

1 A bill to be entitled

2 An act relating to water pollution control; amending s.  
3 403.067, F.S.; providing requirements for basin management  
4 action plans; allowing such plans to take into account the  
5 benefits of pollutant load reduction achieved by point or  
6 nonpoint sources, where appropriate; requiring that the  
7 Department of Environmental Protection adopt all or part of  
8 any such plan, or any amendment thereto, by secretarial  
9 order as provided by state law; providing that the  
10 provisions of the department's rule relating to the  
11 equitable abatement of pollutants into surface waters may  
12 not be applied to water bodies or water body segments for  
13 which a basin management plan that takes into account  
14 future or new expanded activities or discharges has been  
15 adopted; authorizing water quality protection programs to  
16 include the trading of water quality credits; authorizing  
17 the department to adopt rules related to the trading of  
18 water quality credits; requiring that such rulemaking  
19 include certain provisions; specifying that water quality  
20 credit trading shall initially be limited to the Lower St.  
21 Johns River basin as a pilot project; allowing the  
22 Department of Environmental Protection to authorize water  
23 quality credit trading and establish specific requirements  
24 for trading in the adopted basin management action plan for  
25 the Lower St. Johns River Basin prior to the adoption of  
26 rules; requiring that the department provide the  
27 Legislature with an annual report regarding the  
28 effectiveness of the pilot project; correcting cross-

29 | references to conform to changes made by the act; amending  
 30 | s. 403.088, F.S.; authorizing the department to revise a  
 31 | water pollution operation permit under certain  
 32 | circumstances; authorizing the department to revise, renew,  
 33 | issue, or reissue such a permit if a water quality credit  
 34 | trade that meets the requirements of s. 403.067, F.S.;  
 35 | requiring that revised permits be accompanied by an order  
 36 | establishing a schedule for achieving compliance with all  
 37 | permit conditions; providing an effective date.

38 |

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

40 |

41 | Section 1. Subsections (7), (8), and (9) of section  
 42 | 403.067, Florida Statutes, are amended to read:

43 | 403.067 Establishment and implementation of total maximum  
 44 | daily loads.--

45 | (7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND  
 46 | IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.--

47 | (a) Basin management action plans.--

48 | 1. In developing and implementing the total maximum daily  
 49 | load for a water body, the department, or the department in  
 50 | conjunction with a water management district, may develop a  
 51 | basin management action plan that addresses some or all of the  
 52 | watersheds and basins tributary to the water body. Such a plan  
 53 | must ~~shall~~ integrate the appropriate management strategies  
 54 | available to the state through existing water quality protection  
 55 | programs to achieve the total maximum daily loads and may  
 56 | provide for phased implementation of these management strategies

57 to promote timely, cost-effective actions as provided for in s.  
58 403.151. The plan must ~~shall~~ establish a schedule for  
59 implementing the management strategies, establish a basis for  
60 evaluating the plan's effectiveness, and identify feasible  
61 funding strategies for implementing the plan's management  
62 strategies. The management strategies may include regional  
63 treatment systems or other public works, where appropriate, and,  
64 in basins listed in paragraph (8)(f) for which a basin  
65 management action plan has been adopted, voluntary trading of  
66 water quality credits to achieve the needed pollutant load  
67 reductions.

68 2. A basin management action plan must ~~shall~~ equitably  
69 allocate, pursuant to paragraph (6)(b), pollutant reductions to  
70 individual basins, as a whole to all basins, or to each  
71 identified point source or category of nonpoint sources, as  
72 appropriate. For nonpoint sources for which best management  
73 practices have been adopted, the initial requirement specified  
74 by the plan must ~~shall~~ be those practices developed pursuant to  
75 paragraph (c). Where appropriate, the plan may take into  
76 account the benefits of ~~provide~~ pollutant load reduction  
77 achieved by point or nonpoint sources ~~credits to dischargers~~  
78 that have implemented management strategies to reduce pollutant  
79 loads, including best management practices, prior to the  
80 development of the basin management action plan. The plan must  
81 ~~shall~~ also identify the mechanisms that will address ~~by which~~  
82 potential future increases in pollutant loading ~~will be~~  
83 ~~addressed~~.

