

1 A bill to be entitled
2 An act relating to water resource management;
3 amending s. 373.4145, F.S.; postponing
4 scheduled July 1, 1999, repeal of certain
5 provisions of the interim wetlands permitting
6 program for the Northwest Florida Water
7 Management District; directing the Northwest
8 Florida Water Management District and the
9 Department of Environmental Protection to
10 develop a plan to implement an environmental
11 resource permitting program within the
12 jurisdiction of the district by a specified
13 date; requiring reports to the Legislature on
14 the progress of the planning efforts; providing
15 that certain jurisdictional declaratory
16 statements shall not expire until a specified
17 date; amending s. 252.937, F.S.; renaming the
18 Division of Water Facilities of the department
19 as the Division of Water Resource Management;
20 amending ss. 378.901 and 403.021, F.S.;
21 deleting references to the Division of
22 Environmental Resource Permitting; amending s.
23 86 of ch. 93-213, Laws of Florida; eliminating
24 repayment of funds appropriated for
25 administering the state NPDES program;
26 requiring reinstatement of certain suspended
27 payments in lieu of taxes; amending subsection
28 (2) of section 373.136, F.S.; allowing the
29 prevailing party to recover attorney's fees and
30 costs; amending s. 403.031, F.S.; defining the
31 term "total maximum daily load"; creating s.

1 403.067, F.S.; authorizing the Department of
2 Environmental Protection to adopt a process of
3 listing surface waters not meeting water
4 quality standards and for the process of
5 establishing, allocating, and implementing
6 total maximum daily loads applicable to such
7 listed waters; providing specific authority for
8 the department to implement s. 1313, 33 U.S.C.;
9 providing legislative findings and intent;
10 providing for a listing of surface waters;
11 providing for an assessment; providing for an
12 adopted list; providing for removal from the
13 list; providing for calculation of total
14 maximum daily load; providing for
15 implementation; providing for rules; providing
16 for application; providing for construction;
17 providing for evaluation; amending s. 403.805,
18 F.S.; revising language with respect to the
19 powers and duties of the Secretary of the
20 Department of Environmental Protection;
21 providing authorization for the Secretary of
22 the Department of Environmental Protection to
23 reorganize the department under certain
24 conditions; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Subsection (6) of section 373.4145, Florida
29 Statutes, is amended and subsection (7) is added to said
30 section, to read:

31

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 2. 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 3. 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 4. 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)(a) The Legislature finds and declares that it is
10 essential to preserve and maintain authorized water depth in
11 the existing navigation channels, port harbors, turning
12 basins, and harbor berths of this state in order to provide
13 for the continued safe navigation of deepwater shipping
14 commerce. The department shall recognize that maintenance of
15 authorized water depths consistent with port master plans
16 developed pursuant to s. 163.3178(2)(k) is an ongoing,
17 continuous, beneficial, and necessary activity that is in the
18 public interest; and it shall develop a regulatory process
19 that shall enable the ports of this state to conduct such
20 activities in an environmentally sound, safe, expeditious, and
21 cost-efficient manner. It is the further intent of the
22 Legislature that the permitting and enforcement of dredging,
23 dredged-material management, and other related activities for
24 Florida's deepwater ports pursuant to this chapter and
25 chapters 161, 253, and 373 shall be consolidated within the
26 department's Division of Water Resource Management
27 ~~Environmental Resource Permitting~~ and, with the concurrence of
28 the affected deepwater port or ports, may be administered by a
29 district office of the department or delegated to an approved
30 local environmental program.

31

1 Section 5. 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~~
17 ~~fund the Legislature deems appropriate, no later than July 1,~~
18 ~~2000.~~

19 Section 6. If the Department of Environmental
20 Protection or a water management district has made a payment
21 in lieu of taxes to a governmental entity and subsequently
22 suspended such payment, the department or water management
23 district shall reinstitute appropriate payments and continue
24 the payments in consecutive years until the governmental
25 entity has received a total of 10 payments for each tax loss.

