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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 "site-specific nutrient
5 management"; amending s. 576.045, F.S.; providing
6 legislative findings and intent; authorizing the use
7 of site-specific nutrient management in specified
8 circumstances; revising the authorized uses of
9 specified funds; authorizing citrus producers to use
10 written recommendations from certified professionals
11 to tailor their recommended nutrient application rates
12 under certain circumstances; requiring citrus
13 producers to keep records regarding the determination
14 that the published nutrient application rates are not
15 appropriate and any recommendations for site-specific
16 nutrient management for a specified period of time;
17 requiring producers using site-specific nutrient
18 management to enroll in and implement certain
19 applicable best management practices; providing a
20 presumption of compliance with certain requirements
21 for producers using site-specific nutrient management;
22 directing the University of Florida Institute of Food
23 and Agricultural Sciences to analyze the use of site-
24 specific nutrient management for certain crops,
25 develop a research plan and certain recommendations,
26 and submit an annual report to the Governor and
27 Legislature by a specified date; extending the
28 expiration of certain provisions; amending s. 403.067,
29 F.S.; conforming a provision to changes made by the

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30 act; providing an effective date.

31
32 Be It Enacted by the Legislature of the State of Florida:

33
34 Section 1. Present subsections (5) through (33) and (34)
35 through (42) of section 576.011, Florida Statutes, are
36 redesignated as subsections (6) through (34) and (36) through
37 (44), respectively, and new subsections (5) and (35) are added
38 to that section, to read:

39 576.011 Definitions.—When used in this chapter, the term:
40 (5) “Certified professional” means an individual who holds
41 a certified crop adviser designation issued by the American
42 Society of Agronomy, who has passed the society’s Southeast
43 Region Certified Crop Adviser Exam, who holds a 4R Nutrient
44 Management Specialty certification, and whose credentials have
45 been verified by the society’s Florida Certified Crop Adviser
46 Board.

47 (35) “Site-specific nutrient management” means the
48 application of nutrients in accordance with s. 576.045(4).

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

51 576.045 Nitrogen and phosphorus; findings and intent; fees;
52 purpose; best management practices; waiver of liability;
53 compliance; rules; exclusions; expiration.—

54 (1) FINDINGS AND INTENT.—

55 (a) The Legislature finds that:

56 1. Nitrogen and phosphorus residues have been found in
57 groundwater, surface water, and drinking water in various areas
58 throughout this ~~the~~ state at levels in excess of established

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59 water quality standards. The Legislature further finds that some
60 fertilization-management practices could be a source of such
61 contamination.

62 2. Nutrient application rate recommendations are presently
63 under review by the University of Florida Institute of Food and
64 Agricultural Sciences so that they can reflect the latest
65 methods of producing agricultural commodities and changes to
66 nutrient application practices which are appropriate due to
67 disease, new crop varieties, changes in United States Department
68 of Agriculture Agricultural Marketing Service standards, growing
69 techniques, and market conditions.

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

79 4. Florida citrus faces challenges that include citrus
80 greening, citrus canker, windstorms, a freeze in 2022 that
81 resulted in the smallest citrus harvest since 1946, labor and
82 supply chain shortages in 2022, and other events that result in
83 the fruit not being harvested. In order to continue production
84 of this state's iconic crop, nutrient application rates must
85 reflect fruit grown on the tree after the bloom during the
86 growing season and not fruit ultimately harvested for market
87 delivery.

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

89 1. Improve fertilization-management practices as soon as
90 practicable in a way that protects ~~this~~ the state's water
91 resources and preserves a viable agricultural industry. This
92 goal is to be accomplished through research concerning best
93 management practices and education and incentives for the
94 agricultural industry and other major users of fertilizer.

95 2. Accommodate continued citrus production without
96 interruption as research to formally revise nutrient application
97 rates is completed.

98 3. Authorize the use of site-specific nutrient management
99 for Florida citrus to adjust recommended nutrient application
100 rates when site-specific nutrient management is supported by
101 written recommendations from a certified professional and
102 documented using production and field data that is retained for
103 review during the best management practices implementation
104 verification process.

105 (2) FEES.—

106 (a) In addition to the fees imposed under ss. 576.021 and
107 576.041, the following supplemental fees shall be collected and
108 paid by licensees for the sole purpose of implementing this
109 section:

110 1. One hundred dollars for each license to distribute
111 fertilizer.

