

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Agriculture

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BILL: SB 336

INTRODUCER: Senator Rouson

SUBJECT: Large-scale Agricultural Pollution Reduction Pilot Program

DATE: January 25, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Argote</u>	<u>Becker</u>	<u>AG</u>	<b>Favorable</b>
2.	_____	_____	<u>EN</u>	_____
3.	_____	_____	<u>AP</u>	_____

**I. Summary:**

SB 336 creates a large-scale agricultural pollution reduction pilot program within the Department of Environmental Protection (DEP) in partnership with dairy farms to develop and maintain regional pollution reduction projects that eliminate water pollution in the state.

The bill establishes pilot program application and project selection requirements. All aspects of projects planned and developed must be available for inspection by the DEP, the Department of Agriculture and Consumer Services, and water management districts. The bill specifies that pilot program participants are presumed to comply with water quality standards and are eligible for certain permit terms and funding. The DEP is given discretionary authority to adopt rules to provide a general permit for the construction of systems and projects under certain circumstances.

The bill requires that the Office of Program Policy Analysis and Government Accountability evaluate the pilot program using specified minimum criteria and report its findings to the Legislature. The pilot program is repealed as of October 2, 2025, unless reviewed and continued by the Legislature.

The bill authorizes the DEP to grant general permits for certain pilot program participants.

The bill provides for a nonrecurring appropriation in the 2021-2022 fiscal year of \$1.3 million for the initial implementation of the program, of which \$800,000 is to be spent in the Lake Okeechobee Basin Management Action Plan and \$500,000 in the Suwannee Basin Management Action Plan.

This act takes effect July 1, 2021.

## II. Present Situation:

### Water Quality and Nutrients

Phosphorus and nitrogen are naturally present in water and are essential nutrients for the healthy growth of plant and animal life. The correct balance of both nutrients is necessary for a healthy ecosystem; however, excessive nitrogen and phosphorus can cause significant water quality issues. Animal manure contains high concentrations of organic material, nitrogen, phosphorus, and fecal bacteria, which can be harmful when absorbed into wastewater. Excessive nutrient loads may result in harmful algal blooms, nuisance aquatic weeds, and the alteration of the natural community of plants and animals. Dense, harmful algal blooms can also cause human health problems, fish kills, problems for water treatment plants, and impairment of the aesthetics and taste of waters. Growth of nuisance aquatic weeds tends to increase in nutrient enriched waters, which can impact recreational activities.<sup>1</sup>

### Total Maximum Daily Loads and Concentrated Agricultural Feeding Operations

A total maximum daily load (TMDL), which must be adopted by rule, is a scientific determination of the maximum amount of a given pollutant that can be absorbed by a waterbody and still meet water quality standards.<sup>2</sup> Waterbodies or sections of waterbodies that do not meet the established water quality standards are deemed impaired. Pursuant to the federal Clean Water Act, The DEP is required to establish a TMDL for impaired waterbodies.<sup>3</sup> A TMDL for an impaired waterbody is defined as the sum of the individual waste load allocations for point sources and the load allocations for nonpoint sources and natural background.<sup>4</sup> Point sources are discernible, confined, and discrete conveyances including pipes, ditches, and tunnels.<sup>5</sup> Nonpoint sources are unconfined sources that include runoff from agricultural lands or residential areas.<sup>6</sup>

Concentrated agricultural feeding operations (CAFOs)<sup>7</sup> are facilities where large numbers of livestock or poultry animals are confined for various purposes which include feeding, breeding, training, milking, egg production, meat production, and more. Facilities that have fewer than the

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<sup>1</sup> The Environmental Protection Agency, *The Problem*, <https://www.epa.gov/nutrientpollution/problem> (last visited Jan. 26, 2021).

<sup>2</sup> The Florida Department of Environmental Protection, *Total Maximum Daily Loads Program*, <https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program> (last visited Jan. 26, 2021).

<sup>3</sup> See s. 403.067(1), F.S.

<sup>4</sup> See s. 403.031(21), F.S.

<sup>5</sup> Fla. Admin. Code R. 62-620.200(37). “Point source” is defined as “any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.” Nonpoint sources of pollution are sources of pollution that are not point sources. Nonpoint sources can include runoff from agricultural lands or residential areas; oil, grease and toxic materials from urban runoff; and sediment from improperly managed construction sites.

<sup>6</sup> *Id.*

<sup>7</sup> Florida Livestock Agents Group, *Spring Ranchers Forum*, UF-IFAS, <https://extadmin.ifas.ufl.edu/media/extadminifasufledu/cflag/image/docs/pdfs/spring-ranchers-forum/2014/2014Proceedings.pdf> (last visited Jan. 26, 2021).

threshold number of animals are referred to as Animal Feeding Operations (AFOs).<sup>8</sup> The confinement of a large number of animals in a relatively small area can cause a manure build up, which can impact TMDLs. Because of their potential to be significant pollution sources, CAFOs nationwide are subject to federal and state wastewater permitting.<sup>9</sup> CAFOs are regulated under the National Pollutant Discharge Elimination System (NPDES),<sup>10</sup> which was created as a portion of the federal Clean Water Act.<sup>11</sup> NPDES rules require CAFOs to obtain wastewater permits if they discharge pollutants to surface water.