26 Section 7. Subsection (2) of section 373.136, Florida
27 Statutes, is amended to read:

28 (2) Any persons who prevail in an action or legal
29 proceeding brought against them by the department, the
30 governing board of any water management district, any local
31 board, or a local government to which authority has been

1 delegated under s. 373.103(8). pursuant to this chapter shall
2 be entitled to recover reasonable attorney's fees and costs.

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

7 Section 8. Subsection (21) is added to section
8 403.031, Florida Statutes, to read:

9 403.031 Definitions.--In construing this chapter, or
10 rules and regulations adopted pursuant hereto, the following
11 words, phrases, or terms, unless the context otherwise
12 indicates, have the following meanings:

13 (21) "Total maximum daily load" is defined as the sum
14 of the individual wasteload allocations for point sources and
15 the load allocations for nonpoint sources and natural
16 background. Prior to determining individual wasteload
17 allocations and load allocations, the maximum amount of a
18 pollutant that a water body or water segment can assimilate
19 from all sources without exceeding water quality standards
20 must first be calculated.

21 Section 9. Section 403.067, Florida Statutes, is
22 created to read:

23 403.067 Establishment and implementation of total
24 maximum daily loads.--

25 (1) LEGISLATIVE FINDINGS AND INTENT.--In furtherance
26 of public policy established in s. 403.021, the Legislature
27 declares that the waters of the state are among its most basic
28 resources and that the development of a total maximum daily
29 load program for state waters as required by ss. 303(d) of the
30 Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et
31 seq. will promote improvements in water quality throughout the

1 state through the coordinated control of point and nonpoint
2 sources of pollution. The Legislature finds that, while point
3 and nonpoint sources of pollution have been managed through
4 numerous programs, better coordination among these efforts and
5 additional management measures may be needed in order to
6 achieve the restoration of impaired water bodies. The
7 scientifically based total maximum daily load program is
8 necessary to fairly and equitably allocate pollution loads to
9 both nonpoint and point sources. Implementation of the
10 allocation shall include consideration of a cost-effective
11 approach coordinated between contributing point and nonpoint
12 sources of pollution for impaired water bodies or water body
13 segments and may include the opportunity to implement the
14 allocation through non-regulatory and incentive-based
15 programs. The Legislature further declares that the Department
16 of Environmental Protection shall be the lead agency in
17 administering this program and shall coordinate with local
18 governments, water management districts, the Department of
19 Agriculture and Consumer Services, local soil and water
20 conservation districts, environmental groups, regulated
21 interests, other appropriate state agencies, and affected
22 pollution sources in developing and executing the total
23 maximum daily load program.

24 (2) LIST OF SURFACE WATERS OR SEGMENTS.--In accordance
25 with ss. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33
26 U.S.C. ss. 1251 et seq., the department must submit
27 periodically to the United States Environmental Protection
28 Agency a list of surface waters or segments for which total
29 maximum daily load assessments will be conducted. The
30 assessments shall evaluate the water quality conditions of the
31 listed waters and, if such waters are determined not to meet

1 water quality standards, total maximum daily loads shall be
2 established, subject to the provisions of s. 403.067(4). The
3 department shall establish a priority ranking and schedule for
4 analyzing such waters.

5 (a) The list, priority ranking, and schedule cannot be
6 used in the administration or implementation of any regulatory
7 program. However, this paragraph does not prohibit any agency
8 from employing the data or other information used to establish
9 the list, priority ranking, or schedule in administering any
10 program.

11 (b) The list, priority ranking, and schedule prepared
12 under this subsection shall be made available for public
13 comment, but shall not be subject to challenge under chapter
14 120.