84 3. The basin management action planning process is  
85 intended to involve the broadest possible range of interested  
86 parties, with the objective of encouraging the greatest amount  
87 of cooperation and consensus possible. In developing a basin  
88 management action plan, the department shall assure that key  
89 stakeholders, including, but not limited to, applicable local  
90 governments, water management districts, the Department of  
91 Agriculture and Consumer Services, other appropriate state  
92 agencies, local soil and water conservation districts,  
93 environmental groups, regulated interests, and affected  
94 pollution sources, are invited to participate in the process.  
95 The department shall hold at least one public meeting in the  
96 vicinity of the watershed or basin to discuss and receive  
97 comments during the planning process and shall otherwise  
98 encourage public participation to the greatest practicable  
99 extent. Notice of the public meeting must ~~shall~~ be published in  
100 a newspaper of general circulation in each county in which the  
101 watershed or basin lies not less than 5 days nor more than 15  
102 days before the public meeting. A basin management action plan  
103 shall not supplant or otherwise alter any assessment made under  
104 subsection (3) or subsection (4) or any calculation or initial  
105 allocation.

106 4. The department shall adopt all or any part of a basin  
107 management action plan and any amendment to such plan by  
108 secretarial order pursuant to chapter 120 to implement the  
109 provisions of this section.

110 5. The basin management action plan must ~~shall~~ include  
111 milestones for implementation and water quality improvement, and

112 an associated water quality monitoring component sufficient to  
113 evaluate whether reasonable progress in pollutant load  
114 reductions is being achieved over time. An assessment of  
115 progress toward these milestones shall be conducted every 5  
116 years, and revisions to the plan shall be made as appropriate.  
117 Revisions to the basin management action plan shall be made by  
118 the department in cooperation with basin stakeholders. Revisions  
119 to the management strategies required for nonpoint sources must  
120 ~~shall~~ follow the procedures set forth in subparagraph (c)4.  
121 Revised basin management action plans must ~~shall~~ be adopted  
122 pursuant to subparagraph 4.

123 6. In accordance with procedures adopted by rule under  
124 paragraph (8)(c), plans for basins listed in paragraph (9) may  
125 allow point or nonpoint sources that will achieve greater  
126 pollutant reductions than required by an adopted total maximum  
127 load or wasteload allocation to generate, register, and trade  
128 water quality credits for the excess reductions to enable other  
129 sources to achieve their allocation; however, the generation of  
130 water quality credits does not remove the obligation of a source  
131 or activity to meet applicable technology requirements or  
132 adopted best management practices. Such plans must allow  
133 trading between NPDES permittees, and trading that may or may  
134 not involve NPDES permittees, where the generation or use of the  
135 credits involve an entity or activity not subject to department  
136 water discharge permits whose owner voluntarily elects to obtain  
137 department authorization for the generation and sale of credits.  
138 Notwithstanding any such water quality credit trades, entities  
139 subject to a department water discharge permit shall remain

140 responsible for compliance with the limitations of the  
 141 department water discharge permit, including any applicable load  
 142 or wasteload allocation.

143 7. The provisions of department's rule relating to the  
 144 equitable abatement of pollutants into surface waters shall not  
 145 be applied to water bodies or water body segments for which a  
 146 basin management action plan that takes into account future new  
 147 or expanded activities or discharges has been adopted pursuant  
 148 to this section.

149 (b) Total maximum daily load implementation.--

150 1. The department shall be the lead agency in coordinating  
 151 the implementation of the total maximum daily loads through  
 152 existing water quality protection programs. Application of a  
 153 total maximum daily load by a water management district must  
 154 ~~shall~~ be consistent with this section and shall not require the  
 155 issuance of an order or a separate action pursuant to s.  
 156 120.536(1) or s. 120.54 for the adoption of the calculation and  
 157 allocation previously established by the department. Such  
 158 programs may include, but are not limited to:

159 a. Permitting and other existing regulatory programs,  
 160 including water-quality-based effluent limitations;

161 b. Nonregulatory and incentive-based programs, including  
 162 best management practices, cost sharing, waste minimization,  
 163 pollution prevention, agreements established pursuant to s.  
 164 403.061(21), and public education;

165 c. Other water quality management and restoration  
 166 activities, for example surface water improvement and management

167 plans approved by water management districts or basin management  
 168 action plans developed pursuant to this subsection;

169 d. Trading of water quality credits ~~Pollutant trading~~ or  
 170 other equitable economically based agreements;

171 e. Public works including capital facilities; or

172 f. Land acquisition.

