

## Committee Substitute for Senate Bill No. 1644

An act relating to nitrogen and phosphorus fertilizers; amending s. 576.045, F.S.; providing legislative findings and intent with respect to protecting the state's water resources; requiring that persons licensed to distribute fertilizer pay a fee on fertilizer containing nitrogen or phosphorus; revising the purposes for which the Department of Agriculture and Consumer Services may use the proceeds of fees levied against persons licensed to distribute fertilizer; providing that implementation of interim measures, best-management practices, or certain other measures acts as a release from certain requirements and provides a presumption of compliance with state water quality standards; revising requirements for the department with respect to adopting rules; revising the dates for the expiration of certain provisions; providing an effective date.

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

Section 1. Section 576.045, Florida Statutes, is amended to read:

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

(1) FINDINGS AND INTENT.—

(a) The Legislature finds that nitrogen and phosphorus ~~nitrate~~ residues have been found in groundwater, surface water, and drinking water in various areas throughout the state at levels in excess of established water quality standards. The Legislature further finds that some fertilization-management ~~fertilization~~ practices could be a source of such ~~nitrate~~ contamination.

(b) It is the intent of the Legislature to improve fertilization-management ~~fertilizer-management~~ practices as soon as practicable in a way that protects the state's water resources and preserves a viable agricultural industry. This goal is to be accomplished through research concerning best-management practices and education and incentives for the agricultural industry and other major users of fertilizer.

(2) FEES.—

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

1. One hundred dollars for each license to distribute fertilizer.
2. One hundred dollars for each of the first five specialty fertilizer registrations and \$25 for each registration after the first five.

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

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

(c) All fees paid under this section must be deposited into the General Inspection Trust Fund and are exempt from the provisions of s. 215.20. These funds are to be appropriated annually to the department and allocated according to a memorandum of understanding between the department and the Department of Environmental Protection to be adopted by October 1, 1994. The allocation of indirect costs to these funds by any state agency is specifically prohibited.

(3) PURPOSE.—The funds collected pursuant to subsection (2) must be used by the department for the sole purpose of:

(a) Research, development, demonstration, and implementation of suitable interim measures, best-management practices, or other measures used to achieve state water quality standards for nitrogen and phosphorus criteria. Implementation of interim measures, best-management practices, and other measures may include cost-sharing grants, technical assistance, implementation tracking, and conservation leases or other agreements for water quality improvement. Contracting, where appropriate, with the Institute of Food and Agricultural Sciences at the University of Florida and the College of Engineering, Science, Technology, and Agriculture at Florida Agricultural and Mechanical University to conduct research relating to best-management practices designed to prevent nitrates from fertilizers or other soil-applied nutritional materials from entering groundwater at levels in excess of state water quality standards. Such contracts must be for fixed periods of time and must require interim reports concerning the progress of the research.

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

(c) Reimbursing the Water Quality Assurance Trust Fund for costs incurred by the Department of Environmental Protection for costs incurred which are associated with:

1. Monitoring and verifying the effectiveness of the interim measures, best-management practices, or other measures approved and adopted under subsection (6) paragraph (b) at representative sites. The Department of Environmental Protection shall use its best professional judgment in making the initial determination of the effectiveness of the interim measures, best-management practices, or other measures.

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

This subsection must be implemented through a memorandum of understanding between the department and the Department of Environmental Protection to be adopted by October 1, 1994.

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

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

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

3. ~~Implements practicable interim measures identified and adopted by the department which can be implemented immediately or according to rules adopted by the department; or~~

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

(5) **COMPLIANCE.**—If the property owner or leaseholder implements interim measures, best-management practices, or other measures adopted by the department which practices or measures that have been verified by the Department of Environmental Protection to be effective at representative sites and complies with the following, there is a presumption of compliance with state water nitrate groundwater quality standards for such criteria with respect to the application of fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus:

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

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

~~3. Implements practicable interim measures identified and adopted by the department which can be implemented immediately or according to rules adopted by the department; or~~

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

(6) RULEMAKING.—

(a) The department, in consultation with the Department of Environmental Protection, the Department of Health, the water management districts, environmental groups, the fertilizer industry, and representatives from the affected farming groups, shall adopt rules to:

~~(a)1.~~ Specify the requirements of interim measures, best-management practices, or other measures to be implemented by property owners and leaseholders.

~~(b)2.~~ Establish procedures for property owners and leaseholders to submit the notice of intent to implement and comply with interim measures, best-management practices, or other measures.

~~(c)3.~~ Establish schedules for implementation of interim measures, best-management practices, or other measures and of interim measures that can be taken prior to adoption of best-management practices.

~~(d)4.~~ Establish a system to assure the implementation of best-management practices, including recordkeeping requirements.

~~(b) Rules adopted pursuant to this subsection shall become effective pursuant to the applicable provisions of chapter 120, but must be submitted to the President of the Senate and the Speaker of the House of Representatives for review by the Legislature. The rules shall be referred to the appropriate committees of substance and scheduled for review during the first available regular session following adoption. Except as otherwise provided by operation of law, such rules shall remain in effect until rejected or modified by act of the Legislature.~~

(7) OTHER PROVISIONS.—

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

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

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

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

(8) EXPIRATION OF PROVISIONS.—Subsections (1), (2), (3), (4), and (6) expire on December 31, 2012 ~~2003~~. Subsections (5) and (7) expire on December 31, 2017 ~~2008~~.

Section 2. This act shall take effect July 1, 2003.

Approved by the Governor June 12, 2003.

Filed in Office Secretary of State June 12, 2003.