

1 A bill to be entitled
2 An act relating to environmental protection;
3 amending s. 20.255, F.S.; deleting the Office
4 of the Youth Corps; renaming the Division of
5 Water Facilities as the Division of Resource
6 Management; deleting the Division of
7 Environmental Resource Permitting;
8 reinstating payment in lieu of taxes;
9 amending s. 373.4145, F.S.; postponing
10 scheduled July 1, 1999 repeal of certain
11 provisions of the interim wetlands permitting
12 program for the Northwest Florida Water
13 Management District; directing the Northwest
14 Florida Water Management District and the
15 Department of Environmental Protection to adopt
16 a plan to implement an environmental resource
17 permitting program within the jurisdiction of
18 the district by a specified date; requiring
19 reports to the Legislature on the progress of
20 the planning efforts; providing that certain
21 jurisdictional declaratory statements will not
22 expire until January 1, 2002; providing
23 authorization for the Secretary of the
24 Department of Environmental Protection to
25 reorganize the department under certain
26 conditions; amending s. 86, ch. 93-213, Laws of
27 Florida; forgiving the repayment of a loan;
28 amending s. 373.136, F.S.; allowing the
29 prevailing party to recover attorney's fees and
30 costs; amending ss. 252.937, 378.901, 403.021,
31 F.S.; conforming a statutory cross-reference;

1 amending s. 403.031, F.S.; defining the term
2 "total maximum daily load"; creating s.
3 403.067, F.S.; providing legislative findings
4 and intent; requiring the Department of
5 Environmental Protection to periodically submit
6 to the United States Environmental Protection
7 Agency a list of surface waters or segments for
8 which total maximum daily load assessments will
9 be conducted; providing that the list cannot be
10 used in the administration or implementation of
11 any regulatory program; providing for public
12 comment on the list; requiring the Department
13 of Environmental Protection to conduct total
14 maximum daily load assessments on water bodies
15 based on the priority ranking and schedule;
16 requiring the Department of Environmental
17 Protection to adopt a methodology for
18 determining those water bodies which are
19 impaired by rule; specifying what the rule
20 shall set forth; providing for the adoption of
21 a subsequent updated list of water bodies for
22 which total maximum daily loads will be
23 calculated under certain circumstances;
24 providing for the removal of surface waters or
25 segments under certain conditions; providing
26 for the process for calculating and allocating
27 total maximum daily loads; providing that the
28 Department of Environmental Protection must
29 submit a report by February 1, 2001, to the
30 Governor, the President of the Senate, and the
31 Speaker of the House of Representatives which

1 contains recommendations and draft legislation
2 for any modifications to the process for
3 allocating total maximum daily loads; requiring
4 that the recommendations be developed by the
5 department in cooperation with a technical
6 committee; providing that the total maximum
7 daily load calculations and allocations shall
8 be adopted by rule; providing for public
9 workshops and public notice; providing that the
10 Department of Environmental Protection shall be
11 the lead agency in coordinating the
12 implementation of the total maximum daily load
13 allocation through water quality protection
14 programs; authorizing the department to develop
15 a basin plan requiring the department to
16 cooperatively develop suitable interim
17 measures, best management practices, or other
18 measures necessary to achieve the level of
19 pollution reduction established in allocations
20 for nonagricultural nonpoint pollutant sources;
21 requiring the Department of Agriculture and
22 Consumer Services to develop, and to adopt by
23 rule at its discretion, certain interim
24 measures or best management practices necessary
25 to achieve the level of pollution reduction
26 established in allocations of agricultural
27 pollutant sources; authorizing the Department
28 of Environmental Protection to adopt certain
29 rules; prohibiting the Department of
30 Environmental Protection from implementing,
31 without prior legislative approval, any

1 additional regulatory authority pursuant to the
2 Clean Water Act; amending s. 403.805, F.S.;
3 providing for the powers and duties of the
4 secretary; requiring the Department of
5 Environmental Protection, in coordination with
6 the water management district and the
7 Department of Agriculture and Consumer
8 Services, to evaluate the effectiveness of the
9 implementation of total maximum daily loads for
10 a specific period and to report to the Governor
11 and the Legislature; providing an effective
12 date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Subsections (2) and (6), of section 20.255,
17 Florida Statutes, 1998 Supplement, are amended to read:

18 20.255 Department of Environmental Protection.--There
19 is created a Department of Environmental Protection.