173 2. For a basin management action plan adopted pursuant to  
 174 paragraph (a) ~~subparagraph (a)4.~~, any management strategies and  
 175 pollutant reduction requirements associated with a pollutant of  
 176 concern for which a total maximum daily load has been developed,  
 177 including effluent limits set forth for a discharger subject to  
 178 NPDES permitting, if any, must ~~shall~~ be included in a timely  
 179 manner in subsequent NPDES permits or permit modifications for  
 180 that discharger. The department shall not impose limits or  
 181 conditions implementing an adopted total maximum daily load in  
 182 an NPDES permit until the permit expires, the discharge is  
 183 modified, or the permit is reopened pursuant to an adopted basin  
 184 management action plan, unless required by federal law or  
 185 regulation.

186 a. Absent a detailed allocation, total maximum daily loads  
 187 shall be implemented through NPDES permit conditions that  
 188 provide for ~~afford~~ a compliance schedule. In such instances, a  
 189 facility's NPDES permit must ~~shall~~ allow time for the issuance  
 190 of an order adopting the basin management action plan. The time  
 191 allowed for the issuance of an order adopting the plan may ~~shall~~  
 192 not exceed 5 years. Upon issuance of an order adopting the plan,  
 193 the permit must ~~shall~~ be reopened or renewed, as necessary, and  
 194 permit conditions consistent with the plan must ~~shall~~ be

195 established. Notwithstanding ~~the~~ other provisions of this  
 196 subparagraph, upon request by a NPDES permittee, the department  
 197 as part of a permit issuance, renewal, or modification may  
 198 establish individual allocations prior to the adoption of a  
 199 basin management action plan.

200       b. For holders of NPDES municipal separate storm sewer  
 201 system permits and other stormwater sources, implementation of a  
 202 total maximum daily load or basin management action plan must  
 203 ~~shall~~ be achieved, to the maximum extent practicable, through  
 204 the use of best management practices or other management  
 205 measures.

206       c. The basin management action plan does not relieve the  
 207 discharger from any requirement to obtain, renew, or modify an  
 208 NPDES permit or to abide by other requirements of the permit.

209       d. Management strategies set forth in a basin management  
 210 action plan to be implemented by a discharger subject to  
 211 permitting by the department must ~~shall~~ be completed pursuant to  
 212 the schedule set forth in the basin management action plan. This  
 213 implementation schedule may extend beyond the 5-year term of an  
 214 NPDES permit.

215       e. Management strategies and pollution reduction  
 216 requirements set forth in a basin management action plan for a  
 217 specific pollutant of concern shall not be subject to challenge  
 218 under chapter 120 at the time they are incorporated, in an  
 219 identical form, into a subsequent NPDES permit or permit  
 220 modification.

221       f. For nonagricultural pollutant sources not subject to  
 222 NPDES permitting but permitted pursuant to other state,



223 regional, or local water quality programs, the pollutant  
 224 reduction actions adopted in a basin management action plan  
 225 shall be implemented to the maximum extent practicable as part  
 226 of those permitting programs.

227 g. A nonpoint source discharger included in a basin  
 228 management action plan must ~~shall~~ demonstrate compliance with  
 229 the pollutant reductions established under ~~pursuant to~~  
 230 subsection (6) by either implementing the appropriate best  
 231 management practices established pursuant to paragraph (c) or  
 232 conducting water quality monitoring prescribed by the department  
 233 or a water management district. A nonpoint source discharger  
 234 may, in accordance with department rules, supplement the  
 235 implementation of best management practices with water quality  
 236 credit trades in order to demonstrate compliance with the  
 237 pollutant reductions established under subsection (6).

238 h. A nonpoint source discharger included in a basin  
 239 management action plan may be subject to enforcement action by  
 240 the department or a water management district based upon a  
 241 failure to implement the responsibilities set forth in sub-  
 242 subparagraph g.

