

Bill No. CS for SB 2282

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1 must first be calculated.

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

4 403.067 Establishment and implementation of total
5 maximum daily loads.--

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

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1 conservation districts, environmental groups, regulated
2 interests, other appropriate state agencies, and affected
3 pollution sources in developing and executing the total
4 maximum daily load program.

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

17 (a) The list, priority ranking, and schedule cannot be
18 used in the administration or implementation of any regulatory
19 program. However, this paragraph does not prohibit any agency
20 from employing the data or other information used to establish
21 the list, priority ranking, or schedule in administering any
22 program.

23 (b) The list, priority ranking, and schedule prepared
24 under this subsection shall be made available for public
25 comment, but shall not be subject to challenge under chapter
26 120.

27 (c) The provisions of this subsection are applicable
28 to all lists prepared by the department and submitted to the
29 United States Environmental Protection Agency pursuant to
30 section ss. 303(d) of the Clean Water Act. Pub. L. No. 92-500,
31 33 U.S.C. ss. 1251 et seq., including those submitted prior to

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1 the effective date of this act, except as provided in s.
2 403.067(4).

3 (d) If the department proposes to implement total
4 maximum daily load calculations or allocations established
5 prior to the effective date of this act, the department shall
6 adopt those calculations and allocations by rule by the
7 secretary pursuant to ss. 120.54, 120.536(1) and
8 403.067(6)(d).

9 (3) ASSESSMENT.--

10 (a) Based on the priority ranking and schedule for a
11 particular listed water body or water body segment, the
12 department shall conduct a total maximum daily load assessment
13 of the basin in which the water body or water body segment is
14 located using the methodology developed pursuant to s.
15 403.067(3)(b). In conducting this assessment, the department
16 shall coordinate with the local water management district, the
17 Department of Agriculture and Consumer Services, other
18 appropriate state agencies, soil and water conservation
19 districts, environmental groups, regulated interests, and
20 other interested parties.

21 (b) The department shall adopt by rule a methodology
22 for determining those waters which are impaired. The rule
23 shall provide for consideration as to whether water quality
24 standards codified in chapter 62-302, Florida Administrative
25 Code, are being exceeded, based on objective and credible
26 data, studies and reports, including surface water improvement
27 and management plans approved by water management districts
28 under s. 373.456 and pollutant load reduction goals developed
29 according to department rule. Such rule also shall set forth:

30 1. Water quality sample collection and analysis
31 requirements, accounting for ambient background conditions,

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1 seasonal and other natural variations;

2 2. Approved methodologies;

3 3. Quality assurance and quality control protocols;

4 4. Data modeling; and

5 5. Other appropriate water quality assessment
6 measures.

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

18 (4) APPROVED LIST.--If the department determines,
19 based on the total maximum daily load assessment methodology
20 described in s. 403.067(3), that water quality standards are
21 not being achieved and that technology-based effluent
22 limitations and other pollution control programs under local,
23 state, or federal authority, including Everglades restoration
24 activities pursuant to s. 373.4592 and the National Estuary
25 Program, which are designed to restore such waters for the
26 pollutant of concern are not sufficient to result in
27 attainment of applicable surface water quality standards, it
28 shall confirm that determination by issuing a subsequent,
29 updated list of those water bodies or segments for which total
30 maximum daily loads will be calculated. In association with
31 this updated list the department shall establish priority

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1 rankings and schedules by which water bodies or segments will
2 be subjected to total maximum daily load calculations. If a
3 surface water or water segment is to be listed under this
4 subsection, the department must specify the particular
5 pollutants causing the impairment and the concentration of
6 those pollutants causing the impairment relative to the water
7 quality standard. This updated list shall be approved and
8 amended by order of the department subsequent to completion of
9 an assessment of each water body or water body segment, and
10 submitted to the United States Environmental Protection
11 Agency. Each order shall be subject to challenge under ss.
12 120.569 and 120.57.

13 (5) REMOVAL FROM LIST.--At any time throughout the
14 total maximum daily load process, surface waters or segments
15 evaluated or listed under this section shall be removed from
16 the lists described in s. 403.067(2) or s. 403.067(4) upon
17 demonstration that water quality criteria are being attained,
18 based on data equivalent to that required by rule under s.
19 403.067(3).

20 (6) CALCULATION AND ALLOCATION.--

21 (a) Calculation of total maximum daily load.

22 1. Prior to developing a total maximum daily load
23 calculation for each water body or water body segment on the
24 list specified in s. 403.067(4), the department shall
25 coordinate with applicable local governments, water management
26 districts, the Department of Agriculture and Consumer
27 Services, other appropriate state agencies, local soil and
28 water conservation districts, environmental groups, regulated
29 interests, and affected pollution sources to determine the
30 information required, accepted methods of data collection and
31 analysis, and quality control/quality assurance requirements.