20 (2) There shall be two deputy secretaries and an
21 executive coordinator for ecosystem management who are to be
22 appointed by and shall serve at the pleasure of the secretary.
23 The secretary may assign either deputy secretary the
24 responsibility to supervise, coordinate, and formulate policy
25 for any division, office, or district. The following special
26 offices are established and headed by managers, each of whom
27 is to be appointed by and serve at the pleasure of the
28 secretary: Office of General Counsel, Office of Inspector
29 General, Office of Communication, the latter including public
30 information, legislative liaison, cabinet liaison and special
31 projects, Office of Water Policy, Office of Intergovernmental

1 Programs, Office of Ecosystem Planning and Coordination,
2 Office of Environmental Education, and Office of Greenways and
3 Trails, ~~and an Office of the Youth Corps~~. The executive
4 coordinator for ecosystem management shall coordinate policy
5 within the department to assure the implementation of the
6 ecosystem management provisions of chapter 93-213, Laws of
7 Florida. The executive coordinator for ecosystem management
8 shall supervise only the Office of Water Policy, the Office of
9 Intergovernmental Programs, the Office of Ecosystem Planning
10 and Coordination, and the Office of Environmental Education.
11 The executive coordinator for ecosystem management may also be
12 delegated authority by the secretary to act on behalf of the
13 secretary; this authority may include the responsibility to
14 oversee the inland navigation districts. The other special
15 offices not supervised by the executive coordinator for
16 ecosystem management shall report to the secretary; however,
17 the secretary may assign them, for daily coordination
18 purposes, to report through a senior manager other than the
19 secretary. There shall be six administrative districts
20 involved in regulatory matters of waste management, water
21 facilities, wetlands, and air resources, which shall be headed
22 by managers, each of whom is to be appointed by and serve at
23 the pleasure of the secretary. Divisions of the department may
24 have one assistant or two deputy division directors, as
25 required to facilitate effective operation. The managers of
26 all divisions and offices specifically named in this section
27 and the directors of the six administrative districts are
28 exempt from part II of chapter 110 and are included in the
29 Senior Management Service in accordance with s. 110.205(2)(i).
30 No other deputy secretaries or senior management positions at
31 or above the division level, except those established in

1 chapter 110, may be created without specific legislative
2 authority.

3 (6) The following divisions of the Department of
4 Environmental Protection are established:

5 (a) Division of Administrative and Technical Services.

6 (b) Division of Air Resource Management.

7 (c) Division of Water Resource Management ~~Facilities~~.

8 (d) Division of Law Enforcement.

9 (e) Division of Marine Resources.

10 (f) Division of Waste Management.

11 (g) Division of Recreation and Parks.

12 (h) Division of State Lands, the director of which is
13 to be appointed by the secretary of the department, subject to
14 confirmation by the Governor and Cabinet sitting as the Board
15 of Trustees of the Internal Improvement Trust Fund.

16 ~~(i) Division of Environmental Resource Permitting.~~

17
18 In order to ensure statewide and intradepartmental
19 consistency, the department's divisions shall direct the
20 district offices and bureaus on matters of interpretation and
21 applicability of the department's rules and programs.

22 Section 2. If the Department of Environmental
23 Protection or a water management district has made a payment
24 in lieu of taxes to a governmental entity and subsequently
25 suspended such payment, the department or water management
26 district shall reinstitute appropriate payment and continue
27 the payments in consecutive years until the governmental
28 entity has received a total of ten payments for each tax loss.

29 Section 3. Subsection (6) of section 373.4145, Florida
30 Statutes, is amended and subsection (7) is added to said
31 section, to read:

1 373.4145 Interim part IV permitting program for the
2 Northwest Florida Water Management District.--

3 (6) Subsections (1), (2), (3), and (4) shall be
4 repealed effective July 1, 2003 ~~1999~~.

5 (7)(a) The department and the Northwest Florida Water
6 Management District are directed to begin developing a plan by
7 which the permitting for activities proposed in surface waters
8 and wetlands shall fully comply with the provisions of part IV
9 of chapter 373, beginning July 1, 2003. The plan also shall
10 address the division of environmental resource permitting
11 responsibilities between the department and the Northwest
12 Florida Water Management District; the methodology of
13 delineating wetlands in the Northwest Florida Water Management
14 District; authority of the Northwest Florida Water Management
15 District to implement federal permitting programs related to
16 activities in surface waters and wetlands; and the chapter 70
17 implications of implementing the provisions of part IV of
18 chapter 373 within the jurisdiction of the Northwest Florida
19 Water Management District.

20 (b) The department and Northwest Florida Water
21 Management District shall jointly prepare an interim report on
22 their progress in developing the aforementioned plan, to be
23 presented March 1, 2001 to the Governor, the President of the
24 Senate, the Speaker of the House of Representatives, and the
25 chairs of the relevant substantive and fiscal committees. The
26 department and district shall present a final report on March
27 1, 2003.

