

By Senator Albritton

26-00596B-22

20221000__

1 A bill to be entitled
2 An act relating to nutrient application rates;
3 amending s. 576.011, F.S.; defining the terms
4 "certified professional" and "rate tailoring";
5 amending s. 576.045, F.S.; providing legislative
6 findings and intent; authorizing the use of rate
7 tailoring in specified circumstances; authorizing
8 producers to use written recommendations from
9 certified professionals to tailor their recommended
10 nutrient application rates under certain
11 circumstances; requiring producers to keep records
12 regarding the determination that the published
13 nutrient application rates are not appropriate and any
14 recommendations for rate tailoring for a specified
15 period of time; requiring producers using rate
16 tailoring to enroll in and implement certain
17 applicable best management practices; requiring
18 revisions to recommended application rates by certain
19 state universities and Florida College System
20 institutions to authorize rate tailoring; providing a
21 presumption of compliance with certain requirements
22 for producers using rate tailoring; extending the
23 expiration of a certain provision; amending s.
24 403.067, F.S.; conforming a provision to changes made
25 by the act; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Present subsections (5) through (31) and (32)

26-00596B-22

20221000__

30 through (42) of section 576.011, Florida Statutes, are
31 redesignated as subsections (6) through (32) and (34) through
32 (44), respectively, and new subsections (5) and (33) are added
33 to that section, to read:

34 576.011 Definitions.—When used in this chapter, the term:

35 (5) "Certified professional" means an individual who holds
36 a certified crop adviser designation issued by the American
37 Society of Agronomy, who has passed the society's Southeast
38 Region Certified Crop Adviser Exam, and whose credentials have
39 been verified by the society's Florida Certified Crop Adviser
40 Board.

41 (33) "Rate tailoring" means the application of nutrients in
42 accordance with s. 576.045(4).

43 Section 2. Section 576.045, Florida Statutes, is amended to
44 read:

45 576.045 Nitrogen and phosphorus; findings and intent; fees;
46 purpose; best management practices; waiver of liability;
47 compliance; rules; exclusions; expiration.—

48 (1) FINDINGS AND INTENT.—

49 (a) The Legislature finds that:

50 1. Nitrogen and phosphorus residues have been found in
51 groundwater, surface water, and drinking water in various areas
52 throughout this ~~the~~ state at levels in excess of established
53 water quality standards. The Legislature further finds that some
54 fertilization-management practices could be a source of such
55 contamination.

56 2. Nutrient application rate recommendations are general
57 guidelines, not site-specific absolute rates, and that such
58 rates may not take into account the latest methods of producing

26-00596B-22

20221000__

59 agricultural commodities or changes to nutrient application
60 practices which are appropriate due to disease, new crop
61 varieties, changes in United States Department of Agriculture
62 Agricultural Marketing Service standards, growing techniques, or
63 market conditions.

64 3. To gain efficiency and be able to compete successfully
65 with foreign producers that benefit from lower costs of
66 production and favorable trade conditions, many producers in
67 this state grow more product per acre, resulting in higher
68 production at lower overall costs. This high-efficiency crop
69 production requires nutrient application to be based on the
70 intensity of production on a per-acre basis, rather than the
71 lower per-acre production on which past research based its
72 recommended nutrient application rate.

73 4. Florida citrus faces challenges that include citrus
74 greening, citrus canker, freezes, windstorms, and other events
75 that result in the fruit not being harvested. In order to
76 continue production of this state's iconic crop, nutrient
77 application rates must reflect fruit grown on the tree after the
78 bloom during the growing season and not fruit ultimately
79 harvested for market delivery.

80 (b) It is the intent of the Legislature to:

81 1. Improve fertilization-management practices as soon as
82 practicable in a way that protects ~~this~~ the state's water
83 resources and preserves a viable agricultural industry. This
84 goal is to be accomplished through research concerning best
85 management practices and education and incentives for the
86 agricultural industry and other major users of fertilizer.

87 2. Accommodate continued agricultural production without

26-00596B-22

20221000__

88 interruption as research to formally revise nutrient application
89 rates is completed.

90 3. Authorize the use of rate tailoring in recommended
91 nutrient application rates when rate tailoring is supported by
92 written recommendations from a certified professional and
93 documented using production and field data that is retained for
94 review during the best management practices implementation
95 verification process.

96 (2) FEES.—

97 (a) In addition to the fees imposed under ss. 576.021 and
98 576.041, the following supplemental fees shall be collected and
99 paid by licensees for the sole purpose of implementing this
100 section:

101 1. One hundred dollars for each license to distribute
102 fertilizer.

103 2. One hundred dollars for each specialty fertilizer
104 registration.

105 3. Fifty cents per ton for all fertilizer that contains
106 nitrogen or phosphorus and that is sold in this state.