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1 The analysis may include mathematical water quality modeling
2 using approved procedures and methods.

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

25 (b) Allocation of total maximum daily loads. The total
26 maximum daily loads shall include establishment of reasonable
27 and equitable allocations of the total maximum daily load
28 among point and nonpoint sources that will alone, or in
29 conjunction with other management and restoration activities,
30 provide for the attainment of water quality standards and the
31 restoration of impaired waters. The allocations shall

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1 establish the maximum amount of the water pollutant from a
2 given source or category of sources that may be discharged or
3 released into the water body or water body segment in
4 combination with other discharges or releases. Such
5 allocations shall be designed to attain water quality
6 standards and shall be based on consideration of the
7 following:

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

25 (c) Not later than February 1, 2001, the department
26 shall submit a report to the Governor, the President of the
27 Senate, and the Speaker of the House of Representatives
28 containing recommendations, including draft legislation, for
29 any modifications to the process for allocating total maximum
30 daily loads, including the relationship between allocations
31 and the basin planning process. Such recommendations shall be

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1 developed by the department in cooperation with a technical
2 advisory committee which includes representatives of affected
3 parties, environmental organizations, water management
4 districts, and other appropriate local, state, and federal
5 government agencies. The technical advisory committee shall
6 also include such members as may be designated by the
7 President of the Senate and the Speaker of the House of
8 Representatives.

9 (d) The total maximum daily load calculations and
10 allocations for each water body or water body segment shall be
11 adopted by rule by the secretary pursuant to ss. 120.54 and
12 120.536(1), and 403.805. The rules adopted pursuant to this
13 paragraph shall not be subject to approval by the
14 Environmental Regulation Commission. As part of the rule
15 development process, the department shall hold at least one
16 public workshop in the vicinity of the water body or water
17 body segment for which the total maximum daily load is being
18 developed. Notice of the public workshop shall be published
19 not less than 5 days nor more than 15 days before the public
20 workshop in a newspaper of general circulation in the county
21 or counties containing the water bodies or water body segments
22 for which the total maximum daily load calculation and
23 allocation are being developed.

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

25 (a) The department shall be the lead agency in
26 coordinating the implementation of the total maximum daily
27 load allocation through water quality protection
28 programs. Application of a total maximum daily load
29 calculation or allocation by a water management district shall
30 be consistent with this section and shall not require the
31 issuance of an order or a separate action pursuant to s.

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1 120.54 or s. 120.536(1) for adoption of the calculation and
2 allocation previously established by the department. Such
3 programs may include, but are not limited to:

4 1. Permitting and other existing regulatory programs;
5 2. Nonregulatory and incentive-based programs,
6 including best management practices, cost sharing, waste
7 minimization, pollution prevention, and public education;
8 3. Other water quality management and restoration
9 activities, for example surface water improvement and
10 management plans approved by water management districts under
11 s. 373.456;

12 4. Pollutant trading or other equitable economically
13 based agreements;

14 5. Public works including capital facilities; or
15 6. Land acquisition.

16 (b) In developing and implementing the total maximum
17 daily load allocation, the department may develop a basin
18 plan. The basin plan will serve to fully integrate all the
19 management strategies available to the state for the purpose
20 of achieving water quality restoration. The basin planning
21 process is intended to involve the broadest possible range of
22 interested parties, with the objective of encouraging the
23 greatest amount of cooperation and consensus possible. The
24 department shall hold at least one public meeting in the
25 vicinity of the basin to discuss and receive comments during
26 the basin planning process and shall otherwise encourage
27 public participation to the greatest practical extent. Notice
28 of the public meeting shall be published in a newspaper of
29 general circulation in each county in which the basin lies not
30 less than 5 days nor more than 15 days before the public
31 meeting. A basin plan shall not supplant or otherwise alter

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1 any assessment made under s. 403.086(3) and s.403.086(4), or
2 any calculation or allocation made under s. 403.086(6).
3 (c) The department, in cooperation with the water
4 management districts and other interested parties, as
5 appropriate, may develop suitable interim measures, best
6 management practices, or other measures necessary to achieve
7 the level of pollution reduction established by the department
8 for nonagricultural nonpoint pollutant sources in allocations
9 developed pursuant to s. 403.067(6)(b). These practices and
10 measures may be adopted by rule by the department and the
11 water management districts pursuant to ss. 120.54 and
12 120.536(1), and may be implemented by those parties
13 responsible for nonagricultural nonpoint pollutant sources and
14 the department and the water management districts shall assist
15 with implementation. Where interim measures, best management
16 practices, or other measures are adopted by rule, the
17 effectiveness of such practices in achieving the levels of
18 pollution reduction established in allocations developed by
19 the department pursuant to s. 403.067(6)(b) shall be verified
20 by the department. Implementation, in accordance with
21 applicable rules, of practices that have been verified by the
22 department to be effective at representative sites shall
23 provide a presumption of compliance with state water quality
24 standards and release from the provisions of s. 376.307(5) for
25 those pollutants addressed by the practices, and the
26 department is not authorized to institute proceedings against
27 the owner of the source of pollution to recover costs or
28 damages associated with the contamination of surface or ground
29 water caused by those pollutants. Such rules shall also
30 incorporate provisions for a notice of intent to implement the
31 practices and a system to assure the implementation of the