28 (c) Any jurisdictional declaratory statement issued
29 for a project within the geographic jurisdiction of the
30 Northwest Florida Water Management District that is valid on
31 July 1, 1999, and for which there has been issued a permit

1 pursuant to chapters 403 and 373 for a phase of that project
2 and which identified proposed future development, including
3 mitigation, that would require an additional permit pursuant
4 to chapters 403 and 373 shall not expire until January 1,
5 2002.

6 Section 4. Subsection (2) of section 252.937, Florida
7 Statutes, 1998 Supplement, is amended to read:

8 252.937 Department powers and duties.--

9 (2) To ensure that this program is self-supporting,
10 the department shall provide administrative support, including
11 staff, facilities, materials, and services to implement this
12 part for specified stationary sources subject to s. 252.939
13 and shall provide necessary funding to local emergency
14 planning committees and county emergency management agencies
15 for work performed to implement this part. Each state agency
16 with regulatory, inspection, or technical assistance programs
17 for specified stationary sources subject to this part shall
18 enter into a memorandum of understanding with the department
19 which specifically outlines how each agency's staff,
20 facilities, materials, and services will be utilized to
21 support implementation. At a minimum, these agencies and
22 programs include: the Department of Environmental
23 Protection's Division of Air Resources Management and Division
24 of Water Resource Management ~~Facilities~~, and the Department of
25 Labor and Employment Security's Division of Safety. It is the
26 Legislature's intent to implement this part as efficiently and
27 economically as possible, using existing expertise and
28 resources, if available and appropriate.

29 Section 5. Paragraph (a) of subsection (1) of section
30 378.901, Florida Statutes, is amended to read:

31 378.901 Life-of-the-mine permit.--

1 (1) As used in this section, the term:

2 (a) "Bureau" means the Bureau of Mine Reclamation of
3 the Division of Water Resource Management ~~Environmental~~
4 ~~Resource Permitting~~ of the Department of Environmental
5 Protection.

6 Section 6. Paragraph (a) of subsection (9) of section
7 403.021, Florida Statutes, is amended to read:

8 403.021 Legislative declaration; public policy.--

9 (9)

10 (a) The Legislature finds and declares that it is
11 essential to preserve and maintain authorized water depth in
12 the existing navigation channels, port harbors, turning
13 basins, and harbor berths of this state in order to provide
14 for the continued safe navigation of deepwater shipping
15 commerce. The department shall recognize that maintenance of
16 authorized water depths consistent with port master plans
17 developed pursuant to s. 163.3178(2)(k) is an ongoing,
18 continuous, beneficial, and necessary activity that is in the
19 public interest; and it shall develop a regulatory process
20 that shall enable the ports of this state to conduct such
21 activities in an environmentally sound, safe, expeditious, and
22 cost-efficient manner. It is the further intent of the
23 Legislature that the permitting and enforcement of dredging,
24 dredged-material management, and other related activities for
25 Florida's deepwater ports pursuant to this chapter and
26 chapters 161, 253, and 373 shall be consolidated within the
27 department's Division of Water Resource Management
28 ~~Environmental Resource Permitting~~ and, with the concurrence of
29 the affected deepwater port or ports, may be administered by a
30 district office of the department or delegated to an approved
31 local environmental program.

1 Section 7. Section 86 of chapter 93-213, Laws of
2 Florida, is amended to read:

3 Section 86. The Department of Environmental Regulation
4 is authorized 54 career service positions for administering
5 the state NPDES program. Twenty-five career service positions
6 are authorized for startup of the program beginning July 1,
7 1993, and the remaining 29 career service positions beginning
8 January 1, 1994. The state NPDES program staffing shall start
9 July 1, 1993, with completion targeted for 6 months following
10 United States Environmental Protection Agency authorization to
11 administer the National Pollutant Discharge Elimination System
12 program. Implementation of positions is subject to review and
13 final approval by the secretary of the Department of
14 Environmental Regulation. The sum of \$3.2 million is hereby
15 appropriated from the Pollution Recovery Trust Fund to cover
16 program startup costs. ~~Such funds are to be repaid from a fund
17 the Legislature deems appropriate, no later than July 1, 2000.~~

18 Section 8. Section 373.136, Florida Statutes, is
19 amended to read:

20 373.136 Enforcement of regulations and orders.--

21 (1) The governing board may enforce its regulations
22 and orders adopted pursuant to this chapter, by suit for
23 injunction or other appropriate action in the courts of the
24 state.

25 (2) The court may award to the prevailing party or
26 parties reasonable attorney's fees for services rendered in
27 administrative hearings, actions at law, and all appellate
28 proceedings resulting therefrom under the provisions of ch.
29 373.

30 (a) In addition to the above, the court may award all
31 costs and charges incident to such actions.

1 (b) The provisions of s. 57.111 apply to all state
2 agencies, including, but not limited to, all water management
3 districts.

