

1 A bill to be entitled
 2 An act relating to water quality credit trading;
 3 amending s. 403.067, F.S.; declaring the policy of the
 4 state with regard to water quality credit trading;
 5 providing for the South Florida Water Management
 6 District to coordinate with the Department of
 7 Environmental Protection to establish public-private
 8 partnerships for the development of water quality
 9 enhancement projects and water quality credit trading
 10 pilot programs in the Caloosahatchee Basin, the St.
 11 Lucie Basin, and the Lake Okeechobee Basin; requiring
 12 the department to amend specified rules; conforming
 13 provisions; providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Paragraph (a) of subsection (7) and subsections
 18 (8), (10), and (14) of section 403.067, Florida Statutes, are
 19 amended to read:

20 403.067 Establishment and implementation of total maximum
 21 daily loads.—

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

24 (a) Basin management action plans.—

25 1. In developing and implementing the total maximum daily
 26 load for a water body, the department, or the department in
 27 conjunction with a water management district, may develop a
 28 basin management action plan that addresses some or all of the

HB 1107

2012

29 | watersheds and basins tributary to the water body. Such a plan
30 | must integrate the appropriate management strategies available
31 | to the state through existing water quality protection programs
32 | to achieve the total maximum daily loads and may provide for
33 | phased implementation of these management strategies to promote
34 | timely, cost-effective actions as provided for in s. 403.151.
35 | The plan must establish a schedule for implementing the
36 | management strategies, establish a basis for evaluating the
37 | plan's effectiveness, and identify feasible funding strategies
38 | for implementing the plan's management strategies. The
39 | management strategies may include regional treatment systems or
40 | other public works, where appropriate, and, in the basins ~~basin~~
41 | listed in subsection (10) for which ~~a~~ basin management action
42 | plans have ~~plan has~~ been adopted, voluntary trading of water
43 | quality credits to achieve the needed pollutant load reductions.

44 | 2. A basin management action plan must equitably allocate,
45 | pursuant to paragraph (6) (b), pollutant reductions to individual
46 | basins, as a whole to all basins, or to each identified point
47 | source or category of nonpoint sources, as appropriate. For
48 | nonpoint sources for which best management practices have been
49 | adopted, the initial requirement specified by the plan must be
50 | those practices developed pursuant to paragraph (c). Where
51 | appropriate, the plan may take into account the benefits of
52 | pollutant load reduction achieved by point or nonpoint sources
53 | that have implemented management strategies to reduce pollutant
54 | loads, including best management practices, before ~~prior~~ to the
55 | development of the basin management action plan. The plan must
56 | also identify the mechanisms that will address potential future

HB 1107

2012

57 | increases in pollutant loading.

58 | 3. The basin management action planning process is
59 | intended to involve the broadest possible range of interested
60 | parties, with the objective of encouraging the greatest amount
61 | of cooperation and consensus possible. In developing a basin
62 | management action plan, the department shall ensure ~~assure~~ that
63 | key stakeholders, including, but not limited to, applicable
64 | local governments, water management districts, the Department of
65 | Agriculture and Consumer Services, other appropriate state
66 | agencies, local soil and water conservation districts,
67 | environmental groups, regulated interests, and affected
68 | pollution sources, are invited to participate in the process.
69 | The department shall hold at least one public meeting in the
70 | vicinity of the watershed or basin to discuss and receive
71 | comments during the planning process and shall otherwise
72 | encourage public participation to the greatest practicable
73 | extent. Notice of the public meeting must be published in a
74 | newspaper of general circulation in each county in which the
75 | watershed or basin lies not less than 5 days nor more than 15
76 | days before the public meeting. A basin management action plan
77 | may ~~shall~~ not supplant or otherwise alter any assessment made
78 | under subsection (3) or subsection (4) or any calculation or
79 | initial allocation.

80 | 4. The department shall adopt all or any part of a basin
81 | management action plan and any amendment to such plan by
82 | secretarial order pursuant to chapter 120 to implement ~~the~~
83 | ~~provisions~~ of this section.

84 | 5. The basin management action plan must include

HB 1107

2012

85 milestones for implementation and water quality improvement, and
86 an associated water quality monitoring component sufficient to
87 evaluate whether reasonable progress in pollutant load
88 reductions is being achieved over time. An assessment of
89 progress toward these milestones shall be conducted every 5
90 years, and revisions to the plan shall be made as appropriate.
91 Revisions to the basin management action plan shall be made by
92 the department in cooperation with basin stakeholders. Revisions
93 to the management strategies required for nonpoint sources must
94 follow the procedures set forth in subparagraph (c)4. Revised
95 basin management action plans must be adopted pursuant to
96 subparagraph 4.

97 6. In accordance with procedures adopted by rule under
98 paragraph (9)(c), basin management action plans may allow point
99 or nonpoint sources that will achieve greater pollutant
100 reductions than required by an adopted total maximum load or
101 wasteload allocation to generate, register, and trade water
102 quality credits for the excess reductions to enable other
103 sources to achieve their allocation; however, the generation of
104 water quality credits does not remove the obligation of a source
105 or activity to meet applicable technology requirements or
106 adopted best management practices. Such plans must allow trading
107 between NPDES permittees, and trading that may or may not
108 involve NPDES permittees, where the generation or use of the
109 credits involve an entity or activity not subject to department
110 water discharge permits whose owner voluntarily elects to obtain
111 department authorization for the generation and sale of credits.