The DEP oversees the regulation of dairy farms through the issuance of permits for their centralized wastewater management streams in areas which contain CAFOs.<sup>12</sup> State waste disposal regulations are designed to work in conjunction with animal feeding operation rules so that facilities permitted under animal feeding operation rules will be exempt from solid waste permit requirements.<sup>13</sup>

### **Basin Management Action Plans and Best Management Practices**

Basin management action plans (BMAPs) are one of the primary mechanisms DEP uses to achieve TMDLs. BMAPs are plans that address the entire pollution load, including point and nonpoint discharges, for a watershed. BMAPs generally include:

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Best Management Practices (BMPs) and non-regulatory and incentive-based programs, including cost-sharing, waste minimization, pollution prevention, agreements, and public education;
- Public works projects, including capital facilities; and
- Land acquisition.<sup>14</sup>

### ***Agricultural BMPs***

Agricultural BMPs are practical measures that agricultural producers undertake to reduce the impacts of fertilizer and water use and otherwise manage the landscape to further protect water resources. BMPs are developed using the best available science with economic and technical consideration and, in certain circumstances, can maintain or enhance agricultural productivity.<sup>15</sup>

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<sup>8</sup> The threshold is defined as animals that have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and when crops, vegetation, forage growth, or post-harvest residues cannot be sustained in the normal growing season over any portion of the lot or facility due to animal activity. Florida Department of Agriculture and Consumer Services, *Water Quality/ Quantity Best Management Practices for Florida Dairy Operations*, available at <https://www.fdacs.gov/ezs3download/download/64582/1525731/Media/Files/Agricultural-Water-Policy-Files/Best-Management-Practices/dairyBMPFinal.pdf> (last visited Jan. 26, 2021).

<sup>9</sup> Fla. Admin. Code R. 62-620; Florida Department of Environmental Protection, *Animal Feeding Operations*, available at <https://floridadep.gov/water/industrial-wastewater/content/animal-feeding-operations> (last visited Jan. 26, 2021).

<sup>10</sup> The United States Environmental Protection Agency, *National Pollutant Discharge Elimination System*, available at <https://www.epa.gov/npdes> (last visited Jan. 26, 2021).

<sup>11</sup> 33 U.S.C. §1251 et seq. (1972).

<sup>12</sup> See s. 403.707, F.S.

<sup>13</sup> *Id.*

<sup>14</sup> See s. 403.067(7), F.S.

<sup>15</sup> Florida Department of Agriculture and Consumer Services Office of Agricultural Water Policy, *Status of Implementation of Agricultural Nonpoint Source Best Management Practices*, 3, (Jul. 1, 2019), available at

Those areas of dairies not regulated through DEP permits are enrolled in the Department of Agriculture and Consumer Services (DACS) Office of Agricultural Water Policy's (OAWP) BMP program.<sup>16</sup> Since the BMP program was implemented in 1999,<sup>17</sup> DACS has adopted 11 BMP manuals that cover nearly all major agricultural commodities in Florida. According to the annual report on BMPs prepared by DACS, approximately 54 percent of agricultural acreage is enrolled in the DACS BMP program statewide.<sup>18</sup>

Producers implementing BMPs receive a presumption of compliance with state water quality standards for the pollutants addressed by the BMPs<sup>19</sup> and those who enroll in the BMP program become eligible for technical assistance and cost-share funding for BMP implementation. To enroll in the BMP program, producers must meet with the OAWP to determine the BMPs that are applicable to their operation and submit a Notice of Intent to Implement the BMPs, along with the BMP checklist from the applicable BMP manual.<sup>20</sup> Any cost share projects for nutrient pollution reduction are currently funded through existing DEP and DACS cost share programs via the cooperative agricultural regional water quality improvement element.<sup>21</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 403.068, F.S., to establish a large-scale agricultural pollution reduction pilot program (pilot program) within the DEP which works in conjunction with dairy farms<sup>22</sup> to develop and maintain regional pollution reduction projects that eliminate water pollution in the state.

#### Pilot Program Application and Selection

A pilot program applicant must submit an application to the DEP which includes the following information:

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<https://www.fdacs.gov/ezs3download/download/84080/2481615/Media/Files/Agricultural-Water-Policy-Files> (last visited Jan. 26, 2021).

<sup>16</sup> Section 403.061, F.S. DEP has the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. Furthermore, s. 403.061(21), F.S., allows DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.

<sup>17</sup> The program was voluntary from 1999-2005. In 2005, the Florida Legislature modified the law requiring agricultural producers to adopt BMPs or conduct water quality monitoring.