107 (b) All fees paid to the department under this section are
108 due and payable at the same time and in the same manner as the
109 fees specified in ss. 576.021 and 576.041 and are subject to all
110 provisions contained in those sections.

111 (c) All fees paid under this section must be deposited into
112 the General Inspection Trust Fund and are exempt from ~~the~~
113 ~~provisions of~~ s. 215.20. These funds are to be appropriated
114 annually to the department and allocated according to a
115 memorandum of understanding between the department and the
116 Department of Environmental Protection. The allocation of

26-00596B-22

20221000__

117 indirect costs to these funds by any state agency is
118 specifically prohibited.

119 (3) USE OF FUNDS ~~PURPOSE~~.—The funds collected pursuant to
120 subsection (2) must be used by the department for:

121 (a) Research, development, demonstration, and
122 implementation of suitable interim measures, best management
123 practices, or other measures used to achieve state water quality
124 standards for nitrogen and phosphorus criteria. Implementation
125 of interim measures, best management practices, and other
126 measures may include cost-sharing grants, technical assistance,
127 implementation tracking, and conservation leases or other
128 agreements for water quality improvement.

129 (b) Approving, adopting, publishing, and distributing
130 interim measures, best management practices, or other measures.
131 In the process of developing, approving, and adopting interim
132 measures, best management practices, or other measures, the
133 department shall consult with the Department of Environmental
134 Protection, the Department of Health, the water management
135 districts, environmental groups, the fertilizer industry, and
136 representatives from the affected farming groups.

137 (c) Reimbursing the Department of Environmental Protection
138 for costs incurred which are associated with:

139 1. Monitoring and verifying the effectiveness of the
140 interim measures, best management practices, or other measures
141 approved and adopted under subsection (7) ~~(6)~~ at representative
142 sites. The Department of Environmental Protection shall use its
143 best professional judgment in making the initial determination
144 of the effectiveness of the interim measures, best management
145 practices, or other measures.

26-00596B-22

20221000__

146 2. Sampling, analysis, and restoration of potable water
147 supplies, pursuant to s. 376.307, found to contain levels of
148 nitrate in excess of state water quality standards, which excess
149 is determined to be the result of the application of fertilizers
150 or other soil-applied nutritional materials containing nitrogen.

151
152 This subsection must be implemented through a memorandum of
153 understanding between the department and the Department of
154 Environmental Protection.

155 (4) RATE TAILORING.—The use of rate tailoring to
156 recommended nutrient application rates is authorized where rate
157 tailoring is supported by a certified professional.

158 (a) When recommended nutrient application rates published
159 by the Institute of Food and Agricultural Sciences at the
160 University of Florida or other state universities and Florida
161 College System institutions that have agricultural research
162 programs are not appropriate for a specific producer due to soil
163 conditions, disease, crop varieties, subsequent crop rotations,
164 planting density, market requirements, or site-specific
165 conditions, written recommendations from a certified
166 professional may be used to tailor the recommended nutrient
167 application rates for that producer. The determination that the
168 published nutrient application rates are not appropriate and the
169 recommendation for the tailoring of nutrient application rates
170 must be documented with one or more of the following records, as
171 appropriate: soil tests, plant tissue tests, pathology reports,
172 yield response curves, growth records, or site-specific
173 conditions, together with records specifying the application
174 rate, the types or forms of nutrients used, the nutrient sources

26-00596B-22

20221000__

175 used, and the placement and timing of the nutrient sources. A
176 producer must retain the records for 5 years to support the use
177 of rate tailoring.

178 (b) Producers using rate tailoring must be enrolled in and
179 implementing all other best management practices adopted by the
180 department and identified in the enrolled notice of intent
181 required under subsections (5) and (6).

182 (c) As recommended nutrient application rates for crops are
183 revised by the Institute of Food and Agricultural Sciences at
184 the University of Florida or other state universities and
185 Florida College System institutions that have agricultural
186 research programs, such recommendations must provide an
187 application range or authorize rate tailoring to crop and field
188 conditions.

189 (d) Notwithstanding any other law, producers implementing
190 rate tailoring in compliance with this section are provided a
191 presumption of compliance with state water quality standards,
192 may rely on the waiver of liability in subsection (5), and be
193 deemed to be in compliance with s. 403.067(7)(c) and subsections
194 (5) and (6).

