

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.

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

Section 1. Present subsections (5) through (31) and (32) through (42) of section 576.011, Florida Statutes, are redesignated as subsections (6) through (32) and (34) through (44), respectively, and new subsections (5) and (33) are added to that section, to read:

576.011 Definitions.—When used in this chapter, the term:  
(5) "Certified professional" means an individual who holds a certified crop adviser designation issued by the American Society of Agronomy, who has passed the society's Southeast Region Certified Crop Adviser Exam, and whose credentials have been verified by the society's Florida Certified Crop Adviser Board.

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

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

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

(1) FINDINGS AND INTENT.—

(a) The Legislature finds that:

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  
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  
 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  
112 into 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  
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.

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.

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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  
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  
 183 are revised by the Institute of Food and Agricultural Sciences  
 184 at 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,  
 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

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  
 242 | the 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  
256 | best 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  
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  
 277 apply to the manufacture, mixing, or blending of fertilizer,  
 278 including fertilizer containing sludge, residuals, or septage.

279 (9)~~(8)~~ EXPIRATION OF PROVISIONS.—Subsections (1), (2),  
 280 (3), (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  
 291 management districts and other interested parties, as  
 292 appropriate, may develop suitable interim measures, best  
 293 management practices, or other measures necessary to achieve the  
 294 level of pollution reduction established by the department for  
 295 nonagricultural nonpointpollutant sources in allocations  
 296 developed pursuant to subsection (6) and this subsection. These  
 297 practices and measures may be adopted by rule by the department  
 298 and the water management districts and, where adopted by rule,  
 299 shall be implemented by those parties responsible for  
 300 nonagricultural 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  
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  
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  
378 of 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.