<sup>18</sup> Florida Department of Agriculture and Consumer Services Office of Agricultural Water Policy, *Status of Implementation of Agricultural Nonpoint Source Best Management Practices*, 2, (Jul. 1, 2019), available at <https://www.fdacs.gov/ezs3download/download/84080/2481615/Media/Files/Agricultural-Water-Policy-Files/Status-of-Implementation-of-BMPs-Report-2019.pdf> (last visited Jan. 26, 2021).

<sup>19</sup> See s. 403.067(7), F.S.

<sup>20</sup> Florida Department of Agriculture and Consumer Services Office of Agricultural Water Policy, *Status of Implementation of Agricultural Nonpoint Source Best Management Practices*, 3, (Jul. 1, 2019), available at <https://www.fdacs.gov/ezs3download/download/84080/2481615/Media/Files/Agricultural-Water-Policy-Files/Status-of-Implementation-of-BMPs-Report-2019.pdf> (last visited Jan. 26, 2021)

<sup>21</sup> DACS works with the U.S. Department of Agriculture's Natural Resources Conservation Service, FDEP, water management districts, and soil and water conservation districts to provide funding to assist producers in implementing Best Management Practices. DACS prioritizes the use of cost share funding for projects and practices that provide the greatest benefits to water resources. See s. 403.067(7)(e).

<sup>22</sup> Defined as any place or premises where one or more cows, goats, sheep, water buffalo, or other hooved mammals are kept and from which a part or all of the milk is provided, sold, or offered for sale. See s. 502.012 (2), F.S.

- A plan for the design, construction, operation, management, maintenance, and monitoring of pollution reduction;
- A financial plan that includes financial commitments for the development and long-term maintenance of the pollution reduction project(s), which may include a cooperative agreement among multiple dairy farms to collectively pool resources to support systems designed to capture, reuse, and treat all storm water to reduce nutrient loading to waters of the state; and
- A plan to reduce nutrient loading to waters of the state completely or to insignificant levels for each participating dairy farm.

The DEP is responsible for selecting projects to move forward and each of these projects are subject to DEP review and comment. All aspects of projects planned and developed must be available for inspection by the DEP, the DACS, and water management districts.

### **Participation in the Pilot Program**

Participation in the pilot program results in:

- A rebuttable presumption that the dairy farms participating in the project comply with water quality standards;
- Permit issuance of up to 20 years unless inconsistent with federal law;
- Eligibility for state funding under this section and s. 403.067(7)(e), F.S.; and
- Eligibility for self-certification of the pilot program project.

The DEP is given discretionary authority to provide a general permit that authorizes the construction of the approved pilot program projects. As a part of the general permit, the pilot program projects are permitted to proceed without any further agency action if, before construction begins, an electronic self-certification is submitted to the DEP or water management district which certifies that the proposed system was designed by a Florida registered professional who has certified that the proposed system will not:

- Impact wetlands or surface waters;
- Contain activities conducted in, on, or over wetlands or other surface waters;
- Contain drainage facilities that include pipes having diameters greater than 24 inches and will not use pumps in any manner;
- Be a part of a larger common plan, development, or sale;
- Cause or contribute to adverse water quantity or flooding impacts to receiving water and adjacent lands;
- Cause or contribute to adverse impacts to existing surface water storage and conveyance;
- Cause or contribute to violation of state water quality standards; or
- Cause or contribute to an adverse impact to the maintenance of surface or groundwater flows established pursuant to s. 372.042, F.S., or a work of the district established pursuant to s. 373.086, F.S.

The DEP shall authorize rules to implement this section.

### **Pilot Program Evaluation**

By June 30, 2024, the Office of Program Policy Analysis and Government Accountability shall evaluate the pilot program and report its findings to the President of the Senate and Speaker of the House of Representatives. The report should include, at minimum, costs associated with the pilot program and the level of nutrient loading into the waters of the state by properties involved in the pilot program.

### **Other Provisions**

The pilot program is repealed as of October 2, 2025, unless reviewed and continued by the Legislature. Commitments and benefits that result from the pilot program shall continue to be binding for all partnerships entered into before the repeal date unless or until the department terminates the partnership.

**Section 2** amends s. 403.814, F.S., which outlines terms for general permits and delegation, to add subsection 13 which allows the DEP to grant general permits for projects that are part of a department-approved pilot program pursuant to s. 403.068, F.S.

**Section 3** provides for a nonrecurring appropriation in the 2021-2022 fiscal year of \$1.3 million for the initial implementation of the program, of which \$800,000 is allocated to the Lake Okeechobee Basin Management Action Plan and \$500,000 is allocated to the Suwannee Basin Management Action Plan.

**Section 4** provides that this act shall take effect July 1, 2021.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

### **D. State Tax or Fee Increases:**

None.

### **E. Other Constitutional Issues:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Indeterminate.

**C. Government Sector Impact:**

The pilot program is contingent upon legislative appropriation in the amount of \$1.3 million.

The bill has an indeterminate fiscal impact on the DEP, the DACS, and water management districts for administrative costs incurred as a result of the creation and implementation of the program.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 403.814 of the Florida Statutes.

This bill creates section 403.068 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.