

By the Committees on Governmental Rules & Regulations,
 Water & Resource Management and Representatives Alexander,
 Wallace, Constantine, Dockery, Putnam, Byrd, Sembler,
 Betancourt, Kelly, K. Smith, Healey, Johnson, Cantens,
 Brummer, Boyd, Pruitt, Waters and Merchant

1 A bill to be entitled
 2 An act relating to the Florida Watershed
 3 Restoration Act; providing a short title;
 4 amending s. 403.031, F.S.; defining the term
 5 "total maximum daily load"; creating s.
 6 403.067, F.S.; authorizing the Department of
 7 Environmental Protection to adopt a process of
 8 listing surface waters not meeting water
 9 quality standards and for the process of
 10 establishing, allocating, and implementing
 11 total maximum daily loads applicable to such
 12 listed waters; providing specific authority for
 13 the department to implement s. 1313, 33 U.S.C.;
 14 providing legislative findings and intent;
 15 providing for a listing of surface waters;
 16 providing for an assessment; providing for an
 17 adopted list; providing for removal from the
 18 list; providing for calculation of total
 19 maximum daily load; providing for
 20 implementation; providing for rules; providing
 21 for application; providing for construction;
 22 providing for evaluation; amending s. 403.805,
 23 F.S.; revising language with respect to the
 24 powers and duties of the Secretary of the
 25 Department of Environmental Protection;
 26 providing an effective date.

27
 28 Be It Enacted by the Legislature of the State of Florida:

29
 30 Section 1. Short title.--This act may be cited as the
 31 "Florida Watershed Restoration Act."

1 Section 2. Subsection (21) is added to section
2 403.031, Florida Statutes, to read:

3 403.031 Definitions.--In construing this chapter, or
4 rules and regulations adopted pursuant hereto, the following
5 words, phrases, or terms, unless the context otherwise
6 indicates, have the following meanings:

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

15 Section 3. Section 403.067, Florida Statutes, is
16 created to read:

17 403.067 Establishment and implementation of total
18 maximum daily loads.--

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

1 scientifically based total maximum daily load program is
2 necessary to fairly and equitably allocate pollution loads to
3 both nonpoint and point sources. Implementation of the
4 allocation shall include consideration of a cost-effective
5 approach coordinated between contributing point and nonpoint
6 sources of pollution for impaired water bodies or water body
7 segments and may include the opportunity to implement the
8 allocation through nonregulatory and incentive-based programs.
9 The Legislature further declares that the Department of
10 Environmental Protection shall be the lead agency in
11 administering this program and shall coordinate with local
12 governments, water management districts, the Department of
13 Agriculture and Consumer Services, local soil and water
14 conservation districts, environmental groups, regulated
15 interests, other appropriate state agencies, and affected
16 pollution sources in developing and executing the total
17 maximum daily load program.

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

30 (a) The list, priority ranking, and schedule cannot be
31 used in the administration or implementation of any regulatory

1 program. However, this paragraph does not prohibit any agency
2 from employing the data or other information used to establish
3 the list, priority ranking, or schedule in administering any
4 program.

5 (b) The list, priority ranking, and schedule prepared
6 under this subsection shall be made available for public
7 comment, but shall not be subject to challenge under chapter
8 120.

9 (c) The provisions of this subsection are applicable
10 to all lists prepared by the department and submitted to the
11 United States Environmental Protection Agency pursuant to
12 section ss. 303(d) of the Clean Water Act. Pub. L. No. 92-500,
13 33 U.S.C. ss. 1251 et seq., including those submitted prior to
14 the effective date of this act, except as provided in s.
15 403.067(4).

16 (d) If the department proposes to implement total
17 maximum daily load calculations or allocations established
18 prior to the effective date of this act, the department shall
19 adopt those calculations and allocations by rule by the
20 secretary pursuant to ss. 120.54, 120.536(1), and
21 403.067(6)(d).

22 (3) ASSESSMENT.--

23 (a) Based on the priority ranking and schedule for a
24 particular listed water body or water body segment, the
25 department shall conduct a total maximum daily load assessment
26 of the basin in which the water body or water body segment is
27 located using the methodology developed pursuant to s.
28 403.067(3)(b). In conducting this assessment, the department
29 shall coordinate with the local water management district, the
30 Department of Agriculture and Consumer Services, other
31 appropriate state agencies, soil and water conservation