112 2. One hundred dollars for each specialty fertilizer
113 registration.

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

116 (b) All fees paid to the department under this section are

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117 due and payable at the same time and in the same manner as the
118 fees specified in ss. 576.021 and 576.041 and are subject to all
119 provisions contained in those sections.

120 (c) All fees paid under this section must be deposited into
121 the General Inspection Trust Fund and are exempt from ~~the~~
122 ~~provisions of~~ s. 215.20. These funds are to be appropriated
123 annually to the department and allocated according to a
124 memorandum of understanding between the department and the
125 Department of Environmental Protection. The allocation of
126 indirect costs to these funds by any state agency is
127 specifically prohibited.

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

130 (a) Research, development, demonstration, and
131 implementation of suitable interim measures, best management
132 practices, or other measures used to achieve state water quality
133 standards for nitrogen and phosphorus criteria, including site-
134 specific nutrient management. Implementation of interim
135 measures, best management practices, and other measures may
136 include cost-sharing grants, technical assistance,
137 implementation tracking, and conservation leases or other
138 agreements for water quality improvement.

139 (b) Completing the analysis, research plan and
140 recommendations, and report required under paragraph (4) (b).

141 (c) Approving, adopting, publishing, and distributing
142 interim measures, best management practices, or other measures.
143 In the process of developing, approving, and adopting interim
144 measures, best management practices, or other measures, the
145 department shall consult with the Department of Environmental

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146 Protection, the Department of Health, the water management
147 districts, environmental groups, the fertilizer industry, and
148 representatives from the affected farming groups.

149 (d)~~(e)~~ Reimbursing the Department of Environmental
150 Protection for costs incurred which are associated with:

151 1. Monitoring and verifying the effectiveness of the
152 interim measures, best management practices, or other measures
153 approved and adopted under subsection (7) ~~(6)~~ at representative
154 sites. The Department of Environmental Protection shall use its
155 best professional judgment in making the initial determination
156 of the effectiveness of the interim measures, best management
157 practices, or other measures.

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

163
164 This subsection must be implemented through a memorandum of
165 understanding between the department and the Department of
166 Environmental Protection.

167 (4) SITE-SPECIFIC NUTRIENT MANAGEMENT.—

168 (a) The use of site-specific nutrient management to tailor
169 recommended nutrient application rates is authorized for citrus
170 crops where site-specific nutrient management is supported by a
171 certified professional.

172 1. When recommended nutrient application rates published by
173 the Institute of Food and Agricultural Sciences at the
174 University of Florida or other state universities and Florida

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175 College System institutions that have agricultural research
176 programs are not appropriate for a specific producer due to soil
177 conditions, disease, crop varieties, subsequent crop rotations,
178 planting density, market requirements, or site-specific
179 conditions, written recommendations from a certified
180 professional may be used to tailor the recommended nutrient
181 application rates for that producer. The determination that the
182 published nutrient application rates are not appropriate and the
183 recommendation for the tailoring of nutrient application rates
184 must be documented with one or more of the following records, as
185 appropriate: soil tests, plant tissue tests, pathology reports,
186 yield response curves, growth records, or site-specific
187 conditions, together with records specifying the application
188 rate, the types or forms of nutrients used, the nutrient sources
189 used, and the placement and timing of the nutrient sources. A
190 producer must retain the records for 5 years to support the use
191 of site-specific nutrient management.

192 2. Citrus producers using site-specific nutrient management
193 must be enrolled in and implementing all other best management
194 practices adopted by the department and identified in the
195 enrolled notice of intent required under subsections (5) and (6)
196 and s. 403.067(7)(c).

197 3. Notwithstanding any other law, citrus producers
198 implementing site-specific nutrient management in compliance
199 with this section are provided a presumption of compliance with
200 state water quality standards, may rely on the waiver of
201 liability in subsection (5), and may be deemed to be in
202 compliance with s. 403.067(7)(c) and subsections (5) and (6).

203 (b) The University of Florida Institute of Food and

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204 Agricultural Sciences shall analyze the use of site-specific
205 nutrient management for crops other than citrus and crop
206 rotations, develop a research plan and interim recommendations
207 for implementation of site-specific nutrient management, and
208 submit an annual report to the Governor, the President of the
209 Senate, and the Speaker of the House of Representatives by June
210 30 of each year, beginning in 2023.