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1 practices, including recordkeeping requirements. Where water
2 quality problems are detected despite the appropriate
3 implementation, operation and maintenance of best management
4 practices and other measures according to rules adopted under
5 this paragraph, the department or the water management
6 districts shall institute a reevaluation of the best
7 management practice or other measures.

8 (d) The Department of Agriculture and Consumer
9 Services may develop and adopt by rule pursuant to ss. 120.54
10 and 120.536(1) suitable interim measures, best management
11 practices, or other measures necessary to achieve the level of
12 pollution reduction established by the department for
13 agricultural pollutant sources in allocations developed
14 pursuant to s. 403.067(6)(b). These practices and measures may
15 be implemented by those parties responsible for agricultural
16 pollutant sources and the department, the water management
17 districts and the Department of Agriculture and Consumer
18 Services shall assist with implementation. Where interim
19 measures, best management practices, or other measures are
20 adopted by rule, the effectiveness of such practices in
21 achieving the levels of pollution reduction established in
22 allocations developed by the department pursuant to s.
23 403.067(6)(b) shall be verified by the department.
24 Implementation, in accordance with applicable rules, of
25 practices that have been verified by the department to be
26 effective at representative sites shall provide a presumption
27 of compliance with state water quality standards and release
28 from the provisions of s. 376.307(5) for those pollutants
29 addressed by the practices, and the department is not
30 authorized to institute proceedings against the owner of the
31 source of pollution to recover costs or damages associated

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1 with the contamination of surface or ground water caused by
2 those pollutants. In the process of developing and adopting
3 rules for interim measures, best management practices, or
4 other measures, the Department of Agriculture and Consumer
5 Services shall consult with the department, the Department of
6 Health, the water management districts, representatives from
7 affected farming groups, and environmental group
8 representatives. Such rules shall also incorporate provisions
9 for a notice of intent to implement the practices and a system
10 to assure the implementation of the practices, including
11 recordkeeping requirements. Where water quality problems are
12 detected despite the appropriate implementation, operation and
13 maintenance of best management practices and other measures
14 according to rules adopted under this paragraph, the
15 Department of Agriculture and Consumer Services shall
16 institute a reevaluation of the best management practice or
17 other measure.

18 (e) The provisions of s. 403.067(7) paragraphs (c) and
19 (d) shall not preclude the department or water management
20 district from requiring compliance with water quality
21 standards or with current best management practice
22 requirements set forth in any applicable regulatory program
23 authorized by law for the purpose of protecting water
24 quality. Additionally, s. 403.067(7)(c) and s. 403.067(7)(d)
25 are applicable only to the extent that they do not conflict
26 with any rules promulgated by the department that are
27 necessary to maintain a federally delegated or approved
28 program.

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

31 (a) Delisting water bodies or water body segments from

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1 the list developed under s. 403.067(4) pursuant to the
2 guidance under s. 403.067(5);

3 (b) Administration of funds to implement the total
4 maximum daily load program;

5 (c) Procedures for pollutant trading among the
6 pollutant sources to a water body or water body segment,
7 including a mechanism for the issuance and tracking of
8 pollutant credits. Such procedures may be implemented through
9 permits or other authorizations and must be legally binding.
10 No rule implementing a pollutant trading program shall become
11 effective prior to review and ratification by the Legislature;
12 and

13 (d) The total maximum daily load calculation in
14 accordance with s. 403.067(6)(a) immediately upon the
15 effective date of this act, for those eight water segments
16 within Lake Okeechobee proper as submitted to the United
17 States Environmental Protection Agency pursuant to s.
18 403.067(2).

19 (9) APPLICATION.--The provisions of this section are
20 intended to supplement existing law and nothing in this
21 section shall be construed as altering any applicable state
22 water quality standards or as restricting the authority
23 otherwise granted to the department or a water management
24 district under this chapter or chapter 373. The exclusive
25 means of state implementation of section ss. 303(d) of the
26 Clean Water Act. Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et
27 seq. shall be in accordance with the identification,
28 assessment, calculation and allocation, and implementation
29 provisions of s. 403.067.

