HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1363 Basin Management Action Plans
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Overdorf
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Melkun	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee	8 Y, 0 N	White	Pigott
3) State Affairs Committee			

SUMMARY ANALYSIS

The Department of Environmental Protection (DEP) is the lead agency in coordinating the development and implementation of total maximum daily loads (TMDLs). Once a TMDL is adopted, DEP may develop and implement a basin management action plan (BMAP), which is a restoration plan for the watersheds and basins connected to the impaired water body. A BMAP must integrate appropriate management strategies available to the state and must include milestones for implementation and water quality improvement, and associated water quality monitoring. An assessment of progress must be conducted every five years, and revisions to the BMAP must be made as appropriate.

The bill requires nonpoint source dischargers who discharge into a basin included in an adopted BMAP to comply with interim measures, best management practices (BMPs), other measures adopted by rule by DEP or the Department of Agriculture and Consumer Services (DACS), or management measures adopted in a BMAP. The bill further requires DEP, DACS, or the water management district (WMD), as appropriate, to verify by site visit the implementation of such requirements at least once every two years.

The bill requires DEP, DACS, and owners of agricultural operations in the basin to develop a cooperative agricultural regional water quality improvement element as part of a BMAP under certain circumstances. The bill further requires DEP, Department of Health (DOH), local governments, and WMDs to develop a cooperative urban, suburban, commercial, or institutional regional water quality improvement element as part of a BMAP under certain circumstances.

The bill requires University of Florida, Institute of Food and Agricultural Sciences (UF/IFAS) to work with DACS to develop a research plan and legislative budget request to evaluate and develop BMPs.

The bill establishes a nutrient reduction cost-share program within DEP and allows DEP, subject to appropriation, to provide funding for projects in BMAPs or alternative restoration plans that will individually or collectively reduce nutrient pollution.

The bill defines the term “rural homestead” and exempts rural homesteads from the requirements of BMPs.

The bill requires DEP and DACS to include certain information in the BMAP progress reports they submit to the Governor and Legislature.

The proposed House of Representatives’ Fiscal Year 2020-2021 General Appropriations Act, appropriates funding within DEP and DACS for the increase in the number of required site visits to be conducted, water quality improvement cost share grants and TMDLs.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Water Quality

The federal Clean Water Act (CWA) requires states to adopt water quality standards (WQS) for navigable waters.[1] The CWA requires states to develop lists of water bodies that do not meet WQS, which are called impaired waters. States are then required to develop a total maximum daily load (TMDL) for the particular pollutants causing the impairment. The TMDL is the maximum allowable amount of the pollutants the water body can receive while maintaining WQS.[2]

Total Maximum Daily Loads (TMDLs) and Basin Management Action Plans (BMAPs)

The Florida Watershed Restoration Act guides the development and implementation of TMDLs.[3] TMDLs must include reasonable and equitable pollutant load allocations between or among point sources (e.g., pipes, culverts discharging from a permitted facility, such as a domestic wastewater treatment facility) and nonpoint sources (e.g., agriculture, septic tanks, golf courses) that will alone, or in conjunction with other management and restoration activities, reduce pollutants and achieve WQS.[4] The allocation must consider cost-effective approaches coordinated between contributing point and nonpoint sources of pollution for impaired water bodies and may include both non-regulatory and incentive-based programs.[5]

The Department of Environmental Protection (DEP) is the lead agency in coordinating the development and implementation of TMDLs.[6] Once a TMDL is adopted,[7] DEP may develop and implement a BMAP, which is a restoration plan for the watersheds and basins connected to the impaired water body.[8] A BMAP must integrate appropriate management strategies available to the state through existing water quality protection programs to achieve the TMDL.[9] The BMAP must include milestones for implementation and water quality improvement, and associated water quality monitoring, which determines whether there has been reasonable progress in pollutant load reductions. An assessment of progress must be conducted every five years, and revisions to the BMAP must be made as appropriate.[10]