211 (5) WAIVER OF LIABILITY.—Notwithstanding any other
212 ~~provision of law,~~ the Department of Environmental Protection may
213 ~~not is not authorized to~~ institute proceedings against any
214 person or the Federal Government under ~~the provisions of s.~~
215 376.307(5) to recover any costs or damages associated with
216 nitrogen or phosphorus contamination of groundwater or surface
217 water, or the evaluation, assessment, or remediation of such
218 contamination of groundwater or surface water, including
219 sampling, analysis, and restoration of potable water supplies,
220 where the contamination of groundwater or surface water is
221 determined to be the result of the application of fertilizers or
222 other soil-applied nutritional materials containing nitrogen or
223 phosphorus, provided the property owner or leaseholder:

224 (a)1. Provides the department with a notice of intent to
225 implement applicable interim measures, best management
226 practices, or other measures adopted by the department which
227 ~~practices or measures~~ have been verified by the Department of
228 Environmental Protection to be effective; and

229 2. Implements applicable interim measures, best management
230 practices, or other measures as soon as practicable according to
231 rules adopted by the department or no longer applies fertilizers
232 or other soil-applied nutritional materials containing nitrogen

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233 or phosphorus; or

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

237 (6)~~(5)~~ COMPLIANCE.—If the property owner or leaseholder
238 implements interim measures, best management practices, or other
239 measures adopted by the department which ~~practices or measures~~
240 have been verified by the Department of Environmental Protection
241 to be effective, and complies with the following, there is a
242 presumption of compliance with state water quality standards for
243 such criteria under this section and s. 403.067(7)(c) with
244 respect to the application of fertilizers or other soil-applied
245 nutritional materials containing nitrogen or phosphorus:

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

249 2. Implements applicable interim measures, best management
250 practices, or other measures as soon as practicable according to
251 rules adopted by the department or no longer applies fertilizers
252 or other soil-applied nutritional materials containing nitrogen
253 or phosphorus; or

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

257 (7)~~(6)~~ RULEMAKING.—The department, in consultation with the
258 Department of Environmental Protection, the Department of
259 Health, the water management districts, environmental groups,
260 the fertilizer industry, and representatives from the affected
261 farming groups, shall adopt rules to:

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

265 (b) Establish procedures for property owners and
266 leaseholders to submit the notice of intent to implement and
267 comply with interim measures, best management practices, or
268 other measures.

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

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

273 (8)~~(7)~~ OTHER PROVISIONS.—

274 (a) This section does not limit the authority of the
275 Department of Environmental Protection to regulate discharges
276 associated with the commercial feeding of livestock and poultry
277 defined in chapter 585, including that of dairy farm and egg
278 production operations, or the disposal of sludge, residuals, or
279 septage. This paragraph does not grant additional authority to
280 regulate these discharges.

281 (b) This section does not limit federally delegated
282 regulatory authority.

283 (c) The Department of Environmental Protection may adopt
284 rules to establish criteria for dairy farms which provide
285 reasonable assurance that state nitrate groundwater quality
286 standards will not be violated and which, provided such criteria
287 are met, shall prohibit the Department of Environmental
288 Protection from instituting proceedings against any dairy farmer
289 under ~~the provisions of~~ s. 376.307(5) and shall provide a
290 presumption of compliance with safe nitrate groundwater quality

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291 standards.

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

295 (9)~~(8)~~ EXPIRATION OF PROVISIONS.—Subsection (4) expires on
296 June 30, 2026. Subsections (1), (2), (3), (5) ~~(4)~~, and (7) ~~(6)~~
297 expire on December 31, 2032 ~~2022~~. Subsections (6) ~~(5)~~ and (8)
298 ~~(7)~~ expire on December 31, 2037 ~~2027~~.

299 Section 3. Paragraph (c) of subsection (7) of section
300 403.067, Florida Statutes, is amended to read:

301 403.067 Establishment and implementation of total maximum
302 daily loads.—

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

305 (c) *Best management practices.*—

306 1. The department, in cooperation with the water management
307 districts and other interested parties, as appropriate, may
308 develop suitable interim measures, best management practices, or
309 other measures necessary to achieve the level of pollution
310 reduction established by the department for nonagricultural
311 nonpoint pollutant sources in allocations developed pursuant to
312 subsection (6) and this subsection. These practices and measures
313 may be adopted by rule by the department and the water
314 management districts and, where adopted by rule, shall be
315 implemented by those parties responsible for nonagricultural
316 nonpoint source pollution.

