

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; authorizing citrus producers to use
9 written recommendations from certified professionals
10 to tailor their recommended nutrient application rates
11 under certain circumstances; requiring citrus
12 producers to keep records regarding the determination
13 that the published nutrient application rates are not
14 appropriate and any recommendations for site-specific
15 nutrient management for a specified period of time;
16 requiring citrus producers using site-specific
17 nutrient management to enroll in and implement certain
18 applicable best management practices; providing a
19 presumption of compliance with certain requirements
20 for citrus producers using site-specific nutrient
21 management; directing the University of Florida
22 Institute of Food and Agricultural Sciences to analyze
23 the use of site-specific nutrient management for
24 certain crops, develop a research plan and certain
25 recommendations, and submit a report to the Governor

26 and Legislature by a specified date; extending the
 27 expiration of certain provisions; amending s. 403.067,
 28 F.S.; conforming a provision to changes made by the
 29 act; providing an effective date.

30
 31 Be It Enacted by the Legislature of the State of Florida:

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

38 576.011 Definitions.—When used in this chapter, the term:

39 (5) "Certified professional" means an individual who holds
 40 a certified crop adviser designation issued by the American
 41 Society of Agronomy, who has passed the society's Southeast
 42 Region Certified Crop Adviser Exam, who holds a 4R Nutrient
 43 Management Specialty certification, and whose credentials have
 44 been verified by the society's Florida Certified Crop Adviser
 45 Board.

46 (33) "Site-specific nutrient management" means the
 47 application of nutrients in accordance with s. 576.045(4).

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

50 576.045 Nitrogen and phosphorus; findings and intent;

51 fees; purpose; best management practices; waiver of liability;
52 compliance; rules; exclusions; expiration.—

53 (1) FINDINGS AND INTENT.—

54 (a) The Legislature finds that:

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

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

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

76 | lower per-acre production on which past research based its
 77 | recommended nutrient application rate.

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

87 | (b) It is the intent of the Legislature to:

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

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

97 | 3. Authorize the use of site-specific nutrient management
 98 | for Florida citrus to adjust recommended nutrient application
 99 | rates when site-specific nutrient management is supported by
 100 | written recommendations from a certified professional and

101 documented using production and field data that is retained for
102 review during the best management practices implementation
103 verification process.

104 (2) FEES.—

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

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

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

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

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

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

126 specifically prohibited.

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

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

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

140 (c)-(b) Approving, adopting, publishing, and distributing
 141 interim measures, best management practices, or other measures.
 142 In the process of developing, approving, and adopting interim
 143 measures, best management practices, or other measures, the
 144 department shall consult with the Department of Environmental
 145 Protection, the Department of Health, the water management
 146 districts, environmental groups, the fertilizer industry, and
 147 representatives from the affected farming groups.

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

150 1. Monitoring and verifying the effectiveness of the

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

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

162
 163 This subsection must be implemented through a memorandum of
 164 understanding between the department and the Department of
 165 Environmental Protection.

166 (4) SITE-SPECIFIC NUTRIENT MANAGEMENT.—

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

171 1. When recommended nutrient application rates published
 172 by the University of Florida Institute of Food and Agricultural
 173 Sciences or other state universities and Florida College System
 174 institutions that have agricultural research programs are not
 175 appropriate for a specific citrus producer due to soil

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

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

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

201 compliance with s. 403.067(7)(c) and subsections (5) and (6).

202 (b) The University of Florida Institute of Food and
 203 Agricultural Sciences shall analyze the use of site-specific
 204 nutrient management for crops other than citrus and crop
 205 rotations, develop a research plan and interim recommendations
 206 for implementation of site-specific nutrient management, and
 207 submit a report to the Governor, the President of the Senate,
 208 and the Speaker of the House of Representatives by December 31,
 209 2022.

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

223 (a)1. Provides the department with a notice of intent to
 224 implement applicable interim measures, best management
 225 practices, or other measures adopted by the department which

226 ~~practices or measures~~ have been verified by the Department of
 227 Environmental Protection to be effective; and

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

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

236 (6)~~(5)~~ COMPLIANCE.—If the property owner or leaseholder
 237 implements interim measures, best management practices, or other
 238 measures adopted by the department which ~~practices or measures~~
 239 have been verified by the Department of Environmental Protection
 240 to be effective, and complies with the following, there is a
 241 presumption of compliance with state water quality standards for
 242 such criteria under this section and s. 403.067(7)(c) with
 243 respect to the application of fertilizers or other soil-applied
 244 nutritional materials containing nitrogen or phosphorus:

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

248 2. Implements applicable interim measures, best management
 249 practices, or other measures as soon as practicable according to
 250 rules adopted by the department or no longer applies fertilizers

251 or other soil-applied nutritional materials containing nitrogen
 252 or phosphorus; or

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

256 (7)~~(6)~~ RULEMAKING.—The department, in consultation with
 257 the Department of Environmental Protection, the Department of
 258 Health, the water management districts, environmental groups,
 259 the fertilizer industry, and representatives from the affected
 260 farming groups, shall adopt rules to:

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

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

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

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

272 (8)~~(7)~~ OTHER PROVISIONS.—

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

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

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

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

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

294 (9) ~~(8)~~ EXPIRATION OF PROVISIONS.—Subsection (4) expires on
 295 December 31, 2027. Subsections (1), (2), (3), (5) ~~(4)~~, and (7)
 296 ~~(6)~~ expire on December 31, 2032 ~~2022~~. Subsections (6) ~~(5)~~ and
 297 (8) ~~(7)~~ expire on December 31, 2037 ~~2027~~.

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

300 403.067 Establishment and implementation of total maximum

301 daily loads.—

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

304 (c) *Best management practices.*—

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

316 2. The Department of Agriculture and Consumer Services may
 317 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54
 318 suitable interim measures, best management practices, or other
 319 measures necessary to achieve the level of pollution reduction
 320 established by the department for agricultural pollutant sources
 321 in allocations developed pursuant to subsection (6) and this
 322 subsection or for programs implemented pursuant to paragraph
 323 (12) (b). These practices and measures may be implemented by
 324 those parties responsible for agricultural pollutant sources,
 325 and the department, the water management districts, and the

326 Department of Agriculture and Consumer Services shall assist
327 with implementation. In the process of developing and adopting
328 rules for interim measures, best management practices, or other
329 measures, the Department of Agriculture and Consumer Services
330 shall consult with the department, the Department of Health, the
331 water management districts, representatives from affected
332 farming groups, and environmental group representatives. Such
333 rules must also incorporate provisions for a notice of intent to
334 implement the practices and a system to assure the
335 implementation of the practices, including site inspection and
336 recordkeeping requirements.

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

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

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

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

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

401 confidentiality specified by this subparagraph for such records
402 is maintained.

403 7. Subparagraphs 1. and 2. do not preclude the department
404 or water management district from requiring compliance with
405 water quality standards or with current best management practice
406 requirements in any applicable regulatory program authorized by
407 law for the purpose of protecting water quality. Additionally,
408 subparagraphs 1. and 2. are applicable only to the extent that
409 they do not conflict with any rules adopted by the department
410 that are necessary to maintain a federally delegated or approved
411 program.

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