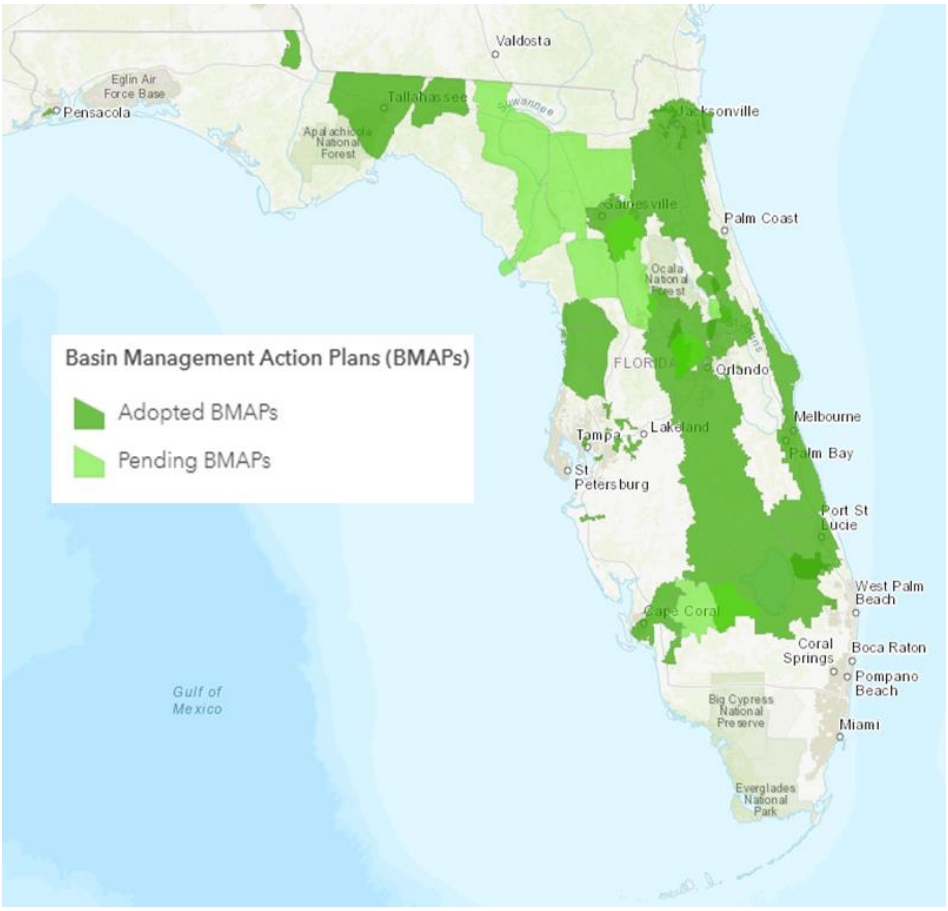
For point source discharges, any management strategies and pollutant reduction requirements associated with a TMDL must be incorporated into subsequent permits or permit modifications. DEP may not impose limits or conditions implementing an adopted TMDL in a permit until the permit expires, the discharge is modified, or the permit is reopened pursuant to an adopted BMAP.[11]

A BMP is a practice or combination of practices adopted by rule by the Department of Agriculture and Consumer Services (DACS), DEP, or the applicable water management district (WMD) as an effective and practicable means for reducing nutrient inputs and improving water quality, taking into account economic and technological considerations.[12] Where there is an adopted BMP for a nonpoint source, the BMAP must require the nonpoint source to implement the applicable BMPs. The nonpoint source

[1] 33 U.S.C. s. 1313.
[2] 33 U.S.C. s. 1313; *see* s. 403.067, F.S.
[3] Section 403.067, F.S.; ch. 99-223, Laws of Fla.
[4] Section 403.067(6)(b), F.S.
[5] Section 403.067(1), F.S.
[6] Section 403.061, F.S. DEP has the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it; s. 403.061(21), F.S., allows DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.
[7] Section 403.067(6)(c), F.S.
[8] Section 403.067(7)(a)1., F.S.
[9] *Id.*
[10] Section 403.067(7)(a)6., F.S.
[11] Section 403.067(7)(b)2., F.S.
[12] Rule 62-306.200(2), F.A.C.; r. 62-503.200(4), F.A.C., defines "best management practice" to mean a control technique used for a given set of conditions to achieve water quality and water quantity enhancement at a feasible cost.

discharger must demonstrate compliance with BMP implementation or conduct water quality monitoring prescribed by DEP or the WMD, and may be subject to enforcement action for failure to implement the BMPs.[13]

The adopted and pending BMAPs are illustrated in the graphic below:[14]



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. Agricultural BMPs are developed using the best available science with economic and technical consideration and, in certain circumstances, BMPs can maintain or enhance agricultural productivity.[15]

Agricultural BMPs are implemented by DACS. Since the implementation of the BMP program in 1999, DACS has adopted nine BMP manuals that cover nearly all major agricultural commodities in Florida. It is estimated that approximately 54 percent of the state's agricultural acreage is enrolled in the DACS BMP program.[16]

Producers implementing agricultural BMPs receive a presumption of compliance with WQS for the pollutants addressed by the BMPs,[17] and those who enroll in the BMP program are eligible for technical assistance and cost-share funding for BMP implementation. To enroll in the BMP program, a producer