317 2. The Department of Agriculture and Consumer Services may
318 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54
319 suitable interim measures, best management practices, or other

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320 measures necessary to achieve the level of pollution reduction
321 established by the department for agricultural pollutant sources
322 in allocations developed pursuant to subsection (6) and this
323 subsection or for programs implemented pursuant to paragraph
324 (12) (b). These practices and measures may be implemented by
325 those parties responsible for agricultural pollutant sources,
326 and the department, the water management districts, and the
327 Department of Agriculture and Consumer Services shall assist
328 with implementation. In the process of developing and adopting
329 rules for interim measures, best management practices, or other
330 measures, the Department of Agriculture and Consumer Services
331 shall consult with the department, the Department of Health, the
332 water management districts, representatives from affected
333 farming groups, and environmental group representatives. Such
334 rules must also incorporate provisions for a notice of intent to
335 implement the practices and a system to assure the
336 implementation of the practices, including site inspection and
337 recordkeeping requirements.

338 3. When interim measures, best management practices, or
339 other measures are adopted by rule, the effectiveness of such
340 practices in achieving the levels of pollution reduction
341 established in allocations developed by the department pursuant
342 to subsection (6) and this subsection or in programs implemented
343 pursuant to paragraph (12) (b) must be verified at representative
344 sites by the department. The department shall use its best
345 professional judgment in making the initial verification that
346 the best management practices are reasonably expected to be
347 effective and, when applicable, shall notify the appropriate
348 water management district or the Department of Agriculture and

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349 Consumer Services of its initial verification before the
350 adoption of a rule proposed pursuant to this paragraph.
351 Implementation, in accordance with rules adopted under this
352 paragraph, of practices that have been initially verified to be
353 effective, or verified to be effective by monitoring at
354 representative sites, by the department, or are authorized by s.
355 576.045, shall provide a presumption of compliance with state
356 water quality standards and release from s. 376.307(5) for those
357 pollutants addressed by the practices, and the department is not
358 authorized to institute proceedings against the owner of the
359 source of pollution to recover costs or damages associated with
360 the contamination of surface water or groundwater caused by
361 those pollutants. Research projects funded by the department, a
362 water management district, or the Department of Agriculture and
363 Consumer Services to develop or demonstrate interim measures or
364 best management practices shall be granted a presumption of
365 compliance with state water quality standards and a release from
366 s. 376.307(5). The presumption of compliance and release is
367 limited to the research site and only for those pollutants
368 addressed by the interim measures or best management practices.
369 Eligibility for the presumption of compliance and release is
370 limited to research projects on sites where the owner or
371 operator of the research site and the department, a water
372 management district, or the Department of Agriculture and
373 Consumer Services have entered into a contract or other
374 agreement that, at a minimum, specifies the research objectives,
375 the cost-share responsibilities of the parties, and a schedule
376 that details the beginning and ending dates of the project.

377 4. When water quality problems are demonstrated, despite

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378 the appropriate implementation, operation, and maintenance of
379 best management practices and other measures required by rules
380 adopted under this paragraph, the department, a water management
381 district, or the Department of Agriculture and Consumer
382 Services, in consultation with the department, shall institute a
383 reevaluation of the best management practice or other measure.
384 If the reevaluation determines that the best management practice
385 or other measure requires modification, the department, a water
386 management district, or the Department of Agriculture and
387 Consumer Services, as appropriate, shall revise the rule to
388 require implementation of the modified practice within a
389 reasonable time period as specified in the rule.

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

393 6. Agricultural records relating to processes or methods of
394 production, costs of production, profits, or other financial
395 information held by the Department of Agriculture and Consumer
396 Services pursuant to subparagraphs 3., 4., and 5. or pursuant to
397 any rule adopted pursuant to subparagraph 2. are confidential
398 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
399 Constitution. Upon request, records made confidential and exempt
400 pursuant to this subparagraph shall be released to the
401 department or any water management district provided that the
402 confidentiality specified by this subparagraph for such records
403 is maintained.

404 7. Subparagraphs 1. and 2. do not preclude the department
405 or water management district from requiring compliance with
406 water quality standards or with current best management practice

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407 requirements in any applicable regulatory program authorized by
408 law for the purpose of protecting water quality. Additionally,
409 subparagraphs 1. and 2. are applicable only to the extent that
410 they do not conflict with any rules adopted by the department
411 that are necessary to maintain a federally delegated or approved
412 program.

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