4 (c) This paragraph is remedial and shall apply to any
5 action pending on the effective date of this act.

6 ~~(3)~~(2) Any action by a citizen of the state to seek
7 judicial enforcement of any of the provisions of this chapter
8 shall be governed by the Florida Environmental Protection Act,
9 s. 403.412.

10 Section 9. Notwithstanding section 20.255(2), Florida
11 Statutes, the Secretary of the Department of Environmental
12 Protection is authorized to restructure and reorganize the
13 department within the current statutory prescribed divisions
14 and in compliance with section 216.292(4), Florida Statutes,
15 1998 Supplement, to increase efficiency in carrying out the
16 agency's statutory mission and objectives. Actions taken under
17 the authority granted by this section must be taken in
18 consultation with the Executive Office of the Governor. The
19 secretary shall submit a report describing actions taken and
20 additional plans for implementing the provisions of this
21 section to the Governor, the President of the Senate, and the
22 Speaker of the House of Representatives by 30 days after this
23 bill becomes a law. The department shall submit status reports
24 on a monthly basis through December 1999.

25 Section 10. Subsection (21) is added to section
26 403.031, Florida Statutes, to read:

27 403.031 Definitions.--In construing this chapter, or
28 rules and regulations adopted pursuant hereto, the following
29 words, phrases, or terms, unless the context otherwise
30 indicates, have the following meanings:

31

1 (21) "Total maximum daily load" is defined as the sum
2 of the individual wasteload allocations for point sources and
3 the load allocations for nonpoint sources and natural
4 background. Prior to determining individual wasteload
5 allocations and load allocations, the maximum amount of a
6 pollutant that a water body or water segment can assimilate
7 from all sources without exceeding water quality standards
8 must first be calculated.

9 Section 11. Section 403.067, Florida Statutes, is
10 created to read:

11 403.067 Establishment and implementation of total
12 maximum daily loads.--

13 (1) LEGISLATIVE FINDINGS AND INTENT.--In furtherance
14 of public policy established in s. 403.021, the Legislature
15 declares that the waters of the state are among its most basic
16 resources and that the development of a total maximum daily
17 load program for state waters as required by ss. 303(d) of the
18 Clean Water Act. Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et
19 seq. will promote improvements in water quality throughout the
20 state through the coordinated control of point and nonpoint
21 sources of pollution. The Legislature finds that, while point
22 and nonpoint sources of pollution have been managed through
23 numerous programs, better coordination among these efforts and
24 additional management measures may be needed in order to
25 achieve the restoration of impaired water bodies. The
26 scientifically based total maximum daily load program is
27 necessary to fairly and equitably allocate pollution loads to
28 both nonpoint and point sources. Implementation of the
29 allocation shall include consideration of a cost-effective
30 approach coordinated between contributing point and nonpoint
31 sources of pollution for impaired water bodies or water body

1 segments and may include the opportunity to implement the
2 allocation through non-regulatory and incentive-based
3 programs. The Legislature further declares that the Department
4 of Environmental Protection shall be the lead agency in
5 administering this program and shall coordinate with local
6 governments, water management districts, the Department of
7 Agriculture and Consumer Services, local soil and water
8 conservation districts, environmental groups, regulated
9 interests, other appropriate state agencies, and affected
10 pollution sources in developing and executing the total
11 maximum daily load program.

12 (2) LIST OF SURFACE WATERS OR SEGMENTS.--In accordance
13 with ss. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33
14 U.S.C. ss. 1251 et seq., the department must submit
15 periodically to the United States Environmental Protection
16 Agency a list of surface waters or segments for which total
17 maximum daily load assessments will be conducted. The
18 assessments shall evaluate the water quality conditions of the
19 listed waters and, if such waters are determined not to meet
20 water quality standards, total maximum daily loads shall be
21 established, subject to the provisions of s. 403.067(4). The
22 department shall establish a priority ranking and schedule for
23 analyzing such waters.

24 (a) The list, priority ranking, and schedule cannot be
25 used in the administration or implementation of any regulatory
26 program. However, this paragraph does not prohibit any agency
27 from employing the data or other information used to establish
28 the list, priority ranking, or schedule in administering any
29 program.

30 (b) The list, priority ranking, and schedule prepared
31 under this subsection shall be made available for public

1 comment, but shall not be subject to challenge under chapter
2 120.

3 (c) The provisions of this subsection are applicable
4 to all lists prepared by the department and submitted to the
5 United States Environmental Protection Agency pursuant to
6 section ss. 303(d) of the Clean Water Act. Pub. L. No. 92-500,
7 33 U.S.C. ss. 1251 et seq., including those submitted prior to
8 the effective date of this act, except as provided in s.
9 403.067(4).