112 7. The provisions of the department's rule relating to the

HB 1107

2012

113 equitable abatement of pollutants into surface waters may ~~shall~~
 114 not be applied to water bodies or water body segments for which
 115 a basin management plan that takes into account future new or
 116 expanded activities or discharges has been adopted under this
 117 section.

118 (8) WATER QUALITY CREDIT TRADING.—

119 (a) It is the policy of the state to encourage the
 120 development of a robust water quality credit trading program.
 121 The Legislature recognizes that water quality credit trading can
 122 lead to increased environmental benefits at reduced costs and
 123 encourages the creation of water quality credits through public-
 124 private partnerships when at all possible.

125 (b) ~~(a)~~ Water quality credit trading must be consistent
 126 with federal law and regulation.

127 (c) ~~(b)~~ Water quality credit trading must be implemented
 128 through permits, including water quality credit trading permits,
 129 other authorizations, or other legally binding agreements as
 130 established by department rule.

131 (d) ~~(e)~~ The department shall establish the pollutant load
 132 reduction value of water quality credits and shall be
 133 responsible for authorizing their use.

134 (e) ~~(d)~~ A person that acquires water quality credits
 135 ("buyer") shall timely submit to the department an affidavit,
 136 signed by the buyer and the credit generator ("seller"),
 137 disclosing the term of acquisition, number of credits, unit
 138 credit price paid, and any state funding received for the
 139 facilities or activities that generate the credits. The
 140 department may ~~shall~~ not participate in the establishment of

141 credit prices.

142 (f)~~(e)~~ Sellers of water quality credits are responsible
 143 for achieving the load reductions on which the credits are based
 144 and complying with the terms of the department authorization and
 145 any trading agreements into which they may have entered.

146 (g)~~(f)~~ Buyers of water quality credits are responsible for
 147 complying with the terms of the department water discharge
 148 permit.

149 (h)~~(g)~~ The department shall take appropriate action to
 150 address the failure of a credit seller to fulfill its
 151 obligations, including, as necessary, deeming the seller's
 152 credits invalid if the seller cannot achieve the load reductions
 153 on which the credits were based in a reasonable time. If the
 154 department determines duly acquired water quality credits to be
 155 invalid, in whole or in part, thereby causing the credit buyer
 156 to be unable to timely meet its pollutant reduction obligations
 157 under this section, the department shall issue an order
 158 establishing the actions required of the buyer to meet its
 159 obligations by alternative means and a reasonable schedule for
 160 completing the actions. The invalidation of credits does ~~shall~~
 161 not ~~itself~~ constitute a violation of the buyer's water discharge
 162 permit.

163 (10) WATER QUALITY CREDIT TRADING PILOT PROJECTS.-

164 (a) Water quality credit trading is ~~shall be~~ limited to
 165 pilot programs in:

166 1. The Lower St. Johns River Basin~~7~~ as defined by the
 167 department.~~7~~

168 2. The Caloosahatchee Basin as defined by the South

HB 1107

2012

169 Florida Water Management District.

170 3. The St. Lucie Basin as defined by the South Florida
171 Water Management District.

172 4. The Lake Okeechobee Basin as defined by the South
173 Florida Water Management District.

174 (b) The South Florida Water Management District shall
175 coordinate with the department in the establishment of public-
176 private partnerships for the development of water quality
177 enhancement projects and water quality trading pilot programs in
178 the Caloosahatchee Basin, the St. Lucie Basin, and the Lake
179 Okeechobee Basin as a pilot project. The department may
180 authorize water quality credit trading and establish specific
181 requirements for trading in the adopted basin management action
182 plan for the Lower St. Johns River Basin prior to the adoption
183 of rules under paragraph (9)(c) in order to effectively
184 implement the pilot project.

185 (c) Entities that participate in water quality credit
186 trades shall timely report to the department the prices for
187 credits, how the prices were determined, and any state funding
188 received for the facilities or activities that generated the
189 credits. The department shall not participate in the
190 establishment of credit prices.

191 (d) The department shall amend the rules adopted pursuant
192 to paragraph (9)(c) under chapter 62-306, Florida Administrative
193 Code, to reflect the establishment of pilot programs in the
194 Caloosahatchee Basin, the St. Lucie Basin, and the Lake
195 Okeechobee Basin. No later than 24 months after adoption of the
196 basin management action plan for the Lower St. Johns River, the

197 ~~department shall submit a report to the Governor, the President~~
 198 ~~of the Senate, and the Speaker of the House of Representatives~~
 199 ~~on the effectiveness of the pilot project, including the~~
 200 ~~following information:~~

201 ~~(a) A summary of how water quality credit trading was~~
 202 ~~implemented, including the number of pounds of pollutants~~
 203 ~~traded.~~

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

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

208 ~~(d) Prices associated with the trades, as reported by the~~
 209 ~~traders.~~

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

214 (14) EFFECT OF RULES AND ORDERS.-In order to provide
 215 adequate due process while ensuring timely development of total
 216 maximum daily loads, proposed rules and orders authorized by
 217 this section are ~~act shall be~~ ineffective pending resolution of
 218 an administrative proceeding under ~~a~~ s. 120.54(3), s. 120.56, s.
 219 120.569, or s. 120.57 ~~administrative proceeding~~. However, the
 220 department may go forward before ~~prior to~~ resolution of such
 221 administrative proceedings with subsequent agency actions
 222 authorized by subsections (2)-(6), if ~~provided that~~ the
 223 department can support and substantiate those actions using the
 224 underlying bases for the rules or orders without the benefit of

HB 1107

2012

225 | any legal presumption favoring, or in deference to, the
226 | challenged rules or orders.

227 | Section 2. This act shall take effect July 1, 2012.