15 (c) The provisions of this subsection are applicable
16 to all lists prepared by the department and submitted to the
17 United States Environmental Protection Agency pursuant to ss.
18 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C.
19 ss. 1251 et seq., including those submitted prior to the
20 effective date of this act, except as provided in s.
21 403.067(4).

22 (d) If the department proposes to implement total
23 maximum daily load calculations or allocations established
24 prior to the effective date of this act, the department shall
25 adopt those calculations and allocations by rule by the
26 secretary pursuant to ss. 120.54, 120.536(1) and
27 403.067(6)(d).

28 (3) ASSESSMENT.--

29 (a) Based on the priority ranking and schedule for a
30 particular listed water body or water body segment, the
31 department shall conduct a total maximum daily load assessment

1 of the basin in which the water body or water body segment is
2 located using the methodology developed pursuant to s.
3 403.067(3)(b). In conducting this assessment, the department
4 shall coordinate with the local water management district, the
5 Department of Agriculture and Consumer Services, other
6 appropriate state agencies, soil and water conservation
7 districts, environmental groups, regulated interests, and
8 other interested parties.

9 (b) The department shall adopt by rule a methodology
10 for determining those waters which are impaired. The rule
11 shall provide for consideration as to whether water quality
12 standards codified in chapter 62-302, Florida Administrative
13 Code, are being exceeded, based on objective and credible
14 data, studies and reports, including surface water improvement
15 and management plans approved by water management districts
16 under s. 373.456 and pollutant load reduction goals developed
17 according to department rule. Such rule also shall set forth:

- 18 1. Water quality sample collection and analysis
19 requirements, accounting for ambient background conditions,
20 seasonal and other natural variations;
- 21 2. Approved methodologies;
- 22 3. Quality assurance and quality control protocols;
- 23 4. Data modeling; and
- 24 5. Other appropriate water quality assessment
25 measures.

26 (c) If the department has adopted a rule establishing
27 a numerical criterion for a particular pollutant, a narrative
28 or biological criterion may not be the basis for determining
29 an impairment in connection with that pollutant unless the
30 department identifies specific factors as to why the numerical
31 criterion is not adequate to protect water quality. If water

1 quality non-attainment is based on narrative or biological
2 criteria, the specific factors concerning particular
3 pollutants shall be identified prior to a total maximum daily
4 load being developed for those criteria for that surface water
5 or surface water segment.

6 (4) APPROVED LIST.--If the department determines,
7 based on the total maximum daily load assessment methodology
8 described in s. 403.067(3), that water quality standards are
9 not being achieved and that technology-based effluent
10 limitations and other pollution control programs under local,
11 state, or federal authority, including Everglades restoration
12 activities pursuant to s. 373.4592 and the National Estuary
13 Program, which are designed to restore such waters for the
14 pollutant of concern are not sufficient to result in
15 attainment of applicable surface water quality standards, it
16 shall confirm that determination by issuing a subsequent,
17 updated list of those water bodies or segments for which total
18 maximum daily loads will be calculated. In association with
19 this updated list the department shall establish priority
20 rankings and schedules by which water bodies or segments will
21 be subjected to total maximum daily load calculations. If a
22 surface water or water segment is to be listed under this
23 subsection, the department must specify the particular
24 pollutants causing the impairment and the concentration of
25 those pollutants causing the impairment relative to the water
26 quality standard. This updated list shall be approved and
27 amended by order of the department subsequent to completion of
28 an assessment of each water body or water body segment, and
29 submitted to the United States Environmental Protection
30 Agency. Each order shall be subject to challenge under ss.
31 120.569 and 120.57.

1 (5) REMOVAL FROM LIST.--At any time throughout the
2 total maximum daily load process, surface waters or segments
3 evaluated or listed under this section shall be removed from
4 the lists described in s. 403.067(2) or s. 403.067(4) upon
5 demonstration that water quality criteria are being attained,
6 based on data equivalent to that required by rule under s.
7 403.067(3).