243 i. A landowner, discharger, or other responsible person  
 244 who is implementing applicable management strategies specified  
 245 in an adopted basin management action plan shall not be  
 246 required by permit, enforcement action, or otherwise to  
 247 implement additional management strategies to reduce pollutant  
 248 loads to attain the pollutant reductions established pursuant to  
 249 subsection (6) and shall be deemed to be in compliance with this  
 250 section. This subparagraph does not limit the authority of the

251 department to amend a basin management action plan as specified  
 252 in subparagraph (a)5.

253 (c) Best management practices.--

254 1. The department, in cooperation with the water  
 255 management districts and other interested parties, as  
 256 appropriate, may develop suitable interim measures, best  
 257 management practices, or other measures necessary to achieve the  
 258 level of pollution reduction established by the department for  
 259 nonagricultural nonpoint pollutant sources in allocations  
 260 developed pursuant to subsection (6) and this subsection. These  
 261 practices and measures may be adopted by rule by the department  
 262 and the water management districts ~~pursuant to ss. 120.536(1)~~  
 263 ~~and 120.54~~, and, where adopted by rule, shall be implemented by  
 264 those parties responsible for nonagricultural nonpoint source  
 265 pollution.

266 2. The Department of Agriculture and Consumer Services may  
 267 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54  
 268 suitable interim measures, best management practices, or other  
 269 measures necessary to achieve the level of pollution reduction  
 270 established by the department for agricultural pollutant sources  
 271 in allocations developed pursuant to subsection (6) and this  
 272 subsection or for programs implemented pursuant to paragraph  
 273 (11)(b). These practices and measures may be implemented by  
 274 those parties responsible for agricultural pollutant sources and  
 275 the department, the water management districts, and the  
 276 Department of Agriculture and Consumer Services shall assist  
 277 with implementation. In the process of developing and adopting  
 278 rules for interim measures, best management practices, or other

279 | measures, the Department of Agriculture and Consumer Services  
 280 | shall consult with the department, the Department of Health, the  
 281 | water management districts, representatives from affected  
 282 | farming groups, and environmental group representatives. Such  
 283 | rules must ~~shall~~ also incorporate provisions for a notice of  
 284 | intent to implement the practices and a system to assure the  
 285 | implementation of the practices, including recordkeeping  
 286 | requirements.

287 |         3. Where interim measures, best management practices, or  
 288 | other measures are adopted by rule, the effectiveness of such  
 289 | practices in achieving the levels of pollution reduction  
 290 | established in allocations developed by the department pursuant  
 291 | to subsection (6) and this subsection or in programs implemented  
 292 | pursuant to paragraph (11)(b) must ~~shall~~ be verified at  
 293 | representative sites by the department. The department shall use  
 294 | best professional judgment in making the initial verification  
 295 | that the best management practices are reasonably expected to be  
 296 | effective and, where applicable, must ~~shall~~ notify the  
 297 | appropriate water management district or the Department of  
 298 | Agriculture and Consumer Services of its initial verification  
 299 | prior to the adoption of a rule proposed pursuant to this  
 300 | paragraph. Implementation, in accordance with rules adopted  
 301 | under this paragraph, of practices that have been initially  
 302 | verified to be effective, or verified to be effective by  
 303 | monitoring at representative sites, by the department, shall  
 304 | provide a presumption of compliance with state water quality  
 305 | standards and release from the provisions of s. 376.307(5) for  
 306 | those pollutants addressed by the practices, and the department

307 is not authorized to institute proceedings against the owner of  
308 the source of pollution to recover costs or damages associated  
309 with the contamination of surface water or groundwater caused by  
310 those pollutants. Research projects funded by the department, a  
311 water management district, or the Department of Agriculture and  
312 Consumer Services to develop or demonstrate interim measures or  
313 best management practices shall be granted a presumption of  
314 compliance with state water quality standards and a release from  
315 the provisions of s. 376.307(5). The presumption of compliance  
316 and release is ~~shall be~~ limited to the research site and only  
317 for those pollutants addressed by the interim measures or best  
318 management practices. Eligibility for the presumption of  
319 compliance and release is ~~shall be~~ limited to research projects  
320 on sites where the owner or operator of the research site and  
321 the department, a water management district, or the Department  
322 of Agriculture and Consumer Services have entered into a  
323 contract or other agreement that, at a minimum, specifies the  
324 research objectives, the cost-share responsibilities of the  
325 parties, and a schedule that details the beginning and ending  
326 dates of the project.