[13] Sections 403.067(7)(b)g. and 403.067(7)(b)h., F.S.
[14] DEP, *Impaired Waters, TMDLs, and Basin Management Action Plans Interactive Map*, available at https://floridadep.gov/dear/water-quality-restoration/content/impaired-waters-tmdls-and-basin-management-action-plans (last visited Jan. 17, 2020).
[15] DACS, *Status of Implementation of Agricultural Nonpoint Source Best Management Practices* (Jul. 1, 2019), 3, available at https://www.fdacs.gov/ezs3download/download/84080/2481615/Media/Files/Agricultural-Water-Policy-Files/Status-of-Implementation-of-BMPs-Report-2019.pdf (last visited Jan. 17, 2020).
[16] *Id*. at 2.
[17] Section 403.067(7), F.S.

must meet with the Office of Agricultural Water Policy within DACS to determine the BMPs that are applicable to its operation and must submit a Notice of Intent to Implement the BMPs, along with the BMP checklist from the applicable BMP manual.[18] Where DEP adopts a BMAP that includes agriculture, producers must either implement DACS-adopted BMPs or conduct water quality monitoring (prescribed by DEP or the WMD and paid for by the producer) to show they are not violating WQS.[19]

The University of Florida's Institute of Food and Agricultural Sciences (UF/IFAS) is also involved in the adoption and implementation of agricultural BMPs. UF/IFAS provides expertise to both DACS and agricultural producers, holds summits and workshops on agricultural BMPs,[20] conducts research to issue recommendations for improving agricultural BMPs,[21] and issues training certificates for agricultural BMPs that require licenses, such as Green Industry BMPs.[22]

DACS also has an implementation verification program to follow up with producers and help ensure that BMPs are being implemented properly. Representatives of DACS conduct site visits to some enrolled operations, while other producers are asked to complete online surveys.[23]

Progress Reports

Current law requires DEP, in conjunction with the WMDs, to submit an annual progress report to the Governor and the Legislature on the status of each TMDL, BMAP, minimum flow or minimum water level, and recovery or prevention strategy. The report must include the status of each project identified to achieve a TMDL or an adopted minimum flow or minimum water level, as applicable.

DACS is required to submit an annual progress report to the Governor and the Legislature on the status of the implementation of the agricultural nonpoint source BMPs, including an implementation assurance report summarizing survey responses and response rates, site inspections, and other methods used to verify implementation of and compliance with BMPs pursuant to BMAPs.

Rural Areas of Opportunity

A rural area of opportunity (RAO) is a rural community or region of rural communities that presents a unique economic development opportunity of regional impact or that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster.[24] By executive order, the Governor may designate up to three RAOs, establishing each region as a priority assignment for Rural Economic Development Initiative agencies. The Governor can waive the criteria, requirements, or any similar provisions of any state economic development incentive for projects in a RAO.[25]

The currently designated RAOs are:

- Northwestern RAO: Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington Counties, and part of Walton County.
- South Central RAO: DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee Counties, and the cities of Pahokee, Belle Glade, South Bay (Palm Beach County), and Immokalee (Collier County).

[18] DACS, *Status of Implementation of Agricultural Nonpoint Source Best Management Practices* (Jul. 1, 2019), 3, available at https://www.fdacs.gov/ezs3download/download/84080/2481615/Media/Files/Agricultural-Water-Policy-Files/Status-of-Implementation-of-BMPs-Report-2019.pdf (last visited Jan. 17, 2020).
[19] DACS, *Agricultural Best Management Practices*, available at https://www.fdacs.gov/Agriculture-Industry/Water/Agricultural-Best-Management-Practices (last visited Jan. 21, 2020).
[20] UF/IFAS, *Best Management Practices Resource*, available at https://bmp.ifas.ufl.edu/ (last visited Jan. 21, 2020).
[21] UF/IFAS, *Best Management Practices & Water Resources*, available at https://erec.ifas.ufl.edu/featured-3-menus/research-/best-management-practices--water-resources/ (last visited Jan. 21, 2020).
[22] UF/IFAS, *GI-BMP Training Program Overview,* available at https://ffl.ifas.ufl.edu/professionals/BMP_overview.htm (last visited Jan. 21, 2020).
[23] DACS, *Agricultural Best Management Practices*, available at https://www.fdacs.gov/Agriculture-Industry/Water/Agricultural-Best-Management-Practices (last visited Jan. 21, 2020).
[24] Section 288.0656(2)(d), F.S.
[25] Section 288.0656(7), F.S.

- North Central RAO: Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union Counties.[26]

Effect of the Bill

The bill requires DEP to promote technically and financially practical actions in the development of BMAPs.