8 (6) CALCULATION AND ALLOCATION.--

9 (a) Calculation of total maximum daily load.

10 1. Prior to developing a total maximum daily load
11 calculation for each water body or water body segment on the
12 list specified in s. 403.067(4), the department shall
13 coordinate with applicable local governments, water management
14 districts, the Department of Agriculture and Consumer
15 Services, other appropriate state agencies, local soil and
16 water conservation districts, environmental groups, regulated
17 interests, and affected pollution sources to determine the
18 information required, accepted methods of data collection and
19 analysis, and quality control/quality assurance requirements.
20 The analysis may include mathematical water quality modeling
21 using approved procedures and methods.

22 2. The department shall develop total maximum daily
23 load calculations for each water body or water body segment on
24 the list described in s. 403.067(4) according to the priority
25 ranking and schedule unless the impairment of such waters is
26 due solely to activities other than point and nonpoint sources
27 of pollution. For waters determined to be impaired due solely
28 to factors other than point and nonpoint sources of pollution,
29 no total maximum daily load will be required. A total maximum
30 daily load may be required for those waters that are impaired
31 predominantly due to activities other than point and nonpoint

1 sources. The total maximum daily load calculation shall
2 establish the amount of a pollutant that a water body or water
3 body segment can assimilate without exceeding water quality
4 standards, and shall account for seasonal variations and
5 include a margin of safety that takes into account any lack of
6 knowledge concerning the relationship between effluent
7 limitations and water quality. The total maximum daily load
8 may be based on a pollutant load reduction goal developed by a
9 water management district, provided that such pollutant load
10 reduction goal is promulgated by the department in accordance
11 with the procedural and substantive requirements of this
12 subsection.

13 (b) Allocation of total maximum daily loads. The total
14 maximum daily loads shall include establishment of reasonable
15 and equitable allocations of the total maximum daily load
16 among point and nonpoint sources that will alone, or in
17 conjunction with other management and restoration activities,
18 provide for the attainment of water quality standards and the
19 restoration of impaired waters. The allocations shall
20 establish the maximum amount of the water pollutant from a
21 given source or category of sources that may be discharged or
22 released into the water body or water body segment in
23 combination with other discharges or releases. Such
24 allocations shall be designed to attain water quality
25 standards and shall be based on consideration of the
26 following:

- 27 1. Existing treatment levels and management practices;
- 28 2. Differing impacts pollutant sources may have on
29 water quality;
- 30 3. The availability of treatment technologies,
31 management practices, or other pollutant reduction measures;

1 4. Environmental, economic, and technological
2 feasibility of achieving the allocation;

3 5. The cost benefit associated with achieving the
4 allocation;

5 6. Reasonable timeframes for implementation;

6 7. Potential applicability of any moderating
7 provisions such as variances, exemptions, and mixing zones;
8 and

9 8. The extent to which nonattainment of water quality
10 standards is caused by pollution sources outside of Florida,
11 discharges that have ceased, or alterations to water bodies
12 prior to the date of this act.

13 (c) Not later than February 1, 2001, the department
14 shall submit a report to the Governor, the President of the
15 Senate, and the Speaker of the House of Representatives
16 containing recommendations, including draft legislation, for
17 any modifications to the process for allocating total maximum
18 daily loads, including the relationship between allocations
19 and the basin planning process. Such recommendations shall be
20 developed by the department in cooperation with a technical
21 advisory committee which includes representatives of affected
22 parties, environmental organizations, water management
23 districts, and other appropriate local, state, and federal
24 government agencies. The technical advisory committee shall
25 also include such members as may be designated by the
26 President of the Senate and the Speaker of the House of
27 Representatives.