1 districts, environmental groups, regulated interests, and
2 other interested parties.
3 (b) The department shall adopt by rule a methodology
4 for determining those waters which are impaired. The rule
5 shall provide for consideration as to whether water quality
6 standards codified in chapter 62-302, Florida Administrative
7 Code, are being exceeded, based on objective and credible
8 data, studies and reports, including surface water improvement
9 and management plans approved by water management districts
10 under s. 373.456 and pollutant load reduction goals developed
11 according to department rule. Such rule also shall set forth:
12 1. Water quality sample collection and analysis
13 requirements, accounting for ambient background conditions,
14 seasonal and other natural variations;
15 2. Approved methodologies;
16 3. Quality assurance and quality control protocols;
17 4. Data modeling; and
18 5. Other appropriate water quality assessment
19 measures.
20 (c) If the department has adopted a rule establishing
21 a numerical criterion for a particular pollutant, a narrative
22 or biological criterion may not be the basis for determining
23 an impairment in connection with that pollutant unless the
24 department identifies specific factors as to why the numerical
25 criterion is not adequate to protect water quality. If water
26 quality nonattainment is based on narrative or biological
27 criteria, the specific factors concerning particular
28 pollutants shall be identified prior to a total maximum daily
29 load being developed for those criteria for that surface water
30 or surface water segment.
31

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

27 (5) REMOVAL FROM LIST.--At any time throughout the
28 total maximum daily load process, surface waters or segments
29 evaluated or listed under this section shall be removed from
30 the lists described in s. 403.067(2) or s. 403.067(4) upon
31 demonstration that water quality criteria are being attained,

1 based on data equivalent to that required by rule under s.
2 403.067(3).
3 (6) CALCULATION AND ALLOCATION.--
4 (a) Calculation of total maximum daily load.--
5 1. Prior to developing a total maximum daily load
6 calculation for each water body or water body segment on the
7 list specified in s. 403.067(4), the department shall
8 coordinate with applicable local governments, water management
9 districts, the Department of Agriculture and Consumer
10 Services, other appropriate state agencies, local soil and
11 water conservation districts, environmental groups, regulated
12 interests, and affected pollution sources to determine the
13 information required, accepted methods of data collection and
14 analysis, and quality control/quality assurance requirements.
15 The analysis may include mathematical water quality modeling
16 using approved procedures and methods.
17 2. The department shall develop total maximum daily
18 load calculations for each water body or water body segment on
19 the list described in s. 403.067(4) according to the priority
20 ranking and schedule unless the impairment of such waters is
21 due solely to activities other than point and nonpoint sources
22 of pollution. For waters determined to be impaired due solely
23 to factors other than point and nonpoint sources of pollution,
24 no total maximum daily load will be required. A total maximum
25 daily load may be required for those waters that are impaired
26 predominantly due to activities other than point and nonpoint
27 sources. The total maximum daily load calculation shall
28 establish the amount of a pollutant that a water body or water
29 body segment can assimilate without exceeding water quality
30 standards, and shall account for seasonal variations and
31 include a margin of safety that takes into account any lack of

1 knowledge concerning the relationship between effluent
2 limitations and water quality. The total maximum daily load
3 may be based on a pollutant load reduction goal developed by a
4 water management district, provided that such pollutant load
5 reduction goal is promulgated by the department in accordance
6 with the procedural and substantive requirements of this
7 subsection.

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

- 22 1. Existing treatment levels and management practices;
- 23 2. Differing impacts pollutant sources may have on
24 water quality;
- 25 3. The availability of treatment technologies,
26 management practices, or other pollutant reduction measures;
- 27 4. Environmental, economic, and technological
28 feasibility of achieving the allocation;
- 29 5. The cost benefit associated with achieving the
30 allocation;
- 31 6. Reasonable timeframes for implementation;

1 7. Potential applicability of any moderating
2 provisions such as variances, exemptions, and mixing zones;
3 and

4 8. The extent to which nonattainment of water quality
5 standards is caused by pollution sources outside of Florida,
6 discharges that have ceased, or alterations to water bodies
7 prior to the date of this act.

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

23 (d) Rule.--The total maximum daily load calculations
24 and allocations for each water body or water body segment
25 shall be adopted by rule by the secretary pursuant to ss.
26 120.54, 120.536(1), and 403.805. The rules adopted pursuant to
27 this paragraph shall not be subject to approval by the
28 Environmental Regulation Commission. As part of the rule
29 development process, the department shall hold at least one
30 public workshop in the vicinity of the water body or water
31 body segment for which the total maximum daily load is being

1 developed. Notice of the public workshop shall be published
2 not less than 5 days nor more than 15 days before the public
3 workshop in a newspaper of general circulation in the county
4 or counties containing the water bodies or water body segments
5 for which the total maximum daily load calculation and
6 allocation are being developed.

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

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

- 18 1. Permitting and other existing regulatory programs;
- 19 2. Nonregulatory and incentive-based programs,
20 including best management practices, cost sharing, waste
21 minimization, pollution prevention, and public education;
- 22 3. Other water quality management and restoration
23 activities, for example surface water improvement and
24 management plans approved by water management districts under
25 s. 373.456;
- 26 4. Pollutant trading or other equitable economically
27 based agreements;
- 28 5. Public works including capital facilities; or
- 29 6. Land acquisition.