The bill allows BMAP management strategies to include interim measures and BMPs; implementation of cooperative agricultural regional water quality improvement projects or practices; and cooperative urban, suburban, commercial, or institutional regional water quality improvement projects or practices.

The bill requires a nonagricultural nonpoint source discharger who discharges into a basin included in an adopted BMAP to, within five years after the date of the adoption of the BMAP or a BMAP amendment that imposes new requirements, comply with nonagricultural interim measures, nonagricultural BMPs, or other measures adopted by rule by DEP or management measures adopted in a BMAP. The bill further requires DEP or the WMD, as appropriate, to verify by site visit the implementation of such requirements at least once every two years.

The bill requires an agricultural nonpoint source discharger who discharges into a basin included in an adopted BMAP to, within five years after the date of the adoption of the BMAP or BMAP amendment that imposes new requirements, comply with agricultural interim measures, agricultural BMPs, or other measures adopted by rule by DACS and implemented according to a notice of intent filed by the agricultural nonpoint source discharger. The bill further requires DACS to verify by site visit the implementation of such requirements at least once every two years.

The bill requires DEP to verify by site visit the implementation of management measures adopted in a BMAP at least once every two years.

The bill specifies that if verification cannot be accomplished every two years, the responsible agency must include recommendations for meeting the intent of the verification along with a budget request as part of the progress report submitted to the Governor and Legislature.

The bill allows an agricultural or nonagricultural nonpoint source discharger to implement water quality monitoring in lieu of complying with the requirements above.

The bill requires DEP, DACS, and owners of agricultural operations in a basin to develop a cooperative agricultural regional water quality improvement element as part of the BMAP if:

- Agricultural measures have been adopted by DACS and have been implemented and the waterbody remains impaired;
- Agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges; and
- DEP determines that additional measures, in combination with state-sponsored regional projects and other management strategies included in the BMAP, are necessary to achieve the TMDL.

The bill requires the cooperative agricultural regional water quality improvement element to be implemented through a cost-sharing program. The element must include cost-effective and technically and financially practical cooperative regional agricultural nutrient reduction projects that can be implemented on private properties on a site-specific, cooperative basis if funding is made available. Such projects may include land acquisition in fee or conservation easements on the lands of willing sellers and site-specific water quality improvement or dispersed water management projects on the lands of program participants. To qualify for participation in the element, the bill requires a participant to

[26] Department of Economic Opportunity, *Rural Areas of Opportunity*, available at http://www.floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity (last visited Jan. 21, 2020).

have already implemented the interim measures, BMPs, or other measures adopted by DACS. The bill allows the element to be included in the BMAP as a part of the next five-year assessment.

The bill requires DEP, DOH, local governments, and WMDs with jurisdiction in a basin to develop a cooperative urban, suburban, commercial, or institutional regional water quality improvement element as part of the BMAP in which:

- Nonagricultural interim measures and nonagricultural BMPs have been implemented and the waterbody remains impaired;
- Nonagricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges; and
- DEP determines that additional measures, in combination with state-sponsored regional projects and other management strategies included in the BMAP, are necessary to achieve the TMDL.

The bill requires the cooperative urban, suburban, commercial, or institutional regional water quality improvement element to be implemented through a cost-sharing program. The element must include cost-effective and technically and financially practical cooperative regional nutrient reduction projects that can be implemented on urban, suburban, commercial, or institutional properties if funding is made available. The bill requires the element to be included in the BMAP as a part of the next five-year assessment.

The bill requires DACS to work with DEP to improve the accuracy of data used to estimate agricultural land uses in BMAPs. The bill further requires DACS to work with producers to identify agricultural technologies that are cost effective and technically and financially practical and that could be implemented on agricultural lands if funding is made available.

The bill requires UF/IFAS to work with DACS to develop a research plan and legislative budget request to:

- Evaluate and, if cost effective and technically and financially practical, suggest enhancements to adopted BMPs;
- Develop new BMPs that are cost effective and technically and financially practical and that, when proven, can be considered by DACS for rule adoption; and
- Develop technically and financially practical cooperative agricultural nutrient reduction projects to be considered by DEP for inclusion in a BMAP that will reduce the nutrient impacts from agricultural operations on surface and groundwater quality.

The bill requires DEP to work with UF/IFAS and regulated entities to consider adopting BMPs by rule for nutrient impacts from golf courses.