327 4. Where water quality problems are demonstrated, despite  
328 the appropriate implementation, operation, and maintenance of  
329 best management practices and other measures required by  
330 ~~according to~~ rules adopted under this paragraph, the department,  
331 a water management district, or the Department of Agriculture  
332 and Consumer Services, in consultation with the department,  
333 shall institute a reevaluation of the best management practice  
334 or other measure. Should the reevaluation determine that the

335 best management practice or other measure requires modification,  
 336 the department, a water management district, or the Department  
 337 of Agriculture and Consumer Services, as appropriate, shall  
 338 revise the rule to require implementation of the modified  
 339 practice within a reasonable time period as specified in the  
 340 rule.

341 5. Agricultural records relating to processes or methods  
 342 of production, costs of production, profits, or other financial  
 343 information held by the Department of Agriculture and Consumer  
 344 Services pursuant to subparagraphs 3. and 4. or pursuant to any  
 345 rule adopted pursuant to subparagraph 2. are confidential and  
 346 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 347 Constitution. Upon request, records made confidential and exempt  
 348 pursuant to this subparagraph shall be released to the  
 349 department or any water management district if ~~provided that~~ the  
 350 confidentiality specified by this subparagraph for such records  
 351 is maintained.

352 6. The provisions of subparagraphs 1. and 2. do ~~shall~~ not  
 353 preclude the department or water management district from  
 354 requiring compliance with water quality standards or with  
 355 current best management practice requirements set forth in any  
 356 applicable regulatory program authorized by law to protect ~~for~~  
 357 ~~the purpose of protecting~~ water quality. Additionally,  
 358 subparagraphs 1. and 2. are applicable only to the extent that  
 359 they do not conflict with any rules adopted by the department  
 360 which ~~that~~ are necessary to maintain a federally delegated or  
 361 approved program.

362 (8) RULES.--The department is authorized to adopt rules  
 363 pursuant to ss. 120.536(1) and 120.54 for:

364 (a) Delisting water bodies or water body segments from the  
 365 list developed under subsection (4) pursuant to the guidance  
 366 under subsection (5).~~†~~

367 (b) Administering Administration of funds to implement the  
 368 total maximum daily load and basin management action planning  
 369 programs.~~†~~

370 (c) Water quality credit Procedures for pollutant trading  
 371 among the pollutant sources to a water body or water body  
 372 segment in basins listed in subsection (9), which shall be  
 373 consistent with federal requirements and implemented through  
 374 permits, including water quality credit trading permits, other  
 375 authorizations, or other legally binding agreements as  
 376 established by department rule. By July 1, 2008, rulemaking  
 377 must be initiated which provides for the following:~~†, including a~~  
 378 ~~mechanism for the issuance and tracking of pollutant credits.~~  
 379 ~~Such procedures may be implemented through permits or other~~  
 380 ~~authorizations and must be legally binding. Prior to adopting~~  
 381 ~~rules for pollutant trading under this paragraph, and no later~~  
 382 ~~than November 30, 2006, the Department of Environmental~~  
 383 ~~Protection shall submit a report to the Governor, the President~~  
 384 ~~of the Senate, and the Speaker of the House of Representatives~~  
 385 ~~containing recommendations on such rules, including the proposed~~  
 386 ~~basis for equitable economically based agreements and the~~  
 387 ~~tracking and accounting of pollution credits or other similar~~  
 388 ~~mechanisms. Such recommendations shall be developed in~~  
 389 ~~cooperation with a technical advisory committee that includes~~

390 ~~experts in pollutant trading and representatives of potentially~~  
 391 ~~affected parties;~~

392 1. The process to be used to determine how credits are  
 393 generated, quantified, and validated.

394 2. A publicly accessible water quality credit trading  
 395 registry that tracks water quality credits, trading activities,  
 396 and prices paid for credits. Entities that participate in water  
 397 quality credit trades shall timely report to the department the  
 398 prices for credits and any state funding received for the  
 399 facilities or activities that generated the credits. The  
 400 department shall not participate in the establishment of credit  
 401 prices.