30 (10) CONSTRUCTION.--Nothing in this section shall be
31 construed as limiting the applicability or consideration of

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1 any mixing zone, variance, exemption, site specific
2 alternative criteria, or other moderating provision.

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

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

21 Section 4. Subsection (1) of section 403.805, Florida
22 Statutes, is amended to read:

23 403.805 Secretary; powers and duties.--

24 (1) The secretary shall have the powers and duties of
25 heads of departments set forth in chapter 20, including the
26 authority to adopt rules pursuant to ss. 120.536(1) and 120.54
27 to implement the provisions of chapters 253, 373, and 376 and
28 this chapter. The secretary shall have rulemaking
29 responsibility under chapter 120, but shall submit any
30 proposed rule containing standards to the Environmental
31 Regulation Commission for approval, modification, or

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

14 Section 5. The department, coordinating with the water
15 management districts and the Department of Agriculture and
16 Consumer Services, shall evaluate the effectiveness of the
17 implementation of total maximum daily loads for a period of 5
18 years from the effective date of this act. The department
19 shall document that effectiveness, using all data and
20 information at its disposal, in a report to the Governor, the
21 President of the Senate, and the Speaker of the House of
22 Representatives by January 1, 2005. The report shall provide
23 specific recommendations for statutory changes necessary to
24 implement total maximum daily loads more effectively,
25 including the development or expansion of pollution prevention
26 and pollutant trading opportunities, and best management
27 practices. The report shall also provide recommendations for
28 statutory changes relating to pollutant sources which are not
29 subject to permitting under chapter 403, Florida Statutes, or
30 chapter 373, Florida Statutes, and which do not implement the
31 nonregulatory practices or other measures outlined in the

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1 basin plan prepared under s. 403.067, Florida Statutes, in
2 accordance with the schedule of the plan, or fail to implement
3 them as designed.

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

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7

8 ===== T I T L E A M E N D M E N T =====

9 And the title is amended as follows:

10 Delete everything before the enacting clause

11
12

and insert:

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A bill to be entitled

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An act relating to implementation of water
quality standards; amending s. 403.031, F.S.;
defining the term "total maximum daily load";
creating s. 403.067, F.S.; providing
legislative findings and intent; requiring the
Department of Environmental Protection to
periodically submit to the United States
Environmental Protection Agency a list of
surface waters or segments for which total
maximum daily load assessments will be
conducted; providing that the list cannot be
used in the administration or implementation of
any regulatory program; providing for public
comment on the list; requiring the Department
of Environmental Protection to conduct total
maximum daily load assessments on water bodies
based on the priority ranking and schedule;
requiring the Department of Environmental

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1 Protection to adopt a methodology for
2 determining those water bodies which are
3 impaired by rule; specifying what the rule
4 shall set forth; providing for the adoption of
5 a subsequent updated list of water bodies for
6 which total maximum daily loads will be
7 calculated under certain circumstances;
8 providing for the removal of surface waters or
9 segments under certain conditions; providing
10 for the process for calculating and allocating
11 total maximum daily loads; providing that the
12 Department of Environmental Protection must
13 submit a report by February 1, 2001, to the
14 Governor, the President of the Senate, and the
15 Speaker of the House of Representatives which
16 contains recommendations and draft legislation
17 for any modifications to the process for
18 allocating total maximum daily loads; requiring
19 that the recommendations be developed by the
20 department in cooperation with a technical
21 committee; providing that the total maximum
22 daily load calculations and allocations shall
23 be adopted by rule; providing for public
24 workshops and public notice; providing that the
25 Department of Environmental Protection shall be
26 the lead agency in coordinating the
27 implementation of the total maximum daily load
28 allocation through water quality protection
29 programs; authorizing the department to develop
30 a basin plan requiring the department to
31 cooperatively develop suitable interim

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1 measures, best management practices, or other
2 measures necessary to achieve the level of
3 pollution reduction established in allocations
4 for nonagricultural nonpoint pollutant sources;
5 requiring the Department of Agriculture and
6 Consumer Services to develop, and to adopt by
7 rule at its discretion, certain interim
8 measures or best management practices necessary
9 to achieve the level of pollution reduction
10 established in allocations of agricultural
11 pollutant sources; authorizing the Department
12 of Environmental Protection to adopt certain
13 rules; prohibiting the Department of
14 Environmental Protection from implementing,
15 without prior legislative approval, any
16 additional regulatory authority pursuant to the
17 Clean Water Act; amending s. 403.805, F.S. ;
18 providing for the powers and duties of the
19 secretary; requiring the Department of
20 Environmental Protection, in coordination with
21 the water management district and the
22 Department of Agriculture and Consumer
23 Services, to evaluate the effectiveness of the
24 implementation of total maximum daily loads for
25 a specific period and to report to the Governor
26 and the Legislature; providing an effective
27 date.

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