30 (b) In developing and implementing the total maximum
31 daily load allocation, the department may develop a basin

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

17 (c) The department, in cooperation with the water
18 management districts and other interested parties, as
19 appropriate, may develop suitable interim measures, best
20 management practices, or other measures necessary to achieve
21 the level of pollution reduction established by the department
22 for nonagricultural nonpoint pollutant sources in allocations
23 developed pursuant to s. 403.067(6)(b). These practices and
24 measures may be adopted by rule by the department and the
25 water management districts pursuant to ss. 120.54 and
26 120.536(1), and may be implemented by those parties
27 responsible for nonagricultural nonpoint pollutant sources and
28 the department and the water management districts shall assist
29 with implementation. Where interim measures, best management
30 practices, or other measures are adopted by rule, the
31 effectiveness of such practices in achieving the levels of

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

22 (d) The Department of Agriculture and Consumer
23 Services may develop and adopt by rule pursuant to ss. 120.54
24 and 120.536(1) suitable interim measures, best management
25 practices, or other measures necessary to achieve the level of
26 pollution reduction established by the department for
27 agricultural pollutant sources in allocations developed
28 pursuant to s. 403.067(6)(b). These practices and measures may
29 be implemented by those parties responsible for agricultural
30 pollutant sources and the department, the water management
31 districts and the Department of Agriculture and Consumer

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

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

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

13 (a) Delisting water bodies or water body segments from
14 the list developed under s. 403.067(4) pursuant to the
15 guidance under s. 403.067(5);

16 (b) Administration of funds to implement the total
17 maximum daily load program; and

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

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

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

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

11 (12) RULES AND ORDERS.--In order to provide adequate
12 due process while ensuring timely development of total maximum
13 daily loads, proposed rules and orders authorized by this act
14 shall be ineffective pending resolution of s. 120.54(3), s.
15 120.56, s. 120.569, or s. 120.57 administrative proceeding.
16 However, the department may go forward prior to resolution of
17 such administrative proceedings with subsequent agency actions
18 authorized by s. 403.067(2)-(6), provided that the department
19 can support and substantiate those actions using the
20 underlying bases for the rules or orders without the benefit
21 of any legal presumption favoring, or in deference to, the
22 challenged rules or orders.

23 Section 4. Subsection (1) of section 403.805, Florida
24 Statutes, 1998 Supplement, is amended to read:

25 403.805 Secretary; powers and duties.--

26 (1) The secretary shall have the powers and duties of
27 heads of departments set forth in chapter 20, including the
28 authority to adopt rules pursuant to ss. 120.536(1) and 120.54
29 to implement the provisions of chapters 253, 373, and 376 and
30 this chapter. The secretary shall have rulemaking
31 responsibility under chapter 120, but shall submit any

1 proposed rule containing standards to the Environmental
2 Regulation Commission for approval, modification, or
3 disapproval pursuant to s. 403.804, except for total maximum
4 daily load calculations and allocations developed pursuant to
5 s. 403.067(6). The secretary shall have responsibility for
6 final agency action regarding total maximum daily load
7 calculations and allocations developed pursuant to s.
8 403.067(6). The secretary shall employ legal counsel to
9 represent the department in matters affecting the department.
10 Except for appeals on permits specifically assigned by this
11 act to the Governor and Cabinet, and unless otherwise
12 prohibited by law, the secretary may delegate the authority
13 assigned to the department by this act to the assistant
14 secretary, division directors, and district and branch office
15 managers and to the water management districts.

16 Section 5. The department, coordinating with the water
17 management districts and the Department of Agriculture and
18 Consumer Services, shall evaluate the effectiveness of the
19 implementation of total maximum daily loads for a period of 5
20 years from the effective date of this act. The department
21 shall document that effectiveness, using all data and
22 information at its disposal, in a report to the Governor, the
23 President of the Senate, and the Speaker of the House of
24 Representatives by January 1, 2005. The report shall provide
25 specific recommendations for statutory changes necessary to
26 implement total maximum daily loads more effectively,
27 including the development or expansion of pollution prevention
28 and pollutant trading opportunities, and best management
29 practices. The report shall also provide recommendations for
30 statutory changes relating to pollutant sources which are not
31 subject to permitting under chapter 403, Florida Statutes, or

1 chapter 373, Florida Statutes, and which do not implement the
2 nonregulatory practices or other measures outlined in the
3 basin plan prepared under s. 403.067, Florida Statutes, in
4 accordance with the schedule of the plan, or fail to implement
5 them as designed.

6 Section 6. This act shall take effect upon becoming a
7 law.

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