of the state by properties involved in the pilot program.

Other Provisions

The pilot program is repealed as of October 2, 2025, unless reviewed and continued by the Legislature. Commitments and benefits that result from the pilot program shall continue to be binding for all partnerships entered into before the repeal date unless or until the department terminates the partnership.

Section 2 amends s. 403.814, F.S., which outlines terms for general permits and delegation, to authorize the DEP to grant general permits for projects that are part of a department-approved pilot program.

Section 3 provides for a nonrecurring appropriation for the 2021-2022 fiscal year of \$1.3 million for the initial implementation of the pilot program, of which \$800,000 is allocated to projects within the Lake Okeechobee Basin Management Action Plan and \$500,000 is allocated to projects within the Suwannee Basin Management Action Plan.

Section 4 provides that this act shall take effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The bill includes a legislative appropriation in the amount of \$1.3 million.

The bill has an indeterminate fiscal impact on the DEP, the DACS, and water management districts for administrative costs incurred as a result of the creation and implementation of the program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 403.814 of the Florida Statutes.

This bill creates section 403.068 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.