

By Senator Laurent

17-1335-99

1 A bill to be entitled
2 An act relating to implementation of water
3 quality standards; amending s. 403.031, F.S.;
4 defining the terms "load allocation," "loading
5 capacity," "nonpoint source," "total maximum
6 load," and "wasteload allocation"; creating s.
7 403.067, F.S.; authorizing the Department of
8 Environmental Protection to adopt a process of
9 listing surface waters not meeting water
10 quality standards and for the process of
11 establishing, allocating, and implementing
12 total maximum loads applicable to the listed
13 waters; providing specific authority for the
14 Department of Environmental Protection to
15 implement federal law; setting legislative
16 standards and prescribing procedural
17 requirements; requiring a report; providing an
18 effective date.

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20 Be It Enacted by the Legislature of the State of Florida:

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22 Section 1. Subsections (21), (22), (23), (24), and
23 (25) are added to section 403.031, Florida Statutes, to read:

24 403.031 Definitions.--In construing this chapter, or
25 rules and regulations adopted pursuant hereto, the following
26 words, phrases, or terms, unless the context otherwise
27 indicates, have the following meanings:

28 (21) "Load allocation" means the portion of a
29 receiving water's loading capacity that is allocated to one of
30 its existing or future nonpoint sources of pollution.

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1 (22) "Loading capacity" means the mass of a pollutant
2 that a water body can assimilate without a violation of water
3 quality standards. For pollutants that cannot be measured in
4 terms of mass, it means the maximum change that can occur from
5 the best practicable condition in a surface water without
6 causing a violation of the surface water quality standards.

7 (23) "Nonpoint source" means diffuse runoff without a
8 single point of origin that flows over the surface of the
9 ground by stormwater and is then introduced to surface or
10 ground waters. Nonpoint sources include atmospheric deposition
11 and runoff or leaching from agricultural lands, urban areas,
12 unvegetated lands, onsite sewage treatment and disposal
13 systems, and construction sites.

14 (24) "Total maximum load" means the sum of the
15 individual wasteload allocations for point sources, load
16 allocations for nonpoint sources and natural background
17 levels, established at a level necessary to achieve compliance
18 with applicable surface water quality standards for a
19 particular pollutant. The total maximum load also should
20 include any necessary reserves for future growth,
21 consideration of seasonal variations, and a margin of safety
22 to account for the uncertainty concerning the relationship
23 between the pollutant loading and water quality standards.

24 (25) "Wasteload allocation" means the portion of a
25 receiving water's loading capacity that is allocated to one of
26 its existing or future point sources of pollution.

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

29 403.067 Establishment and implementation of total
30 maximum loads.--

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1 (1) In accordance with s. 303(d) of the Clean Water
2 Act, Pub. L. No. 92-500, as amended by 33 U.S.C. ss. 1251 et
3 seq., the department shall submit periodically to the United
4 States Environmental Protection Agency a list of surface
5 waters or segments that may need to be subjected to an
6 assessment of whether a total maximum load calculation and
7 allocation should be developed. The department shall establish
8 a priority ranking and schedule for analyzing such waters.

9 (a) The list, priority ranking, and schedule shall be
10 used by the department solely as planning tools by which to
11 prioritize the preparation of basin assessments and the need
12 for a total maximum load calculation and allocation. The list,
13 priority ranking, and schedule have no regulatory significance
14 or consequence and cannot be relied upon by the department or
15 third parties in the administration or implementation of any
16 regulatory program.

17 (b) The list, priority ranking, and schedule prepared
18 under this subsection must be made available for public
19 comment, but are not subject to challenge under ss. 120.569
20 and 120.57, and may not be adopted by rule under s. 120.54.

21 (2)(a) Based upon the priority ranking and schedule
22 for a particular listed water body or waterbody segment, the
23 department shall conduct a preliminary assessment of the basin
24 in which the water body or segment is located, using
25 methodology adopted by rule. In conducting this preliminary
26 assessment, the department shall coordinate with the local
27 water management district, the Department of Agriculture and
28 Consumer Services, soil and water conservation districts,
29 environmental groups, regulated interests, and other
30 interested parties.