10 (d) If the department proposes to implement total
11 maximum daily load calculations or allocations established
12 prior to the effective date of this act, the department shall
13 adopt those calculations and allocations by rule by the
14 secretary pursuant to ss. 120.54, 120.536(1) and
15 403.067(6)(d).

16 (3) ASSESSMENT.--

17 (a) Based on the priority ranking and schedule for a
18 particular listed water body or water body segment, the
19 department shall conduct a total maximum daily load assessment
20 of the basin in which the water body or water body segment is
21 located using the methodology developed pursuant to s.
22 403.067(3)(b). In conducting this assessment, the department
23 shall coordinate with the local water management district, the
24 Department of Agriculture and Consumer Services, other
25 appropriate state agencies, soil and water conservation
26 districts, environmental groups, regulated interests, and
27 other interested parties.

28 (b) The department shall adopt by rule a methodology
29 for determining those waters which are impaired. The rule
30 shall provide for consideration as to whether water quality
31 standards codified in chapter 62-302, Florida Administrative

1 Code, are being exceeded, based on objective and credible
2 data, studies and reports, including surface water improvement
3 and management plans approved by water management districts
4 under s. 373.456 and pollutant load reduction goals developed
5 according to department rule. Such rule also shall set forth:

6 1. Water quality sample collection and analysis
7 requirements, accounting for ambient background conditions,
8 seasonal and other natural variations;

9 2. Approved methodologies;

10 3. Quality assurance and quality control protocols;

11 4. Data modeling; and

12 5. Other appropriate water quality assessment
13 measures.

14 (c) If the department has adopted a rule establishing
15 a numerical criterion for a particular pollutant, a narrative
16 or biological criterion may not be the basis for determining
17 an impairment in connection with that pollutant unless the
18 department identifies specific factors as to why the numerical
19 criterion is not adequate to protect water quality. If water
20 quality non-attainment is based on narrative or biological
21 criteria, the specific factors concerning particular
22 pollutants shall be identified prior to a total maximum daily
23 load being developed for those criteria for that surface water
24 or surface water segment.

25 (4) APPROVED LIST.--If the department determines,
26 based on the total maximum daily load assessment methodology
27 described in s. 403.067(3), that water quality standards are
28 not being achieved and that technology-based effluent
29 limitations and other pollution control programs under local,
30 state, or federal authority, including Everglades restoration
31 activities pursuant to s. 373.4592 and the National Estuary

1 Program, which are designed to restore such waters for the
2 pollutant of concern are not sufficient to result in
3 attainment of applicable surface water quality standards, it
4 shall confirm that determination by issuing a subsequent,
5 updated list of those water bodies or segments for which total
6 maximum daily loads will be calculated. In association with
7 this updated list the department shall establish priority
8 rankings and schedules by which water bodies or segments will
9 be subjected to total maximum daily load calculations. If a
10 surface water or water segment is to be listed under this
11 subsection, the department must specify the particular
12 pollutants causing the impairment and the concentration of
13 those pollutants causing the impairment relative to the water
14 quality standard. This updated list shall be approved and
15 amended by order of the department subsequent to completion of
16 an assessment of each water body or water body segment, and
17 submitted to the United States Environmental Protection
18 Agency. Each order shall be subject to challenge under ss.
19 120.569 and 120.57.

20 (5) REMOVAL FROM LIST.--At any time throughout the
21 total maximum daily load process, surface waters or segments
22 evaluated or listed under this section shall be removed from
23 the lists described in s. 403.067(2) or s. 403.067(4) upon
24 demonstration that water quality criteria are being attained,
25 based on data equivalent to that required by rule under s.
26 403.067(3).

27 (6) CALCULATION AND ALLOCATION.--

28 (a) Calculation of total maximum daily load.

29 1. Prior to developing a total maximum daily load
30 calculation for each water body or water body segment on the
31 list specified in s. 403.067(4), the department shall

1 coordinate with applicable local governments, water management
2 districts, the Department of Agriculture and Consumer
3 Services, other appropriate state agencies, local soil and
4 water conservation districts, environmental groups, regulated
5 interests, and affected pollution sources to determine the
6 information required, accepted methods of data collection and
7 analysis, and quality control/quality assurance requirements.
8 The analysis may include mathematical water quality modeling
9 using approved procedures and methods.

