

By the Committee on Environment and Natural Resources; and
Senator Albritton

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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)

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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, who holds a 4R Nutrient
39 Management Specialty certification, and whose credentials have
40 been verified by the society's Florida Certified Crop Adviser
41 Board.

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

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

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

49 (1) FINDINGS AND INTENT.—

50 (a) The Legislature finds that:

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

57 2. Nutrient application rate recommendations are general
58 guidelines, not site-specific absolute rates, and that such

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59 rates may not take into account the latest methods of producing
60 agricultural commodities or changes to nutrient application
61 practices which are appropriate due to disease, new crop
62 varieties, changes in United States Department of Agriculture
63 Agricultural Marketing Service standards, growing techniques, or
64 market conditions.

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

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

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

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

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88 2. Accommodate continued agricultural production without
89 interruption as research to formally revise nutrient application
90 rates is completed.

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

97 (2) FEES.—

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

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

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

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

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

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

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117 Department of Environmental Protection. The allocation of
118 indirect costs to these funds by any state agency is
119 specifically prohibited.

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

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

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

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

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

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146 practices, or other measures.

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

152

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

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

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

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

179 (b) Producers using rate tailoring must be enrolled in and
180 implementing all other best management practices adopted by the
181 department and identified in the enrolled notice of intent
182 required under subsections (5) and (6) or s. 403.067(7)(c).

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

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

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

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

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

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

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

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

231 (a)1. Provides the department with a notice of intent to
232 implement applicable interim measures, best management

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233 practices, or other measures adopted by the department; and

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

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

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

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

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

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

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

258 (8) ~~(7)~~ OTHER PROVISIONS.—

259 (a) This section does not limit the authority of the
260 Department of Environmental Protection to regulate discharges
261 associated with the commercial feeding of livestock and poultry

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262 defined in chapter 585, including that of dairy farm and egg
263 production operations, or the disposal of sludge, residuals, or
264 septage. This paragraph does not grant additional authority to
265 regulate these discharges.

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

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

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

280 (9) ~~(8)~~ EXPIRATION OF PROVISIONS.—Subsections (1), (2), (3),
281 (5) ~~(4)~~, and (7) ~~(6)~~ expire on December 31, 2032 ~~2022~~.
282 Subsections (4), (6), ~~(5)~~ and (8) ~~(7)~~ expire on December 31,
283 2037 ~~2027~~.

284 Section 3. Paragraph (c) of subsection (7) of section
285 403.067, Florida Statutes, is amended to read:

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

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

290 (c) *Best management practices*.—

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

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

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320 implement the practices and a system to assure the
321 implementation of the practices, including site inspection and
322 recordkeeping requirements.

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

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

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

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

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

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

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