28 (d) The total maximum daily load calculations and
29 allocations for each water body or water body segment shall be
30 adopted by rule by the secretary pursuant to ss. 120.54 and
31 120.536(1), and 403.805. The rules adopted pursuant to this

1 paragraph shall not be subject to approval by the
 2 Environmental Regulation Commission. As part of the rule
 3 development process, the department shall hold at least one
 4 public workshop in the vicinity of the water body or water
 5 body segment for which the total maximum daily load is being
 6 developed. Notice of the public workshop shall be published
 7 not less than 5 days nor more than 15 days before the public
 8 workshop in a newspaper of general circulation in the county
 9 or counties containing the water bodies or water body segments
 10 for which the total maximum daily load calculation and
 11 allocation are being developed.

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

13 (a) The department shall be the lead agency in
 14 coordinating the implementation of the total maximum daily
 15 load allocation through water quality protection
 16 programs. Application of a total maximum daily load
 17 calculation or allocation by a water management district shall
 18 be consistent with this section and shall not require the
 19 issuance of an order or a separate action pursuant to s.
 20 120.54 or s. 120.536(1) for adoption of the calculation and
 21 allocation previously established by the department. Such
 22 programs may include, but are not limited to:

- 23 1. Permitting and other existing regulatory programs;
- 24 2. Nonregulatory and incentive-based programs,
 25 including best management practices, cost sharing, waste
 26 minimization, pollution prevention, and public education;
- 27 3. Other water quality management and restoration
 28 activities, for example surface water improvement and
 29 management plans approved by water management districts under
 30 s. 373.456;

31

1 4. Pollutant trading or other equitable economically
2 based agreements;

3 5. Public works including capital facilities; or

4 6. Land acquisition.

5 (b) In developing and implementing the total maximum
6 daily load allocation, the department may develop a basin
7 plan. The basin plan will serve to fully integrate all the
8 management strategies available to the state for the purpose
9 of achieving water quality restoration. The basin planning
10 process is intended to involve the broadest possible range of
11 interested parties, with the objective of encouraging the
12 greatest amount of cooperation and consensus possible. The
13 department shall hold at least one public meeting in the
14 vicinity of the basin to discuss and receive comments during
15 the basin planning process and shall otherwise encourage
16 public participation to the greatest practical extent. Notice
17 of the public meeting shall be published in a newspaper of
18 general circulation in each county in which the basin lies not
19 less than 5 days nor more than 15 days before the public
20 meeting. A basin plan shall not supplant or otherwise alter
21 any assessment made under s. 403.086(3) and s.403.086(4), or
22 any calculation or allocation made under s. 403.086(6).

23 (c) The department, in cooperation with the water
24 management districts and other interested parties, as
25 appropriate, may develop suitable interim measures, best
26 management practices, or other measures necessary to achieve
27 the level of pollution reduction established by the department
28 for nonagricultural nonpoint pollutant sources in allocations
29 developed pursuant to s. 403.067(6)(b). These practices and
30 measures may be adopted by rule by the department and the
31 water management districts pursuant to ss. 120.54 and

1 120.536(1), and may be implemented by those parties
2 responsible for nonagricultural nonpoint pollutant sources and
3 the department and the water management districts shall assist
4 with implementation. Where interim measures, best management
5 practices, or other measures are adopted by rule, the
6 effectiveness of such practices in achieving the levels of
7 pollution reduction established in allocations developed by
8 the department pursuant to s. 403.067(6)(b) shall be verified
9 by the department. Implementation, in accordance with
10 applicable rules, of practices that have been verified by the
11 department to be effective at representative sites shall
12 provide a presumption of compliance with state water quality
13 standards and release from the provisions of s. 376.307(5) for
14 those pollutants addressed by the practices, and the
15 department is not authorized to institute proceedings against
16 the owner of the source of pollution to recover costs or
17 damages associated with the contamination of surface or ground
18 water caused by those pollutants. Such rules shall also
19 incorporate provisions for a notice of intent to implement the
20 practices and a system to assure the implementation of the
21 practices, including recordkeeping requirements. Where water
22 quality problems are detected despite the appropriate
23 implementation, operation and maintenance of best management
24 practices and other measures according to rules adopted under
25 this paragraph, the department or the water management
26 districts shall institute a reevaluation of the best
27 management practice or other measures.