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1 (b) The preliminary assessment methodology shall be
2 adopted by rule. The rule must provide for reliance, to the
3 greatest extent possible, on objective, quantitative, and
4 credible existing data, studies and reports, including surface
5 water improvement and management plans adopted by water
6 management districts under s. 373.456 and pollutant load
7 reduction goals developed according to department rule. The
8 rule must also provide, as part of the preliminary assessment,
9 that the department conduct specified supplemental water
10 quality sampling, including multiple samples that take into
11 account seasonal or other natural variations, collected and
12 analyzed in accordance with approved methodologies and quality
13 assurance/quality control protocols, monitoring, data
14 modeling, or other assessment measures specific to an
15 individual water body or waterbody segment.

16 (3) When the department determines, based on the
17 preliminary basin assessment that water quality standards
18 cannot be achieved on account of ongoing discharges of
19 pollutants into the waters or segments from point or nonpoint
20 sources, and that technology-based effluent limitations and
21 other implemented pollution control programs under local,
22 state, or federal authority designed to restore the waters for
23 the pollutant of concern are not sufficient to result in
24 attainment of applicable surface water criteria pursuant to s.
25 303(d) of the Clean Water Act, Pub. L. No. 92-500, as amended
26 by 33 U.S.C. ss. 1251 et seq., it may confirm that
27 determination by adopting a list of those water bodies or
28 segments for which total maximum loads will be calculated.
29 This basin-specific list shall be adopted by order of the
30 department subject to challenge under ss. 120.569 and 120.57.

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1 (4) At any time throughout the total maximum load
2 process, surface waters or segments evaluated or listed under
3 this section must be removed from the list outlined in
4 subsection (1) and the basin specific list upon demonstration
5 that water quality criteria are being attained, based on an
6 equivalent quantity and quality of data required by rule for
7 the basin-specific list.

8 (5)(a) Before developing a total maximum load
9 calculation for each water body or waterbody segment on the
10 basin-specific list, the department shall coordinate with
11 applicable local governments, water management districts, the
12 Department of Agriculture and Consumer Services, local soil
13 and water conservation districts, environmental groups,
14 regulated interests and affected pollution sources to
15 determine the information required, accepted methods of data
16 collection and analysis, and quality control/quality assurance
17 requirements. The analysis may include mathematical water
18 quality modeling using approved procedures and methods.

19 (b) If a surface water or water segment is to be
20 subjected to a total maximum load calculation and allocation
21 based on narrative or biological criteria, the department must
22 specify the particular pollutants causing the impairment, the
23 level of the pollutants causing the impairment, and the
24 technical basis for these determinations. If the department
25 has promulgated a rule establishing a numerical criterion for
26 a particular pollutant, a narrative or biological criterion
27 may not be the basis for determining an impairment in
28 connection with that pollutant unless the department
29 identifies a specific reason as to why the numerical criterion
30 is not adequate. If water quality nonattainment is based on
31 narrative or biological criteria, but these factors concerning

1 specific pollutants are not identified, then no total maximum
2 load may be developed for those criteria for that surface
3 water or water segment.

4 (c) If nonattainment of applicable criteria is caused
5 by ambient background conditions, impaired surface waters
6 entering Florida from Alabama or Georgia, previous but no
7 longer existing discharges, or historical alterations to such
8 waters or segments, these factors must be included in the
9 total maximum load calculation, but must not be included in
10 allocations to affected Florida pollutant sources. The
11 allocations for these factors must be addressed in the basin
12 plans developed in subsection (6) through alternative
13 regulatory or nonregulatory measures in accordance with the
14 Clean Water Act, where specified.

15 (d) The department shall develop a total maximum load
16 calculation for each water body or waterbody segment on the
17 basin-specific list. The contributions of both point source
18 and nonpoint source pollutant loads must be considered in
19 calculating the total maximum load. When the Environmental
20 Regulation Commission has approved under s. 403.804 a numeric
21 or narrative criterion for a particular pollutant, the
22 department, in accordance with paragraph (c), may apply the
23 criterion for a specific water body or waterbody segment by
24 establishing the pollutant's total maximum load. The total
25 maximum load may be a pollutant load reduction goal
26 established by a water management district and approved under
27 this subsection. The total maximum load calculation shall be
28 adopted by order of the department subject to challenge under
29 ss. 120.569 and 120.57.