The bill creates a nutrient reduction cost-share program within DEP. The bill allows DEP, subject to appropriation, to provide funding for projects in BMAPs or alternative restoration plans that will individually or collectively reduce nutrient pollution. The bill specifies that projects may include:

- Projects to retrofit On Site Treatment Disposal Systems (OSTDSs);
- Projects to construct, upgrade, or expand facilities to provide advanced waste treatment;
- Projects to connect OSTDSs to central sewer facilities;
- Projects identified in the cooperative urban, suburban, commercial, or institutional regional water quality improvement element;
- Projects identified in the cooperative agricultural regional water quality improvement element; and
- Data collection and research activities identified in the UF/IFAS research plan.

In allocating funds for projects, the bill requires DEP to prioritize the projects listed above, with the exception of data collection and research activities. The bill further requires priority to be given to projects that subsidize the connection of OSTDSs to a wastewater treatment plant or that subsidize inspections and assessments of OSTDSs. The bill requires DEP, in determining priority, to consider the project's estimated reduction in nutrient load, readiness, cost effectiveness, overall environmental

benefit, and location within the plan area as well as the availability of local matching funds and the projected water savings or water quantity improvements.

The bill requires projects to retrofit OSTDSs; to construct, upgrade, or expand facilities to provide advanced waste treatment; or to connect OSTDSs to central sewer facilities to have a minimum 50-percent local match. The bill authorizes DEP, at its discretion, to waive, in whole or in part, consideration of the local contribution for proposed projects within an area designated as a RAO.

The bill requires DEP to coordinate with DACS, UF/IFAS, and each WMD, as necessary, when allocating funds appropriated for the nutrient reduction cost-share program.

The bill requires DEP, beginning January 1, 2021, and each January 1 thereafter, to submit a report to the Governor and the Legislature regarding the projects funded through the nutrient reduction cost-share program.

The bill specifies that the nutrient reduction cost-share program is in addition to, and does not replace, existing funding authorizations.

The bill defines “rural homestead” to mean low-density rural residential properties up to 50 acres in size that are homesites and noncommercial in nature and that include single-family homes and accessory structures together with the keeping of livestock, horses, traditional farm animals, and poultry, and the planting and maintenance of groves and gardens for the primary purpose of serving the needs and interests of those living on the property.

The bill exempts rural homesteads from the requirements of BMPs unless any activity on a rural homestead rises to the level of bona fide agricultural activity and is classified as an agricultural use.

The bill requires DEP, beginning July 1, 2020, and each July 1 thereafter, to include certain information in the progress report submitted to the Governor and Legislature. Such information must include the status of the results of verification of the stormwater systems and nonagricultural BMPs as well as the number of landowners, dischargers, or other responsible persons required to implement applicable management strategies, including BMPs or water quality monitoring, but who did not comply with such requirements.

The bill requires DACS, beginning July 1, 2020, and each July 1 thereafter, to include in the progress report submitted to the Governor and Legislature the status of the results of implementation of agricultural nonpoint source BMPs for irrigated and non-irrigated agricultural acres, fallow agricultural acres, and agricultural parcels of fewer than 50 acres, excluding rural homesteads.

The bill requires DEP and DACS to focus on the priority areas identified in the BMAPs for the progress reports submitted July 1, 2020, July 1, 2021, and July 1, 2022.

B. SECTION DIRECTORY:

Section 1. Amends s. 403.067, F.S., relating to the establishment and implementation of TMDLs.

Section 2. Amends s. 403.0675, F.S., relating to progress reports for TMDLs.

Section 3. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill requires the agencies to conduct site visits, incorporate two new elements in the creation and implementation of BMAPs, and expands the reporting requirements in the reports to be submitted to the Governor and the Legislature.

The proposed House of Representatives' Fiscal Year 2020-2021 General Appropriations Act, appropriates $955,592 in trust funds and 8 FTE to DACS for the expected increase in the number of required site visits to be conducted; $122 million in nonrecurring general revenue funds for water quality improvement cost share grants; and $50 million in nonrecurring general revenue and trust funds for TMDLs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on members of the private sector who operate within a BMAP because the bill provides two new elements in the creation and implementation of BMAPs.

The bill may have an indeterminate positive fiscal impact on members of the private sector whose property meets the definition of rural homestead created in the bill because they will be exempt from the requirements of BMPs.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

Lines 406-425 and lines 675-694 of the bill appear to be redundant. Lines 675-694 should be removed from the bill.

Lines 646-649 and lines 669-674 of the bill appear to be redundant. The language on lines 669-674 should either be clarified or removed from the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 28, 2020, the Agriculture & Natural Resources Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment required DEP, instead of the WMDs, to consider nutrient reduction projects recommended by UF/IFAS.

This analysis is drafted to the committee substitute as approved by the Agriculture & Natural Resources Subcommittee.