10 2. The department shall develop total maximum daily
11 load calculations for each water body or water body segment on
12 the list described in s. 403.067(4) according to the priority
13 ranking and schedule unless the impairment of such waters is
14 due solely to activities other than point and nonpoint sources
15 of pollution. For waters determined to be impaired due solely
16 to factors other than point and nonpoint sources of pollution,
17 no total maximum daily load will be required. A total maximum
18 daily load may be required for those waters that are impaired
19 predominantly due to activities other than point and nonpoint
20 sources. The total maximum daily load calculation shall
21 establish the amount of a pollutant that a water body or water
22 body segment can assimilate without exceeding water quality
23 standards, and shall account for seasonal variations and
24 include a margin of safety that takes into account any lack of
25 knowledge concerning the relationship between effluent
26 limitations and water quality. The total maximum daily load
27 may be based on a pollutant load reduction goal developed by a
28 water management district, provided that such pollutant load
29 reduction goal is promulgated by the department in accordance
30 with the procedural and substantive requirements of this
31 subsection.

1 (b) Allocation of total maximum daily loads. The total
2 maximum daily loads shall include establishment of reasonable
3 and equitable allocations of the total maximum daily load
4 among point and nonpoint sources that will alone, or in
5 conjunction with other management and restoration activities,
6 provide for the attainment of water quality standards and the
7 restoration of impaired waters. The allocations shall
8 establish the maximum amount of the water pollutant from a
9 given source or category of sources that may be discharged or
10 released into the water body or water body segment in
11 combination with other discharges or releases. Such
12 allocations shall be designed to attain water quality
13 standards and shall be based on consideration of the
14 following:

- 15 1. Existing treatment levels and management practices;
- 16 2. Differing impacts pollutant sources may have on
17 water quality;
- 18 3. The availability of treatment technologies,
19 management practices, or other pollutant reduction measures;
- 20 4. Environmental, economic, and technological
21 feasibility of achieving the allocation;
- 22 5. The cost benefit associated with achieving the
23 allocation;
- 24 6. Reasonable timeframes for implementation;
- 25 7. Potential applicability of any moderating
26 provisions such as variances, exemptions, and mixing zones;
27 and
- 28 8. The extent to which nonattainment of water quality
29 standards is caused by pollution sources outside of Florida,
30 discharges that have ceased, or alterations to water bodies
31 prior to the date of this act.

1 (c) Not later than February 1, 2001, the department
2 shall submit a report to the Governor, the President of the
3 Senate, and the Speaker of the House of Representatives
4 containing recommendations, including draft legislation, for
5 any modifications to the process for allocating total maximum
6 daily loads, including the relationship between allocations
7 and the basin planning process. Such recommendations shall be
8 developed by the department in cooperation with a technical
9 advisory committee which includes representatives of affected
10 parties, environmental organizations, water management
11 districts, and other appropriate local, state, and federal
12 government agencies. The technical advisory committee shall
13 also include such members as may be designated by the
14 President of the Senate and the Speaker of the House of
15 Representatives.

16 (d) The total maximum daily load calculations and
17 allocations for each water body or water body segment shall be
18 adopted by rule by the secretary pursuant to ss. 120.54 and
19 120.536(1), and 403.805. The rules adopted pursuant to this
20 paragraph shall not be subject to approval by the
21 Environmental Regulation Commission. As part of the rule
22 development process, the department shall hold at least one
23 public workshop in the vicinity of the water body or water
24 body segment for which the total maximum daily load is being
25 developed. Notice of the public workshop shall be published
26 not less than 5 days nor more than 15 days before the public
27 workshop in a newspaper of general circulation in the county
28 or counties containing the water bodies or water body segments
29 for which the total maximum daily load calculation and
30 allocation are being developed.

31 (7) IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.--

1 (a) The department shall be the lead agency in
2 coordinating the implementation of the total maximum daily
3 load allocation through water quality protection
4 programs. Application of a total maximum daily load
5 calculation or allocation by a water management district shall
6 be consistent with this section and shall not require the
7 issuance of an order or a separate action pursuant to s.
8 120.54 or s. 120.536(1) for adoption of the calculation and
9 allocation previously established by the department. Such
10 programs may include, but are not limited to:
11 1. Permitting and other existing regulatory programs;
12 2. Nonregulatory and incentive-based programs,
13 including best management practices, cost sharing, waste
14 minimization, pollution prevention, and public education;
15 3. Other water quality management and restoration
16 activities, for example surface water improvement and
17 management plans approved by water management districts under
18 s. 373.456;
19 4. Pollutant trading or other equitable economically
20 based agreements;
21 5. Public works including capital facilities; or
22 6. Land acquisition.
23 (b) In developing and implementing the total maximum
24 daily load allocation, the department may develop a basin
25 plan. The basin plan will serve to fully integrate all the
26 management strategies available to the state for the purpose
27 of achieving water quality restoration. The basin planning
28 process is intended to involve the broadest possible range of
29 interested parties, with the objective of encouraging the
30 greatest amount of cooperation and consensus possible. The
31 department shall hold at least one public meeting in the

1 vicinity of the basin to discuss and receive comments during
2 the basin planning process and shall otherwise encourage
3 public participation to the greatest practical extent. Notice
4 of the public meeting shall be published in a newspaper of
5 general circulation in each county in which the basin lies not
6 less than 5 days nor more than 15 days before the public
7 meeting. A basin plan shall not supplant or otherwise alter
8 any assessment made under s. 403.086(3) and s.403.086(4), or
9 any calculation or allocation made under s. 403.086(6).