30 (6)(a) After the total maximum loads have been adopted
31 by order, the department shall establish through a basin plan

1 or other similar plan a reasonable and equitable allocation of
2 the maximum load among point and nonpoint sources that would
3 alone, or in conjunction with other management and restoration
4 activities, provide for the attainment of water quality
5 standards. At a minimum, the allocation must take into account
6 existing treatment levels and management practices, the
7 differing impacts pollutant sources may have on water quality,
8 the availability of treatment technologies and management
9 practices, and reasonable timeframes for implementation.

10 (b) The allocation must establish:

11 1. The maximum amount of the pollutant from a given
12 source or category of sources that may be discharged or
13 released into the water body or waterbody segment in
14 combination with other discharges or releases; or

15 2. The best available treatment technologies,
16 management practices, or other measures that are available to
17 be implemented by each pollutant source or category of
18 sources.

19 (c) The department's analysis shall include
20 consideration of the potential applicability of any moderating
21 provisions available under the department's rules and this
22 chapter. This subsection may not be considered as limiting the
23 applicability or consideration of any mixing zone variance,
24 exemption, or other moderating provision.

25 (d) The total maximum load allocation shall be adopted
26 by rule under s. 120.54.

27 (7) The basin planning process is intended to involve
28 the broadest possible range of interested parties, with the
29 objective of encouraging the greatest amount of cooperation
30 and consensus possible. The department shall hold at least one
31 public meeting within the basin to discuss and receive

1 comments during the basin planning process and shall otherwise
2 encourage public participation to the greatest practical
3 extent.

4 (8) The department shall implement the basin plan and
5 total maximum load through its water quality protection
6 programs, including, but not limited to:

7 (a) Permitting and other regulatory programs;

8 (b) Nonregulatory and incentive-based programs,
9 including best management practices, cost sharing, waste
10 minimization, pollution prevention, and public education;

11 (c) Other water quality management and restoration
12 activities; and

13 (d) Pollutant trading.

14 (9)(a) Pollutant sources that are not subject to
15 permitting under this chapter or part IV of chapter 373 have
16 the opportunity to implement the total maximum load allocation
17 through nonregulatory and incentive-based programs, including
18 best management practices, or other preventive measures,
19 outlined in the basin plan developed under subsection (6).

20 (b) The department, the water management districts,
21 and other interested parties, as appropriate, cooperatively
22 shall develop and adopt suitable best management practices or
23 other measures to be implemented by nonagricultural pollutant
24 sources and shall assist to the greatest extent possible with
25 the implementation of the specific practices and measures
26 outlined in the basin plan. The Department of Agriculture and
27 Consumer Services shall develop and adopt by rule suitable
28 interim measures, best management practices, or other measures
29 to be implemented by agricultural pollutant sources and shall
30 assist to the greatest extent possible with the implementation
31 of the specific practices and measures outlined in the basin

1 plan. In the process of approving and adopting interim
2 measures, best management practices, or other measures, the
3 Department of Agriculture and Consumer Services shall consult
4 with the department, the Department of Health, the water
5 management districts, representatives from affected farming
6 groups, and environmental group representatives.

7 (c) Pollutant sources that are not subject to
8 permitting under this chapter or part IV of chapter 373 and
9 that implement the nonregulatory practices or other measures
10 outlined in the basin plan as designed and according to the
11 schedule in the plan are not required to obtain a permit or
12 other regulatory authorization to conduct these activities.

13 (10) The department may adopt other rules necessary to
14 administer this section pertaining to:

15 (a) Delisting water bodies or waterbody segments from
16 the basin-specific list;

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

19 (c) Procedures for pollutant trading among the
20 pollutant sources of a water body or waterbody segment,
21 including a mechanism for the issuance and tracking of
22 pollutant credits. The procedures may be implemented through
23 permits or other authorizations and must be legally binding.

24 (11) This section does not alter any applicable state
25 water quality standards or restrict the authority otherwise
26 granted to the department or a water management district under
27 this chapter or part IV of chapter 373.

28 (12) The department shall not accept or implement any
29 additional federally delegated or authorized regulatory
30 program related to total maximum loads without prior specific
31 legislative approval.

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

25 Section 4. This act shall take effect upon becoming a
26 law.

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SENATE SUMMARY

Authorizes the Department of Environmental Protection to adopt a process of listing surface waters not meeting water quality standards. Authorizes the department to establish, allocate, and implement total maximum loads applicable to the listed waters. Sets standards and prescribes procedural requirements. Requires an evaluation and a report.