195 (5) WAIVER OF LIABILITY.—Notwithstanding any other
196 ~~provision of law,~~ the Department of Environmental Protection may
197 ~~not is not authorized to~~ institute proceedings against any
198 person or the Federal Government under ~~the provisions of~~ s.
199 376.307(5) to recover any costs or damages associated with
200 nitrogen or phosphorus contamination of groundwater or surface
201 water, or the evaluation, assessment, or remediation of such
202 contamination of groundwater or surface water, including
203 sampling, analysis, and restoration of potable water supplies,

26-00596B-22

20221000__

204 where the contamination of groundwater or surface water is
205 determined to be the result of the application of fertilizers or
206 other soil-applied nutritional materials containing nitrogen or
207 phosphorus, provided the property owner or leaseholder:

208 (a)1. Provides the department with a notice of intent to
209 implement applicable interim measures, best management
210 practices, or other measures adopted by the department which
211 ~~practices or measures~~ have been verified by the Department of
212 Environmental Protection to be effective; and

213 2. Implements applicable interim measures, best management
214 practices, or other measures as soon as practicable according to
215 rules adopted by the department or no longer applies fertilizers
216 or other soil-applied nutritional materials containing nitrogen
217 or phosphorus; or

218 (b) No longer applies fertilizers or other soil-applied
219 nutritional materials containing nitrogen or phosphorus ~~as of~~
220 ~~the effective date of this section.~~

221 (6) ~~(5)~~ COMPLIANCE.—If the property owner or leaseholder
222 implements interim measures, best management practices, or other
223 measures adopted by the department which ~~practices or measures~~
224 have been verified by the Department of Environmental Protection
225 to be effective, and complies with the following, there is a
226 presumption of compliance with state water quality standards for
227 such criteria under this section and s. 403.067(7)(c) with
228 respect to the application of fertilizers or other soil-applied
229 nutritional materials containing nitrogen or phosphorus:

230 (a)1. Provides the department with a notice of intent to
231 implement applicable interim measures, best management
232 practices, or other measures adopted by the department; and

26-00596B-22

20221000__

233 2. Implements applicable interim measures, best management
234 practices, or other measures as soon as practicable according to
235 rules adopted by the department or no longer applies fertilizers
236 or other soil-applied nutritional materials containing nitrogen
237 or phosphorus; or

238 (b) No longer applies fertilizers or other soil-applied
239 nutritional materials containing nitrogen or phosphorus ~~as of~~
240 ~~the effective date of this section.~~

241 (7)~~(6)~~ RULEMAKING.—The department, in consultation with the
242 Department of Environmental Protection, the Department of
243 Health, the water management districts, environmental groups,
244 the fertilizer industry, and representatives from the affected
245 farming groups, shall adopt rules to:

246 (a) Specify the requirements of interim measures, best
247 management practices, or other measures to be implemented by
248 property owners and leaseholders.

249 (b) Establish procedures for property owners and
250 leaseholders to submit the notice of intent to implement and
251 comply with interim measures, best management practices, or
252 other measures.

253 (c) Establish schedules for implementation of interim
254 measures, best management practices, or other measures.

255 (d) Establish a system to assure the implementation of best
256 management practices, including recordkeeping requirements.

257 (8)~~(7)~~ OTHER PROVISIONS.—

258 (a) This section does not limit the authority of the
259 Department of Environmental Protection to regulate discharges
260 associated with the commercial feeding of livestock and poultry
261 defined in chapter 585, including that of dairy farm and egg

26-00596B-22

20221000__

262 production operations, or the disposal of sludge, residuals, or
263 septage. This paragraph does not grant additional authority to
264 regulate these discharges.

265 (b) This section does not limit federally delegated
266 regulatory authority.

267 (c) The Department of Environmental Protection may adopt
268 rules to establish criteria for dairy farms which provide
269 reasonable assurance that state nitrate groundwater quality
270 standards will not be violated and which, provided such criteria
271 are met, shall prohibit the Department of Environmental
272 Protection from instituting proceedings against any dairy farmer
273 under ~~the provisions of~~ s. 376.307(5) and shall provide a
274 presumption of compliance with safe nitrate groundwater quality
275 standards.

276 (d) This section, except for subsection (2), does not apply
277 to the manufacture, mixing, or blending of fertilizer, including
278 fertilizer containing sludge, residuals, or septage.

279 (9)~~(8)~~ EXPIRATION OF PROVISIONS.—Subsections (1), (2), (3),
280 (5)~~(4)~~, and (7)~~(6)~~ expire on December 31, 2032~~2022~~.
281 Subsections (4), (6), ~~(5)~~ and (8)~~(7)~~ expire on December 31,
282 2037~~2027~~.

283 Section 3. Paragraph (c) of subsection (7) of section
284 403.067, Florida Statutes, is amended to read:

285 403.067 Establishment and implementation of total maximum
286 daily loads.—

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

289 (c) *Best management practices*.—

290 1. The department, in cooperation with the water management

26-00596B-22

20221000__

291 districts and other interested parties, as appropriate, may
292 develop suitable interim measures, best management practices, or
293 other measures necessary to achieve the level of pollution
294 reduction established by the department for nonagricultural
295 nonpoint pollutant sources in allocations developed pursuant to
296 subsection (6) and this subsection. These practices and measures
297 may be adopted by rule by the department and the water
298 management districts and, where adopted by rule, shall be
299 implemented by those parties responsible for nonagricultural
300 nonpoint source pollution.