10 (c) The department, in cooperation with the water
11 management districts and other interested parties, as
12 appropriate, may develop suitable interim measures, best
13 management practices, or other measures necessary to achieve
14 the level of pollution reduction established by the department
15 for nonagricultural nonpoint pollutant sources in allocations
16 developed pursuant to s. 403.067(6)(b). These practices and
17 measures may be adopted by rule by the department and the
18 water management districts pursuant to ss. 120.54 and
19 120.536(1), and may be implemented by those parties
20 responsible for nonagricultural nonpoint pollutant sources and
21 the department and the water management districts shall assist
22 with implementation. Where interim measures, best management
23 practices, or other measures are adopted by rule, the
24 effectiveness of such practices in achieving the levels of
25 pollution reduction established in allocations developed by
26 the department pursuant to s. 403.067(6)(b) shall be verified
27 by the department. Implementation, in accordance with
28 applicable rules, of practices that have been verified by the
29 department to be effective at representative sites shall
30 provide a presumption of compliance with state water quality
31 standards and release from the provisions of s. 376.307(5) for

1 those pollutants addressed by the practices, and the
2 department is not authorized to institute proceedings against
3 the owner of the source of pollution to recover costs or
4 damages associated with the contamination of surface or ground
5 water caused by those pollutants. Such rules shall also
6 incorporate provisions for a notice of intent to implement the
7 practices and a system to assure the implementation of the
8 practices, including recordkeeping requirements. Where water
9 quality problems are detected despite the appropriate
10 implementation, operation and maintenance of best management
11 practices and other measures according to rules adopted under
12 this paragraph, the department or the water management
13 districts shall institute a reevaluation of the best
14 management practice or other measures.

15 (d) The Department of Agriculture and Consumer
16 Services may develop and adopt by rule pursuant to ss. 120.54
17 and 120.536(1) suitable interim measures, best management
18 practices, or other measures necessary to achieve the level of
19 pollution reduction established by the department for
20 agricultural pollutant sources in allocations developed
21 pursuant to s. 403.067(6)(b). These practices and measures may
22 be implemented by those parties responsible for agricultural
23 pollutant sources and the department, the water management
24 districts and the Department of Agriculture and Consumer
25 Services shall assist with implementation. Where interim
26 measures, best management practices, or other measures are
27 adopted by rule, the effectiveness of such practices in
28 achieving the levels of pollution reduction established in
29 allocations developed by the department pursuant to s.
30 403.067(6)(b) shall be verified by the department.
31 Implementation, in accordance with applicable rules, of

1 practices that have been verified by the department to be
2 effective at representative sites shall provide a presumption
3 of compliance with state water quality standards and release
4 from the provisions of s. 376.307(5) for those pollutants
5 addressed by the practices, and the department is not
6 authorized to institute proceedings against the owner of the
7 source of pollution to recover costs or damages associated
8 with the contamination of surface or ground water caused by
9 those pollutants. In the process of developing and adopting
10 rules for interim measures, best management practices, or
11 other measures, the Department of Agriculture and Consumer
12 Services shall consult with the department, the Department of
13 Health, the water management districts, representatives from
14 affected farming groups, and environmental group
15 representatives. Such rules shall also incorporate provisions
16 for a notice of intent to implement the practices and a system
17 to assure the implementation of the practices, including
18 recordkeeping requirements. Where water quality problems are
19 detected despite the appropriate implementation, operation and
20 maintenance of best management practices and other measures
21 according to rules adopted under this paragraph, the
22 Department of Agriculture and Consumer Services shall
23 institute a reevaluation of the best management practice or
24 other measure.

25 (e) The provisions of s. 403.067(7) paragraphs (c) and
26 (d) shall not preclude the department or water management
27 district from requiring compliance with water quality
28 standards or with current best management practice
29 requirements set forth in any applicable regulatory program
30 authorized by law for the purpose of protecting water
31 quality. Additionally, s. 403.067(7)(c) and s. 403.067(7)(d)

1 are applicable only to the extent that they do not conflict
2 with any rules promulgated by the department that are
3 necessary to maintain a federally delegated or approved
4 program.