28 (d) The Department of Agriculture and Consumer
29 Services may develop and adopt by rule pursuant to ss. 120.54
30 and 120.536(1) suitable interim measures, best management
31 practices, or other measures necessary to achieve the level of

1 pollution reduction established by the department for
2 agricultural pollutant sources in allocations developed
3 pursuant to s. 403.067(6)(b). These practices and measures may
4 be implemented by those parties responsible for agricultural
5 pollutant sources and the department, the water management
6 districts and the Department of Agriculture and Consumer
7 Services shall assist with implementation. Where interim
8 measures, best management practices, or other measures are
9 adopted by rule, the effectiveness of such practices in
10 achieving the levels of pollution reduction established in
11 allocations developed by the department pursuant to s.
12 403.067(6)(b) shall be verified by the department.
13 Implementation, in accordance with applicable rules, of
14 practices that have been verified by the department to be
15 effective at representative sites shall provide a presumption
16 of compliance with state water quality standards and release
17 from the provisions of s. 376.307(5) for those pollutants
18 addressed by the practices, and the department is not
19 authorized to institute proceedings against the owner of the
20 source of pollution to recover costs or damages associated
21 with the contamination of surface or ground water caused by
22 those pollutants. In the process of developing and adopting
23 rules for interim measures, best management practices, or
24 other measures, the Department of Agriculture and Consumer
25 Services shall consult with the department, the Department of
26 Health, the water management districts, representatives from
27 affected farming groups, and environmental group
28 representatives. Such rules shall also incorporate provisions
29 for a notice of intent to implement the practices and a system
30 to assure the implementation of the practices, including
31 recordkeeping requirements. Where water quality problems are

1 detected despite the appropriate implementation, operation and
2 maintenance of best management practices and other measures
3 according to rules adopted under this paragraph, the
4 Department of Agriculture and Consumer Services shall
5 institute a reevaluation of the best management practice or
6 other measure.

7 (e) The provisions of s. 403.067(7) paragraphs (c) and
8 (d) shall not preclude the department or water management
9 district from requiring compliance with water quality
10 standards or with current best management practice
11 requirements set forth in any applicable regulatory program
12 authorized by law for the purpose of protecting water
13 quality. Additionally, s. 403.067(7)(c) and s. 403.067(7)(d)
14 are applicable only to the extent that they do not conflict
15 with any rules promulgated by the department that are
16 necessary to maintain a federally delegated or approved
17 program.

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

20 (a) Delisting water bodies or water body segments from
21 the list developed under s. 403.067(4) pursuant to the
22 guidance under s. 403.067(5);

23 (b) Administration of funds to implement the total
24 maximum daily load program;

25 (c) Procedures for pollutant trading among the
26 pollutant sources to a water body or water body segment,
27 including a mechanism for the issuance and tracking of
28 pollutant credits. Such procedures may be implemented through
29 permits or other authorizations and must be legally binding.

30 No rule implementing a pollutant trading program shall become
31

1 effective prior to review and ratification by the Legislature;
2 and

3 (d) The total maximum daily load calculation in
4 accordance with s. 403.067(6)(a) immediately upon the
5 effective date of this act, for those eight water segments
6 within Lake Okeechobee proper as submitted to the United
7 States Environmental Protection Agency pursuant to s.
8 403.067(2).

9 (9) APPLICATION.--The provisions of this section are
10 intended to supplement existing law and nothing in this
11 section shall be construed as altering any applicable state
12 water quality standards or as restricting the authority
13 otherwise granted to the department or a water management
14 district under this chapter or chapter 373. The exclusive
15 means of state implementation of ss. 303(d) of the Clean Water
16 Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq. shall be
17 in accordance with the identification, assessment, calculation
18 and allocation, and implementation provisions of s. 403.067.