301 2. The Department of Agriculture and Consumer Services may
302 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54
303 suitable interim measures, best management practices, or other
304 measures necessary to achieve the level of pollution reduction
305 established by the department for agricultural pollutant sources
306 in allocations developed pursuant to subsection (6) and this
307 subsection or for programs implemented pursuant to paragraph
308 (12) (b). These practices and measures may be implemented by
309 those parties responsible for agricultural pollutant sources,
310 and the department, the water management districts, and the
311 Department of Agriculture and Consumer Services shall assist
312 with implementation. In the process of developing and adopting
313 rules for interim measures, best management practices, or other
314 measures, the Department of Agriculture and Consumer Services
315 shall consult with the department, the Department of Health, the
316 water management districts, representatives from affected
317 farming groups, and environmental group representatives. Such
318 rules must also incorporate provisions for a notice of intent to
319 implement the practices and a system to assure the

26-00596B-22

20221000__

320 implementation of the practices, including site inspection and
321 recordkeeping requirements.

322 3. When interim measures, best management practices, or
323 other measures are adopted by rule, the effectiveness of such
324 practices in achieving the levels of pollution reduction
325 established in allocations developed by the department pursuant
326 to subsection (6) and this subsection or in programs implemented
327 pursuant to paragraph (12)(b) must be verified at representative
328 sites by the department. The department shall use its best
329 professional judgment in making the initial verification that
330 the best management practices are reasonably expected to be
331 effective and, when applicable, shall notify the appropriate
332 water management district or the Department of Agriculture and
333 Consumer Services of its initial verification before the
334 adoption of a rule proposed pursuant to this paragraph.
335 Implementation, in accordance with rules adopted under this
336 paragraph, of practices that have been initially verified to be
337 effective, or verified to be effective by monitoring at
338 representative sites, by the department, or are authorized by s.
339 576.045, shall provide a presumption of compliance with state
340 water quality standards and release from s. 376.307(5) for those
341 pollutants addressed by the practices, and the department is not
342 authorized to institute proceedings against the owner of the
343 source of pollution to recover costs or damages associated with
344 the contamination of surface water or groundwater caused by
345 those pollutants. Research projects funded by the department, a
346 water management district, or the Department of Agriculture and
347 Consumer Services to develop or demonstrate interim measures or
348 best management practices shall be granted a presumption of

26-00596B-22

20221000__

349 compliance with state water quality standards and a release from
350 s. 376.307(5). The presumption of compliance and release is
351 limited to the research site and only for those pollutants
352 addressed by the interim measures or best management practices.
353 Eligibility for the presumption of compliance and release is
354 limited to research projects on sites where the owner or
355 operator of the research site and the department, a water
356 management district, or the Department of Agriculture and
357 Consumer Services have entered into a contract or other
358 agreement that, at a minimum, specifies the research objectives,
359 the cost-share responsibilities of the parties, and a schedule
360 that details the beginning and ending dates of the project.

361 4. When water quality problems are demonstrated, despite
362 the appropriate implementation, operation, and maintenance of
363 best management practices and other measures required by rules
364 adopted under this paragraph, the department, a water management
365 district, or the Department of Agriculture and Consumer
366 Services, in consultation with the department, shall institute a
367 reevaluation of the best management practice or other measure.
368 If the reevaluation determines that the best management practice
369 or other measure requires modification, the department, a water
370 management district, or the Department of Agriculture and
371 Consumer Services, as appropriate, shall revise the rule to
372 require implementation of the modified practice within a
373 reasonable time period as specified in the rule.

374 5. Subject to subparagraph 6., the Department of
375 Agriculture and Consumer Services shall provide to the
376 department information obtained pursuant to subparagraph (d)3.

377 6. Agricultural records relating to processes or methods of

26-00596B-22

20221000__

378 production, costs of production, profits, or other financial
379 information held by the Department of Agriculture and Consumer
380 Services pursuant to subparagraphs 3., 4., and 5. or pursuant to
381 any rule adopted pursuant to subparagraph 2. are confidential
382 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
383 Constitution. Upon request, records made confidential and exempt
384 pursuant to this subparagraph shall be released to the
385 department or any water management district provided that the
386 confidentiality specified by this subparagraph for such records
387 is maintained.

388 7. Subparagraphs 1. and 2. do not preclude the department
389 or water management district from requiring compliance with
390 water quality standards or with current best management practice
391 requirements in any applicable regulatory program authorized by
392 law for the purpose of protecting water quality. Additionally,
393 subparagraphs 1. and 2. are applicable only to the extent that
394 they do not conflict with any rules adopted by the department
395 that are necessary to maintain a federally delegated or approved
396 program.

397 Section 4. This act shall take effect July 1, 2022.