402 3. Limitations on the availability and use of water  
 403 quality credits, including a list of eligible pollutants or  
 404 parameters and minimum water quality requirements and, where  
 405 appropriate, adjustments to reflect best management practice  
 406 performance uncertainties and water-segment-specific location  
 407 factors.

408 4. The timing and duration of credits and allowance for  
 409 credit transferability.

410 5. Mechanisms for determining and ensuring compliance with  
 411 trading procedures, including recordkeeping, monitoring,  
 412 reporting, and inspections. Generators of traded credits are  
 413 responsible for achieving the load reductions on which the  
 414 credits are based; persons or entities acquiring credits are  
 415 responsible for enforcing the terms of water quality credit  
 416 acquisition agreements and meeting applicable permit conditions.

417 (d) The total maximum daily load calculation in

418 accordance with paragraph (6)(a) immediately upon the effective  
 419 date of this act, for those eight water segments within Lake  
 420 Okeechobee proper as submitted to the United States  
 421 Environmental Protection Agency pursuant to subsection (2) ~~and~~

422 (e) Implementation of other specific provisions.

423 (9) Water quality credit trading shall be limited to the  
 424 Lower St. Johns River basin, as defined by the department, as a  
 425 pilot project. The department may authorize water quality  
 426 credit trading and establish specific requirements for trading  
 427 in the adopted basin management action plan for the Lower St.  
 428 Johns River basin prior to the adoption of rules under paragraph  
 429 (8)(c) in order to effectively implement the pilot project.

430 Entities that participate in water quality credit trades shall  
 431 timely report to the department the prices for credits, how the  
 432 prices were determined, and any state funding received for the  
 433 facilities or activities that generated the credits. The  
 434 department shall not participate in the establishment of credit  
 435 prices. No later than 24 months after adoption of the basin  
 436 management action plan for the Lower St. Johns River, the  
 437 department shall submit a report to the Governor, the President  
 438 of the Senate, and the Speaker of the House of Representatives  
 439 on the effectiveness of the pilot project, including the  
 440 following information:

441 1. A summary of how water quality credit trading was  
 442 implemented, including the number of pounds of pollutants  
 443 traded;

444 2. A description of the individual trades and estimated  
 445 pollutant load reductions that are expected to result from each



- 446 trade;  
 447 3. A description of any conditions placed on trades;  
 448 4. Prices associated with the trades, as reported by the  
 449 traders, and;  
 450 5. A recommendation as to whether other areas of the state  
 451 would benefit from water quality credit trading and, if so, an  
 452 identification of the statutory changes necessary to expand the  
 453 scope of trading.

454 Section 2. Paragraphs (e) and (f) of subsection (2) of  
 455 section 403.088, Florida Statutes, are amended to read:

456 403.088 Water pollution operation permits; conditions.--

457 (2)

458 (e) However, if the discharge will not meet permit  
 459 conditions or applicable statutes and rules, the department may  
 460 issue, renew, revise, or reissue the operation permit if:

461 1. The applicant is constructing, installing, or placing  
 462 into operation, or has submitted plans and a reasonable schedule  
 463 for constructing, installing, or placing into operation, an  
 464 approved pollution abatement facility or alternative waste  
 465 disposal system;

466 2. The applicant needs permission to pollute the waters  
 467 within the state for a period of time necessary to complete  
 468 research, planning, construction, installation, or operation of  
 469 an approved and acceptable pollution abatement facility or  
 470 alternative waste disposal system;

471 3. There is no present, reasonable, alternative means of  
 472 disposing of the waste other than by discharging it into the  
 473 waters of the state;

PCS for HB 547

2008

474 4. The granting of an operation permit will be in the  
475 public interest; ~~or~~

476 5. The discharge will not be unreasonably destructive to  
477 the quality of the receiving waters; or-

478 6. A water quality credit trade meets the requirements of  
479 s. 403.067.

480 (f) A permit issued, renewed, revised, or reissued  
481 pursuant to paragraph (e) shall be accompanied by an order  
482 establishing a schedule for achieving compliance with all permit  
483 conditions. Such permit may require compliance with the  
484 accompanying order.

485 Section 3. This act shall take effect July 1, 2008.