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

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

29 (12) In order to provide adequate due process while
30 ensuring timely development of total maximum daily loads,
31 proposed rules and orders authorized by this act shall be

1 ineffective pending resolution of a section 120.54(3), 120.56,
2 120.569, or 120.57 administrative proceeding. However, the
3 department may go forward prior to resolution of such
4 administrative proceedings with subsequent agency actions
5 authorized by s. 403.067(2) through s. 403.067(6), provided
6 that the department can support and substantiate those actions
7 using the underlying bases for the rules or orders without the
8 benefit of any legal presumption favoring, or in deference to,
9 the challenged rules or orders.

10 Section 10. Subsection (1) of section 403.805, Florida
11 Statutes, is amended to read:

12 403.805 Secretary; powers and duties.--

13 (1) The secretary shall have the powers and duties of
14 heads of departments set forth in chapter 20, including the
15 authority to adopt rules pursuant to ss. 120.536(1) and 120.54
16 to implement the provisions of chapters 253, 373, and 376 and
17 this chapter. The secretary shall have rulemaking
18 responsibility under chapter 120, but shall submit any
19 proposed rule containing standards to the Environmental
20 Regulation Commission for approval, modification, or
21 disapproval pursuant to s. 403.804, except for total maximum
22 daily load calculations and allocations developed pursuant to
23 s. 403.067(6). The secretary shall have responsibility for
24 final agency action regarding total maximum daily load
25 calculations and allocations developed pursuant to s.
26 403.067(6). The secretary shall employ legal counsel to
27 represent the department in matters affecting the department.
28 Except for appeals on permits specifically assigned by this
29 act to the Governor and Cabinet, and unless otherwise
30 prohibited by law, the secretary may delegate the authority
31 assigned to the department by this act to the assistant

1 secretary, division directors, and district and branch office
2 managers and to the water management districts.

3 Section 11. The department, coordinating with the
4 water management districts and the Department of Agriculture
5 and Consumer Services, shall evaluate the effectiveness of the
6 implementation of total maximum daily loads for a period of 5
7 years from the effective date of this act. The department
8 shall document that effectiveness, using all data and
9 information at its disposal, in a report to the Governor, the
10 President of the Senate, and the Speaker of the House of
11 Representatives by January 1, 2005. The report shall provide
12 specific recommendations for statutory changes necessary to
13 implement total maximum daily loads more effectively,
14 including the development or expansion of pollution prevention
15 and pollutant trading opportunities, and best management
16 practices. The report shall also provide recommendations for
17 statutory changes relating to pollutant sources which are not
18 subject to permitting under chapter 403, Florida Statutes, or
19 chapter 373, Florida Statutes, and which do not implement the
20 nonregulatory practices or other measures outlined in the
21 basin plan prepared under s. 403.067, Florida Statutes, in
22 accordance with the schedule of the plan, or fail to implement
23 them as designed.

24 Section 12. Notwithstanding subsection 20.255(2),
25 Florida Statutes, the Secretary of the Department of
26 Environmental Protection is authorized to restructure and
27 reorganize the department within the current statutory
28 prescribed divisions and in compliance with s. 216.292, F.S.,
29 1998 Supplement, to increase efficiency in carrying out the
30 agency's statutory mission and objectives. Actions taken under
31 the authority granted by this section must be taken in

1 consultation with the Executive Office of the Governor subject
2 to the notification and review procedures in s. 216.177,
3 Florida Statutes. The secretary shall submit a report
4 describing actions taken and additional plans for implementing
5 the provisions of this section to the Governor, the President
6 of the Senate, and the Speaker of the House of Representatives
7 by 30 days after this bill becomes a law. The department shall
8 submit status reports on a monthly basis through December
9 1999.

10 Section 13. This act shall take effect upon becoming a
11 law.