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

7 (a) Delisting water bodies or water body segments from
8 the list developed under s. 403.067(4) pursuant to the
9 guidance under s. 403.067(5);

10 (b) Administration of funds to implement the total
11 maximum daily load program;

12 (c) Procedures for pollutant trading among the
13 pollutant sources to a water body or water body segment,
14 including a mechanism for the issuance and tracking of
15 pollutant credits. Such procedures may be implemented through
16 permits or other authorizations and must be legally binding.
17 No rule implementing a pollutant trading program shall become
18 effective prior to review and ratification by the Legislature;
19 and

20 (d) The total maximum daily load calculation in
21 accordance with s. 403.067(6)(a) immediately upon the
22 effective date of this act, for those eight water segments
23 within Lake Okeechobee proper as submitted to the United
24 States Environmental Protection Agency pursuant to s.
25 403.067(2).

26 (9) APPLICATION.--The provisions of this section are
27 intended to supplement existing law and nothing in this
28 section shall be construed as altering any applicable state
29 water quality standards or as restricting the authority
30 otherwise granted to the department or a water management
31 district under this chapter or chapter 373. The exclusive

1 means of state implementation of section ss. 303(d) of the
2 Clean Water Act. Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et
3 seq. shall be in accordance with the identification,
4 assessment, calculation and allocation, and implementation
5 provisions of s. 403.067.

6 (10) CONSTRUCTION.--Nothing in this section shall be
7 construed as limiting the applicability or consideration of
8 any mixing zone, variance, exemption, site specific
9 alternative criteria, or other moderating provision.

10 (11) IMPLEMENTATION OF ADDITIONAL PROGRAMS.--The
11 department shall not implement, without prior legislative
12 approval, any additional regulatory authority pursuant to the
13 Clean Water Act ss. 303(d) or 40 CFR Part 130, if such
14 implementation would result in water quality discharge
15 regulation of activities not currently subject to regulation.

16 (12) In order to provide adequate due process while
17 ensuring timely development of total maximum daily loads,
18 proposed rules and orders authorized by this act shall be
19 ineffective pending resolution of a section 120.54(3), 120.56,
20 120.569, or 120.57 administrative proceeding. However, the
21 department may go forward prior to resolution of such
22 administrative proceedings with subsequent agency actions
23 authorized by s. 403.067(2) through s. 403.067(6), provided
24 that the department can support and substantiate those actions
25 using the underlying bases for the rules or orders without the
26 benefit of any legal presumption favoring, or in deference to,
27 the challenged rules or orders.

28 Section 12. Subsection (1) of section 403.805, Florida
29 Statutes, is amended to read:

30 403.805 Secretary; powers and duties.--
31

1 (1) The secretary shall have the powers and duties of
2 heads of departments set forth in chapter 20, including the
3 authority to adopt rules pursuant to ss. 120.536(1) and 120.54
4 to implement the provisions of chapters 253, 373, and 376 and
5 this chapter. The secretary shall have rulemaking
6 responsibility under chapter 120, but shall submit any
7 proposed rule containing standards to the Environmental
8 Regulation Commission for approval, modification, or
9 disapproval pursuant to s. 403.804, except for total maximum
10 daily load calculations and allocations developed pursuant to
11 s. 403.067(6). The secretary shall have responsibility for
12 final agency action regarding total maximum daily load
13 calculations and allocations developed pursuant to s.
14 403.067(6). The secretary shall employ legal counsel to
15 represent the department in matters affecting the department.
16 Except for appeals on permits specifically assigned by this
17 act to the Governor and Cabinet, and unless otherwise
18 prohibited by law, the secretary may delegate the authority
19 assigned to the department by this act to the assistant
20 secretary, division directors, and district and branch office
21 managers and to the water management districts.

22 Section 13. The department, coordinating with the
23 water management districts and the Department of Agriculture
24 and Consumer Services, shall evaluate the effectiveness of the
25 implementation of total maximum daily loads for a period of 5
26 years from the effective date of this act. The department
27 shall document that effectiveness, using all data and
28 information at its disposal, in a report to the Governor, the
29 President of the Senate, and the Speaker of the House of
30 Representatives by January 1, 2005. The report shall provide
31 specific recommendations for statutory changes necessary to

1 implement total maximum daily loads more effectively,
2 including the development or expansion of pollution prevention
3 and pollutant trading opportunities, and best management
4 practices. The report shall also provide recommendations for
5 statutory changes relating to pollutant sources which are not
6 subject to permitting under chapter 403, Florida Statutes, or
7 chapter 373, Florida Statutes, and which do not implement the
8 nonregulatory practices or other measures outlined in the
9 basin plan prepared under s. 403.067, Florida Statutes, in
10 accordance with the schedule of the plan, or fail to implement
11 them as designed.

12 Section 14. This act shall take effect July 1, 1999.